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Chapter 36

Crimes Related to Assisting Escape and Harboring Criminals

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Escape (Criminal Act, Article 145, paragraph 1), Special Escape (Criminal Act, Article 146), Helping Escaping (Criminal Act, Article 147), Escape Caused by Prison Guard (Criminal Act, Article 148), and Harboring Criminals (Criminal Act, Article 151).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | ESCAPE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Escape	- 6 mos.	4 mos. - 8 mos.	6 mos. - 1 yr.
2	Special Escape	- 8 mos.	6 mos. - 1 yr. 6 mos.	1 yr. - 4 yrs.
3	Assisting Escape	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs.	1 yr. 6 mos. - 5 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Special consideration can be taken into account for engaging in the offense or its motive Cases where the degree of damages, assault, the threat is minor (Type 2) 	<ul style="list-style-type: none"> Particularly malicious commission of the offense Instigating the subordinate person to commit the crime
	Actor/ Etc.	<ul style="list-style-type: none"> Those with hearing and visuals impairments Those with mental incapacity (cases where the offender cannot be liable) Voluntary surrender to investigative agencies 	<ul style="list-style-type: none"> Commission by a correctional officer or conveyor who is in charge of the person in lawful custody (Type 3) Repeated offenses under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Passive participation 	
	Actor/ Etc.	<ul style="list-style-type: none"> Those with mental incapacity (cases where the offender can be liable) No prior criminal history Offender expresses remorse, and the victim opposes punishment (Type 2) 	<ul style="list-style-type: none"> A prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of disciplinary action against violation of the same offense exist (This applies when the criminal history is within ten years after completion of sentence)



02¹ HARBORING A CRIMINAL OR AIDING AN ESCAPE

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Harboring a Criminal or Aiding Escape	- 6 mos.	4 mos. - 1 yr.	8 mos. - 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Special consideration can be taken into account for engaging in the offense or its motive 	<ul style="list-style-type: none"> Particularly malicious commission of the offense Acquired financial benefits in exchange for the commission of the offense Instigating the subordinate person to commit the crime
	Actor/ Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments Those with mental incapacity (cases where the offender cannot be liable) Voluntary surrender to investigative agencies 	<ul style="list-style-type: none"> Repeated offenses under the Criminal Act (including perjury, destruction of evidence, false accusation, and others)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Passive participation The degree of interference with criminal justice is not significant 	<ul style="list-style-type: none"> Promises for financial benefit
	Actor/ Etc.	<ul style="list-style-type: none"> Those with mental incapacity (cases where the offender can be liable) Expresses sincere remorse No prior criminal history 	<ul style="list-style-type: none"> Destroying evidence or attempting to conceal evidence after the commission of the offense A prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of disciplinary action against violation of the same offense exist (including perjury, destruction of evidence, false accusation, and others)

DEFINITION OF OFFENSES

01 | ESCAPE

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person who was lawfully arrested or in custody escapes	Criminal Act, Article 145, Paragraph 1
A person who, by destroying an accommodating device or equipment, by using violence or intimidation to others, or is accompanied by two or more persons, committed the crime of escaping	Criminal Act, Article 146
A person who forcibly abducts another who is in lawful custody or who causes such person to escape	Criminal Act, Article 147
A correctional officer or conveyor who makes a person in lawful custody to escape	Criminal Act, Article 148

02 | HARBORING CRIMINAL · ESCAPE

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person who harbors a person who has committed a crime punishable by fine or a more severe punishment, or who causes such person to escape	Criminal Act, Article 151



DEFINITION OF SENTENCING FACTORS

01 | ESCAPE

1. SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR COMMITTING THE CRIME OR THE CRIME'S MOTIVE

- This means one or more of the following factors apply:
 - Participation in the crime was forced by another person or resulted from threats (This excludes cases where the Criminal Act, Article 12 is applicable)
 - When the offender merely agreed to participate in the crime but did not lead or participate in the commission of the crime
 - The commission of the offense was due to the arrester or correctional officer's neglect
 - Other cases with comparable factors

2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
 - The means and methods for the commission of the offense were meticulously done in advance
 - Multiple persons involved in an organized manner for the purpose of committing the offense or in the case of using professional devise or technology, the offender lead the crime by planning or executing the crime or played a key role
 - The offender possessed a dangerous object
 - Other cases with comparable factors

3. PASSIVE PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the crime.

02¹ HARBORING CRIMINAL · ESCAPE

1. SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR COMMITTING THE CRIME OR THE CRIME'S MOTIVE

- This means one or more of the following factors apply:
 - Participation in the crime was forced by another person or resulted from threats (This excludes cases where the Criminal Act, Article 12 is applicable)
 - When the offender merely agreed to participate in the crime but did not lead or participate in the commission of the crime
 - The offender was in a close personal relationship such as a *de facto* marriage, partners, friends or others. The offense was committed because the personal relationship made it hard to refuse the original offender's request
 - Poor level of awareness of "a person who committed an offense"
 - Other cases with comparable factors

2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE

- This indicates cases in which one or more following factors apply:
 - The means and methods for the commission of the offense were meticulously done in advance (For example, while operating an illegal gambling enterprise and others, arrange a "paper owner" who would act as the business owner during the inspection and harbor the offender)
 - Multiple persons was involved in an organized manner for the purpose of committing the offense or in the case of using professional devise or technology, the offender lead the crime by planning or executing the crime or played a key role
 - Offender was actively invoked
 - Other cases with comparable factors

3. PASSIVE PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the crime.

4. THE DEGREE OF INTERFERENCE WITH THE CRIMINAL JUSTICE SYSTEM IS NOT SIGNIFICANT

- This indicates cases in which one or more following factors apply:
 - Cases where a statement made in the early stages of the investigation was reversed or the false statement was easily detected by the investigative agency so that the degree of interference with criminal justice was not significant
 - Other cases with comparable factors

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01 | DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors.
 - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
 - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

02 | DETERMINING THE SENTENCE APPLICABLE

- When determining the sentence, the court shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.

GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to $\frac{1}{2}$.

02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE RANGE BY LAW

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

01 | APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03 | CALCULATING THE SENTENCE OF A MULTIPLE OFFENDER

- To calculate the sentence of an offender convicted of multiple offenses that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting the sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the $\frac{1}{2}$ of the maximum sentencing range of the second offense.

- ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of $\frac{1}{2}$ of the maximum sentencing range of the offense with the highest sentencing range, and (2) $\frac{1}{3}$ of the maximum sentencing range of the remaining offense with the second-highest sentencing range.
- ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

01 | ESCAPE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Particularly malicious commission of the offense • Commission by a correctional officer or conveyor who is in charge of the person in lawful custody (Type 3) • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or more than three incidents of fines) exists 	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in or the motivation for the offense • Cases where the degree of damages, assault, the threat is minor (Type 2) • Express penitence (including voluntary surrender or confessions, and the like) • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • More than two incidents of suspension of sentence or more severe punishment • Lack of social ties • Absence of remorse • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Passive participation as an accomplice • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

02¹ HARBORING CRIMINAL · ESCAPE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Acquired financial benefits in exchange for the commission of the offense • Particularly malicious commission of the offense • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years or more than three incidents of fines) exists 	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in or the motivation for the offense • Express penitence (including voluntary surrender or confessions, and the like) • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Promises for financial benefit • More than two incidents of suspension of sentence or more severe punishment • Lack of social ties • Absence of remorse • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • The degree of interference with criminal justice is not significant • No criminal history of the suspension of sentence or imposing of other sentences more severe • Strongly-established social ties • Passive participation as an accomplice • Cases of elderly offenders • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- Determining Criminal History
 - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.



ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factor by two or more, suspension of the sentence is recommended.
 - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of the sentence section comprehensively.