



**Sentencing Guidelines
Manual Commentary**



I . INTRODUCTION

01 | SIGNIFICANCE OF THE SENTENCING GUIDELINE

Sentencing decisions are of great significance because they involve direct deprivation or limitations of an individual's liberty and restricts an offender's earning capacity or assets. In light of this, reasonable and proper sentencing is crucial to assure fairness and trustworthiness within the criminal procedures.

The Sentencing Commission of Korea ("the Commission"), which is empowered to issue guidelines under the Court Organization Act's Part VIII, has set this guideline to advise judges in making sentencing decisions (Court Organization Act, Article 81-6, paragraph 1).

In adopting sentencing guidelines, the Commission is required to comply with the following principles: 1. The guideline shall reflect the seriousness and the circumstances of the crimes and the extent of the defendant's liability. 2. The guidelines shall consider the general prevention of crimes, the prevention of offenders from committing repeated offenses, the offender's re-entry into society. 3. The guidelines shall not distinguish between same or similar types of offenses when weighing the sentencing factors and is to treat them equally. 4. The guidelines shall not discriminate against defendants based on their nationality, religion, conscience, and social status in making sentencing decisions (Court Organization Act, Article 81-6, paragraph 2).

02 | SCOPE OF THE GUIDELINE'S APPLICATION

1. Objective Scope

The guideline is applied to the public trial cases and does not apply to cases involving petitions for summary judgments by the prosecution or requests for full-trials.

Even for full trials requests by the prosecution in criminal trials, the guideline is not applicable except for crimes related to elections if a monetary penalty is selected. The guideline does not apply when a monetary penalty is imposed, unless

there is a separate standard for monetary penalty, provides monetary penalty with imprisonment, or explicitly prohibits monetary penalty.

The guideline does not apply to attempted crime offenders of other offense groups. However, the guideline does apply to attempted murders.

The guideline also applies to co-perpetrators and instigators. Most guideline sentencing tables regulate “Instigating the Subordinate Person to Commit the Offense” under the Criminal Act, Article 34 as a special sentencing determinant. In crimes of perjury, “Instigating Perjury” is treated as a general sentencing determinant. This means that it assumes that the guideline applies to instigators as well. However, this guideline does not apply to offenders committing the crime of aiding and abetting since such standards are not provided.

2. Subjective Scope

The guideline applies to both domestic and foreign nationals, and does not distinguish between the two. Juvenile offenders are excluded from the application of this guideline and are distinguished from adult offenders. This is because juveniles are defined as individuals under 19 years of age under the Juvenile Act. (Juvenile Act, Article 2). As a result, the sentencing guidelines shall be applied to individuals older than 19 years of age using the indictment date as the date for applying this guideline.

3. Temporal Scope

This sentencing guideline applies to all offenses charged after this guideline's effective date (Sentencing Commission Operation Rules, Article 20, and 2010Do2076 Supreme Court Decision May 27, 2010). For indictments brought before the guideline became effective, the guideline does not apply even after the cases reach the appeals level. However, for lawsuits initiated before the guideline became effective, and the guidelines were referred to for determining the sentencing range, for cases such as this, applying the law retroactively cannot be viewed illegal, even if it can be disadvantageous to the defendant. (Supreme Court Decision 2009 Do11448 Decided Dec. 10, 2009). The guideline applies to amendments made to the indictment of the offenses, even if the offense was initially not set forth. For sentencing guidelines amended during trials, the general rule is that the guidelines shall be applied at the time of indictment. The exception to this rule is for offenses excluded from the guideline due to amendments made to the indictments; or cases

in which the adjusted recommended sentencing range is less severe than the previous recommended sentencing range. Although no specifications are required under law, the sentencing judge must present the reason for such sentencing decisions persuasively and adequately.

In cases where the sentencing guideline became effective, and if the sentencing range was adjusted accordingly, but the indictment was brought without adjusting the range, then do not apply the sentencing guidelines as is. This is because such decisions did not reflect the amendments to the sentencing guidelines' sentencing and sentencing practices.

03¹ AUTHORITY OF THE GUIDELINE

1. Advisory Authority

The sentencing guideline provides a reference for sentencing judges to determine the offense type and the sentencing period. This guideline, however, stands as an advisory recommendation without any legally binding authority. (Court Organization Act, Article 81-7, paragraphs 1, saving clause) Nevertheless, the sentencing judge is to respect the guideline in the sentencing determination. (Supreme Court Decision 2009Do11448 Decided Dec. 10, 2009) For sentencing decisions that depart from the guideline's sentencing range, the judge is required to set forth their reasons in judicial opinions (Court Organization Act, Article 81-7, paragraphs 1 and 2). In this case, the reasons for determining such sentencing range shall be written, giving a reasonable basis for reaching such a decision. (Supreme Court Decision 2010Do7410, Decision 2010JunDo44, Decided Dec. 9, 2010)

This sentencing guideline provides guidance to sentencing judges of the first instance and appellate courts. However, this does not mean that first instance court judges must follow the guideline sentencing range to render just sentencing. To this extend, if the first instance court departs from the guideline, the appellate court may or may not decide to review the case. In cases where the guideline is applied, appeals can be made to the appellate court on the grounds of improper sentencing.

2. General Application of the Sentencing Guidelines and Stated Reasons for Imposing Sentencing Range

The types of offenses, sentencing periods, and guidelines on the suspension of the sentence are provided in the guideline. The guidelines are organized according to the offenses, and such offenses are divided into different types. This guideline presents mitigating, standard, and aggravating sentencing ranges that allow the judge to set a sentencing range by adjusting the range and then decide on a final sentencing period. For cases involving less than three years of imprisonment (with or without prison labor), the sentencing judge may decide whether to suspend the sentence. This determination is done pursuant to the distinction of suspension advised, imprisonment advised, or for cases when neither is advised. For instances where neither is advised, the sentencing judge may select either to impose imprisonment or suspension of sentence.

Since providing proper and reasonable grounds for sentencing in every case would result in an unworkable guideline, it permits exceptions that allow departures from the recommended sentencing range. For special cases where factors not considered in the guidelines or if other special circumstances for evaluating sentencing or adjusting factors are present, the sentencing judge is allowed to depart from this guideline by specifying the reasons.

For example, ① the aggravated sentencing range can be selected when the guideline suggests a standard sentencing range ② imprisonment can be selected when the guideline suggests suspending the sentence ③ the standard sentencing range can be selected when the guideline suggests aggravated sentencing range and ④ suspension of sentence can be selected when the guideline suggests imposing imprisonment. Combining ① and ④, or ② and ③, is permitted as well. Other examples can include cases where the maximum limit of the sentencing range is advised by the guideline pursuant to the multiple offenses; cases imposing a sentencing range that is below the minimum sentencing limits suggested by the guideline for multiple offenses; cases where the aggravating actor/etc. factors, and special mitigating actor/etc. factors are assessed as the same and there is a departure from the guideline's principles on evaluating the factors; cases where the special mitigating factor is excluded from the guideline but for assessing purposes, the factors are included.

II. APPLICABLE OFFENSES

01 | SCOPE OF THE APPLICABLE OFFENSES

1. Offense Group Classification

1) General Principles

The Commission chose to establish a separate and independent guideline for each offense group instead of a single, unified guide applicable for all types of offenses. The guideline is organized by the nature of the offense and its conduct and focused attention on specially protected interest. The Commission followed the chapter of the Criminal Act (“Act”) to categorize each group, and the character or nature of the offense was also taken into account.

In order to apply the sentencing guideline, classifying the offense applicable is the first starting point. Since the guidelines are based on the criminal classification of the Act or the Special Criminal Act, identifying the offense groups will be relatively straightforward in most cases, with some exceptions.

For example, in cases of sexual assault crimes, particular aspects of a crime are based on Chapter 32 Rape and Sexual Assault Crimes. Similar crimes such as Robbery Rape Crimes (Article 339 of Chapter 38 Robbery and Larceny) and the Protection of Sexual Crimes Against Minors, the Act on Punishment of Sexual Violence Crimes, the Act on Special Cases concerning the Punishment of Specific Violent Crimes, and the Military Criminal Law are treated as one offense group.

2) Classification within the Same Offense Group

Selecting the sentencing standards for individual offenses does not imply that a single table for offense types and sentencing range applies. More than one guideline table may be applicable for types of offenses and the sentencing period within the offense group.

For example, for sexual crimes, there can be the following classification:

- (1) Sexual crimes based on general standards (rape against victims over thirteen years of age, indecent act by compulsion against victims over thirteen years of age, sexual crimes against disabled persons over thirteen years of age, and sexual crimes against victims under thirteen years of age , and sexual crimes

under the Military Criminal Law)

- (2) Sexual crimes resulting in bodily injuries (bodily injuries or death resulting from crimes against victims over thirteen years of age, sexual crimes against disabled persons over thirteen years of age, bodily injuries or death resulting from crimes against victims under thirteen years of age, and sexual crimes under the Military Criminal Law)
- (3) Seven separate tables of sentencing and sentence range are available for sexual crimes resulting in death

2. Established Offense Groups

The Commission in adopting changes to the guideline has considered various aspects, including the general public’s perception and interest as well as the frequent occurrence of a crime, and implications to the society in determining the offense groups in a particular period.

| COMMISSION GROUP | ADOPTED OFFENSE GROUP |
|------------------|--|
| First | Crimes of Homicide, Crimes of Bribery, Crimes of Sexual Assault, Crimes of Robbery, Crimes of Embezzlement and Breach of Trust, Crimes of Perjury, and Crimes of False Accusation |
| Second | Crimes of Abduction and Inducement, Crimes of Fraud, Crimes of Larceny, Crimes Related to Official Documents, Crimes Related to Private Documents, Crimes of ⚔ Obstructing the Performance of Official Duties, Crimes of Food and Health, and Crimes of Narcotics |
| Third | Crimes Related to Securities and Finance, Crimes Related to Intellectual Property, Crimes of Violence, Crimes Related to Traffic Offenses, Crimes Related to Elections, Crimes Related to Taxation, Crimes of Extortion, and Crimes of Arson |
| Fourth | Crimes Accepting or Offering Bribes by Breach of Trust, Crimes of Accepting or Offering Bribes by Breach of Trust, Violation of Attorney-at-Law Act, Crimes of Arrangement of Commercial Sexual Acts, Crimes of Illegal Arrest, Confinement, Abandonment, and Abuse, Crimes of Dealing with Stolen Property, Obstructing Another from Exercising One’s Rights, Interference with a Business, Destruction and Damage, etc. of Property, and Crimes of Speculative Game Products |
| Fifth | Crimes Related to Labor Standards, Crimes Related to the Petroleum Business Act, Crimes Related to Death and Injury by Negligence, Crimes Related to Assisting Escape and Harboring Criminals, Crimes Related to Currencies, Valuable Securities, and the Illegal Check Control Act, and Crimes Related to the Credit Business Act and the Debt Collection Act |

| COMMISSION GROUP | ADOPTED OFFENSE GROUP |
|------------------|---|
| Sixth | Crimes of Defamation, Crimes Related to Violations of the Act on Regulations of Conducting Fund-Raising Business without Permission, and Crimes Related to the Electronic Financial Transaction Act |

3. Applicable Offenses

The Sentencing Guideline does not apply to every offense within the offense group.

The Commission has established applicable offenses from each crime of the offense group:

- (1) Realistic restrictions accompanying the establishment of the sentencing guidelines for all crimes belong to specific offense group from the beginning of the implementation
- (2) Crimes with a extremely low frequency of occurrence are hard to establish the sentencing ranges based on a statistical analysis and find sentencing factors, etc.
- (3) Main sentence is less than monetary penalty, etc.

To apply the guideline, the sentencing judge must first determine whether the sentencing guidelines are established for such crimes in a particular offense group.

02¹ APPLYING THE SENTENCING GUIDELINES

Determine the Offense Type

Determine the Guideline's Recommendation

Determine the Sentencing Range

Make the Sentencing Decision

Determine Whether to Grant a Suspension of Sentence

The sentencing guidelines are applied as follows:

1. Determine the Offense Type

Determine the offense type after deciding on the offense group for the offense at issue. The offense type is to be decided by following the specified definitions contained in the sentencing guideline.

2. Determine the Guideline's Recommendation

The guideline provides three sentencing ranges for each offense type. Under this, select a sentencing range after analyzing and assessing the special sentencing factors.

3. Determine the Sentencing Range

After the appropriate sentencing range is selected under the guidelines, the sentencing range is determined by the offense type and the sentencing period tables. However, the following is also to be considered.

1) Special Adjustments

The special adjustment is made to the recommended sentencing range for cases where multiples of special sentencing determinant factors exist. This special adjustment refers to multiples of both special mitigating or aggravated determinant factors or when there are multiples of either factor. In this situation, the minimum level is decreased or the maximum level is increased.

2) Descriptive Sentencing Ranges

Due to the special offense group, the Commission added a descriptive sentencing range. Descriptive sentencing ranges refer to those descriptions marked with an asterisk symbol (*) located below the sentencing criteria table or the sentencing determinant tables. The sentencing range can be increased or reduced when needed.

3) Punishment under Law

For cases where the recommended sentencing range goes beyond the mitigating or aggravated sentencing range under law, then the range is adjusted higher or lower. When the recommended sentencing range is lower the minimum level of the sentencing under law, the minimum level of the sentencing under law becomes the base level.

4) Multiple Offenses Criteria

When determining sentencing range under the Criminal Act, aggravating factors for an offender committing multiple offenses, mitigating factors under the law, aggravating factors for an offender with a previous criminal history, and discretionary mitigation are to be considered in that order. However, these factors were reflected in the determinants found in this guideline. For offenders with a previous criminal history, distinctions are drawn between the rules under the General Parts of the Criminal Act and the repeated offenses.

4. Sentencing Decision

When the sentencing range is determined through the above process, the sentencing judge can decide on a sentence appropriate for the case at hand. The sentencing judge should consider both the general sentencing factors and special sentencing factors. In cases where the general sentencing factors are not suggested in the guidelines, and the judge determines that it is reasonable to reflect the factors in the sentencing range, then this can be taken into consideration comprehensively.

5. Determine Whether to Grant Suspension of Sentence

If the sentencing is imprisonment for not more than three years, the sentencing judge shall decide on whether to suspend a sentence. In addition to the sentence type and the sentencing range, this guideline also suggests the probation criteria to recommend imprisonment or suspension of a sentence for some instances by comparing the main consideration factors.

The following is a more detailed description of the sentence type, sentencing range, and criteria for suspending a sentence.

III. TYPE OF OFFENSES AND SENTENCING PERIODS

01 | DETERMINING OFFENSE TYPES

1. Classification Offense Types

1) Need for Classification

This guideline divides the different types of offenses within certain offense groups according to particular principles. Within the same type of offense, the suggested sentencing ranges are contained in the sentencing guidelines. Under this approach, determining the proper category of each offense becomes relevant.

This guideline's classification allows offenses similar in nature to be treated in the same way and non-similar offenses differently. Categories of offenses in the guidelines are necessary to assure predictability and to guarantee the recommending function of the sentencing guideline.

Since the sentencing ranges may overlap, convictions for heavier offenses do not necessarily imply imposing a more severe sentences. Yet, classifying the guideline's offenses according to the severity of the crime ensures that the purposes of this guideline are met.

2) Principles Applied to the Classifications

The sentencing guideline is based on the types of offenses that help determine a sentencing range for a particular crime instead of taking the elements of the crime or the sentencing factors into account.

The substantive law constitutes a reference for deciding elements of a crime. In turn, this allows the guideline to consider the elements of the crime for the substantive law. However, due to this guideline's purpose, which is to contain narrowed sentencing ranges based on specific sentencing factors, the classifications are not bound according to each element of the crime.

For example, the motives and means in committing murder can provide a wide range of sentencing periods. This includes different types of cases, including those with a relatively low penalty or highly severe punishment. The sentencing range for murder cases should be classified into several offense types by following consistent criteria. With regard to motive, the guideline classifies murder into Type 1 Murder

with Extenuating Motive, Type 2 Murder Committed with General Motive, Type 3 Murder with Condemnable Motive, Type 4 Murder in Combination with Other Serious Crimes, and Type 5 Murder Committed with Extreme Neglect of Human Life.

The sentencing guideline's approach to the Offense of Sexual Assault Group is quite different from the Offense of Murder Group. The guideline classifies types in a sexual assault with a similar action or closeness of sentencing ranges. The reason for this difference can be found in Korea's approach to criminal law. It does not distinguish murder into different types despite the various possible offenses. However, sexual assault is categorized into various types according to the conduct, victims, methods used in the commission of the offense, whether other crimes were committed in combination of the sexual assault, and whether the crime constitutes as an aggravated crime. For the offense of sexual assault, the guideline sets out similar offense types with a sentencing range of imprisonment of more than 3, 5, 7, and 10 years.

3) Criteria of the Classification

There is no general principle or criteria applicable for all classifications for various offense groups throughout the guideline. Each offense group contains different criteria to divide the types of offenses. This includes the motive, purpose, means used in committing the crime, type of behavior, age of the victim, the crime's substance that is to be combined, whether the offender habitually committed the crime, criminal record of the offender, and amount of profit made from the crime. The guideline is helpful in that offenses deserving comparable sentences or offenses analogous in nature are identified as within the same offense type. To this end, various criteria were utilized to reflect the different characteristics of each offense group.

The sentencing guidelines classify various offense types with sentencing factors that are considered most important when imposing a sentence. The special constituent element can be considered as aggravating or mitigating factor in the sentencing process but cannot always be applied as a criterion to classify the offense types. A special constituent element cannot be regarded as a consistent factor applicable to all criteria. This is because, in some cases, a more critical sentencing factor may exist.

2. Determining Offense Type

The type of crime involved must first be determined before imposing sentencing of an offense by referring to the sentence type and sentencing range. For example, there are five types of homicide crimes, ranging from Type 1 (presumably motivated murder) to Type 5 (reckless killing). Therefore, which of the five types of crimes will be the base offense must be determined. Each offense in the guideline includes 'Definition of Offenses,' which describes the specifics of each crime. The 'Definition of Offenses' can help determine the specific type of crime.

For example, when an offender commits the murder of the offender's spouse due to the Othello syndrome, discontentment of the victim spouse, or when the offense falls under killings due to family discord because of the motive of the killing, this is a Type 2 offense. However, when the offender commits the killing due to continued marital affairs of the victim spouse, the offense falls under Type 3 offense includes murder for money, due to marital affairs, or for organizational profit.

02 | DETERMINING SENTENCING RANGES

1. Distinction between Sentencing Factors

Sentencing factors are classified according to the following: (1) the basic characteristics of various sentencing determinants (conduct determinants, actor/other determinants), (2) matters that affect the seriousness of the crime (aggravated and mitigated factors), and (3) the degree of such offense (special and general sentencing determinants).

While quantifying and assessing the type factors can increase the predictability of the determinants, establishing objective criteria for all types of crimes uniformly would be difficult. Not only that but when the sentencing determination is imposed uniformly across offense types, it also presents validity issues concerning the sentencing.

As a result, the Commission presented multiple sentencing factors and drawing a distinction between them. The guideline well demonstrates the correlation between sentencing factors and sentencing without quantifying or measuring them.

The sentencing guideline first classifies the sentencing determinants into aggravating and mitigating factors and then divides them into special and general sentencing factors considering its impact on the sentence. Subsequently, the sentencing factors are again classified into conduct, actors, and other factors.

1) Aggravating and Mitigating Factors

First, the sentencing factors are divided into aggravating and mitigating factors. An aggravating factor refers to a factor that increases accountability for committing the offense, while a mitigating factor refers to a factor that reduces such accountability.

Based on a statistical analysis of past sentencing practices, the Commission has set forth aggravating and mitigating factors that the sentencing judge should consider in determining the sentence for an offense.

2) Special and General Sentencing Determinants

The sentencing factors are classified into special sentencing determinants and general sentencing determinants. Special sentencing determinants have a significant impact on criminal sentencing and are used to determine the recommended zone. General sentencing determinants are factors that do not fall under a special sentencing determinant. It is not used to determine the recommended zone and is applied to imposing the sentence within the selected recommended sentencing range.

For example, even if there is one special aggravating factor and many general mitigating factors, the aggravating sentencing range shall be based on the special sentencing determinants only.

Special sentencing determinants are applied to determine the recommended zone. These determinants are also considered comprehensively. The general sentencing factor should also be taken into account when determining the sentencing range.

Since special sentencing determinants are the only factor that is used in determining the recommended sentencing zone, deciding which factor will fall under the special sentencing determinants becomes essential. In this regard, the Commission has set forth special sentencing determinants due to findings revealed by statistics based on legislative intent, overall consensus, and sentencing policy of the Korean Criminal Law.

The Commission framed the guidelines under the offense groups. Because the special and general sentencing determinant distinction cannot be entirely definite for all offense groups, certain factors classified as a special factor in an offense group may be treated as a general factor in another offense group.

Another relevant point is that the division of special and general sentencing determinants is not always clear. The overlapping mentioned above of sentencing ranges resolves this problem.

3) Determinants of Conduct and Actor/etc

Sentencing determinants are divided into two separate determinants of conduct and actor/etc. Under principles applied to sentencing determinants for assessment, the act determinant is given more weight than the actor/etc. determinant for the special sentencing determinants. This follows the principle that the accountability for the offense conduct is more significant than other sentencing determinants.

The sentencing guidelines classify factors relevant to the offense into conduct factors, the non-offenders extent of participation in the offense, circumstances after committing the offense, and others.

The guideline lists premeditated crime or cruel commission of crimes in determinants relevant to conduct. Cases where the offender expresses remorse and the victim opposes punishment, voluntary surrender to investigative agencies, a significant amount of money was deposited, and prior criminal records as the actor/etc. of the general sentencing are also under this determinant. In some cases, however, the distinction between the conduct and actor/etc. determinants may not always be clear.

4) Sentencing Determinants Not Listed in the Table

The special sentencing determinants, which determine the sentencing range, are limited to the guideline factors. Even if a particularly crucial factor that proves as important as a special sentencing determinant is not listed in the guideline, it cannot be viewed as a special sentencing determinant.

When such sentencing component mentioned above is excluded and such cases have resulted in an inappropriate sentencing range, the sentencing judge can depart from the guideline. The Commission may revise the guideline to reflect the factor as a special sentencing determinant if the factor is a special and typical sentencing determinant repeatedly acknowledged by judges.

On the other hand, the general sentencing determinants affect the recommended sentencing ranges and are not limited to the factors provided in the guideline. This is because, unlike factors decided in the recommended sentencing range, there are difficulties in limiting the factors to the recommended sentencing range.

The guideline lists general sentencing determinants to prevent typical factors in the procedure of sentencing from being omitted and allow practices regarding the sentencing determinants between the parties, and help judges assess the numerous sentencing determinants.

5) Statutory Aggravating and Mitigating Factors and Discretionary Mitigating Factors

Under the Criminal Act, the sentencing determinants are classified as statutory aggravating/mitigating factors and discretionary mitigating factors.

This guideline, however, takes a different approach than the Act. Rather than following the Act, the statutory aggravating/mitigating factors and special sentencing determinants are treated differently in this guideline. Although the statutory aggravating/mitigating factors are important sentencing determinants, other significant sentencing determinants are included as discretionary mitigating factors.

Statutory aggravating/mitigating factors are not always classified as special sentencing determinants, but many discretionary mitigating factors are contained in the special sentencing determinants.

2. Determining Whether Sentencing Determinants Exist

The sentencing guidelines divide the sentencing determinants according to the offense group and the type of offense. The sentencing range is calculated according to the recommended zone, and the special sentencing factors, and the sentence is imposed within the recommended sentencing zone.

In determining whether a sentencing factor exists in the case is the starting point for determining the recommended zone, special sentencing factors, and whether the sentence is imposed within the recommended sentencing zone. In particular, since the recommended zone is determined by assessing the special sentencing determinant, whether the special sentencing determinant exists in the case will be a vital component of deciding the sentence.

The sentencing judge shall investigate and evaluate records through a sufficient sentencing hearing and decide whether sentencing factors exist. When the judge determines that multiple special sentencing determinants exist, the recommended zone can be established by evaluating the sentencing factors.

It is important to note that the number of sentencing factors is calculated based on those classified as a “●” bullet in the sentencing factor table. If several factors are listed within one “●” bullet, those are treated as a single type of factor, even if there are more than one.

For rape (against a victim thirteen years or older), “● sadistic or metamorphic infringement or extreme sexual shame” is one of the special factors. Despite the fact that the factor falls under “sadistic or metamorphic infringement” and “extreme

sexual shame,” these are treated as one special sentencing factor and not two.

3. Principles Applicable to the Sentencing Factors

1) Assessing Principles Applicable to the Sentencing Factors and Its Needs

Without the principles for assessing sentencing factors, applying the guideline properly will be a challenge. Although the assessing principles will not ensure absolute assessments for every case, in most cases, assessing the principles outlined in the guideline will provide a reasonable sentencing range.

2) Outline of Assessing Principles of the Sentencing Factors

The special sentencing determinants are given more consideration than the general sentencing determinants. As previously mentioned, the guidelines allow the special sentencing determinants to adjust three sentencing zones while the general sentencing determinants can only be considered within the recommended sentencing zone. This distinguishes between the effect of the determinants and their function.

As seen in the table below, in regards to the murder group, the sentencing guidelines have multiples of assessing principles applicable to the special sentencing determinants.

ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS

- When more than two special sentencing determinants are found, the sentencing range is determined through assessing the factors according to the following:
 - ① The conduct factor is taken into consideration with greater weight than the same number of actor/etc. factor. However, the victim or the victim's family who opposes punishing the offender can be considered the same as the conduct factors.
 - ② Each factor within the categories of conduct or actor/etc. are weighted equivalently.
 - ③ When the sentencing range is not decided clearly with ① and ②, the sentencing judge should decide the sentencing range by comparing and assessing the determinants overall based on the principles in ① and ②.

The following summarizes the principles applied to assess the sentencing factors:

The first principle applied is “the principle of greater weight given to the conduct determinant,” and the second is “the principle of special sentencing determinants of the same kind treated equally.”

In order to implement the principle that liability should result from the conduct, the conduct determinants are treated with greater weight than actor/etc. determinant. Between the conduct determinants or the actor/etc. determinants, the special aggravating factors and special mitigating factors possess the same weight as the same number of factors to offset each other.

In offense groups such as Murder, Sexual Assault, Robbery, Embezzlement, and Breach of Trust, Abduction and Inducement, Fraud, Larceny, and Crimes of Obstruction of Official Duties, however, the victim or the victim’s family member opposing the punishment of the offender can match the conduct determinant. The Commission made this exception to follow the criminal policy of protecting victims by allowing opportunities for recovery from the offender’s harm.

Since sentencing factors are not quantified numerically, sentencing ranges cannot be determined automatically in every case. Also, for offenses that satisfy the aggravating component due to the principle of giving greater weight to conduct factors, in some instances, the recommended sentencing range can be lower than that of the essential elements of the offense. In exceptional cases where a reasonable range of sentences is not determined by the principle of assessing multiple special factors, the sentencing judge shall comprehensively evaluate various factors and decide on the sentencing range.

After assessing the sentencing determinants, the aggravated sentencing range is recommended when the assessment reveals greater aggravating factors and the standard sentencing range is recommended when the same number of aggravating and mitigating factors exist.

3) Application of Principles of Assessing the Sentencing Factors

When the special mitigating determinants are more in number or greater in weight (when the number of special aggravating factors in the conduct determinants and special mitigating factors in the act/etc. determinants are the same), apply the mitigating sentencing range. This follows the principles for assessing the sentencing factors. When the special aggravating determinants are more in number or more significant in weight, use the aggravating sentencing range. Apply the standard sentencing range for cases where no special aggravating or mitigating factors are present, and the number of factors, and the characteristics, are the same for either factor.

The following explains this assessment more specifically:

Compare the number of conducts in the special mitigating factor and conducts in the special aggravating factors, then calculate the number of special sentencing determinants after offsetting the factors. Compare the number of actor/etc. in the special mitigating factor and actor/etc. in the special aggravating factors, then calculate the number of special determinants after offsetting the factors.

First, the standard sentencing range is recommended for cases with no special sentencing determinants.

Second, when only the special mitigating factors or special aggravating factors remain, assessments should be done as follows. If the remaining are aggravating factors, an aggravated sentencing range is recommended, and if mitigating factors remain, then the mitigated sentencing range is recommended for sentencing. A cautionary note under the special adjustment of the sentencing range is advised. When the number of remaining special mitigating factors are more than 2, the minimum level of the mitigated sentencing range is reduced by $\frac{1}{2}$; when the number of remaining special aggravating factors is more than 2, the maximum level of the aggravated sentencing range is increased by $\frac{1}{2}$.

For example, when the mitigated sentencing range is “2 to 4 years” and the remaining special mitigating factors are more than 2, the recommended sentencing range would be “1 to 4 years.” If the aggravated sentencing range are “4 to 6 years” and the remaining special aggravating factors is more than 2, the recommended sentencing range would be “4 to 9 years.” This would be applied regardless of whether the special sentencing determinants or conduct or actor/etc. determinants remain.

Third, when both special mitigating and aggravating factors remain in the assessing process, the following should be taken into account:

- (1) When the conduct in the special mitigating factors and actor/etc. in the special aggravating factors remain, and the number of conduct in the special mitigating factors is more than or the same number as that of actor/etc. in the special aggravating factors, the sentencing guideline recommends the mitigated sentencing range. This is because the guideline considers the offense conduct factors with greater weight than the actor/etc. factors. If the remaining number of conduct in the special mitigating factors is more than 2, the mitigated sentencing range’s minimum level is reduced by $\frac{1}{2}$.

- (2) When actor/etc. in the special mitigating factors and conduct in the special aggravating factors remain, the advised sentencing zone is determined in the same manner. When the number of conduct in the special aggravating factors is more than or same as that of actor/etc. in the special mitigating factors, an aggravated sentencing range is advised. When the number of actor/etc. in the special aggravating factors is greater, the sentencing judge is to decide the range among mitigated, standard, and aggravated sentencing ranges, through comparing and evaluating the special sentencing determinants. This applies in the case when the remaining number of the actor in the special aggravating factors is more than 2. In addition, the aggravated sentencing range is not advised, nor should the maximum level of the aggravated sentencing range increased by $\frac{1}{2}$.

When actor/etc. in the special mitigating factors outnumber conduct in the special aggravating factors, the advised sentencing range is decided through comparing and assessing the determinants.

CASES EXEMPLIFYING EQUAL NUMBERS OF SPECIAL SENTENCING FACTORS

Examples Determining Sentencing Ranges

(1) Case 1

| CLASSIFICATION | MITIGATING | AGGRAVATING |
|----------------|------------------------------------|---|
| Conduct | (Strong) Provocation by the Victim | Cases where the Victim is Ascendant of the Offender |
| Actor/Etc. | | |

- The actor factor of 'those with hearing and visual impairments' offsets 'absence of remorse,' but since '(strong) provocation by the victim' factor remains, select the mitigating factor.

(2) Case 2

| CLASSIFICATION | MITIGATING | AGGRAVATING |
|----------------|----------------------|--|
| Conduct | | Cases where the Victim is an Ascendant of the Offender |
| Actor/Etc. | Offender's Admission | |

- As the above table exemplifies, one for each factor of special aggravating factor and special mitigating factor is present in this case. Since the offense conduct factor is given more weight than the actor/etc. factor, the aggravated sentencing zone is recommended.

- If the above case had other factors involved, then the recommended zone would be different. For example, a special mitigating factor of ‘the victim opposes punishment’ factor could be present instead of the ‘voluntary surrender to investigative agencies’ factor. Since the guideline recommends evaluating the ‘victim opposes punishment’ factor as same as the actor/etc. factor due to policy reasons, the standard sentencing zone would be recommended.

(3) Case 3

| CLASSIFICATION | MITIGATING | AGGRAVATING |
|-----------------|--|---|
| Offense Conduct | Excessive Use of Self-Defense, Willful Negligence | Premeditated Crime |
| Actor/Etc. | | Special Violent Crime Act (Repeated Crime) |

- The above table shows that there are two special aggravating factors and two special mitigating factors for this case. The conduct factor, ‘use of excessive self-defense’ offsets ‘premeditated crime.’ Also, the remaining conduct factor, ‘willful negligence’ is given greater weight than the actor/etc. factor or the ‘Special Violent Crime Act (repeated crime).’ The mitigated sentencing range would be recommended under the guideline.

CASES EXEMPLIFYING UNEQUAL NUMBERS OF SPECIAL SENTENCING FACTORS

(1) Case 1

| CLASSIFICATION | MITIGATING | AGGRAVATING |
|-----------------|--|--------------------|
| Offense Conduct | (Strong) Provocation by the Victim | |
| Actor/Etc. | Those with Hearing and Visual Impairments | Absence of Remorse |

- The actor factor of ‘those with hearing and visual impairments’ offsets ‘absence of remorse,’ but since ‘(strong) provocation by the victim’ factor remains, select the mitigating factor.
 - The conduct factor ‘(strong) provocation by the victim’ here is given greater weight than the actor/etc. factor, ‘absence of remorse,’ and additional special mitigating factor such as ‘those with hearing and visual impairments’ suggests the mitigated sentencing zone to be selected.

(2) Case 2

| CLASSIFICATION | MITIGATING | AGGRAVATING |
|-----------------|--|--------------------|
| Offense Conduct | | Premeditated Crime |
| Actor/Etc. | Those with Hearing and Visual Impairments, Voluntary Surrender to Investigative Agencies | |

- The conduct factor of 'premeditated crime' is taken into greater consideration than actor/etc. factor such as the 'those with hearing and visual impairments' or 'voluntary surrender to investigative agencies.' But, the actor/etc. factors outnumber the factors in the conduct classification. In this case, the sentencing range zone cannot be recommended based only on the assessing principles.
- The judge decides the appropriate sentencing zone in the three-level sentencing zones by evaluating the effects of the special sentencing factors.

03¹ DETERMINING SENTENCING RANGES

1. Principles Applicable to the Sentencing Factors

In determining the final sentencing range, one of the three recommended sentencing zones is selected and adjustments are made. The details of this process are as follows: 1. Determine whether sentencing factors exist → 2. Assess the multiple special sentencing factors → 3. Make special adjustments to the sentencing range and apply the descriptive standards → 4. Apply criteria for repeated crimes. Since this is different from deriving punishments under the Substantive Laws, further adjustments maybe needed due to the relationship between the recommended sentencing range under the guideline and the punishment under statutory law.

2. Principles Applicable to the Sentencing Factors

1) Basis for Establishing the Sentencing Ranges

The sentencing guidelines aim to ensure objective and reasonable guidelines in typical cases. The sentencing ranges reflect the statistic analysis based on nearly 70 to 80 percent of former judgments and sentencing practices. The adjustment takes

into account the opinions on improvements of sentencing practices and the public's request for crimes that have the established consensus for stiffer punishment for offenders of such crimes.

2) Recommended Sentencing Zones and Sentencing Ranges

The sentencing guideline divides certain offense groups into several offense types, with sentencing ranges corresponding to each type. For example, Type 1 in Murder Group suggests a sentencing range from 3 to 8 years imprisonment.

This classification of offense allows the sentencing range to be narrowed from the original statutory penalty. Also, the guideline divides the sentencing ranges into three zones of mitigated, standard, and aggravated zone. Based on these zones, the sentencing court can select the appropriate zone after comparing and assessing each specific sentencing factor. Overall, this approach promotes the guidance function and predictability of the guidelines.

3) Overlap of Sentencing Ranges

i) Basic Concept

There can be possible overlaps within the sentencing ranges among the three recommended zones for an offense type. According to the guidelines, the recommended zone of offense is determined mechanically by verifying and assessing the special sentencing factors. Also, the sentencing guidelines allow certain overlaps when the special sentencing factors exist due to inadequate considering of the importance of the factors.

ii) Overlap of Sentencing Ranges within the Recommended Sentencing Zones

The overlapping of the ranges enables reasonable sentencing because the overlap functions as a buffer zone when various special sentencing factors have a particular effect on the sentencing. The risk of deciding a recommended zone by using special and general sentencing factors is also eliminated by this overlap.

iii) Overlap of Sentencing Ranges within the Types of Offenses

The guideline allows the overlap in sentencing ranges among offense types to decrease the possibility of any single sentencing factor used in the classification of offense types excessively and guarantee reasonable sentencing ranges for the offense at issue.

3. Special Adjustments to the Sentencing Range

1) Basic Concept

The Commission has established special adjustments in cases when the special aggravating or mitigating factors exist in multiples, or the special aggravating factors outnumber the special mitigating factors by more than 2. This special adjustment aims to assure the imposing of reasonable sentencing.

When the sentencing range exceeds 25 years, the sentencing judge may impose life imprisonment.

2) Methods

SPECIAL ADJUSTMENT OF THE RECOMMENDED SENTENCING RANGE

- ① When the evaluation of special sentencing determinants shows 2 or more special aggravating factors or the special aggravating factors outnumber the special mitigating factors by more than 2, increase the maximum level of the aggravated sentencing range by $\frac{1}{2}$. When sentencing range exceeds 25 years, the sentencing court may impose life imprisonment.
- ② When the special sentencing determinants shows 2 or more special mitigating factors present or the special mitigating factors outnumber the special aggravating factors by more than 2, reduce the minimum level of the aggravated sentencing range by $\frac{1}{2}$.

3) General Fraud Case

| CLASSIFICATION | MITIGATING | AGGRAVATING |
|-----------------|------------|--|
| Offense Conduct | | Crime Against Unspecified Multiples of Victims or Prolonged and Repeated Commission of the Crime |
| Actor/Etc. | | Repeated Offense of the Same Type |

For general fraud type offense involving less than 100 million won (Type 1), the aggravated sentencing range is 1-2 years and 6 months with imprisonment. In the case above, since two special aggravating factors exist, the recommended sentencing range is increased to $\frac{1}{2} \Rightarrow$ [Recommended Sentencing Range] 1 yr. – 3 yrs. and 9 mos. [= 2 yrs. and 6 mos. + (2 yrs. and 6 mos. $\times \frac{1}{2}$)]

4. Sentencing Criteria in Descriptive Form

1) Basic Concept

In offense groups, such as Murder, Sexual Assault, Robbery, Abduction and Inducement, and Larceny, the sentencing criteria are suggested in a descriptive form together with the general guidelines. For example, the sentencing range of an attempt of murder is calculated by multiplying some ratio to the range of murder. Another example would be increasing the sentencing range by repeated crimes under the Special Violent Act or the Aggravated Punishment Act. When the offense is found to apply to the descriptive sentencing criteria and to bear relevant sentencing factors, the sentencing criteria in the descriptive form are applied to adjust the sentencing range.

When the sentencing range exceeds 25 years after applying the descriptive sentencing criteria, the sentencing judge may impose life imprisonment.

2) Rape Case of a Victim Thirteen Years of Age or Older

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|------|---|----------------------------|---------------------------|-----------------------------|
| 1 | Standard Rape | 1 yr. 6 mos. - 3 yrs. | 2 yrs. 6 mos. - 5 yrs. | 4 yrs. - 7 yrs. |
| 2 | Rape by Relative/Rape After Intrusion Upon Habitation, etc. /Special Rape | 3 yrs. - 5 yrs. 6 mos. | 5 yrs. - 8 yrs. | 6yrs. - 9 yrs. |
| 3 | Rape After Robbery | 5 yrs. - 9 yrs. | 8 yrs. - 12 yrs. | 10 yrs. - 15 yrs. |

* Imitative Rape against an adult falls within Type 1. However, reduce the maximum and the minimum sentencing range to $\frac{2}{3}$.

* Rape/Imitative Rape against the minor (including sexual intercourse by deceptive schemes or by the use of force/*quasi*-sexual intercourse) falls within Type 2.

* When the offense falls within Repeated Crimes as set forth in the Special Violent Crimes Act, increase the minimum and maximum sentencing range each by multiplying 1.5.

* When the offense falls within Repeated Crimes set forth in the Aggravated Punishment Act, increase the minimum and maximum sentencing range each by multiplying 1.5.

⇒ Under the descriptive form of the sentencing criteria, this results in 1 yr. and 8 mos. (= 2 yrs. and 6 mos. $\times \frac{2}{3}$) - 3 yrs. and 4 mos. (= 5 yrs. $\times \frac{2}{3}$) for imitative rape against an adult.

5. Discrepancies Between the Sentencing Range and the Statutory Punishment Prescribed by Law

1) Discrepancies Between the Recommended Sentencing Range and the Statutory Sentencing Ranges Prescribed by Law

i) Application

When the sentencing range drawn by applicable law through the statutory aggravation and mitigation differs from the guideline's range, the statutory sentencing range prescribed by law will govern. When the maximum sentencing of the guideline is higher than that of the possible sentencing range under law, the statutory maximum becomes the upper limit for the sentencing range. If the minimum sentencing of the guideline is lower than that of the possible statutory sentencing range, the statutory minimum becomes the minimum sentencing range. When the maximum penalty of the guideline is not higher, or the minimum penalty of the guideline is not lower than that of the possible sentencing range under law, no adjustments are needed to the guideline's sentencing range.

ii) Rape Case of a Victim Thirteen-Years of Age or Older

1. Sentencing Range under Prescribed Law: 3-30 yrs. Imprisonment
2. Recommended Sentencing Range under the Guideline
 [Offense Type] Sexual Assault Crimes > 01. General Criteria > 1. Rape of a Victim Thirteen Years of Age or Older > Type 1 General Rape
 [Recommended Zone and Sentencing Range] General Zone, 2 yrs. 6 mos. – 5 yrs. Imprisonment
 [Adjustment made under the Statutory Sentencing Ranges] 3 – 5 yrs.
 (Statutory sentencing range is applied since the minimum level of the recommended sentencing range and the statutory sentencing range differs)

2) Statutory Optional Mitigating Factors

i) Need to Reflect the Statutory Optional Mitigating Factors

The Commission addressed the issue of the sentencing factor that was a discretionary mitigating factor under the statute (For example, voluntary surrender to investigative agencies prescribed in the Criminal Act, Article 52, paragraph 1). If the sentencing determinant is taken into consideration in the sentencing procedure, then the difference between a mandatory mitigating

factor and a discretionary mitigating factor becomes trivial. On the other hand, if the mitigating factors are placed in the sentencing judge's discretion, bias could become problematic. The Commission resolved the issue by placing the discretionary mitigating factors under the statute as either a special or a general sentencing determinant. The Commission also advised that when the sentencing judge decides not to mitigate under the statutory mitigation, it may still mitigate under the discretionary mitigating factors of this guideline. This helped resolve the problem of two conflicting approaches regarding the mitigating factors. Overall, when there is a statutory mitigating factor of discretionary power and the guideline's sentencing range reflecting such mitigating factor is lower, the sentencing factor must be considered as either a statutory or a discretionary mitigating factor.

ii) Case—Admissions

1. Sentencing Range under Prescribed Law: 1 yr. 6 mos. – 15 yrs. imprisonment
2. Recommended Sentencing Range under this Guideline
[Offense Type]
Robbery Crime > 01. General Criteria > Type 1 General Rape
[Special Sentencing Factor]
- Mitigating factor: Admissions
[Recommended Zone and Sentencing Range]
Mitigating Zone, 1 yr. 6 mos. – 3 yrs. imprisonment

※ When admissions are not considered as a mitigating factor under the prescribed law or discretion

1. Sentencing Range under Prescribed Law: 3 yrs. – 30 yrs. Imprisonment
2. Recommended Sentencing Range under this Guideline
[Offense Type]
Robbery Crime > 01. General Criteria > Type 1 General Rape
[Special Sentencing Factor]
- Mitigating factor: Admissions
[Recommended Zone and Sentencing Range]
Mitigating Zone, 1 yr. 6 mos. – 3 yrs. imprisonment
[Recommended Zone and Sentencing Range under Prescribed Law]
3 yrs. imprisonment (statutory sentencing range is applied since the minimum level of the recommended sentencing range and the statutory sentencing range differs)

04 | DETERMINING A SENTENCING RANGE BASED ON MULTIPLE GUIDELINES

1. Guidelines on Concurrent Crimes and Multiple Offenses Convictions

With regard to the concurrent crimes, the guideline provides a different approach than the general provision of the Act. This discrepancy is the different approach of the Act and the guideline in determining the possible sentencing range and how it is assessed for the sentencing range.

The Act's general provision considers concurrent crimes first as an aggravating factor and then considers discretionary mitigation. The guideline considers all aggravating and mitigating factors together to select the appropriate sentencing range zone and then on how to treat concurrent crimes.

Another difference between the Act and the guideline is that the purpose of the general provision of the Act on concurrent crimes is to set up possible ranges for the sentence; the purpose of the guideline, however, is to present an appropriate sentencing range of the concurrent crimes.

Since the general provision of the Act cannot offer solutions to the need, the sentencing guidelines take a different approach in regards to concurrent crimes. In order to distinguish with concurrent crimes under the Act, the guidelines uses the term "Multiple Offenses."

SENTENCING RANGES UNDER THE CRIMINAL ACT

Sentencing Range Prescribed by Law → (Select Penalty) → Statutory Aggravation/Mitigation → Statutory Discretionary Mitigation → **Aggravation with Concurrent Crimes** → Discretionary Mitigation → Finding Possible Sentencing Range → Sentencing Decision

SENTENCING RANGE UNDER THE GUIDELINE

Select Offense Type → Evaluate Sentencing Factors and Determine Sentencing Range (Reflect all Statutory Aggravation and Mitigation and Discretionary Mitigation) → **Apply Criteria on Multiple Offenses** → Sentencing Decision

2. Application of multiple offenses under the Guidelines

APPLYING THE GUIDELINES FOR MULTIPLE OFFENSES

- **Scope**

The guidelines are applied to concurrent crimes as prescribed in the Criminal Act's Article 37. If, however, certain multiple offenses do not fall under the Guidelines and others fall under the Criminal Act, the lower limit of the sentencing range should be the minimum penalty as suggested by the guidelines.

- **Base Offense**

The base offense is the offense with the most seriousness after the selection of penalty and statutory aggravation and mitigation. If the maximum sentencing limit of the most serious count is lower than the other counts in the guideline, the latter becomes the base offense.

- **Calculate the Sentencing Range**

- Two Counts

Increase sentencing range by adding $\frac{1}{2}$ of the sentencing range of other offenses to the maximum limit of the base offense.

- More than Three Counts

Increase sentencing range by adding $\frac{1}{2}$ of the sentencing range of the most serious offense and add $\frac{1}{3}$ of the sentencing range of the second most serious offense to the maximum limit of the base offense.

- Lower Limit

When the minimum sentencing range of a base count is lower than that of the other count, the minimum sentencing range of the other count becomes the lower limit.

3. Application of Multiple Offenses under the Guidelines

1) Concurrent Crimes under the Criminal Act, Article 37, Beginning Parts

Multiple offenses are applied only when all relevant offenses are set out in the guidelines.

If one type of offense is provided in the guideline and the other offense is not, applying the guideline on multiple offenses would present extreme difficulties. While excluding the application from this guideline could be possible, this guideline chose an alternative approach. If an offense defined under this guideline and an offense not included in this guideline both exists, then apply the minimum sentencing range.

The Commission resolved issues related to an imbalance of penalty and practical application to the guidelines through this approach. This is not limited to cases where the offense under the guideline's offense category is the base offense or the offense's accountability is more severe.

When an offense under the guidelines and the offense typically accompanying an offense is committed, the two are charged in one case. The latter is treated as a single sentencing factor rather than viewing it as a multiple offense.

EXAMPLE: MULTIPLE OFFENSES AS A SENTENCING FACTOR

(1) Case 1 Special Sentencing Factor under Homicide Crimes

| CLASSIFICATION | | MITIGATING | AGGRAVATING |
|---------------------------|-----------------|------------|---|
| Special Sentencing Factor | Offense Conduct | | Damaging the physical remains of the body of the deceased victim Cases where the offender also committed rape with the crime of robbery (Type 4) |
| | Actor/Etc. | | |

(2) Case 2 General Sentencing Factor under Forgery of Private Document Crimes

| CLASSIFICATION | | MITIGATING | AGGRAVATING |
|---------------------------|-----------------|------------|--|
| General Sentencing Factor | Offense Conduct | | Those who committed forgery or altering of documents also utters the falsified documents |
| | Actor/Etc. | | |

(3) Case 3 Special Sentencing Factor under Fraud

| CLASSIFICATION | | MITIGATING | AGGRAVATING |
|---------------------------|-----------------|------------|---|
| Special Sentencing Factor | Offense Conduct | | Particularly malicious commission of the offense or offense of fraud in lawsuits by committing deception in court |
| | Actor/Etc. | | |

[Definition of the Sentencing Factor]

'Particularly malicious commission of the offense' means actively committing the crime by using methods such as bookkeeping, document forgery, etc.

※ If a fraudulent crime involves forgery or altering documents, this is treated as a sentencing factor, and not as a multiple offense.

2) Concurrent Crimes under the Criminal Act, Article 37, Latter Part

The Commission has found it challenging to recommend sentencing ranges and whether to suspend a sentence after the sentencing judge has made a decision. The difficulty is that the concurrent crimes under the Act's, subsequent parts of Article 37 rarely occur in practice. The latter part of Article 37 in the Criminal Act does not set a guideline for multiple offenses. Therefore, for these offenses, the guidelines do not apply.

3) Multiple Offenses and Compound Offenses

The guidelines did not provide a guidelines for compound offenses. This does not imply that a higher sentencing range applies for compound offenses.

Despite this, the guideline can be used as a reference for compound offenses where the highest minimum penalty among the compound offenses might be treated as the lower limit of the sentencing range.

4. Determining Multiple Offenses

1) Calculating the Base Offense

The guideline's base offense is determined through selecting the penalty and statutory aggravation and mitigation and then the offense with the highest maximum sentencing becomes the base offense. Determining the base offense for the guideline and the Criminal Act is identical. The difference arises in the guideline, when the upper sentence limit of the heaviest count is lower than another count, the latter becomes the base offense. This exception was established to avoid the sentencing range of multiple offenses becoming lower than the sentencing range of a single offense.

An example would be a case involving combined convictions with a count of murder against an ascendant in the mitigated sentencing range of Type 1 (3 to 5 years) and a count of murder in the standard sentencing range of Type 2 (10 to 16 years). If murder is the base offense and the guideline suggests an increase by adding $\frac{1}{2}$ of the maximum sentencing range of the other offense, then the final sentencing range would be 10 to 18 yrs and 6 months [Murder with General Motive, Type 2 General Zone (10-16 yrs.) + Murder of an Ascendant of Type 1, $\frac{1}{2}$ Maximum Level of Mitigating Zone is 5 yrs = 18 years 6 mos.] If, however, the base offense is the murder is against an ascendant, the final sentencing range is 10 to 13 years [Murder with General Motive Type 2 Minimum Level (10 yrs.) is higher than Murder of an Ascendant, Type 1 Minimum Level of Aggravating Zone (3 yrs.) so the

minimum level is 10 years. Murder of an Ascendant Type 1 Maximum Level of Mitigating Zone (5 yrs.) + $\frac{1}{2}$ of Murder with General Motive Type 2 Maximum Level ($\frac{1}{2}$ of 16 yrs.) = 13 years. Under the general provision of the Criminal Act, when the base offense is murder against an ascendant, the sentencing range of multiple offenses is lower than a single offense of murder. In this case, murder would be more suitable as a base offense since the sentencing range is higher than the murder against an ascendant.

Acknowledging all the principles and exceptions under the guideline, the base offense has the highest maximum sentencing range pursuant to this guidelines.

2) Calculating The Sentencing Range of Multiple Offenses

The Commission chose to heighten the maximum limit of the sentencing range for calculating multiple offenses. Unlike the general rules under the Criminal Act, the guideline suggests different methods for calculating the maximum level of the aggravated factors depending on whether there are two or more offenses.

- ① Base offense: Select the highest maximum level of the recommended sentencing range.
- ② Conviction of two counts: Increase the maximum sentencing range by adding $\frac{1}{2}$ of the other offense's maximum sentencing range.
- ③ Conviction of three counts: Increase the maximum sentencing range of the base offense by adding $\frac{1}{2}$ of the most serious count's maximum sentencing range and add $\frac{1}{3}$ of the second most serious count's maximum sentencing range.
- ④ The maximum sentencing range for multiple offense is $\frac{5}{6}$ of the base offense's maximum sentencing range.

5. Special Guidelines on Special Types of Multiple Offenses

In offense groups such as Bribery, Embezzlement, Breach of Trust, Fraud, Crimes on Food and Health, Crimes Related to Securities and Finance, Crimes Related to Taxation, Crimes of Extortion, Crimes of Receiving or Giving Bribe by Breach of Trust, Crimes Related to Attorney-At-Law Act, Crimes Related to Labor Standards, and Crimes Related to Petroleum Business Act, special guidelines are set forth for these types of multiple offenses.

For cases related to multiple crimes of the same type and are treated as one single offense, the total amount involved would be used to determine the offense type and the recommended sentencing zones. This means that when the total sum of money

changes the type of offense to a more serious offense by one degree than the most serious offense, the minimum sentencing range is mitigated by $\frac{1}{2}$. When the total sum results in a serious offense with a difference by two or more degrees, the minimum sentencing is mitigated by $\frac{1}{3}$. However, the minimum should not be lower than the minimum sentencing range of the base offense.

When multiple offenses combine offenses of the same and different kinds, first calculate the multiple offenses of the same kind. After the sentencing range among the same kind of offense is determined, then apply the usual process to produce the sentencing range in cases involving multiple offenses.

SPECIAL GUIDELINE ON MULTIPLE OFFENSES INVOLVING BRIBERY

- **Multiple Offenses Involving Same Type of Offense**

- Applicable Principles

Decide on the type of offense according to the summed amount of the bribe received, demanded, any amount promise, bribes delivered, promised, or expressed intent to be delivered. Determine the sentencing range after considering all relevant circumstances.

- Special Provision Applicable to the Minimum Sentencing Range

The following should be considered ① when the total amount results in an offense of one degree higher than the single offense, lower the minimum sentencing range by $\frac{1}{3}$ ② when the total amount results in an offense of two or more degrees higher than the single offense, lower the minimum sentencing range by $\frac{1}{2}$. However, the most serious single offense in the offense type category is treated as the minimum sentencing range.

- **Multiple Offenses Involving Different Type of Offenses**

- For Two Counts

Increase the maximum sentencing range of the base offense by adding $\frac{1}{2}$ of the other count's maximum sentencing range.

- For More than Three Counts

Increase the maximum sentencing range of the base offense by adding $\frac{1}{2}$ of the maximum sentencing range of the most serious count; and by adding $\frac{1}{3}$ of the maximum sentencing range of the second most serious count.

- Special Rule on Minimum Sentencing Range

For cases where the base offense's minimum sentencing range is lower

than the offense level suggested from the remaining count, the latter becomes the minimum sentencing range.

- Multiple Offenses Involving Same and Different Type of Offenses
Determine the multiple offense after calculating the multiple offense for bribery and use it as a reference for the sentencing range.

05¹ IMPOSING A SENTENCE

For cases involving a single offense sentences are imposed within the recommended sentencing range. For multiple offenses the sentencing range recommended under the base offense is used as a to determine the final sentencing range for multiple offenses. In deciding the sentencing range for both cases, the special and the general sentencing determinants are taken into account for a comprehensive assessment. As previously discussed, the general sentencing determinants list is not exclusive but is a list of the possible factors to be considered for the offense.

The sentencing judge may take into consideration the relevant general sentencing determinants not listed in the guidelines in a case. However, for sentencing decisions that depart from the guideline's sentencing range, the judge is required to set forth their reasons in judicial opinions (Court Organization Act, Article 81-7, paragraphs 1 and 2).

The guideline requires the sentencing judge to impose a sentence most appropriate to comply with the principles of conduct liability, distinguishing the seriousness of the conduct into different degrees and other applicable principles.

IV. SUSPENDING A SENTENCE

01 | TYPES OF OFFENSES, SENTENCING PERIODS, AND SUSPENDING A SENTENCE

The sentencing guidelines provide guides to suspending a sentence by using accountability and considering the prevention of the offense. Since the legislatures intended that the maximum term to suspend a sentence is 'less than three years of imprisonment (with or without prison labor),' the guideline also applies this threshold to types of offenses and sentencing periods over three years of imprisonment (with or without prison labor).

02 | CLASSIFICATION OF CONSIDERATION FACTORS

1. Classification of Consideration Factors and Its Significance

Similar to the qualitative classifications of the sentencing factors, the consideration factors provided in the guideline are classified.

The guideline classifies the consideration factors to ① affirmative factors are factors affirming the suspension of a sentence and adverse factors deny suspending the sentence; ② primary consideration factors and general consideration factors, according to the importance of the factors on the determination; and ③ in some cases, other relevant factors, such as the risk of recidivism within the primary or general consideration factors are considered.

It is possible to decide to suspend a sentence by considering only the risk of recidivism as a single factor. The Commission, however, recognized the lack of research, absence of a firm statistical basis, and possible criticism on whether an objective judgment on the prevention of an offense would be attainable. Because of this, the Commission did not limit the factors considered to a single factor on the risk of recidivism.

Like the sentencing factors, each offense group provides factors considered when determining whether to suspend a sentence. Even though several tables of sentencing factors exist in a specific offense group, the table representing the factors

to consider in suspending a sentence can be presented in a single unit. For example, without classifying within the consideration factors, a single group of consideration factors are offered for the Sexual Assault Group, contrary to five tables of sentencing factors, *i.e.*, standard sexual assault (such as rape against victims thirteen years or older, indecent act by compulsion against victims thirteen years or older, sexual crimes against the victim under thirteen years of age), sexual assault resulting in bodily injury, and sexual assault resulting in death.

2. Primary and General Consideration Factors

Among the factors, the primary consideration factor directly affects whether to suspend sentencing or impose imprisonment on the defendant. The general consideration factor, however, does not directly affect the decision to suspend the sentence. This factor can become a deciding factor for modifying the decision when such determination resulted from the primary consideration factor.

Though the general consideration factor has somewhat of a passive part in the determination process, it aids the sentencing judge by providing an abundant basis for deciding to suspend a sentence. General consideration factors also play significant roles in balancing sentences among cases by preventing common consideration factors from being omitted within the identical offense group or offense type.

3. Sentencing and Consideration Factors

- 1) When determining the sentencing periods for an offense, the existence of a standard sentencing range sets forth the special sentencing determinant as an aggravating or mitigating factor. If a particular sentencing determinant is provided as a mitigating factor, then the standard sentencing range is recommended if the determinant is not present. An example would be when 'the victim opposes punishment' factor is present as a sentencing factor and recommends the mitigated sentencing range. If the factor is not present, it would be inappropriate to use that as an aggravating factor. For this example, selecting either an aggravated and mitigated sentencing range without the standard sentencing range for the offense would lead to imposing unreasonable sentencing.
- 2) This, however, is not the case for consideration factors on the suspension of sentence. Contrary to determining the sentencing periods, whether to suspend a sentence is based on either selecting the suspension of the sentence or

imprisonment. Under the guidelines, this process involves selecting the following three sectors: the imprisonment advised sector, suspension of sentence advised sector, and discretionary sector. Compare the guideline's approach to the sentencing period and the suspension of a sentence. For the sentencing period, the guideline sets forth the standard sentencing range as a basis. It makes it possible to choose the aggravated sentencing range or the mitigated sentencing range depending on whether the special sentencing determinants are present. The guideline sets forth the discretionary sector as a base for the suspension of a sentence. It determines whether the suspension of a sentence is recommended depending on the primary consideration factors. If the guideline does not provide recommendations for either case, the discretionary sector makes it possible for the sentencing judge to select either sector.

The consideration factors regarding the suspension of a sentence are different from the sentencing factors. Even if a certain consideration factor exists as an adverse (affirmative) factor, the absence of a factor can be regarded as an affirmative (or adverse) factor. For example, when the consideration factor 'victim opposes punishment' is specified as a primary affirmative factor, the absence of such factor works as a primary adverse factor.

03¹ PRINCIPLES FOR ASSESSING THE CONSIDERATION FACTORS

1. Principles for Assessing the Consideration Factors and Its Needs

The sentencing guidelines provide principles applied when determining suspending a sentence and when assessing the sentencing factors. This promotes the guidance's function and ensures the predictability of sentences.

2. Applicable Principles

The primary consideration factors have substantial effects on suspending the sentence and are given greater weight than the general consideration factors.

Furthermore, the advised guidelines on the suspension of sentences were designed by evaluating primary consideration factors, different from the guidelines on the sentencing periods. In the suspension of sentence determinations, the sentencing judge selects either the suspension of sentence or imprisonment.

A closer look at this principle is illustrated as follows: Type 2 Murder Group’s sentencing period has three sectors—mitigated, standard, and aggravated—with some overlaps that regulate excessive use of any individual sentencing factor to obtain just sentencing.

| | | | | | | |
|-----------|------------------------|----------|-------------------------|------------|----|-------------------|
| 7 | | 10 | 12 | 15 | 16 | Life Imprisonment |
| Mitigated | Mitigated/ Standard | Standard | Standard/ Aggravated | Aggravated | | |

To ensure reasonable sentencing, the issue of overlaps between the sectors could be a problematic issue for suspending a sentence.

| | | | | |
|-----------------------------|---|--|---|--------------|
| Suspension of a Sentence | ? | Suspension of a Sentence/ Imprisonment | ? | Imprisonment |
|-----------------------------|---|--|---|--------------|

The overlapping sectors above, marked with ‘?’, can be treated as either suspension of a sentence or imprisonment. However, certain consideration factor has the danger of posing a disproportionate effect when deciding to suspend a sentence. This would result in biased and unreasonable sentencing without a comprehensive review of the consideration factors provided in the guideline for sentencing periods. For these reasons, the guideline considers the issue of giving discretion to the sentencing judge. The judge may choose to suspend a sentence or impose or imprisonment for the overlapping sectors (marked with ‘?’) and to advise suspending a sentence for those cases clearly reflecting the consideration factors.

| | | |
|-----------------------------|---------------------------------------|--------------|
| Suspension of a Sentence | Suspension of a Sentence/Imprisonment | Imprisonment |
|-----------------------------|---------------------------------------|--------------|

As a result, the applicable principle is provided as follows: In cases in which the affirmative primary consideration factors outnumber the adverse factors by two or more; and when the general consideration factors are not contained with the overlapping sectors, then the suspension of sentence is recommended.

PRINCIPLES FOR ASSESSING THE CONSIDERATION FACTORS FOR SUSPENDING A SENTENCE

- The primary consideration factors are given more gravity than the general consideration factors. The guideline further advises the assessment as follows:
 - ① Suspension of a sentence is recommended when two or more affirmative primary consideration factors exist alone, or affirmative primary consideration factors outnumber the adverse consideration factors by two or more.
 - ② Imprisonment is recommended when two or more adverse primary consideration factors exist alone, or adverse primary consideration factors outnumber affirmative consideration factors by two or more.
 - ③ The sentencing judge can decide whether to impose a suspension of the sentence by comparing and assessing the consideration factors comprehensively; in cases in which the comparison of the number of affirmative and adverse general consideration factors shows more margin than that of affirmative and adverse primary factors (even if the cases fall within ① or ②); and for cases that do not fall within ① or ②.

3. Principles for Assessing the Consideration Factors

The guideline on suspending a sentence is categorized into three sectors: imprisonment, suspending a sentence, and discretionary decisions. If the evaluation of the consideration factors does not suggest imprisonment or suspension of a sentence, then the sentencing judge may select either of those options. Recommended term tables are not provided for suspending a sentence, contrary to the sentencing period guide. The guideline, however, provides a table recommending one of the three sectors.

The only consideration that affects the decision to suspend a sentence or impose imprisonment is the primary consideration factor. The guideline suggests suspension of a sentence when two or more affirmative primary consideration factors exist alone, or affirmative primary consideration factors outnumber the adverse consideration factors by two or more. In addition, imprisonment is recommended when two or more adverse primary consideration factors exist alone; or when the

adverse primary consideration factors outnumber affirmative consideration factors by two or more.

There are only two cases when the sentencing judge may decide to impose a suspension of sentence or imprisonment. When the affirmative and adverse primary consideration is equal in number or the margin between the two factors is 1, then the sentencing judge can decide to suspend the sentence by comparing and assessing the consideration factors comprehensively. In addition, the sentencing judge can decide to suspend a sentencing by comparing and assessing the consideration factors comprehensively when the affirmative primary consideration factor outnumbers the adverse primary consideration factor by two or more, or vice versa, and in cases in which the margin of affirmative (adverse) and adverse (affirmative) general consideration factors outnumber the adverse (affirmative) and affirmative (adverse) primary consideration factors.

EXAMPLE ON DETERMINING WHETHER TO SUSPEND A SENTENCE

WHEN IMPRISONMENT IS RECOMMENDED

(1) Case 1 Attempt to Murder

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|------------------------------|---|---------------------|
| Primary Consideration Factor | Premeditated Crime, Serious Bodily Injury, No Reverse of Harm | No Criminal History |
| General Consideration Factor | | Sincere Remorse |

- In this case, the adverse primary consideration factor outnumbers the affirmative factor by 2, and only one affirmative general consideration factor is present. Therefore, imprisonment is recommended under the guideline.

(2) Case 2 Offense Related to Acceptance of Bribe

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|------------------------------|--|--|
| Primary Consideration Factor | Active Demand of Bribe, Engaging in Conduct in Return for the Bribe that Constitutes as an Illegal or Wrongful Performance of Duties | |
| General Consideration Factor | | Bribe Returned Before the Commencement of an Investigation |

- In this case, there are two adverse primary consideration factors present without any affirmative consideration factor, and only one affirmative general consideration factor exists. Therefore, imprisonment is recommended.

WHEN BOTH SUSPENSION OF SENTENCE OR IMPRISONMENT ARE POSSIBLE

(1) Case 1 Attempt to Murder

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|------------------------------|-----------------------|---------------------------|
| Primary Consideration Factor | Serious Bodily Injury | |
| General Consideration Factor | | Expresses Sincere Remorse |

- In this case, one adverse major consideration factors exist; since this poses difficulty in recommending the suspension of sentence as a decision, the sentencing judge has the discretion to impose either a suspension of sentence or imprisonment.

(2) Case 2 Offense Related to Acceptance of Bribe

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|------------------------------|--|---|
| Primary Consideration Factor | Active Demand | Expresses Penitence, Cases where the Amount of Bribe Involved is Less Than 10 Million Won |
| General Consideration Factor | Criminal History of the Same Offense and Prior Records of Disciplinary Actions on the Same Offense | |

- In this case, the affirmative primary consideration factor outnumbers the adverse factor by a margin of only 1. Since this poses difficulty in recommending the suspension of sentence as a decision, the sentencing judge may impose either a suspension of sentence or imprisonment.

04 | GUIDELINE ON SUSPENDING OF A SENTENCE FOR CONCURRENT CRIMES

The guideline on suspending a sentence is limited to a single offense. Since concurrent crimes can occur in multiple combinations, the guideline excluded providing guidelines for such cases.

05 | DECISION TO SUSPEND A SENTENCE

The decision to suspend a sentence is raised only in cases where the guideline's assessment on types of offenses and sentencing periods reveal a sentence of 'less than three years of imprisonment (with or without prison labor).' The sentencing judge first determines the consideration factors; then determines whether to suspend the sentence or impose imprisonment by assessing the applicable principles outlined in the guideline. If neither is recommended under this guideline, then the sentencing judge has the discretion to decide on either punishment by comparing and assessing the totality of the consideration factors.

The guideline permits the sentencing judge to depart from the guideline's recommended sentence for cases where consideration factors not listed in the guideline exists. The sentencing judge may make such a decision after applying the principles set forth in the guideline and after determining that the guideline's recommendation to suspend a sentence or impose imprisonment is deemed inappropriate for the case.

HOW THE SENTENCING GUIDELINES WORK: SINGLE OFFENSE EXAMPLE

The defendant, an employee at the victim's shop, broke into the store through the bathroom window at night and took 260,000 won in cash from the safe and some food. The defendant, a first-time criminal with no criminal record, needed money to pay for his daughter's hospital bills and deeply regrets for committing the crime.

STEP 1 | DETERMINE THE BASE OFFENSE LEVEL

1. Larceny of General Property

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|------|-------------------------------------|----------------------------|---------------------------|-----------------------------|
| 1 | Larceny of Unattended Property | - 6 mos. | 4 mos. - 8 mos. | 6 mos. - 1 yr. |
| 2 | General Larceny | 4 mos. - 10 mos. | 6 mos. - 1 yr. 6 mos. | 10 mos. - 2 yrs. |
| 3 | Larceny Against Personal Belongings | 6 mos. - 1 yr. | 8 mos. - 2 yrs. | 1 yr. - 3 yrs. |
| 4 | Larceny Accompanied by Intrusion | 8 mos. - 1 yr. 6 mos. | 1 yr. - 2 yrs. 6 mos. | 1 yr. 6 mos. - 4 yrs. |

DEFINITION OF OFFENSE TYPES

I. LARCENY OF GENERAL PROPERTY

4. TYPE 4—LARCENY ACCOMPANIED BY INTRUSION

- This means cases of larceny by way of intruding on another person’s dwelling, managed residence, structure, ship, or occupied room.

* For cases where the offense is not committed at nighttime, the offense would constitute the concurrent crime of intrusion upon habitation and larceny. However, the offense shall be classified as Larceny Accompanied by Intrusion and will not be treated as a multi-count conviction under the sentencing guideline.

* Determine the base offense (refer to the Definition of Types of Offenses) ⇒ I. Larceny of General Property, Type 4 Larceny Accompanied by Intrusion

STEP2 | DETERMINE THE RECOMMENDED SENTENCING ZONE

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|--------------------------------|-------------|--|---|
| Special Sentencing Determinant | Conduct | <ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in the offense • Poverty crimes • Intrusion upon places other than indoors of a dwelling (Type 4) | <ul style="list-style-type: none"> • Carrying a deadly weapon, intrusion upon habitation, building, or other similar structures by destroying security devices (Type 4) • Offense committed with an organized scheme (excluding habitual offenders) • Cases where the offense repeatedly committed through special methods, tools, or organization (in case of the habitual offender) • Serious personal or social harm caused, and harm not reversed • Instigating the subordinate person to commit the offense |
| Special Sentencing Determinant | Actor /Etc. | <ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies • Offender expresses remorse, and the victim opposes punishment | <ul style="list-style-type: none"> • Repeated offenses of the same offense under the Criminal Act that do not constitute a repeated offense under the Aggravated Punishment Act • Habitual offender |

- Determine whether special sentencing determinants exist by referring to the definition of sentencing factors.

DEFINITION OF SENTENCING DETERMINANTS

2. POVERTY CRIMES

- This indicates cases in which one or more of the following factors apply:
 - Offense was committed to escape from the offender's impoverished circumstances.
 - Offense was committed to paying for hospital expenses or school tuition, and the like.
 - Other cases with comparable factors.

- Two special mitigating sentencing determinants exist (Poverty crimes, and intrusion upon places other than indoors of a dwelling) ⇒ Assessment shows that mitigating factors are greater, so this falls under the mitigating zone.

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|------|----------------------------------|----------------------------|---------------------------|-----------------------------|
| 4 | Larceny Accompanied by Intrusion | 8 mos. - 1 yr. 6 mos. | 1 yr. - 2 yrs. 6 mos. | 1 yr. 6 mos. - 4 yrs. |

STEP3 | DETERMINE THE SENTENCING RANGE

Sentencing range of the mitigating zone results in '8 mos. - 1 yr. 6 mos.' or since two special mitigating determinants exist, special adjustment can be made, resulting in $\frac{1}{2}$ of the minimum level of the sentencing range ⇒ 4 mos. (= 8 mos. x $\frac{1}{2}$) - 1 yr. 6 mos.

STEP 4 | DECIDE THE IMPOSING SENTENCE

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|--------------------------------|-------------|--|---|
| Special Sentencing Determinant | Conduct | <ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in the offense • Poverty crimes • Intrusion upon places other than indoors of a dwelling (Type 4) | <ul style="list-style-type: none"> • Carrying a deadly weapon, intrusion upon habitation, building, or other similar structures by destroying security devices (Type 4) • Offense committed with an organized scheme (excluding habitual offenders) • Cases where the offense repeatedly committed through special methods, tools, or organization (in case of the habitual offender) • Serious personal or social harm caused, and harm not reversed • Instigating the subordinate person to commit the offense |
| Special Sentencing Determinant | Actor /Etc. | <ul style="list-style-type: none"> • Those with hearing and visual impairments • Those with mental incapacity (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies • Offender expresses remorse, and the victim opposes punishment | <ul style="list-style-type: none"> • Repeated offenses of the same offense under the Criminal Act that do not constitute a repeated offense under the Aggravated Punishment Act • Habitual offenders |
| General Sentencing Determinant | Conduct | <ul style="list-style-type: none"> • Offender's passive participation | <ul style="list-style-type: none"> • Two or more co-offenders were involved • Cases falling within the Act on Forest Culture and Recreation, Article 35, paragraph 2, and the Forest Protection Act, Article 54, paragraph 1 |
| General Sentencing Determinant | Actor /Etc. | <ul style="list-style-type: none"> • A substantial portion of the damages was reversed • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history exists | <ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute a repeated offense under the Aggravated Punishment Act, the criminal history by the same type of offenses that do not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence) |

- The sentencing range imposed is ‘4 mos. - 1 yr. 6 mos.’ It is possible to make adjustments by taking into account the special sentencing determinant (Poverty crimes and Intrusion upon places other than indoors of a dwelling) and general sentencing determinant (Expresses sincere remorse and No prior criminal history exists) comprehensively.

STEP5 | DECIDE WHETHER TO SUSPEND THE SENTENCE

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|------------------------------|---|--|
| Primary Consideration Factor | <ul style="list-style-type: none"> • An organized or professional crime • Repeated offenses • Carrying a deadly weapon, intrusion upon habitation, a building nighttime, or other similar structures by destroying security devices at nighttime • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years and three or more criminal history of a sentence to fine) exists • Serious personal or social damages caused • Absence of efforts to reverse damages | <ul style="list-style-type: none"> • Efforts to obstruct or confront the accomplice’s commission of the offense • Motive for committing offense can be taken into special consideration • Poverty crimes • No prior criminal history • Offender expresses remorse, and the victim opposes punishment (This includes the offender’s genuine efforts to reverse the harm) |
| General Consideration Factor | <ul style="list-style-type: none"> • Two or more criminal history on the suspension of a sentence or for a greater offense • Lack of social ties • Drug or alcohol addiction • Absence of remorse • Active participation as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense | <ul style="list-style-type: none"> • Insignificant damage • No prior criminal history of the suspension of a sentence or punishment more severe • Strongly established social ties • Voluntary surrender to investigative agencies • Expresses sincere remorse • Cases of elderly offenders • Offender’s passive participation as an accomplice • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender’s dependent family member |

- Two affirmative factors exist under the primary consideration factor of the guideline ⇒ suspending of the sentence is recommended.