CHAPTER 3

Crimes of Obstructing Performance of Official Duties

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Obstruction of Official Duties (Criminal Act, Article 136, paragraph 1), Obstruction of Official Duties by Coercion (Criminal Act, Article 136, paragraph 2), Obstruction of Official Duties by Fraudulent Means (Criminal Act, Article 137), Invalidation or Destruction of Public Goods (Criminal Act, Article 141, paragraph 1, paragraph 2), or Special Obstruction of Official Duties and Special Obstruction of Official Duties Resulting in Bodily Injury or Death (Criminal Act, Article 144, paragraph 1, paragraph 2).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 OBSTRUCTION OF OFFICIAL DUTIES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Obstruction of Official Duties/ Coercion of Official Duties	– 8 mos.	6 mos. – 1 yr. 6 mos.	1 yr. – 4 yrs.
2	Obstruction of Official Duties by Fraudulent Means	4 mos. – 10 mos.	8 mos. – 1 yr. 6 mos.	1 yr. – 3 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Extent of violence, threat, or deceptive means used, or obstruction of official duties is minor • Extenuating motives for the offense	• Morally reprehensible motives • Demonstrating the organization's power or the power of the multitude; otherwise, offense committed while carrying a dangerous weapon (Type 1) • Serious bodily injuries (Type 1) • Offense committed against numerous public officials (Type 1) • Significant obstruction of official duties • Repeated crimes that do not constitute concurrent crimes • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities	• Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation	• Planned crime • Cases resulting in bodily injury that is not serious (Type 1)
	Offender /Etc.	• Diminished mental capacity (with fault) • No prior criminal convictions • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same type of offense under the Criminal Act resulting in imprisonment, which do not constitute statutory recidivism (within ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

▷ Apply the following classification in cases where the offense of Obstruction of Official Duties was committed while severely intoxicated by alcohol or drugs (including cases of Invalidation · Destruction of Public Goods, Special Obstruction of Official Duties Resulting in Bodily Injury or Death):

❶ Cases in which the offender voluntarily became intoxicated by alcohol or drugs with the intent to commit a crime, in anticipation of committing a crime, or to use as grounds for exemption after committing a crime, the state of intoxication shall be reflected as a general aggravating factor regardless of whether the defendant was in a state of diminished mental capacity at the time of the offense.

❷ Cases in which offender had no criminal intent and no anticipation of committing a crime, but past experiences, physical condition, or circumstances indicated a propensity to cause harm to others when intoxicated, the state of intoxication shall not be reflected as a mitigating factor regardless of the defendant's mental capacity at the time of the offense.

❸ Even in cases not falling under ❶ or ❷, if the offender did not suffer from diminished mental capacity at the time of the offense, the intoxication shall not be reflected as a mitigating factor.

2 INVALIDATION · DESTRUCTION OF PUBLIC GOODS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Invalidation of Public Goods	– 8 mos.	6 mos. – 1 yr. 6 mos.	1 yr. – 4 yrs.
2	Destruction of Public Goods	6 mos. – 1 yr. 6 mos.	10 mos. – 2 yrs. 6 mos.	2 yrs. – 5 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Value of the invalidated · destroyed object is insignificant • Extenuating motives for the offense	• Morally reprehensible motives • Cases where the offense is committed by a show of force by a group or multitude, or by possessing a dangerous weapon • Serious bodily injuries • Repeated crimes that do not constitute concurrent crimes • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	• Planned crime • Cases resulting in bodily injury that is not serious
	Offender /Etc.	• Diminished mental capacity (with fault) • No prior criminal convictions • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, resulting in imprisonment which do not constitute statutory recidivism (less than ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

3 SPECIAL OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES OR DEATH

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Special Obstruction of Official Duties Resulting in Bodily Injuries	1 yr. 6 mos. – 3 yrs.	2 yrs. – 4 yrs.	3 yrs. – 7 yrs.
2	Special Obstruction of Official Duties Resulting in Death	3 yrs. – 6 yrs.	5 yrs. – 8 yrs.	7 yrs. – 10 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Extenuating motives for the offense • Offender's conduct was not the direct cause of death (Type 2)	• Morally reprehensible motives • Serious bodily injuries (Type 1) • Offense committed against numerous public officials • Significant obstruction of official duties • Repeated crimes that do not constitute concurrent crimes • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	• Cases where the base offense (obstruction of official duties) was planned in advance
	Offender /Etc.	• Rescuing or transferring the victim to the hospital after committing the offense • Diminished mental capacity (with fault) • No prior criminal convictions • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, resulting in imprisonment which do not constitute statutory recidivism (less than ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 OBSTRUCTION OF OFFICIAL DUTIES

1. TYPE 1 — OBSTRUCTION OF OFFICIAL DUTIES/COERCION OF OFFICIAL DUTIES

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law (hereinafter the same).

ELEMENTS OF OFFENSE	APPLICABLE LAW
Use of force or threat against a public official engaged in performing public duties	Criminal Act, Article 136, paragraph 1
Use of force or threat against a public official for the purposes of coercing or obstructing certain acts; or, to force a resignation from a particular position	Criminal Act, Article 136, paragraph 2
Commission of crimes above by demonstrating the organization's power or leveraging through the power of multitudes; or, offense committed while carrying a dangerous weapon	Criminal Act, Article 144, paragraph 1

2. TYPE 2 — OBSTRUCTION OF OFFICIAL DUTIES BY FRAUDULENT MEANS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Obstruction of the official duties by the use of fraudulent schemes	Criminal Act, Article 137

2 INVALIDATION · DESTRUCTION OF PUBLIC GOODS

1. TYPE 1 — INVALIDATION OF PUBLIC GOODS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Damaging, concealing, or reduces its utility by any other methods on documents, goods, or electronic records Etc. used in public offices	Criminal Act, Article 141, paragraph 1
Commission of crimes above by demonstrating the organization's power or leveraging through the power of multitudes; or, offense committed while carrying a dangerous weapon	Criminal Act, Article 144, paragraph 1

2. TYPE 2 — DESTRUCTION OF PUBLIC GOODS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Destroying structures, ships, trains, or airplanes used in public office	Criminal Act, Article 141, paragraph 2
Commission of crimes above by demonstrating the organization's power or leveraging through the power of multitudes; or, offense committed while carrying a dangerous weapon	Criminal Act, Article 144, paragraph 1

3 SPECIAL OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES OR DEATH

1. TYPE 1 — SPECIAL OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES

ELEMENTS OF OFFENSE	APPLICABLE LAW
Offenders of Special Obstruction of Official Duties, or Special Invalidation or Destruction of Public Goods cause bodily injuries to a public official	Criminal Act, Article 144, paragraph 2

2. TYPE 2 — SPECIAL OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN DEATH

ELEMENTS OF OFFENSE	APPLICABLE LAW
Offenders of Special Obstruction of Official Duties, or Special Invalidation or Destruction of Public Goods cause death to a public official	Criminal Act, Article 144, paragraph 2

DEFINITION OF SENTENCING FACTORS

1. EXTENUATING MOTIVES FOR THE OFFENSE

- This applies where one or more of the following are present:
  - Official duties performed were excessive or improper
  - Crime was committed impulsively in the course of exercising or asserting justifiable rights
  - Other cases with comparable factors

2. SERIOUS BODILY INJURIES

- This indicates cases in which the recovery from the inflicted injury that requires four to five weeks or more of medical care in general, including cases with after-effects causing impairment, disfigurement, severe disability, injuries inflicted to vulnerable body parts, or further bodily injuries are anticipated.

3. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - Offense committed out of retaliation, grievance or hatred toward the legitimate exercise of official duties
  - Offense committed to harass the public official victim
  - Offense committed without any special reason (or target), or for the offender's own enjoyment of committing the crime itself.
  - Other cases with comparable factors

4. SIGNIFICANT OBSTRUCTION OF OFFICIAL DUTIES

- This applies where one or more of the following are present:
  - The obstruction of official duties in regard to the extent and duration causing inconvenience or interruptions to official duties is significant
  - Offense committed against the public officer who was performing an urgent mission to save lives, extinguishing fires, crimes investigation, security, etc.
  - Other cases with comparable factors

5. REPEATED OFFENSES THAT DO NOT CONSTITUTE CONCURRENT CRIMES

- This means the offender has three or more incidents of fines or heavier punishments (including suspension of sentence) regarding the same-offense; this is calculated within 3 years from the time of the commission of the offense.

6. MINOR PARTICIPATION

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

7. PLANNED CRIME

- This applies where one or more of the following are present:
  - Advance preparation and possession of a weapon used in the offense
  - Planned conspiracy
  - Inducement of the victim
  - Preparation for the destruction of evidence
  - Prior planning of an escape plan
  - Offense committed covering a part of his or her body to avoid identification (However, this excludes cases without intention of committing a crime of Obstruction of Public Duties)
  - Other cases with comparable factors

8. VALUE OF THE INVALIDATED OR DESTROYED OBJECT IS INSIGNIFICANT

- This indicates cases in which the social and/or economic value of the invalidated or destructed object is insignificant so that the cost for repair or reversing the harm is relatively small.

9. OFFENDER'S CONDUCT WAS NOT THE DIRECT CAUSE OF DEATH OF THE VICTIM

- This indicates cases in which intervening causes unforeseen by the offender existed at the time of the commission of the offense and, therefore, the offender cannot be held liable for the direct cause of the death.

10. VICTIM EXPRESSES THE INTENT OF NON-PUNISHMENT

- This indicates cases in which the offender shows sincere remorse with genuine efforts to reach a settlement with the victim; the victim or the family of victim (in the case of a deceased victim) fully understands the legal and social implications of opposing punishment and clearly expresses the intent not to seek punishing the offender. However, this should not apply in the following cases:
  - (1) in cases in which the victim or the family of the deceased opposes punishment as a result of *de facto* coercion or deceit by the offender against the victim's will, or
  - (2) where there is no reasonable or convincing basis for the victim or their legal representative to express no desire for punishment.
- This applies only to cases in which, upon careful and thorough examination and assessment of the victim's or legal representative's age, intelligence, and ability to fully understand the meaning, content, and legal implications of expressing an intent not to seek punishment, it is determined that such expression is both informed and genuine.

11. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the offender, through genuine and sustained efforts, has restored the damages to a degree comparable to a formal settlement, or in which restitution of such degree is reasonably assured.
- In the case of a deposit, this applies only where it amounts to substantial recovery of damages, as determined through careful examination of the following: the opinion of the victim or the victim's legal representative (in case of a deceased victim, this includes the spouse, lineal relatives, and siblings); whether the defendant is able by law to recover the deposited money or is likely to do so; and the nature of the legal interest harmed and the scale and degree of the damage.
- Cases where the victim has received aid from the State under the Crime Victim Protection Act in connection with the damage (including where the defendant subsequently fulfills the obligation to indemnify the State) shall be excluded, absent special circumstances.

12. CAUSING HARM IN THE COURSE OF ATTEMPTED SETTLEMENT (EXCLUDING CASES WHERE SEPARATE CRIMES SUCH AS COERCION ARE ESTABLISHED)

- This indicates cases in which harm is inflicted by persistently harassing the victim, by applying undue pressure by suggesting tangible or intangible disadvantages for refusing the settlement, or by using other equivalent methods, in the course of attempting settlement.

13. NO PRIOR CRIMINAL CONVICTIONS

- This indicates cases in which, the defendant has never committed a crime even once prior to the relevant offense. However, this excludes cases targeting unspecified victims or multiple victims, or cases where crimes were committed repeatedly over a prolonged period.

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se*, shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.

GENERAL APPLICATION PRINCIPLES

1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

❶ After the assessment of Special Sentencing Factors, if a case falls within the Aggravating Sentencing Range and either i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, the upper limit of the recommended sentencing range may be increased by up to 1/2.

❷ After the assessment of Special Sentencing Factors, if a case falls within the Mitigating Sentencing Range and either i) two or more Special Mitigating Factors exist alone, or ii) Special Mitigating Factors outnumber Special Aggravating Factors by two or more, the lower limit of the recommended sentencing range may be reduced by up to 1/2.

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

- Where the sentencing range recommended under this guideline conflicts with the statutory applicable aggravated/mitigated sentencing range, the upper or lower limit of the applicable sentencing range by law shall govern.

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

- Where a judge declines to apply discretionary statutory mitigating factors listed in the Sentencing Factor Table of this guideline, such factors shall be considered as extenuating circumstances among mitigating factors.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE RANGE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act include both an offense set forth in the sentencing guidelines and an offense not covered by the sentencing guidelines, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

2 DETERMINING THE BASE OFFENSE

- The "base offense" refers to the offense subject to the most severe punishment after selecting the type of punishment and applying any statutory aggravation and/or mitigation thereto. However, where the upper end of the sentencing range under the sentencing guidelines for an offense covered by this chapter is lower than the upper end of the sentencing range under the sentencing guidelines for the other concurrent offense, the other concurrent offense shall become the base offense.

3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE OFFENSES

- Except for concurrent offenses that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply:
  - ❶ For multiple offenses involving two offenses, the upper end of the sentencing range shall be determined by adding 1/2 of the upper end of the sentencing range of the other offense to the upper end of the sentencing range of the base offense.

❷ For multiple offenses involving three or more offenses, the upper end of the sentencing range shall be determined by adding the following three figures: (1) the upper end of the sentencing range of the base offense, (2) 1/2 of the upper end of the sentencing range of the offense with the highest sentencing range among the other offenses, and (3) 1/3 of the upper end of the sentencing range of the offense with the second highest sentencing range among the other offenses.

❸ For multiple offenses where the lower end of the sentencing range of the other offense is higher than the lower end of the sentencing range of the base offense, the lower end of the sentencing range after applying the method of aggravation for multiple offenses shall be the lower end of the sentencing range of the other offense.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Morally reprehensible motives • Cases where the offense is committed by a show of force by a group or multitude, or by carrying a dangerous weapon • Significant obstruction of official duties • Planned and/or repeated offense • Offense resulting in serious bodily injuries or death • Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)]	• Extent of violence, threat, or deceptive means used, or obstruction of official duties is minor • Extenuating motives for the offense • Cases where the defendant prevented or hindered the commission of the crime by a co-offender (or co-perpetrator) • No prior criminal convictions
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of social/family ties • Drug or alcohol addiction • Absence of sincere remorse • Playing a leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • Absence of efforts to reverse the harm • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Stable social/family ties • Voluntary surrender to investigative authorities • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Offender's minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment or a fine was imposed, the period of a prior conviction is calculated from the date on which the judgment became final to the date of the commission of the offense.
  - For cases where a sentence of imprisonment was executed, the period of a prior conviction is calculated from the date on which the sentence was fully served to the date of the commission of the offense.
- Sincere Remorse

  This refers to cases where, following investigation and assessment of the specific circumstances in which the defendant acknowledged the offense, voluntary efforts toward damage recovery or prevention of re-offending, etc. the defendant is recognized as having sincerely repented of the offense.

PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with labor and judges decide to suspend execution of the sentence, they must give greater weight to the Primary Circumstances than to the General Circumstances, and the following principles should be considered:
  - ❶ When two or more Primary Affirmative Circumstances exist alone, or when Primary Affirmative Circumstances outnumber Primary Adverse Circumstances by two or more, it is recommended to suspend the sentence.
  - ❷ When two or more Primary Adverse Circumstances exist alone, or when Primary Adverse Circumstances outnumber Primary Affirmative Circumstances by two or more, imprisonment is recommended.
  - ❸ In cases in which ❶ or ❷ apply, but the difference between the number of General Adverse (Affirmative) Circumstances and General Affirmative (Adverse) Circumstances is greater than the difference between the number of Primary Affirmative (Adverse) Circumstances and Primary Adverse (Affirmative) Circumstances, or in cases other than ❶ or ❷, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.