CHAPTER 7

Crimes Related to Traffic Offenses

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Death and Injury by Traffic Accident (Act on Special Cases Concerning the Settlement of Traffic Accidents, hereinafter 'Traffic Accidents Act'; Traffic Accidents Act, Article 3, paragraph 1), Fleeing After Causing Death to the Victim by a Traffic Accident (or Death Of The Victim After The Accident-Causing Driver Flees the Scene) (Act on the Aggravated Punishment of Specific Crimes, Article 5-3, paragraph 1, subparagraph 1), Fleeing After Causing Injury to the Victim by a Traffic Accident (or Injury of the Victim After the Accident-Causing Driver Flees the Scene) (Act on the Aggravated Punishment of Specific Crimes, Article 5-3, paragraph 1, subparagraph 2), Abandoning the Victim and Fleeing After Causing Death to the Victim by a Traffic Accident (or Death of the Victim After the Accident-Causing Driver's Abandoning and Fleeing the Scene) (Act on the Aggravated Punishment of Specific Crimes, Article 5-3, paragraph 2, subparagraph 1), Abandoning the Victim and Fleeing After Causing Injury to the Victim by a Traffic Accident (Act on the Aggravated Punishment of Specific Crimes, Article 5-3, paragraph 2, subparagraph 2), and Death and Injury by Dangerous Driving (Act on the Aggravated Punishment of Specific Crimes, Article 5-11 paragraph 1), Aggravated Punishment for Death of a Child in Protection Area for Children (Act on the Aggravated Punishment of Specific Crimes, Article 5-13, subparagraph 1), Aggravated Punishment for Injury to a Child in Protection Area for Children (Act on the Aggravated Punishment of Specific Crimes, Article 5-13, subparagraph 2), Refusal to Breathalyzer Test (Road Traffic Act, Article 148-2 paragraph 2), Driving Under Influence (hereinafter 'DUI') (Road Traffic Act, Article 148-2 paragraph 3, subparagraph 1, subparagraph 2, subparagraph 3), Unlicensed Driving (Road Traffic Act, Article 152, subparagraph 1).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 TRAFFIC ACCIDENTS

1. GENERAL TRAFFIC ACCIDENTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Injury by Traffic Accident	– 8 mos. Fine 1 million – 7 million	4 mos. – 1 yr. Fine 5 million – 12 million	8 mos. – 2 yrs.
2	Death by Traffic Accident	4 mos. – 1 yr. Fine 5 million – 15 million	8 mos. – 2 yrs.	1 yr. – 3 yrs.

(unit: KRW)

▷ Type 1 Aggravated Sentencing Range: When minor injury has occurred, a fine may be selected if one or more of the following conditions are met: Victim expresses intent of non-punishment or substantial restitution was made to the victim. In such cases, the amount range of fine shall be within 8 million KRW – 20 million KRW. However, imprisonment without labor is recommended when there are two or more Special Aggravating Factors exist alone, or when Special Aggravating Factors exceed Special Mitigating Factors by two or more.

▷ Type 2 Standard Sentencing Range: A fine may be selected when victim expresses intent of non-punishment or substantial restitution was made to the victim. In this case, amount range of fine shall be 10 million KRW – 20 million KRW.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases where the victim is responsible for the occurrence and the extent of damage • Minor bodily injuries (Type 1) • Accident caused while operating a bicycle	• Aggravated bodily injury (Type 1) • Cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2 that embodies heavy illegality or reckless driving
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Victim expresses intent of non-punishment or substantial restitution was made to the victim	• Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factors	Conduct	• Free rider by the driver's favor	• Serious bodily injuries which do not constitute aggravated bodily injury (Type 1) • Other cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2, proviso
	Offender /Etc.	• Buying full coverage auto insurance • Sincere remorse • No prior criminal convictions • Considerable restitution	• Post-offense evidence tampering or attempt to conceal or destroy evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period(within ten years after the completion of the sentence or after the judgment became final) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

2. TRAFFIC ACCIDENTS BY DANGEROUS DRIVING

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Injury by Dangerous Driving	6 mos. ~ 1 yr. 6 mos. Fine 7 million ~ 15 million	10 mos. ~ 2 yrs. 6 mos.	2 yrs. ~ 5 yrs.
2	Death by Dangerous Driving	1 yr. 6 mos. ~ 3 yrs.	2 yrs. ~ 5 yrs.	4 yrs. ~ 8 yrs.

(unit: KRW)

▷ Type 1 Standard Sentencing Range: When minor injury has occurred, a fine may be selected if one or more of the following conditions are met: Victim expresses intent of non-punishment or substantial restitution was made to the victim. In this case, amount range of fine shall be 12 million KRW ~ 30 million KRW.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases where the victim is responsible for the occurrence and the extent of damage • Minor bodily injuries (Type 1)	• Aggravated bodily injury (Type 1) • Cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2 that embodies heavy illegality or reckless driving
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Victim expresses intent of non-punishment or substantial restitution was made to the victim	• Same-offense recidivism within the statutory recidivism period (Including Road Traffic Act, Article 148-2 violation crimes)
General Sentencing Factors	Conduct	• Free rider by the driver's favor	• Serious bodily injuries which do not constitute aggravated bodily injury (Type 1) • Other cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2
	Offender /Etc.	• Buying full coverage auto insurance • Sincere remorse • No prior criminal convictions • Considerable restitution	• Post-offense evidence tampering or attempt to conceal or destroy evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period (within ten years after the completion of the sentence or after the judgment became final, this includes violation of Road Traffic Act, Article 148-2) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

3. TRAFFIC ACCIDENTS INVOLVING CHILDREN

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Child Injury by Traffic Accidents	6 mos. – 1 yr. 6 mos. Fine 3 million – 15 million	10 mos. – 2 yrs. 6 mos.	2 yrs. – 5 yrs.
2	Child Death by Traffic Accidents	1 yr. 6 mos. – 3 yrs.	2 yrs. – 5 yrs.	4 yrs. – 8 yrs.

(unit: KRW)

▷ Type 1 Standard Sentencing Range: When minor injury has occurred, a fine may be selected if one or more of the following conditions are met: Victim expresses intent of non-punishment or substantial restitution was made to the victim. In this case, amount range of fine shall be 10 million KRW - 30 million KRW.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases where the victim is responsible for the occurrence and the extent of damage • Minor bodily injuries (Type 1)	• Aggravated bodily injury (Type 1) • Cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2 that embodies heavy illegality or reckless driving
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Victim expresses intent of non-punishment or substantial restitution was made to the victim	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factors	Conduct		• Serious bodily injuries which do not constitute aggravated bodily injury (Type 1) • Other cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2, proviso
	Offender /Etc.	• Buying full coverage auto insurance • Sincere remorse • No prior criminal convictions • Considerable restitution	• Post-offense evidence tampering or attempt to conceal or destroy evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period (within ten years after the completion of the sentence or after the judgment became final) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

2 FLEEING AFTER TRAFFIC ACCIDENTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Fleeing After Causing Injury to the Victim by a Traffic Accident	6 mos. ~ 1 yr. 6 mos. Fine 3 million ~ 15 million	10 mos. ~ 2 yrs. 6 mos.	2 yrs. ~ 6 yrs.
2	Fleeing and Abandoning the Victim After Causing Injury to the Victim by a Traffic Accident	1 yr. 6 mos. ~ 2 yrs. 6 mos.	2 yrs. ~ 4 yrs.	3 yrs. ~ 7 yrs.
3	Fleeing After Causing Death to the Victim by a Traffic Accident (Death of the Victim After the Accident-Causing Driver Flees the Scene)	2 yrs. 6 mos. ~ 4 yrs.	3 yrs. ~ 6 yrs.	5 yrs. ~ 10 yrs.
4	Fleeing and Abandoning the Victim After Causing Death to the Victim by a Traffic Accident (Death of the Victim After the Accident-Causing Driver Abandons and Flees the Scene)	3 yrs. ~ 5 yrs.	4 yrs. ~ 7 yrs.	6 yrs. ~ 12 yrs.

(unit: KRW)

▷ Type 1 Standard Sentencing Range: When minor injury has occurred, a fine may be selected if one or more of the following conditions are met: Victim expresses intent of non-punishment or substantial restitution was made to the victim. In this case, amount range of fine shall be 10 million KRW ~ 30 million KRW.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases where the victim is responsible for the occurrence and the extent of damage • Special circumstances extenuating the defendant's motives to commit the offense exists (Type 1) • Minor bodily injuries (Type 1, 2)	• Aggravated bodily injury or substantial risk to the victim's life occurred due to fleeing of the accident (Type 1, 2) • Cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2 that embodies heavy illegality or reckless driving
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities • Victim expresses intent of non-punishment or substantial restitution was made to the victim	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factors	Conduct		• Serious bodily injuries which do not constitute aggravated bodily injury (Type 1, 2) • Other cases that fall under saving clause of the Traffic Accident Act, Article 3, paragraph 2, proviso
	Offender /Etc.	• Buying full coverage auto insurance • Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period (within ten years after the completion of the sentence or after the judgment became final) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

3 DRIVING UNDER THE INFLUENCE (DUI) · UNLICENSED DRIVING

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Unlicensed Driving	Fine 0.5 million – 1.5 million1)	– 8 mos. Fine 1 million – 2 million2)	6 mos. – 10 mos. Fine 1.5 million– 3 million3)
2	DUI (Blood Alcohol Concentration, hereinafter BAC1) 0.03% or more but less than 0.08%)	Fine 1 million – 3 million1)	– 8 mos. Fine 2 million – 4 million2)	6 mos. – 10 mos. Fine 3 million – 5 million3)
3	DUI (BAC 0.08% or more but less than 0.2%)	6 mos. – 10 mos. Fine 3 million – 6 million2)	8 mos. – 1 yr. 4 mos. Fine 5 million – 8 million2)	1 yr. – 1 yr. 10 mos. Fine 7 million – 10 million3)
4	DUI (BAC 0.2% or more)	1 yr. – 2 yrs. Fine 7 million – 12 million2)	1 yr. 6 mos. – 3 yrs. Fine 10 million – 17 million2)	2 yrs. 6 mos. – 4 yrs.4)
5	Refusal to Breathalyzer Test	6 mos. – 1 yr. 2 mos. Fine 3 million – 10 million2)	8 mos. – 2 yrs. Fine 7 million – 15 million2)	1 yr. 6 mos. – 4 yrs.4)

(unit: KRW)

▷ 1) Mitigated Sentencing Range for each Type 1 and Type 2: Where there is prior convictions for the same-offense [three or more fines (including suspended sentence) or heavier punishment within the past five years] imprisonment may be selected.

▷ 2) Standard Sentencing Range for each Type 1 and Type 2, and Mitigated Sentencing Range and/or Standard Sentencing Range for each Type 3 and Type 5: Where there is prior convictions for the same-offense [three or more fines (including suspended sentence) or heavier punishment within the past five years] imprisonment is recommended.

▷ 3) Aggravated Sentencing Range for each Type 1 through Type 3: ① Where there is prior convictions for the same-offense [three or more fines (including suspended sentence) or heavier punishment within the past five years] imprisonment is recommended. ② Where there are i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, imprisonment is recommended.

▷ 4) Aggravated Sentencing Range for each Type 4 and Type 5: Where there is no prior convictions of the

1) BAC (hyul-jung-alcohol-nongdo) is also rendered as blood-alcohol concentration, blood alcohol content, or blood alcohol level; all of these denote the same value, namely the quantity of alcohol per unit volume of blood. In the English translation of the Road Traffic Act provided by the Korea Legislation Research Institute (KLRI), Article 44 (4) renders the term as "blood-alcohol concentration" and Article 148-2 (2) as "blood alcohol content," although the two refer to the same concept. In this report, "blood-alcohol concentration" is abbreviated as BAC. In Korea, BAC is expressed as a percentage.

same-offense, a fine may be selected (in this case, the fine range for Type 4 Aggravated Sentencing Range shall be 15 million KRW to 20 million KRW, and the fine range for Type 5 Aggravated Sentencing Range shall be 13 million KRW to 20 million KRW). However, when there are i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, imprisonment is recommended.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Risk to road traffic caused by driving is very low	• Risk to road traffic caused by driving is very high • Cases involving substantial obstruction of official duties (Type 5)
	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 Factors	Conduct	• Cases where the offense was committed out of economic necessity (Type 1)	
	Offender /Etc.	• Sincere remorse • No prior criminal convictions	• Post-offense evidence tampering or attempting to destroy or conceal evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period (within ten years after the completion of the sentence or after the judgment became final)

▷ Apply the following classification in cases where the offense of Unlicensed Driving · Driving Under Influence (DUI) · Refusal to Breathalyzer Test is committed while in a state of severe intoxication due to alcohol or drugs.

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.

DEFINITION OF OFFENSES

1 TRAFFIC ACCIDENTS

1. GENERAL TRAFFIC ACCIDENTS

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

(1) TYPE 1 — INJURY BY TRAFFIC ACCIDENT

ELEMENTS OF OFFENSE	APPLICABLE LAW
When a Driver of a Vehicle Causes Injury to the Victim by Traffic Accident Due to Negligence or Gross Negligence Committed Under Duty	Traffic Accident Act, Article 3, paragraph 1

(2) TYPE 2 — DEATH BY TRAFFIC ACCIDENT

ELEMENTS OF OFFENSE	APPLICABLE LAW
When a Driver of a Vehicle Causes Death to the Victim by Traffic Accident Due to Negligence or Gross Negligence Committed Under Duty	Traffic Accident Act, Article 3, paragraph 1

2. TRAFFIC ACCIDENTS BY DANGEROUS DRIVING

(1) TYPE 1 — INJURY BY DANGEROUS DRIVING

ELEMENTS OF OFFENSE	APPLICABLE LAW
When a Driver of a Vehicle Causes Injury to the Victim by Traffic Accident While Driving a Car Under the Condition Difficult to Drive Normally Due to the Influence of Alcohol or Drugs	Act on the Aggravated Punishment of Specific Crimes, Article 5-11, paragraph 1, first part

(2) TYPE 2 — DEATH BY DANGEROUS DRIVING

ELEMENTS OF OFFENSE	APPLICABLE LAW
When a Driver of a Vehicle Causes death to the Victim by Traffic Accident While Driving a Car Under the Condition Difficult to Drive Normally Due to the Influence of Alcohol or Drugs	Act on the Aggravated Punishment of Specific Crimes, Article 5-11, paragraph 1, latter part

3. TRAFFIC ACCIDENTS INVOLVING CHILDREN

(1) TYPE 1 — CHILD INJURY BY TRAFFIC ACCIDENTS

ELEMENTS OF OFFENSE	APPLICABLE LAW
When a Driver of a Vehicle Causes Injury to the Child Victim by Traffic Accident Due to Negligence or Gross Negligence Committed Under Duty, within Protection Area for Children	Act on the Aggravated Punishment of Specific Crimes, Article 5-13, subparagraph 2

(2) TYPE 2 — CHILD DEATH BY TRAFFIC ACCIDENTS

ELEMENTS OF OFFENSE	APPLICABLE LAW
When a Driver of a Vehicle Causes Death to the Child Victim by Traffic Accident Due to Negligence or Gross Negligence Committed Under Duty, within Protection Area for Children	Act on the Aggravated Punishment of Specific Crimes, Article 5-13, subparagraph 1

2 FLEEING AFTER THE TRAFFIC ACCIDENTS

1. TYPE 1 — FLEEING AFTER CAUSING INJURY TO THE VICTIM

ELEMENTS OF OFFENSE	APPLICABLE LAW
When the Offender Causing the Traffic Accident Injure the Victim and Flees	Act on the Aggravated Punishment of Specific Crime, Article 5-3, paragraph 1, subparagraph 2

2. TYPE 2 — ABANDONING THE VICTIM AND FLEEING AFTER CAUSING INJURY TO THE VICTIM

ELEMENTS OF OFFENSE	APPLICABLE LAW
When the Offender Causing the Traffic Accident Injure the Victim Flees and Abandons the Victim	Act on the Aggravated Punishment of Specific Crime, Article 5-3, paragraph 2, subparagraph 2

3. TYPE 3 — FLEEING AFTER CAUSING DEATH TO THE VICTIM OR DEATH TO THE VICTIM AFTER THE DRIVER FLEES THE SCENE

ELEMENTS OF OFFENSE	APPLICABLE LAW
When the Offender Causing the Victim's Death Flees, or When the Victim Dies After the Offender Flees	Act on the Aggravated Punishment of Specific Crime, Article 5-3, paragraph 1, subparagraph 1

4. TYPE 4 — ABANDONING THE VICTIM AND FLEEING AFTER CAUSING DEATH TO THE VICTIM OR DEATH TO THE VICTIM AFTER THE DRIVER ABANDONS VICTIM AND FLEES THE SCENE

ELEMENTS OF OFFENSE	APPLICABLE LAW
When the Offender Causing the Victim's Death Abandons the Victim and Flees, or the Victim Dies After the Offender Abandoned the Victim	Act on the Aggravated Punishment of Specific Crime, Article 5-3, paragraph 2, subparagraph 1

3 DRIVING UNDER THE INFLUENCE (DUI) · UNLICENSED DRIVING

1. TYPE 1 — UNLICENSED DRIVING

ELEMENTS OF OFFENSE	APPLICABLE LAW
Driving a motor vehicle without obtaining a driver's license	Road Traffic Act, Article 152, subparagraph 1

2. TYPE 2 — DUI (BAC 0.03% OR MORE BUT LESS THAN 0.08%)

ELEMENTS OF OFFENSE	APPLICABLE LAW
Cases where a person with a BAC 0.03% or more but less than 0.08% drives a motor vehicle or other vehicle	Road Traffic Act, Article 148-2, paragraph 3, subparagraph 3

3. TYPE 3 — DUI (BAC 0.08% OR MORE BUT LESS THAN 0.2%)

ELEMENTS OF OFFENSE	APPLICABLE LAW
Cases where a person with a BAC 0.08% or more but less than 0.2% drives a motor vehicle or other vehicle	Road Traffic Act, Article 148-2, paragraph 3, subparagraph 2

4. TYPE 4 — DUI (BAC 0.2% OR MORE)

ELEMENTS OF OFFENSE	APPLICABLE LAW
Cases where a person with a BAC 0.2% or higher drives a motor vehicle or other vehicle	Road Traffic Act, Article 148-2, paragraph 3, subparagraph 1

5. TYPE 5 — REFUSAL TO BREATHALYZER TEST

ELEMENTS OF OFFENSE	APPLICABLE LAW
Cases where a person who has reasonable grounds to be recognized as being in a state of intoxication refuses to comply with a police officer's breathalyzer test	Road Traffic Act, Article 148-2, paragraph 2

DEFINITION OF SENTENCING FACTORS

1 TRAFFIC ACCIDENTS[2)]

1. CASES WHERE THE VICTIM IS ALSO RESPONSIBLE FOR THE OCCURRENCE AND THE EXTENT OF THE DAMAGE

- This applies where one or more of the following are present:
  - Cases of jaywalking which an ordinary driver could not generally have expected or foreseen in light of conditions such as the traffic conditions, the surroundings, the time of the accident, or other similar factors
  - Cases where the victim's negligence, such as traffic signal violation partially contributed to the occurrence of the accident
  - Other cases with comparable factors

2. VICTIM EXPRESSES INTENT FOR 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.

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2) Sentencing factors with the same designation that apply to Fleeing After Traffic Accidents · Driving Under Influence (DUI) · Unlicensed Driving have the same definition unless defined otherwise.

3. 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 (in cases where only property damage occurred, approximately two-thirds or more of the total loss), 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.

4. 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.

5. MINOR BODILY INJURIES

- Minor bodily injuries means injuries that require two weeks or less of medical care, affect only relatively limited parts of the body, do not interfere with the victim's day-to-day activities, and do not require medical interventions such as surgical stitches.

6. AGGRAVATED BODILY INJURIES

- Aggravated bodily injuries refer to injuries that create a substantial risk of death, or result in permanent physical impairment, or lead to an incurable or intractable disease.

7. CASES THAT FALL UNDER A CERTAIN SAVING CLAUSE OF THE TRAFFIC ACCIDENT ACT, ARTICLE 3, PARAGRAPH 2 THAT EMBODIES HEAVY ILLEGALITY, OR RECKLESS DRIVING

- This applies where one or more of the following are present. However, cases of 'Fleeing Without Taking Measures prescribed in Article 54, paragraph 1 of the Road Traffic Act or Fleeing After Abandoning the Victim', 'Refusal to Take the Breathalyzer Test', subparagraph 7, subparagraph 8 (in case of Type 1 Traffic Accidents Involving Children, include subparagraph 11) are excluded.
  - Cases which fall under two or more cases of the Saving Clause
  - Cases which fall under Reckless Driving stipulated in Road Traffic Act, Article 46-3
  - Other cases with comparable factors with at least one case of the Saving Clause

  ※ This shall not be treated as multiple offenses; it shall instead be considered solely as a sentencing factor.

8. SERIOUS BODILY INJURIES WHICH DO NOT CONSTITUTE AGGRAVATED BODILY INJURY

- Serious bodily injuries refer to injuries requiring four to five weeks or more of medical treatment. This includes, but is not limited to, injuries resulting in protracted functional impairment or severe disfigurement, injuries to vital body parts, or cases where further physical complications are anticipated.

9. OTHER CASES THAT FALL UNDER SAVING CLAUSE OF THE TRAFFIC ACCIDENT ACT, ARTICLE 3, PARAGRAPH 2, PROVISO

- This means cases that fall under one of the cases in Saving Clause of Traffic Accident Act, Article 3, paragraph 2, proviso excluding 'Fleeing Without Taking Measures Prescribed in Article 54, paragraph 1 of the Road Traffic Act or Fleeing After Abandoning the Victim' 'Refusal to Take the Breathalyzer Test', subparagraph 7, subparagraph 8 (in case of Type 1 Traffic Accidents Involving Children, include subparagraph 11).
- In case in which 'Cases That Fall Under A Certain Saving Clause Of The Traffic Accident Act, Article 3, paragraph 2, proviso That Embodies Heavy Illegality or Reckless Driving' is already applied, this is not considered as a General Aggravating Factor.

  ※ This shall not be treated as multiple offenses, but shall instead be considered solely as a sentencing factor.

10. PRIOR CONVICTIONS FOR THE SAME-OFFENSE

- This refers to criminal convictions of Traffic Accident, Fleeing After Traffic Accident (Section 1, 2)[3] as set forth in this sentencing guideline.
- However, when the cases fall under the Traffic Accident Act, Article 3, paragraph 2 of the Saving Clause, subparagraph 8 or Refusal to Take the Breathalyzer Test, prior convictions for the same-offense include DUI (including Refusal to Take the Breathalyzer Test) under the Road Traffic Act.
- In case of Dangerous Driving Accidents, prior convictions for the same-offense includes violations of Road Traffic Act, Article 148-2

11. SINCERE REMORSE

- This indicates cases in which, after examining and assessing the specific circumstances surrounding the offender's admission of the offense and any voluntary efforts made toward victim restitution and/or the prevention of re-offending, the offender is deemed to show genuine remorse for the offense.

12. 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.

2 FLEEING AFTER TRAFFIC ACCIDENT

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S INVOLVEMENT

- This applies where one or more of the following are present:
  - Cases where the necessity of rescuing the victim was objectively minor according to the details and situations of the accident, the extent and severeness of the harm, whether there were visible external injuries, the age of

[3] DEFINITION OF OFFENSES 01, 02 of this Chapter

the victim, and the pain and appeal of medical treatment by the victim
- Other cases with comparable factors

2. AGGRAVATED BODILY INJURIES FROM THE TRAFFIC ACCIDENT OR SUBSTANTIAL RISK TO THE VICTIM'S LIFE CAUSED BY THE DRIVER'S FLEEING

- This applies where one or more of the following are present:
  - This indicates cases in which the victim's bodily injury has resulted in danger to life, permanent disability, or an incurable or intractable disease (Type 1, 2)
  - When the offender ran away, abandoning the victim on a road with heavy traffic and therefore causing serious danger to the victim's life (Type 1)
  - Other cases with comparable factors

3 DRIVING UNDER INFLUENCE (DUI) · UNLICENSED DRIVING

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATING THE OFFENDER'S INVOLVEMENT

- This applies where one or more of the following are present:
  - Cases where driving was unavoidably necessary due to urgent circumstances such as a family member being critically ill
  - Other cases with comparable factors

2. RISK TO ROAD TRAFFIC CAUSED BY DRIVING IS VERY LOW

- This refers to cases in which one or more of the following factors apply. However, when this factor is applied, sentencing factor for 'Extenuating Circumstances for Offender's Motive for Committing Offense' shall not be applied cumulatively.
  - Cases where a person moved near the destination by designated driver service, etc., and then drove a short distance for parking
  - Cases where a person drove a short distance to relocate the vehicle to resolve the situation where parallel parking, etc., made it difficult for other vehicles to pass
  - Other cases with comparable factors

3. RISK TO ROAD TRAFFIC CAUSED BY DRIVING IS VERY HIGH

- This refers to cases in which one or more of the following factors apply. However, this factor shall not be applied when a separate offense is established and Guidelines On Multiple Offenses are applied.
  - Cases where the defendant crashed into median strips, utility poles, etc.
  - Cases where the driving distance was very long or the defendant drove on highways
  - Other cases with comparable factors

4. SIGNIFICANT INTERFERENCE WITH OFFICIAL DUTIES OCCURRED

- This refers to cases in which one or more of the following factors apply. However, this factor shall not be applied when a separate offense is established and Guidelines On Multiple Offenses are applied.
  - Cases where the defendant caused a disturbance through prolonged use of abusive language and disorderly conduct
  - Cases where the defendant fled from police and was apprehended after pursuit
  - Other cases with comparable factors

5. PRIOR CONVICTIONS FOR THE SAME-OFFENSE

- This refers to prior convictions of Driving Under The Influence (DUI) and Unlicensed Driving (Section 3) and Traffic Accidents by Dangerous Driving (Subsection 2 of Section 1) based on this sentencing guidelines.

6. 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 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. However, where a victim or bereaved family member has intent of non-punishment, such wishes may be treated on a par with a Conduct Factor.
  - 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[4)]

1 TRAFFIC ACCIDENTS AND FLEEING AFTER TRAFFIC ACCIDENTS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Resulting in death · aggravated injuries or substantial risk to the victim's life by fleeing • Abandoning the victim and fleeing after the traffic accident • Cases that fall under a certain saving clause of the Traffic Accident Act, Article 3, paragraph 2 that embodies heavy illegality, or Reckless Driving • 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)]	• Cases where the victim is also substantially responsible for the occurrence of the accident or the extent of damage • Minor bodily injuries • Accident caused by operating a bicycle (limited to General Traffic Accidents) • No prior criminal convictions • Victim expresses intent of non-punishment or substantial restitution was made to the victim
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Other cases that fall under the Traffic Accident Act, Article 3, paragraph 2 saving clause • Post-offense evidence tampering or attempt to conceal or destroy evidence • Lack of social/family ties • Drug or alcohol addiction • Absence of efforts to reverse the harm • Absence of sincere remorse • 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 (crimes of Fleeing the Traffic Accident) • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the defendant would impose excessive hardship on dependent family members • Buying full coverage auto insurance • Considerable restitution

4) This Chapter's Guideline on Suspending a Sentence refers to imprisonment without labor and imprisonment with labor

2 DRIVING UNDER THE INFLUENCE (DUI) · UNLICENSED DRIVING

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Risk to road traffic caused by driving is very high • Significant interference with official duties occurred (Type 5) • 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)]	• Cases with special extenuating circumstances that mitigate the offender's involvement • Risk to road traffic caused by driving is very low • No prior criminal convictions
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Post-offense evidence tampering or attempting to destroy or conceal evidence • Lack of social/family ties • Drug or alcohol addiction • Absence of sincere remorse	• 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 • The offender's physical condition is severely impaired • Cases where detaining the defendant would impose excessive hardship on dependent family members

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.
- For cases That Fall Under 'A Certain Saving Clause Of The Traffic Accident Act, Article 3, Paragraph 2, Proviso That Embodies Heavy Illegality or Reckless Driving':
  - This refers to cases in which one or more of the following factors apply. However, when this factor is applied, sentencing factor for 'Fleeing Without Taking Measures Prescribed in Article 54, paragraph 1 of the Road Traffic Act or Fleeing And Abandoning the Victim After Traffic Accident' shall be excluded.
    - Cases which fall under the Traffic Accident Act, Article 3, paragraph 2, subparagraph 8 or Act on the Aggravated Punishment of Specific Crimes, Article 5-11
    - Cases which fall under the Traffic Accident Act, Article 3, paragraph 2, subparagraph 11 or Act on the Aggravated Punishment of Specific Crimes, Article 5-13
    - Cases where there was a refusal to take the Breathalyzer Test
    - Cases which fall under two or more cases of the Saving Clause Among The Traffic Accident Act, Article 3, Paragraph 2, Proviso
    - Cases which fall under Reckless Driving stipulated in Road Traffic Act, Article 46-3
    - Other cases with comparable factors with single Saving Clause Among The Traffic Accident Act, Article 3, Paragraph 2, Proviso
- 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.

PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with or without 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.