CHAPTER 12

Crimes of Escape · Harboring Criminals

- Promulgated on April 10, 2017. Effective on July 1, 2017.
- Amended on December 6, 2021. Effective on March 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
- Amended on March 30, 2026. Effective on July 1, 2026.

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

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 ESCAPE

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Cases where the degree of damages, assault, the threat is minor (Type 2)	• Highly egregious conducts or methods • Instigating the subordinate to commit the crime
	Offender/ Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities	• Commission by a correctional officer or conveyor who is in charge of the person in lawful custody (Type 3) • Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	
	Offender/ Etc.	• Diminished mental capacity (with fault) • No prior criminal convictions • Victim expresses intent of non-punishment or substantial restitution was made to the victim (Type 2)	• 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 (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)(Type 2)

2 HARBORING · AIDING A CRIMINAL

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense	• Highly egregious conducts or methods • Acquired financial benefits in exchange for the commission of the offense • Instigating the subordinate to commit the crime
	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 (including Perjury, Evidence Tampering, False Accusation, Etc.)
General Sentencing Factor	Conduct	• Minor participation • The degree of interference with criminal justice is not significant	• Promises for financial benefit
	Offender/ Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions	• Post-offense evidence tampering or attempt 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 (including Perjury, Evidence Tampering, False Accusation, Etc.)

DEFINITION OF OFFENSES

1 ESCAPE

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

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

2 HARBORING · AIDING A CRIMINAL

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

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

DEFINITION OF SENTENCING FACTORS

1 ESCAPE[1)]

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES CONCERNING THE OFFENDER'S PARTICIPATION IN, OR MOTIVES FOR, THE OFFENSE

- This applies where one or more of the following are present:
  - The offender participated in the crime under coercion or threats by another person (excluding cases that fall under Article 12 of the Criminal Act).
  - The offender merely agreed to participate in the crime and neither directed nor directly took part in carrying out the offense.
  - The commission of the offense was due to the arrester or correctional officer's neglect
  - Other cases with comparable factors

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - The means and methods of the offense were carefully planned in advance.
  - Where the offense was committed in an organized manner by multiple persons with divided roles, or offense committed with professional device or technology, and the defendant played a leading role in planning or directing the execution of the offense, or assumed a key role
  - The offender possessed a dangerous object
  - Other cases with comparable factors

3. MINOR PARTICIPATION

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

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1) Sentencing factors with the same designation that apply to Harboring · Aiding a Criminal have the same definition unless separately defined.

4. VICTIM EXPRESS 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.

5. 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.

6. 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.

7. 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.

2 HARBORING · AIDING A CRIMINAL

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S PARTICIPATION IN, OR MOTIVES FOR THE OFFENSE

- This applies where one or more of the following are present:
  - The offender participated in the crime under coercion or threats by another person (excluding cases that fall under Article 12 of the Criminal Act).
  - The offender merely agreed to participate in the crime and neither directed nor directly took part in carrying out the offense.
  - The offender was in a close personal relationship such as a *de facto* marriage, partnership, friends or others with the principal offender. The offense was committed because the personal relationship made it hard to refuse the principal offender's request
  - Poor level of awareness of "a person who committed a crime"
  - Other cases with comparable factors

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - The means and methods of the offense were carefully planned in advance (For example, while operating an illegal gambling enterprise and others, arrange a "paper owner" who would act as the business owner during the inspection and harbor the offender Etc.)
  - Where the offense was committed in an organized manner by multiple persons with divided roles, or offense committed with professional device or technology, and the defendant played a leading role in planning or directing the execution of the offense, or assumed a key role
  - Offender actively induced the principal offender
  - Other cases with comparable factors

3. THE DEGREE OF INTERFERENCE WITH THE CRIMINAL JUSTICE SYSTEM IS MINOR

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

4. 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.

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

1 ESCAPE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Highly egregious conducts or methods • Commission by a correctional officer or conveyor who is in charge of the person in lawful custody (Type 3) • Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)]	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Cases where the degree of damages, assault, the threat is minor (Type 2) • Expresses substantial penitence (including voluntary surrender, confessions and the like) • No prior criminal convictions
General Circumstance	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of social/family ties • Absence of sincere remorse • Post-offense evidence tampering or attempt to destroy or conceal evidence • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) (Type 2)	• No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Stable social/family ties • 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 intent of non-punishment or substantial restitution was made to the victim (Type 2)

2 HARBORING · AIDING A CRIMINAL

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Acquired financial benefits in exchange for the commission of the offense • Highly egregious conducts or methods • Prior convictions for the same-offense [a suspended sentence of imprisonment or a heavier punishment within the past five years, or three or more fines (including suspended sentences)]	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Expresses substantial penitence (including voluntary surrender, confessions and the like) • No prior criminal convictions
General Circumstance	• Promises for financial benefit • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of social/family ties • Absence of sincere remorse • Post-offense evidence tampering or attempt to destroy or conceal evidence	• The degree of interference with criminal justice is not significant • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Stable social/family ties • 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

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.

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.