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CHAPTER

Crimes Related to Digital Sex Crime (Technology-facilitated Sexual Violence)

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses violating Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 1 through paragraph 4 paragraph 5, paragraph 7 (Production or Distribution of Child or Minor Sexual Exploitation Materials), Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 13 (Obscene Acts by Using Means of Communication), Article 14 (Taking Photographs or Video Clips by Using Camera), Article 14-2 (Distribution of False Video Products), or Article 14-3 (Intimidation or Compulsion by Using Photograph, etc.).

※ Note that the underlined provisions applied to certain crimes were deleted or amended following the statutory revisions made after the sentencing guidelines were established. The sentencing guidelines on those crimes will be revised later. For this reason, all or part of the current standards of sentencing would not be applied.

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 CHILD · MINOR SEXUALLY EXPLOITED MATERIALS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Production etc.	2 yrs. 6 mos. – 6 yrs.	5 yrs. – 9 yrs.	7 yrs. – 13 yrs.
2	Sell for Commercial Purposes, etc.	2 yrs. 6 mos. – 5 yrs.	4 yrs. – 8 yrs.	6 yrs. – 12 yrs.
3	Distribution, etc.	1 yr. 6 mos. – 4 yrs.	2 yrs. 6 mos. – 6 yrs.	4 yrs. – 8 yrs.
4	Arrange to Buy Sex From a Child · Minor	1 yr. 6 mos. – 4 yrs.	2 yrs. 6 mos. – 6 yrs.	4 yrs. – 8 yrs.
5	Purchase etc.	6 mos. – 1 yr. 4 mos.	10 mos. – 2 yrs.	1 yr. 6 mos. – 3 yrs.

▷ In cases of habitual offender, increase both the minimum and maximum sentencing range each by multiplying 1.5 (Type 1)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement	• Highly egregious methods • Morally reprehensible motives • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • Causing serious harm to the victim • Instigating the subordinate to commit the offense

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organized crime • Taking substantive measures to prevent further harm	• Offenses by a mandatory reporter of child abuse crimes or child welfare facility employee • Same-offense recidivism within the statutory recidivism period (including sex crime, commercial sex, etc)
General Sentencing Factors	Conduct	• Minor participation	• Cases where the actual profit obtained from the offense is substantial (Type 2)
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Offender's cooperation with the investigation • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim	• Abuse of relationship of trust • Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense with a suspended sentence of imprisonment without labor or a heavier penalty that do not constitute statutory recidivism (including sex crimes, commercial sex, 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 Producing · Distributing Child · Minor Sexually Exploited Materials, was committed while severely intoxicated by alcohol or drugs (including cases of Taking Photographs or Video Clips by Using Camera, Distribution of False Video Products, Intimidation · Coercion by Using Photograph, Video Recordings, Etc., Obscene Acts by Using Means of Communication):

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 TAKING PHOTOGRAPHS OR VIDEO CLIPS BY USING CAMERA

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Taking Photographs or Video	4 mos. – 10 mos.	8 mos. – 2 yrs.	1 yr. – 3 yrs.
2	Distribution Etc.	4 mos. – 1 yr. 4 mos.	1 yr. – 2 yrs. 6 mos.	1 yr. 6 mos. – 4 yrs.
3	Distribution Etc. For Profits	1 yr. 6 mos. – 4 yrs.	2 yrs. 6 mos. – 6 yrs.	4 yrs. – 8 yrs.
4	Possession, etc.	– 8 mos.	6 mos. – 1 yr.	10 mos. – 2 yrs.

▷ In cases of habitual offender, increase both the minimum and maximum sentencing range each by multiplying 1.5 (excluding Type 4).

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • In cases where contents of the recording cannot be easily identified, or equivalent situation	• Highly egregious methods • Morally reprehensible motives • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • Causing serious harm to the victim • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organized crime • Taking substantive measures to prevent further harm • Victim expresses the intent of non-punishment	• Same-offense recidivism within the statutory recidivism period (including sex crime, commercial sex, etc)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factors	Conduct	• Minor participation	• Cases where the actual profit obtained from the offense is substantial (Type 3)
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Offender's cooperation with the investigation • Considerable restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense with a suspended sentence of imprisonment without labor or a heavier penalty that do not constitute statutory recidivism (including sex crimes, commercial sex, within ten years of the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

3 DISTRIBUTION OF FALSE VIDEO PRODUCTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Editing, Etc.	- 8 mos.	6 mos. - 1 year. 6 mos.	10 mos. - 2 yrs. 6 mos.
2	Distribution, Etc.	- 8 mos.	8 mos. - 1 year. 6 mos.	10 mos. - 2 yrs. 6 mos.
3	Distribution Etc. For Profits	4 mos - 1 yr. 4 mos.	1 yr. - 2 yrs. 6 mos.	1 yr. 6 mos. - 4 yrs.

▷ In cases of habitual offender, increase both the minimum and maximum sentencing range each by multiplying 1.5.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • In cases where contents of the edited, synthesized, altered, or reproduced material cannot be easily identified, or equivalent situation.	• Highly egregious methods • Morally reprehensible motives • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • Causing serious harm to the victim • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organized crime • Taking substantive measures to prevent further harm • Victim expresses the intent of non-punishment	• Same-offense recidivism within the statutory recidivism period (including sex crime, commercial sex, etc)
General Sentencing Factors	Conduct	• Minor participation	• Cases where the actual profit obtained from the offense is substantial (Type 3)
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Offender's general cooperation with the investigation • Considerable restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense with a suspended sentence of imprisonment without labor or a heavier penalty that do not constitute statutory recidivism (including sex crimes, commercial sex, 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)

4 INTIMIDATION · COERCION BY USING PHOTOGRAPH, VIDEO RECORDINGS, ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Intimidation	9 mos. – 1 yr. 6 mos.	1 yr. – 3 yrs.	2 yrs. – 4 yrs.
2	Coercion	1 yr. 6 mos. – 4 yrs.	3 yrs. – 6 yrs.	5 yrs. – 8 yrs.

▷ In cases of habitual offender, increase both the minimum and maximum sentencing range each by multiplying 1.5.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • In cases where degree of intimidation or coercion is minor	• Morally reprehensible motives • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • Causing serious harm to the victim • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities • Victim expresses the intent of non-punishment	• Same-offense recidivism within the statutory recidivism period (including sex crime, commercial sex, etc)
General Sentencing Factors	Conduct	• Minor participation	• Two or more co-offenders • Planned crime
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense with a suspended sentence of imprisonment without labor or a heavier penalty that do not constitute statutory recidivism (including sex crimes, commercial sex, within ten years of the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

5 OBSCENE ACTS BY USING MEANS OF COMMUNICATION

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Obscene Acts by Using Means of Communication	– 6 mos.	4 mos. – 10 mos.	8 mos. – 1 yr. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factors	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Actual damage is minor	• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • Causing serious harm to the victim • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities • Victim expresses the intent of non-punishment	• Same-offense recidivism within the statutory recidivism period (including sex crime, commercial sex, etc)
General Sentencing Factors	Conduct	• Minor participation	
	Offender /Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense with a suspended sentence of imprisonment without labor or a heavier penalty that do not constitute statutory recidivism (including sex crimes, commercial sex, within ten years of 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 CHILD · MINOR SEXUALLY EXPLOITED MATERIALS

1. TYPE 1 – PRODUCTION ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Produces, imports, or exports child or minor sexual exploitation materials	Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 1

※ The following applies to habitual offenders.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Habitually produces, imports, or exports child or minor sexual exploitation materials	Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 7

2. TYPE 2 – SELL FOR COMMERCIAL PURPOSES ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Sell, lend, distribute, or provide child or minor sexual exploitation materials for commercial purposes, or possess or transport, or advertise, or mediate them for any of such purposes, or publicly exhibit or display them	Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 2

3. TYPE 3 — DISTRIBUTION ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Distribute, or provide child or minor sexual exploitation materials, or advertise or mediate them for any of such purposes, or publicly exhibit or display them	Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 3

4. TYPE 4 — ARRANGING A CHILD · MINOR

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Arrange child or minor to a pornography producer, knowing from the circumstances that the producer will produce sexual exploitation materials using the child · the minor	Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 4

5. TYPE 5 — PURCHASE, ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Purchases child or minor sexual exploitation materials knowing that it is a child · minor sexual exploitation materials, or possesses · views them	Act on the Protection of Children and Youth Against Sex Offenses, Article 11, paragraph 5

2 TAKING PHOTOGRAPHS OR VIDEO CLIPS BY USING CAMERA

1. TYPE 1 — TAKING PHOTOGRAPHS OR VIDEO

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Takes photographs or videos of another person's body, which may cause any sexual desire or shame against the will of the person who was shot, by using a camera or other mechanism which has functions similar thereto	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 1

2. TYPE 2 — DISTRIBUTION, ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Distributes, sells, leases, provides, or openly exhibits or shows a photograph or video recording taken under Sexual Crimes Act, Article 14 paragraph 1, or its duplicate (including a duplicate of a duplicate)	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 2
Distributes, sells, leases, provides, or openly exhibits or shows, after the fact and against the will of the person who is the subject of the recording, a photograph or video recording referred to in Sexual Crimes Act, Article 14, paragraph 1, or its duplicate, even where the recording was not made against that person's will at the time it was made, including where that person recorded his or her own body	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 2

3. TYPE 3 — DISTRIBUTION ETC. FOR PROFITS

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
For the purpose of making profits, commits a crime under Sexual Crimes Act, Article 14, paragraph 2 by using an information and communications network against the will of the person photographed	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 3

4. TYPE 4 — POSSESSION ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Possesses, purchases, stores, or views the photograph or its duplicates provided in Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 1 or 2	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 4

※ The following applies to habitual offenders. (Type 1, Type 2, Type 3)

ELEMENTS OF OFFENSE	APPLICABLE LAW
Habitually commits any of the crimes provided in Act on Special Cases Concerning the Punishment of Sexual Crimes Article 14, paragraphs 1 through 3	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14, paragraph 5

3 DISTRIBUTION OF FALSE VIDEO PRODUCTS

1. TYPE 1 — EDITING ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Edits, synthesizes, or processes photographs, video recordings, or audio recordings targeting the face, body or voice of a person for the purpose of distribution, etc, in a form that may cause sexual desire or shame against the will of the person who is subject to video, etc.	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraph 1

2. TYPE 2 — DISTRIBUTION ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Distribute, sell, rent, provide or display or show publicly edited, synthesized, processed, or reproduced materials etc. (including a duplicate of a duplicate) under the Sexual Crimes Act, Article 14-2, paragraph 1	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraph 2
Distribute, sell, rent, provide or display or show publicly edited, synthesized, processed, or reproduced materials, etc. against the will of the person subject to the video material, etc. even if it is not contrary to the intention of the person, at the time of editing, compiling, compositing or processing the material under the Sexual Crimes Act, Article 14-2, paragraph 1	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraph 2

3. TYPE 3 — DISTRIBUTION ETC. FOR PURPOSE OF PROFITS

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
For the purpose of making profits by using an information and communications network, commits a crime under the Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraph 2 against the will of a person who is the subject of the material	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraph 3

※ The following applies to habitual offenders.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Habitually commits any of the crimes provided in the Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraphs 1 through 3	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-2, paragraph 4

4 INTIMIDATION · COERCION BY USING PHOTOGRAPH, VIDEO RECORDINGS, ETC.

1. TYPE 1 — INTIMIDATION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Intimidates another person by using photograph or its duplicates (including a duplicate of a duplicate) which may cause sexual desire or shame	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-3, paragraph 1

2. TYPE 2 — COERCION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Interferes with the exercise of a person's right by intimidation under the Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-3, paragraph 1 or has the person to the work not obligatory for him/her	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-3, paragraph 2

※ The following applies to habitual offenders.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Habitually commits any of the crimes provided in the Sexual Crimes Act, Article 14-3, paragraphs 1, 2	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 14-3, paragraph 3

5 OBSCENE ACTS BY USING MEANS OF COMMUNICATION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Sends another person any words, sounds, writings, pictures, images, or other things that may cause a sense of sexual shame or aversion by telephone, mail, computer, or other means of communication, with intent to arouse or satisfy his/her own or the other person's sexual urges	Act on Special Cases Concerning the Punishment of Sexual Crimes, Article 13

DEFINITION OF SENTENCING FACTORS

1 CHILD · MINOR SEXUAL EXPLOITATION MATERIALS[1)]

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

- 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.
  - Other cases with comparable mitigating factors.

2. TAKING SUBSTANTIAL MEASURES TO PREVENT FURTHER HARM

- This applies where one or more of the following are present:
  - Immediately deleting or destroying the produced or imported sexual exploitation materials before they are distributed,
  - When the offender voluntarily made significant efforts and expenditures to retrieve or remove distributed sexual exploitation materials,
  - Other cases with comparable factors.

3. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - The means and methods for the commission of the offense were meticulously planned in advance
  - The offense was committed using highly sophisticated methods
  - The offense was committed by devising new, specialized methods not previously known

[1)] Sentencing factors with the same designation that apply to Taking Photographs or Video Clips by Using Camera, Distribution of False Video Products, Intimidation · Coercion by Using Photograph, Video Recordings, Etc., and Obscene Acts by Using Means of Communication have the same definition unless separately defined.

- Where the offense was committed in an organized manner by multiple persons with divided roles, or by using specialized equipment or techniques, and the offender played a key role, such as leading the planning or directing the execution of the offense
- The sexual exploitation materials were distributed by using means with high-dissemination
- The offense involved assaulting or intimidating the victim, using deception or force against the victim, or luring the victim by offering benefits
- Other cases with comparable factors.

4. MORALLY REPREHENSIBLE MOTIVE

- This applies where one or more of the following are present:
  - The offense was committed for the purpose of preventing the victim from reporting another crime committed by the offender.
  - The offense was committed in retaliation against, or out of grievance or hatred toward, the victim.
  - The offense was committed as a means to commit another crime.
  - The offense was committed for the offender's own enjoyment of committing the crime itself.
  - Other cases with comparable aggravating factors

5. VULNERABLE VICTIMS

- This indicates cases in which the victim was especially vulnerable due to physical or mental incapacity, the victim's age at the time of the crime or others, and the offender was already aware of or possibly aware of the victim's circumstances.

6. CAUSING SERIOUS HARM TO THE VICTIM

- This refers to cases in which one or more of the following factors apply:
  - Where the offender, with respect to sexual exploitation material that contains personally identifiable information of the victim, or depicts the victim's nudity, sexual intercourse, or other content causing extreme sexual humiliation, (i) produces, imports, or exports such material;

(ii) sells, lends, distributes, or otherwise provides such material to an unspecified number of persons or to persons closely related to the victim, including family members, teachers, or students attending the same educational institution;

(iii) possesses, carries, advertises, or introduces such material for the purpose of sale, lease, distribution, or provision;

(iv) publicly exhibits or displays such material; or

(v) purchases, possesses, or views such material;

- Where the victim has suffered irreparable harm in daily life, education, or livelihood;
- Where the offense has caused the victim extreme psychological suffering, including severe sexual humiliation or hatred;
- Other cases with comparable factors

7. OFFENSE BY A MANDATORY REPORTER OF CHILD ABUSE CRIMES OR CHILD WELFARE FACILITY STAFF

- This indicates cases in which one or more of the following factors apply:
  - Offense committed by the head of an organization or the staff of the institution or facilities prescribed in the Act on the Protection of Children and Youth Against Sex Offenses, Article 34, paragraph 2, against a child · minor under the protection or supervision of the offender, or with respect to sexual exploitation materials featuring such child · minor
  - Offense committed by the head of an organization or the staff of the institution or facilities provided in Act on Welfare of Persons with Disabilities, Article 59-4, paragraph 2, against a disabled child · minor under the protection, supervision, or medical treatment of the offender, or with respect to sexual exploitation materials featuring such child · minor

8. MINOR PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role. However, this does not apply in cases in which the offender had an active role in the commission of the offense by causing another person to commit the crime by means such as in an attempt to fulfill the offender's voyeurism.

9. VICTIM EXPRESSES THE INTENT OF NON-PUNISHMENT OF THE OFFENDER

- 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.

10. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the defendant, 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 court deposit, it constitutes substantial recovery of damages only when such a determination is made after carefully examining and assessing the opinions of the victim of the underlying offense or their legal representative (including the spouse, lineal relatives, and siblings if the victim is deceased) regarding the deposit, whether the defendant is legally permitted or intends to retrieve the deposited funds, the nature of the infringed legal interests, and the scale and extent of the damage.

11. CAUSING HARM WHILE ATTEMPTING TO REACH A SETTLEMENT WITH THE VICTIM (EXCLUDING CASES WHERE THE ACT CONSTITUTES ANY OTHER CRIME SUCH AS THE CRIME OF COERCION)

- This indicates cases in which the offender persistently harassed the victim or exerted undue pressure by implying tangible or intangible disadvantages in the course of attempting to reach a settlement, or otherwise caused harm through comparable means in response to the victim's refusal to settle.

12. NO PRIOR CRIMINAL CONVICTIONS

- It means that the offender has no previous criminal conviction before. However, this does not apply to cases targeting an unspecified number of persons or multiple victims, or cases in which the offense was committed repeatedly over an extended period.

13. OFFENDER'S COOPERATION WITH THE INVESTIGATION

- This refers to cases where the offender did not qualify for 'Voluntary Full Disclosure of Crime,' but nonetheless truthfully stated the facts of his or her own offense and related subsequent offenses, thereby contributing to the investigation, including the punishment of involved parties and the prevention of further crimes

14. MISUSE OF THE VICTIM'S TRUST IN THE OFFENDER

- This indicates cases in which the offender exploits mutual relationship with the victim and his/her trust in the offender, while it does not amount to a statutorily aggravated offense. Examples of such relationship include:
  - Teacher-student relationship
  - Child of an acquaintance
  - Other comparable relationships

15. SINCERE REMORSE

- This indicates cases in which the offender is deemed to show genuine remorse for the offense 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.

2 TAKING PHOTOGRAPHS OR VIDEO CLIPS BY USING CAMERA

1. TAKING SUBSTANTIAL MEASURES TO PREVENT FURTHER HARM

- This indicates cases in which one or more of the following factors apply:
  - Immediately deleting or destroying the photographs, video recordings, or duplicates before they are distributed
  - When the offender voluntarily made significant efforts and expenditures to retrieve distributed photographs, video recordings, or duplicates
  - Other cases with comparable factors.

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This indicates cases in which one or more of the following factors apply:
  - The means and methods for the commission of the offense were meticulously planned in advance
  - The offense was committed using highly sophisticated methods
  - The offense was committed by devising new, specialized methods not previously known
  - Where the offense was committed in an organized manner by multiple persons with divided roles, or by using specialized equipment or techniques, and the offender played a key role, such as leading the planning or directing the execution of the offense
  - Photographs, video recordings, or duplicates were distributed by using means capable of wide dissemination
  - The offense involved assaulting or intimidating the victim, using deception or force against the victim, or luring the victim by offering benefits
  - Other cases with comparable factors

3. CAUSING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more of the following factors apply:
  - Where the offender photographed or video-recorded sexual exploitation material that makes the victim personally identifiable, and causes extreme sexual humiliation, such as the victim's nudity or sexual intercourse, or, with respect to photographs, video recordings, or duplicates containing such

content and; (i) distributes, sells, leases, or provides them to an unspecified number of persons or to persons closely related to the victim, such as family members, teachers or students at the same educational institution, or co-workers; (ii) publicly exhibits or displays them; or (iii) possesses, purchases, stores, or views them;

- Where the victim has suffered irreparable harm in daily life, education, or livelihood;
- Where the offense has caused the victim extreme psychological suffering, including severe sexual humiliation or hatred;
- Other cases with comparable factors

3 DISTRIBUTION OF FALSE VIDEO PRODUCTS

1. TAKING SUBSTANTIAL MEASURES TO PREVENT FURTHER HARM

- This indicates cases in which one or more of the following factors apply:
  - Immediately deleting or destroying edited, synthesized, or processed materials or duplicates before they are distributed
  - When the offender voluntarily made significant efforts and expenditures to retrieve distributed edited, synthesized, or processed materials or duplicates
  - Other cases with comparable factors

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This indicates cases in which one or more of the following factors apply:
  - The means and methods for the commission of the offense were meticulously planned in advance
  - The offense was committed using highly sophisticated methods
  - The offense was committed by devising new, specialized methods not previously known
  - Where the offense was committed in an organized manner by multiple persons with divided roles, or by using specialized equipment or techniques, and the offender played a key role, such as leading the planning or directing the execution of the offense

- Edited, synthesized, or processed materials or duplicates were extensively distributed by using means capable of wide dissemination
- It is extremely difficult to discern that the material has been edited, synthesized, or processed
- Other cases with comparable factors.

3. CAUSING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more of the following factors apply:
  - Where the offender edited, synthesized, or processed content that makes the victim personally identifiable and causes extreme sexual humiliation, such as the victim's nudity or sexual intercourse, or, with respect to edited, synthesized, or processed materials or duplicates containing such content,
    (i) distributes, sells, leases, or provides them to an unspecified number of persons or to persons closely related to the victim, such as family members, teachers or students at the same educational institution, or co-workers; or
    (ii) publicly exhibits or displays them;
  - Where the victim has suffered irreparable harm in daily life, education, or livelihood;
  - Where the offense has caused the victim extreme psychological suffering, including severe sexual humiliation or hatred;
  - Other cases with comparable factors

4 OBSCENE ACTS BY USING MEANS OF COMMUNICATION

1. ACTUAL HARM IS MINOR

- This indicates cases in which one or more of the following factors apply:
  - When the words, sounds, texts, images, videos, or objects cause only a slight degree of sexual humiliation or disgust
  - Other cases with comparable factors.

2. CAUSING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more of the following factors apply:
  - Where the victim has suffered irreparable harm in daily life, education, or livelihood,
  - Where the offense causes the victim extreme level of psychological pain, such as severe sexual humiliation, or hatred,
  - Other cases with comparable factors.

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 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

1 CHILD · MINOR SEXUALLY EXPLOITED MATERIALS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Highly egregious conducts or methods • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • Offenses by a mandatory reporter of child abuse crimes or child welfare facility staff • Prior criminal conviction for the same-offense (a suspended sentence of imprisonment without labor or a heavier punishment imposed within 10 years, including sex crime and commercial sex) • Morally reprehensible motives • Offenses caused significant damage to the victim	• Cases with special extenuating circumstances that mitigate the offender's involvement • The offender attempted to prevent the offense by hindering the co-offender • No prior criminal convictions • Taking substantial effort to prevent further harm • Voluntary surrender to investigative authorities, internal whistle-blowing, or voluntary full-disclosure of organized crime
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of family/social ties • Absence of sincere remorse • Absence of genuine efforts to recover the harm • Cases where the actual profit obtained from the offense is substantial (Type 2) • Drug or alcohol addiction • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • Causing harm in the course of attempting to reach a settlement (excluding cases where separate crimes such as coercion are established)	• No prior convictions for the same-offense (including sex crime, commercial sex) and no prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Stable family/social ties • Sincere remorse • 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 • The offender's cooperation with the investigation • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim

2 TAKING PHOTOGRAPHS OR VIDEO CLIPS BY USING CAMERA OR DISTRIBUTION OF FALSE VIDEO PRODUCTS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Highly egregious conducts or methods • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • A prior criminal conviction for the same-offense (a suspended sentence of imprisonment without labor or a heavier punishment imposed within 10 years, including sex crime and commercial sex) • Morally reprehensible motives • Offenses caused significant damage to the victim	• Cases with special extenuating circumstances that mitigate the offender's involvement • In cases where contents of the recording cannot be easily identified, or in a circumstances of similar difficulty, or equivalent situation (including edited synthesized, altered, or reproduced materials cannot be readily identified or so) • The offender attempted to prevent the offense by hindering the co-offender • No prior criminal convictions • Taking substantial effort to prevent further harm • Voluntary surrender to investigative authorities, internal whistle-blowing or voluntary full-disclosure of organized crime • Victim expresses the intent of non-punishment of the offender
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of family/social ties • Absence of sincere remorse • Absence of genuine efforts to recover the harm • Cases where the actual profit obtained from the offense is substantial (Type 3) • Drug or alcohol addiction • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • Causing harm in the course of attempting to reach a settlement (excluding cases where separate crimes such as coercion are established)	• No prior convictions for the same-offense (including sex crime, commercial sex) and no prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Stable family/social ties • Sincere remorse • 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 • Offender's cooperation with the investigation • Considerable restitution

3 INTIMIDATION · COERCION BY USING PHOTOGRAPH, VIDEO RECORDINGS, ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • A prior criminal conviction for the same-offense (a suspended sentence of imprisonment without labor or a heavier punishment imposed within 10 years, including sex crime and commercial sex) • Morally reprehensible motives • Offenses caused significant damage to the victim	• Cases with special extenuating circumstances that mitigate the offender's involvement • The degree of intimidation or coercion is minor • The offender attempted to prevent the offense by hindering the co-offender • No prior criminal convictions • Victim expresses the intent of non-punishment of the offender
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of family/social ties • Absence of sincere remorse • Absence of genuine efforts to recover the harm • Drug or alcohol addiction • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • Causing harm in the course of attempting to reach a settlement (excluding cases where separate crimes such as coercion are established)	• No prior convictions for the same-offense (including sex crime, commercial sex) and no prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Stable family/social ties • Voluntary surrender to investigative authorities • Sincere remorse • 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 • Considerable restitution

4 OBSCENE ACTS BY USING MEANS OF COMMUNICATION

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victim • A prior criminal conviction for the same-offense (a suspended sentence of imprisonment without labor or a heavier punishment imposed within 10 years, including sex crime and commercial sex) • Offenses caused significant damage to the victim	• Cases with special extenuating circumstances that mitigate the offender's involvement • The degree of intimidation or compulsion is minor • The offender attempted to prevent the offense by hindering the co-offender • No prior criminal convictions • Victim expresses the intent of non-punishment of the offender
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of family/social ties • Absence of sincere remorse • Absence of genuine efforts to recover the harm • Drug or alcohol addiction • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • Causing harm in the course of attempting to reach a settlement (excluding cases where separate crimes such as coercion are established)	• No prior convictions for the same-offense (including sex crime, commercial sex) and no prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Stable family/social ties • Voluntary surrender to investigative authorities • Sincere remorse • 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 • Considerable restitution

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.