CHAPTER 18

Crimes of Arson

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Setting Fire to a Present Dwelling Structure (Criminal Act, Article 164, paragraph 1), Setting Fire to a Present Dwelling Structure Resulting in Injury or Death (Criminal Act, Article 164, paragraph 2), Setting Fire to a Public Structure or the like (Criminal Act, Article 165), Setting Fire to a Building Structure, etc. Owned by Another (Criminal Act, Article 166, paragraph 1), Setting Fire to Goods in Another's Ownership (Criminal Act, Article 167, paragraph 1), Setting Fire to Building Structures Designated as Cultural Heritage (Cultural Heritage Protection Act, Article 94), Setting Fire to Seed-Collection Forests, etc. (Creation and Management of Forest Resources Act, hereinafter 'Forest Resources Act'; Forest Resources Act, Article 71, paragraph 1), Setting Fire to a Forest, etc. of Another's Ownership (Forest Protection Act, Article 53, paragraph 1), and Setting Fire to a Forest as prescribed in the Act on the Aggravated Punishment of Specific Crimes (Act on the Aggravated Punishment of Specific Crimes, Article 9, paragraph 2, Forest Resources Act, Article 71, paragraph 1).

※ 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 GENERAL STANDARD

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Setting Fire to a Present Dwelling Structure Etc., Setting Fire to a Public Structure Etc.	1 yr. 6 mos. – 3 yrs.	2 yrs. – 5 yrs.	4 yrs. – 7 yrs.
2	Setting Fire to a Building Structure, Etc. Owned by Another	1 yr. – 2 yrs.	1 yr. 6 mos. – 3 yrs.	2 yrs. 6 mos. – 5 yrs.
3	Setting Fire to Goods in Another's Ownership	6 mos. – 1 yr.	10 mos. – 2 yrs.	1 yr. 6 mos. – 4 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 • Actual damage is minor	• Offense committed over a prolonged period repeatedly • Resulted in multiples of victims, the extent of harm is serious or inflicting serious harm to the victim • Morally reprehensible motives • 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 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 Factor	Conduct	• Minor participation	• Planned crime • Substantial risk of causing multiple victims or inflicting serious harm to the victim (excluding Type 3)
	Offender /Etc.	• Efforts to prevent the spread of fire or damages • Offender injured severely due to the fire • Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

▷ Apply the following classification in cases where the offense of Setting Fire is committed while severely intoxicated due to alcohol or drugs (the same applies to the offense of setting fire to the Special Properties, Setting Fire to a Present Dwelling Structure Resulting in Injury/Death)

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

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

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

2 SETTING FIRE TO SPECIAL PROPERTIES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Setting Fire to a Cultural Heritage	2 yrs. 6 mos. – 4 yrs.	3 yrs. – 8 yrs.	6 yrs. – 12 yrs.
2	Setting Fire to a Forest	3 yrs. – 6 yrs.	5 yrs. – 9 yrs.	8 yrs. – 13 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 • Actual damage is minor • Offender did not intend to set fire on special properties (Type 1)	• Offense committed over a prolonged period repeatedly • Resulted in multiples of victims, the extent of harm is severe or inflicted serious harm to the victim • Crime against special property with high social, cultural, or economic value • Morally reprehensible motives • 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 intent of non-punishment or substantial restitution was made to the victim	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	• Planned crime • Substantial risk of causing multiples of victims or inflicting serious harm to the victim
	Offender /Etc.	• Efforts to prevent the spread of fire or damages • Offender injured severely due to the fire • Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

3 SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY OR DEATH

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Setting Fire to a Present Dwelling Structure Resulting in Injury	2 yrs. 6 mos. – 5 yrs.	4 yrs. – 7 yrs.	6 yrs. – 11 yrs.
2	Setting Fire to a Present Dwelling Structure Resulting in Death (Without Intent to Commit Murder)	4 yrs. – 9 yrs.	7 yrs. – 13 yrs.	10 yrs. – 17 yrs.
3	Setting Fire to a Present Dwelling Structure Resulting in Death (With Intent to Commit Murder)	9 yrs. – 13 yrs.	12 yrs. – 16 yrs.	15 yrs. or more, life imprisonment or more

▷ In case of Type 3, compare the maximum and minimum limit of the recommended sentencing range with the sentencing range of Crimes of Homicide (Chapter 24) of this Guideline, and apply heavier sentencing range.

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 • Minor bodily injuries (Type 1) • Offender's conduct is not the direct cause of death (Type 2) • Dolus Eventualis of Murder (Type 3)	• Offense committed over a prolonged period repeatedly • Causing multiple casualties, or inflicting serious bodily injury on the victim (the latter is only applied to Type 1) • Exceptionally brutal or cruel methods • Vulnerable victims • Morally reprehensible motives • 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 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 Factor	Conduct	• Minor participation	• Planned crime • Causing property damage to multiple persons, or causing serious property damage
	Offender /Etc.	• Efforts to prevent the spread of fire or damages • Offender was injured severely due to the fire • Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense resulting in imprisonment which do not constitute statutory recidivism (within ten years after the completion of the sentence) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 GENERAL STANDARD

1. TYPE 1 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE ETC, SETTING FIRE TO A PUBLIC STRUCTURE, ETC.

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines	Criminal Act, Article 164, paragraph 1
An Offense of Setting Fire to (Official Business, Public Interest) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines	Criminal Act, Article 165

2. TYPE 2 — SETTING FIRE TO A BUILDING STRUCTURE, ETC. OWNED BY ANOTHER

ELEMENTS OF OFFENSE	APPLICABLE LAW
General Offense of Setting Fire to Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mine	Criminal Act, Article 166, paragraph 1

3. TYPE 3 — SETTING FIRE TO GOODS IN ANOTHER'S OWNERSHIP

ELEMENTS OF OFFENSE	APPLICABLE LAW
Offense of Setting Fire to General Goods	Criminal Act, Article 167, paragraph 1

2 SETTING FIRE TO SPECIAL PROPERTIES

1. TYPE 1 — SETTING FIRE TO A CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Setting Fire to a Structure that is Designated as or Provisionally Designated as a Cultural Heritage	Cultural Heritage Protection Act, Article 94

2. TYPE 2 — SETTING FIRE TO A FOREST

ELEMENTS OF OFFENSE	APPLICABLE LAW
Setting Fire to a Seed-Collection Forest, an Seed Production Stand or an Experimental Forest	Forest Resources Act, Article 71, paragraph 1
Setting Fire to a Forest, or Others that is under Another Person's Ownership	Forest Protection Act, Article 53, paragraph 1
Setting Fire to a Forest under the Act on the Aggravated Punishment of Specific Crimes	Act on the Aggravated Punishment of Specific Crimes, Article 9, paragraph 2, and Forest Resources Act, Article 71, paragraph 1

3 SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY OR DEATH

1. TYPE 1 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines Resulting in Injury	Criminal Act, Article 164, paragraph 2, first part

2. TYPE 2 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN DEATH (WITHOUT THE INTENT TO COMMIT MURDER)

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines Resulting in Death	Criminal Act, Article 164, paragraph 2, latter part

3. TYPE 3 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN DEATH (WITH INTENT TO COMMIT MURDER)

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines Resulting in Death	Criminal Act, Article 164, paragraph 2, latter part

DEFINITION OF SENTENCING FACTORS

1 GENERAL STANDARD[1)]

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES MITIGATING THE OFFENDER'S INVOLVEMENT OR MOTIVE FOR COMMITTING 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.
  - Cases where the offense resulted from causes attributable to the prior wrongful act or unfair treatment by the victim or a person related to the victim
  - Other cases with comparable factors

2. ACTUAL DAMAGE IS MINOR

- This applies where one or more of the following are present:
  - The actual extent of harm is very slight due to extinguishing the fire in the beginning stages
  - The economic value of the damaged goods is minor
  - Other cases with comparable factors

3. VICTIM EXPRESSES INTENT FOR NON-PUNISHMENT

- This indicates cases in which the offender shows sincere remorse to the victim or the victim's family (in the case of a deceased victim), and the victim and the victim's family fully understand the legal and social implications of opposing the offender's punishment, and clearly express their intent not to seek the offender's punishment.

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1) Sentencing factors with the same designation that apply to the offense of Setting Fire to the Special Properties, Setting Fire to a Present Dwelling Structure Resulting in Injury or Death have the same definition unless separately defined.

- 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.

4. 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.
- Cases where the victim has received aid from the State under the Crime Victim Protection Act in connection with the damage (including where the defendant subsequently fulfills the obligation to indemnify the State) shall be excluded, absent special circumstances.

5. 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.

6. RESULTED IN MULTIPLES OF VICTIMS, THE EXTENT OF HARM IS SERIOUS OR INFLICTING SERIOUS HARM TO THE VICTIM

- This applies where one or more of the following are present:
  - Caused damage to nearby buildings (multiplex houses, apartment complexes, etc.)
  - Caused extensive amount of economic damage to the victim
  - Majority of the victim's property was lost
  - Other cases with comparable factors

7. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - Offense committed to conceal other offenses
  - Offense committed to gain economic benefits such as earning insurance compensation
  - Offense committed indiscriminately (randomly) without any particular reason, or was committed for the pleasure of committing the offense itself
  - Offense committed as a way of using force while ignoring due process prescribed under the law, including cases of setting fire to houses or business of the occupants who oppose urban renewal projects
  - Offense committed against the facilities of another religion due to religious beliefs
  - Other cases with comparable factors

8. 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.

9. SUBSTANTIAL RISK OF CAUSING MULTIPLES OF VICTIMS OR INFLICTING SERIOUS HARM TO THE VICTIM (THIS EXCLUDES TYPE 3)

- This indicated cases of setting fire to multiplex houses, apartment complexes, shopping centers, gas stations, etc. that has the substantial risk of causing multiples of victims or inflicting serious harm to the victim.

10. 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.

11. 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 SETTING FIRE TO SPECIAL PROPERTIES

1. OFFENDER DID NOT INTEND TO SET FIRE ON SPECIAL PROPERTIES (TYPE 1)

- This indicates cases in which the offender set fire on certain buildings without the intent to burn buildings designated under the Cultural Heritage Protection Act, Article 94.

2. CRIME AGAINST SPECIAL PROPERTY WITH HIGH SOCIAL, CULTURAL, OR ECONOMIC VALUE

- This means cases of setting fire to properties with high social, cultural, economic value and properties that are virtually irreparable after the destruction by fire, and with one or more of the following factors:
  - Setting fire to a structure that is designated or provisionally designated as cultural heritage such as a national treasure
  - Setting fire to a forest in forest gene protection zones of a national park, or setting fire to a natural monuments
  - Other cases with comparable factors

3 SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY OR DEATH

1. MINOR BODILY INJURIES (TYPE 1)

- This refers to cases where the inflicted injury requires two weeks or less medical care, affecting relatively limited bodily parts, which does not disrupt the day-to-day activities of the victim, and does not require medical intervention such as surgical stitches and the like.

2. OFFENDER'S CONDUCT IS NOT THE DIRECT CAUSE OF DEATH (TYPE 2)

- This refers to cases involving an intervening cause unrelated to the defendant's conduct, where the victim's death cannot readily be attributed directly to that conduct

3. SERIOUS BODILY INJURIES (TYPE 1)

- This indicates cases in which the recovery from the inflicted injury requires 4 to 5 weeks or more medical care in general, including cases with after-effects causing impairment, disfigurement, severe disability injuries inflicted to vulnerable body parts, or further bodily injuries is anticipated.

4. EXCEPTIONALLY BRUTAL OR CRUEL METHODS

- This refers to cases where the victim has been harmed by extreme physical or mental pain in terms of the degree and duration of the pain.

5. VULNERABLE VICTIMS

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

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.
- Where the upper limit of the sentencing range under the sentencing guidelines exceeds 25 years, life imprisonment may be imposed.

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. If the resulting upper limit exceeds 25 years, life imprisonment may be imposed.

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

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

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

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

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

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE RANGE

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

2 DETERMINING THE BASE OFFENSE

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

3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE OFFENSES

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

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

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

PART B

GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Offense committed over a prolonged period repeatedly • Resulted in multiples of victims, the extent of harm is severe or inflicting serious harm to the victim • Crime against special property with high social, cultural, or economic value • Morally reprehensible motives • Prior convictions for the same-offense (a suspended sentence of imprisonment without labor or a heavier punishment within the past five years) • Serious bodily injuries • Vulnerable victims	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Actual damage is minor • Voluntary surrender to the investigative authorities • Minor bodily injuries • No prior criminal convictions • Victim expresses intent of non-punishment or substantial restitution was made to the victim
General Circumstance	• Substantial risk of causing multiples of victims or inflicting serious harm to the victim • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of social/family ties • Drug or alcohol addiction • Absence of sincere remorse • Planned crime • Leading role as a co-offender • Post-offense evidence tampering or attempt to destroy or conceal evidence • Absence of efforts to reverse the harm • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Stable social/family ties • Efforts to prevent the spread of fire • Offender is severely injured due to fire (However, 'The defendant's physical condition is severely impaired' does not apply in duplication) • Offense committed impulsively • 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 • Offender's minor participation as a co-offender • 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 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.