CHAPTER 22

Crimes Related to Private Documents

- Promulgated on March 21, 2011. Effective on July 1, 2011.
- Amended on April 24, 2023. Effective on July 1, 2023.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Forgery and Alteration of Private Documents, and Other Similar Documents (Criminal Act, Article 231), Making Falsified Official Documents and Other Similar Documents for Employment Purposes (Criminal Act, Article 232), Forging and Altering Private Electronic Records (Criminal Act, Article 232-2), Making False Medical Certificates and Other Similar Documents (Criminal Act, Article 233), or Uttering of Documents Thereof (Criminal Act, Article 234).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 FORGERY · ALTERATION, AND THE LIKE OF PRIVATE DOCUMENTS

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Forgery · Alteration, and the Like of Private Documents	– 1 yr.	6 mos. – 2 yrs.	1 yr. – 3 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 • No social damage caused due to incomplete commission of the offense's purpose	• Cases where the offender is a central figure, executive, professional technician, or a person directly in charge of brokering and conveying to persons in positions mentioned • Repeated forgery and alteration of multiple documents • Serious social and economic harm resulted from the offense • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities	• Same-offense recidivism within the statutory recidivism period (including crimes related to public documents)
General Sentencing Factor	Conduct	• Minor participation • Compared to the entire document, only small parts of the document were altered • Offense failed to cause social damage, or the social and economic harm caused is minor	• Offender made requests to professionals engaging in forgery or brokers of such activities • Those who committed forgery or altering of documents also utter the falsified documents • Forgery or alteration of important documents with high public confidence such as direct legal documents (documents containing the direct representation of the legal

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
			act in question) or documents for submission of evidence (However, offenses that caused serious social and economic damages are excluded) • Use of professional forgery or altering devices (such as color printers, scanners, and other similar devices)
	Offender /Etc.	• No prior criminal convictions • Sincere remorse	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (including crimes related to public documents)

2 MAKING FALSE MEDICAL CERTIFICATE AND OTHER SIMILAR DOCUMENTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Passive Purpose	- 8 mos.	4 mos. - 10 mos.	8 mos. - 1 yr. 6 mos.
2	Active Purpose	6 mos. - 1 yr. 6 mos.	8 mos. - 2 yrs.	1 yr. 6 mos. - 2 yrs. 6 mos.

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 • Offense failed to cause social damage, or the social and economic harm caused are minor	• Serious social and economic harm resulted from the offense • Involves commercial or organizational schemes • Instigating the subordinate person to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities	• Prior conviction for the same type offense within five years (including crimes related to public documents) • Deliberate concealment of profits gained from the offense or obstructing recovery of damages

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation	• A person who falsifies the medical records also commits the offense of uttering the document
	Offender /Etc.	• No prior criminal convictions • Sincere remorse	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (including crimes related to public documents)

DEFINITION OF OFFENSES

1 FORGERY · ALTERATION, AND THE LIKE OF PRIVATE DOCUMENTS

○ 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
Forging and altering private documents and uttering the documents thereof	Criminal Act, Article 231, Article 234
Making of falsified private documents and other similar documents for employment purposes and uttering the documents thereof	Criminal Act, Article 232, Article 234
Forging and altering of private electronic records and uttering the documents thereof	Criminal Act, Article 232-2, Article 234

2 MAKING FALSE MEDICAL CERTIFICATE AND OTHER SIMILAR DOCUMENTS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Making false medical certificates and uttering of the document thereof	Criminal Act, Article 233, Article 234

1. TYPE 1 - PASSIVE PURPOSE (CASES THAT DO NOT FALL UNDER TYPE 2, BUT INVOLVE ILLEGAL ACTS COMMITTED OUT OF PASSIVE PURPOSE SUCH AS JOB-RELATED CONVENIENCE OF THE OFFENDER OR A THIRD PARTY, OR EXPEDIENT PERFORMANCE OF DUTIES, AND OTHERS).

○ Cases where the offender committed illegal acts simply for the convenience of performing one's duty. This includes cases where the offender falsifies medical certificates with the same content and inserts such documents when inadvertently omitting or misplacing the original medical certificates while asserting insurance claims.

- Cases where the offender, for convenience, issues medical certificates based on photographs, images, phone calls, or other similar methods, even though there was a need to examine the patient in-person, or arbitrarily makes entries for a patient or insurance claimant's medical certificates due to the time-consumed for the process.

2. TYPE 2 – ACTIVE PURPOSE (CASES WITH AN ACTIVE PURPOSE TO OBTAIN THE OFFENDER'S OR THIRD PARTY'S SOCIO-ECONOMIC STATUS, OR BENEFITS ETC.)

- Cases where the purpose involves insurance frauds, evading military service, certifying an unqualified person as disabled, obtaining eligibility for long-term care benefits, and other similar incidents.

DEFINITION OF SENTENCING FACTORS

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.
  - Crime committed by mere curiosity or ostentation
  - The offender did not aim to obtain illegal benefits or solely for the purpose of other minor benefits
  - Other cases with comparable factors

2. NO SOCIAL DAMAGE RESULTED DUE TO FAILURE TO COMPLETE THE PURPOSE OF THE OFFENSE

- This indicates cases in which the offender could not complete the purpose of the offense and possible social and economic damages that could have resulted from the offense did not occur.

3. CASES WHERE THE OFFENDER IS A CENTRAL FIGURE, EXECUTIVE, PROFESSIONAL TECHNICIAN, OR A PERSON DIRECTLY IN CHARGE OF BROKERING AND CONVEYING TO PERSONS IN POSITIONS MENTIONED

- This indicates cases in which the offender holds a vital position in the criminal organization such as an actual central figure, executive, professional technician that engages in forgery and falsification, and executives of middle rank or higher in charge of the brokering or conveying the documents.

4. SERIOUS SOCIAL AND ECONOMIC HARM RESULTING FROM THE OFFENSE

- This indicates cases in which the offense disrupted the social and economic order, for example by causing enormous economic losses, enabling the offender to acquire large amounts of benefit, or producing numerous victims, and the resulting harm is serious and severe.

5. 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.

6. ONLY SMALL PARTS OF THE DOCUMENT WERE ALTERED

- This means the part of the document that was altered did not involve affecting significant legal relations (For example, simple alteration of date irrelevant to the lapse of a right).

7. OFFENDER MADE REQUESTS TO PROFESSIONAL FORGER OR COUNTERFEITER OR BROKERS OF FORGERY OR ALTERATION

- This means the offender, who is not a professional forger or involved in such organizations, has made requests of forgery or falsifying documents to a professional forger, broker, or a member of an organization engaged in forgery (For example, this includes requesting forgery or falsification to a professional forger or a broker of such criminal organization through the use of internet websites).

8. FORGERY OR ALTERATION OF DOCUMENTS WITH HIGH PUBLIC CONFIDENCE SUCH AS DOCUMENTS CONTAINING A DIRECT REPRESENTATION OF THE LEGAL ACT IN QUESTION OR SUBMISSION OF DOCUMENTARY EVIDENCE (HOWEVER, OFFENSES THAT CAUSED SERIOUS SOCIAL AND ECONOMIC DAMAGES ARE EXCLUDED)

- This means the document subjected to the forgery or falsification has high public confidence in the society or certifies important legal relations or facts, including direct legal documents by which the legal act in question was directly rendered, documents for submission of evidence, and the like (However, if applicable to cases that caused serious social and economic damage, this is not considered as a general sentencing factor).

9. 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.

10. NO PRIOR CRIMINAL CONVICTIONS

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

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number.
  - 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.

※ When the offender who Forges or Alters Private Documents, or Falsifies Medical Certificates commits offenses of uttering such documents, the uttering offense is not treated as a separate crime constituting multiple offenses, but is considered only as a sentencing factor.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)] • Serious social and economic harm resulted from the offense • Commercial or organizational crime	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • Expresses substantial penitence (including voluntary surrender, confessions, whistle-blowing, 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 • Leading role as a co-offender • Post-offense evidence tampering or attempt to destroy or conceal evidence • Lack of social/family ties • Absence of sincere remorse • Absence of efforts to reverse the harm • Instigating the subordinate to commit the offense	• Offense failed to cause social damage, or the social and economic harm caused are minor • Offender's minor participation as a co-offender • Stable social/family ties • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • The defendant's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Sincere remorse

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:
  1. 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.
  2. 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.
  3. In cases in which 1 or 2 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 1 or 2, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.