CHAPTER 29

Crimes of Destruction and Damage of Property

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Destruction and Damage, etc. of Property (Criminal Act, Article 366), Destruction of Structure for Public Use (Criminal Act, Article 367), Aggravated Destruction and Damage (Criminal Act, Article 368, paragraph 1), Causing Another's Bodily Injury by Destruction and Damage of Property, etc., or by Destruction of Structure for Public Use, etc (Criminal Act, Article 368, paragraph 2, first part), Causing Another's Death by Destruction and Damage of Property, etc., or by Destruction of Structure for Public Use, etc. (Criminal Act, Article 368, paragraph 2, latter part of the text), Special Destruction and Damage, etc. of Property (Criminal Act, Article 369, paragraph 1), Special Destruction of Structure for Public Use, etc. (Criminal Act, Article 369, paragraph 2), Joint Destruction and Damage, etc. of Property (Punishment of Violence, etc. Act, Article 2, paragraph 2), Repeated Commission of Destruction and Damage, etc. of Property (Punishment of Violence, etc. Act, Article 2, paragraph 3), Repeated Commission of Special Destruction and Damage, etc. of Property (Punishment of Violence, etc. Act, Article 3, paragraph 4), Crime of Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 92, paragraph 1, paragraph 2,

paragraph 4, excluding stealing of cultural heritage, hereinafter as so applied), Crime of Special Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 93, paragraph 1), Causing Another's Bodily Injury by Special Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 93, paragraph 2, first part), Causing Another's Death by Special Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 93, paragraph 2, latter part), and Destruction of Cultural Heritage Buildings (Cultural Heritage Protection Act, Article 94, excluding Arson or Inundation of Cultural Heritage Buildings, hereinafter as so applied), Habitual Offenders of Child Abuse Crimes (Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 6, Article 2, paragraph 4, item 11, Child Abuse Crimes by a mandatory child abuse reporter (Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 7, Article 2, paragraph 4 (k).

※ 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 STANDARDS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Destruction and Damage of Property Etc.	– 6 mos.	4 mos. – 10 mos.	8 mos. – 1 yr. 6 mos.
2	Destruction of Structure for Public Use	4 mos. – 1 yr.	8 mos. – 2 yrs.	1 yr. 6 mos. – 4 yrs.
3	Damage of Designated Cultural Heritage Etc.	1 yr. – 2 yrs. 6 mos.	1 yr. 6 mos. – 3 yrs.	2 yrs. 6 mos. – 4 yrs.
4	Damage of State-Designated Cultural Heritage	1 yr. 6 mos. – 3 yrs.	2 yrs. – 4 yrs.	3 yrs. – 6 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Extenuating motives for the offense • Destruction or damage of property caused by Dolus Eventualis • Actual loss is minor • Cases where the offender did not intend to destroy or damage (state) designated cultural heritage from the beginning (Type 3, Type 4)	• Playing a leading role or directing/coordinating the offense • Serious personal or social damages caused (Type 1, Type 2) • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Morally reprehensible motives • Endangering another's life or limb (Type 1, Type 2) • 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 or substantial	• Same-offense recidivism within the statutory recidivism period • Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes (Type 1)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		restitution to the victim	• Habitual offenders (limited to cases of aggravated punishment under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crimes, Article 6) (Type 1)
General Sentencing Factor	Conduct	• Minor participation	• Two or more co-offenders • Destroying designated cultural heritage buildings under the Cultural Heritage Protection Act (Type 2) • Planned crime
	Offender/ Etc.	• 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 in which the crimes of Destruction and Damage of Property was committed while severely intoxicated by alcohol or drugs (including cases of the repeated offense within the statutory recidivism period · aggravated destruction and damage of property, or cases where the offense results in bodily injury or 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 REPEATED OFFENSE · AGGRAVATED DESTRUCTION AND DAMAGE OF PROPERTY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Repeated Offense · Aggravated Destruction and Damage of Property	– 8 mos.	6 mos. – 1 yr. 2 mos.	8 mos. – 2 yrs.
2	Repeated Commission of Aggravated Destruction and Damage of Property	6 mos. – 1 yr. 6 mos.	10 mos. – 2 yrs. 6 mos.	1 yr. 6 mos. – 4 yrs.
3	Aggravated Damage of Cultural Heritage	1 yr. – 3 yrs.	2 yrs. – 4 yrs.	3 yrs. – 7 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Extenuating motives for the offense • Actual loss is minor • Cases where the offender had no intent to destroy or damage (state) designated cultural heritage from the beginning (Type 3)	• Playing a leading role or directing/coordinating the offense • Serious personal or social damages caused (Type 1, Type 2) • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • 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 the intent of non-punishment, or substantial restitution to the victim	• Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes (Type 1, Type 2) • Habitual offenders (limited to cases of aggravated punishment under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crime, Article 6) (Type 1, Type 2)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation	• Destruction and damage of state-designated cultural heritage (Type 3) • Planned crime
	Offender/ Etc.	• 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 OFFENSES RESULTING IN BODILY INJURIES OR DEATH

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Causing Bodily Injury through Destruction and Damage of Property · Destruction of Structure for Public Use	6 mos. – 1 yr. 6 mos.	10 mos. – 2 yrs. 6 mos.	1 yr. 6 mos. – 4 yrs. 6 mos.
2	Causing Death through Destruction and Damage of Property · Destruction of Structure for Public Use	1 yr. 6 mos. – 3 yrs.	2 yrs. – 5 yrs.	4 yrs. – 7 yrs.
3	Causing Bodily Injury through Special Infliction of Damage to Cultural Heritage	2 yrs. 6 mos. – 4 yrs.	3 yrs. – 6 yrs.	5 yrs. – 8 yrs.
4	Causing Death through Special Infliction of Damage to Cultural Heritage	3 yrs. – 6 yrs.	5 yrs. – 8 yrs.	7 yrs. – 10 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Extenuating motives for the offense • Minor bodily injuries (Type 1, Type 3) • Where bodily injury resulted, but the underlying offense was only attempted (Type 1, Type 3) • The offender's conduct was not the direct cause of death (Type 2, Type 4)	• Cases where the offender committed the offense by showing the power of an organization or multitude or by carrying dangerous articles (Type 1, Type 2) • Playing a leading role or directing/coordinating the • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Serious bodily injuries (Type 1, Type 3) • 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 the intent of non-punishment of the offender or substantial restitution to the victim	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Minor participation	• Planned crime • Two or more co-offenders (Type 1, Type 2)
	Offender/ Etc.	• 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 STANDARDS

1. TYPE 1 — DESTRUCTION AND DAMAGE, ETC. OF PROPERTY

- 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
Destruction and damage of property (spoil utility of the property, documents, or special media records by damaging or concealing it or using other methods)	Criminal Act, Article 366
Endanger another's life or limb by offenses of destruction and damages of property	Criminal Act, Article 368, paragraph 1
A joint commission of destruction and damage of property	Punishment of Violence Act, Article 2, paragraph 2

2. TYPE 2 — DESTRUCTION OF STRUCTURE FOR PUBLIC USE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Destruction of structure for public use	Criminal Act, Article 367
Endanger another's life or limb by destroying a structure for public use	Criminal Act, Article 368, paragraph 1
Destroying structures which are designated or provisionally designated cultural heritage or structures for the protection of designated or provisionally designated cultural heritage (excluding arson or inundation)	Cultural Heritage Protection Act, Article 94

3. TYPE 3 — CAUSE DAMAGE TO DESIGNATED CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Cause damage to designated cultural heritage (excluding state-designated cultural heritage), provisionally designated cultural heritage (excluding buildings), or ordinary movable cultural heritage (excluding stealing)	Cultural Heritage Protection Act, Article 92, paragraph 2
Caused damage to, steal, or conceals designated cultural heritage (excluding state-designated cultural heritage), provisionally designated cultural heritage (excluding buildings), ordinary movable cultural heritage, or impairs the utility thereof by any other means before concealment	Cultural Heritage Protection Act, Article 92, paragraph 4

4. TYPE 4 — DAMAGE TO STATE-DESIGNATED CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Cause damage, etc. to state-designated cultural heritage (excluding larceny)	Cultural Heritage Protection Act, Article 92, paragraph 1
Cause damage to, steal, or conceals state-designated cultural heritage or impairs the utility thereof by any other means before conceal	Cultural Heritage Protection Act, Article 92, paragraph 4

2 REPEATED OFFENSE WITHIN STATUTORY RECIDIVISM PERIOD · AGGRAVATED DESTRUCTION AND DAMAGE OF PROPERTY

1. TYPE 1 — REPEATED OFFENSE WITHIN STATUTORY RECIDIVISM PERIOD · AGGRAVATED DESTRUCTION AND DAMAGE OF PROPERTY ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Special destruction and damage of property	Criminal Act, Article 369, paragraph 1
Repeated commission of destruction and damage, etc. of property	Punishment of Violence Act, Article 2, paragraph 3

2. TYPE 2 — REPEATED OFFENSE OF AGGRAVATED DESTRUCTION AND DAMAGE OF PROPERTY WITHIN STATUTORY RECIDIVISM PERIOD

ELEMENTS OF OFFENSE	APPLICABLE LAW
Repeated commission of special destruction and damage, etc. of property	Punishment of Violence Act, Article 3, paragraph 4
Destruction of special structure for public use	Criminal Act, Article 369, paragraph 2

3. TYPE 3 — AGGRAVATED DAMAGE OF CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Special damage, etc. of designated cultural heritage, provisionally designated cultural heritage, ordinary movable cultural heritage	Cultural Heritage Protection Act, Article 93, paragraph 1

3 OFFENSES RESULTING IN BODILY INJURIES OR DEATH

1. TYPE 1 — INFLICT BODILY INJURY UPON TO ANOTHER THROUGH DESTRUCTION AND DAMAGE OF PROPERTY · DESTRUCTION OF STRUCTURES FOR PUBLIC USE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Inflict bodily injury upon to another through destruction and damage, etc. of property or destruction of structures for public use	Criminal Act, Article 368, paragraph 2, first part

2. TYPE 2 — CAUSING DEATH BY DESTRUCTION AND DAMAGE OF PROPERTY · DESTRUCTION OF STRUCTURE FOR PUBLIC USE, ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Causing another's death by destruction and damage of property, or by destruction of structure for public use, etc.	Criminal Act, Article 368, paragraph 2, latter part

3. TYPE 3 — CAUSING BODILY INJURIES THROUGH AGGRAVATED DAMAGE OF CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Causing an injury to a person who manages or protects designated cultural heritage or provisionally designated cultural heritage through special damage, etc. of cultural heritage	Cultural Heritage Protection Act, Article 93, paragraph 2, first part

4. TYPE 4 — CAUSING DEATH THROUGH AGGRAVATED DAMAGE OF CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Causing death to a person who manages or protects designated cultural heritage or provisionally designated cultural heritage through special damage, etc. of cultural heritage	Cultural Heritage Protection Act, Article 93, paragraph 2, latter part

※ The following applies to cases where the offender is a mandatory reporter of child abuse or habitual offenders of child abuse (The same applies to offenses falling within Type 1 and Type 2).

ELEMENTS OF OFFENSE	APPLICABLE LAW
The offender habitually commits child abuse as stipulated in Article 2, subparagraph 4, item 11, item 13 (This is limited to habitual offenders falling within item 11 and subject to aggravated punishment under other statutes) of the Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes	Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes, Article 6
An offender is a person who has a duty to report child abuse cases under the subparagraph of Article 10, paragraph 2, and commits a crime of child abuse as stipulated in Article 2, subparagraph 4, item 11, item 13 (This is limited to habitual offenders falling within item 11 and subject to aggravated punishment under other statutes) of the same Act against a child under his or her protection.	Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes, Article 7

DEFINITION OF SENTENCING FACTORS

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. EXTENUATING MOTIVES FOR THE OFFENSE

- This applies where one or more of the following are present:
  - Offenses were committed as a means of exercising rights
  - Cases where the victim is also primarily responsible for the crime
  - Other cases with comparable factors

3. ACTUAL LOSS IS MINOR

- This applies where one or more of the following are present:
  - Cases where actual harm is exceptionally minor, so that little or no cost is required to repair or reverse the harm,
  - Cases in which the economic value of the commodity is insignificantly small,
  - Cases where no actual physical damage was inflicted on the commodity, however, the victim has temporary difficulties in using it only due to emotional problems,
  - Other cases with comparable factors.

4. LACK OF INTENT TO DESTROY AND DAMAGE (THE STATE) DESIGNATED CULTURAL HERITAGE FROM THE BEGINNING

- This indicates cases in which the offender destroyed or damaged a state-designated cultural heritage or a designated cultural heritage under the Cultural Heritage Protection Act, Article 92, paragraph 1 and paragraph 2 in a location

where such cultural heritage is not usually found and committed the offense by coincidence, without being aware of it or without any intention to destroy or damage the cultural heritage.

5. VICTIM EXPRESSES THE INTENT OF NON-PUNISHMENT

- This indicates cases in which the offender shows sincere remorse with genuine efforts to reach a settlement with the victim; the victim or the family of victim (in the case of a deceased victim) fully understands the legal and social implications of opposing punishment and clearly expresses an intention 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.

6. 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.

7. WHERE THE PERSONAL HARM OR SOCIAL HARM IS PARTICULARLY SERIOUS

- "Serious personal harm" means cases involving one or more of the following factors:
  - Cases in which the offender caused significant harms to the victim by destroying or damaging expensive antiques, precious jewelry, large amounts of stocks or cash, or other similar property, taking into account the victim's subjective valuation of the damaged items and the overall derivative damage.
  - Other cases with comparable factors.
- "Serious social harm" means cases involving one or more of the following factors:
  - Cases that do not fall within destroying or damaging state-designated cultural heritage or other designated cultural heritage, etc. under the Cultural Heritage Protection Act, Article 92, paragraph 1 and 2, but where the crime of destruction or damage has caused considerably serious social harm,
  - Other cases with comparable factors.

8. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - Offenses were committed indiscriminately without specific reasons.
  - Motives derived from the pleasure of committing the crime itself.
  - Offenses were committed out of retaliation, grievance, or hatred.
  - Offenses were committed to conceal another offense.
  - Offenses were committed against religious facilities due to religious beliefs.
  - Other cases with comparable factors.

9. 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 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.

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

- It means that the defendant has no previous criminal conviction before. However, this does not apply to cases where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period.

12. DESTRUCTION OF DESIGNATED CULTURAL HERITAGE BUILDING UNDER CULTURAL HERITAGE PROTECTION ACT

- This indicates cases in which the offender destroyed structures that are designated or provisionally designated cultural heritage or structures for the protection of designated or provisionally designated cultural heritage under the Cultural Heritage Protection Act, Article 94.

13. PLANNED CRIME

- This applies where one or more of the following are present:
  - Advance preparation and possession of a weapon used in the offense
  - Planned conspiracy
  - Inducement of the victim
  - Preparation for the destruction of evidence
  - Pre-arranged plan to flee
  - Other cases with comparable factors

14. MINOR BODILY INJURIES

- Minor bodily injuries mean 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.

15. OFFENDER'S CONDUCT WAS NOT A DIRECT CAUSE OF DEATH

- This indicates cases in which intervening causes unforeseen by the offender existed at the time of the commission of the offense and, therefore, the offender cannot be held liable for the direct cause of the death.

16. SERIOUS BODILY INJURIES

- This refers to injuries resulting in protracted functional impairment or severe disfigurement, injuries to vital body parts, or cases where further physical complications are anticipated.

17. CAUSING HARM WHILE ATTEMPTING TO REACH A SETTLEMENT (EXCLUDING CASES WHERE SEPARATE CRIMES SUCH AS COERCION ARE ESTABLISHED)

- 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.

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number. However, where a victim or bereaved family member has intent of non-punishment, such wishes may be treated on a par with a Conduct Factor.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se,* shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.

GENERAL APPLICATION PRINCIPLES

1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

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

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

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

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

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

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

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE SCOPE

- 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	• Cases where the offender committed the offense by showing the power of an organization or multitude or by carrying dangerous articles • Morally reprehensible motives • Serious personal or social harm caused by destruction and damage • The offense resulted in serious bodily injuries or death • 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)] • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes (limited to the offense of destruction of property etc.)	• Cases with special extenuating circumstances concerning the offender's participation in, or motives for the offense • The offender attempted to thwart the accomplice's commission of the crime • Actual loss caused by destruction and damage of the property is insignificant (excluding cases where the offense resulted in bodily injury or death) • Minor bodily injuries • The offender's conduct was not the direct cause of death or serious bodily injuries • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Lack of family/social ties • Drug or alcohol addiction • Absence of sincere remorse • Planned crime • Leading role as a co-offender • Post-offense evidence tampering or attempt to conceal or destroy evidence • No genuine effort to reverse the harm • Causing harm in the course of attempting to reach an agreement (excepting cases where the act constitutes a crime of coercion)	• Stable family/social ties • Offense committed impulsively • Voluntary surrender to investigative authorities • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • The offender's physical condition is severely impaired • Minor participation as a co-offender • Post-offense aid/medical transport • Cases where detaining the offender would impose excessive hardship on offender's 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.