CHAPTER 30

Crimes of Stalking

- Promulgated on March 25, 2024. Effective on July 1, 2024.
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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Stalking (Act on Punishment of Stalking Crimes, Article 18, paragraph 1), Stalking by Carrying or Using a Deadly Weapon or Other Dangerous Thing (Act on Punishment of Crime of Stalking, Article 18, paragraph 2), Non-compliance with Provisional Measures (Act on Punishment of Crime of Stalking, Article 20, paragraph 2), and Non-compliance with Emergency Measures (Act on Punishment of Crime of Stalking, Article 20, paragraph 3).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 CRIME OF STALKING

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Stalking	– 8 mos., Fine 1 million – 10 million	6 mos. – 1 yr., Fine 5 million – 20 million	10 mos. – 2 yrs. 6 mos.
2	Stalking by Carrying or Using Deadly Weapon, etc.	– 10 mos., Fine 3 million – 20 million	8 mos. – 1 yr. 6 mos.	1 yr. – 3 yrs. 6 mos.

(unit: KRW)

▷ Aggravated Sentencing Range of Type 1: When the victim expresses the intent of non-punishment, a fine may be imposed (in this case, the range of fine shall be from 15 million to 30 million KRW). Provided, however, that where the number of special aggravated factors applied exceed that of special mitigating factors by two or more, imprisonment is recommended.

▷ Standard Sentencing Range of Type 2: When the victim expresses the intent of non-punishment of the offender, a fine may be imposed (in this case, the range of fine shall be from 15 million to 40 million KRW).

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 • Dolus Eventualis • In cases where the degree of anxiety or fear caused is minor	• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Highly egregious conducts or methods • Morally reprehensible motives • 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)	• Prior convictions for the same-offense (suspended sentence of imprisonment without labor or a more severe punishment imposed within the past three years)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		• Voluntary surrender to investigative authorities • Victim expresses the intent of non-punishment or substantial restitution to the victim	
General Sentencing Factor	Conduct		
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Prior convictions for the same-offense (during a period exceeding three years but within ten years, a suspended sentence of imprisonment or a heavier punishment), or different-offense recidivism within the statutory recidivism period • 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 Stalking was committed while severely intoxicated by alcohol or drugs (including cases of Non-compliance with Provisional Measures Etc.).

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 NON-COMPLIANCE WITH PROVISIONAL MEASURES, ETC

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Non-compliance With Emergency Measures	– 6 mos., Fine 1 million – 3 million	4 mos. – 8 mos., Fine 2 million – 6 million	6 mos. – 1 yr., Fine 5 million – 10 million
2	Non-compliance With Provisional Measures	– 8 mos., Fine 1 million – 7 million	6 mos. – 1 yr. Fine 3 million – 15 million	10 mos. – 2 yrs.

(unit: KRW)

▷ Aggravated sentencing range of Type 2: When the victim expresses the intent of non-punishment, a fine may be imposed (in this case, the range of fine shall be from 1 million to 20 million KRW). Provided, however, that where the number of special aggravated factors applied exceed that of special mitigating factors by two or more, imprisonment is recommended.

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 • The degree of offenses is minor	• The offense committed for a prolonged period • Degree of offense is serious • Morally reprehensible motives • Victim vulnerable to crime • Offenses caused significant damage to the victim
	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	• Prior convictions for the same-offense (suspended sentence of imprisonment without labor or a more severe punishment imposed within the past three years
General Sentencing Factor	Conduct		
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Prior convictions for same-offense (during a period exceeding three years but not exceeding ten years, after completion of a suspended sentence of imprisonment without labor or more severe punishment), or different-offense recidivism within the statutory recidivism period • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 CRIME OF STALKING

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

1. TYPE 1 — GENERAL STALKING

ELEMENTS OF OFFENSE	APPLICABLE LAW
Crime of Stalking	Act on Punishment of Crime of Stalking, Article 18, paragraph 1

2. TYPE 2 — STALKING BY CARRYING OR USING A DEADLY WEAPON, ETC

ELEMENTS OF OFFENSE	APPLICABLE LAW
Stalking by Carrying or Using a Deadly Weapon or Other Dangerous Thing	Act on Punishment of Crime of Stalking, Article 18, paragraph 2

2 NON-COMPLIANCE WITH PROVISIONAL MEASURES, ETC.

1. TYPE 1 — NON-COMPLIANCE WITH EMERGENCY MEASURES

ELEMENTS OF OFFENSE	APPLICABLE LAW
Fails to comply with an urgent emergency measure (excluding cases where a prosecutor does not request ex post facto approval for an urgent emergency measure under Article 5 (2) or a judge of a district court does not grant approval under paragraph (3) of that Article) without good cause	Act on Punishment of Crime of Stalking, Article 20, paragraph 3

2. TYPE 2 — NON-COMPLIANCE WITH PROVISIONAL MEASURES

ELEMENTS OF OFFENSE	APPLICABLE LAW
Non-compliance with Provisional Measures Prescribed in Article 9, paragraph 1, subparagraph 2 or subparagraph 3	Act on Punishment of Crime of Stalking, Article 20, paragraph 2

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:
  - Cases where the offense was committed in the course of pressing the victim to repay the debt, or exercising the offender's right, such as property distribution,
  - where the offense resulted from causes attributable to the victim or the victim is also primarily responsible for the crime as the offense was committed in response to a preceding crime or unfair treatment toward the offender by the victim or a person related to the victim,
  - 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 was meticulously planned in advance
  - The offender employed highly sophisticated methods to commit the offense
  - Other cases with comparable factors

4. MORALLY REPREHENSIBLE MOTIVE

- This applies where one or more of the following are present:
  - Offense committed out of retaliation, grievance, or hatred against the victim,

- Offense committed as a means of committing another crime,
- Cases where the offender enjoyed committing the crime itself,
- Other cases with comparable factors

5. VULNERABLE VICTIM

- 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 SIGNIFICANT HARM TO THE VICTIM

- This means cases with one or more of the following factors:
  - where, due to the offense, the victim, family members, or cohabitants suffered substantial harm in their daily life, studies, or livelihood, such as being forced to relocate, change or resign from their jobs, or take a leave of absence from school,
  - Where the offense causes the victim extreme level of psychological pain, such as uneasiness or fear,
  - Where the offense causes serious harm to family members, children, or cohabitants who have close relationship with the victim,
  - Offense causes any irreversible harm to the victim

7. 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 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.

8. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the offender, through genuine and sustained efforts, has restored the damages to a degree comparable to a formal settlement, or in which restitution of such degree is reasonably assured.
- In the case of a 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 offender is legally permitted to retrieve, or intends to retrieve the deposited funds, the nature of the infringed legal interests, and the scale and extent of the damage.

9. PRIOR CONVICTIONS FOR THE SAME-OFFENSES

- This means prior criminal convictions for any of the following offenses, for which sentencing guidelines have been established: stalking Section 1 (crime of stalking) and Section 2 (non-compliance with the provisional measures, etc); repeated attempts to speak to or send messages to the victim that cause fear or anxiety; attempted murder against the same victim; violent crimes; confinement or abuse; trespass into a residence; sexual offenses; digital sexual offenses; defamation; interference with business; arson; false accusation; or abduction or enticement offenses.

10. 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.

11. NO PRIOR CRIMINAL CONVICTIONS

- It means that the offender has not committed any offense before. Provided that it does not apply where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period.

12. 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.

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 CRIME OF STALKING

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Highly egregious conducts or methods • Morally reprehensible motives • Vulnerable victim • Causing serious harm to the victim • 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)]	• Cases with special extenuating circumstances that mitigate the offender's involvement • Extenuating motives for the offense • Dolus Eventualis • The degree of causing anxiety or fear is minor • Voluntary surrender to investigative authorities • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Absence of sincere remorse • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Lack of family/social ties • Absence of genuine efforts to reverse the harm • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Stable family/social ties • 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 • Cases where detaining the offender would impose excessive hardship on his/her family members • Considerable restitution

2 NON-COMPLIANCE WITH PROVISIONAL MEASURES ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• The offense committed for a prolonged period • Degree of offense is serious • Morally reprehensible motives • Vulnerable victim • Offenses caused significant damage to the victim • 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)]	• Cases with special extenuating circumstances that mitigate the offender's involvement • Extenuating motives for the offense • In cases where the degree of offenses is minor • Voluntary surrender to investigative authorities • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Absence of sincere remorse • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Lack of family/social ties • Absence of genuine efforts to reverse the harm • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Stable family/social ties • 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 • Cases where detaining the offender would impose excessive hardship on his/her 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.