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CHAPTER

Crimes of Perjury · Destruction of Evidence

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- Amended on April 10, 2017. Effective on May 15, 2017.
- Amended on December 6, 2021. Effective on March 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Perjury (Criminal Act, Article 152, paragraph 1), Malicious Perjury (Criminal Act, Article 152, paragraph 2), Statutory Perjury violating Act on Testimony and Appraisal before the National Assembly (Aforementioned Act, Article 14, paragraph 1), Perjury under the Patent Act (Aforementioned Act, Article 227, paragraph 1), Perjury under the Utility Model Act (Aforementioned Act, Article 47, paragraph 1), Perjury under the Design Protection Act (Aforementioned Act, Article 83, paragraph 1), or Perjury under the Trademark Act (Aforementioned Act, Article 94, paragraph 1), Destruction of Evidence (Criminal Act, Article 155, paragraph 1), Concealing a Witness (Criminal Act, Article 155, paragraph 2), and Destruction of Evidence for Malicious Perjury (Criminal Act, Article 155, paragraph 3).

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 PERJURY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Perjury	– 10 mos.	6 mos. – 1 yr. 6 mos.	10 mos. – 3 yrs.
2	Malicious Perjury	6 mos. – 1 yr. 6 mos.	10 mos. – 2 yrs.	1 yr. 6 mos. – 4 yrs.

▷ Perjury under the Patent Act, Utility Model Act, Design Protection Act, and Trademark Act falls within Type 1.

▷ Statutory Perjury violating Act on Testimony and Appraisal before the National Assembly falls within Type 2.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Offense committed impulsively • Cases where the false testimony concerns peripheral matters and lacks material significance • Participation resulting from pressure or threat by another person	• Acquired financial benefits in exchange for the commission of the offense • Perjury resulting in arrest of a party or affecting the outcome of the trial • Instigating the subordinate to commit the offense
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity • Voluntary surrender to investigative authorities or confession	• Same-offense recidivism within the statutory recidivism period (including evidence tampering, concealing a fugitive, perjury, etc.)
General Sentencing Factor	Conduct	• Dolus Eventualis • Minor participation • Cases where the testimony is extremely unreliable considering all relevant circumstances • Cases where the testimony is false but is consistent with objective facts	• False testimony was given on multiple occasions at different hearing dates within the courts of the same instance • Promises for financial benefit • Instigating perjury

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
	Offender /Etc.	• Expresses sincere remorse • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (including evidence tampering, concealing a fugitive, false accusation, etc.) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

2 DESTRUCTION OF EVIDENCE · CONCEALMENT OF A WITNESS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Destruction of Evidence · Concealing a Witness	- 10 mos.	6 mos. - 1 yr. 6 mos.	10 mos. - 3 yrs.
2	Destruction of Evidence With Intent to Injure · Concealment of a Witness with Intent to Injure	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs.	1 yr. 6 mos. - 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases where destruction of evidence concerns peripheral matters and lacks material significance • Cases with special extenuating circumstances concerning the offender's participation in, or motives for, the offense	• Acquired financial benefits in exchange for the commission of the offense • Highly egregious conduct or methods • Destruction of evidence affecting the outcome of the criminal trial or decision of disciplinary measures on others • 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 false accusation, concealing a fugitive, perjury, or etc.)
General Sentencing Factor	Conduct	• Minor participation • Cases where destroyed evidence is restored	• Promise for financial benefit • Instigating destruction of evidence, etc. • Destroying multiple items of evidence or destroying evidence over a prolonged period
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim	• Different-offense recidivism within the statutory recidivism period. Prior convictions for the same-offense, which do not constitute statutory recidivism (including perjury, concealing a fugitive, false accusation, etc.) • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 PERJURY

1. TYPE 1 - PERJURY

- This means where the witness makes a false statement under oath, and such offense does not fall within Type 2.
- Perjury as prescribed in the Patent Act, Utility Model Act, Design Protection Act, and Trademark Act falls within Type 1.

2. TYPE 2 - MALICIOUS PERJURY

- This indicates cases in which the witness who has taken an oath according to law makes a false statement under oath in a criminal or a disciplinary proceeding for the purposes of causing harm to the accused or a suspect.
- Statutory Perjury as prescribed in the Act on Testimony and Appraisal before the National Assembly falls within Type 2.

2 DESTRUCTION OF EVIDENCE · CONCEALMENT OF A WITNESS

1. TYPE 1 - DESTRUCTION OF EVIDENCE · CONCEALING A WITNESS

- This refers to cases in which an offender destroys, conceals, forges, or alters evidence in a criminal or disciplinary case against another person, or uses forged or altered evidence, pursuant to Article 155, paragraph 1 of the Criminal Act.
- This also refers to cases in which an offender conceals a witness or induces a witness not to testify in a criminal or disciplinary case against another person, pursuant to Article 155, paragraph 2 of the Criminal Act.

2. TYPE 2 - MALICIOUS DESTRUCTION OF EVIDENCE · CONCEAL A WITNESS

- This refers to cases in which a person, for the purpose of causing harm to an accused or a criminal or disciplinary suspect, commits the offenses prescribed in Article 155, paragraph 3 of the Criminal Act.

DEFINITION OF SENTENCING FACTORS

1 PERJURY[1)]

1. OFFENSE COMMITTED IMPULSIVELY

- This refers to cases in which the offender did not plan the offense in advance, but gave false testimony in response to an unanticipated question from the judge or the opposing party.

2. FALSE TESTIMONY CONCERNING MINOR AND NON-ESSENTIAL MATTERS

- This refers to cases in which the false testimony relates only to secondary or minor matters and has no material relevance to facts required to be proven or to merits of the case. However, this category does not apply to the following cases:
  - Where the false testimony is the sole evidence presented by a party
  - Where the false testimony constitutes a material means of proof relied upon by a party

3. PERJURY RESULTING IN ARREST OF A PARTY OR AFFECTING OUTCOMES OF THE TRIAL

- This refers to cases in which the false testimony results in the arrest of a party or materially affects the verdict or the imposition of a sentence in a criminal case. This also includes cases in which the testimony materially affects the judgment or the determination of material factual issues in civil proceedings.

4. VOLUNTARY SURRENDER TO INVESTIGATIVE AUTHORITIES OR CONFESSION

- Voluntary surrender to an investigative authority may occur at any time, however, with respect to confessions, the following time limits apply:
  - Perjury under the Criminal Act: the confession must be made before the entry of judgment in the trial or before the final disposition in the disciplinary proceeding.

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1) Sentencing factors with the same designation that apply to crimes of Destruction of Evidence · Concealing a Witness have the same definition unless separately defined.

- Statutory perjury under the Act on Testimony and Appraisal before the National Assembly (and related Acts): the confession must be made before the offense is detected and before the conclusion of deliberations, audits, or investigations conducted by the National Assembly.
- Perjury under the Patent Act: the confession must be made before the entry of judgment in the relevant case.
- Perjury under the Utility Model Act: the confession must be made before the entry of judgment in the relevant case.
- Perjury under the Design Protection Act: the confession must be made before a decision to grant or refuse design registration, before a decision on an application for unexamined design registration, or before the affirmation of a final decision.
- Perjury under the Trademark Act: the confession must be made before a decision to grant or refuse trademark registration, before the issuance of a final decision, or before the affirmation of a final decision.

5. DOLUS EVENTUALIS

- This refers to cases in which the offender, while giving testimony, was aware of a substantial risk that the testimony might contradict his or her actual memory, yet nevertheless provided a definitive answer despite not fully understanding the question or being unable to accurately recollect the subject matter.

6. 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.

7. THE TESTIMONY IS EXTREMELY UNRELIABLE CONSIDERING ALL RELEVANT CIRCUMSTANCES

- This refers to cases in which, after considering relevant circumstances, such as the witness's educational background, age, the content of the testimony, and the relationship between the parties, the witness's testimony is found to be extremely unreliable.

8. FALSE TESTIMONY WAS GIVEN ON MULTIPLE OCCASIONS AT DIFFERENT HEARING DATES WITHIN COURTS OF THE SAME INSTANCE

- This indicates situations where a witness makes distinct false statements on separate hearing dates during the same proceeding, while remaining under the continuing effect of the initial oath

9. 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.
- However, this excludes cases where confession is considered a special mitigating factor.

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

- This indicates cases in which the offender shows sincere remorse with genuine efforts to reach a settlement with the victim; the victim or the family of victim (in the case of a deceased victim) fully understands the legal and social implications of opposing punishment and clearly expresses the intent not to seek punishing the offender. However, this should not apply in the following cases:
  - (1) in cases in which the victim or the family of the deceased opposes punishment as a result of *de facto* coercion or deceit by the offender against the victim's will, or
  - (2) where there is no reasonable or convincing basis for the victim or their legal representative to express no desire for punishment.
- This applies only to cases in which, upon careful and thorough examination and assessment of the victim's or legal representative's age, intelligence, and ability to fully understand the meaning, content, and legal implications of expressing an intent not to seek punishment, it is determined that such expression is both informed and genuine.

11. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the offender, through genuine and sustained efforts, has restored the damage 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 or intends to retrieve the deposited funds, the nature of the infringed legal interests, and the scale and extent of the damage.

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.

13. NO PRIOR CRIMINAL CONVICTIONS

- It means that the offender has no previous criminal conviction before. However, this does not apply to cases in which the offense was committed repeatedly over an extended period.

2 DESTRUCTION OF EVIDENCE · CONCEALMENT OF A WITNESS

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,
- When the offense is committed from an intimate personal relationship, such as *de facto* marriage, lover, or friend, with the original criminal, where the offender could not refuse the original criminal's active demand,
- Other cases with comparable mitigating factors

2. HIGHLY EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - The means and methods for the commission of the offense were meticulously planned in advance,
  - There were multiple persons involved in an organized manner for the purpose of committing the offense, or when the offense was committed through the use of professional devices or technologies, the offender played an active leading role in planning and orchestrating the commission of the offense,
  - Other cases with comparable factors

3. DESTRUCTION OF EVIDENCE, ETC., AFFECTING ARREST OR THE OUTCOME OF TRIAL PROCEEDINGS

- This refers to cases in which the destruction of evidence affects the determination of guilt or innocence or the imposition of a sentence in a criminal proceeding. This also includes cases in which the destruction of evidence affects a decision or determination regarding disciplinary action against another person.

4. DESTROYED EVIDENCE IS RESTORED

- This indicates cases in which the destroyed evidence is restored, thereby, the destruction of evidence does not affect the finding of substantial truth.

5. 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.

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.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

1 PERJURY

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Acquired financial benefits in exchange for the commission of the offense • 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)] • Offense committed with the purpose of inflicting harm • False statement resulting in arrest of a party or affecting the outcome of trial	• Minor participation • Offense committed impulsively • Expresses penitence (including voluntary surrender or confessions, 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 • Post-offense evidence tampering or attempt to conceal or destroy evidence • Lack of family/social ties • Instigating perjury • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• No prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on his/her family members • Victim expresses the intent of non-punishment or substantial restitution to the victim

2 DESTRUCTION OF EVIDENCE · CONCEALMENT OF A WITNESS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Acquired financial benefits in exchange for the commission of the offense • Highly egregious conduct or methods • 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)] • Offense committed with the purpose of inflicting harm • Destruction of evidence, etc. affecting outcomes of the criminal trial or decision of disciplinary action against others	• In cases where there are special circumstances that mitigate the offender's involvement in the offense or motives to commit the offense • Cases where destruction of evidence, etc. concerns peripheral matters and lacks material significance • Expresses penitence (voluntary surrender or confession, etc.) • No prior criminal convictions
General Circumstance	• Promising financial benefits in exchange for the commission of the offense • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Destruction of evidence affecting the outcome of the criminal trial or disciplinary measures on others • Destroying multiple items of evidence or destroy evidence for a prolonged period • Lack of family/social ties • Instigating destruction of evidence • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Cases where destroyed evidence is restored • Stable family/social ties • Offender's minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on his/her family members • Victim expresses the intent of non-punishment or substantial restitution to the victim

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.[2)]

2) Types of perjury were revised on April 15, 2011.