CHAPTER 37

Crimes of Dealing with Stolen Property

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Acquiring, Taking Over, Transporting, Taking Custody of, or Aiding Stolen Property (Criminal Act, Article 362), Habitual Crimes of Dealing with Stolen Property (Criminal Act, Article 363), Repeated Offense of Dealing with Stolen Property (Act on the Aggravated Punishment, etc. of Specific Crimes, Article 5-4, paragraph 5), or Dealing with Stolen Cultural Heritage (Cultural Heritage Protection Act, Article 92, paragraph 3, subparagraph 2 and subparagraph 3).

※ 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 DEALING WITH STOLEN PROPERTY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Dealing with General Stolen Property	4 mos. – 10 mos.	6 mos. – 1 yr. 6 mos.	1 yr. – 3 yrs.
2	Dealing with Special Stolen Property	1 yr. – 2 yrs.	1 yr. 6 mos. – 3 yrs.	2 yrs. – 4 yrs.

▷ If multiple offenses of stolen property constituting habitual crimes fall within different types of crimes, apply the most severe sentencing range.

▷ However, if the sentencing range calculated by assessing special sentencing factors of stolen property is lower than that of the other stolen property crimes constituting habitual crimes, then the sentencing range for other stolen property crimes should apply.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Dolus Eventualis • Cases where the offender has a lineal blood relationship with the person who committed the crime (including the lineal blood relatives stipulated in the Criminal Act, Article 328, paragraph 1) or where the offense was inevitably committed due to such a relationship • Cases where the offender did not intend to commit the crime involving special stolen property (Type 2)	• Offense committed through an organized division of roles • Actively provoking the principal who committed the crime • The offense resulted in significant personal or social harm • Cases where the offense involves with stolen cultural heritage (Type 2) • Stolen property of significant industrial technology or materials concerning trade secrets (Type 2) • Instigating the subordinate to commit the offense

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
	Offender /Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities or internal whistle-blowing • Cases where the victim is a lineal blood relative of the offender under Article 328, paragraph 1 of the Criminal Act • Victim expresses the intent of non-punishment or substantial restitution to the victim	• Same-offense recidivism within the statutory recidivism period which does not constitute recidivism offense under the Act on the Aggravated Punishment of Specific Crimes (within the statutory recidivism period) • Habitual offenders
General Sentencing Factor	Conduct	• Offense committed for basic living expenses, hospital expenses and the like • Cases where the offender failed to consume or retain most of the profit from the crime • Minor participation	• Deliberate concealment of profits gained from the offense
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Post-offense evidence tampering or attempt to conceal or destroy evidence • Different-offense recidivism within the statutory recidivism period that does not constitute recidivism offense under the Act on the Aggravated Punishment of Specific Crimes (Repeat offense within the statutory recidivism period of three years). Prior convictions for the same-offense, 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)

2 REPEATED OFFENSE WITHIN THE STATUTORY RECIDIVISM PERIOD RELATING TO STOLEN PROPERTY

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Repeated Offense Within the Statutory Recidivism Period Relating to Stolen Property	1 yr. – 2 yrs.	1 yr. 6 mos. – 3 yrs.	2 yrs. – 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Cases where the offender has a lineal blood relationship with the person who committed the crime (including the lineal blood relatives stipulated in the Criminal Act, Article 328, paragraph 1) or inevitably committed the crime due to the relationship	• Actively provoking the person who committed the crime or cases where the offense was repeatedly committed by a criminal organization • Cases where the offense was committed against the special property (This does not apply to cases where the offender did not intend to deal with stolen special property from the beginning) • 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 or internal whistle-blowing • Cases where the victim is a lineal blood relative of the offender under Article 328, paragraph 1 of the Criminal Act • Victim expresses the intent of non-punishment or substantial restitution to the victim	

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Cases where the offense was committed for the purpose of covering living costs or paying for medical costs • Cases where the offender did not spend most of the proceeds from the crime or retain them • Minor participation	• Cases where the offender intentionally conceals the proceeds from the crime
	Offender /Etc.	• Diminished mental capacity (with fault) • Sincere remorse • Considerable restitution	• Post-offense evidence tampering or attempt to conceal or destroy evidence • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 DEALING WITH STOLEN PROPERTY

1. TYPE 1 — DEALING WITH STOLEN GENERAL PROPERTY

- This applies to cases where the crime of dealing with stolen property does not fall within Type 2.

2. TYPE 2 — DEALING WITH STOLEN SPECIAL PROPERTY

- This means cases of offense dealing with stolen property with high social, cultural, or economic values, and one or more of the following factors applies:
  - Stolen property crimes as prescribed in the Cultural Heritage Protection Act, Article 92, paragraph 3, subparagraph 2 and subparagraph 3,
  - Cases where the value of the property has surged in a short period or is scarce,
  - Stolen property of significant industrial technology or materials concerning trade secrets.

2 REPEATED OFFENSE WITHIN THE STATUTORY RECIDIVISM PERIOD RELATING TO STOLEN PROPERTY

- This applies to crimes prescribed in the Act on the Aggravated Punishment of Specific Crimes, Article 5-4, paragraph 5.

DEFINITION OF SENTENCING FACTORS

1. IN CASES WHERE THERE ARE SPECIAL CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S INVOLVEMENT IN 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.
  - Other cases with comparable mitigating factors.

2. THE OFFENDER HAS A LINEAL BLOOD RELATIONSHIP WITH THE PERSON WHO COMMITTED THE CRIME (INCLUDING THE LINEAL BLOOD RELATIVES STIPULATED IN THE CRIMINAL ACT, ARTICLE 328, PARAGRAPH 1) AND INEVITABLY COMMITTED THE CRIME DUE TO THE RELATIONSHIP

- This refers to cases in which the offender has a lineal blood relationship or other special relationship with the principal offender, as provided in Article 328, paragraph 1 of the Criminal Act (including lineal blood relationships not expressly stipulated in that paragraph, *de facto* marriage, or similar relationships), and in which the offender committed a stolen property offense because it was difficult to refuse the request due to such a personal relationship.

3. CASES WHERE THE OFFENDER DID NOT INTEND TO COMMIT A CRIME THAT DEALS WITH STOLEN SPECIAL PROPERTY FROM THE OUTSET OF THE OFFENSE (TYPE 2)

- This indicates cases in which the offender was not aware that the stolen property is classified as special property from the outset of the crime, and later realized that it was special property during the commission of the crime.

4. THE OFFENDER HAS A LINEAL BLOOD RELATIONSHIP WITH THE PERSON COMMITTING THE CRIME AS STIPULATED IN THE CRIMINAL ACT, ARTICLE 328, PARAGRAPH 1

- This refers to cases in which the offender and the principal offender have a lineal blood relationship or other relationship as stipulated in Article 328, paragraph 1 of the Criminal Act (including lineal blood relatives, spouses, relatives living together, family members living together, or their spouses), in which case punishment shall be mitigated or remitted pursuant to Article 365, paragraph 2 of the Criminal Act.
- However, where the offender not only has such a lineal blood or familial relationship with the principal offender but also inevitably committed the offense due to that relationship (including relatives as prescribed in Article 328, paragraph 1 of the Criminal Act), such circumstances shall be considered as a special mitigating factor based on a special personal relationship, rather than as a statutory sentencing factor under Article 328, paragraph 1.

5. OFFENSES COMMITTED WITH AN ORGANIZED SCHEME

- This refers to cases in which multiple offenders commit an offense involving stolen property through an organized scheme, including prior agreement to commit the crime, allocation of roles, and coordinated execution.

6. ACTIVE PROVOCATION OF THE PRINCIPAL OFFENDER

- This refers to cases in which the principal offender is actively induced to commit the offense by prior notification of the feasibility of selling stolen property, through means such as Internet advertising, distribution of business cards, or offers of payment. However, this sentencing factor shall not apply where the offense of instigation is established, or where the sentencing guidelines on multiple offenses apply.

7. WHERE THE PERSONAL OR SOCIAL HARMS ARE PARTICULARLY SERIOUS

- 'Serious personal harm' means cases involving one or more of the following factors:
  - Cases in which the offender caused significant harm to the victim by stealing expensive antiques, precious jewelry, large amounts of stocks or cash, or other

similar property, taking into account the victim's subjective valuation of the stolen 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 dealing with stolen special property but nonetheless resulted in significant social harm.
  - Other cases with comparable aggravating factors.

8. CASES WHERE THE STOLEN PROPERTY IS STATE-DESIGNATED CULTURAL HERITAGE (TYPE 2)

- This indicates cases in which stolen property is state-designated cultural heritage under the Cultural Heritage Protection Act, Article 92, paragraph 1.

9. CASES WHERE STOLEN PROPERTY IS A SIGNIFICANT INDUSTRIAL TECHNOLOGY OR MATERIALS CONCERNING TRADE SECRETS (TYPE 2)

- This means the stolen property is a significant technology crucial enough to change the course of a company's future, or the dynamics of the relevant industry.

10. 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.

11. DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This refers to the deliberate concealment of profits gained from the offense to avoid claim for damages or execution of monetary penalty.

12. 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 the 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 punishment of 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.

13. 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 (generally amounting to at least two-thirds of the total loss in cases involving only property damage), 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.

14. 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.

15. 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.

16. NO PRIOR CRIMINAL CONVICTIONS

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

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstance	• Actively provoking the principal who committed the crime or the offense committed through an organized division of roles • Repeated commission of a crime • 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 involving serious personal or social harm • Absence of efforts to recover damages	• In cases where there are special circumstances that mitigate the offender's involvement in the offense • The offender attempted to prevent the co-offender from committing the crime • Cases where the offender has a lineal blood relationship with the person who committed the crime including the lineal blood relatives stipulated in the Criminal Act, Article 328, paragraph 1 and inevitably committed the crime due to the relationship • Voluntary surrender to investigative authorities or internal whistle-blowing • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution to the victim
General Circumstance	• Leading role as a co-offender • Deliberate concealment of profits gained from the offense • Post-offense evidence tampering or attempt to conceal or destroy evidence • Prior criminal convictions for the same-offense, or 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 sincere remorse • Causing harm in the course of attempting to reach a settlement (excluding cases where the act constitutes a crime of coercion)	• Offense committed for basic living expenses, hospital expenses and the like • Cases where the offender failed to spend or retain most of the profit from the crime • No prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Stable family/social ties • Sincere remorse • 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 • 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.
- Repeated Offense
  - This refers to cases where the offender is found to have repeatedly committed similar offenses, upon comprehensive consideration of the nature of the offense, the offender's history of punishment, and concurrent offense, etc.

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.