CHAPTER 42

Crimes of Intrusion upon Habitation

- Promulgated on March 29, 2021. Effective on July 1, 2021.
- Amended on March 28, 2022. Effective on June 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
- Amended on March 30, 2026. Effective on July 1, 2026.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Intrusion upon Habitation (Criminal Act, Article 319, paragraph 1), Refusal to Leave (Criminal Act, Article 319, paragraph 2), Special Intrusion upon Habitation · Refusal to Leave (Criminal Act, Article 320), Illegal Search of Residence and Body (Criminal Act, Article 321), Joint Intrusion upon Habitation · Refusal to Leave (Punishment of Violences, Etc. Act, Article 2, paragraph 2, subparagraph 1), Repeated Offenses of Intrusion upon Habitation · Refusal to Leave (Punishment of Violences, Etc. Act, Article 2, paragraph 3, subparagraph 1), Repeated Offenses of Special Intrusion upon Habitation · Refusal to Leave (Punishment of Violences, Etc. Act, Article 3, paragraph 4, subparagraph 1), Repeated Offenses of Child Abuse (Act on Special Cases concerning the Punishment, etc. of Crimes of Child Abuse, Article 6, Article 2, subparagraph 4, item 8), or Child Abuse Cases by the Person With the Duty to Report Child Abuse Cases (Act on Special Cases concerning the Punishment, etc. of Crimes of Child Abuse, Article 7, Article 2, subparagraph 4, item 8).

※ 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 APPLICABLE PRINCIPLES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Intrusion upon Habitation	– 8 mos.	6 mos. – 1 yr.	10 mos. – 2 yrs.
2	Refusal to Leave	– 6 mos.	4 mos. – 10 mos.	8 mos. – 1 yr. 6 mos.
3	Illegal Search of Residence · Body	– 6 mos.	4 mos. – 1 yr.	8 mos. – 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Dolus Eventualis • Degree of infringement upon tranquility of the human habitation is minor • Extenuating motives for the offense	• Playing a leading role or directing/coordinating the offense • Highly egregious conduct or methods • 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 or internal whistle-blowing • Victim expresses the intent of non-punishment or substantial restitution to the victim	• 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 of Child Abuse Crimes (Type 3) • Habitual offender (limited to the cases where the aggravated punishment provided in Article 6 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes is applied)(Type 3)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation	• Two or more co-offenders • 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 where the offense of Intrusion upon Habitation was committed while severely intoxicated by alcohol or drugs (including cases of crimes of repeated offense within statutory recidivism period · special intrusion upon habitation).

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 the 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 WITHIN STATUTORY RECIDIVISM PERIOD · SPECIAL INTRUSION UPON HABITATION

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Special Intrusion upon Habitation, Etc.	– 10 mos.	6 mos. – 1 yr. 2 mos.	1 yr. – 2 yrs. 6 mos.
2	Repeated Intrusion upon Habitation, Etc.	4 mos. – 1 yr.	8 mos. – 1 yr. 4 mos.	1 yr. 2 mos. – 3 yrs.
3	Repeated and Special Intrusion upon Habitation	6 mos. – 1 yr. 6 mos	10 mos. – 2 yrs.	1 yr. 6 mos. – 3 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigate the offender's involvement • Dolus Eventualis • Degree of infringement upon tranquility of the human habitation is minor • Extenuating motives for the offense • Refusal to vacate upon demand	• Playing a leading role or directing/coordinating the offense • Highly egregious conduct or methods • 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 or internal whistle-blowing • Victim expresses the intent of non-punishment or substantial restitution to the victim	• Same-offense recidivism within the statutory recidivism period (Type 1)
General Sentencing Factor	Conduct	• Minor participation	• 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)

DEFINITION OF OFFENSES

1 GENERAL APPLICABLE PRINCIPLES

1. TYPE 1 - INTRUSION UPON HABITATION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
Intrusion upon a residence, guarded building, ship, aircraft, or occupied room (Intrusion upon Habitation, etc.)	Criminal Act, Article 319, paragraph 1
Two or more jointly trespass into a residence, etc.	Punishment of Violences, Etc. Act, Article 2, paragraph 2, subparagraph 1

2. TYPE 2 - REFUSAL TO LEAVE

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law

ELEMENTS OF OFFENSE	APPLICABLE LAW
Refusal to leave a residence, guarded building, ship, aircraft, or occupied room despite the demand of the occupants (refusal to leave)	Criminal Act, Article 319, paragraph 2
Two or more jointly refuse to leave	Punishment of Violences, Etc. Act, Article 2, paragraph 2, subparagraph 1

3. TYPE 3 — ILLEGAL SEARCH OF RESIDENCE · BODY

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law

ELEMENTS OF OFFENSE	APPLICABLE LAW
Illegally searches another's body or one's habitation, guarded building, structure, automobile, ship, aircraft or occupied room	Criminal Act, Article 321

2 REPEATED OFFENSE WITHIN STATUTORY RECIDIVISM PERIOD · SPECIAL INTRUSION UPON HABITATION

1. TYPE 1 — SPECIAL INTRUSION UPON HABITATION, ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law

ELEMENTS OF OFFENSE	APPLICABLE LAW
Intrusion upon a residence by displaying the threat of collective force, or by carrying a dangerous weapon	Criminal Act, Article 320
Refusal to leave by displaying the threat of collective force, or by carrying a dangerous weapon	Criminal Act, Article 320

2. TYPE 2 — REPEAT OFFENSE OF INTRUSION UPON HABITATION WITHIN STATUTORY RECIDIVISM PERIOD, ETC

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person who has been convicted at least twice to imprisonment with labor for violation of the Punishment of Violences Act, etc. (including each applicable provision of the Criminal Act, a repeated crime, special crime, and repeated special crime specified in each applicable provision, and an attempted repeated crime, attempted special crime, and attempted repeated special crime) committed the offense of the intrusion upon a residence, etc	Punishment of Violences, Etc. Act, Article 2, paragraph 3, subparagraph 1
A person who has been convicted at least twice to imprisonment with labor for violation of the Punishment of Violences Act, etc. (including each applicable provision of the Criminal Act, a repeated crime, special crime, and repeated special crime specified in each applicable provision, and an attempted repeated crime, attempted special crime, and attempted repeated special crime) committed the offense of the refusal to leave, etc	Punishment of Violences, Etc. Act, Article 2, paragraph 3, subparagraph 1

3. TYPE 3 — REPEATED OFFENSE OF SPECIAL INTRUSION UPON HABITATION WITHIN STATUTORY RECIDIVISM PERIOD, ETC

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law

ELEMENTS OF OFFENSE	APPLICABLE LAW
A person who has been convicted at least twice to imprisonment with labor for violation of the Punishment of Violences Act, etc (including each applicable provision of the Criminal Act, a repeated crime, special crime, and repeated special crime specified in each applicable provision, and an attempted repeated crime, attempted special crime, and attempted repeated special crime) committed the offense of the intrusion upon a residence by displaying the threat of collective force, or by carrying a dangerous weapon	Punishment of Violences, Etc. Act, Article 3, paragraph 4, subparagraph 1
A person who has been convicted at least twice to imprisonment with labor for violation of the Punishment of Violences Act, etc (including each applicable provision of the Criminal Act, a repeated crime, special crime, and repeated special crime specified in each applicable provision, and an attempted repeated crime, attempted special crime, and attempted repeated special crime) committed the offense of the refusal to leave, etc., by displaying the threat of collective force or by carrying a dangerous weapon	Punishment of Violences, Etc. Act, Article 3, paragraph 4, subparagraph 1

※ Habitual offender of child abuse, child abuse by a mandatory reporter to report child abuse (Illegal Search of a Residence · Body among Type 1 Offense)

ELEMENTS OF OFFENSE	APPLICABLE LAW
The offender habitually commits child abuse as stipulated in Article 2, paragraph 4, item 5, item 13 (This is limited to habitual offenders falling within item 5 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 each subparagraph of Article 10, paragraph 2, and commits a crime of child abuse as stipulated in Article 2, paragraph 4 item 5, item 13 (This is limited to habitual offenders falling within item 5, 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. WHERE THE INTRUSION UPON THE PEACE OF A RESIDENCE IS MINOR

- This applies where one or more of the following are present:
  - Where only a part of the offender's body entered and the victim did not perceive the intrusion
  - Offenses committed in places other than indoor residential areas (including comparable indoor spaces)
  - Where the offender left voluntarily without delay and remained in the residence, etc., only for a very short time
  - Where no occupant was present at the time of entry
  - Other cases with comparable factors

3. EXTENUATING CIRCUMSTANCES FOR OFFENDER'S MOTIVE FOR COMMITTING OFFENSE

- This applies where one or more of the following are present:
  - Cases where the victim bears considerable responsibility for the commission of the offense
  - The offenses were committed in the course of exercising the offender's lawful rights
  - Other cases with comparable factors

4. 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 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.

5. 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 to retrieve, or intends to retrieve the deposited funds, the nature of the infringed legal interests, and the scale and extent of the damage.

6. HIGHLY EGREGIOUS CONDUCT OR METHODS

- This applies where one or more of the following are present:
  - Cases where the offender trespassed into a residence after dusk,
  - Cases where the intrusion upon the peace of a residence continued for a

substantial period of time,

- Cases where the offense was committed by displaying the collective force, or while carrying a dangerous object (excluding cases where aggravated trespass into a residence applies),
- Cases where, in the course of the offense, the degree of physical force, deception, fraud, or threats was extremely serious (excluding cases where crimes resulting from such acts such as physical force, deception, fraud, or threats and crimes such as trespass into a residence are punished as concurrent offenses),
- Other cases with comparable factors.

7. MORALLY REPREHENSIBLE MOTIVES

- This applies where one or more of the following are present:
  - Cases where the offender trespassed into the residence for the purpose of committing a crime (excluding cases where the intended crime and crimes such as trespass into a residence are punished as concurrent offenses);
  - Cases where the intrusion was committed for a sexual purpose;
  - Cases where the offense was committed out of stalking of the victim, retaliation or resentment, or feelings of hatred
  - Other cases with comparable factors

8. 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.

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 or the prevention of re-offending.

10. 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.

11. PLANNED CRIME

- This applies where one or more of the following are present:
  - Preparation for and possession of a weapon used in the offense
  - A planned conspiracy
  - Luring or inducing the victim
  - Preparation for the destruction of evidence
  - Pre-arranged plan to flee
  - Other cases involving comparable aggravating factors

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 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.
- In case of concurrent offense of Intrusion upon Habitation (Criminal Act, Article 319, paragraph 1) and Crime of Larceny, the recommended sentencing range for 'Definition of Offense, 01 Larceny of General Property 〉 Type 4, Intrusion and Larceny' under the Sentencing Guidelines for Larceny (Chapter 39) shall apply, and the Guidelines on Sentencing Multiple Offenses shall not apply separately.

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	• Playing a leading role or directing/coordinating the offense • Highly egregious conduct or methods • 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 • 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)] • 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 search of residence or body)	• Cases with special extenuating circumstances that mitigate the offender's involvement • Dolus Eventualis • Degree of infringement upon tranquility of the human habitation is minor • Extenuating motives for the offense • No prior criminal convictions • Victim expresses the intent of non-punishment or substantial restitution
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 • Absence of sincere remorse • Drug or alcohol addiction • Planned crime • Playing a leading role as a co-offender • 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)	• Stable family/social ties • Offense committed impulsively • Voluntary surrender to investigative authorities or internal whistle-blowing • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment • Minor participation as a co-offender • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent 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.