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CHAPTER

# Crimes of Violence

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This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Inflicting Injury (Criminal Act, Article 257, paragraph 1), Inflicting Injury on Lineal Ascendant (Criminal Act, Article 257, paragraph 2), Inflicting Aggravated Injury (Criminal Act, Article 258, paragraph 1, 2), Inflicting Aggravated Injury on Lineal Ascendant (Criminal Act, Article 258, paragraph 3), Special Injury · Special Bodily Injury on Lineal Ascendant (Criminal Act, Article 258-2, paragraph 1), Special Aggravated Bodily Injury · Special Aggravated Bodily Injury on Lineal Ascendant (Criminal Act, Article 258-2, paragraph 2), Injury Resulting In Death (Criminal Act, Article 259, paragraph 1), Injury Against Lineal Ascendant Resulting In Death (Criminal Act, Article 259, paragraph 2), Assault (Criminal Act, Article 260, paragraph 1), Assault Against Lineal Ascendant (Criminal Act, Article 260, paragraph 2), Special Assault · Special Assault Against Lineal Ascendant (Criminal Act, Article 261), Assault Resulting in Injury · Special Assault Resulting in Injury · Assault Against Lineal Ascendant Resulting In Injury (Criminal Act, Article 262), Assault Resulting in Death · Special Assault Resulting In Death · Assault Against Lineal Ascendant Resulting in Death (Criminal Act, Article 262), Habitual Infliction of Injury · Habitual Infliction of Injury Against Lineal Ascendant · Habitual Infliction of Aggravated Injury · Habitual Infliction of Aggravated Injury Against Lineal Ascendant · Habitual Special Infliction of Injury · Habitual Special Infliction of Injury Against Lineal Ascendant · Habitual Special Infliction of Aggravated Injury · Habitual Special Infliction of Aggravated Injury Against Lineal Ascendant · Habitual Assault · Habitual Assault

Against Lineal Ascendant · Habitual Special Assault · Habitual Special Assault Against a Lineal Ascendant (Criminal Act, Article 264), Intimidation (Criminal Act, Article 283, paragraph 1), Intimidation Against Lineal Ascendant (Criminal Act, Article 283, paragraph 2), Special Intimidation · Special Intimidation Against Lineal Ascendant (Criminal Act 284), Habitual Intimidation · Habitual Intimidation Against Lineal Ascendant · Habitual Special Intimidation · Habitual Special Intimidation Against Lineal Ascendant (Criminal Act, Article 285), Infliction of Injury By Multiple Persons · Infliction of Injury By Multiple Persons Against Lineal Ascendant · Assault By Multiple Persons · Assault By Multiple Persons Against Lineal Ascendant · Intimidation By Multiple Persons · Intimidation By Multiple Persons Against Lineal Ascendant (Punishment of Violences, etc. Act, Article 2, paragraph 2), Repeated Infliction of Injury · Repeated Infliction of Injury Against Lineal Ascendant · Repeated Assault · Repeated Assault Against Lineal Ascendant · Repeated Intimidation · Repeated Intimidation Against Lineal Ascendant (Punishment of Violences, etc. Act, Article 2, paragraph 3), Repeated Special Infliction of Injury · Repeated Special Infliction of Injury Against Lineal Ascendant · Repeated Special Assault · Repeated Special Assault Against Lineal Ascendant · Repeated Special Intimidation · Repeated Special Intimidation Against Lineal Ascendant (Punishment of Violences, etc. Act, Article 3, paragraph 4), Infliction of Injury For Retaliation · Assault For Retaliation · Intimidation For Retaliation (Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 2), Infliction of Injury For Retaliation Resulting In Death · Assault For Retaliation Resulting in Death (Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 3), Assault Against Drivers Operating Motor Vehicles · Intimidation Against Drivers Operating Motor Vehicles (Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 1), and Assault Against Drivers Operating Motor Vehicles Resulting In Injury · Assault Against Drivers Operating Motor Vehicles Resulting In Death · Intimidation Against Drivers Operating Motor Vehicles Resulting In Injury · Intimidation Against Drivers Operating Motor Vehicles Resulting In Death (Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 2), Child Abuse by a Person With the Duty to Report Child Abuse Cases (Act on Special Cases Concerning the Punishment of Child Abuse Crime, Article 7, Article 2 subparagraph 4 item 1, item 4.

※ 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 INFLICTION OF BODILY INJURY

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | General Injury | 2 mos. – 10 mos. | 4 mos. – 1 yr. 6 mos. | 6 mos. – 2 yrs. 6 mos. |
| 2 | Aggravated Injury | 6 mos. – 1 yr. 6 mos. | 1 yr. – 2 yrs. | 1 yr. 6 mos. – 4 yrs. |
| 3 | Injury Resulting in Death | 2 yrs. – 4 yrs. | 3 yrs. – 5 yrs. | 4 yrs. – 8 yrs. |
| 4 | Injury for Retaliation | 6 mos. – 1 yr. 6 mos. | 1 yr. – 2 yrs. | 1 yr. 6 mos. – 3 yrs. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Dolus Eventualis<br>• Minor bodily injuries (Type 1, 4)<br>• Cases with special extenuating circumstances that mitigate the offender's involvement<br>• The victim bears a significant degree of responsibility for the commission of the offense or the exacerbation of the harm<br>• The offender's conduct was not the direct cause of the victim's death (Type 3) | • Playing a leading role or directing/coordinating the offense<br>• Cases where the offense is committed by a show of force by a group or multitude, or by carrying a dangerous weapon (excluding cases which fall under Type 2 offenses of Repeated Bodily Injury Within Statutory Recidivism period or Special Injury)<br>• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period<br>• Serious bodily injuries (Type 1, 4)<br>• Victim is a lineal ascendant of the offender<br>• Instigating the subordinate to commit the offense<br>• Morally reprehensible motives (This excludes Type 4)<br>• Obstructing Performance of Official |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| | | | Duties<br>• Exceptionally brutal or cruel methods<br>• Vulnerable victims |
| | Offender /Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities or internal whistle-blowing<br>• Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim | • Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes<br>• Habitual offenders<br>• Same-offense recidivism within the statutory recidivism period |
| General Sentencing Factor | Conduct | • Minor participation | • Two or more co-offenders<br>• Planned crime |
| | Offender /Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• 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)<br>• 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 crime of violence was committed while severely intoxicated by alcohol or drugs (including cases of Special Injury · Repeated Offense of Injury Within Statutory Recidivism Period, Offense of Assault, Offense of Intimidation):

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 OFFENSE OF SPECIAL INJURY · REPEATED OFFENSE OF INJURY WITHIN STATUTORY RECIDIVISM PERIOD

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | Special Injury | 4 mos. – 1 yr. | 6 mos. – 2 yrs. | 1 yr. – 3 yrs. |
| 2 | Special Aggravated Injury · Repeated Injury Within Statutory Recidivism Period | 10 mos. – 2 yrs. | 1 yr. 6 mos. – 3 yrs. 6 mos. | 2 yrs. – 5 yrs. |
| 3 | Repeated Offense of Special Injury Within Statutory Recidivism Period | 1 yr. 6 mos. – 3 yrs. | 2 yrs. – 4 yrs. | 3 yrs. – 6 yrs. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Dolus Eventualis<br>• Minor bodily injuries<br>• Cases with special extenuating circumstances that mitigate the offender's involvement<br>• The victim bears a significant degree of responsibility for the commission of the offense or the resulting harm | • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period<br>• Serious bodily injuries (excluding Special Aggravated Injury)<br>• Victim is a lineal ascendant of the offender<br>• Instigating the subordinate to commit the offense<br>• Morally reprehensible motives<br>• Obstructing Performance of Official Duties<br>• Exceptionally brutal or cruel methods<br>• Vulnerable victims |
| | Offender /Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities or internal whistle-blowing<br>• Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim | • Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes<br>• Habitual offenders |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| General Sentencing Factor | Conduct | • Minor participation | • Planned crime |
| | Offender /Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• 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)<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) |

## 3 OFFENSE OF ASSAULT

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | General Assault | ~ 8 mos. | 2 mos. ~ 10 mos. | 4 mos. ~ 1 yr. 6 mos. |
| 2 | Assault Resulting in Injury | 2 mos. ~ 1 yr. 6 mos. | 4 mos. ~ 2 yrs. | 6 mos. ~ 3 yrs. |
| 3 | Assault Resulting in Death | 1 yr. 6 mos. ~ 3 yrs. | 2 yrs. ~ 4 yrs. | 3 yrs. ~ 5 yrs. |
| 4 | Assault Against Drivers Operating Motor Vehicles Resulting in Injury | 10 mos. ~ 2 yrs. | 1 yr. 6 mos. ~ 3 yrs. | 2 yrs. ~ 4 yrs. |
| 5 | Assault Against Drivers Operating Motor Vehicles Resulting in Death | 2 yrs. ~ 4 yrs. | 3 yrs. ~ 5 yrs. | 4 yrs. ~ 8 yrs. |
| 6 | Repeated Assault Within Statutory Recidivism Period · Special Assault | 2 mos. ~ 1 yr. 2 mos. | 4 mos. ~ 1 yr. 10 mos. | 6 mos. ~ 2 yrs. 4 mos. |
| 7 | Assault for Retaliation | 4 mos. ~ 1 yr. 4 mos. | 10 mos. ~ 2 yrs. | 1 yr. ~ 2 yrs. 6 mos. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Dolus Eventualis<br>• Degree of the assault is minor (Type 1, 6, 7)<br>• Minor bodily injuries (Type 2, 4)<br>• Cases with special extenuating circumstances that mitigating the offender's involvement<br>• The victim bears a significant degree of responsibility for the commission of the offense or the resulting harm<br>• The offender's conduct was not the direct cause of the victim's death (Type 3) | • Playing a leading role or directing/coordinating the offense (excluding Type 6)<br>• Cases where the offense is committed by a show of force by a group or multitude, or by carrying a dangerous weapon (excluding cases where the offense of special assault is applied)<br>• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period<br>• Serious bodily injuries (Type 2, 4)<br>• Victim is a lineal ascendant of the offender<br>• Instigating the subordinate to commit the offense<br>• Assault against the driver of a motor vehicle during operation (Type 1)<br>• Morally reprehensible motives (excluding Type 7)<br>• Exceptionally brutal or cruel methods<br>• Vulnerable victims |
| | Offender /Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities or internal whistle-blowing<br>• Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim | • Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes<br>• Habitual offenders<br>• Same-offense recidivism within the statutory recidivism period (excluding repeated assault among Type 6) |
| General Sentencing Factor | Conduct | • Minor participation | • Two or more co-offenders<br>• Planned crime |
| | Offender /Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• 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)<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) |

## 4 OFFENSE OF INTIMIDATION

| TYPE | CLASSIFICATION | MITIGATED SENTENCING RANGE | STANDARD SENTENCING RANGE | AGGRAVATED SENTENCING RANGE |
|---|---|---|---|---|
| 1 | General Intimidation | – 8 mos. | 2 mos. – 1 yr. | 4 mos. – 1 yr. 6 mos. |
| 2 | Intimidation Against Drivers Operating Motor Vehicles Resulting in Injury | 10 mos. – 2 yrs. | 1 yr. 6 mos. – 3 yrs. | 2 yrs. – 4 yrs. |
| 3 | Intimidation Against Drivers Operating Motor Vehicles Resulting in Death | 2 yrs. – 4 yrs. | 3 yrs. – 5 yrs. | 4 yrs. – 7 yrs. |
| 4 | Repeated Intimidation Within Statutory Recidivism Period · Special Intimidation | 2 mos. – 1 yr. | 4 mos. – 1 yr. 6 mos. | 6 mos. – 2 yrs. |
| 5 | Intimidation for Retaliation | 4 mos. – 1 yr. 4 mos. | 10 mos. – 2 yrs. | 1 yr. – 2 yrs. 6 mos. |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| Special Sentencing Factor | Conduct | • Dolus Eventualis<br>• Degree of intimidation is minor (Type 1, 2, 5)<br>• Minor bodily injuries (Type 2)<br>• Cases with special extenuating circumstances that mitigate the offender's involvement<br>• The victim bears a significant degree of responsibility for the commission of the offense or the resulting harm (Type 3) | • Playing a leading role or directing/coordinating the offense (excluding Type 4)<br>• Cases where the offense is committed by a show of force by a group or multitude, or by carrying a dangerous weapon (excluding cases where the offense of special intimidation is applied)<br>• Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period<br>• Victim is a lineal ascendant of the offender<br>• Serious bodily injuries (Type 2)<br>• Instigating the subordinate to commit the offense<br>• Assault against the driver of a motor vehicle during operation (Type 1)<br>• Morally reprehensible motives (excluding Type 5)<br>• Exceptionally brutal or cruel methods<br>• Vulnerable victims |

| CLASSIFICATION | | MITIGATING FACTOR | AGGRAVATING FACTOR |
|---|---|---|---|
| | Offender /Etc. | • Hearing and/or speech disabilities<br>• Diminished mental capacity (without fault)<br>• Voluntary surrender to investigative authorities or internal whistle-blowing<br>• Victim expresses the intent of non-punishment of the offender or substantial restitution | • Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes<br>• Habitual offenders<br>• Same-offense recidivism within the statutory recidivism period (excluding repeated intimidation among Type 4) |
| General Sentencing Factor | Conduct | • Minor participation | • Two or more co-offenders<br>• Planned crime |
| | Offender /Etc. | • Diminished mental capacity (with fault)<br>• Sincere remorse<br>• No prior criminal convictions<br>• 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)<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) |

# DEFINITION OF OFFENSES

## 1 GENERAL INJURY

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

| TYPE | ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|---|
| Type 1 General Injury | Infliction of Injury | Criminal Act, Article 257, paragraph 1 |
| | Infliction of Injury Against Lineal Ascendant | Criminal Act, Article 257, paragraph 2 |
| | Joint Infliction of Injury · Joint Infliction of Injury Against Lineal Ascendant | Punishment of Violences, etc. Act, Article 2, paragraph 2, subparagraph 3 |
| | Habitual Infliction of Injury · Habitual Infliction of Injury Against Lineal Ascendant | Criminal Act, Article 264 |
| Type 2 Aggravated Injury | Infliction of Aggravated Injury | Criminal Act, Article 258, paragraph 1 and 2 |
| | Infliction of Aggravated Injury Against Lineal Ascendant | Criminal Act, Article 258, paragraph 3 |
| | Habitual Infliction of Aggravated Injury · Habitual Infliction of Aggravated Injury Against Lineal Ascendant | Criminal Act, Article 264 |
| Type 3 Injury Resulting in Death | Infliction of Injury Resulting in Death | Criminal Act, Article 259, paragraph 1 |
| | Infliction of Injury Against Lineal Ascendant Resulting in Death | Criminal Act, Article 259, paragraph 2 |
| | Infliction of Injury for Retaliation Resulting in Death | Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 3 |
| Type 4 Inflicting Injury for Retaliation Purpose | Infliction of Injury for Retaliation | Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 2 |

## 2 OFFENSE OF SPECIAL INJURY · REPEATED OFFENSE OF INJURY WITHIN STATUTORY RECIDIVISM PERIOD

| TYPE | ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|---|
| Type 1<br>Infliction of Special Injury | Infliction of Special Injury · Special Injury Against Lineal Ascendant | Criminal Act, Article 258-2, paragraph 1 |
| | Habitual Special Injury · Habitual Special Injury Against Lineal Ascendant | Criminal Act, Article 264 |
| Type 2<br>Special Aggravated Injury, Repeated Infliction of Injury Within Statutory Recidivism Period | Special Aggravated Injury · Special Aggravated Injury Against Lineal Ascendant | Criminal Act, Article 258-2, paragraph 2 |
| | Habitual Special Aggravated Injury · Habitual Special Aggravated Injury Against Lineal Ascendant | Criminal Act, Article 264 |
| | Repeated Infliction of Injury Within Statutory Recidivism Period · Repeated Infliction of Injury Against Lineal Ascendant Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 2, paragraph 3, subparagraph 3 |
| Type 3<br>Repeated Special Injury Within Statutory Recidivism Period | Repeated Special Infliction of Injury Within Statutory Recidivism Period · Repeated Special Injury Against Lineal Ascendant Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 3, paragraph 4, subparagraph 3 |

## 3 OFFENSE OF ASSAULT

| TYPE | ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|---|
| Type 1<br>General Assault | Assault | Criminal Act, Article 260, paragraph 1 |
| | Assault Against Lineal Ascendant | Criminal Act, Article 260, paragraph 2 |
| | Joint Assault · Joint Assault Against Lineal Ascendant | Punishment of Violences, etc. Act, Article 2, paragraph 2, subparagraph 1, subparagraph 2 |
| | Habitual Assault · Habitual Assault Against Lineal Ascendant | Criminal Act, Article 264 |
| | Assault Against Drivers Operating Motor Vehicles | Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 1 |

| TYPE | ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|---|
| Type 2<br>Assault Resulting in Injury | Assault Resulting in Injury · Special Assault Resulting in Injury | Criminal Act, Article 262 |
| | Assault Resulting in Injury · Special Assault Resulting in Injury (Aggravated Injury) | Criminal Act, Article 262 |
| | Assault Against Lineal Ascendant Resulting in Injury | Criminal Act, Article 262 |
| | Assault Against Lineal Ascendant Resulting in Injury (Aggravated Injury) | Criminal Act, Article 262 |
| Type 3<br>Assault Resulting in Death | Assault Resulting in Death, Special Assault Resulting in Death | Criminal Act, Article 262 |
| | Assault Against Lineal Ascendant Resulting in Death | Criminal Act, Article 262 |
| | Assault for Retaliation Resulting in Death | Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 3 |
| Type 4<br>Assault Against Drivers Operating Motor Vehicles Resulting in Injury | Assault Against Drivers Operating Motor Vehicles Resulting in Injury | Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 2 |
| Type 5<br>Assault Against Drivers Operating Motor Vehicles Resulting in Death | Assault Against Drivers Operating Motor Vehicles Resulting in Death | Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 2 |
| Type 6<br>Repeated Assault Within Statutory Recidivism Period · Special Assault | Special Assault · Special Assault Against Lineal Ascendant | Criminal Act, Article 261 |
| | Habitual Special Assault · Habitual Special Assault Against Lineal Ascendant | Criminal Act, Article 264 |
| | Repeated Assault Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 2, paragraph 3, subparagraph 1 |
| | Repeated Assault Against Lineal Ascendant Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 2, paragraph 3, subparagraph 2 |
| | Repeated Special Assault Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 3, paragraph 4, subparagraph 1 |
| | Repeated Special Assault Against Lineal Ascendant Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 3, paragraph 4, subparagraph 2 |
| Type 7<br>Assault for Retaliation | Assault for Retaliation | Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 2 |

## 4 OFFENSE OF INTIMIDATION

| TYPE | ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|---|
| Type 1<br>General Intimidation | Intimidation | Criminal Act, Article 283, paragraph 1 |
| | Intimidation Against Lineal Ascendant | Criminal Act, Article 283, paragraph 2 |
| | Joint Intimidation · Joint Intimidation Against Lineal Ascendant | Punishment of Violences, etc. Act, Article 2, paragraph 2, subparagraph 1 and 2 |
| | Habitual Intimidation · Habitual Intimidation Against Lineal Ascendant | Criminal Act, Article 285 |
| | Intimidation Against Drivers Operating Motor Vehicles | Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 1 |
| Type 2<br>Intimidation Against Drivers Operating Motor Vehicles Resulting in Injury | Intimidation Against Drivers Operating Motor Vehicles Resulting in Injury | Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 2 |
| Type 3<br>Intimidation Against Drivers Operating Motor Vehicles Resulting in Death | Intimidation Against Drivers Operating Motor Vehicles Resulting in Death | Act on the Aggravated Punishment of Specific Crimes, Article 5-10, paragraph 2 |
| Type 4<br>Repeated Intimidation Within Statutory Recidivism Period · Special Intimidation | Special Intimidation · Special Intimidation Against Lineal Ascendant | Criminal Act, Article 284 |
| | Habitual Special Intimidation · Habitual Special Intimidation Against Lineal Ascendant | Criminal Act, Article 285 |
| | Repeated Intimidation Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 2, paragraph 3, subparagraph 1 |
| | Repeated Intimidation Against Lineal Ascendant Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 2, paragraph 3, subparagraph 2 |
| | Repeated Special Intimidation Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 3, paragraph 4, subparagraph 1 |
| | Repeated Special Intimidation Against Lineal Ascendant Within Statutory Recidivism Period | Punishment of Violences, etc. Act, Article 3, paragraph 4, subparagraph 2 |

| TYPE | ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|---|
| Type 5<br>Intimidation for Retaliation Purpose | Intimidation for Retaliation Purpose | Act on the Aggravated Punishment of Specific Crimes, Article 5-9, paragraph 2 |

※ Habitual Offender of Child Abuse, Child Abuse by a Mandatory Reporter of Child Abuse (This applies to offenses falling under Type 1 through Type 4)

| ELEMENTS OF OFFENSE | APPLICABLE LAW |
|---|---|
| Cases where the offender who has a duty to report child abuse under the subparagraph of Article 10 paragraph 2 commits a crime of child abuse against a child under his or her protection stipulated in Article 2, subparagraph 4, item 1, item 4, item 13 of the Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes (This shall only apply to offenders stipulated in item 1, or item 4 subject to aggravated punishment under other statutes) | Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes, Article 7 |

## DEFINITION OF SENTENCING FACTORS

### 1. MINOR BODILY INJURIES

- Minor bodily injuries mean cases where the inflicted injury requires two weeks or less of medical care, affecting relatively limited bodily parts, which does not disrupt the victim's day-to-day activities and does not require medical intervention such as surgical stitches and the like.

### 2. SERIOUS BODILY INJURIES

- Serious bodily injuries means cases where the inflicted injury requires four to five weeks or more medical treatment for recovery, including injuries resulting in lasting after-effects or functional impairment, severe disability caused by the offense, injuries to particularly vulnerable body parts, or injuries that are expected to lead to further bodily harm.

### 3. 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.

### 4. THE VICTIM BEARS A SIGNIFICANT DEGREE OF RESPONSIBILITY FOR THE COMMISSION OF THE OFFENSE OR THE RESULTING HARM

- This applies to cases in which the commission of the offense was influenced by causes attributable to both the victim and the offender, including situations where prior domestic violence by the victim against the offender motivated the offense, or where the offense was committed in resistance to the victim's preceding criminal act or unjust treatment, as well as cases in which the extent of damage was significantly increased by causes attributable to the victim during or after the offense.

## 5. OFFENDER'S CONDUCT WAS NOT THE DIRECT CAUSE OF THE DEATH OF THE VICTIM

- This indicates cases in which the intervening causes other than the offender's conduct led to the death of the victim and, therefore, the offender cannot be held liable for the direct cause of the death.

## 6. 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.

## 7. 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.

- In cases where the victim has received relief money from the State pursuant to the Crime Victim Protection Act in connection with the damage suffered (including cases where the offender subsequently fulfills the obligation to reimburse the State), such cases shall be excluded unless special circumstances exist.

## 8. MORALLY REPREHENSIBLE MOTIVE

- This applies where one or more of the following are present:
  - Offenses were committed out of retaliation, grievance, or hatred.
  - Motives derived from the pleasure of committing the crime itself.
  - Other cases with comparable aggravating factors

## 9. CRUEL METHOD OF THE OFFENSE

- This applies to cases in which the victim sustains harm through the infliction of severe physical or mental distress that goes beyond customary limits with regard to its intensity and temporal continuity.

## 10. VULNERABLE VICTIM

- Vulnerable victim refers to cases in which, at the time the offense was committed, the victim was vulnerable to the offense due to diminished physical or mental capacity or age, and the offender was aware or could reasonably have been aware of the victim's circumstances.

## 11. 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.

## 12. 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.

## 13. 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.

## 14. 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
  - Inducing the victim
  - Pre-arranged plan to flee
  - Advance planning of escape or flight
  - Other cases with comparable aggravating factors

## 15. 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 or bereaved family member 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 | • Cases where the offense is committed by a show of force by a group or multitude, or by carrying a dangerous weapon<br>• Victim is a lineal ascendant of the offender<br>• Morally reprehensible motives<br>• Exceptionally brutal or cruel methods or the offense resulted in death of the victim or serious bodily injuries on the victim<br>• 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)]<br>• The degree of Obstructing Performance of Official Duties is serious<br>• Vulnerable victims<br>• Crime committed repeatedly over a prolonged period<br>• Child abuse committed by a mandatory reporter defined in Article 7 of the Act on Special Cases Concerning the Punishment of Child Abuse Crimes | • Dolus Eventualis<br>• Minor bodily injuries<br>• Cases with special extenuating circumstances that mitigate the offender's involvement<br>• The victim bears a significant degree of responsibility for the commission of the offense or the resulting harm<br>• Where the nature of commission of the offense is minor<br>• The offender attempted to prevent the offense by hindering the co-offender<br>• Offender's conduct was not the direct cause of death of the victim or serious bodily injury on the victim<br>• No prior criminal convictions<br>• Victim expresses the intent of non-punishment of the offender or substantial restitution |
| General Circumstance | • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or a heavier punishment<br>• Lack of family/social ties<br>• Drug or alcohol addiction<br>• Absence of sincere remorse<br>• Planned crime<br>• Victim was a driver while operating a motor vehicle | • Stable family/social ties<br>• The offense was committed impulsively, without prior deliberation<br>• Voluntary surrender to investigative agencies or internal whistle-blowing<br>• Sincere remorse<br>• No prior conviction of a suspended sentence of imprisonment without labor or a heavier punishment<br>• The offender's physical condition is severely impaired |

| CLASSIFICATION | ADVERSE | AFFIRMATIVE |
|---|---|---|
| | • Crime against unspecified or multiple victims<br>• Leading role as a co-offender<br>• Deliberate concealment of profits gained from the offense<br>• Absence of efforts to recover the harm<br>• Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established) | • Minor participation as a co-offender<br>• Post-offense aid/medical transport<br>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member<br>• 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.
- 'The degree of Obstructing Performance of Official Duties is serious' applies where one or more of the following are present:
  - The obstruction of official duties in regard to the degree and duration causing inconvenience or interruptions to official duties is significant
  - Offense committed against the public officer who was performing an urgent mission to save lives, extinguish fires, investigate crimes, maintain security, etc.
  - Other cases with comparable 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.