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# 1 Crimes of Homicide

This guideline applies to adult offender (nineteen years of age or older) who committed any offenses of Murder (Criminal Act, Article 250, paragraph 1), Murder of an Ascendant (Criminal Act, Article 250, paragraph 2), Rape and Murder (Criminal Act, Article 301-2 and Sexual Crime Act, Article 9, paragraph 1 and Children-Juvenile Sexual Crime Act, Article 10, paragraph 1), Murder by Robbery (Criminal Act, Article 338), Hostage Murder in a Hostage Taking (Criminal Act, Article 324-4), Murder of Minor by Abduction or Inducement (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 2), Retaliatory Murder (Aggravated Punishment Act, Article 5-9, paragraph 1) or Attempts of each of the abovementioned crime (Criminal Act, Article 254, Article 324-5 and 342, Sexual Crime Act, Article 15, and Aggravated Punishment Act, Article 5-2, paragraph 6).

## I. TYPES OF OFFENSE AND SENTENCING PERIOD

Offense Type	Classification	Mitigated Sentencing Range (Category)	Standard Sentencing Range	Aggravated Sentencing Range
1	Murder with Extenuating Motive	3 yrs - 5 yrs	4 yrs - 6 yrs	5 yrs - 8 yrs
2	Murder with General Motive	7 yrs - 12 yrs	10 yrs - 16 yrs	15 yrs or More, Life Imprisonment or More
3	Murder with Condemnable Motive	10 yrs - 16 yrs	15 yrs - 20 yrs	18 yrs or More, Life Imprisonment or More
4	Murder in Combination with Other Serious Crimes	17 yrs - 22 yrs	20 yrs or More, Life Imprisonment	25 yrs or More, Life Imprisonment or More
5	Murder by Extreme Neglect for Human Life	20 yrs - 25 yrs	23 yrs or More, Life Imprisonment	Life Imprisonment or More

▷ To determine the recommended sentencing range for Attempt of Murder, apply 2/3 reduction to the minimum, 1/3 reduction to the maximum sentencing range. However, 'Life Imprisonment' shall be reduced to 20 yrs or more', 'Life Imprisonment or More' shall be reduced to '20 yrs or More, Life Imprisonment'.

Classification			Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	General Application	<ul style="list-style-type: none"> <li>Special Considerations can be Taken into Account for Engaging in Offense</li> <li>Use of Excessive Self-Defense</li> <li>Willful Negligence to Commit Murder</li> <li>(Strong) Provocation by the Victim</li> </ul>	<ul style="list-style-type: none"> <li>Premeditated Crime</li> <li>Vulnerable Victims</li> <li>Damaging the Physical Remains of the Body of the Deceased Victim</li> <li>Usage of Cruel Methods to Commit Crime</li> <li>Cases where the Victim is an Ascendant of the Offender</li> <li>Abduction or Inducement with Condemnable Purpose (Type 4)</li> <li>Cases where the Offender also Committed Rape with the Crime of Robbery (Type 4)</li> <li>Instigating the Subordinate Person to Commit the Crime</li> </ul>
Special Sentencing Determinant	Conduct	Attempt	<ul style="list-style-type: none"> <li>Minor Bodily Injuries (Includes Cases Without Bodily Injuries)</li> </ul>	<ul style="list-style-type: none"> <li>Serious Bodily Injuries</li> </ul>

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Actor/etc.	<ul style="list-style-type: none"> <li>● Those with Hearing and Visuals Impairments</li> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Voluntary Surrender to Investigative Agencies</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment (This Includes Genuine Efforts to Reverse Harm)</li> </ul>	<ul style="list-style-type: none"> <li>● Absence of Remorse (Excludes Cases Where the Offender is Merely Pleading Not Guilty)</li> <li>● Special Violent Crime Act (Applies to Repeated Offenses)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>● Passive Participation in the Committed Crime</li> <li>● (Average) Provocation by the Victim</li> </ul>	<ul style="list-style-type: none"> <li>● Abandoning the Physical Remains of the Body of the Deceased Victim</li> </ul>
General Sentencing Determinant	Actor/etc.	<ul style="list-style-type: none"> <li>● Rescuing or Transferring the Victim to the Hospital After Committing the Crime</li> <li>● Deposited Significant Amounts of Money</li> <li>● Those with Reduced Mental Capacity (These Are Cases Where the Offender Can be Held Liable. But Does Not Apply to Type 4 Category Crimes of Murder After Committing Rape/ Sexual Penetration/Indecent Acts by Compulsion, Murder After Abduction or Inducement Against the Minor, or Murder After Taking Hostage)</li> <li>● Sincere Remorse for Committing the Crime</li> </ul>	<ul style="list-style-type: none"> <li>● Repeated Offenses of Different Type under the Criminal Act that Does Not Constitute Repeated Offenses under the Special Violent Crime Act, Criminal History of Imprisonment by the Same Type of Offenses, or by Crime of Violence that Does not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)</li> </ul>

▷ For cases of committing Murder after Rape/Sexual Penetration/Murder After Indecent Acts by Compulsion under the influence of alcohol or other drugs, sentencing criteria described in Sentencing Guideline on Crimes of Sexual Assault (Amended, Effective on July 15, 2010) shall be applied.

## [ DEFINITION OF OFFENSE ]

### 01 | TYPE 1 (MURDER WITH EXTENUATING MOTIVE)

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- Type 1 includes murders committed with motives which can be considered as extenuating circumstances, with one or more of the following factors:
  - Murder with Causes Attributable to the Victim
    - Where the offender or the offender’s relative has received physical or mental harm (such as domestic violence, sexual assault, or others) consistently from the victim over an extended period of time.
    - Where the offender or the offender’s relative has received a series of actual death threats from the victim (In this case, excessive use of self-defense is not considered as a special mitigation factor).
  - Murder of a Family Member While in the Mental State that Apparently Lacks Capacity to Judge
  - Other Cases with Comparable Factors

### 02 | TYPE 2 (MURDER WITH GENERAL MOTIVE)

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- Type 2 includes murders with general motives with one or more of the following factors; or murders that do not fall into the category of Type 1, 3, 4, 5:
  - Murder Committed Out of Resentment
    - Murder committed out of resentment in response to a partner’s demand to end their relationship.
    - Murder committed out of resentment as a result of perception that he or she has been ignored or degraded by the victim.
    - Murder as a consequence of a verbal dispute or a physical encounter.
  - Murder as a Result of Domestic Grievances
    - Murder of a marriage partner due to delusional infidelity.
    - Murder of a marriage partner due to accumulated grievance toward the victim.
  - Murder Committed Out of Resentment in Debtor and Creditor Relations

- Murder as a result of the victim’s refusal of debt payment.
- Murder as a result of the victim’s pressure to make debt payment.
- Other Cases with Comparable Factors

### 03 | TYPE 3 (MURDER WITH CONDEMNABLE MOTIVES)

- Type 3 includes murders with exceptionally high degree of condemnation in regards to motives for committing the crime with one or more of the following factors:
  - Retaliatory Murder as Prescribed in the Aggravated Punishment Act (Aggravated Punishment Act, Article 5-9, paragraph 1)
    - Murder committed with the intention of retaliating against accusations, complaints, statements, testimonies or submission of materials.
    - Murder committed with intent to prevent or nullify accusations, complaints, statements, testimonies or submission of materials, or to fabricate statements, testimonies or submission of materials.
  - Murder Committed with Motives Pertaining to Money, Adultery or Organizational Benefits
    - Murder committed out of greed (such as murder for inheritance or insurance, and the Like).
    - Contract murder committed for the purpose of gaining economic benefit.
    - Murder of a marriage partner for the purpose of maintaining an adulterous relationship.
    - Murder committed as a result of rivalry between criminal organizations.
  - Murder Committed in Commission of Other Crimes or to Prevent Disclosure of the Committed Crime
    - Murder committed in commission of other offenses (murder of prison guard for fleeing or murder of bodyguard to abduct a particular individual).
    - Murder committed as a result of fear of disclosure of the committed crime or the victim’s report of the offense.
  - Murder Committed With No Specific Reason Towards Indiscriminate (Random) Number of People, or to Fulfill the Offender’s Own Desire to Kill Towards One

Individual

- Other Cases with Comparable Factors

## 04<sup>1</sup> TYPE 4 (MURDER COMMITTED IN COMBINATION WITH ADDITIONAL SERIOUS OFFENSES)

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- Type 4 includes murders committed in combination with additional serious crimes with one or more of the following factors:
  - Rape and Murder/Sexual Penetration by Compulsion and Murder/Indecent Acts by Impulsion and Murder (Criminal Act, Article 301-2, Sexual Crime Act, Article 9, paragraph 1, Children-Juvenile Sexual Crime Act, Article 10, paragraph 1);
  - Minor Abduction or Inducement Murders (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 2);
  - Hostage Murder in a Hostage Taking (Criminal Act, Article 324-4); and
  - Murder Committed in Commission of a Robbery (Criminal Act, Article 338).

## 05<sup>1</sup> TYPE 5 (MURDER BY EXTREME NEGLIGENCE FOR HUMAN LIFE)

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- Type 5 includes murders that reflect the offender's extreme tendency towards neglect for human life with one or more of the following factors:
  - Multiple Killings of Indiscriminate Targets that Victimized Two or More People;
  - Murder of Two or More People Out of Pure Desire to Kill; and
  - Other Cases with Comparable Factors.

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## [ DEFINITION OF SENTENCING FACTORS ]

### 01 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN OFFENSE

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- “Special considerations can be taken into account for engaging in offense” means one or more of the following factors apply:
  - Participation in the crime was forced by another person or resulted from threats (This excludes cases where Criminal Act, Article 12 is applicable).
  - When the offender merely agreed to participate in the crime but did not lead or actually participate in the commission of the crime.
  - Other cases with comparable factors.

### 02 | PROVOCATION BY THE VICTIM

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- “Provocation by the victim” means there are certain causes attributable to the victim as well as the offender when the crime was committed.
- Nonetheless, this is limited to cases that fall outside the use of excessive self-defense. When the long-existing causes attributable to the victim such as cases of domestic violence inflicted to the victim for extended period of time has already been taken into consideration during the type classification stage, this factor should be precluded from adjustment considerations.

### 03 | PREMEDITATED CRIME

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- “Premeditated crime” means cases with one or more of the following factors:
  - Advance preparation and possession of the crime weapon;
  - Planned conspiracy;
  - Inducement of victim;
  - Preparation of destruction of evidence;
  - Prior planning of a flight plan; or
  - Other cases with comparable factors.

## 04<sup>1</sup> VULNERABLE VICTIMS

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- “Vulnerable victims” means cases where the victim was especially vulnerable due to reduced physical or mental capacity or age at the time of the crime and the offender was already aware of or possibly aware of the victim’s such circumstances.
- In case of Murder of minor by abduction or inducement (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 2), this applies to cases where the victim was less than 13 years of age or physically or mentally disabled and the offender was already aware or possibly aware of victim’s such circumstances.

## 05<sup>1</sup> MURDER COMMITTED WITH CRUEL CONDUCTS

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- “Cruel method of the crime” means cases where the victim has been killed by extreme physical or mental pain in terms of the degree and duration of the pain, including the following:
  - Murder committed through arson;
  - Murder committed by use of explosives;
  - Cases where bodily harm was deliberately inflicted upon the victim prior to killing;
  - Cases where the murder was committed by stabbing or striking vital points of the victim dozens of times by using a knife or other lethal weapon; or
  - Other cases with comparable factors.

## 06<sup>1</sup> ABDUCTION OR INDUCEMENT WITH CONDEMNABLE PURPOSE

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- “Abduction or inducement with condemnable purpose” means cases where the purpose of abduction or inducement is one or more of the following:
  - Cases where the purpose is to commit murder;
  - Cases where the purpose is to taking of property;
  - Cases where the purpose is to engage in Indecent Acts, sexual intercourse, or for profit-making;
  - Cases where the purpose is to exploit labor, engage in sex trade or sexual exploitation, or to acquire internal organs; or



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- Cases where the purpose is to engage in overseas trafficking.

## 07 | MINOR BODILY INJURIES (THIS INCLUDES CASES WITHOUT BODILY INJURY)

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- “Minor bodily injuries” means cases where the inflicted injury requires less than two weeks of medical care, affecting relatively limited bodily parts, which does not disrupt day-to-day activities of the victim, and does not require medical intervention such as surgical stitches and the like.
- This includes cases where the offense did not result in any bodily injury.

## 08 | SERIOUS BODILY INJURIES

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- “Serious bodily injuries” means cases with after-effects causing impairment, severe disability resulting from the offense, injuries inflicted to vulnerable body parts or further anticipated bodily injuries.

## 09 | OFFENDER EXPRESSES REMORSE AND THE VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE HARM)

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- This means cases where the offender expresses signs of remorse and the family member of the deceased victim or the victim (for cases of attempted murder) acknowledges this and objects punishing the offender.
- This includes cases where deposits are made in a considerable amount of money comparable to reaching of an agreement with the family of the deceased or the victim as a result of the offender’s genuine efforts to reverse harm.

## 10 | ABSENCE OF REMORSE (THIS EXCLUDES CASES WHERE THE OFFENDER MERELY DENIES OFFENSE)

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- This means cases where the offender admits to committing the crime yet does not express any sign of guilt or remorse but rather justifies the offense conduct. This

should be distinguished from merely denying the offense.

## 11<sup>1</sup> PASSIVE PARTICIPATION IN THE COMMITTED OFFENSE

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- This means cases where 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 where the offender had an active role in the commission of the offense by causing another person to commit murder.

## 12<sup>1</sup> THOSE WITH REDUCED MENTAL CAPACITY (CASES WHERE THE OFFENDER CAN BE HELD LIABLE)

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- This means cases where the reduced mental capacity is caused by the use of alcohol, substances, or the like.
- However, this is not applicable to Category Type 4 Offenses set forth in this guideline, which includes offense conducts of Rape and Murder/Sexual Penetration by Compulsion and Murder/Indecent Acts by Compulsion and Murder, Minor Abduction or Inducement and Murder, Hostage Murder in a Hostage Taking.

## 13<sup>1</sup> CRIMINAL HISTORY OF THE SAME OFFENSE

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- This means cases of criminal history for Murder, Murder of an Ascendant and Attempt of the Ascendant, Retaliatory Murder under Aggravated Punishment Act, Sexual Assault, Crimes of Robbery, Crimes of Abduction, and Inducement as set forth in Sentencing Guideline.

## [ ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS ]

### 01<sup>1</sup> DETERMINING APPROPRIATE SENTENCING RANGE

- In determining the appropriate sentencing range, the judge must only consider the special sentencing determinants.
- However, in cases involving more than two special sentencing determinant, the applicable sentencing range is adjusted after assessing the factors as set forth below:
  - ① The same number of conduct factor shall be considered with greater significance than the actor/etc. factor. However, this shall be assessed equally to the victim or the family member of the deceased victim's objection to the punishment.
  - ② Each factor within the relevant categories of conduct or actor/etc. factors should be treated as equal.
  - ③ If the applicable sentencing range is unable to be determined by the aforementioned principles ①, ②, the judge is to decide the applicable sentencing range through a comprehensive comparison and assessment based on the principles set forth in ①, ②.
- It is recommended that when the assessment reveals greater aggravating factors to select the aggravated zone, the mitigating factors is greater to select the mitigating zone, and the same number of aggravating factors and mitigating factors to select the standard zone as a sentencing range.

### 02<sup>1</sup> DETERMINING THE APPLICABLE SENTENCE

- The judge should select the proper point within the sentencing range as assessed in accordance with the above principles, along with the special sentencing determinant and general sentencing determinant taken together.
- When the maximum of the sentencing range exceeds twenty-five years, the judge may impose a life imprisonment.

## [ GENERAL APPLICATION PRINCIPLES ]

### 01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

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- ① In cases where the aggravating factor is selected and the assessment of the special sentencing determinant reveals only two or more special aggravating factors or the special sentencing determinant outnumbers the special mitigating determinant by two or more, then the sentencing range should be increased up to 1/2 from the maximum level.
- ② For cases where the mitigating factor is selected as a result of assessment of the special sentencing determinant, and there are two or more special mitigating determinant or the special mitigating determinant outnumbers the special aggravating determinant by two or more, the sentencing range should be decreased up to 1/2 from the minimum level.

### 02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE GUIDELINES AND APPLICABLE SENTENCING RANGE BY LAW

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When the sentencing range under this guideline conflicts with the range drawn in accordance with the aggravation and mitigation of applicable law, the sentencing range prescribed by applicable law governs.

### 03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

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When the judge declines to apply the optional mitigation factor under the applicable law as listed in the sentencing table of this guideline, this shall be considered as the discretion for mitigation.

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## [ GUIDELINE ON MULTI-COUNT CONVICTIONS ]

### 01 | APPLICABLE SCOPE

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- This part on multi-count convictions applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act as set forth in this sentencing guideline. However, in cases of this article's concurrent crimes where offenses that fall within and outside of the sentencing guidelines are involved, the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

### 02 | DETERMINING BASE OFFENSE

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- The “base offense” means the most severe offense that results after the selection of penalty and statutory aggravation and mitigation as prescribed in Criminal Act, Article 50. However, in cases where the maximum sentencing range is lower than that of the maximum sentencing range of the other counts as provided in this guideline, then such other count becomes the base offense.

### 03 | CALCULATING SENTENCING RANGE

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- For purposes of calculating sentencing range for multi-count conviction cases, the judge shall apply the following unless the offenses are deemed as a single offense under the sentencing guideline:
  - ① In setting sentencing range for an offender convicted of two counts, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the 1/2 of the maximum sentencing range of the second count.
  - ② In setting sentencing range for an offender convicted of three or more counts, the sentencing range should be the total sum of the following: (1) maximum sentencing range of the base offense, (2) 1/2 of the maximum sentencing range of the count with the highest sentencing range, and (3) 1/3 of the maximum sentencing range of the remaining count with the second highest sentencing range.

- ③ For cases where the minimum sentencing range of the other count is higher than that of the base offense, the minimum sentencing range resulting from the multi-count offense should be the minimum sentencing range of the other count.

## II. GUIDELINE ON SUSPENSION OF SENTENCE OF ATTEMPTS OF MURDER

Classification		Adverse	Affirmative
Primary Consideration Factor	Risk of Recidivism, etc.	<ul style="list-style-type: none"> <li>● Premeditated Crime</li> <li>● Usage of Cruel Methods to Commit Crime</li> <li>● Condemnable Motives</li> <li>● Criminal History of the Same Offense (for Suspension of Sentence or Imposing of More Severe Sentence Within Ten Years)</li> </ul>	<ul style="list-style-type: none"> <li>● Offender Attempted to Thwart the Accomplice's Commission of the Crime</li> <li>● The Crime's Motive Can Be Taken Into Consideration in Particular</li> <li>● Voluntarily Cease of Crime</li> <li>● (Strong) Provocation by the Victim</li> <li>● No Prior Criminal History</li> </ul>
	Other Factors	<ul style="list-style-type: none"> <li>● Serious Bodily Injury</li> <li>● No Restoration of Caused Harm</li> </ul>	<ul style="list-style-type: none"> <li>● Minor Bodily Injury (Includes Cases Without Bodily Injury)</li> <li>● Offender Expresses Remorse and Victim Opposes Punishment (Includes Genuine Efforts to Reverse Harm)</li> </ul>
General Consideration Factor	Risk of Recidivism, etc.	<ul style="list-style-type: none"> <li>● Two or More Criminal Record on Suspension of Sentence or Greater Offense</li> <li>● Lack of Social Ties</li> <li>● Drug or Alcohol Addiction</li> <li>● Carrying of a Dangerous Weapon</li> <li>● Absence of Remorse</li> <li>● No Acquaintance with the Victim</li> </ul>	<ul style="list-style-type: none"> <li>● Strongly-Established Social Ties</li> <li>● Voluntary Surrender to Investigative Agencies</li> <li>● Expresses Sincere Remorse</li> <li>● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe</li> <li>● Cases of Old-age Offenders</li> <li>● (Average) Provocation by the Victim</li> </ul>
	Other Factors	<ul style="list-style-type: none"> <li>● Active Participation as an Accomplice</li> <li>● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense</li> </ul>	<ul style="list-style-type: none"> <li>● Passive Participation As an Accomplice</li> <li>● Rescuing or Transferring the Victim to the Hospital After Committing the Offense</li> <li>● Cases of Physically-ill Offenders</li> <li>● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member</li> </ul>

## [ DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE ]

- In cases where the consideration factors for suspension of sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
  
- Determining Criminal History
  - Prior criminal history is calculated as follows: In cases involving suspension of sentence, calculate from the date the defendant’s suspension of sentence was affirmed up to the date of the commission of the offense. In cases imposing imprisonment, calculate from the final date of the completion of the sentence up to the date of the commission of the offense.



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## [ ASSESSING PRINCIPLES APPLICABLE TO THE CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE ]

- For cases where the imposing penalty is imprisonment, in deciding whether the suspension of sentence is appropriate, the primary consideration factor should be taken into account with greater importance than the general consideration factors. This is further specified as follows:
  - ① In cases where only two or more primary affirmative factors exist or when primary affirmative factors outnumber the major adverse factor by two or more, suspension of sentence is recommended.
  - ② In cases where two or more primary adverse factors exist or when primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
  - ③ In cases other than ①, ②, or even if cases of ①, ②, if the difference between the number of general adverse(affirmative) factors and general affirmative (adverse) factors is greater than that of adverse and affirmative factors of the primary consideration, then the judge shall decide whether to suspend the sentencing after assessing and comprehensively taking into account the factors listed under the suspension of sentence section.