

Promulgated on March 21, 2011, Effective on July 1, 2011

12 Crimes Related to Private Documents

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Forgery and Alteration of Private Documents, and Other Similar Documents (Criminal Act, Article 231), Making Falsified Private Documents and Other Similar Documents for Employment Purposes (Criminal Act, Article 232), Forging and Altering Private Electronic Records (Criminal Act, Article 232-2), Making False Medical Certificates and Other Similar Documents (Criminal Act, Article 233), or Uttering of Documents Thereof (Criminal Act, Article 234).

I. TYPES OF OFFENSE AND SENTENCING PERIODS

01 | FORGERY, ALTERATION, AND SIMILAR CONDUCTS OF PRIVATE DOCUMENTS

Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
Forgery, Alteration, and Similar Conducts of Private Documents	- 1yr	6months - 2yrs	1yr - 3yrs

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Engaging in Offense or Motive for Committing Offense Can be Taken into Particular Consideration No Social Damage Caused Due to Incomplete Commission of the Offense's Purpose 	<ul style="list-style-type: none"> Cases where the Offender is a Central Figure, Executive, Professional Technician, or a Person Directly in Charge of Brokering and Conveying to the Aforementioned Persons in Positions Forgery and Altering Multiple Documents Repeatedly Serious Social and Economic Harm Resulted From the Offense Instigating the Subordinate Person to Commit the Offense
	Actor /Etc.	<ul style="list-style-type: none"> Those with Hearing and Visual Impairments Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable) Voluntary Surrender to Investigative Agencies 	<ul style="list-style-type: none"> Repeated Offenses of the Same Type Under the Criminal Act(Includes Crimes Related to Public Documents)

Classification		Mitigating Factor	Aggravating Factor
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Passive Participation ● Compared to the Entire Document, Only Small Parts of the Document Was Altered ● Offense Failed to Cause Social Damage or the Social and Economic Harm Caused Are Insignificant 	<ul style="list-style-type: none"> ● Offender Made Requests to Professionals Engaging in Forgery or Brokers of Such Activities ● Those Who Committed Forgery or Altering of Documents Also Utters the Falsified Documents ● Forgery or Alteration of Important Documents with High Public Confidence such as Direct Legal Documents (Documents Containing the Direct Representation of the Legal Act in Question) or Documents for Submission of Evidence (However, Offenses That Caused Serious Social and Economic Damages are Excluded) ● Use of Professional Forgery or Altering Devices (Such as Color Printers, Scanners, and Other Similar Devices)
	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● No Prior Criminal History 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act, Criminal History by the Same Type of Offenses that Does not Constitute Repeated Offense under the Criminal Act (Includes Crimes Related to Public Documents)

02¹ MAKING OF FALSE MEDICAL CERTIFICATES

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Passive Motive	- 8months	4months - 10months	8months - 1yr 6months
2	Active Motive	6months - 1yr 6months	8months - 2yrs	1yr 6months - 2yrs 6months

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Engaging in Offense or Motive for Committing Offense Can be Taken into Particular Consideration Offense Failed to Cause Social Damage or the Social and Economic Harm Caused Are Insignificant 	<ul style="list-style-type: none"> Serious Social and Economic Harm Resulted From the Offense Involves Commercial or Organizational Schemes Instigating the Subordinate Person to Commit the Offense
	Actor /Etc.	<ul style="list-style-type: none"> Those with Hearing and Visual Impairments Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable) Voluntary Surrender to Investigative Agencies 	<ul style="list-style-type: none"> Criminal History of the Same Type of Offense (Within Five Years) (Includes Crimes Related to Public Documents) Deliberate Concealment of Profits Gained from the Offense or Obstructing Recovery of Damages
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Passive Participation 	<ul style="list-style-type: none"> A Person who Falsifies the Medical Records also Commits Offense of Uttering the Document
	Actor /Etc.	<ul style="list-style-type: none"> No Prior Criminal History Expresses Sincere Remorse 	<ul style="list-style-type: none"> Repeated Offenses of Different Type under the Criminal Act , Criminal History by the Same Type of Offenses that Does not Constitute Repeated Offense under the Criminal Act (Includes Crimes Related to Public Documents)

[DEFINITION OF OFFENSES]

01¹ FORGERY, ALTERATION, AND THE LIKE OF PRIVATE DOCUMENTS

- This means offenses with the following elements of offense as prescribe in the applicable law (Applies to all offenses).

Elements of Offense	Applicable Law
Forging and altering private documents and uttering the documents thereof	Criminal Act, Article 231, Article 234
Making of falsified private documents and other similar documents for employment purposes and uttering the documents thereof	Criminal Act, Article 232, Article 234
Forging and altering of private electronic records and uttering documents thereof	Criminal Act, Article 232-2, Article 234

02¹ MAKING FALSE MEDICAL CERTIFICATE AND OTHER SIMILAR DOCUMENTS

1. TYPE 1 PASSIVE MOTIVE : THIS INDICATES CASES THAT DO NOT FALL UNDER TYPE2 AND THOSE LIKE THE CASES STATED BELOW WHICH INVOLVE ILLEGAL ACTS THAT ARE COMMITTED OUT OF PASSIVE MOTIVE, SUCH AS JOB-RELATED CONVENIENCE OF THE OFFENDER HIMSELF OR HERSELF, EXPEDIENT PERFORMANCE OF DUTIES, AND OTHER SIMILAR CONDUCTS.

- Cases where the offender committed illegal acts simply for the convenience of performing one’s duty. Examples include falsifying medical certificates and inserting such documents when inadvertently omitting or misplacing the original medical certificates while asserting insurance claims.
- Cases where the offender for the purposes of convenience, issues medical certificates based on photographs, images, phone calls, or other similar methods,

even though there was a need to examine the patient in-person, or arbitrarily makes entries for a patient or insurance claimant’s medical certificates due to the time-consumed for the process.

2. TYPE 2 ACTIVE MOTIVE : ACTS WITH AN ACTIVE MOTIVE TO OBTAIN PERSONAL OR THIRD PARTY’S BENEFITS OTHERWISE SOCIAL OR ECONOMIC STATUS

– Cases where the purpose involves insurance frauds, evading military service, certifying an unqualified person as a disabled, issuing benefits to long-term patients, and other similar Incidents.

Elements of Offense	Applicable Law
Making false medical certificates and uttering of the document thereof	Criminal Act, Article 233, Article 234

[DEFINITION OF SENTENCING FACTORS]

1. ENGAGING IN OFFENSE OR MOTIVE FOR COMMITTING OFFENSE CAN BE TAKEN INTO PARTICULAR CONSIDERATION

- This 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;
 - Crime committed by mere curiosity or ostentation;
 - Motive for crime was not for the purpose of obtain illegal benefits or solely for the purpose of other minor benefits; or
 - Other cases with comparable factors.

2. NO SOCIAL DAMAGE CAUSED DUE TO FAILURE TO COMPLETE THE PURPOSE OF THE OFFENSE

- This means cases where the offender could not complete the purpose of the offense and possible social and economic damages that could have resulted from the offense did not occur.

3. CASES WHERE THE OFFENDER IS A CENTRAL FIGURE, EXECUTIVE, PROFESSIONAL TECHNICIAN, OR A PERSON DIRECTLY IN CHARGE OF BROKERING AND CONVEYING TO THE AFOREMENTIONED PERSONS IN POSITIONS

- This means cases where the offender holds a vital position in the criminal organization such as an actual central figure, executive, professional technician that engages in forgery and falsification, and executives of middle rank or higher in charge of the brokering or conveying the documents.

4. SERIOUS SOCIAL AND ECONOMIC HARM RESULTING FROM THE OFFENSE

- This means cases where the crime has caused enormous economic losses; the offender

acquired large amounts of benefit, numerous victims to the offense; and other similar consequences causing social and economic disturbance as well as serious and severe damages resulted from the offense.

5. PASSIVE PARTICIPATION

- 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 the offense.

6. COMPARED TO THE ENTIRE DOCUMENT, ONLY SMALL PARTS OF THE DOCUMENT WAS ALTERED


- This means the part of the document that was altered did not involve affecting significant legal relations (for example, simple alteration of date irrelevant to lapse of a right).

7. OFFENDER MADE REQUESTS TO PROFESSIONALS ENGAGING IN FORGERY OR BROKERS OF SUCH ACTIVITIES

- This means the offender, who is not a professional forger or involved in such organizations, has made requests of forgery or falsifying documents to a professional forger, broker, or a member of an organization engaged in forgery (For example, this includes requesting forgery or falsification to a professional forger or a broker of such criminal organization through the use of internet websites).

8. FORGERY OR ALTERATION OF DOCUMENTS WITH HIGH PUBLIC CONFIDENCE SUCH AS DIRECT LEGAL DOCUMENTS(DOCUMENTS CONTAINING THE DIRECT REPRESENTATION OF THE LEGAL ACT IN QUESTION) OR DOCUMENTS FOR SUBMISSION OF EVIDENCE(HOWEVER, OFFENSES THAT CAUSED SERIOUS SOCIAL AND ECONOMIC DAMAGES ARE EXCLUDED)

- This means the document subjected to the forgery or falsification has high public confidence in the society or certifies important legal relations or facts including direct



legal documents by which the legal act in question was directly rendered, documents for submission of evidence, and the like (However, if applicable to cases that caused serious social and economic damage, this is not considered as a general sentencing factor).

[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

01 | 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.
 - 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 | 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.

[GENERAL APPLICATION PRINCIPLES]

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- 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

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

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.

[GUIDELINE ON MULTI-COUNT CONVICTIONS]

01 | APPLICABLE SCOPE


- 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

- 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

- 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.

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- 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.
 - ※ When the offender who forges or alters official documents or falsifies medical certificates commits offenses of uttering such documents, the offense is not to be treated as a multi-count conviction, but to be considered only as a sentencing factor.

II. GUIDELINE ON SUSPENSION OF SENTENCE

Classification	Adverse	Affirmative
<p>Primary Consideration Factor</p>	<ul style="list-style-type: none"> ● Criminal History of the Same Offense (Imposing of Suspension of Sentence or More Severe Punishment Within Five Years; or More Than Three Incidents of Fines) ● Serious Social and Economic Harm Resulted From the Offense ● Commercial or Organizational Crime 	<ul style="list-style-type: none"> ● Engaging in Offense or Motive for Committing Offense Can be Taken into Particular Consideration ● Expresses Penitence (Including Voluntary Surrender or Confessions, Whistle-blowing, and the Like) ● No Prior Criminal History
<p>General Consideration Factor</p>	<ul style="list-style-type: none"> ● Two or More Criminal History on Suspension of Sentence or for a Greater Offense ● Active Participation as an Accomplice ● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense ● Lack of Social Ties ● Absence of Remorse ● Absence of Efforts to Reverse Harm ● Instigating the Subordinate Person to Commit the Offense 	<ul style="list-style-type: none"> ● Offense Failed to Cause Social Damage or the Social and Economic Harm Caused Are Insignificant ● Passive Participation As an Accomplice ● Strongly-Established Social Ties ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Cases of Physically-ill Offenders ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member ● Cases of Old-age Offenders ● Expresses Sincere Remorse

[DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE]

- In cases where the consideration factors for suspension of sentence of sentencing 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.

[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.