

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

## 13 Crimes of Obstruction of the Performance of Official Duties

This guideline applies to adult offenders (offenders aged 19 or older) who committed any offenses of Obstruction of Official Duties (Criminal Act, Article 136, paragraph 1), Coercion of Duties (Criminal Act, Article 136, paragraph 2), Obstruction of Official Duties by Deceptive Means (Criminal Act, Article 137), Invalidation or Destruction of Objects for Public Use (Criminal Act, Article 141, paragraph 1, paragraph 2), or Extraordinary Cases Involving Obstruction of Official Duties and Extraordinary Cases Involving Obstruction of Official Duties Resulting in Bodily Injury or Death (Criminal Act, Article 144, paragraph 1, paragraph 2).

## I. TYPES OF OFFENSE AND SENTENCING PERIODS

### 01 | OBSTRUCTION OF OFFICIAL DUTIES

| Type | Classification   | Mitigated Sentencing Range | Standard Sentencing Range | Aggravated Sentencing Range |
|------|--|----------------------------|---------------------------|-----------------------------|
| 1    | Obstruction of Performance of Official Duties/Coercion of duties | - 8months                  | 6months - 1yr 4months     | 1yr - 4yrs                  |
| 2    | Obstruction of Performance of Official Duties by Deceptive Means | 4months - 10months         | 8months - 1yr 6months     | 1yr - 3yrs                  |

| Classification                 |             | Mitigating Factor  | Aggravating Factor  |
|--------------------------------|-------------|--|---|
| Special Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>● Extent of Violence, Threat, or Deceptive Means Used is Slight</li> <li>● Extent of Performing the Official Duties was Excessive or Inappropriate</li> </ul>   | <ul style="list-style-type: none"> <li>● Demonstrating the Organization's Power or the Power of the Multitude; Otherwise Offense Committed While Carrying a Dangerous Object (Type 1)</li> <li>● Serious Bodily Injuries (Type 1)</li> <li>● Offense Committed Against Numerous Public Officials (Type 1)</li> <li>● Significant Obstruction of Official Duties</li> <li>● Repeated Crimes That Does Not Constitute as Concurrent Crimes</li> <li>● Instigating the Subordinate Person to Commit the Offense</li> </ul> |
|                                | Actor /Etc. | <ul style="list-style-type: none"> <li>● Those with Hearing and Visual 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 (Type 1, Cases with Serious Bodily Injury)</li> </ul> | <ul style="list-style-type: none"> <li>● Repeated Offenses of the Same Type under the Criminal Act</li> </ul>   |
| General Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>● Passive Participation</li> </ul>  | <ul style="list-style-type: none"> <li>● Premeditated Crime</li> <li>● Cases Resulting in Less Serious Bodily Injuries (Type 1)</li> </ul>  |
|                                | Actor /Etc. | <ul style="list-style-type: none"> <li>● Those with Mental Incapacity (These Are Cases Where the Offender Can be Held Liable)</li> <li>● No Prior Criminal History</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment (Type 1, Cases with Non-serious Bodily Injury)</li> </ul>   | <ul style="list-style-type: none"> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses 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>  |

## 02 | INVALIDATION OR DESTRUCTION OF OBJECTS USED FOR PUBLIC PURPOSES

| Type | Classification                                  | Mitigated Sentencing Range | Standard Sentencing Range  | Aggravated Sentencing Range |
|------|---|----------------------------|----------------------------|-----------------------------|
| 1    | invalidation of Objects Used for Public Purpose | - 8months                  | 6months<br>- 1yr 6months   | 1yr r- 4yrs                 |
| 2    | Destruction of Objects Used for Public Purpose  | 6months<br>- 1yr 6months   | 10months<br>- 2yrs 6months | 2yrs - 5yrs                 |

| Classification                 |             | Mitigating Factor  | Aggravating Factor  |
|--------------------------------|-------------|--|---|
| Special Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>● Value of the Invalidated or Destroyed Object is Insignificant</li> <li>● Extent of Performing the Official Duties was Excessive or Inappropriate</li> </ul>   | <ul style="list-style-type: none"> <li>● Demonstrating the Organization's Power or Leveraging Through the Power of Multitudes Otherwise, Offense Committed While Carrying a Dangerous Object</li> <li>● Serious Bodily Injuries</li> <li>● Repeated Crimes That Does Not Constitute as Concurrent Crimes</li> <li>● Instigating the Subordinate Person to Commit the Offense</li> </ul> |
|                                | Actor /Etc. | <ul style="list-style-type: none"> <li>● Those with Hearing and Visual 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 (Cases with Serious Bodily Injury)</li> </ul> | <ul style="list-style-type: none"> <li>● Repeated Offenses of the Same Type under the Criminal Act</li> </ul>   |
| General Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>● Passive Participation</li> </ul>  | <ul style="list-style-type: none"> <li>● Premeditated Crime</li> <li>● Cases Resulting in Less Serious Bodily Injuries</li> </ul>   |
|                                | Actor /Etc. | <ul style="list-style-type: none"> <li>● Offender Expresses Remorse and the Victim Opposes Punishment (Cases with Non-serious Bodily Injury)</li> <li>● Invalidated or Destroyed Object Recovered</li> <li>● Those with Mental Incapacity (These Are Cases Where the Offender Can be Held Liable)</li> <li>● No Prior Criminal History</li> </ul>          | <ul style="list-style-type: none"> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses 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>  |

### 03 | EXTRAORDINARY CASES INVOLVING OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES OR DEATH

| Type | Classification   | Mitigated Sentencing Range | Standard Sentencing Range | Aggravated Sentencing Range |
|------|--|----------------------------|---------------------------|-----------------------------|
| 1    | Particular obstruction of official duties Resulting in Bodily Injuries | 1yr 6months - 3yrs         | 2yrs - 4yrs               | 3yrs - 6yrs                 |
| 2    | Particular obstruction of official duties Resulting in Death           | 3yrs - 6yrs                | 5yrs - 8yrs               | 7yrs - 10yrs                |

| Classification                 |             | Mitigating Factor   | Aggravating Factor   |
|--------------------------------|-------------|---|--|
| Special Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>● Performance of Official Duties was Excessive or Inappropriate</li> <li>● Offender's Conduct Was Not Direct Cause of Death (Type 2)</li> </ul>  | <ul style="list-style-type: none"> <li>● Serious Bodily Injuries (Type 1)</li> <li>● Offense Committed Against Numerous Public Officials</li> <li>● Significant Obstruction of Official Duties</li> <li>● Repeated Crimes That Does Not Constitute as Concurrent Crimes</li> <li>● Instigating the Subordinate Person to Commit the Offense</li> </ul> |
|                                | Actor /Etc. | <ul style="list-style-type: none"> <li>● Those with Hearing and Visual 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>● Repeated Offenses of the Same Type under the Criminal Act</li> </ul>  |
| General Sentencing Determinant | Conduct     | <ul style="list-style-type: none"> <li>● Passive Participation</li> </ul>   | <ul style="list-style-type: none"> <li>● Cases Where the Base Offense (Obstruction of Official Duties) was Premeditated</li> </ul>   |
|                                | Actor /Etc. | <ul style="list-style-type: none"> <li>● Rescuing or Transferring the Victim to the Hospital After Committing the Offense</li> <li>● Those with Mental Incapacity (These Are Cases Where the Offender Can be Held Liable)</li> <li>● No Prior Criminal History</li> </ul>   | <ul style="list-style-type: none"> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses 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>               |

## [ DEFINITION OF OFFENSES ]

### 01<sup>1</sup> OBSTRUCTION OF OFFICIAL DUTIES

#### 1. TYPE 1 OBSTRUCTION OF OFFICIAL DUTIES

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

| Elements of Offense  | Applicable Law                         |
|--|--|
| Use of force or threat against a public official engaged in performing of public duties  | Criminal Act, Article 136, paragraph 1 |
| Use of force or threat against a public official for the purposes of coercing or obstructing certain acts; otherwise, to force resignation from particular position                        | Criminal Act, Article 136, paragraph 2 |
| Commission of aforementioned crimes by demonstrating the organization's power or leveraging through the power of multitudes otherwise, offense committed while carrying a dangerous object | Criminal Act, Article 144, paragraph 1 |

#### 2. TYPE 2 OBSTRUCTION OF OFFICIAL DUTIES BY DECEPTIVE MEANS

| Elements of Offense  | Applicable Law            |
|--|---------------------------|
| Obstruction of the official duties by use of deceptive schemes | Criminal Act, Article 137 |



## 02<sup>1</sup> INVALIDATION OR DESTRUCTION OF OBJECTS USED FOR PUBLIC PURPOSES

### 1. TYPE 1 INVALIDATION OF OBJECTS USED FOR PUBLIC PURPOSES

| Elements of Offense   | Applicable Law                         |
|---|--|
| Damaging, concealing or other similar conducts performed to documents or goods; electronic records that includes electromagnetic records and other similar items used in public offices.    | Criminal Act, Article 141, paragraph 1 |
| Commission of aforementioned crimes by demonstrating the organization's power or leveraging through the power of multitudes; otherwise, offense committed while carrying a dangerous object | Criminal Act, Article 144, paragraph 1 |

### 2. TYPE 2 DESTRUCTION OF OBJECTS USED FOR PUBLIC PURPOSES

| Elements of Offense   | Applicable Law                         |
|---|--|
| Destroying structures, ships, trains, or airplanes used in public office  | Criminal Act, Article 141, paragraph 2 |
| Commission of aforementioned crimes by demonstrating the organization's power or leveraging through the power of multitudes; otherwise, offense committed while carrying a dangerous object | Criminal Act, Article 144, paragraph 1 |

## 03<sup>1</sup> PARTICULAR OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES OR DEATH

### 1. TYPE 1 EXTRAORDINARY OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES

| Elements of Offense   | Applicable Law                         |
|---|--|
| Offenders of extraordinary obstruction of official duties, extraordinary cases of invalidation or destruction of objects used for public purposes causes bodily injuries to a public official | Criminal Act, Article 144, paragraph 2 |

### 2. TYPE 2 EXTRAORDINARY OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN DEATH

| Elements of Offense   | Applicable Law                         |
|---|--|
| Offenders of extraordinary obstruction of official duties, extraordinary cases of invalidation or destruction of objects used for public purposes causes death to a public official | Criminal Act, Article 144, paragraph 2 |

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## [ DEFINITION OF SENTENCING FACTORS ]

### **1. EXTENT OF PERFORMING THE OFFICIAL DUTIES WAS EXCESSIVE OR INAPPROPRIATE**

- This means cases where the legal authority and proper means for performing the official duties was present; but, unnecessarily excessive methods for performing such duties resulted; or the public official's use of words or attitude provoked the offender.

### **2. SERIOUS BODILY INJURIES**

- This means cases where the recovery from the inflicted injury requires more than 4 to 5 weeks of medical care in general, including cases with after-effects causing impairment, severe disability resulting from the offense, injuries inflicted to vulnerable body parts or further anticipated bodily injuries.

### **3. SIGNIFICANT OBSTRUCTION OF OFFICIAL DUTIES**

- This means that the obstruction of official duties in regards to the extent and duration causing inconvenience or interruptions to official duties is significant.

### **4. REPEATED CRIMES THAT DOES NOT CONSTITUTE AS CONCURRENT CRIMES**

- This means the offender has three or more incidents of imposing of fines or more severe punishments regarding same type of offense; this is calculated within three years from the time of the commission of 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 crime.

### **6. PREMEDITATED CRIME**

- This 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.

**7. VALUE OF THE INVALIDATED OR DESTROYED OBJECT IS INSIGNIFICANT**

- This means cases where the social and economic value of the invalidated or destructed object is insignificant so that the cost for repair or reversing the harm is relatively small.

**8. OFFENDER'S CONDUCT WAS NOT DIRECT CAUSE OF DEATH**

- This means cases where intervening causes unforeseen by the offender existed at the time of the commission of the offense and, therefore, the offender cannot be held liable for the direct cause of the death.

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## [ ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS ]

### 01 | DETERMINING APPROPRIATE SENTENCING RANGE

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- 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 | DETERMINING THE APPLICABLE SENTENCE

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- 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<sup>1</sup> 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<sup>1</sup> 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<sup>1</sup> 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

| Classification                             | Adverse   | Affirmative   |
|--|---|---|
| <p><b>Primary Consideration Factor</b></p> | <ul style="list-style-type: none"> <li>● Demonstrating the Organization's Power or the Power of the Multitude; Otherwise Offense Committed While Carrying a Dangerous Object</li> <li>● Significant Obstruction of Official Duties</li> <li>● Premeditated or Repeated Crimes</li> <li>● Cases Resulting in Serious Bodily Injuries or Death</li> <li>● 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)</li> </ul> | <ul style="list-style-type: none"> <li>● Extent of Violence, Threat, or Deceptive Means Used is Slight</li> <li>● Extent of Performing the Official Duties was Excessive or Inappropriate</li> <li>● Efforts to Obstruct or Confront the Accomplice's Commission of the Offense</li> <li>● No Prior Criminal History</li> <li>● Expresses Penitence (Including Voluntary Surrender or Confessions, Whistle-blowing, and the Like)</li> </ul>  |
| <p><b>General Consideration Factor</b></p> | <ul style="list-style-type: none"> <li>● Two or More Criminal History on Suspension of Sentence or for a Greater Offense</li> <li>● Lack of Social Ties</li> <li>● Drug or Alcohol Addiction</li> <li>● Absence of Remorse</li> <li>● Active Participation as an Accomplice</li> <li>● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense</li> <li>● Absence of Efforts to Reverse Harm</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>● Passive Participation As an Accomplice</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 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.

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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.

