

Promulgated on April 24, 2009, Effective on July 1, 2009

7 Crimes of False Accusation

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of False Accusation (Criminal Act, Article 156), or False Accusation as prescribed in the Aggravated Punishment Act (Aggravated Punishment Act, Article 14).

I. TYPES OF OFFENSE AND SENTENCING PERIODS

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Standard False accusation	- 1yr	6months - 2yrs	1yr - 4yrs
2	False accusation under Aggravated Punishment Act	1yr - 3yrs	2yrs - 4yrs	3yrs - 6yrs

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Participation Resulting From Outside Pressure or Threat by Another Person ● Consent by the Falsely Accused 	<ul style="list-style-type: none"> ● Repeated Charges Not As a Concurrent Offenses ● Causes Serious Harm ● 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 ● Voluntary Surrender to Investigative Agencies or Confession 	<ul style="list-style-type: none"> ● Repeated Offenses of Same Offense under the Criminal Act (Including Destroying Evidence, Hiding Offenders, Perjury, and the Like)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Passive Participation ● Motive for Committing Offense Can be Taken into Consideration 	<ul style="list-style-type: none"> ● Multiple Incidents of Falsifying Facts
	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● Offender Expresses Remorse and the Victim Opposes Punishment (This Includes Genuine Efforts to Reverse Harm) ● No Prior Criminal History 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act or Criminal History of Same Type of Offenses that Does Not Constitute Repeated Offenses under the Criminal Act (Including Destroying Evidence, Hiding Offenders, Perjury, and the Like)

[DEFINITION OF OFFENSES]

01 | TYPE 1 STANDARD FALSE ACCUSATION

- This means where the offender reported false information to a government office or a public officer with the purpose to have a criminal measure or disciplinary action imposed on another person as prescribed in Criminal Act, Article 156 and does not fall within Type 2.

02 | TYPE 2 FALSE ACCUSATION PRESCRIBED IN AGGRAVATED PUNISHMENT ACT

- This means cases where the false accusation as prescribed in Aggravated Punishment Act which adheres to the Criminal Act, Article 156.

[DEFINITION OF SENTENCING FACTORS]

01 | CONSENT BY THE FALSELY ACCUSED

- This means cases where the offender reported false information after requested by or permission from the falsely accused.

02 | CAUSED SERIOUS HARM

- This means cases with one or more of the following factors:
 - The offense caused the falsely accused to be arrested, convicted, or subject to a disciplinary action;
 - The offense causes the accused to be subject to investigation or questioning for a substantial amount of time; or
 - Other cases with comparable factors.

03 | VOLUNTARY SURRENDER TO INVESTIGATIVE AGENCIES OR CONFESSION

- Voluntary surrender to investigative agencies can be initiated any time, but confessions must be made prior to the judgment of the criminal case or decision of the disciplinary action is becomes final.

04 | 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.

05 | MOTIVE FOR COMMITTING OFFENSE CAN BE TAKEN INTO CONSIDERATION

- This applies to cases with one or more of the following factors.
 - When the offender made a false accusation that is beyond exaggeration of harms while being inflicted with certain harms caused by the falsely accused or others

associated with the accused.

- Other considerations that can be taken into account that led to the accusation.

06 | MULTIPLE INCIDENTS OF FALSIFYING FACTS

- This means cases where the offender reported several Incidents of false information that could suffice as grounds for criminal convictions or disciplinary actions.

07 | EXPRESSES SINCERE REMORSE

- This means cases where the offender admits the commission of the crime and expresses sincere regret for the conduct.
- However, this excludes cases where confession is considered as a special mitigation factor.

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

- This means cases where the offender expresses signs of remorse and the falsely accused acknowledges this and objects to punishing the offender.
- This includes cases where deposits are made in a considerable amount of money comparable to reaching of an agreement with the falsely accused as a result of the offender's genuine efforts to reverse harm.

[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.

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) ● Caused Serious Harm 	<ul style="list-style-type: none"> ● Offender Expresses Remorse and Victim Opposes Punishment (Includes Genuine Efforts to Reverse Harm) ● Expresses Penitence (Including Voluntary Surrender or Confessions, 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 Efforts to Reverse Harm 	<ul style="list-style-type: none"> ● Passive Participation as 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

[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.