



## Guidelines Changes in Response to 2021 1st Special Session

MSGC Staff Presentation

July 22, 2021

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## Implied in Each of Today's Motions to Modify the Guidelines *(unless otherwise specified)*

1. Each modification is subject to a public hearing on September 1, 2021
2. Each modification is subject to the Commission's final action on September 9, 2021
3. The specified modification effective date is September 15, 2021, to apply as provided in section 3.G of the Sentencing Guidelines  
  
(The modifications will apply to offenders whose date of offense is on or after September 15, 2021)
4. The motion includes the staff-drafted Guidelines modification language associated with the motion

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## A. Changes to Sex Offenses

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## 1. Changes to CSC Offenses Involving Force *(see pp. 2–3)*

### What the Act Does

- Carves out force with bodily harm from other “force” definitions
- Moves force-with-bodily-harm offenses from CSC 3 & CSC 4 to CSC 1 & CSC 2
- Assigns 144-month & 90-month minimums to the new offenses
- Restructures force & coercion offenses

### Staff-Recommended Response

- Rank new force offenses at SL A (CSC 1) and SL B (CSC 2)
- Add new CSC 1 & CSC 2 force offenses to Severe Violent Offense List
- Maintain existing rankings for other restructured force & coercion offenses

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## 2. Reorganize CSC Offenses/Age/Occupation

(see pp. 3–12)

### What the Act Does

- Reduces most age gaps from 48 months to 36 months
- Changes the age threshold for CSC 1 & CSC 2 from “under 13” to “under 14”
- Consolidates occupation-related offenses under “prohibited occupational relationships” (and adds two new ones)
- All age cases (where age is an element) are placed in new subd. 1a of each statute
- Non-age cases are divided between subds. 1 (adult victim) and 1a (child victim)

### Staff-Recommended Response

- With respect to age-gap and age-threshold changes, make no Guidelines changes other than conforming changes
- Rank prohibited occupational relationship offenses at SL C (CSC 3) & SL E (CSC 4)
- Treat reorganized offenses in the same way that corresponding offenses with same elements are now treated
  - *But see next slide*
- Make conforming technical changes

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## Dividing Non-Age CSC Offenses by Adult & Child Victims

(see separate paper)

- Some Commission members expressed interest in punishing newly divided offenses differently depending on the victim’s status as a child
- After these non-age cases are reorganized, an aggravated departure based on the victim’s status as a child will no longer be possible
  - Practically, there were no such departures in 2019
  - In fact, there was a higher *mitigated* dispositional departure rate for child victims
- Possible alternative to the “treat reorganized offenses in the same way” recommendation (previous slide): For CSC offenses against child victims, increase duration 15% compared to identical offenses against adult victims

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### 3. New Offense: CSC 5 (Nonconsensual Penetration)

(see pp. 12–21)

#### What the Act Does

- Creates new felony CSC 5 for nonconsensual sexual penetration
- Similar to existing gross misdemeanor CSC 5 for nonconsensual sexual contact
- Two-year statutory maximum penalty

#### Staff-Recommended Response

- Rank at new SL I, shaded through CHS 4, maxing out at 24 months
  - (Appendix 2, pp. 50–52)
  - ½ point in criminal history score
- Alternatively: Rank at SL H, shaded through CHS 4
  - (Appendix 3, pp. 53–55)
  - 1 pt. in CHS for sex offense; otherwise ½
- Add to consecutive-sentence list
- Make conforming technical changes

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### 4. New Offenses: Sexual Extortion

(see pp. 21–24)

#### What the Act Does

- Creates new offenses for sexual penetration or contact compelled by threats to create a disadvantage or withhold a benefit
- Same respective statutory maximum penalties as CSC 3 and 4
- Classified as a sex offense, but not placed on all violent-crime lists

#### Staff-Recommended Response

- Rank penetration offense at SL C (Alternatives: rank at SL D or leave unranked)
- Rank contact offense at SL E (Alternatives: rank at SL F or leave unranked)
- Add to consecutive-sentence list
- Add to list of exceptions to the length of stay

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## 5. Sex Trafficking Added to “Violent Crime” List

(see pp. 25–27)

### What the Act Does

- Adds Sex Trafficking to the list of “violent crimes” in the career-offender & dangerous-offender statute

### Staff-Recommended Response

- Add aggravated sex trafficking (only) to Severe Violent Offense List
- Alternative to staff recommendation: Add all sex trafficking offenses to Severe Violent Offense List

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## 6. Sex Trafficking Statutory Maximums Increased

(see pp. 27–29)

### What the Act Does

- Five-year increase to statutory maximum penalty of each of the three sex trafficking offenses

### Staff-Recommended Response

- Make conforming technical changes (no ranking changes recommended)
- Note: This will require changing some upper-range durations for SL C on the Sex Offender Grid, as the statutory maximum penalty for Sex Trafficking 2nd Degree will exceed the current grid maximum of 180 months (15 years)

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## 7. Child Prostitution Age Threshold Adjustment

(see pp. 30–31)

### What the Act Does

- Consistent with CSC changes, “Under 13” is changed to “Under 14”
- Note: This is not a sex offense, but is included in this section because of the similar policy change in CSC & child pornography offenses

### Staff-Recommended Response

- Make no Guidelines changes (thus treating new child prostitution offenses involving 13-year-old victims like existing child prostitution offenses involving 12-year-old victims)

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## 8. Child Porn Age Threshold Adjustment & Ranking Directive

(see pp. 31–33)

### What the Act Does

- Consistent with CSC changes, “Under 13” is changed to “Under 14”
- MSGC must increase severity of Dissemination of Child Pornography (enhanced) from SL D to SL C
- MSGC must increase severity of Possession of Child Pornography (enhanced) from SL F to SL E
- MSGC must rerank of Use of Minors in Sexual Performance as proposed

### Staff-Recommended Response

- Adjust Use of Minors in Sexual Performance severity levels as proposed in January report
- Adjust severity levels for enhanced dissemination and possession offenses as directed
- With respect to age threshold changes, make no Guidelines changes other than conforming changes

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## 9. Solicit Child for Sex – Statutory Maximums Increased *(see pp. 34–35)*

### What the Act Does

- Statutory maximum penalty for Solicitation of Children to Engage in Sexual Conduct is increased from three to five years

### Staff-Recommended Response

- Make conforming technical changes (no ranking changes recommended)

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## B. Other Changes to Criminal Offenses & Sentencing Policy

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## 1. New Offense: Child Torture

(see pp. 36–38)

### What the Act Does

- Creates new offense for torturing a child under age 18
- “Torture” is the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner
- 25-year statutory maximum penalty

### Staff-Recommended Response

- Rank Child Torture at SL 8 (Alternative: leave unranked)
- Add to consecutive-sentence list
- Add to Severe Violent Offense list

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## 2. New Offense: Patrons of Prostitution (2nd/Subs.)

(see pp. 38–39)

### What the Act Does

- Elevates Patrons of Prostitution from a misdemeanor to a gross misdemeanor
- Establishes a felony for a second violation within 10 years of a previous conviction
- Five-year statutory maximum penalty

### Staff-Recommended Response

- Rank at Patrons of Prostitution (2nd or Subsequent Violation) at SL 3

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### 3. Expansion of Assault 1st Degree *(see pp. 40–44)*

#### What the Act Does

- Current Assault 1: Inflicting great bodily harm (GBH) upon anyone –or– using deadly force against official (peace officer, prosecutor, judge, or correctional employee)
- Deadly force against official: 10-yr. mandatory minimum
- Expanded Assault 1: Two new subdivisions (subd. 3 & 4) involving inflicting GBH upon an official
- Subd. 4 also requires deadly force or dangerous weapon
- New, long mandatory minimums: 15 & 25 yrs.

#### Staff-Recommended Response

- Rank Assault 1st Degree (Great Bodily Harm Upon Official) at SL 10
- Leave unranked Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)
- Clarify and edit offenses listed at SL 9 in Sentencing Guidelines Grid
- Clarify and distinguish offenses listed in section 5
- Include the new offenses in Appendix 1, Mandatory and Presumptive Sentences Reference Table

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### Assault 1st Degree – Two New Subdivisions

Subdivision	Victim	Means	Harm	Mandatory Minimum	Statutory Maximum	Severity Level
1	—	—	Great bodily harm	—	20 years	9
2	Official	Deadly force	—	10 years	20 years	9
3	Official	—	Great bodily harm	15 years	25 years	10 (staff rec.)
4	Official	Dangerous weapon or deadly force	Great bodily harm	25 years	30 years	Unranked (staff rec.)

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## 4. Reorganization of Drive-By Shooting

*(see pp. 45–46)*

### What the Act Does

- Reorganizes Drive-By Shooting statute to clarify that a victim need not be in another vehicle or building

### Staff-Recommended Response

- Make conforming technical changes

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## 5. Veterans Restorative Justice Act

*(see pp. 47–48)*

### What the Act Does

- Requires stays of adjudication when a veteran defendant suffers from a service-connected, offense-connected condition
- Provides a mitigated Guidelines departure factor in the event of conviction

### Staff-Recommended Response

- Incorporate the statutory departure factor within the Guidelines' list of departure factors
- Reference the act in section 3.F, Military Veterans

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