



Legislative Update Criminal Sexual Conduct & Sexual Extortion

Staff Presentation

MSGC Meeting May 6, 2021

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Introduction

- This presentation is limited to the criminal sexual conduct (CSC) and sexual extortion provisions common to both the Senate and House versions of S.F. 970 (Omnibus Public Safety Bill)
 - Further amendments are possible before final passage
- The legislative session will end May 17, 2021
- Timing
 - Today: Last day for MSGC to make recommendations to the Legislature
 - June 3: MSGC meets to decide changes to Sentencing Guidelines in response to legislative action
 - July 15: MSGC holds public hearing
 - July 21: MSGC meets to take final action on Guidelines changes
 - August 1: Staff publishes new Sentencing Guidelines

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Changes to definitions of terms

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Four revised definitions

- “Force”—Divided and narrowed
 - Current definition encompasses **infliction** of bodily harm, **attempted** infliction of bodily harm, **threat** of bodily harm, & threat of any other crime
 - New definition separates **infliction of bodily harm** from the rest of the definition
 - New definition deletes requirement that the force must cause victim to submit
- “Mentally incapacitated”—Expanded to encompass voluntary intoxication
- “Coercion”—Makes the definition’s language somewhat broader
- “Significant relationship”—Expanded to include parent’s boyfriend/girlfriend

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Changes to definitions of terms: Guidelines implications

- “Force”—with bodily harm inflicted—is used to create a new, more serious offense (discussed later)
- “Mentally incapacitated” redefinition will expand the number of mentally impaired, mentally incapacitated, or physically helpless (“MI/PH”) cases sentenced
- Staff does not foresee a significant change due to “coercion” redefinition
- Due to the “significant relationship” redefinition—
 - Staff expects more significant relationship (“SR”) cases to be sentenced
 - These are expected to come from current position of authority (“POA”) cases
 - SR cases are ranked the same as POA cases, unless certain aggravating factors are present
- **Bottom line for June: Staff unlikely to recommend changes as a result of these redefinitions**

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Another new definition: “prohibited occupational relationships”

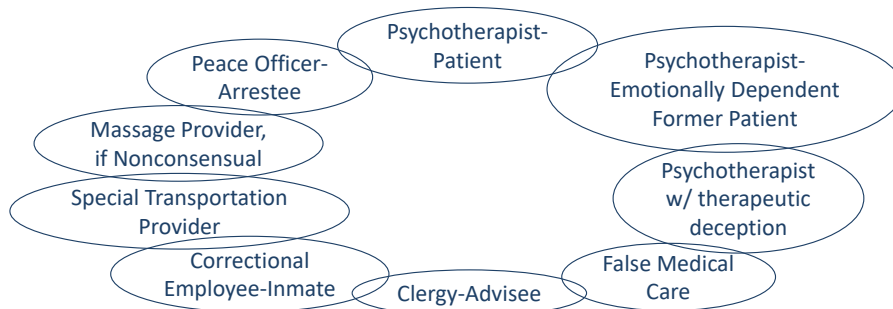
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Current CSC 3 & 4 offenses involving occupations

- Under current law, most of the CSC 3 & 4 offense paragraphs relate to sex acts by members of certain occupations; consent is generally no defense



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These offenses are consolidated & expanded

- The bill collectively refers to these as “prohibited occupational relationships”
- The bill also adds two new prohibited occupational relationships
- Another expansion: false impersonators



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Prohibited occupational relationships: Guidelines implications

- The current Guidelines rank all occupation-related offenses identically
 - CSC 3 offenses (sexual penetration) are ranked at severity level (SL) C
 - CSC 4 offenses (sexual contact) are ranked at SL E
- Consolidating all offenses under one paragraph—
 - Makes it difficult to distinguish the severity of these offenses from each other, if the Commission were interested in doing that—
 - In the future, or
 - Now, with respect to the two new offenses
 - Avoids the need to change the Guidelines every time a new occupation is added to law
- **Bottom line for June: Staff likely to recommend ranking prohibited occupational relationship offenses at SL C & SL E**

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Changes to age thresholds

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“Under 13” is changed to “under 14”

CURRENT LAW

- If victim is under 13, offense is CSC 1 or 2
- If victim is 13, 14, or 15, offense is CSC 3 or 4



BILL

- If victim is under 14, offense is CSC 1 or 2
- If victim is 14 or 15, offense is CSC 3 or 4

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48-month age gap reduced to 36 months

- **Current law:** Most CSC offenses involving children require a minimum age gap between the perpetrator and the child
 - Victims under 13: 36-month age gap
 - Position-of-authority cases & 13–16 year old victims: **48-month** age gap
 - CSC 3 has a shorter, alternative age gap of 24 months (lesser crime)
 - Significant-relationship cases do not require an age gap
 - CSC 4 has no age gap for position of authority
- **Bill:** Reduces 48-month age gap to **36 months**; leaves the other gaps the same
 - ... but introduces a new 48-month age gap for the new occupational relationship offense involving high school students & high school staff, or licensed teachers at other schools

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Mistake-of-age defense narrowed

- **Current law:** For CSC 3 & 4 offenses based solely on victim's age (13, 14, or 15), the mistake-of-age defense is available only to defendants within **120 months** of the victim's age
- **Bill:** The mistake-of-age defense is limited to defendants within **60 months** of the victim's age

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Changes to age thresholds: Guidelines implications

- Commission ranked the severity of these age-related offenses based on existing age thresholds
- Bill's age-threshold changes will alter the elements of age-related offenses
 - Some crimes will shift to higher degrees (*offenses involving 13-year-old victims*)
 - Some non-criminal behavior will become criminal (*cases with a 3-year age gap*)
- Should the Commission consider reducing severity level because of this?
 - But statutory 144-mo. presumptive sentence applies to new CSC 1 (13-year-old victims)
- Assuming no changes in ranking, prison-bed impact is high
 - Moving 13-year-old victims to CSC 1 & 2 (severity levels A & D) would eventually cost an estimated 162 prison beds
- **Bottom line for June: Staff likely to recommend maintaining existing SL rankings for amended offenses**

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Reorganization of CSC offenses

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The basic statutory organizational scheme is unchanged

- **CSC 1** offenses require sexual **penetration***
- **CSC 2** offenses are the same as CSC 1, but requiring only sexual **contact**
- **CSC 3** offenses require sexual **penetration**
- **CSC 4** offenses are very similar to CSC 3, but requiring only sexual **contact**

*or, in the case of young children, bare genital-to-genital contact

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New CSC 1 & 2 offense: Force with bodily harm

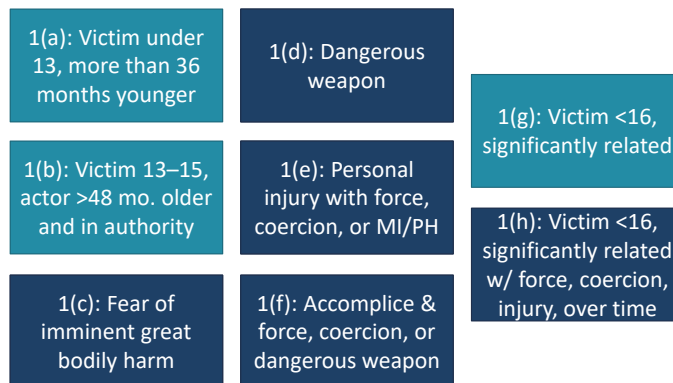
- Current law:
 - Use of “force” alone = CSC 3 or 4
 - Use of “force” **plus** “personal injury” = CSC 1 or 2
- But one of the definitions of “force” is the infliction of “bodily harm”
- And one of the definitions of “personal injury” is “bodily harm”
- Can the same “bodily harm” (which includes physical pain) supply both the “force” and the “personal injury” for CSC 1 or 2?
- At least one district court judge (and law review article) finds this practice to be unconstitutional
- Bill solves this problem by moving force **with bodily harm** from CSC 3 or 4 to CSC 1 or 2

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Current law: CSC 1 & 2 offenses



Current severity rankings: ● A (CSC 1) or B (CSC 2) ● A (CSC 1) or D (CSC 2)

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Bill's CSC 1 & 2 offenses separate child victims

Subd. 1: Adult victims		Subd. 1a: Child victims		
1(a): Fear of imminent great bodily harm	1(d): Force with bodily harm	1a(a): Fear of imminent great bodily harm	1a(d): Accomplice & force, coercion, dangerous weapon	1a(g): Victim <16, significantly related
1(b): Dangerous weapon		1a(b): Dangerous weapon	1a(e): Victim under 14, more than 36 months younger	1a(h): Victim <16, significantly related w/ force, coercion, injury, over time
1(c): Personal injury with force, coercion, or MI/PH		1(e): Accomplice & force, coercion, or dangerous weapon	1a(c): Personal injury with force, coercion, or MI/PH	1a(f): Victim 14 or 15, actor >36 mo. older & in authority

Assumed severity rankings: ● **A (CSC 1) or B (CSC 2)** ● **A (CSC 1) or D (CSC 2)**

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Current law: CSC 3 & 4 offenses

1(a): Victim under 13, less than 36 months younger	1(d): MI/PH	1(g): Victim 16–17, significantly related w/ force, coercion, injury, over time
1(b): Victim 13–15, actor >48* mo. older**	1(e): Victim 16–17, actor >48 mo. older and in authority	
1(c): Force or coercion	1(f): Victim 16–17, significantly related	

1(h)(i)(j)(k)(l)(m)(n)(o)(p): Occupation offenses

Current severity rankings: ● **C (CSC 3) or E (CSC 4)** ● **D (CSC 3) or F (CSC 4)**

*For CSC 3, there is SL G version if age gap is 24–48 months
**For CSC 4, there is a position-of-authority version with no age gap required

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Bill's CSC 3 & 4 offenses separate child victims

Subd. 1: Adult victims		Subd. 1a: Child victims		
1(a): Coercion	1(c): Force without bodily harm	1a(a): Victim under 14, less than 36 months younger	1a(d): MI/PH	1a(g): Victim 16-17, significantly related w/ force, coercion, injury, over time
1(b): MI/PH	1(d): Prohibited occupational relationship	1a(b): Victim 14-15, actor >36* mo. older**	1a(e): Victim 16-17, actor >36 mo. older & in authority	1a(h): Force without bodily harm
<p>*For CSC 3, there is a SL G (assumed) version if age gap is 24-36 months **For CSC 4, there is a position-of-authority version with no age gap required</p>		1a(c): Coercion	1a(f): Victim 16-17, significantly related	1a(i): Prohibited occupational relationship

Assumed severity rankings: ● C (CSC 3) or E (CSC 4) ● D (CSC 3) or F (CSC 4)

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Creation of new felony CSC 5 offense

- Current law: nonconsensual sexual **contact** is a gross misdemeanor
- Bill: nonconsensual sexual **penetration** is a felony
 - Two-year, \$10,000 maximum penalty

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Reorganization of CSC offenses: Guidelines implications

- Severity-level rankings for new CSC 1 & 2 force-with-bodily-harm offenses are likely constrained by statutory presumptive sentences of 144 & 90 months
- Separation of adult-victim from child-victim offenses opens opportunities to make severity distinctions
 - E.g., ranking coerced penetration of a minor differently than coerced penetration of an adult
- Two-year statutory maximum for new CSC 5 offense presents a ranking challenge
 - One possible course of action: Use SL H? This would require shading now-unshaded cells
- **Bottom line for June: Staff likely to recommend—**
 - **Ranking new force offenses at SL A & SL B;**
 - **Making no distinctions between adult and child offenses with identical elements; and**
 - **Using SL H—shaded through CHS 4 or 5—for the new CSC 5 felony (or add a new row?)**

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Creation of sexual extortion offense

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New sexual extortion offense

- Sexual penetration or contact, the submission to which is compelled by a threat to—
 - Withhold or harm a job or business;
 - Cause criminal charges to be made;
 - Report immigration status;
 - Disseminate private sexual images;
 - Expose a secret; or
 - Change housing or rent
- May not be charged as an attempt
- Statutory maximum penalties:
 - Penetration: 15 years, \$30,000
 - Contact: 10 years, \$20,000
- Same statutory maximums as CSC 3 & 4
- Treated as a “sex offense” in 609.3455
- Sex-offense penalties apply, including 10-year conditional release and possible life sentence

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Creation of sexual extortion offense: Guidelines implications

Commission will need to make ranking decisions

- Place sexual extortion on sex offender grid?
- Rank equally to force/coercion offenses and occupational relationship offenses, or below?
 - MSGC staff’s fiscal note assumed would rank them equally, at SL C & SL E
 - But there’s also a case to be made that sexual extortion involves a lower degree of compulsion, should be ranked at SL D & SL F
- **Bottom line for June: Staff likely to present both options to the Commission without recommending one or the other**

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