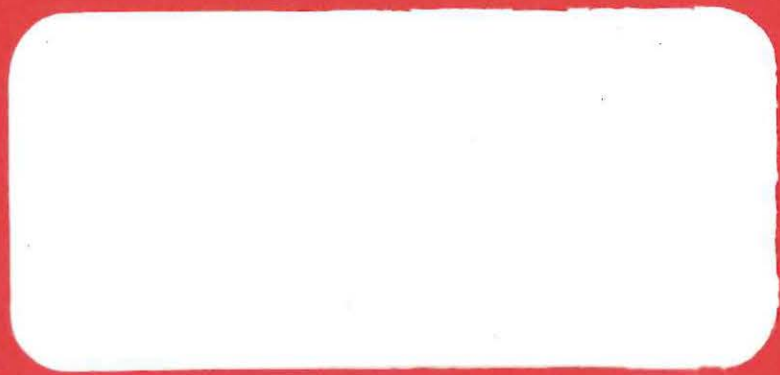


Minnesota Sentencing Guidelines Commission

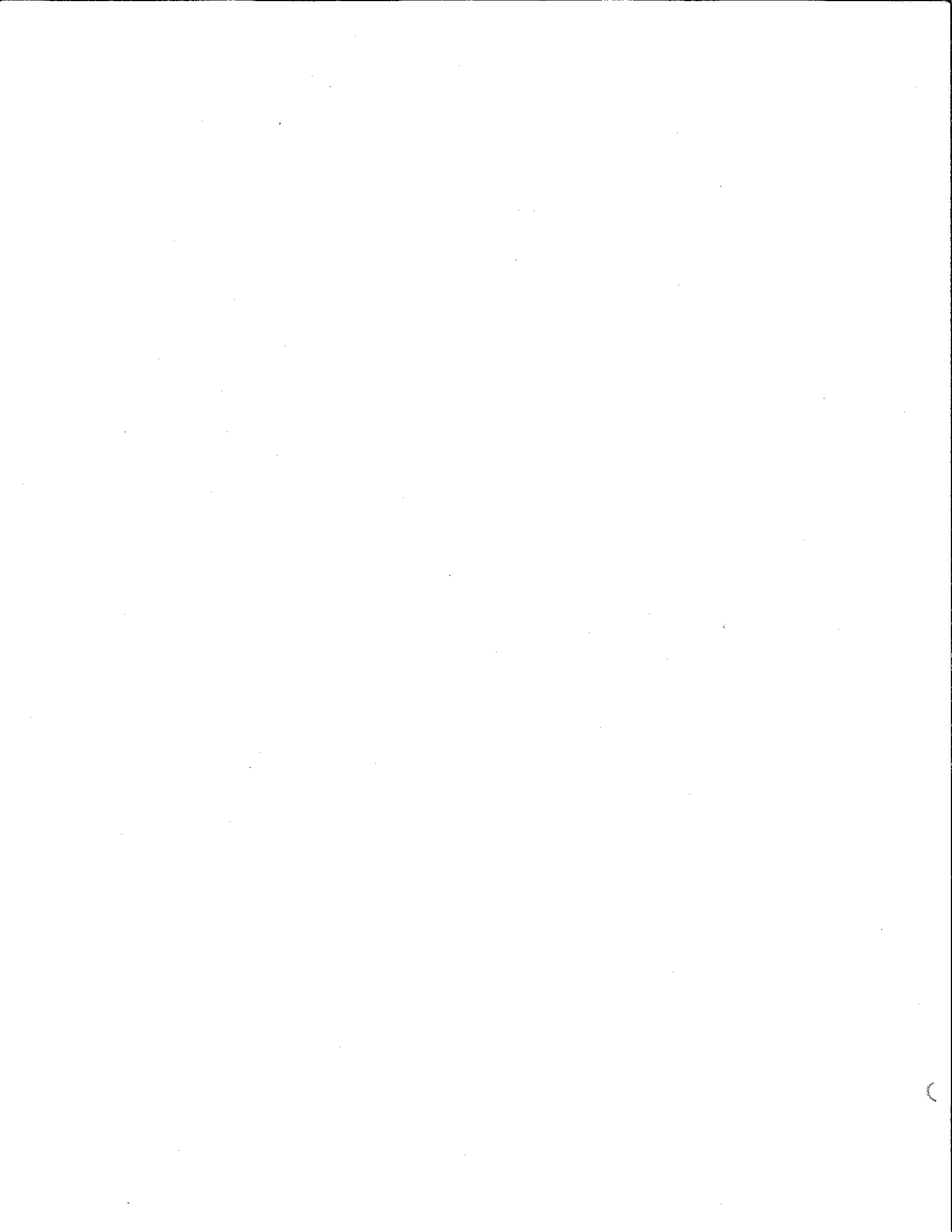




Minnesota Sentencing Guidelines Commission

REPORT TO THE LEGISLATURE

January, 1995



MINNESOTA SENTENCING GUIDELINES COMMISSION

*Meridian National Bank Building
205 Aurora Avenue
Suite 205
St. Paul, Minnesota 55103*

*Voice: (612) 296-0144
MN Relay Service TDD: (612) 297-5353*

FAX: (612) 297-5757

Members

*Julius E. Gernes, Chairman and County Attorney, Winona County
James Dege, Law Enforcement Representative, Steele County
Sandra Gardebring, Justice, Minnesota Supreme Court
Mary T. Howard, Citizen Representative
Roger M. Klaphake, Judge, Court of Appeals
Susan Lange, Citizen Representative
Stanley J. Suchta, Probation Officer Representative, Ramsey County
Jenny L. Walker, Chief Public Defender, Tenth Judicial District
T. Williams, Citizen Representative
Edward S. Wilson, District Court Judge, Second Judicial District
Frank Wood, Commissioner of Corrections*

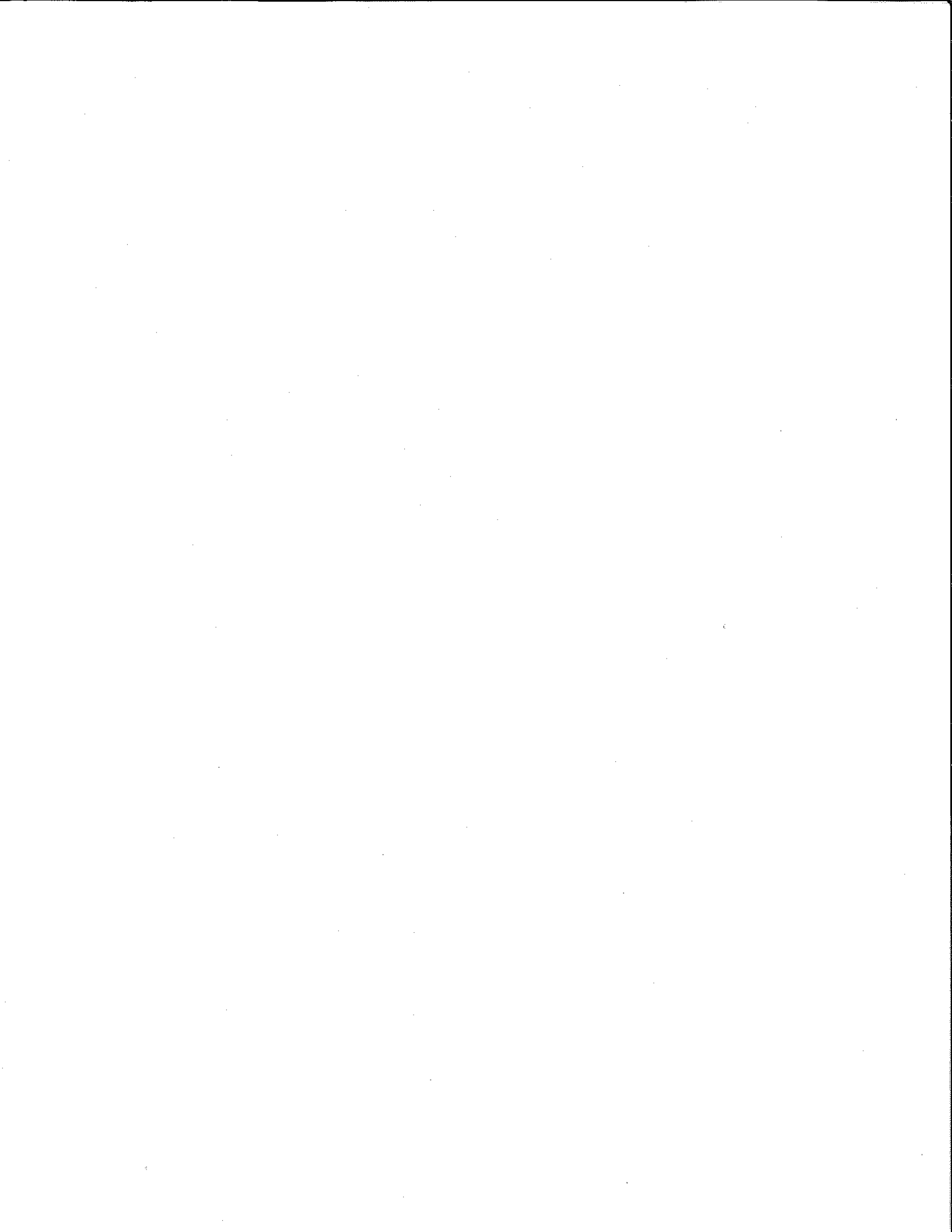
Staff

*Debra L. Dailey, Director
Susan D. Carter, Research Analysis Specialist, Senior
Cheryl DeWolfe, Clerk Typist II
Jodi Ehlenz, Administrator
Jill Haselmann, Research Analyst
Stephen Schele, Employee Development Specialist II
Anne Wall, Research Analysis Specialist*



TABLE OF CONTENTS

I.	BACKGROUND INFORMATION	1
II.	GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1994	2
	A. Adopted Modifications Reviewed by the 1994 Legislature	2
	B. Ranking of New or Amended Crimes	3
	C. 1994 Legislative Directives Regarding Certain Crimes	5
	D. Adopted Modifications to Clarify or Correct Technical Errors	5
III.	GUIDELINES MODIFICATIONS - EFFECTIVE JANUARY 1, 1995	7
	A. Adopted Modifications Regarding Juvenile Policy	7
	B. Adopted Modifications to Add an Aggravating Factor	10
IV.	OTHER GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1995	11
	A. Language to Implement 1994 Mandatory Prison Law for Certain Repeat Offenders	11
	B. Ranking New Crime of Female Genital Mutilation	11
V.	1994 ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW	12
	A. Adopted Modifications Regarding Enhanced Felonies	12
	B. Adopted Severity Level Ranking for Inadvertently Unranked Crime	12
	C. Adopted New Ranking for Aiding an Offender	13
	D. Adopted New Ranking for Previously Unranked Crime	13



I. BACKGROUND INFORMATION

Minnesota adopted a sentencing guidelines system effective May 1, 1980. The guidelines were created to ensure uniform and determinate sentencing. The goals of the guidelines are: (1) To enhance public safety; (2) To promote uniformity in sentencing so that offenders who are convicted of similar types of crimes and have similar types of criminal records are similarly sentenced; (3) To establish proportionality in sentencing by emphasizing a "just deserts" philosophy. Offenders who are convicted of serious violent offenses, even with no prior record, those who have repeat violent records, and those who have more extensive nonviolent criminal records are recommended the most severe penalties under the guidelines; (4) To provide truth and certainty in sentencing; and (5) To enable the Legislature to coordinate sentencing practices with correctional resources.

A sentencing guidelines system provides the legislature and the state with a structure for determining and maintaining rational sentencing policy. Through the development of the sentencing guidelines, the legislature determines the goals and purposes of the sentencing system. Guidelines represent the general goals of the criminal justice system and indicate specific appropriate sentences based on the offender's conviction offense and criminal record.

Judges may depart from the presumptive guideline sentence if the circumstances of the case are substantial and compelling. The judge must state the reasons for departure and either the prosecution or the defense may appeal the pronounced sentence. While the law provides for offenders to serve a term of imprisonment equal to two-thirds of their total sentence and a supervised release period equal to up to one-third of their total sentence if there are no disciplinary infractions, the sentence length is fixed. There is no mechanism for "early release due to crowding" that other states have been forced to accept because of disproportionate and overly lengthy sentences.

Judges pronounce sentences and are accountable for sentencing decisions. Prosecutors also play an important role in sentencing. The offense that a prosecutor charges directly affects the recommended guideline sentence if a conviction is obtained.

The Minnesota Sentencing Guidelines Commission is responsible for maintaining the sentencing guidelines. There are 11 members on the Commission who represent the criminal justice system and citizens of the State of Minnesota. The Commission meets monthly and all meetings are open to the public. Meeting minutes are available upon request.

A constant flow of information is gathered on sentencing practices and made available to the Commission, the legislature, and others interested in the system. The Commission modifies the guidelines, when needed, to take care of problem areas and legislative changes. Extensive changes were made in 1989 when the Commission and the Legislature addressed the problem of violent crime. In subsequent years, the Legislature made additional changes to law and sentencing policy to address public concerns. This report outlines the work of the Commission in 1994, much of which was in response to the 1994 legislative session.

II. GUIDELINES MODIFICATIONS - EFFECTIVE AUGUST 1, 1994

A. ADOPTED MODIFICATIONS REVIEWED BY THE 1994 LEGISLATURE

Adopted Modifications to Jail Credit Under Huber Law

The 1993 Legislature passed language directing the Commission to consider modifying the guidelines so that credit for time spent in confinement under Huber Law would be given at the rate of one day for each day served. The Commission adopted the following language with an effective date of August 1, 1994, as specified by the legislation:

- C. Jail Credit: . . . Time spent in confinement under Huber Law (Minn. Stat. § 631.425) shall be awarded at the rate of ~~twelve hours for each 24 hour period~~ one day for each day served. See State v. Deschampe, 332 N.W.2d. 18 (Minn. 1983).

Comment

III.C.02. . . . Jail credit for time spent in confinement under the conditions of Huber Law (Minn. Stat. § 631.425) should be awarded at the rate of ~~12 hours for each 24 hour period~~ one day for each day served.

Adopted Severity Level Rankings for Inadvertently Unranked Crimes

Several felony offenses were recently discovered that had not been considered for ranking by the Commission and were technically unranked. The Commission adopted the following severity level rankings for these crimes.

Severity Level IV

Theft of Incendiary Device - 609.52, subd. 3 (2)

Severity Level III

Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1 (a) & (b)
(The added provision deals with persons under 18 years who possess a pistol.)
Theft of Trade Secret - 609.52, subd. 2(8)

Severity Level II

Gambling Regulations - 349.22, subd. 4

Severity Level I

Insurance Regulations - 62A.41
Voting Violations - Chapters 201, 203B, & 204C

Adopted Increased Severity Level Rankings of Certain Prostitution Crimes Involving Force

A private citizen wrote to the Commission expressing concern over the severity level ranking for certain prostitution crimes involving force. The citizen believed that the severity level for these crimes should be the same as the severity level for criminal sexual conduct involving force; i.e., severity level VII. Upon review of these crimes, the Commission agreed that it is more appropriate to treat these prostitution crimes similar to criminal sexual conduct in the third degree with force and adopted an increased severity level ranking of VII.

Severity Level VII

Solicitation of Prostitution (force) - 609.322, subd. 1a (2) & (4)(b)

Adding Crimes to the List of Misdemeanors and Gross Misdemeanors

Violation of Harassment Restraining Order - 609.748
Obscene or Harassing Telephone Calls - 609.79
Letter, Telegram, or Package; Opening; Harassment - 609.795

B. RANKING OF NEW OR AMENDED CRIMES

The Commission adopted the following severity level rankings for crimes amended or created by the 1994 Legislature:

Severity Level VII

Aggravated Robbery 1 - 609.245, subd. 1
Arson 1 - 609.561
Criminal Sexual Conduct 1 (sexual contact - victim under 13) - 609.342
Kidnapping (not in safe place or victim under 16) - 609.25, subd. 2 (2)

Severity Level VI

Aggravated Robbery 2 - 609.245, subd. 2
Discharge of Firearm at Occupied Transit Vehicle/Facility - 609.855, subd. 5
Explosive Device and Incendiary Device - 609.668, subd. 6

Severity Level V

Negligent Discharge of Explosive - 299F.83
Possession or Use (unauthorized) of Explosives - 299F.79; 299F.80, subd. 1;
299F.82, subd. 1

Severity Level IV

Weapon in Courthouse or Certain State Buildings - 609.66, subd. 1g

Severity Level III

Dangerous Weapons/Certain Persons Not to Have Firearms - 609.67, subd. 2;
624.713, subd. 1 (a) & (b); 609.165, subd. 1b
Gambling Taxes - 297E.13, subd. 1-4

Severity Level II

Gambling Regulations - 349.2127, subd. 1-6; 349.22, subd. 4
Transfer Pistol to Ineligible Person - 624.7141, subd. 2
Transfer Pistol to Minor - 624.7132, subd. 15 (b)

Severity Level I

Assault 3 - 609.223, subd. 2 & 3
Assault Weapon in Public if Under 21 - 624.7181, subd. 2
Discharge of Firearm at Unoccupied Transit Vehicle/Facility - 609.855, subd. 5
Failure to Appear in Juvenile Court - 609.49, subd. 1a
Interference with Transit Operator - 609.855, subd. 2 (c) (1)
Malicious Punishment of a Child (bodily harm) - 609.377
Remove or Alter Serial Number on Firearm - 609.667
Theft from Abandoned or Vacant Building (\$500 or less) - 609.52, subd. 3 (3) (d)
(iii)

Unranked List

Failure to Report - 626.556, subd. 6

The Commission also adopted the proposal to continue ranking the crime of Defrauding Insurer - 609.611 as a Theft Related Crime, including the new provision under subd. 2.

The Commission considered the changes made by the 1994 Legislature to the following crimes and decided to continue the existing severity level rankings, unless otherwise noted above:

Attempted Murder 1, Kidnapping, Depriving Another of Custodial or Parental Rights, Prostitution (Patron), Criminal Sexual Conduct 1 - 4, Escape, Terroristic Threats, Computer Damage, Computer Theft, Tear Gas & Tear Gas Compounds, Furnishing Firearm to Minor, Furnishing a Dangerous Weapon, and Dangerous Weapons on School Property.

C. 1994 LEGISLATIVE DIRECTIVES REGARDING CERTAIN CRIMES

The Commission directed staff to implement the directive made by the 1994 Legislature to increase the severity level ranking of those provisions of Criminal Vehicular Homicide that were ranked at severity level VI.

Severity Level VII

Criminal Vehicular Homicide and Injury - 609.21, subd. 1 and 3

The following language was removed from section C. Presumptive Sentence:

~~When the current conviction offense is criminal vehicular operation resulting in death (Minn. Stat. § 609.21, subds. 1 & 3), the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid.~~

The following reference was deleted from the Sentencing Guidelines Grid:

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to a state prison. These offenses include ~~Criminal Vehicular Homicide~~, Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault).

The Commission adopted the proposal to increase the ranking for Theft of a Firearm from Severity Level III to Severity Level IV.

D. ADOPTED MODIFICATIONS TO CORRECT TECHNICAL ERRORS

Section II.E. Mandatory Sentences was modified to correct language and remove an inappropriate reference:

E. Mandatory Sentences: . . . When an offender ~~has been~~ is sentenced according to Minn. Stat. § 609.196, Mandatory Penalty for Certain Murderers, ~~or has been sentenced according to Minn. Stat. § 609.346, subd. 2b, which provides for a mandatory sentence of 30 years for certain sex offenders;~~ the statutory provision determines the presumptive sentence. . . .

When an offender ~~has been~~ is sentenced according to Minn. Stat. § 609.11, subd. 5a the presumptive duration of the prison sentence is the mandatory minimum sentence

The following commentary language was removed from section II.H.01.:

II.H.01. There will be rare instances where the presumptive sentence length will exceed the statutory maximum sentence. This will occur in a handful of cases each year, generally involving the offense of Assault in the Second Degree, for offenders with criminal history scores of six or more. If that situation occurs, the statutory maximum sentence becomes the presumptive sentence length.

The following crime was removed from the Offense Severity Reference Table because it is no longer a felony level crime:

Nonsupport of Wife or Child - 609.375, subd. 2, 3, & 4

The Commission corrected the title of the following crime on the Misdemeanor and Gross Misdemeanor Offense List:

Possession of Receiving Stolen Property
609.53

The Commission clarified that stays of imposition for misdemeanor and gross misdemeanor convictions are included in the calculation of the misdemeanor point in the criminal history score and amended section II.3. of the sentencing guidelines as follows:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and for which a sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. . . .
 - c. A prior misdemeanor or gross misdemeanor sentence or stay of imposition following a misdemeanor or gross misdemeanor conviction shall not be used in computing the criminal history score if a period of ten years has elapsed since the offender was adjudicated guilty for that offense, to the sentencing date for the current offense. . .

III. GUIDELINES MODIFICATIONS - EFFECTIVE JANUARY 1, 1995

A. ADOPTED MODIFICATIONS REGARDING JUVENILE POLICY

The Commission decided to continue to rank the crime of Certain Persons Not to Have Firearms at Severity Level III. This law prohibits felons who were convicted of a crime of violence from possessing a firearm and the law was amended to also prohibit certain juveniles from possessing a firearm.

The Juvenile Justice Bill states that prior juvenile offenses prosecuted under the Extended Jurisdiction Juvenile provision be treated the same as prior felony adult offenses for purposes of calculating a criminal history score under the sentencing guidelines. The Commission modified the sentencing guidelines as follows to provide that an extended jurisdiction juvenile conviction is treated the same as a felony conviction of an adult:

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned a particular weight for every extended jurisdiction juvenile conviction and for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. For purposes of this section, prior extended jurisdiction juvenile convictions are treated the same as prior felony sentences.

Comment

II.B.110. Under Minn. Stat. § 260.126, a child alleged to have committed a felony offense under certain circumstances may be prosecuted as an extended jurisdiction juvenile. If the prosecution results in a guilty plea or finding of guilt and the court imposes a disposition according to Minn. Stat. § 260.126, subd. 4 (a), the extended jurisdiction juvenile conviction shall be treated in the same manner as an adult felony sentence for purposes of calculating the prior felony record component of the criminal history score. All of the policies under sections II.B.1, a - e and corresponding commentary apply to extended jurisdiction juvenile convictions. If the extended jurisdiction juvenile conviction resulted in execution of the stayed adult prison sentence, the offense can only be counted once in the criminal history.

2. The offender is assigned one point if he or she was on probation or parole or confined in a jail, workhouse, or prison following conviction of a felony or gross misdemeanor or an extended jurisdiction juvenile conviction, or released pending sentencing at the time the felony was committed for which he or she is being sentenced.

The offender will not be assigned a point under this item when:

- a. the person was committed for treatment or examination pursuant to Minn. R. Crim. P. 20; or
- b. the person was on juvenile probation or parole status at the time the felony was committed for which he or she is being sentenced and was not on probation or supervised release status for an extended jurisdiction juvenile conviction.

Comment

II.B.201. *The basic rule assigns offenders one point if they were under some form of criminal justice custody following conviction of a felony or gross misdemeanor when the offense was committed for which they are now being sentenced. Commitments under Minn. R. Crim. P. 20, and juvenile parole, probation, or other forms of juvenile custody status are not included because, in those situations, there has been no conviction for a felony or gross misdemeanor which resulted in the individual being under such status. However, a custody point will be assigned if the offender committed the current offense while under some form of custody following an extended jurisdiction juvenile conviction.*

The Legislature directed the Commission to make several changes to the guidelines regarding the calculation of the juvenile contribution to the criminal history score:

- 1) **Allow juvenile offenses occurring after the juvenile's fourteenth birthday to be included in the criminal history score (rather than after the sixteenth birthday);**
- 2) **Permit juvenile offenses to be included if the offender was under 25 years at the time the current felony was committed (rather than 21); and**
- 3) **Modify section II.B.4 (e) to exclude presumptive commitment offenses from the maximum limit on the number of criminal history score points an offender may receive for prior juvenile offenses.**

The Commission modified the sentencing guidelines as follows in response to this legislative directive to change the policy for computing the prior juvenile record contribution to the criminal history score:

4. The offender is assigned one point for every two offenses committed and prosecuted as a juvenile that would have been felonies if committed by an adult, provided that:
 - a. Findings were made by the juvenile court pursuant to an admission in court or after trial;
 - b. Each offense represented a separate behavioral incident or involved separate victims in a single behavioral incident;
 - c. The juvenile offenses occurred after the offender's ~~sixteenth~~ fourteenth birthday;
 - d. The offender had not attained the age of ~~twenty-one~~ five at the time the felony was committed for which he or she is being currently sentenced; and
 - e. ~~No~~ Generally, an offender may receive ~~more than~~ only one point for offenses committed and prosecuted as a juvenile, ~~unless at least one of the offenses is Murder, Assault in the 1st or 2nd Degree, Criminal Sexual Conduct in the First, Second, or Third Degree or Aggravated Robbery involving a dangerous weapon. No offender may receive more than two points for offenses committed and prosecuted as a juvenile.~~
This point limit does not apply to offenses committed and prosecuted as a juvenile for which the sentencing guidelines would presume imprisonment. The presumptive disposition of the juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the

sentencing guidelines is imprisonment. This determination is made regardless of the criminal history score and includes those offenses that carry a mandatory minimum prison sentence and other presumptive imprisonment offenses described in section II.C. Presumptive Sentence.

Comment

II.B.401. *The juvenile history item is included in the criminal history index to identify those young adult felons whose criminal careers were preceded by repeated felony-type offenses committed as a juvenile. The Commission held several public hearings devoted to the issue of using juvenile records in the criminal history index. Those hearings pointed out differences in legal procedures and safeguards between adult and juvenile courts, differing availability of juvenile records, and differing procedures among juvenile courts. As a result of these issues, the Commission originally decided to establish rigorous standards regulating the consideration of juvenile records in computing the criminal history score.*

Effective January 1, 1995, the legislature enacted many substantive changes to the juvenile justice system. Included in these changes are the right to effective assistance of counsel in connection with a proceeding in juvenile court and the right to a jury trial on the issue of guilt for a child who is prosecuted as an extended jurisdiction juvenile. Because these rights are now afforded to juveniles, the standards regulating the consideration of juvenile records in computing the criminal history score are broadened.

II.B.402. *First, only juvenile offenses that would have been felonies if committed by an adult will be considered in computing the criminal history score. Status offenses, dependency and neglect proceedings, and misdemeanor or gross misdemeanor-type offenses will be excluded from consideration. Consistent with Minn. Stat. § 609.035 which provides for a single sentence for adult offenders when multiple convictions arise from a single course of conduct, only juvenile offenses arising from separate courses of conduct contribute to the juvenile point(s), unless multiple victims were involved.*

II.B.403. *Second, the juvenile offenses must have been committed after the offender's ~~sixteenth~~ fourteenth birthday. The Commission chose the date of the offense rather than the date the findings were made by the court to eliminate variability in application based on differing juvenile court practices.*

II.B.404. *Third, juvenile offenses will be considered in computing the criminal history score only for adult offenders who had not attained the age of ~~24~~ 25 at the time the felony was committed for which they are now being sentenced. Again, the Commission chose to examine the age of the offender at the time of the offense rather than at time of sentencing to prevent disparities resulting from system processing variations.*

II.B.405. *Fourth, the Commission decided that, provided the above conditions are met, it would take two juvenile offenses to equal one point on the criminal history score, and ~~that no generally, an offender may not receive more than one point on the basis of prior juvenile offenses, unless at least one of the prior offenses was a serious violent offense, subject to provision II.B.4.e., upon which the offender may receive no more than two points.~~ This point limit does not apply to offenses committed and prosecuted as a juvenile for which the guidelines would presume imprisonment. The presumptive disposition for a prior juvenile offense is considered to be imprisonment if the presumptive disposition for that offense under the sentencing guidelines is imprisonment regardless of criminal history. Included in this determination are any*

mandatory minimum laws that apply to the offense or any other applicable policies under section II.C. Presumptive Sentence. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile offenses are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile offense meeting the above criteria would receive no point on the criminal history score. The two point limit was deemed consistent with the purpose of including the juvenile record in the criminal history to distinguish the young adult felon with no juvenile record of felony type behavior from the young adult offender who has a prior juvenile record of repeated felony type behavior. The two point limit also was deemed advisable to limit the impact of findings obtained under a juvenile court procedure that does not afford the full procedural rights available in adult courts. The former one point limit was expanded to two points to differentiate the youthful violent offender.

II.B.406. Only those juvenile offenses where findings were made after August 1, 1989 can contribute to a juvenile history score of two more than one. To receive a juvenile history score of two, findings for the serious violent offense (listed in section 4.e.) and at least one other offense must have been made after August 1, 1989. The Commission was concerned with possible past the disparities in the procedures used in the various juvenile courts. This effective date for the prior findings corresponds to the Commission's previous policy which allowed for more than one juvenile point when there were certain prior serious violent offenses on the juvenile record. Retaining this effective date for the new policy continues to gives proper notice that in the future, the juvenile history can result in two more than one criminal history points.

B. ADOPTED MODIFICATIONS TO ADD AN AGGRAVATING FACTOR

The Legislature directed the Commission to consider adding an aggravating factor regarding crimes committed as part of a group. The Commission adopted the following aggravating factor be added to the sentencing guidelines and a change to corresponding commentary:

Section II.D.2.b. Aggravating Factors

- (8) The offender committed the crime as part of a group of three or more persons who all actively participated in the crime.

Comment

II.D.205. The aggravating factor involving groups of three or more persons under section II.D.2.b. (8) cannot be used when an offender has been convicted Gang related criminal activity is now a separate crime under Minn. Stat. § 609.229, Crime Committed for Benefit of a Gang and can no longer be used as a reason for departure from the presumptive sentence. See Section G. **Convictions for Attempts, Conspiracies, and Other Sentence Modifiers** for the presumptive sentence for persons convicted of Crime Committed for Benefit of a Gang, Minn. Stat. § 609.229, subd. 3 (a).

IV. OTHER ADOPTED MODIFICATIONS - EFFECTIVE AUGUST 1, 1995

A. LANGUAGE TO IMPLEMENT 1994 MANDATORY PRISON LAW FOR CERTAIN REPEAT OFFENDERS

The 1994 Legislature passed a law requiring a mandatory prison sentence for certain repeat offenders. The following language modifies section II.E. Mandatory Sentences: to help clarify the implementation of this new law under the sentencing guidelines:

When an offender is sentenced according to Minn. Stat. § 609.152, subd. 2a, the presumptive disposition is commitment to the commissioner and the court must impose and execute the presumptive duration unless a longer mandatory minimum sentence is otherwise required by law or the court imposes a longer aggravated durational departure.

B. RANKING NEW CRIME OF FEMALE GENITAL MUTILATION

The Commission decided to place the crime of Female Genital Mutilation - 609.2245 on the Unranked Offense List.

V. 1994 ADOPTED MODIFICATIONS REQUIRING LEGISLATIVE REVIEW

A. ADOPTED MODIFICATIONS REGARDING ENHANCED FELONIES

The Commission adopted a proposal to change the manner in which the criminal history score is calculated for enhanced felonies. The Commission is concerned that prior misdemeanors and gross misdemeanors that are enhanced to higher penalties by statute on the basis of a prior offense are overemphasized under the current method of calculating the criminal history under the guidelines. The Commission amended the guidelines by adding the following language to section II.B. of the sentencing guidelines and commentary:

6. When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related offenses, the prior conviction upon which the enhancement is based may be used in determining custody status, but cannot be used in calculating the remaining components of the offender's criminal history score.

Comment

II.B.601. There are a number of instances in Minnesota law in which misdemeanor or gross misdemeanor behavior carries a felony penalty as a result of the offender's prior record. The Commission decided that in the interest of fairness, a prior offense that elevated the misdemeanor or gross misdemeanor behavior to a felony should not also be used in criminal history points other than custody status. Only one prior offense should be excluded from the criminal history score calculation, unless more than one prior was required for the offense to be elevated to a felony. For example, Assault in the Fifth Degree is a felony if the offender has two or more convictions for assaultive behavior. In those cases the two related priors at the lowest level should be excluded. Similarly, theft crimes of more than \$200 but less than \$500 are felonies if the offender has at least one previous conviction for an offense specified in that statute. In those cases, the prior related offense at the lowest level should be excluded.

7. 6. The criminal history score is the sum of points accrued under items one through four above.

B. ADOPTED SEVERITY LEVEL RANKING FOR INADVERTENTLY UNRANKED CRIME

A felony offense was recently discovered that has not been considered for ranking by the Commission. This crime is technically unranked at this time. The Commission adopted a severity level ranking of I for this crime.

Severity Level I

False Declaration - 256.984

C. ADOPTED NEW RANKING FOR AIDING AN OFFENDER

The Commission adopted a proposal to place the crime of Aiding an Offender, Accomplice After the Fact - 609.495, subd. 3 on the Unranked Offense List. The Commission believes it is more appropriate for the sentencing judge to determine the severity level of this offense because the statutory penalty is based on the underlying crime. Subdivision 1 will remain ranked at severity level I.

D. ADOPTED NEW RANKING FOR PREVIOUSLY UNRANKED CRIME

The crime of Lottery Fraud is currently on the unranked offense list and the Commission reviewed information over the last several years on the types of Lottery Fraud prosecutions and where judges ranked these crimes. The Commission adopted a severity level ranking of I for the following provision of Lottery Fraud:

Severity Level I

Lottery Fraud - 609.651, subd. 1 with subd. 4(a)

The remaining felony level subdivisions will remain on the unranked offense list because there had been no prosecutions under subd. 2 or 3 and those crimes sentenced under subd. 4(b) would involve larger monetary losses.

