No. A21-1264

State of Minnesota
In Supreme Court

JENNIFER SCHROEDER, ELIZER EUGENE DARRIS, CHRISTOPHER JAMES JECEVICUS-VARNER, AND TIERRE DAVON CALDWELL,

Plaintiffs-Petitioners,

v.

MINNESOTA SECRETARY OF STATE STEVE SIMON, IN HIS OFFICIAL CAPACITY,

Defendant-Respondent.

PETITIONERS' ADDENDUM TO PETITION FOR REVIEW

Craig S. Coleman
Thomas K. Pryor
Kirsten L. Elfstrand
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000

Teresa J. Nelson
David P. McKinney
AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA
2828 University Avenue Southeast
Suite 160
Minneapolis, MN 55414
Phone: (651) 645-4097

Theresa J. Lee (NY #5022769) (admitted *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2500

Attorneys for Plaintiffs-Petitioners

Keith Ellison
Angela Behrens
Jason Marisam
Office of the Attorney General
445 Minnesota Street, Suite 1100
St. Paul, MN 55101
Phone: (651) 757-1275

Attorneys for Defendant-Respondent

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1264

Jennifer Schroeder, et al.,
Appellants,

vs.

Minnesota Secretary of State Steve Simon,
Respondent.

Filed May 24, 2021
Affirmed in part and dismissed in part
Johnson, Judge

Ramsey County District Court
File No. 62-CV-19-7440

Craig S. Coleman, Thomas K. Pryor, Kirsten L. Elfstrand, Faegre Drinker Biddle & Reath, L.L.P., Minneapolis, Minnesota; and

Teresa J. Nelson, David P. McKinney, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota (for appellants)

Keith Ellison, Attorney General, Angela Behrens, Jason Marisam, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Tara Kalar, St. Paul, Minnesota (for *amicus curiae* ISAIAH)

Joseph Plumer, Plumer Law Office, Bemidji, Minnesota; and

Riley Plumer, Hobbs, Straus, Dean & Walker, L.L.P., Washington, D.C. (for *amicus curiae* Red Lake Band of Chippewa Indians)

Marc A. Al, Andrew J. Pieper, Riley A. Conlin, Emily C. Atmore, Stoel Rives, L.L.P., Minneapolis, Minnesota (for *amici curiae* League of Women Voters Minnesota, Common Cause Minnesota, The Minnesota Second Chance Coalition, and New Venture Fund o/b/o Voting Rights Lab)

Lyndsey M. Olson, St. Paul City Attorney, Anthony G. Edwards, Megan D. Hafner, Assistant City Attorneys, St. Paul, Minnesota; and

James R. Rowader, Jr., Minneapolis City Attorney, Minneapolis, Minnesota (for *amici curiae* City of St. Paul and City of Minneapolis)

Bradford Colbert, Kevin Gray, St. Paul, Minnesota (for *amicus curiae* Legal Assistance to Minnesota Prisoners)

Joshua Esmay, Minneapolis, Minnesota (for *amicus curiae* Legal Rights Center)

Emily Hunt Turner, Minneapolis, Minnesota (for *amicus curiae* All Square)

Mark R. Bradford, Maria P. Brekke, Bassford Remele, P.A., Minneapolis, Minnesota (for *amicus curiae* Minnesota Association of Black Lawyers)

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for *amicus curiae* Ramsey County Attorney's Office)

Henry Allen Blair, Greene Espel, P.L.L.P., Minneapolis, Minnesota (for *amicus curiae* Volunteers of America)

Katherine M. Swenson, Greene Espel, P.L.L.P., Minneapolis, Minnesota (for *amici curiae* the District of Columbia, California, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, Virginia, and Washington)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter, Judge.

SYLLABUS

Section 609.165 of the Minnesota Statutes is not unconstitutional on the ground that it violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution; the equal-protection principle arising under article I, section 2, of the Minnesota Constitution; or the due-process clause in article I, section 7, of the Minnesota Constitution.

OPINION

JOHNSON, Judge

The Minnesota Constitution provides that a person who has been convicted of a felony is not entitled to vote "unless restored to civil rights." A statute provides that a felon's civil rights are restored when the felon is discharged, which occurs automatically upon the expiration of the felon's sentence. The appellants in this appeal challenge the constitutionality of that statute on the ground that it violates three provisions of the state constitution. The district court rejected their arguments on cross-motions for summary judgment. We conclude that the statute does not violate any of the three constitutional provisions on which it is challenged. Therefore, we affirm.

FACTS

This action was commenced in October 2019 by four persons who have been convicted of felonies and were, at that time, living in their respective communities and completing their sentences on probation, parole, or supervised release. Jennifer Schroeder was convicted of a drug crime in 2013, was sentenced to confinement in a county jail for one year, and now is serving a 40-year term of probation, which will expire in 2053. Elizer Darris was convicted of second-degree murder in 2001, was imprisoned until 2016, and now is serving a term of supervised release that will expire in 2025. Christopher Jecevicus-Varner was convicted of a drug crime in 2014 and was serving a sentence of 20 years of probation. Tierre Caldwell was convicted of assault in 2010, served approximately six years in prison, and was released in 2016 and placed on probation.

The plaintiffs sued Steve Simon, the Secretary of State, in his official capacity. In the first paragraph of their complaint, the plaintiffs stated that the purpose of their lawsuit is "to remedy the Defendant's unconstitutional deprivations of their fundamental constitutional right to participate in the democratic process." The plaintiffs pleaded three legal theories: that section 609.165 violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution; that the statute violates the equal-protection principle arising from article I, section 2, of the Minnesota Constitution; and that the statute violates the due-process clause in article I, section 7, of the Minnesota Constitution. In their prayer for relief, the plaintiffs sought a declaration that the challenged statute is unconstitutional to the extent that it disentitles felons from voting while on probation, parole, or supervised release and a declaration that felons may regain their right to vote upon "being released or excused from incarceration."

In February 2020, the plaintiffs and the secretary filed cross-motions for summary judgment, which addressed all of the plaintiffs' claims. The plaintiffs submitted a lengthy report prepared by a professor of sociology, who compiled and analyzed statistics concerning the numbers of persons who have been convicted of a felony in Minnesota and are in prison or on probation, parole, or supervised release. The professor calculated the per-capita rates of disenfranchisement in the state at various times in its history. The professor noted that, in 2018, 0.21 percent of Minnesota's voting-age population was in prison because of a felony conviction and that 1.22 percent was on probation, parole, or supervised release because of a felony conviction. The professor also calculated disenfranchisement rates by race and determined that, at present, "about 4.5% of voting-

age Black Minnesotans and 8.3% of American Indian Minnesotans are disenfranchised due to voting restrictions for persons on community supervision, relative to less than 1% of Asian and White Minnesotans."[1] The secretary does not dispute the professor's data or analysis, and the secretary did not submit any contrary data or evidence.

In August 2020, the district court filed a 14-page order and memorandum in which it granted the secretary's summary-judgment motion and denied the plaintiffs' summary-judgment motion. The plaintiffs filed a timely notice of appeal from the judgment.

ISSUES

I. Is section 609.165 of the Minnesota Statutes unconstitutional on the ground that it violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution?

II. Is section 609.165 of the Minnesota Statutes unconstitutional on the ground that it violates the equal-protection principle arising under article I, section 2, of the Minnesota Constitution?

III. Is section 609.165 of the Minnesota Statutes unconstitutional on the ground that it violates the due-process clause in article I, section 7, of the Minnesota Constitution?

[1]The professor does not state that the disparities in disenfranchisement rates by race would be less if the district court had granted the relief requested. Our review of the data in the professor's report indicates that, if felons were prohibited from voting only while incarcerated, the disparities would increase, not decrease. But we need not consider that issue. The secretary does not make such an argument, and our analysis of the plaintiffs' claims leads to the conclusion that the challenged statute is not unconstitutional, which makes it unnecessary to consider the issue of remedy.

ANALYSIS

Before we analyze the issues raised by the parties' arguments, we identify the laws that determine whether a person may vote if he or she has been convicted of a felony.

The Minnesota Constitution defines the right to vote in article VII, which is captioned "Elective Franchise." The first section of that article states:

> Every person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct. The place of voting by one otherwise qualified who has changed his residence within 30 days preceding the election shall be prescribed by law. *The following persons shall not be entitled or permitted to vote at any election in this state*: A person not meeting the above requirements; *a person who has been convicted of treason or felony, unless restored to civil rights*; a person under guardianship, or a person who is insane or not mentally competent.

Minn. Const. art. VII, § 1 (emphasis added).

There is no other provision in article VII concerning the restoration of civil rights of a person who has been convicted of treason or a felony. "But the Legislature has identified the circumstances under which the voting rights of felons . . . are restored." *Minnesota Voters Alliance v. Simon*, 885 N.W.2d 660, 662 (Minn. 2016). The relevant statute provides, in part:

> When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, *such discharge shall restore the person to all civil rights* and to full citizenship, *with full right to vote* and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Minn. Stat. § 609.165, subd. 1 (2020) (emphasis added). The same statute specifies how and when a person who has been convicted of a felony is discharged: "The discharge may be: (1) by order of the court following stay of sentence or stay of execution of sentence; or (2) upon expiration of sentence." *Id.*, subd. 2.

Section 609.165 was enacted in 1963 as part of a comprehensive revision of the state's criminal code, which was recommended by a statutorily created commission. 1963 Minn. Laws ch. 753, art. 1, at 1198; *see also* Advisory Commission on Revision of the Criminal Code, *Proposed Minnesota Criminal Code* 5-10 (1962). The commission recommended a statute that is very similar to the present version of section 609.165. *Proposed Minnesota Criminal Code*, *supra*, at 42. In its final report, the commission explained the reasons for its recommendation:

> The recommended sections also revise the rather extensive present provisions relating to the restoration of civil rights. This may be discretionary with the Governor, but in practice it appears that the restoration of civil rights has been granted almost as a matter of course. Under the recommended provisions, these rights will be automatically restored when the defendant is discharged following satisfactory service of sentence, probation or parole. This is deemed desirable to promote the rehabilitation of the defendant and his return to his community as an effective participating citizen.

Proposed Minnesota Criminal Code, *supra*, at 42. In additional comments, the commission further explained:

> It is believed that where a sentence has either been served to completion or where the defendant has been discharged after parole or probation his rehabilitation will be promoted by removing the stigma and disqualification to active community participation resulting from the denial of his civil

> rights. The present practice it is understood is for the Governor to restore civil rights almost automatically.

Proposed Minnesota Criminal Code, *supra*, at 60-61. Since 1963, section 609.165 has been amended in only minor ways, which are not relevant to this appeal.

In general, a duly enacted statute is presumed to be constitutional. *Fletcher Props., Inc. v. City of Minneapolis*, 947 N.W.2d 1, 9 (Minn. 2020). Accordingly, an appellate court should "exercise [its] power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *Id.* (quotation omitted). We apply a *de novo* standard of review to a district court's determination of the constitutionality of a statute. *Id.* In addition, we apply a *de novo* standard of review to a district court's grant of summary judgment. *Id.*

I. Right to Vote

We begin by considering appellants' argument that section 609.165 of the Minnesota Statutes violates their constitutional right to vote in violation of article VII, section 1, of the Minnesota Constitution. Appellants[2] pleaded this theory as an

[2]While the appeal was pending in this court, respondent informed the court that Caldwell and Jecevicus-Varner had been discharged and had regained the right to vote. Accordingly, respondent argues that their claims are moot. Appellants have not disputed respondent's factual representations and have not argued in writing that Caldwell's and Jecevicus-Varner's claims are not moot. At oral argument, appellants' counsel urged the court to invoke the exception to the mootness doctrine for claims that are capable of repetition yet likely to evade review. Appellants' counsel also acknowledged that the claims of Caldwell and Jecevicus-Varner do not present any legal issues that are not already presented by the claims of Schroeder and Darris. Because there is no apparent benefit to invoking an exception to the mootness doctrine, we conclude that the claims of Caldwell and Jecevicus-Varner are moot, and we dismiss the appeal with respect to each of them. *See Housing & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002); *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999);

independent, free-standing claim and presented it to the district court in that manner. The district court did not separately discuss the right-to-vote claim but nonetheless interpreted article VII, section 1, in the course of its analysis of appellants' other arguments. In this court, appellants renew the arguments that they presented to the district court. At oral argument, appellants' counsel argued that article VII, section 1, should be interpreted to mean that a felon's civil rights are restored whenever he or she is released from prison or jail (or, presumably, sentenced to probation without any incarceration in jail or prison). Appellants' counsel further explained that, given such an interpretation of article VII, section 1, a statute that does not restore civil rights until a later date, when a felon is discharged, is inconsistent with article VII, section 1.

The premise of appellants' argument—that they were "restored to civil rights" when they were released from jail (in Schroeder's case) or from prison (in Darris's case)—is not reflected in the text of article VII, section 1. There is no language in that section—or any other section of article VII—that reasonably could be understood to mean that a felon's civil rights are restored by his or her release from incarceration or by being placed on probation without any incarceration. Appellants' argument effectively would require this court to add words to article VII, section 1, which we are unwilling to do. *Cf. 328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 750 (Minn. 2015) (applying statutory-interpretation canon that courts "cannot add words to an unambiguous statute under the guise of statutory interpretation").

In re Inspection of Minnesota Auto Specialties, Inc., 346 N.W.2d 657, 658 (Minn. 1984). The appeal nonetheless remains justiciable with respect to Schroeder and Darris.

Appellants' argument also is inconsistent with the meaning of the phrase "unless restored to civil rights," as that phrase is used in article VII, section 1. Appellants have not identified any law in the history of Minnesota that restored a felon's civil rights automatically upon release from incarceration. To the contrary, it appears that, in the territorial era and for more than a century thereafter, the civil rights of felons were restored only by executive or legislative action, not merely by a felon's release from confinement. The phrase "unless restored to civil rights" first appeared in the voting laws governing the Territory of Minnesota, which provided that the persons "permitted to vote at any election" did not include "any person convicted of treason, felony, or bribery, *unless restored to civil rights*." Minn. Rev. Stat. (Terr.) ch. 5, § 2, at 45 (1851) (emphasis added). It appears that no other provision in the territorial statutes provided for the restoration of civil rights. *See* Minn. Rev. Stat. (Terr.) ch. 1-137. Such a provision likely was unnecessary because it was understood that civil rights are restored by other means. In the debates of the 1857 constitutional convention,[3] some delegates considered a draft that would have denied the right to vote to persons convicted of treason or a felony with an exception that expressly referred to a means of restoration: "*Provided*, That the Governor or the Legislature may restore any such person to civil rights." *The Debates & Proceedings of the Constitutional Convention for the Territory of Minnesota* 540 (St. Paul, G.W. Moore ed. 1858) (emphasis in original). One delegate commented, "A pardon always restores a person to his legal

[3]For historical background concerning the 1857 constitutional convention, see *State v. Lessley*, 779 N.W.2d 825, 838-39 (Minn. 2010); Mary Jane Morrison, *The Minnesota State Constitution: A Reference Guide* (2002); and William Anderson, *Constitution of Minnesota*, 5 Minn. L. Rev. 407, 422 (1921).

civil rights." *Id.* The delegates in attendance agreed to retain the proviso, *id.* at 541, although it was not retained in the version that eventually was ratified, *see* Minn. Const. art. VII, § 1 (1857). Nonetheless, the debates demonstrate that delegates generally understood that there were means by which a felon could be restored to civil rights, such as a pardon by the governor or an act of the legislature.

Subsequent events confirmed the delegates' understanding. Ten years after the constitutional convention, a law was enacted to allow felons to be restored to civil rights without a pardon. Specifically, a person who had completed a prison sentence without any disciplinary violations could obtain a certificate of good behavior from the warden and, "upon the presentation thereof to the governor he shall be entitled to a restoration of the rights of citizenship, which may have been forfeited by his conviction." 1867 Minn. Laws ch. 14, § 82, at 19. In 1887, a law was enacted to allow felons to be restored to civil rights even if they had a disciplinary record in prison; it provided that, upon a prisoner's release from prison, "The governor may . . . in his discretion restore such person to citizenship." 1887 Minn. Laws ch. 208, § 16, at 334. In 1907, a law was enacted to provide that felons who had been sentenced to jail or to a fine could be "restored to all their civil rights and to full citizenship with full right to vote and hold office," so long as the felon waited one year, applied to a district court, produced three character witnesses, and proved "his or her good character during the time since such conviction." 1907 Minn. Laws ch. 34, § 1, at 40; *see also* 1913 Minn. Laws ch. 187, § 1, at 238 (requiring only two character witnesses and proof only of "general good character"). In 1911, a law was enacted to provide for indeterminate sentences, "subject to release on parole and to final discharge by the board

of parole." 1911 Minn. Laws ch. 298, § 1, at 413. That law also provided that, whenever the parole board granted an "absolute release," the board was required to "certify the fact and the grounds therefor to the governor, who may in his discretion restore the prisoner released to citizenship." 1911 Minn. Laws ch. 298, § 7, at 415. In 1919, a law was enacted to provide that felons who were sentenced to prison "may be restored by the governor, in his discretion, to civil rights, upon certification to him by the judge, officer or board having jurisdiction, custody or supervision of such person at the time such jurisdiction, custody or supervision is terminated." 1919 Minn. Laws ch. 290, § 1, at 299. It appears that these laws remained in force and effect until 1963, when the legislature enacted section 609.165 in conjunction with the comprehensive revision of the state's criminal code. *See* 1963 Minn. Laws ch. 753, art 1, at 1198.

In light of this history, it is apparent that, when the constitution was ratified in 1857, it was understood that the restoration of a felon's civil rights would occur in ways specified by the executive or legislative branches. Contrary to appellants' argument, there is no reason to believe that the framers of the constitution understood the phrase "unless restored to civil rights" to mean that a felon automatically would be restored to civil rights upon being released from jail or prison. Appellants have not identified any law from the territorial era or the early years of statehood under which felons' civil rights were restored automatically upon release from incarceration.[4]

[4]We note that, in the early 1970s, a special commission recommended that article VII be amended in five ways, including the removal of the provision prohibiting felons from voting. Minn. Constitutional Study Commission, *Final Report* 24 (1973). The commission stated that such an amendment would "allow greater flexibility to the

Appellants also contend that this court should analyze the constitutionality of section 609.165 with respect to article VII, section 1, by weighing the burdens placed on a felon's right to vote against the state's interests in the policy reflected in the statute. They cite *Kahn v. Griffin*, 701 N.W.2d 815 (Minn. 2005), in support of that argument. The *Kahn* opinion was not concerned with the disenfranchisement provisions in article VII, section 1, or with section 609.165. *See Kahn*, 701 N.W.2d at 829-31. Rather, the *Kahn* opinion was concerned with the rights of all qualified voters and the question whether those rights were infringed by the timing of municipal elections in the City of Minneapolis. *See id.* at 829. Accordingly, the *Kahn* opinion is not relevant to our analysis. Appellants also cite *Minnesota Voters Alliance v. Ritchie*, 890 F. Supp. 2d 1106 (D. Minn. 2012), for the same purpose. But the court in that case considered a different argument: that article VII, section 1, of the Minnesota Constitution is in conflict with the United States Constitution. *See id.* at 1115. The constitutional analysis in that case cannot apply to appellants' argument that section 609.165 is in conflict with article VII, section 1, of the Minnesota Constitution. It

---

Legislature in determining proper restrictions on the franchise rights of" felons and other disqualified persons and would allow the legislature to "provide such safeguards or qualifications as were felt necessary." *Id.* But the legislature and the governor did not seek to implement that recommendation; they proposed other amendments to article VII but proposed to retain the 1857 language that prohibits felons from voting "unless restored to civil rights." 1974 Minn. Laws ch. 409, art. 7, § 1, at 799-800. At the 1974 general election, the voters ratified the amendments that were proposed by the legislature and the governor. Minn. Const. art. VII, § 1 (1974) There can be no doubt that the framers of the 1974 amendments to article VII (the legislature, the governor, and the voters) understood that the restoration of a felon's civil rights would occur automatically at the discharge of a felon's sentence because that means of restoration was then clearly stated in section 609.165.

appears that appellants are asking this court to reconsider the wisdom of article VII, section 1, itself. That we may not do.

Thus, section 609.165 of the Minnesota Statutes is not unconstitutional on the ground that it violates the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution.

II. Right to Equal Protection

Appellants also argue that section 609.165 violates the equal-protection principle arising from article I, section 2, of the Minnesota Constitution.

In Minnesota, a constitutional right to equal protection arises from a provision in the first article of the state constitution, entitled "Bill of Rights," which states, "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. "The equal protection guarantee in the Minnesota Constitution places limits on the circumstances under and extent to which the Legislature can treat similarly situated people differently." *Fletcher*, 947 N.W.2d at 20.

Courts may analyze an equal-protection claim in various ways. Under a rational-basis review, "a law . . . does not violate the equal protection principle of the Minnesota Constitution when it is a rational means of achieving a legislative body's legitimate policy goal." *Id.* at 19. But, in Minnesota, "a higher standard of evidence" may apply—*i.e.*, a heightened form of rational-basis review—if "a statutory classification demonstrably and adversely affects one race differently than other races, even if the lawmakers' purpose in enacting the law was not to affect any race differently." *Id.* (citing *State v. Russell*, 477

N.W.2d 886, 890 (Minn. 1991)). The most exacting form of review—known as strict scrutiny—applies if "a statutory classification impacts fundamental rights or creates a suspect class," in which event the statute "is subject to less deference and heightened scrutiny by the courts." *Id.* at 20.

Appellants make three alternative arguments in support of their equal-protection claim. First, they argue that this court should apply strict scrutiny to their equal-protection claim because their right to vote is a fundamental right. Second, they argue in the alternative that, if a rational-basis standard applies, the heightened form of rational-basis review should apply and, furthermore, the statute cannot satisfy that heightened standard. Third, they argue, again in the alternative, that if the ordinary rational-basis standard applies, the statute cannot satisfy that standard of review. In his responsive brief, respondent raises an additional issue: whether appellants have satisfied the threshold requirement that they are similarly situated in all relevant respects to other persons who are treated differently.

A.

Before addressing the parties' arguments, we note that we must consider appellants' equal-protection argument, which is based on article I, section 2, of the state constitution, in light of the right-to-vote provisions in article VII, section 1, of the state constitution. As the district court observed, it is article VII, section 1, of the state constitution—*not* section 609.165 of the state statutes—that disenfranchises an otherwise qualified person from voting if the person has been convicted of a felony, "unless" such a person has been "restored to civil rights." The district court also observed that the challenged statute is

beneficial to appellants inasmuch as it provides them with a means by which they may automatically be re-enfranchised. We agree with the district court's observations.

A person may challenge the constitutionality of a statute by asserting multiple constitutional rights, each of which, if valid, would lead to the same outcome. For example, in *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018), the plaintiff asserted a right to equal protection based on article I, section 2, in conjunction with a right to an education based on article XIII, section 1. *Id.* at 10-12. But in this case, multiple constitutional provisions point toward different outcomes. We have interpreted article VII, section 1, to mean that a person who has been convicted of a felony does *not* have a constitutional right to vote if he or she has not been restored to civil rights. *See supra* part I. As a consequence, appellants' equal-protection argument based on article I, section 2, is in conflict with their right-to-vote argument based on article VII, section 1. *Cf. Richardson v. Ramirez*, 418 U.S. 24, 41-55, 92 S. Ct. 2655, 2665-71 (1974) (considering claim arising under Equal Protection Clause in section 1 of Fourteenth Amendment in light of language in section 2 recognizing state felon-disenfranchisement laws).

The present situation is similar to another part of the *Cruz-Guzman* opinion, in which the supreme court considered the state's counter-argument that judicial review was precluded by the speech-or-debate clause in article IV, section 10, of the Minnesota Constitution. 916 N.W.2d at 12-13. The *Cruz-Guzman* court reasoned, "We interpret constitutional provisions in light of each other in order to avoid conflicting interpretations." *Id.* at 13 (quotation omitted). The supreme court continued by reasoning, "We decline to interpret one provision in the constitution—the Speech or Debate Clause—to immunize

the Legislature from meeting its obligation under *more specific* constitutional provisions—the Education, Equal Protection, and Due Process Clauses." *Id.* (emphasis added). If we were to find merit in appellants' equal-protection argument in this case, we would need to consider whether to resolve the case according to the equal-protection principle in article I, section 2, or the right-to-vote provision in article VII, section 1. We likely would do so by reasoning that the right-to-vote provision in article VII, section 1, is "more specific" than the equal-protection principle arising from article I, section 2, and, thus, that article VII, section 1, must govern. *See id.* at 13; *cf. Connexus Energy v. Commissioner of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015) (applying statutory-interpretation canon that specific provision prevails over general provision). But we need not consider that issue because, for the reasons stated below, appellants' equal-protection claim does not succeed under the analysis prescribed by the equal-protection caselaw.

B.

As stated above, respondent argues that appellants have not satisfied a threshold requirement applicable to all equal-protection claims. Under Minnesota law, it is necessary to consider a "threshold question" before analyzing an equal-protection claim: "whether the claimant is treated differently from others to whom the claimant is similarly situated *in all relevant respects*." *State v. Holloway*, 916 N.W.2d 338, 347 (Minn. 2018) (emphasis added) (quotation omitted). In other words, the first question is "whether the law creates distinct classes within a broader group of similarly situated persons or whether those treated differently by the law are sufficiently dissimilar from others such that the law does not create different classes within a group of similarly situated persons." *Fletcher*, 947 N.W.2d

at 22. "When the claimant is not treated differently than all others to whom the claimant is similarly situated, there is no equal protection violation." *Id.*

Respondent contends that appellants are not similarly situated to persons who have been discharged upon reaching the expiration of their sentences. Specifically, respondent asserts that felons who still are serving a sentence "are subject to a host of legal restrictions that do not apply to those who have completed their sentences," such as conditions of release and the possibility of being reincarcerated. In reply, appellants contend that they are similar to persons who have been discharged because they are "living in the community" and have "all of the rights, freedoms, and responsibilities relevant to voting."

Respondent's argument is an accurate reflection of the state statutes governing probation, parole, and supervised release. A person who has been convicted of a felony and has been released from jail or prison but not yet reached the expiration of a sentence is subject to numerous restrictions on his or her freedom that do not apply to persons whose sentences have expired. For example, all persons on parole or supervised release are required to comply with nine standard conditions of release, including requirements about maintaining contact with a supervising agent, a prohibition on possessing firearms and other dangerous weapons, and a prohibition on leaving the state without the written permission of the supervising agent. *See* Minn. R. 2940.2000 (2019); *see also* Minn. Stat. § 244.05, subd. 3 (2020) (authorizing commissioner of corrections to make rules regarding terms and conditions of release). Such persons also may be subject to "special conditions," such as "limits regarding contact with specified persons" and a requirement that the person participate in non-residential or residential therapy or counseling programs. Minn. R.

2940.2100 (2019). In addition, the commissioner has discretion to place a person on "intensive supervised release," which may entail conditions such as "unannounced searches of the inmate's person, vehicle, premises, computer, or other electronic devices capable of accessing the Internet . . . ; random drug testing; house arrest; daily curfews; frequent face-to-face contacts with an assigned intensive supervision agent; work, education, or treatment requirements; and electronic surveillance." Minn. Stat. § 244.05, subd. 6(b). Similar restrictions may be, and often are, imposed on persons on probation. *See* Minn. Stat. §§ 609.135, .14 (2020).

Furthermore, if a person on supervised release violates any of the conditions imposed on him or her, "the commissioner may . . . revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time." Minn. Stat. § 244.05, subd. 3(2). Similarly, a person who has been placed on parole "remains in the legal custody and under the control of the commissioner, subject at any time to be returned to a facility of the Department of Corrections . . . and the parole rescinded by the commissioner." Minn. Stat. § 243.05, subd. 1(b) (2020). In light of these provisions, there is no assurance that a felon who has not yet been discharged will not be reincarcerated in the future. But a felon who *has* been discharged no longer faces the possibility of being reincarcerated for the same felony conviction.

Thus, appellants have not satisfied the threshold requirement that they are similarly situated in all relevant respects to persons who are treated differently. This is a sufficient and independent basis for the conclusion that section 609.165 does not violate the equal-

protection principle arising from article I, section 2, of the Minnesota Constitution. *See Fletcher*, 947 N.W.2d at 22; *Holloway*, 916 N.W.2d at 347.

C.

As stated above, appellants argue that this court should apply strict scrutiny to their equal-protection claim because their right to vote is a fundamental right. Respondent contends that strict scrutiny does not apply because appellants' equal-protection claim does not implicate a fundamental right.

Strict scrutiny applies if "a statutory classification impacts fundamental rights." *Fletcher*, 947 N.W.2d at 20. Both the United States Supreme Court and the Minnesota Supreme Court have held that, as a general matter, the right to vote is a fundamental right. *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670, 86 S. Ct. 1079, 1083 (1966); *Kahn*, 701 N.W.2d at 830; *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 730 (Minn. 2003); *Ulland v. Growe*, 262 N.W.2d 412, 415 (Minn. 1978); *State ex rel. South St. Paul v. Hetherington*, 61 N.W.2d 737, 741 (Minn. 1953).

The district court reasoned that appellants do not have a fundamental right to vote because they have been expressly disentitled by article VII, section 1, of the Minnesota Constitution. The district court's reasoning is consistent with that of the United States Supreme Court, which has held that a state law that disqualifies felons from voting does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Richardson*, 418 U.S. at 53-54, 92 S. Ct. at 2670. The *Richardson* Court reached that conclusion in part by referring to another provision in the Fourteenth Amendment, which expresses approval of state felon-disenfranchisement laws. *Id.* at

53-54, 92 S. Ct. at 2670-71. The Court also referred to the fact that, at the time of the adoption of the Fourteenth Amendment, many state constitutions prohibited felons from voting or authorized state legislatures to enact such prohibitions. *Id.* at 48, 92 S. Ct. at 2668.

There is no caselaw on the question whether, as a matter of Minnesota law, a person who has been convicted of a felony has a fundamental right to vote. But there is caselaw describing the method of determining whether a right is a fundamental right. The supreme court has stated, "A fundamental right is one that is 'objectively, deeply rooted in this Nation's history and tradition.'" *Holloway*, 916 N.W.2d at 345 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21, 117 S. Ct. 2258, 2268 (1997)). In addition, the supreme court has stated that "fundamental rights are those which have their origin in the express terms of the Constitution or which are necessarily to be implied from those terms." *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993) (quotation and alteration omitted). An individual seeking to apply strict scrutiny to a statute bears the burden of establishing that the statute implicates a fundamental right. *Holloway*, 916 N.W.2d at 345.

Under either of the criteria described above, appellants cannot establish that section 609.165 implicates a fundamental right. There is no deeply rooted history or tradition in Minnesota by which a person who has been convicted of a felony has been assured of a right to vote. *See id.* This is evident from the text of article VII, section 1, of the state constitution, which was adopted in 1857 and was retained in 1974 despite a recommendation that it be eliminated. *See* Minn. Constitutional Study Commission, *Final Report* 24 (1973). In addition, there is no such fundamental right "in the express terms of

the Constitution" or in a right "necessarily to be implied from those terms." *See Skeen*, 505 N.W.2d at 313. To the contrary, the express terms of article VII, section 1, of the state constitution provide that a person who has been convicted of a felony does *not* have a right to vote.

Thus, the district court properly ruled that appellants' equal-protection claim does not implicate a fundamental right. Accordingly, strict scrutiny does not apply.

D.

As stated above, appellants argue in the alternative that, if strict scrutiny does not apply, a heightened form of rational-basis review applies. Respondent contends that heightened rational-basis review does not apply because section 609.165 does not cause racial disparities.

In *Russell*, the supreme court articulated a rational-basis test for some equal-protection claims based on the Minnesota Constitution. 477 N.W.2d at 888. The *Russell* court explained that, under a heightened form of rational-basis review, Minnesota courts are "unwilling to hypothesize a rational basis to justify a classification, as the more deferential federal standard requires" and instead "require[] a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Id.* at 889. The *Russell* court further explained that the heightened rational-basis test was "particularly appropriate" in that case because "the challenged classification appears to impose a substantially disproportionate burden on the very class of persons whose history inspired the principles of equal protection." *Id.* The supreme court recently stated that the heightened rational-basis test articulated in *Russell* applies if

"a statutory classification demonstrably and adversely affects one race differently than other races." *Fletcher*, 947 N.W.2d at 19.

In this case, the prerequisites identified in *Fletcher* for application of the heightened rational-basis test are not satisfied. The only statutory classification in section 609.165 is the distinction between felons who have been discharged and felons who have not been discharged. That statutory classification does not "adversely affect[] one race differently than other races." *See id.* As respondent asserts, "Section 609.165 automatically restores voting rights to all people with felony convictions when they complete their sentences, regardless of race." There is no evidence in this case that the statute's racially neutral criterion has been applied differently based on race. In every racial category, all persons who are discharged are re-enfranchised upon discharge by operation of section 609.165, subdivision 2.

Thus, the district court properly ruled that the heightened rational-basis test does not apply. Accordingly, ordinary rational-basis review applies.

E.

As stated above, appellants contend in the alternative that, even if the ordinary form of rational-basis review applies, the statute does not have a rational basis.

A state statute has a rational basis for purposes of a constitutional challenge if it is "a rational means of achieving a legislative body's legitimate policy goal." *Fletcher*, 947 N.W.2d at 19. Respondent asserts that the general purpose of the statute is to effectuate the policy reflected in the constitution, which disqualifies felons from voting "unless restored to civil rights." Minn. Const. art. VII, § 1. Respondent further asserts that the

legislature chose to accomplish that goal by automatically re-enfranchising felons upon the expiration of sentence, a point in the criminal-justice process at which "debts to society have been satisfied and there is no further criminal sanction for the conviction" and the person "is no longer under correctional supervision and the state has a clear interest in fully rehabilitating the person into the community."

The legislature's policy choice as to how and when a felon should regain the right to vote was a rational choice. We assume that the legislature in 1963 generally agreed with the reasons stated by the commission recommending a comprehensive revision of the state's criminal code. The commission expressed the view that automatically restoring civil rights upon the expiration of a sentence would be "desirable to promote the rehabilitation of the defendant and his return to his community as an effective participating citizen" and to "remov[e] the stigma and disqualification to active community participation resulting from the denial of his civil rights." *Proposed Minnesota Criminal Code*, *supra*, at 42, 61. The expiration of a criminal sentence is a rational time to restore a person's right to vote, in part because it is the time past which the person no longer may be reincarcerated for a felony conviction. *See supra* part I.B. The commission also recommended the automatic restoration of civil rights as an alternative to the then-existing process that required felons to apply to the governor, who tended to approve the applications as a matter of course. *Proposed Minnesota Criminal Code*, *supra*, at 42. The automatic restoration of civil rights is rational because it is administratively efficient in that it avoids time-consuming, case-specific determinations of rehabilitation. *See Fletcher*, 947 N.W.2d at 28-29. Furthermore, the justifications stated by respondent have been validated by courts

in other jurisdictions in cases involving equal-protection challenges to similar state statutes. *See Jones v. Governor of Florida,* 975 F.3d 1016, 1034-35 (11th Cir. 2020) (holding that Florida statute restoring felons to civil rights after completion of sentence satisfies rational-basis test); *Harvey v. Brewer*, 605 F.3d 1067, 1078-80 (9th Cir. 2010) (holding that Arizona statute restoring civil rights upon completion of sentence satisfies rational-basis test); *Owens v. Barnes*, 711 F.2d 25, 27-28 (3d Cir. 1983) (holding that Pennsylvania statute disenfranchising incarcerated felons but not felons on release does not violate Equal Protection Clause); *Madison v. State*, 163 P.3d 757, 771-72 (Wash. 2007) (holding that Washington statute restoring civil rights upon completion of sentence satisfies rational-basis test).

Thus, the district court did not err by concluding that section 609.165 has a rational basis. Therefore, section 609.165 of the Minnesota Statutes is not unconstitutional on the ground that it violates the equal-protection principle arising from article I, section 2, of the Minnesota Constitution.

III. Right to Substantive Due Process

Appellants also argue that section 609.165 violates the due-process clause in article I, section 7, of the Minnesota Constitution.

"[N]o person shall . . . be deprived of life, liberty or property without due process of law." Minn. Const. art. I, § 7. The due-process clause gives rise to substantive protections as well as procedural protections. *See State v. Hill*, 871 N.W.2d 900, 906 & n.5 (Minn. 2015). Under the doctrine of substantive due process, a statute is not unconstitutional if "the objective of the law is permissible, the means chosen to achieve

that objective are reasonable, and the legislative body did not act arbitrarily or capriciously in enacting the law." *Fletcher*, 947 N.W.2d at 10. The party challenging the constitutionality of a statute bears the burden of proving that the statute violates the doctrine of substantive due process. *Id.* at 11.

Section 609.165 satisfies each part of this three-part test. First, the objective of the law is permissible because it is "within the power of the governmental decision maker to enact and serves a public purpose." *See id.* at 10. There is no dispute that the legislature was authorized to enact a statute to provide for the restoration of felons' civil rights.

Second, the means chosen to achieve the legislature's objective are reasonable because the legislature "could rationally believe that the mechanism it chose would help achieve the legislative goal or mitigate the harm the legislation seeks to address." *See id.* As stated above, the legislature sought to provide a simplified means of restoring civil rights and reasonably chose to do so no later than the expiration of a criminal sentence, which marks the completion of a felon's punishment. The legislature chose to restore civil rights automatically at discharge instead of requiring felons to apply for restoration. *See Proposed Minnesota Criminal Code*, *supra*, at 42.

Third, the legislature did not act arbitrarily or capriciously in enacting the law because it "emerged from a reasoned, deliberative process, rather than as a result of legislative chance, whim, or impulse." *See id.* As described above, the legislature adopted the recommendation of a statutorily authorized commission, which had been charged with revising the state's criminal code, and the reasons for the commission's recommendation were well explained in the commission's report. *See supra* part II.E.

Thus, the district court did not err by concluding that section 609.165 is not unconstitutional on the ground that it violates the due-process clause in article I, section 7, of the Minnesota Constitution.

DECISION

Subdivisions 1 and 2 of section 609.165 of the Minnesota Statutes are not unconstitutional on the ground that they violate the right-to-vote provisions in article VII, section 1, of the Minnesota Constitution; the equal-protection principle arising under article I, section 2, of the Minnesota Constitution; or the due-process clause in article I, section 7, of the Minnesota Constitution.

Affirmed in part and dismissed in part.

Expert Report by Christopher Uggen, Ph.D.

February 18, 2020

Case: Jennifer Schroeder, Elizer Eugene Darris, Christopher James Jecevicus-Varner, and Tierre Davon Caldwell v. Minnesota Secretary of State Steve Simon, in his official capacity,
Court File No. 62-CV-19-7440

State of Minnesota
County of Ramsey
District Court
Second Judicial District

Introduction and Professional Qualifications

I have been retained as an expert by counsel for the Plaintiffs in the above captioned litigation. In forming my opinions, I have considered all materials produced in discovery requests and data requests, as well as those listed in Section 5 and the footnotes below.

I am a Regents Professor of Sociology at the University of Minnesota. I received my Ph.D. in sociology at the University of Wisconsin in 1995. With Professor Jeff Manza, I wrote *Locked Out: Felon Disenfranchisement and American Democracy* (2006, Oxford University Press) and have authored or coauthored numerous research articles, reports, and book chapters on the subject of voting restrictions for people convicted of crime. A detailed record of my professional qualifications and scholarly achievements is set forth in the attached curriculum vitae, including a list of publications I authored, awards, research grants, and professional activities.

This report summarizes my analysis of the number and demographic composition of people who have lost the right to vote in Minnesota due to a felony conviction, as well as some of the history and sociological effects of felony disenfranchisement in Minnesota. I compiled this information with the research assistance of two advanced University of Minnesota graduate students, Robert A. Stewart and Ryan P. Larson. Both have expertise in felon disenfranchisement issues and have published extensively in the fields of criminology and sociology. Mr. Stewart assisted in compiling historical information and Mr. Larson assisted in compiling statistics and preparing the maps shown below. Below, I summarize the opinions I have reached, the methodology I used to reach these opinions, the data sources I have examined, and the exhibits I have constructed in conducting this research.

1. Expansion of Criminal Justice System

People convicted of felonies in Minnesota are currently disenfranchised while they are incarcerated in prison, while they are serving probation in the community, and while they are under post-incarceration supervised release or parole. Probation refers to court-

ordered community supervision, generally in lieu of incarceration. Parole refers to community supervision that generally follows incarceration, such that a portion of a prison sentence is served in the community. Minnesota's discretionary parole system ended in 1980, but Minnesota prisoners have continued to serve the latter portion of their sentences in the community on supervised release. Like parole, supervised release is a conditional period of restricted freedom following release from prison.

We report each of these populations separately below. It is not uncommon, however, for individuals to be subject to multiple forms of correctional control due to concurrent sentencing. We therefore also report these populations after removing duplicate records beginning in subsection 1(e). To do so, we used the available identifiers in the data from the Minnesota Department of Corrections "Answers to Requests For Production" to identify those in multiple categories. We then ranked correctional control from most to least severe (i.e., prison, parole, supervised release, probation) and removed duplicates from whichever form was less severe. In other words, individuals on probation and supervised released were removed from the probation count; those on supervised release and in prison were removed from the supervised release count, and so on.

a. Minnesota's Rate of Imprisonment.

Minnesota has historically had a relatively *low* rate of prison incarceration relative to other states. For example, the Bureau of Justice Statistics (2019) estimates the U.S. state and federal imprisonment rate at 464 prisoners per 100,000 residents for year-end 2016. For the same period, Minnesota is reported as having a state and federal imprisonment rate of 192 per 100,000 residents for year-end 2016.

According to the Minnesota Department of Corrections "Answers to Requests For Production" (answer #6), "On December 30, 2019 there were 9,279 people in our jurisdiction currently incarcerated in the state of Minnesota." Incarceration rates are typically represented as the number incarcerated (9,279) divided by the total population (5,611,179 in the 2018 American Community Survey[1]) and expressed per 100,000 residents. This produces a state prison incarceration rate of 165.37 per 100,000 residents, or 215.42 per 100,000 adults of voting age ((9,279 / 4,307,433)*100,000 =215.42). The latter number is most pertinent for estimating the impact of felon voting restrictions. Note that this rate only includes the state prison population and does not include the following groups (many of whom would not be eligible to vote in Minnesota): (1) federal prisoners; (2) persons incarcerated in local jails for stayed felony sentences; (3) civil commitments; and other categories of institutionalized populations.[2]

[1] See U.S. Census Bureau. 2018. 2018 American Community Survey 5-Year Estimates, https://www.census.gov/data/developers/data-sets/acs-5year.html. Accessed 2/5/2020.

[2] Arguably, other populations could be included as part of the disenfranchised prison population in Minnesota. The Bureau of Justice Statistics shows 212 Minnesota prisoners housed in other states' facilities. (Carson, E. Ann and Mulako-Wangota, Joseph. Bureau of Justice Statistics. Count of jurisdiction population - housed in other states' facilities). Generated using the Corrections Statistical Analysis Tool (CSAT) - Prisoners at **www.bjs.gov**. (05-Feb-20). In addition, the Prison Policy Institute estimates that Minnesota is the home state for 1,506 people in Federal Bureau of Prisons facilities around the country ("Home States of People in Bureau of Prisons Facilities").

2019 Minnesota adult state imprisonment rate (all ages) [3]: 165

2019 Minnesota adult state imprisonment rate (ages 18+)[4]: 215

b. Minnesota's Rate of Probation

In contrast to imprisonment, Minnesota's rate of state-level probation is significantly *higher* than the national average. At year-end 2016, for example, the overall adult probation supervision rate was approximately 2,280 per 100,000 residents in Minnesota, relative to 1,466 per 100,000 residents for the U.S. as a whole.[5]

According to the Minnesota Department of Corrections "Answers to Requests For Production" (answer #2), on December 31, 2018, there were 100,101 adults in Minnesota on probation for state-level felony, gross misdemeanor, misdemeanor, or other offenses. Of these, 46,089 were under supervision for felony-level offenses, 32,246 for gross misdemeanors, and 21,766 for misdemeanor or other offenses. The felony figures are most pertinent to disenfranchisement. In addition to those on probation for state-level offenses, according to the United States Probation & Pretrial Office's (USPPO) "RE: Subpoena Request for Records," 87 were on probation for federal-level felony offenses on January 9, 2020. Based on these numbers and using the same 2018 state voting age population estimate as above, I obtain the following figures:

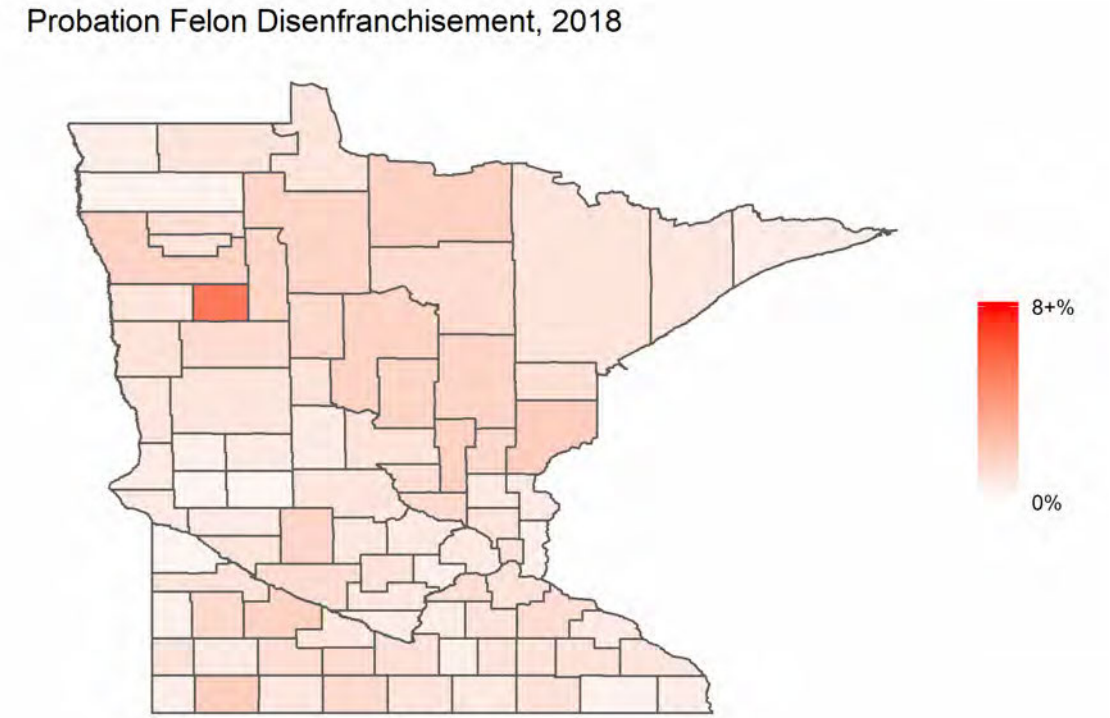
2018 Minnesota adult probation rate (ages 18+)[6]: 2,326

2018 Minnesota adult *felony* probation rate (ages 18+)[7]: 1,072

The latter rate can also be expressed as the percentage of the adult voting age population that is currently under probation supervision for a felony. In

[3] The 2019 Minnesota rate is (9,279 incarcerated/5,611,179 total population) * 100,000 = 165.37. The 2016 national rate of prisoners in state institutions is 406. Carson, E. Ann and Mulako-Wangota, Joseph. Bureau of Justice Statistics. (Imprisonment rates of total jurisdiction population).
Generated using the Corrections Statistical Analysis Tool (CSAT) - Prisoners at www.bjs.gov. (18-Feb-20).
[4] The 2019 Minnesota rate is (9,279 incarcerated/4,307,433 voting age population)*100,000) = 215.42. The 2016 national rate of adults in state institutions is 528. Carson, E. Ann and Mulako-Wangota, Joseph. Bureau of Justice Statistics. (Imprisonment rates of total jurisdiction population).
[5] Bonczar, Thomas P. and Mulako-Wangota, Joseph. Bureau of Justice Statistics. (Adult supervision rate of total probation population). Generated using the Corrections Statistical Analysis Tool (CSAT) - Probation at www.bjs.gov. (05-Feb-20).
[6] The 2018 Minnesota rate is (100,188 total probation population/4,307,433 voting age population)*100,000) = 2,325.93. The 2016 national rate is 1,466.
[7] The Minnesota rate is (46,176 *felony* probation population/4,307,433 voting age population)*100,000) = 1072.01. The 2016 national rate is 694. Bonczar, Thomas P. and Mulako-Wangota, Joseph. Bureau of Justice Statistics. (Count of year-end probation population by type of sentence).Generated using the Corrections Statistical Analysis Tool (CSAT) - Probation at www.bjs.gov. (18-Feb-20).

Minnesota, based on 2018 data, approximately 1% of the adult voting age population is currently under probation supervision for a felony.[8] This group constitutes an important part of the total disenfranchised population in Minnesota. The percentage of disenfranchised felony probationers varies greatly across the state, as shown below, from less than 0.5% in Lac qui Parle County to over 5% in Mahnomen County.



c. Minnesota's Rate of Post-Incarceration Parole and Supervised Release

Minnesota's rate of post-incarceration parole and supervised release is *lower* than that of the nation as a whole. At year-end 2016, the Minnesota adult state supervision rate was 167 per 100,000 residents in Minnesota, relative to a state adult parole supervision rate of 303 per 100,000 residents for the United States overall.[9]

According to the Minnesota Department of Corrections "Answers to Requests For Production" (answers #1 and #3), on December 31, 2018 there were 7,360 adult Minnesotans under their jurisdiction on supervised release and 21 adult Minnesotans on parole.[10] Additionally, according to USPPO's "RE: Subpoena

[8] The percentage is (46,176 *felony* probation population/4,307,433 voting age population) = 0.01072007*100=1.07%

[9] Bonczar, Thomas P. and Mulako-Wangota, Joseph, Bureau of Justice Statistics. (Adult supervision rate of total parole population).Generated using the Corrections Statistical Analysis Tool (CSAT) - Parole at www.bjs.gov. (05-Feb-20).

[10] When duplicate records in other correctional populations are removed, this number drops to 6,779. See part 1e below.

Request for Records," there were 846 adult Minnesotans on supervised release for federal cases and 7 adult Minnesotans on parole.[11] From this figure, we can calculate the rate of parole and supervised release, following the same procedure as above.

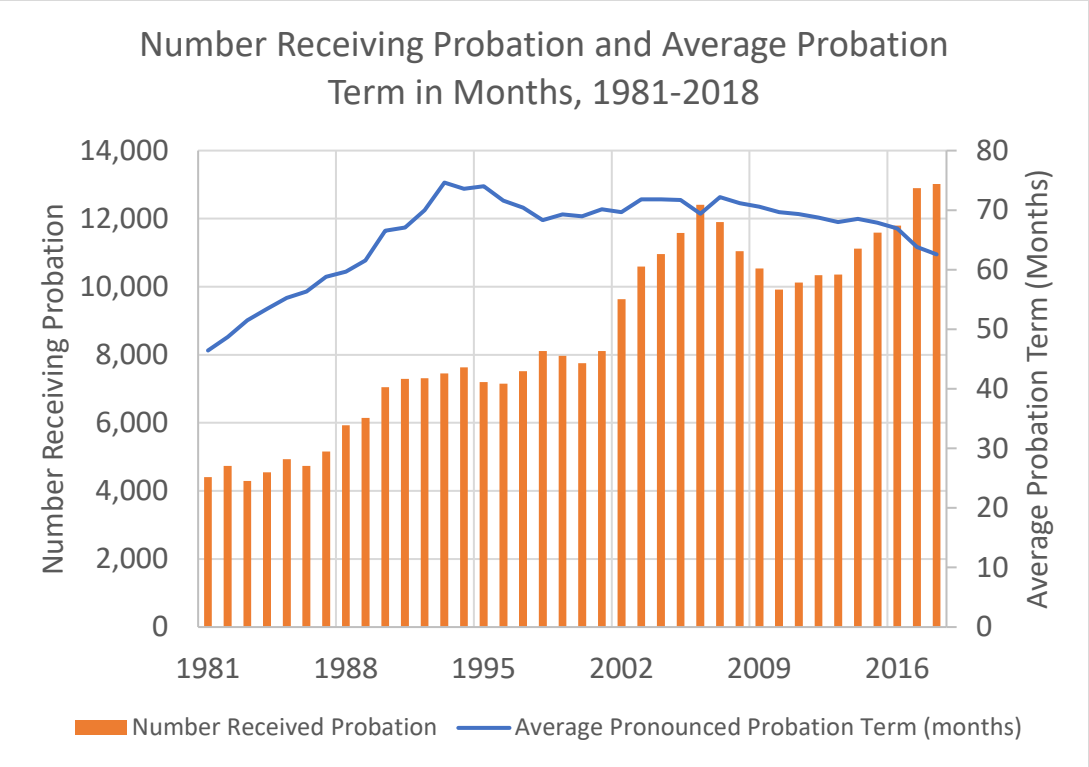
2018 Minnesota adult parole and supervised released rate (ages 18+)[12]: 191

d. Length of Probation and Felony Probation Sentences in Minnesota

According to the Bureau of Justice Statistics' Correctional Populations in the United States, Minnesota had the fourth highest rate of community supervision among the 48 states for which year-end 2016 data were available.[13] This is in large part due to the *length* of probation sentences in Minnesota, as well as the number of persons entering probation in any given year.

The figure below shows the number receiving felony-level probation (represented by the orange bars) and the average length of these sentences in Minnesota from 1981 to 2018 (represented by the blue line). For the past three decades, the average length of probation has exceeded 5 years in Minnesota, which is greater than the maximum (non-life) term that may be imposed in several states.[14] In 2018, the average felony-level probation sentence in Minnesota was 62.57 months. The average for all such sentences from 1981-2018 has been 66.05 months, or 5.5 years. This exceeds the average length of (non-life) felony-level prison sentences in Minnesota, which was 44.7 months in 2017. On average, then, Minnesotans are thus receiving longer probation sentences than prison sentences for non-life felony-level offenses

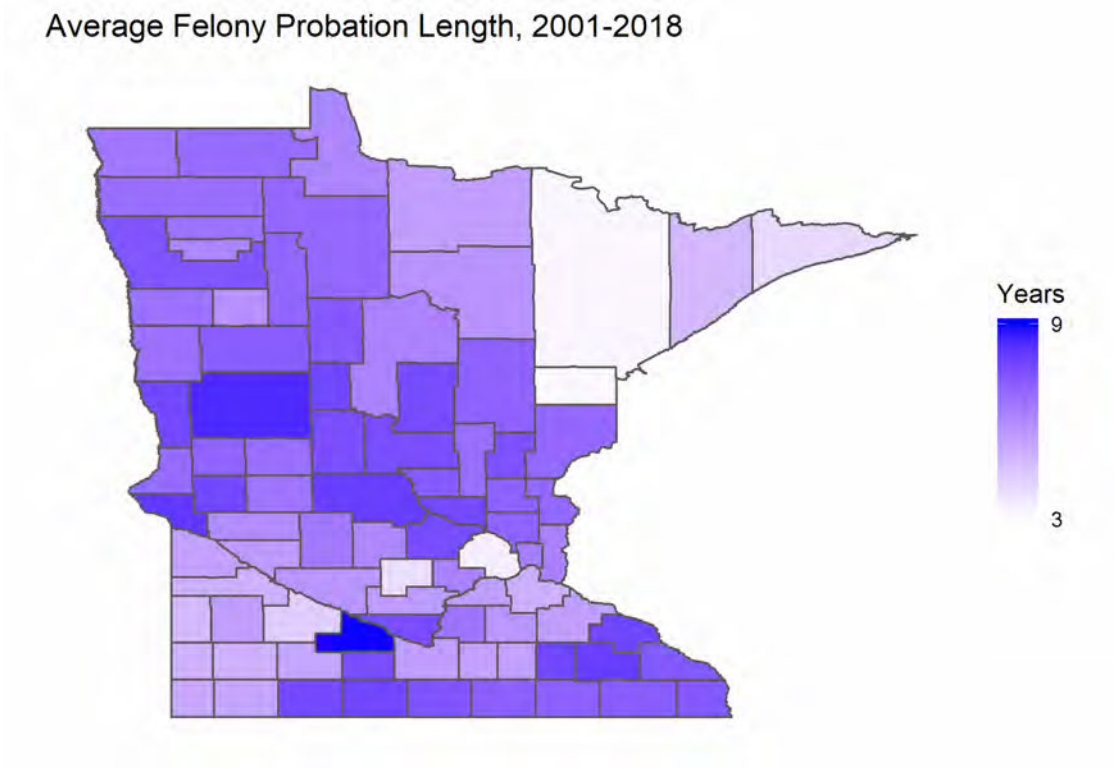
[11] Our count, based on the data we received from the USPPO, is 923. See part 1e below.
[12] The 2018 Minnesota rate is (8,234 on parole or post-incarceration supervised release/4,307,433 voting age population)*100,000) = 191.16. The 2016 national rate is 303 (Bonczar, Thomas P. and Mulako-Wangota, Joseph, Bureau of Justice Statistics. (Adult supervision rate of total parole population)).
Generated using the Corrections Statistical Analysis Tool (CSAT) - Parole at www.bjs.gov. (18-Feb-20).
[13] Kaeble, Danielle, and Mary Cowhig. 2018. *Correctional Populations In The United States, 2016.* U.S. Department of Justice, Bureau of Justice Statistics. http://www.bjs.gov/index.cfm?ty=pbdetail&iid=6226. Georgia is one of the two missing states in this analysis and its rate of probation has historically exceeded the Minnesota rate.
[14] Watts, Alexis Lee. 2016. *Probation in Depth: The Length of Probation Sentences*. Minneapolis: Robina Institute of Criminal Law & Criminal Justice.



The average length of felony probation sentences varies greatly across counties and judicial districts in Minnesota.[15] The map below shows the distribution of average felony probation sentences across counties for the period 2001-2018, based on data received from the Minnesota Sentencing Guidelines Commission. Mean felony-probation sentence lengths range from less than 3.4 years in Carlton, St. Louis, and Hennepin counties to more than 8 years in Brown, Otter Tail, and Big Stone counties. County-level variation in supervision rates likely reflects different police and prosecutorial practices across the state, as well as different practices in community supervision. With regard to the latter, a 2015 report by the Minnesota Sentencing Guidelines Commission finds probation revocation rates ranging from 6.9% in Rice County to 32% in Beltrami County.[16]

[15] For a breakdown by judicial district, see Minnesota Justice Research Center. 2019. *Probation Sentences in Minnesota.*

[16] Minnesota Sentencing Guidelines Commission. 2016. *Probation Revocations: Offenders Sentenced from 2001-2014 and Revoked to Prison.*



e. Size of Felony-Level Community Supervision Population as a Whole

After removing potential duplicate records (e.g., those counted in both the probation and supervised release populations)[17] and removing those supervised for misdemeanors and gross misdemeanors, we find a total state- and federal-level felony community supervision population of 53,585. This includes 45,855 felony probationers (45,770 state, 85 federal), 7,697 on supervised release (6,774 state, 923 federal), and 28 parolees (21 state, 7 federal). This corresponds to a felony-level community supervision rate of 1,244.01 per 100,000 adults in Minnesota.

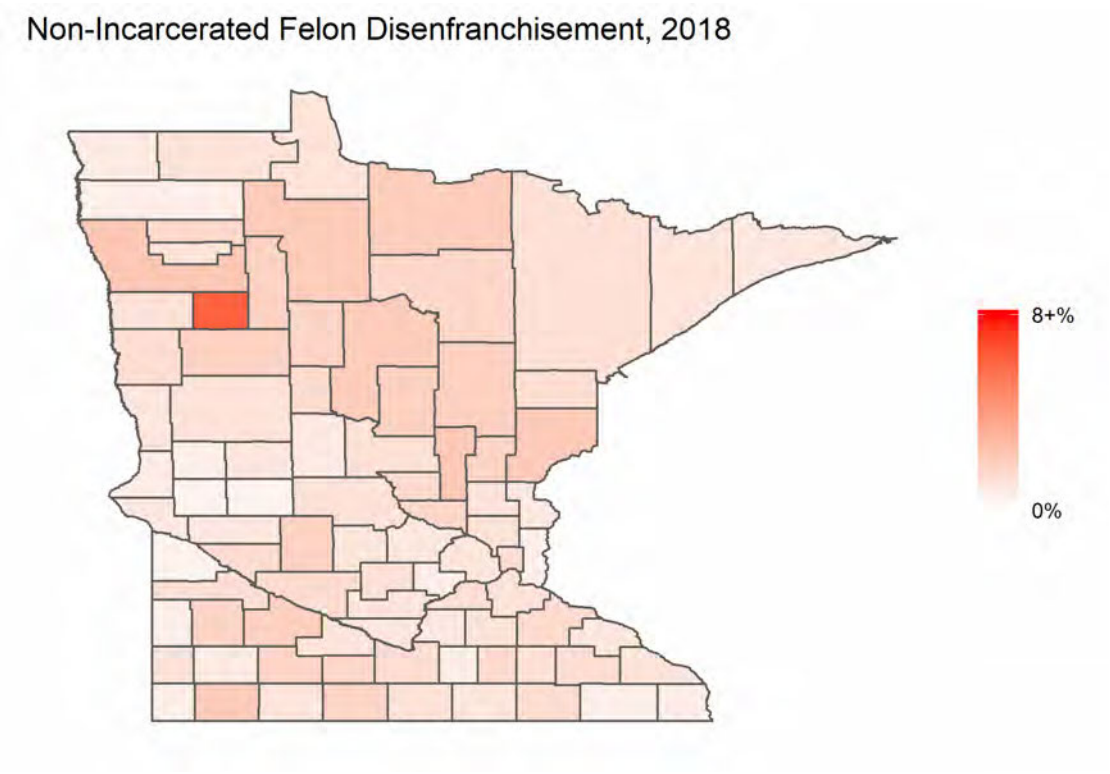
2018 Minnesota Community Supervision Rate (ages 18+)[18]: 1,244

Here too, these rates may be expressed as percentages of the voting age population currently under some form of community supervision. Mahnomen

[17] As noted above, individuals may be subject to multiple forms of correctional control due to concurrent sentencing. For example, someone sentenced to prison for 3 years on one case and 6 years on a second case would technically be on supervised release in the first case after serving 2 years (that is, 2/3 of a 3 year sentence) while still incarcerated for the custodial sentence in the second case. We used the available identifiers in the data from the Minnesota Department of Corrections "Answers to Requests For Production" to flag those in multiple categories. We then ranked correctional control from most to least severe (i.e., prison, parole, supervised release, probation) and removed duplicates from whichever form was less severe, such that individuals on probation and supervised released were removed from the probation count; those on supervised release and in prison were removed from the supervised release count, and so on.

[18] The 2018 Minnesota rate is (53,585/4,307,433)*100,000 = 1,244.01. The comparable 2016 national rate is 999.

County is an outlier, with over 6% of the non-incarcerated population disenfranchised due to a felony conviction in 2018.



These spatial disparities in community supervision are closely tied to racial disparities. The next section disaggregates the community supervision population by race, using the categories "White," "Black," "Asian" (and Pacific Islander), and "American Indian." Unfortunately, we cannot consider ethnicity or Hispanic/Non-Hispanic status in these calculations due to a substantial amount of missing data in many Minnesota counties.

2. Criminal Justice System's Disparate Impact on People of Color

Stark racial and ethnic disparities are observed at all major stages of U.S. criminal justice processing. Most notably, at year-end 2017, the U.S. imprisonment rate for Blacks (1,549 per 100,000) was 5.6 times that of Whites (272 per 100,000).[19] In a thorough review of the rise in criminal punishment since the 1970s, the National Research Council (2014, p. 103) attributes such extreme disparities to "small but systematic racial differences in case processing, from arrest through parole release, that have a substantial cumulative effect," as well as pervasive bias, and changes in sentencing and policing, including policies associated with the war on drugs.[20]

[19] Jennifer Bronson and E. Ann Carson, 2019. *Prisoners in 2017*. U.S. Department of Justice Bureau of Justice Statistics.
[20] National Research Council. 2014. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Academies Press.

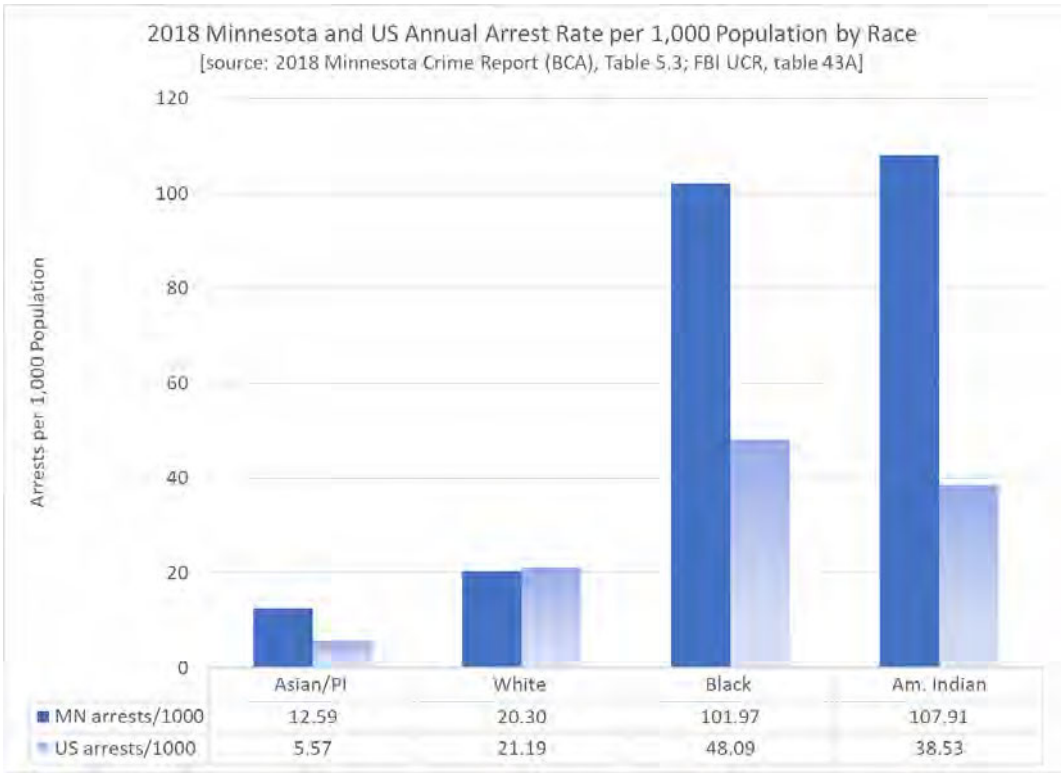
Although disparities in criminal behavior and arrest explain some portion of disparities in punishment, the National Research Council concludes that they cannot fully account for the race gap in punishment, particularly since the 1990s.[21] Based on their examination of the research literature and national data, the Council notes that "even though participation of blacks in serious violent crimes has declined significantly, disparities in imprisonment between blacks and whites have not fallen by much."[22]

Relative to other states and the nation as a whole, racial disparities in criminal justice are particularly high in Minnesota. Over the period from 1982 to 2007, the incarceration rates for Blacks in Minnesota have been at least 11 times those for Whites.[23] The following section considers pre-conviction and post-conviction racial disparities in Minnesota in 2018, before examining the racial impact of the disenfranchisement of persons serving sentences on community supervision.

a. Pre-Conviction Disparities and Arrest

The figure below shows the annual arrest rate per 1,000 residents for Minnesota and the United States in 2018.[24] Because people can be arrested multiple times per year, these figures should not be interpreted as percentages. Instead, they represent the frequency of arrest experienced by members of each group. Overall, there are about 20 arrests per thousand White residents in Minnesota, which is comparable to the national figure of 21 arrests per 1,000. Arrests of Asians and Pacific Islanders are somewhat lower in both the Minnesota and the United States as a whole. The Black and American Indian annual arrest rate, however, is more than 5 times the White rate in Minnesota, at 102 and 108, respectively. On average, then, there were over 100 Black and American Indian arrests for every 1,000 Minnesota residents in these groups in 2018. In short, Blacks, American Indians, and Asians and Pacific Islanders have a higher rate of arrest in Minnesota than these groups have in the nation as a whole. Whites, in contrast, are arrested at comparable rates in Minnesota and in the nation as a whole. Note that the denominator in these figures is the total population, rather than voting age population. The annual arrest rates for would be higher for all racial groups if young children had been excluded from the denominator.

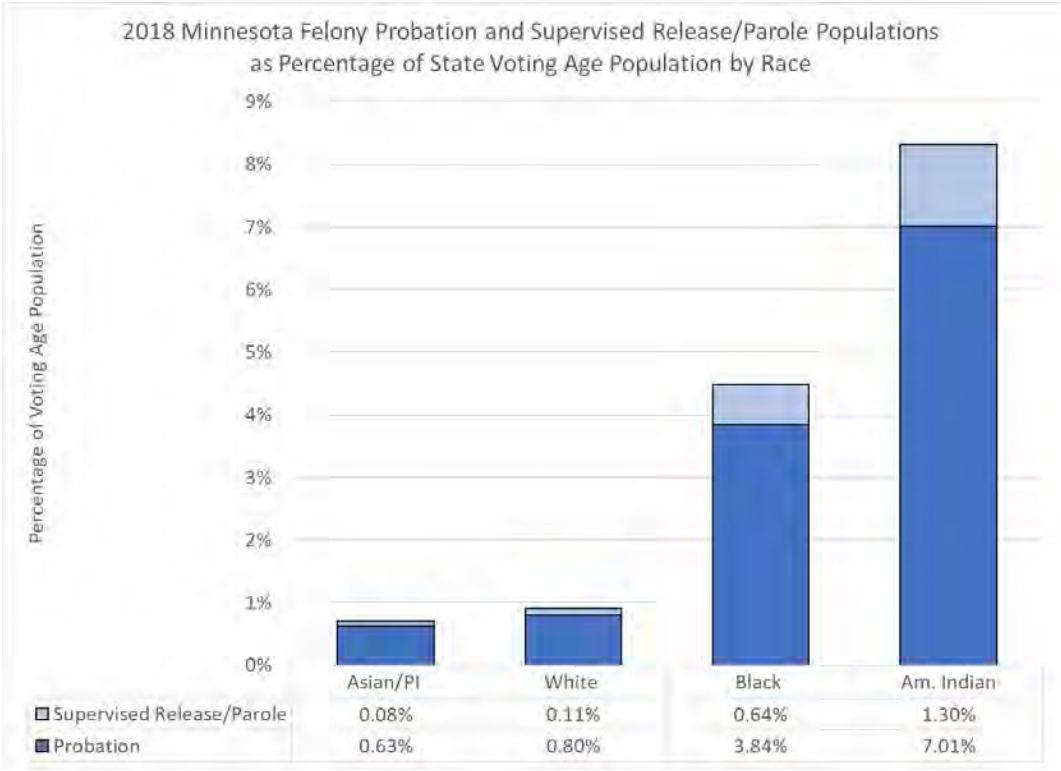
[21] National Research Council. 2014, page 93.
[22] National Research Council, 2014, page 60.
[23] Frase, Richard S. 2009. "What Explains Persistent Racial Disproportionality in Minnesota's Prison and Jail Populations?" *Crime and Justice* 38: 201–280.
[24] Arrest data are compiled from State of Minnesota, Department of Public Safety. 2019. *Minnesota Uniform Crime Report-2018*. National arrest data are compiled from United States Department of Justice, Federal Bureau of Investigation. 2019. *Crime in the United States, 2018.*



b. Community Supervision Population as Percentage of State Voting Age Population

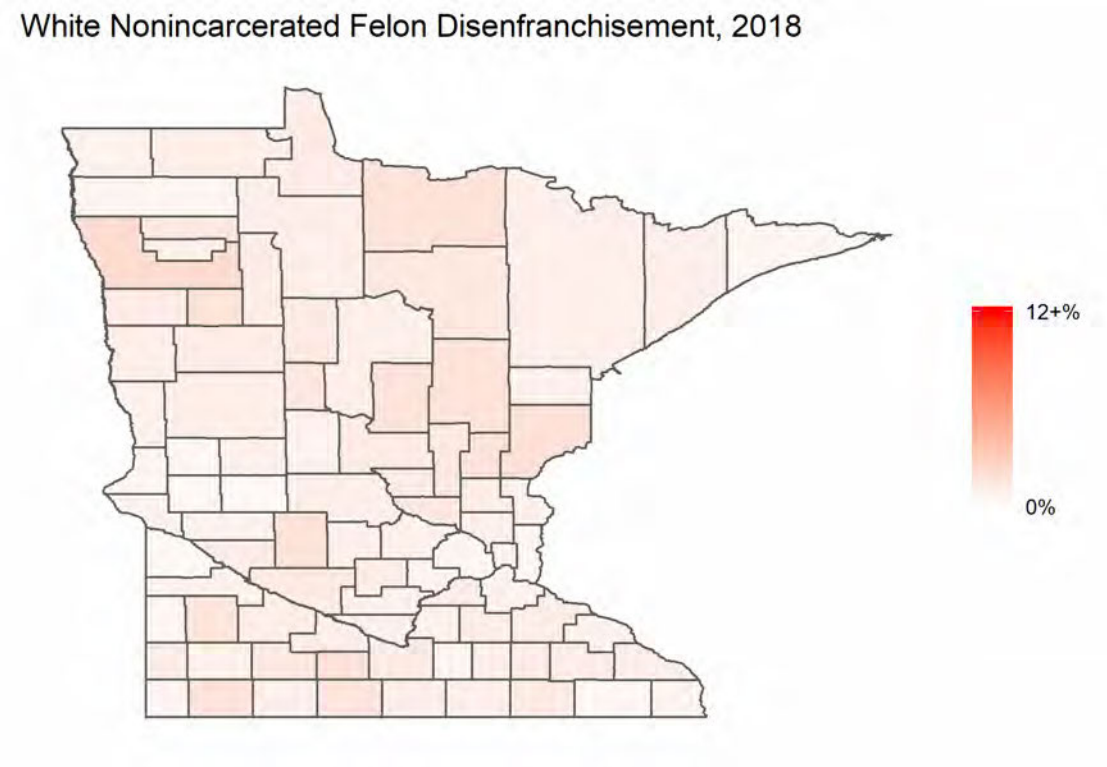
Disparities in punishment, and thus disenfranchisement, are similarly notable in Minnesota prison and community supervision populations. The next figure shows the percentage of Minnesota's voting age population that is currently under felony-level community supervision. This figure shows large racial differences in the rate of supervision, in addition to showing how probation makes up the largest share of the community supervision population for each group. Combining probation and post-incarceration supervision, the rate of supervision (and, hence, disenfranchisement) is 0.71% among Asian and Pacific Islanders, 0.92% among Whites[25], 4.48% among Blacks, and 8.31% among American Indians. In Minnesota, where felony-level community supervision is tightly bound up with disenfranchisement, this provides a clear picture of vote dilution in communities of color. The Black and American Indian disenfranchisement rates are thus 4.9 times and 9.0 times the White disenfranchisement rate, respectively. Overall, about 4.5% of voting-age Black Minnesotans and 8.3% of American Indian Minnesotans are disenfranchised due to voting restrictions for persons on community supervision, relative to less than 1% of Asian and White Minnesotans.

[25] The figure suggests .91, with this difference attributable to rounding error (the combined percentage is 0.9153).



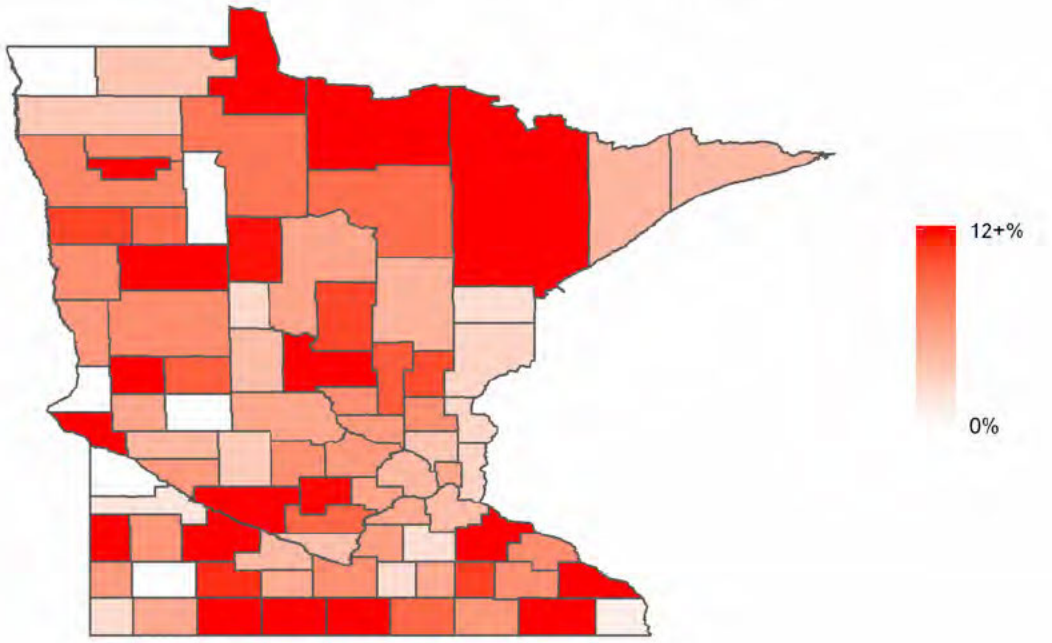
c. Racial Disparities in the Non-incarcerated Disenfranchised Population by County

The following set of figures disaggregates these figures by county, showing the rate of felony-level community supervision (and, hence, disenfranchisement) among white, Black, and American Indian groups for Minnesota counties in 2018. These figures are presented in a common scale, such that unshaded regions indicate 0% disenfranchisement, dark red shaded areas indicating 12% or more disenfranchised, and the gradient representing intermediate rates of disenfranchisement. In the White Non-incarcerated figure below, there is relatively little variation and the entire state is lightly shaded. In no county is more than 2.2% of the white population disenfranchised.

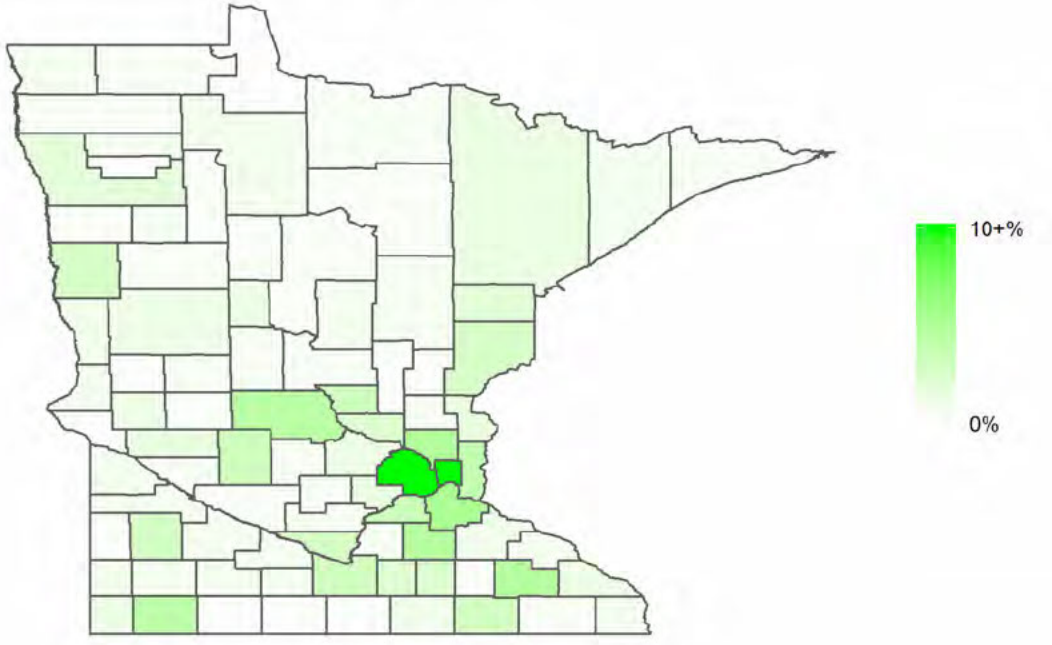


The next map, displaying Black non-incarcerated disenfranchisement, shows much higher rates of disenfranchisement, with more than 10% of the voting age population disenfranchised in many counties. It also shows greater variability than the White map, partly due to relatively small Black populations in some counties. For comparison, we also provide a figure mapping the Black population as a percentage of the county population. This shows that although the Black population is greatest in Hennepin and Ramsey counties, the rate of Black disenfranchisement is higher in other parts of the state. Statewide, as noted above, about 4.5% of the Black voting age population is disenfranchised due to felony-level community supervision, relative to 0.9% of the White voting age population.

Black Nonincarcerated Felon Disenfranchisement, 2018



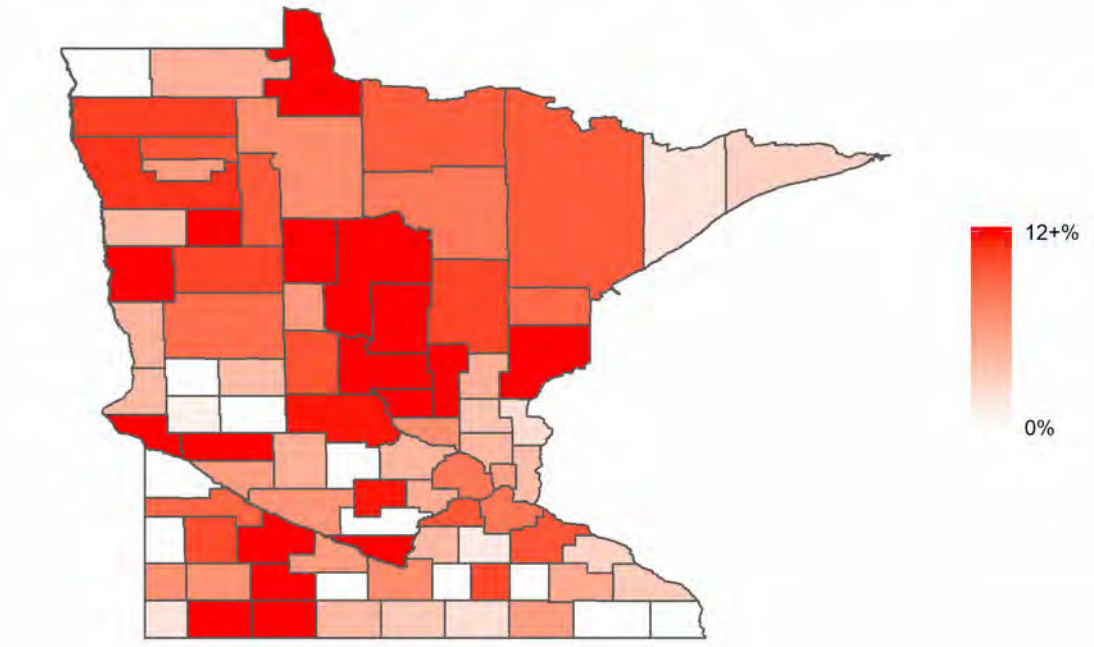
Percent Black of VAP by County, 2018



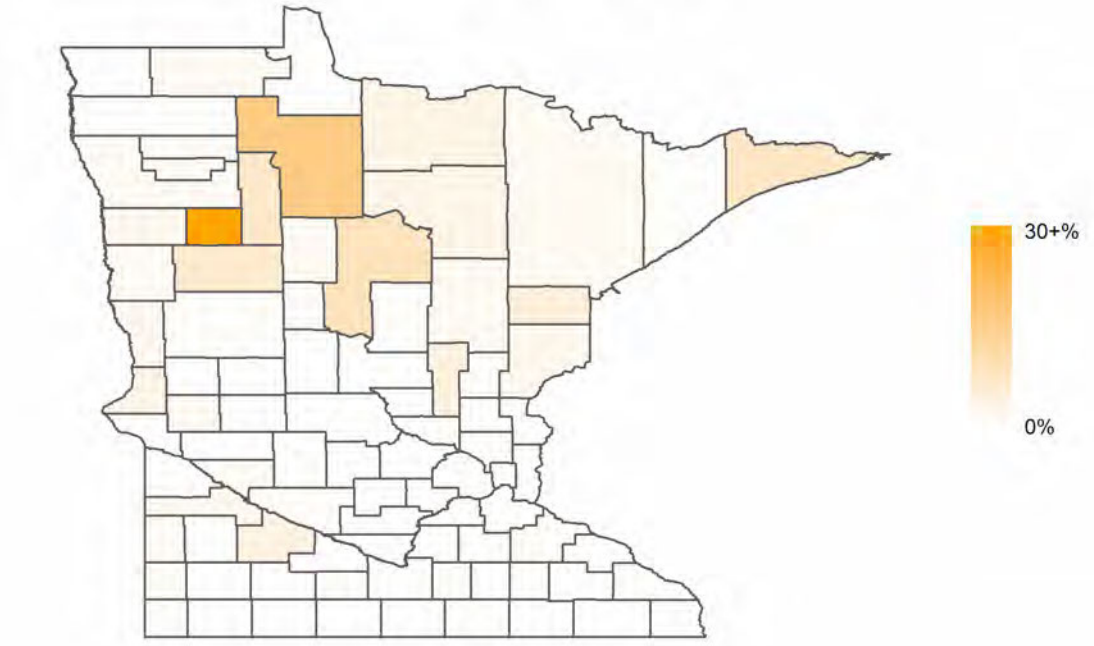
The map for American Indians in Minnesota also shows high rates of disenfranchisement throughout most of the state, with many of the higher rates observed in Northern counties. In contrast to the pattern for Black Minnesotans,

however, American Indians are disenfranchised at high rates in areas where they make up a larger percentage of the population.

American Indian Nonincarcerated Felon Disenfranchisement, 2018



Percent American Indian of VAP by County, 2018



3. Disenfranchisement

The racialized history of felon disenfranchisement is a major focus of my 2006 book with Jeff Manza, *Locked Out: Felon Disenfranchisement and American Democracy.* Based on our historical analysis of the passage and contemporary impact of disenfranchisement provisions, we conclude that "the adoption and expansion of these laws in the United States is closely tied to the divisive politics of race and the history of racial oppression."[26] We are certainly not alone in this appraisal. As Alec Ewald notes, "after Reconstruction, several Southern states carefully re-wrote their criminal disenfranchisement provisions with the express intent of excluding blacks from the suffrage."[27] In Minnesota, the history of disenfranchisement is not as well-documented, although we can describe the conditions that prevailed when felon voting restrictions were imposed and expanded.

a. Disenfranchisement at Constitutional Ratification 1857/58

Criminal justice data are sparse in Minnesota's early years, but some basic statistics are available to speak to the limited impact of felon disenfranchisement in the 1850s and 1860s. The 1850 U.S. Census indicates that 2 persons were convicted in the Territory of Minnesota during the year ended June 1, 1850 and that 1 person was incarcerated on that date.[28] It further notes that this person was foreign-born, so it is unclear whether anyone otherwise eligible to vote would have been disenfranchised. Nevertheless, based on the territorial population of 6,077 persons, the maximum rate of disenfranchisement would be well below 1% of the population. At the time of ratification (1858), we could find records of only two persons in Minnesota's state prison: Thomas Dunn, a 21 year old White man from Canada, and Charles Johnson, a 19 year old Black man from Virginia.[29]

The 1860 U.S. Census indicates that 32 people were incarcerated on June 1, 1860 (16 of whom were foreign-born) and 33 had been convicted in the previous year. By 1860, however, the state population had increased dramatically to 172,023 persons. Thus, disenfranchisement due to felony conviction[30] could only have affected a tiny fraction of the population.

By the 1870 Census, when the state's population had risen to 439,706, a total of 214 persons had been convicted in the previous year and 129 were incarcerated on June 1, 1870. These included 65 categorized as White (among a White population

[26] Jeff Manza and Christopher Uggen. *Locked Out: Felon Disenfranchisement and American Democracy*. 2006, p. 9. New York: Oxford University Press.
[27] Alec C. Ewald. 2002. "'Civil Death': The Ideological Paradox of Criminal Disenfranchisement Law in the United States." 1045, 1065.
[28] Minnesota Territorial Statutes (1851) Ch. 5 Sec. 2. "No person under guardianship, non compos mentis, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, felony, or bribery, unless restored to civil rights, be permitted to vote at any election."
[29] Minnesota State Prison (Stillwater, Minn.). Convict Registers, 1854-1892. Minnesota Historical Society.
[30] Of course, the voting-eligible population was far smaller in 1860 than today, as women, African Americans, persons 18-21, and other populations remained disenfranchised in this period.

of 438,257) and 8 categorized as "Colored" (among a "Colored" population of 759). This indicates some degree of early disproportionality in punishment – the "Colored" incarceration rate is about 71 times the White incarceration rate – but the overriding point is that the size of the criminal justice system was quite small at the time of statehood. Since this time, the number of felony-level crimes in Minnesota statutes has increased dramatically.[31]

When Minnesota's constitutional framers drafted the franchise restriction, there was no formal system of community supervision; categories such as probation, parole, and supervised release did not yet exist. Robert Stewart, who assisted in the preparation of this report, has compiled a timeline of some of the major developments in Minnesota community supervision and corrections. These include the first parole-like apprenticeship program for juveniles[32] (1866), the establishment of the St. Cloud Reformatory for Men and indeterminate sentencing with parole for emerging adults[33] (1887), the expansion of parole to adults over 21[34] (1893), the first establishment of juvenile probation in larger counties[35] (1899), the expansion of probation to people from 18-21 years of age[36] (1901), the expansion of probation more broadly[37] (1909), the shift to indeterminate sentencing and the establishment of a state board of parole[38] (1911), and the establishment of the state Department of Corrections[39] (1959).

The only formalized rights restoration process or path for sentence modification during Minnesota's first few years as a state was the executive pardon. At the urging of the warden of the State Prison at Stillwater, the Minnesota Legislature established its first early release for good behavior scheme in 1862.[40] Under the new program, those incarcerated in the State Prison were eligible to have three days deducted from their sentences for every month of continuous good behavior.[41] Five years later, the Legislature adjusted the system to further incentivize good behavior. The new arrangement entitled those incarcerated to a 2 day reduction of their sentenced after one month of good behavior, 4 days for a second consecutive month of good behavior, 6 days for a third consecutive month, and an additional 6 days for each consecutive month thereafter.[42] The Legislature further incentivized good behavior by including a provision that entitled an

[31] See, e.g., Mark Haase, Civil Death in Modern Times: Reconsidering Felony Disenfranchisement in Minnesota, 99 Minn. L. Rev. 1913 (2015). He notes that "in the 1860s, there were approximately seventy-five felony level crimes in Minnesota statutes. Today there are over 375."
[32] Laws of Minn., 1866, Ch. 7, Sec. 5.
[33] Laws of Minn., 1887, Ch. 208, Sec. 10.
[34] Laws of Minn., 1893, Ch. 9 Sec. 1
[35] Laws of Minn., 1899, Ch. 154. Sec. 4
[36] Laws of Minn., 1901, Ch. 102, Sec. 1
[37] Laws of Minn., 1909, Ch. 391, Sec.1
[38] Laws of Minn., 1911, Ch. 298, Sec. 1, 3, 7, 8
[39] Laws of Minn., 1959, Ch. 263
[40] James Taylor Dunn, "The Minnesota State Prison during the Stillwater Era, 1853-1914," Minnesota History (December 1960).
[41] Laws of Minn, 1862, Ch. 63, Sec. 5(3).
[42] Laws of Minn., 1867, Ch 14, Sec. 82.

incarcerated person to have their rights restored if they completed their entire prison term with good behavior:

> *[I]f any convict shall so pass the whole term of his service or the remainder of his sentence after the passage of this act (provided he shall have the term of one year yet to serve), he shall be entitled to a certificate thereof from the warden, and upon the presentation thereof to the governor he shall be entitled to a restoration of the rights of citizenship, which may have been forfeited by his conviction…"* (Laws of Minn., 1867, Ch. 14, Sec. 82.

To our knowledge, this is the first formalized process for restoring civil rights following a felony conviction (except for the pardon process[43]) in Minnesota's statutes. This 1867 good time/restoration law was introduced (January 21, 1867) in the House by the chair of the State Prison Committee, H.A. Jackman (who represented Stillwater and later became warden of the State Prison).[44] It passed the House (February 6, 1867) and Senate (February 16, 1867) with unanimous support and was signed by Governor Marshall on February 19, 1867. Although the historical record is incomplete, there is evidence that the rights of many former prisoners were restored through this process in the late 1800s.[45]

In 1907, the Legislature added an additional rights restoration process for those sentenced to pay a fine or serve a jail term—but not sent to prison—for a felony conviction. One year after a felony conviction, the disenfranchised person could apply in district court to have their rights restored.[46] As part of the application, the applicant must also supply three witnesses (later changed to two) who could "testify to his or her good character during the time since such conviction."[47] In 1911, due to the state's transition to indeterminate sentencing and the creation of the State Parole Board, rights restoration for those sentenced to prison was at the discretion of the governor following the discharge or termination of the

[43] The Pardon Extraordinary, which is the version of the pardon that those no longer in prison or serving a sentence are eligible to receive, was not created until 1941 (Laws of Minn., Ch. 377, Sec 3).
[44] Minnesota House Journal, 9th Leg., Reg. Sess. (1867).
[45] To provide a snapshot of how these provisions were used, we found records of 233 prisoners who were released from the Minnesota State Prison between Aug 1, 1885 and July 31 1886. Of these, 173 received full "good time" credit, 20 more received partial good time credit, 32 were commuted, and 8 were pardoned. Of the 173 with full good time who were entitled to full restoration of citizenship, we found records of 51 being restored (Restoration of Citizenship. Minnesota: Governor: Hubbard. Records. Minnesota Historical Society. State Archives.). While this appears to be a small proportion, it may be attributable to the significant proportion of prisoners who were not state residents at the time. In a report to the legislature a few years earlier, Warden J.A. Reed stated, "[A] large per cent of our prisoners are not and never were *bona fide* citizens of this State, but come into the State to ply their avocation, are committed, serve out their term of sentence, and then immediately leave the State and we hear nothing more from them." (Biennial Report of the Inspectors and Warden of the State Prison to the Legislature of Minnesota, for the Fiscal Year Ending November 30th, 1880 [p.17]. Minnesota State Prison [Stillwater, Minn.]. Annual and Biennial Reports. Minnesota Historical Society.)
[46] Laws of Minn., 1907, Ch. 34.
[47] Id.

individual's custody or discharge.[48] These processes remained in place until 1963, when the current restoration process was established.[49]

b. Disenfranchisement in the 1960s

In 1963, the Minnesota Criminal Code underwent a significant revision. Some criminal justice statistics are more widely available for this period, although it remains difficult to compile precise (voting age) disenfranchisement rates due to inconsistencies in reporting and the aggregation of juveniles and adults under correctional control. By 1960, the Minnesota voting age population (age 21 and over, at this time) had risen to 2,003,000.[50] The 1960 U.S. Census *Inmates of Institutions Subject Report* lists 2,377 state prisoners (2,112 of whom were over age 21, and 282 of these were non-White), along with 516 federal prisoners (all over age 21, and 198 non-White), and 1,348 inmates in local jails and workhouses (1,100 over age 21, and 230 non-White). Non-Whites were thus overrepresented in the state prisons, as this group comprised over 13% of state prisoners, relative to about 1.2% of the state population.

Partial information on community supervision populations, but not including the three largest counties—Hennepin, Ramsey, and St. Louis—is available in the *Minnesota Department of Corrections Report for the Fiscal Years 1963 and 1964.*[51] This report divides correctional populations into the categories of "juvenile," "youth," and "adult." Some of the 959 "youth" under correctional supervision were likely age 21 or older, although I cannot determine the precise number with accuracy. Among the adults, 1,954 were under some form of probation or parole community supervision at the end of the 1963-1964 fiscal year. The average daily population of adults in St. Cloud, Shakopee, and Stillwater prisons was 1,904 over this period, with an additional 86 housed in the reception centers of these institutions. Based on these figures, one can estimate the total adult correctional population as consisting of approximately 2,000 adult prisoners and 1,954 adults under supervision. Combined, this would represent approximately 0.2% of the total adult voting age population.

c. Recent and Current Rates of Disenfranchisement in Minnesota

The rate of criminal punishment and disenfranchisement accelerated rapidly in Minnesota from the mid-1970s to the early 2000s, as the total disenfranchisement rate rose from about 0.3% of the state voting age population to approximately 1.4% of state voting age population in 2018, as shown in the table below. To avoid the potential for double-counting, this figure does not include people

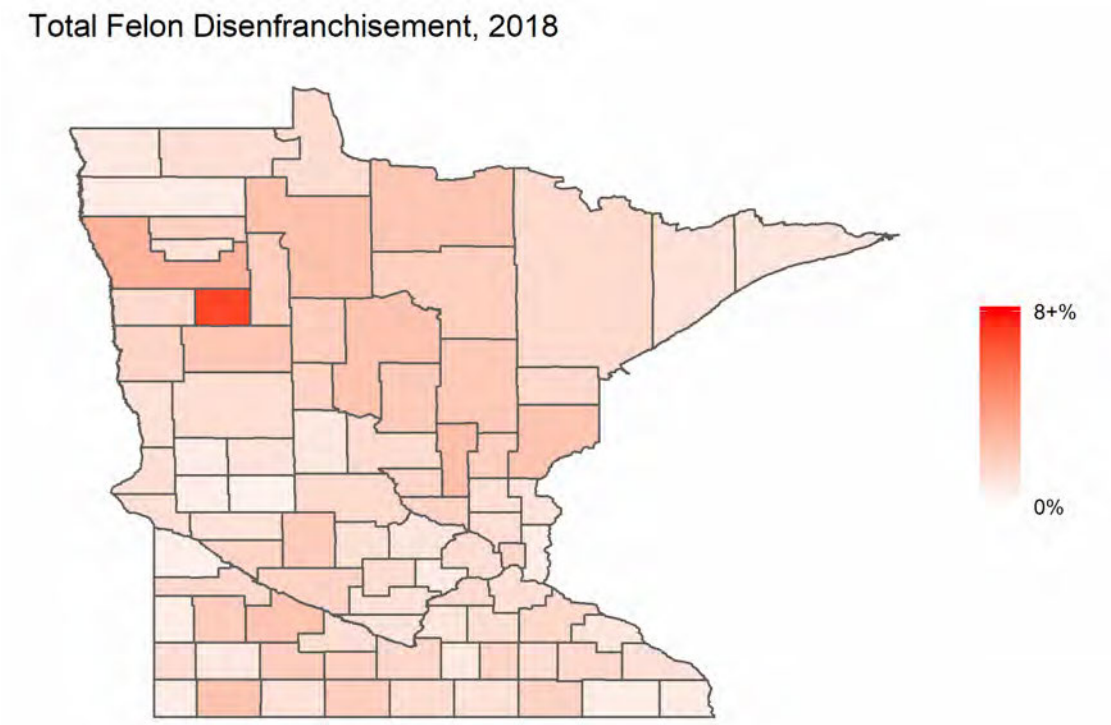
[48] Laws of Minn., 1919, Ch. 290, Sec. 1.
[49] Laws of Minn., 1963, Ch. 753.
[50] U.S. Bureau of the Census Current Population Reports. Estimates of the Civilian Population of Voting Age for States: November 1960.
[51] Report for the Fiscal Years 1963 and 1964. Minnesota. Department of Corrections. Annual and Biennial Reports. Minnesota Historical Society.

convicted of felonies who are currently serving their sentences in jails or workhouses, which represents a non-trivial percentage of the jail population. Race data are not consistently available over this period, though we can provide separate figures for the Black voting age population, which rose from about 3.5% in 1974 to a peak of almost 10% in 2000. In 2018, the Black disenfranchisement rate was about 5.9%, or almost 5 times the 1.2% rate for non-Black Minnesotans ((47,543/4,066,180)*100 =1.17%).

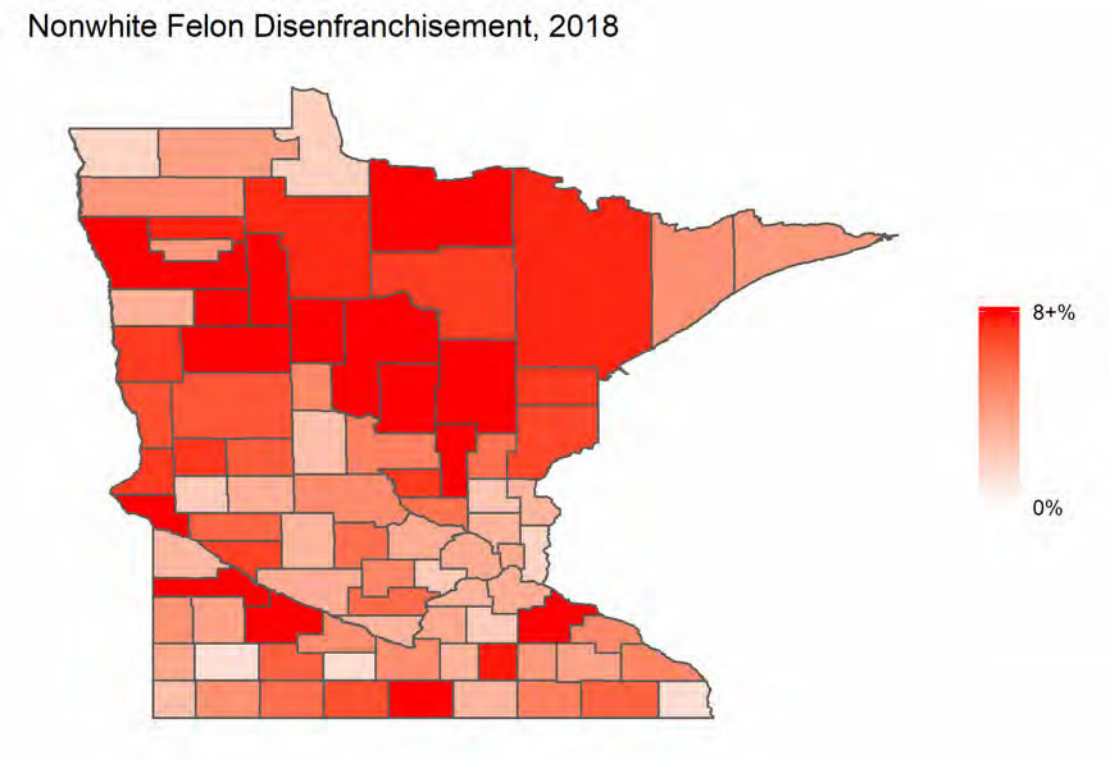
Total and Black Disenfranchised Populations in Minnesota, 1974-2018 (excluding jail)

Category	1974	1980	1990	2000	2010	2018
Voting-Age Population (VAP)	2,546,000	2,933,000	3,222,000	3,632,585	4,019,862	4,307,433
Total Disenfranchised	**7,515**	**11,494**	**21,068**	**46,052**	**57,897**	**61,727**
As % of Voting Age Population	0.30%	0.39%	0.65%	1.27%	1.44%	1.43%
Disenfranchised Group						
Prison	1,372	2,001	3,178	6,276	9,429	9,178
Parole/Supervised Release	1,539	1,534	1,873	3,072	5,807	6,779
Felony Probation	4,604	7,959	16,017	36,704	42,661	45,770
Black Voting Age Population	22,415	32,263	41,886	118,522	199,513	241,253
Black Disenfranchised	**773**	**1,028**	**2,990**	**11,792**	**14,096**	**14,184**
As % of Black VAP	3.45%	3.19%	7.14%	9.95%	7.07%	5.88%
Disenfranchised Group						
Black Prison	218	298	886	2,264	3,353	3,367
Black Parole/Supervised Release	245	228	522	1,108	1,504	1,548
Black Felony Probation	310	502	1,582	8,420	9,239	9,269

The following map shows the distribution of disenfranchisement across Minnesota counties for 2018, combining the prison, parole, and felony probation populations. To better show gradations of county-level variation, the scale here ranges from 0 to 8% or higher. Again, Mahnomen County has the highest rate of disenfranchisement at 7% of the voting age population. Polk, Mille Lacs, Beltrami, and Cass counties also showed some of the highest rates of felony-level criminal punishment and, hence, disenfranchisement.



Using the same scale, we prepared a similar map for the total disenfranchisement rate for the non-White population. This illustrates the high degree of disparity at the county level.



4. Voting, Recidivism, and The Disenfranchisement Ledger

In previous work, I have examined the connection between voting and recidivism, suggesting that voting strengthens civic commitment and helps reinforce an identity as a law-abiding citizen. Based on the available data, which tends to be observational rather than experimental, it is difficult to make strong causal claims about the effect of voting on recidivism. Nevertheless, it is clearly the case that (a) Minnesota voters are less likely to be arrested or to self-report criminal activity than non-voters; (b) that former Minnesota prisoners who begin voting are less likely to recidivate than former Minnesota prisoners who do not vote; and, (c) in Oregon, a state in which persons on community supervision retain voting rights, voters are more likely to successfully complete probation and parole supervision.[52] I will discuss each of these studies in turn.

In "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample," Jeff Manza and I examined survey data from Minnesota's Youth Development Study, a survey of 1,000 Minnesotans who began the study in 1988 as ninth-graders in St. Paul public schools. We found that voting in 1996 was significantly correlated with arrest and incarceration from 1997 to 2000. Approximately 16% of the non-voters were arrested, relative to about 5% of the voters. Among those with arrest histories prior to 1996, about 27% of the non-voters were rearrested, relative to approximately 12% of the voters. To address potential biases in arrest data, we also examined self-reported criminal behavior. Here too, voting is significantly correlated with lower crime. About 18% of the non-voters reported committing property crime, relative to about 11% of the voters. Similarly, about 42% of the non-voters reported violence or threats of violence, relative to 27% of the voters. Those who vote are thus less likely to be arrested and incarcerated, and less likely to report committing property and violent offenses. We next statistically controlled for the effects of race, education, marital status, employment, and official and self-reported criminal history. In these models we find that the estimated effects of voting on arrest are reduced, though they remain statistically significant in the models predicting self-reported crime ($p = .11$ for arrest; $p < .05$ for crime). In all cases, the estimated effects of voting on crime were negative in direction. We interpret these findings as indicating that voting is likely an important part of a package of pro-social behaviors that is linked to desistance from crime.

In a second study with Shelly Schaefer, "Voting and the Civic Reintegration of Former Prisoners," I tracked voting and subsequent crime among a cohort of 1,309 Minnesota prisoners whose sentences expired in 1990 (including any probation or supervised release time).[53] We examined voting as a time-varying covariate in an event history analysis, estimating the effect of participation in the previous biennial election on the likelihood of

[52] See, e.g., Christopher Uggen and Jeff Manza. 2004. "Voting and Subsequent Crime and Arrest: Evidence from a Community Sample." Columbia Human Rights Law Review 36:193-215. Christopher Uggen and Michelle Inderbitzin. 2010. "The Price and the Promise of Citizenship: Extending the Vote to Nonincarcerated Felons." Pages 61-68 in *Contemporary Issues in Criminal Justice Policy: Policy Proposals from the American Society of Criminology Conference*, edited by Natasha A. Frost, Joshua D. Freilich, and Todd R. Clear. Belmont, CA: Cengage/Wadsworth.

[53] See Christopher Uggen and Shelly Schaefer, 2006. "Voting and the Civic Reintegration of Former Prisoners." Paper presented at the 2006 Annual Meetings of the American Sociological Association, Montreal.

recidivism in the next two years. We found that those discharged from the Minnesota Department of Corrections who voted in the previous biennial election were at a significantly lower risk of recidivism than non-voters, and that this relationship holds after statistically controlling for the effects of age, race, gender, marital status, property ownership, and criminal history. Although it is difficult to rule out competing explanations for this pattern of results, our results clearly showed that recidivism dropped sharply when former prisoners began to participate as citizens in their communities.

Finally, a third study with Michelle Inderbitzin examined voting and crime from 2000 to 2005 among 14,751 probationers and 34,787 parolees in Oregon, a state in which these groups are legally permitted to vote.[54] Again, we found that many had voted. We also observed a correlation between voting in the 2000 election and success on probation (about 6% of voters failed from 2001-2005, relative to 8% of non-voters) and parole (about 19% of voters failed from 2001-2005, relative to about 26% of non-voters). These effects also held after controlling for the effects of race, gender, age, and criminal history.

In sum, each of these studies finds a link between voting and reduced crime and recidivism. It should not be surprising that exercising the right to vote may facilitate desistance from crime, as voting remains the most powerful symbol of stake-holding in our democracy.[55] Nevertheless, discussions of whether voting may reduce crime and recidivism should not obscure more fundamental points about the "disenfranchisement ledger." Felon disenfranchisement reduces democratic participation[56], dilutes the votes of communities of color[57], is out of step with U.S. public sentiment (which favors restoration of voting rights for persons on community supervision)[58] and international standards[59], and hinders the reintegrative goals of community corrections.[60]

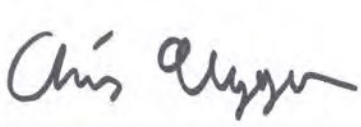
In contrast to these known and well-established costs of disenfranchisement, the practice has virtually no demonstrable societal benefit. I have found no evidence, for example,

[54] Christopher Uggen, Michelle Inderbitzin, and Mike Vuolo, "What Happens When Probationers and Parolees Can Vote? Community Supervision and Civic Reintegration." Paper presented at the 2007 Annual Meetings of the American Society of Criminology, Atlanta. Christopher Uggen and Michelle Inderbitzin. 2010. "The Price and the Promise of Citizenship: Extending the Vote to Nonincarcerated Felons." Pages 61-68 in Contemporary Issues in Criminal Justice Policy: Policy Proposals From the American Society of Criminology Conference, edited by Natasha A. Frost, Joshua D. Freilich, and Todd R. Clear. Belmont, CA: Cengage/Wadsworth.
[55] Jeff Manza and Christopher Uggen. *Locked Out: Felon Disenfranchisement and American Democracy*. 2006, p. 163. New York: Oxford University Press.
[56] Christopher Uggen and Jeff Manza. 2002. "Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States." *American Sociological Review* 67:777-803.
[57] Christopher Uggen, Ryan Larson, and Sarah Shannon. 2016. *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, 2016. Washington, DC: Sentencing Project.
[58] Jeff Manza, Clem Brooks, and Christopher Uggen. 2004. "Public Attitudes toward Felon Disenfranchisement in the United States." *Public Opinion Quarterly* 68:276-87.
[59] Christopher Uggen, Mischelle Van Brakle, and Heather McLaughlin. 2009. "Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement." Pages 59-78 in *Criminal Disenfranchisement in an International Perspective*, edited by Alec Ewald and Brandon Rottinghaus. Cambridge, UK: Cambridge University Press.
[60] Jeff Manza and Christopher Uggen. 2006, page 230. *Locked Out: Felon Disenfranchisement and American Democracy*. New York: Oxford University Press.

that people with felony records could somehow corrupt or taint the political system, that the denial of voting rights serves one of the established purposes of criminal punishment, that democratic political communities are debased in places that do not practice disenfranchisement, or that those convicted of felonies are, in fact, more likely to commit voter fraud.[61] Based on my research, there is thus no legitimate government interest or societal benefit from felony disenfranchisement that could justify its high costs.

[61] Jeff Manza and Christopher Uggen. 2006, pages 27, 229. *Locked Out: Felon Disenfranchisement and American Democracy.* New York: Oxford University Press.

The foregoing constitutes my report in the above-captioned matter and sets forth my opinions related to the matters discussed herein.



Dated: February 18, 2020

Dr. Christopher Uggen, Ph.D.

5. Materials Reviewed

A. Files Received

2020-01-09 U.S. Probation D. Minn. Subpoena Response.pdf

MN_Sent_Guidelines1981_2018

Subpoena_Answer_to_Request.docx

SubpoenaAnswerstoRequests.xlsx

AveragePronouncedProbationOverTime.docx

B. Data and Statistical Packages Used in Producing This Report

Minnesota Sentencing Guidelines Commission. 2020. Response to Interrogatories, "Average Pronounced Probation Lengths: Sentenced 2981-2018." St. Paul, MN.

U.S. Census Bureau. 2018. 2018 American Community Survey 1-Year Estimates, https://www.census.gov/data/developers/data-sets/acs-1year.html. Accessed 2/5/2020.

U.S. Census Bureau. 2018. 2018 American Community Survey 5-Year Estimates, https://www.census.gov/data/developers/data-sets/acs-5year.html. Accessed 2/5/2020.

C. Statistical Packages and Software: R and R Packages

R Core Team. 2019. R: A language and environment for statistical computing. R Foundation for Statistical Computing, Vienna, Austria. URL https://www.R-project.org/.

Walker, Kyle. 2020. tidycensus: Load US Census Boundary and Attribute Data as 'tidyverse' and 'sf'-Ready Data Frames. R package version 0.9.6. https://CRAN.R-project.org/package=tidycensus

Wickham, Hadley. 2016. ggplot2: Elegant Graphics for Data Analysis. Springer-Verlag: New York.

Wickham, Hadley, Jim Hester and Romain Francois. 2018. readr: Read Rectangular Text Data. R package version 1.3.1. https://CRAN.R-project.org/package=readr

Wickham, Hadley, and Dana Seidel 2019. scales: Scale Functions for Visualization. R package version 1.1.0. https://CRAN.R-project.org/package=scales

Wickham, Hadley. 2019. stringr: Simple, Consistent Wrappers for Common String Operations. R package version 1.4.0. https://CRAN.R-project.org/package=stringr

Wickham, Hadley, Romain François, Lionel Henry and Kirill Müller 2020. dplyr: A Grammar of Data Manipulation. R package version 0.8.4. https://CRAN.R-project.org/package=dplyr

Wickham, Hadley, and Lionel Henry. 2020. tidyr: Tidy Messy Data. R package version 1.0.2. https://CRAN.R-project.org/package=tidyr

PROPOSED
MINNESOTA CRIMINAL CODE

Prepared by

ADVISORY COMMITTEE
ON REVISION OF THE CRIMINAL LAW

Established by
Minnesota Legislative Interim Commission

Comments, suggestions, or criticisms with respect to this report should be directed promptly and not later than December 20, 1962 to either of the following —

SENATOR HAROLD W. SCHULTZ
Minnesota Building
St. Paul, Minn.

PROFESSOR MAYNARD E. PIRSIG
Law School, Univ. of Minn.
Minneapolis 14, Minn.

Printed and Distributed to the Lawyers and Judges of Minnesota
As a Public Service

By

WEST PUBLISHING CO.
ST. PAUL, MINN.

Ex. 3-01

The judge may also stay imposition of sentence and place the defendant on probation. Under present law only execution of sentence may be stayed. If probation is revoked the judge may then impose sentence and have before him the conduct of the defendant following his conviction.

Since the proper execution of the sentencing function is all important to the effective administration of criminal justice, provision has been made to assure that the court before imposing sentence be fully informed about the defendant and his history. Hence, a presentence report is required in all cases. The court may also request a diagnostic study and report by the Department of Corrections when these services are made available. To assure that the information therein contained is reliable and adequate, the defendant's attorney is afforded an opportunity to inspect the reports and to question their accuracy, a provision believed also to be required by concepts of rudimentary fairness to the defendant.

Two measures have been incorporated designed to assure that the hardened or professional criminal does not escape with a light sentence. One of these requires that a diagnostic study and report be made by the Department of Corrections in cases where crimes have been committed which under the revised code carry relatively long maximum sentences and which thus evidence the gravity of the offenses committed. The other measure relates to the habitual offender. The recommended provisions substantially modify existing law. The extended term of imprisonment authorized by these provisions cannot be imposed unless a diagnostic study and report has been made. It is then discretionary with the judge whether or not to impose the extended term. Questions of fact such as identity of the defendant and existence of the prior convictions are determined through an informal procedure by the court. By these measures, it is believed, greater assurance is given that the extended term will not be applied where it is not warranted and will be imposed to keep in confinement those criminals who are not susceptible to rehabilitation during normal periods of confinement.

The automatic consecutive service of multiple sentences has been eliminated. Such sentences are served concurrently unless the judge otherwise directs. Credit is also given for confinement imposed following conviction and before commitment unless the court orders otherwise.

The recommended sections also revise the rather extensive present provisions relating to the restoration of civil rights. This may be discretionary with the Governor, but in practice it appears that the restoration of civil rights has been granted almost as a matter of course. Under the recommended provisions, these rights will be automatically restored when the defendant is discharged following satisfactory service of sentence, probation or parole. This is deemed desirable to promote the rehabilitation of the defendant and his return to his community as an effective participating citizen.

Other changes from present law have been noted in the comments to particular recommended sections.

In preparing these provisions, the Advisory Committee has had the benefit of the draft of the Committee on Sentencing of the National Advisory Council of Judges. The Chairman of that Committee is the Honorable Theodore B. Knudson of Minneapolis, Minnesota, who attended the meetings and participated in the deliberations of the Advisory Committee while it was considering this subject.

plate a formal trial of the nature of a criminal trial. If the defendant contests the existence of the prior conviction he will be entitled to offer proof of his position and the issue will be one for the court to determine. The prosecution will initially be required to establish by adequate proof the existence of the prior conviction and its identification with the defendant.

The defendant will also have the opportunity of questioning the presentence report and the report and recommendations of the Commissioner of Corrections, which must be made before the extended term can be imposed.

609.165 Restoration of Civil Rights

Subdivision 1. When a person has been deprived of his civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore him to all his civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Subd. 2. The discharge may be:

(1) By order of the court following stay of sentence or stay of execution of sentence; or

(2) By order of the adult corrections commission or youth conservation commission prior to expiration of sentence; or

(3) Upon expiration of sentence.

Subd. 3. This section does not apply to a forfeiture of and disqualification for public office as provided in section 609.42, subdivision 2.

COMMENT

Minn.St. §§ 610.41 to 610.46 provide for a discretionary power in the Governor to issue a certification of restoration of civil rights and provides the procedure for bringing the question to his attention. A portion of Minn.St. § 243.18 also provides that upon discharge from a satisfactory service of the entire period of imprisonment he "shall" be restored to his rights and privileges and receive a certificate from the Governor accordingly. This leaves no discretion in the Governor or anyone else.

Minn.St. § 242.31 authorizes the Youth Conservation Commission to restore all civil rights and this has the effect of "setting aside the conviction and nullifying the same and purging such person thereof." A similar authorization was given to the district court in cases where the youth is put on probation in Minn.St. § 242.31, 1961. This goes farther than the recommended section. Section 242.31 will be retained. It is believed, however, that if the Youth Conservation Commission or the court does not act, the discharge of a youth convicted of a crime should not have any less consequences in restoring his civil rights than in the case of the adult.

It is believed that where a sentence has either been served to completion or where the defendant has been discharged after parole or

probation his rehabilitation will be promoted by removing the stigma and disqualification to active community participation resulting from the denial of his civil rights. The present practice it is understood is for the Governor to restore civil rights almost automatically.

Minn.St. §§ 610.41 to 610.46 and the portion of Minn.St. § 243.18 referred to will be repealed.

Other Present Sections Relating to Sentencing Not Previously Discussed

§ 610.35:

It is recommended that the first sentence be repealed. This prescribes that the sentence should be limited so that it expires between the months of March and November. The balance of the section deals with the right to commit to a workhouse in the county or in another county. This portion will be retained.

§ 631.46:

This authorizes the court to sentence to a county jail in another county. It is recommended that this section be retained.

§ 631.48:

This authorizes the court to require the cost of prosecution to be paid by the defendant. It is recommended that this be retained.

§ 613.78:

This provides that when the performance of any act is prohibited by a statute and no penalty has been provided the act shall be a misdemeanor. It is recommended that this be repealed. The phrase "any act is prohibited" by a statute is too broad and inclusive. If any particular statute is intended to make the act a crime it should so specifically provide. The section has seldom been used although in one or two instances the Attorney General has ruled that a given statute fell within terms of Minn.St. § 613.78.

§ 631.42:

This prescribes that the form of a sentence to the state prison shall be at hard labor. It is recommended that this be repealed.

§§ 631.44 & 631.45:

These provide for requiring a bond to keep the peace. It is recommended that these be retained.

§ 243.11:

This provides that the county attorney upon sentence to the state prison or reformatory must furnish the warden specified information. With a presentence investigation and report required in all cases under recommended § 609.115, and the report required to be forwarded to the Commissioner of Corrections, Minn.St. § 243.11 is no longer needed and its repeal is recommended.

§ 243.49:

Since this deals only with the documents which must accompany a commitment and does not deal with sentences or substantive offenses no recommendation is made with respect to it. The Advisory Committee notes that this section was amended in 1961, Chapter 602, deleting the requirement that a synopsis of the testimony shall be provided as the judge may direct. This in effect nullifies the effort made by the Supreme Court in State v. Dahlgren, 1961, 259 Minn. 307, 107 N.W.2d 299, to provide some rea-

DEBATES

AND

PROCEEDINGS

OF THE

CONSTITUTIONAL CONVENTION

FOR THE

TERRITORY OF MINNESOTA,

TO FORM A STATE CONSTITUTION PREPARATORY TO ITS ADMISSION INTO THE UNION AS A STATE.

T. F. ANDREWS, Official Reporter to the Convention.

SAINT PAUL:
GEORGE W. MOORE, PRINTER.
MINNESOTIAN OFFICE.
1858.

the word "such," in the eighteenth line, before the word "amendment."

The report, as thus amended, was then passed.

Mr. BUTLER. I move that report number fourteen, on the Elective Franchise, be taken up, read a third time and put upon its passage.

The motion was agreed to.

The report was accordingly taken up and read a third time.

Mr. BOLLES. I move that the Convention resolve itself into a committee of the Whole, to consider this report.

The motion was not seconded.

Mr. BOLLES. I do not feel disposed to urge anything untasteful upon the Convention. I wish to vote for this report, with the exception of the first section; and if the Convention compells me to vote upon the report as a whole, I shall have to vote against it. I cannot vote for the first provision of the bill. If the question is pressed to its final passage now, I shall be compelled to call for the yeas and nays.

Mr. COLBURN. Before the report is passed, I would ask the Convention to change one word in the third section. As it now stands, it provides for punishing a person for procuring or inducing another to vote illegally, while he may himself vote illegally, and escape the disability imposed by that section. I propose to amend that part of the section so that it shall read, "or of voting, or indu- "cing any person to vote illegally, &c."

Mr. MORGAN. I think we are going too far in this section, either way. It provides that every person who procures another person to vote illegally shall be disfranchised. I have no doubt that at every election that thing is done, and innocently done. This is rather a sweeping piece of legislation. If it is in order, I would move to strike out the whole section.

Mr. COLBURN. When this report was under consideration in committee of the Whole, the attention of the committee was almost wholly directed to another clause of the report, and this was passed over without much consideration. For the purpose of having an opportunity to re-arrange this section, I would move that the Convention resolve itself into a committee of the Whole to take into consideration this section of the report.

Mr. BOLLES. I hope the motion will include the entire report.

Mr. COLBURN. I limited the extent of my motion from the fact that that part of the report which the gentleman from Rice desires to re-consider, has been thoroughly considered and discussed, and I am satisfied that there is no general desire to interfere with the disposition which has been made of that section. It is well known that my views correspond with those of the gentleman from Rice county, but I am not disposed to re-open that question now.

The motion was agreed to.

The Convention accordingly resolved itself into a committee of the Whole, (Mr. BARTHOLOMEW in the Chair,) and took up for consideration the third section of the report, on the Elective Franchise.

The section was read as follows:

"SEC. 3. No person shall be qualified to vote at any election who shall be convicted of treason —or any felony—or of voting, or attempting to vote, more than once at any election—or of procuring or inducing any person to vote illegally at any election; *Provided*, That the Governor or the Legislature may restore any such person to civil rights."

Mr. MORGAN. I move to strike out the whole section. I believe it is unusual, in this connection, to introduce such a section as this. I have never seen it in any other Constitution, and it certainly is a very sweeping piece of legislation, and a matter wholly within the province of the Legislature. This provision is certainly a very stringent one, and difficult of application, and in many cases would work great hardship.

The motion was not agreed to.

Mr. BUTLER. I move to amend by striking out the word "procuring," and inserting "voting."

The amendment was agreed to.

Mr. BALCOMBE. I move to strike out all after the word "felony."

Mr. COLBURN. I object to that, for the reason that it would cut off the power of the Legislature to restore civil rights to any person who may be convicted of violating the provisions of this section.

Mr. MORGAN. A pardon always restores a person to his legal civil rights.

Mr. COLBURN. That is usually the case

under the laws of the various States; but where there is a Constitutional provision, that no person shall vote at any election who shall have been convicted of a particular offence, it is not in the power of the Legislature or Governor to restore him.

Mr. MORGAN. The object of the gentleman from Fillmore can be attained by moving to strike out all after "felony," and before "provided."

Mr. BILLINGS. I move to amend the amendment, by striking out the word "any," in the second line, and all after the word "felony," down to the word "provided."

The amendment to the amendment was agreed to, and then the amendment as amended was adopted.

On motion of Mr. HARDING, the committee rose and reported to the Convention the report and amendments, with a recommendation that the amendments be concurred in.

The amendments reported by the committee were severally concurred in.

The question then recurred upon the passage of the report.

Mr. BILLINGS. Mr. PRESIDENT: I do not rise to offer any apology for the vote I shall give upon the final passage of this report. The amendment offered in committee of the Whole, by the gentleman from Rice county, (Mr. NORTH,) which proposed to strike out the word "white," in section one, met my cordial approval, and would have received my support at that time, had I not been confined to my room by severe indisposition. A large majority of this Convention, however, refused to concur in the amendment, consequently the original report of the committee has come down to us unamended, and we are now asked to give it a finishing stroke, and adopt it as a part of our Constitution—the supreme law of the land. I have hitherto had the pleasure of acting with the majority of this body upon most questions of importance, which have come before us; and in doing so, I am happy to say my pleasure and my duty, have been united.

I am not, I trust, so self-confident or so egotistical, as to reject without due and careful consideration the arguments of honorable gentlemen who favor the passage of this report. Yet while I admire their eloquence, and cheerfully accord to them that superiority of intellect eminently their due, I must, with becoming deference, say, that in my judgment the article as it now stands with the word "white" retained, is anti-American, anti-Republican, and unfit to be placed in the Constitution of a people who are or deserve to be free.

I know not what may be the final action of this Convention, but judging from the past, I fear that a large majority of this body are in favor of the report, but I will not believe it until the last vote is taken. I am not prepared to believe that of the fifty-nine gentlemen present—Minnesotians by adoption and by profession, Republicans, also, of 1857, who have before this altar called upon Heaven to witness the sincerity of their intentions, and have sworn faithfully to discharge the duties upon which they have entered—a respectable number will be found finally, who are willing to crush out the only feature in our Constitution that marks the age in which we live, and with it destroy the hopes of Freedom in our beloved Territory; who are willing to disregard the claims of humanity and justice; who are willing to help blast the hopes of our colored population, whose hands are upraised to them for protection. I say, Mr. PRESIDENT, that I cannot believe a respectable number will finally be found ready and willing to enter upon such unholy work without reasonable precedent or apology. I blush for men when I confess that the history of the past proves that Freedom receives, and has received, the cruellest stabs in the house of her pretended friends.

It is said "Negro Suffrage" is not a plank in the National Republican Platform. Admit it. But does it follow that what would be an impracticable plank in a national platform of party principles, is an impracticable plank in a State platform of a party. By no means. When the Republican party in our our sister State (Wisconsin) inserted as a plank in its platform, "that the Fugitive Slave Law shall not be enforced in Wisconsin," did it inquire, or was it its business to inquire, whether this had been incorporated in the national platform of the party? Of course not. Refusing to catch fugitive slaves might not be considered orthodox Republicanism by a majority of the delegates to a National Convention, but it was and is a

CONSTITUTION

OF THE

STATE OF MINNESOTA.

PREAMBLE:

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings, and secure the same to ourselves and our posterity, do ordain and establish this Constitution:

ARTICLE I.

Bill of Rights.

SECTION 1. Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform such government, whenever the public good may require it.

SEC. 2. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than in the punishment of crime whereof the party shall have been duly convicted.

SEC. 3. The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

SEC. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

SEC. 5. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel or unusual punishments be inflicted.

SEC. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the county or district wherein the crime shall have been committed, which county or district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.

SEC. 7. No person shall be held to answer for a criminal offence unless on the presentment or indictment of a Grand Jury, except in cases of impeachment or in cases cognizable by Justices of the Peace, or arising in the Army or Navy, or in the militia when in actual service in time of war or public danger, and no person for the same offence shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty,

of office shall be two years, and whose duties and compensation shall be prescribed by law; *Provided*, That no Justice of the Peace shall have jurisdiction of any civil cause where the amount in controversy shall exceed one hundred dollars, nor in a criminal cause where the punishment shall exceed three months imprisonment, or a fine of over one hundred dollars, nor in any case involving the title to real estate.

SEC. 9. All judges other than those provided for in this Constitution shall be elected by the electors of the Judicial district, county or city, for which they shall be created, nor for a longer term than seven years.

SEC. 10. In case the office of any Judge shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the Governor until a successor is elected and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

SEC. 11. The Justices of the Supreme Court and the District Courts shall hold no office under the United States, nor any other office under this State. And all votes for either of them for any elective office under this Constitution, except a Judicial office, given by the Legislature or the people, during their continuance in office, shall be void.

SEC. 12. The Legislature may at any time change the number of Judicial Districts, or their boundaries, when it shall be deemed expedient, but no such change shall vacate the office of any Judge.

SEC. 13. There shall be elected in each county where a district court shall be held, one clerk of said court, whose qualifications, duties and compensation shall be prescribed by law, and whose term of office shall be four years.

SEC. 14. Legal pleadings and proceedings in the courts of this State shall be under the direction of the Legislature. The style of all process shall be "The State of Minnesota," and all indictments shall include "Against "the peace and dignity of the State of Minne-"sota."

SEC. 15. The Legislature may provide for the election of one person in each organized county in this State, to be called a Court Commissioner, with judicial power and jurisdiction not exceeding the power and jurisdiction of a Judge of the District Court at Chambers, or the Legislature may, instead of such election, confer such power and jurisdiction upon Judges of Probate in the State.

ARTICLE VII.

Elective Franchise.

SECTION 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the United States one year and in this State for four months next preceding any election, shall be entitled to vote at such election, in the election district of which he shall at the time have been for ten days a resident, for all officers that now are or hereafter may be elective by the people:

First. White citizens of the United States.

Second. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States upon the subject of naturalization.

Third. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization.

Fourth. Persons of Indian blood residing in this State, who have adopted the language, customs and habits of civilization, after an examination before any District Court of the State, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the State.

SEC. 2. No person not belonging to one of the classes specified in the preceding section; no person who has been convicted of treason or any felony, unless restored to civil rights; and no person under guardianship, or who may be *non compos mentis* or insane, shall be entitled or permitted to vote at any election in this State.

SEC. 3. For the purpose of voting, no person shall be deemed to have lost a residence by reason of his absence while employed in the service of the United States; nor while engaged upon the waters of this State or of the United States; nor while a student of any seminary of learning; nor while kept at any alms-house or other asylum; nor while confined in any public prison.

SEC. 4. No soldier, seaman, or marine in

the army or navy of the United States, shall be deemed a resident of this State in consequence of being stationed within the same.

SEC. 5. During the day on which any election shall be held, no person shall be arrested by virtue of any civil process.

SEC. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

SEC. 7. Every person who, by the provisions of this article shall be entitled to vote at any election, shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election; except as otherwise provided in this Constitution, or the Constitution and Laws of the United States.

ARTICLE VIII.

School Funds, Education and Science.

SECTION 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature to establish a general and uniform system of public schools.

SEC. 2. The proceeds of such lands as are or hereafter may be granted by the United States for the use of schools within each township in this State, shall remain a perpetual school fund to the State, and not more than one-third (1-3) of said lands may be sold in two (2) years, one third (1-3) in five (5) years, and one-third (1-3) in ten (10) years; but the lands of the greatest valuation shall be sold first, provided that no portion of said lands shall be sold otherwise than at public sale. The principal of all funds arising from sales or other disposition of lands, or other property, granted or entrusted to this State in each township for educational purposes, shall forever be preserved inviolate and undiminished; and the income arising from the lease or sale of said school lands shall be distributed to the different townships throughout the State, in proportion to the number of scholars in each township between the ages of five and twenty-one years, and shall be faithfully applied to the specific objects of the original grants or appropriations.

SEC. 3. The Legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of Public Schools in each township in the State.

SEC. 4. The location of the University of Minnesota as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto the said University, and all lands which may be granted hereafter by Congress or other donations for said University purposes shall vest in the institution referred to in this Section.

ARTICLE IX.

Finances of the State, and Banks and Banking.

SECTION 1. All taxes to be raised in this State shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the State.

SEC. 2. The Legislature shall provide for an Annual Tax sufficient to defray the estimated expenses of the State for each year; and whenever it shall happen that such ordinary expenses of the State for any year shall exceed the income of the State for such year, the Legislature shall provide for levying a tax for the ensuing year sufficient with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year.

SEC. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property used for religious purposes and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall, by general laws, be exempt from taxation.

SEC. 4. Laws shall be passed for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues of every description, of all banks, and of all bankers; so that all property employed in banking shall always be subject to