

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

ADM10-8049

FILED

March 18, 2025

**OFFICE OF
APPELLATE COURTS**

**ORDER PROMULGATING AMENDMENTS
TO THE MINNESOTA GENERAL RULES OF
PRACTICE FOR THE DISTRICT COURTS AND
THE MINNESOTA RULES OF CRIMINAL PROCEDURE**

Until recently, a person who had been convicted of a felony was prohibited from voting until completion of the person’s sentence, even when not incarcerated. *See Schroeder v. Simon*, 985 N.W.2d 529, 545–46 (Minn. 2023). The Legislature changed that rule in March 2023. Act of Mar. 3, 2023, ch. 12, § 1, 2023 Minn. Laws 64, 64 (codified as amended at Minn. Stat. § 201.014, subd. 2a (2024)). Now a person with a felony conviction may vote during any period the person is not incarcerated for the offense. *See* Minn. Stat. § 201.014, subd. 2a. Because the Minnesota Judicial Branch uses the eligible voters list to identify prospective jurors,¹ we received a request to consider the rules regarding jury eligibility for people with felony convictions under supervision but not incarcerated. In response to the request, in the summer of 2023, we issued orders directing the Minnesota Supreme Court Advisory Committee on the General Rules of Practice for

¹ Jury Management Rule 802(b) of the Minnesota General Rules of Practice for the District Courts explains that the “[j]ury source list” is “the list of all prospective jurors statewide resulting from combining the voter registration list and the driver’s license and ID cardholders list.” Similarly, Jury Management Rule 806(b) provides: “The voter registration list and the driver’s license and ID cardholders list must serve as the basis for the jury source list.”

the District Courts (“General Rules Committee”) and the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure (“Criminal Rules Committee”) to consider this question. *In re* Minn. Sup. Ct. Advisory Comm. on the Rules of Gen. Prac. for the Dist. Cts., No. ADM09-8009, Order at 1 (Minn. filed July 20, 2023); *In re* Minn. Sup. Ct. Advisory Comm. on the Rules of Crim. Proc., No. ADM10-8049, Order at 1–2 (Minn. filed June 30, 2023).

The General Rules Committee is composed of judges, court staff, and attorneys from a wide range of practice areas. *See* Final Rep. on Recommendations of Minn. Sup. Ct. Advisory Comm. on Gen. Rules of Prac., at 1 (Nov. 14, 2023) [hereinafter General Rules Committee Report] (available at ADM09-8009). In a report filed on November 14, 2023, the General Rules Committee unanimously recommends that the rules regarding a person’s eligibility to serve on a jury be modified to remove provisions that make people with felony convictions ineligible to serve on a jury during periods when they are under supervision but not incarcerated. *Id.* at 4. More specifically, the General Rules Committee recommends that we amend Jury Management Rule 808(b), which sets forth juror eligibility requirements. *Id.* at 7; *see* Minn. R. Gen. Prac. 808(b). Rule 808(b)(6) currently states that a person convicted of a felony is eligible to serve as a juror when their “civil rights” have been restored. The proposed amendment would change the language of Rule 808(b)(6) to provide that a person convicted of a felony is eligible to serve as a juror when their “civil right to vote” has been restored, consistent with the Legislature’s recent amendment to Minn. Stat. § 201.014, subd. 2a. General Rules Committee Report, at 7.

The Criminal Rules Committee is composed of judges and attorneys—including prosecutors and criminal defense attorneys. *See* Rep. & Proposed Amends. to the Minn. R. of Crim. Proc., at 1 (June 28, 2024) [hereinafter Criminal Rules Committee Report] (available at ADM10-8049). In a report filed on June 28, 2024, the Criminal Rules Committee recommends additional rule amendments designed to remove provisions that make people with felony convictions ineligible to serve on a jury during periods they are under supervision but not incarcerated.² *Id.* at 5–7. It specifically recommends that subdivision 5(1) of Minnesota Rule of Criminal Procedure Rule 26.02, which lists the grounds for challenging a prospective petit juror for cause, be amended to eliminate the following ground: “A felony conviction unless the juror’s civil rights have been restored.” Criminal Rules Committee Report, at 5–9. The Criminal Rules Committee also recommends that Minnesota Rule of Criminal Procedure Rule 18.02, which addresses the organization of a grand jury, be amended to expressly incorporate the grounds for challenging a grand juror for cause listed in Minn. Stat. § 628.54 (2024). Criminal Rules Committee Report, at 6–8. The grounds listed in section 628.54 include a challenge based

² The Criminal Rules Committee also recommends additional amendments to Rule 26.02, subdivision 5, which do not involve people who have been convicted of a felony. Criminal Rules Committee Report, at 6–9. Those amendments focus on provisions that relate to challenging a prospective juror for cause based on a physical or mental disability, or the prospective juror’s consanguinity or affinity to specified people involved in the case. *Id.* In addition, the Criminal Rules Committee recommends renumbering the provisions in subdivision 5 of Rule 26.02. *Id.* at 8–9. For the reasons given by the Criminal Rules Committee, we adopt the additional amendments as modified. But we do not renumber the provisions because keeping the current numbering will help maintain clarity in the law and benefit future legal researchers.

on a grand juror’s inability to “act impartially and without prejudice to the substantial rights of the party objecting.” Minn. Stat. § 628.54(7).

By orders filed after the publication of each committee report, we established time periods for the public to file written comments in response to the amendments recommended by the General Rules Committee and the Criminal Rules Committee. Ord. Establishing Comment Period on Proposed Amends. to the Minn. R. Gen. Prac., No. ADM09-8009, Order at 1–2 (Minn. filed Jan. 12, 2024); Ord. Establishing Pub. Comment Period on Proposed Amends. to the Minn. Rules of Crim. Proc., No. ADM10-8049, Order at 1–2 (Minn. filed July 16, 2024). Regarding the issue relevant to this order, we received written comments from the Minnesota State Bar Association, Criminal Law Section; the American Civil Liberties Union of Minnesota; a professor at the University of Maryland; and the Anoka County Attorney’s Office. (Written comments available at ADM09-8009 and ADM10-8049.) We held a public hearing on October 22, 2024. The chair of the General Rules Committee, the chair of the Criminal Rules Committee, and a representative of the American Civil Liberties Union of Minnesota provided oral comments in favor of the amendments at the public hearing. No one appeared at the hearing to oppose the proposed amendments. We address the written comments below:

The Minnesota State Bar Association, Criminal Law Section (MSBA), supports the proposed amendments. It observes that jury pools are selected from voter rolls and that the Legislature has deemed persons who have been convicted of a felony worthy of inclusion on the voter rolls during any period they are not incarcerated. The MSBA also emphasizes that the proposed amendment does not ensure that all persons with felony convictions who

are under supervision but not incarcerated would serve on a jury because, like all other potential jurors, they would be subject to scrutiny through voir dire, peremptory challenges, and unlimited challenges for cause.

The American Civil Liberties Union of Minnesota (ACLU-MN) also supports the proposed amendments. It asserts that Minnesota's current system of exclusion has a disparate impact on people of color, there is no evidence to suggest that the change would jeopardize the probity or objectivity of the jury, and the amendment would help facilitate successful reintegration and better public safety. ACLU-MN cites statistics and studies supporting its position.

Dr. Robert Stewart, Assistant Professor of Criminology and Criminal Justice at the University of Maryland, submitted a comment supporting the proposed amendments. He cites literature suggesting that "jury duty can promote citizens' understanding of legal processes, a greater sense of community, and overall civic responsibility." He also observes that excluding supervised, nonincarcerated persons from jury service results in the underrepresentation of some racial minorities on Minnesota juries.

The Anoka County Attorney's Office opposes the proposed amendments based on three concerns. First, it is concerned that the proposed amendments will constitute an advisory opinion announcing a "brand new civil right to jury service." We disagree because none of the language in the proposed amendments refers to jury service as a civil right. Instead, the language simply modifies one of the rule-based disqualifications to serve as a juror. Although we acknowledge that some of the proponents of the proposed amendments have argued that service on a jury should be placed on the "same footing" as

the right to vote, we need not and do not decide whether such an argument is sound because the language of the proposed amendments does not implicitly or explicitly create a civil right to jury service.³

The second concern raised by the Anoka County Attorney’s Office is that the proposed amendments will allow murderers, predatory sex offenders, and known gang members to serve on grand and petit juries, which might compromise investigations, cause fellow jurors to withhold their honest views, undermine public confidence in the judicial system, require prospective jurors to violate their conditions of release, or disrupt the proceedings if jurors violate their probation during the trial. We again disagree.

Under our existing rules, a person convicted of a felony—even the serious felonies identified by the Anoka County Attorney’s Office—currently may serve on a jury when they complete their sentence. *See* Minn. R. Gen. Prac. 808(b); Minn. R. Crim. P. 26.02, subd. 5(1). The issue before us is not *whether* a person with a felony conviction should be eligible for jury service, but rather *when* a person with a felony conviction should be

³ The General Rules Committee has proposed a comment stating that “Rule 808(b)(6) is amended to place service on a jury on the same footing as being eligible to vote for those convicted of a felony.” This court does not adopt or approve advisory comments. *Borchert v. Maloney*, 581 N.W.2d 838, 840 n.9 (Minn. 1998); *see also Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 489 n.4 (Minn. 1997) (explaining that “committee comments are included with rules adopted by this court for convenience and do not reflect court approval of those comments”). The rule amendments we adopt here simply change one of the rule-based disqualifications for serving as a juror; we need not and do not decide whether, for those convicted of a felony, service on a jury should be placed on the same footing as being eligible to vote. Moreover, the Legislature’s intent when it enacted the statute restoring voting rights to persons with felony convictions who are under supervision but not incarcerated is not at issue here because the adoption of the rule change is an independent decision by our court. For these reasons, we do not include the proposed comment for publication with these amendments.

eligible for jury service. The proposed amendments would merely extend jury eligibility to allow jury service to occur while a person with a felony conviction is under supervision but not incarcerated.

Because the language of the proposed amendments does not create a civil right to jury service, but rather simply removes disqualification when people are under supervision but not incarcerated, other statutes and rules mitigate the second concern raised by the Anoka County Attorney's Office. Under Minnesota Statutes section 628.54, for example, when empaneling a grand jury to investigate a gang, a prosecutor could exclude a prospective juror based on their inability to act impartially and without prejudice to the State's substantial rights. And under Minnesota Rule of Criminal Procedure 26.02, subdivision 5(1) (challenge for cause) and subdivision 6 (peremptory strikes), prospective jurors with felony convictions, whether or not they are currently serving a sentence, can be excluded from cases that involve criminal charges or circumstances that prevent them from acting impartially and without prejudice to the substantial rights of the State. On the other hand, if the supervision status of a prospective juror does not prevent them from acting impartially and without prejudice to the substantial rights of a party, their service on the jury will not undermine public confidence in the judicial system.⁴ For this reason, we do not agree with the dissent's assumption that most or all of those on probation will be struck for cause from criminal trials. In addition, it seems unlikely that in such cases the

⁴ This may be true, for example, when a person convicted of felony driving while impaired is a prospective juror in a robbery case or a civil contract case.

prospective juror's supervision status will cause fellow jurors to withhold their honest views.

Regarding the concern that service on a jury might require prospective jurors to violate their conditions of release (i.e., no-contact orders), Jury Management Rule 810 of the Minnesota General Rules of Practice for the District Courts allows prospective jurors to be excused from service based on a continuing hardship to them or to members of the public. If service on a jury would require prospective jurors to violate the conditions of their release, a district court may excuse them under Rule 810. Finally, disruptions in the proceedings due to probation violations are unlikely to occur at a significantly higher rate than disruptions due to medical or family emergencies.

The third concern raised by the Anoka County Attorney's Office is that the selection of jurors will require more time and resources because it will require juror questionnaires with specific questions about felony criminal history and more extensive and contentious colloquies during voir dire. Although we agree that the proposed amendments may cause delays during the jury selection process in some cases, we ultimately conclude that the benefits of this change outweigh potential delays.

The information and arguments provided in the comments supporting the proposed amendments are persuasive. Although we conclude that the proposed amendments will help reduce racial disparities, facilitate successful reintegration, and improve public safety, we acknowledge that the proposed amendments, by themselves, will not solve the racial gap in jury pools. But the evidence suggests that it will help. When combined with our

other initiatives,⁵ we believe the proposed amendments are a step forward. We should not refuse to take a step that will make some progress simply because the step does not solve the whole problem. Such an approach would lead to paralysis in an area where change is needed.

Having carefully considered the Advisory Committees' recommendations and the written and oral comments, we agree with the proposed amendments, as modified.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to Rule 808(b) of the Minnesota General Rules of Practice for the District Courts, and Rules 18.02 and 26.02 of the Minnesota Rules of Criminal Procedure, are prescribed and promulgated as shown below.

2. The amendments are effective July 1, 2025, and apply to jury procedures initiated on and after that date.

⁵ Such initiatives include the Minnesota Judicial Branch's budget proposal, which would increase the per diem for jury service. As we noted in *State v. Smith*, 9 N.W.3d 543, 560 n.12 (Minn. 2024):

To make jury service more tenable for low- and middle-income citizens of all races and to lessen the need for excusal requests, the Minnesota Judicial Branch in 2024 asked the Legislature to increase the per diem payment from \$20 a day to \$100 a day to help offset lost wages, childcare, and related costs. A recent study evaluating a pilot program with a similar increase in juror per diem payments showed promising results in increasing the jury participation of citizens of color. See Michelle Lau & Anne Stuhldreher, *Be The Jury: Preliminary Findings from First Six Months of Pilot Program*, Fin. Just. Project, Nov. 2022, at 1. The Legislature did not pass a funding increase in juror per diem in 2024. We urge the Legislature to pass legislation authorizing such an increase as soon as possible.

3. Because the statewide jury source list is compiled annually as required by Rule 806 of the Minnesota General Rules of Practice for the District Courts, grand juries in some counties are drawn annually as required by Minnesota Rule of Criminal Procedure 18.01, and counties across the state have different terms of jury service as authorized by Rule 811 of the Minnesota General Rules of Practice for the District Courts, there will be a period of time after the amended rules take effect during which the jurors for a particular trial or grand jury proceeding were selected according to the rules and procedures in effect prior to July 1, 2025, which required the disqualification of prospective jurors who were convicted of a felony and had not had their civil rights restored. Any failure to follow the rules in effect on July 1, 2025, with respect to procedures that occurred before July 1, 2025, is not a violation of this Order or the court rules. On or after July 1, 2025, any motion brought under Rule 813 of the Minnesota General Rules of Practice for the District Courts alleging a failure to comply with the Jury Management Rules or any challenge to the jury panel raised under Minnesota Rule of Criminal Procedure 26.02, subdivision 3, must be determined according to the rules in effect at the time the particular jury procedures at issue occurred.

Dated: March 18, 2025

BY THE COURT:



Natalie E. Hudson
Chief Justice

D I S S E N T

McKEIG, Justice (dissenting).

Jury service is an important civic duty that everyone who meets recognized criteria owes to the community. It guarantees citizen participation at a critical point in our governance structure, ensuring that a person accused of crime will be judged by impartial, disinterested citizens from the community. But the right to vote and the privilege to serve as a juror are not coextensive. The court's order today removes the provision from our jury qualification rules that makes people with felony convictions automatically ineligible to serve on a jury during periods they are under supervision but not incarcerated. Because persons with felony convictions who are on active probation or supervised release should not serve on criminal juries until they are discharged, I respectfully dissent.

Our current system of selecting jurors to serve on civil and criminal cases disproportionately excludes racial minorities. But this rule change does not address that problem in a significant way. Rather, it has the risk of further alienating individuals who already may distrust the criminal justice system.

Because of this rule change, the jury selection process in criminal cases will become even longer and more contentious. The court acknowledges this concern but does not grapple with it. Challenges for cause allow the removal of jury panel members only “on a narrowly specified, provable and legally cognizable basis of partiality.” *Swain v. Alabama*, 380 U.S. 202, 220 (1965), *overruled on other grounds by Batson v. Kentucky*, 476 U.S. 79, 92–93, 100 n.25 (1986). Partiality may be established by showing, to the satisfaction of the court, that the challenged juror's state of mind—in reference to the case or to either

party—is such that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party. *See* Minn. R. Crim. P. 26.02, subd. 5(1) (explaining that a juror may be challenged for cause based on impartiality). In order to determine a challenged juror’s state of mind, the rule change will lead to the parties spending more time engaging in uncomfortable and difficult questioning of prospective jurors on probation or supervised release about their felony criminal history, their compliance (or lack thereof) with conditions of their probation or supervised release, and the effect of their experiences with the criminal justice system on their ability to be impartial. This may involve increased use of questioning outside the presence of the public or even in camera hearings during voir dire. *See* Minn. R. Crim. P. 26.02, subd. 4(4)(a) (allowing a prospective juror to request an opportunity to address the court in camera during voir dire). Questions about the procedural rights of the prospective juror might also arise, including whether the prospective juror would have a right to counsel if asked a question that requires them to reveal whether they are violating the terms of their probation. There are also likely to be appeals based on sustained for--cause challenges to prospective jurors on probation or supervised release, regardless of whether the defendant objected to the for-cause challenge at trial. *See State v. McKinley*, 891 N.W.2d 64, 68 (Minn. App. 2017) (describing appellate review when a defendant does not object to the State’s for--cause challenge at trial). Not only will this rule change create more inefficiencies in our court system, but it will also continue to upset those already disillusioned with Minnesota’s criminal justice system.

The disruption to the jury selection process will be even more prevalent in grand juries. An individual still involved in a criminal case is closer to their past crimes and their contacts. If such a person were permitted to serve on a grand jury, it could result in the State revealing confidential investigative information to a grand juror who has some connection to the person being investigated or that person's network. This will be of particular concern in smaller counties that use grand juries less frequently and where community members are more likely to be familiar with one another. The proposed amendments will interfere with the already delicate grand jury process.

The court relies on statements from a professor from the University of Maryland touting the "prosocial benefits" of jury participation as a way of encouraging civic engagement to address persistent racial disproportionality in Minnesota's justice system, as well as a comment from the American Civil Liberties Union of Minnesota that the current system of selecting jurors disproportionately excludes racial minorities. Nobody is disputing the seriousness and importance of jury service for all qualified Minnesotans, and the benefits of a jury pool that reflects the racially diverse population of our State. Our court has noted the "gravity" of the responsibility of jury service as not being "a matter of choice, or right, but [as] a duty, imposed by the state," which "is analogous to military duty in time of war." *In re Jenison*, 120 N.W.2d 515, 518 (Minn. 1963) (citation omitted) (internal quotation marks omitted), *vacated on other grounds*, 375 U.S. 14 (1963). Although I completely agree that the issues causing racial disparities in Minnesota's justice system should be addressed, allowing felons on probation or supervised release to serve on

juries is an ineffectual way to do so.¹ And it implies that persons with felony convictions are more likely to be minorities and that allowing felons on probation or supervised release to serve on juries is necessary to diversify jury pools. The racial gap in jury pools is an important issue that deserves more intentional consideration than what the court has given in its order.

This rule change will potentially only impact a small number of jury pools in Minnesota. About 87 percent of jury trials in Minnesota are criminal in nature as opposed to civil. *See Jury Trials in Minnesota State Courts: 2020 to 2024*, Minnesota Judicial Branch, <https://www.mncourts.gov/Help-Topics/Court-Statistics/Jury-Dashboard.aspx> (last visited Mar. 11, 2025) [opinion attachment]. Assuming most or all of those on probation or supervised release will be struck for cause from criminal trials due to their likely conflict with the State, this widening of the jury pool would only be meaningful in around 13 percent of trials—the civil cases—while affecting the criminal jury trials making up most of the cases. The rule change appears to allow more people to serve on juries but may not actually change who will be selected to sit on criminal juries.

¹ As the court notes, the Minnesota Judicial Branch is working on this issue through other initiatives, such as our budget proposal to increase jury per diem. We should continue to push for more well-thought-out changes like our budget proposal. For example, the California Supreme Court formed an Ad Hoc Workgroup that released a report specifically addressing how to improve the “juror experience.” Jud. Branch of Cal., Ad Hoc Workgroup on Post-Pandemic Initiatives, Interim Report: Improving the Juror Experience, at 1 (Mar. 2022) [hereinafter Workgroup Rep.]. California does not allow persons who are on parole, supervised release, felony probation, or mandated supervision to serve as prospective trial jurors. Cal. Civ. Proc. Code § 203(a)(10). But this is not mentioned as a barrier to increasing diversity and inclusion on jury service in the Ad Hoc Workgroup’s report. *See* Workgroup Rep. at 2–3.

The court's interest in attempting to remedy the racial gap in jury pools is worthy, but the solution it offers through this proposed rule change has the potential to be both ineffectual and burdensome on district courts. Because I believe the proposed amendments will disrupt the jury selection process and are not a thoughtful solution to the racial gap in jury pools, I respectfully dissent.

MOORE, III, Justice (dissenting).

I join in the dissent of Justice McKeig.

**AMENDMENT TO THE MINNESOTA GENERAL RULES
OF PRACTICE FOR THE DISTRICT COURTS**

TITLE IX. JURY MANAGEMENT RULES

[Note: In the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

* * *

RULE 808. QUALIFICATIONS FOR JURY SERVICE

* * *

(b) To be qualified to serve as a juror, the prospective juror must be:

* * *

(6) A person who has had their civil rights to vote restored if they have been convicted of a felony.

* * *

AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

* * *

Rule 18.02. Organization of Grand Jury

Subd. 1. Members; Quorum. A grand jury consists of not more than 23 nor fewer than 16 persons, and must not proceed unless at least 16 members are present.

Subd. 2. Organization and Proceedings. The grand jury must be organized and its proceedings conducted as provided by statute, unless these rules direct otherwise. A grand juror may be objected to as provided in Minnesota Statutes section 628.54. The court must remove any prospective grand juror who lacks any qualification under law.

Subd. 3. Charge. After swearing the grand jury, the court must instruct it on its duties.

* * *

Rule 26.02. Jury Selection

* * *

Subd. 5. Challenge for Cause.

(1) Grounds. A juror may be challenged for cause on these grounds:

1. The juror's state of mind – in reference to the case or to either party – satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.
2. A felony conviction unless the juror's civil rights to vote have been restored.
3. The lack of any qualification ~~prescribed by~~ under law.

4. The juror is unable to render satisfactory jury service, with reasonable disability accommodations if necessary. A physical or mental disability that renders the juror incapable of performing the duties of a juror.

5. The consanguinity or affinity, within the ninth degree, A known relationship by blood or marriage to the person alleged to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant, or to any of the attorneys in the case.

6. Standing as a guardian, ward, attorney, client, employer, employee, landlord, tenant, family member of the defendant, or person alleged to have been injured by the offense, or whose complaint instituted the prosecution.

7. Being a party adverse to the defendant in a civil action, or a party who complained against the defendant, or whom the defendant accused, in a criminal prosecution.

8. Service on the grand jury that found the indictment or an indictment on a related offense.

9. Service on a trial jury that tried another person for the same or a related offense as the pending charge.

10. Service on any jury previously sworn to try the pending charge.

11. Service as a juror in any case involving the defendant.

* * *



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Jury Selection

Jury Trials

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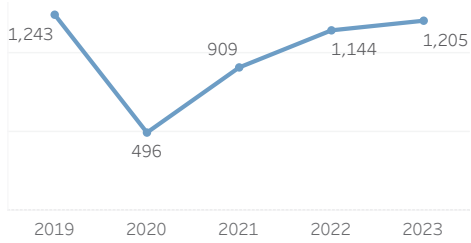
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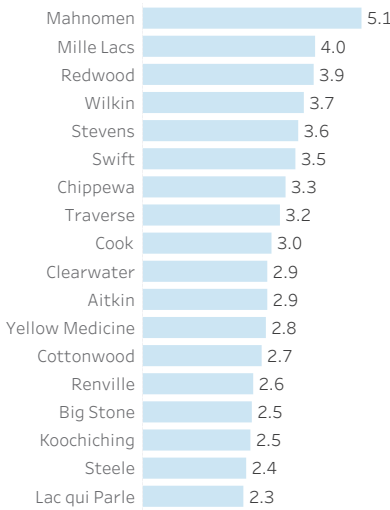
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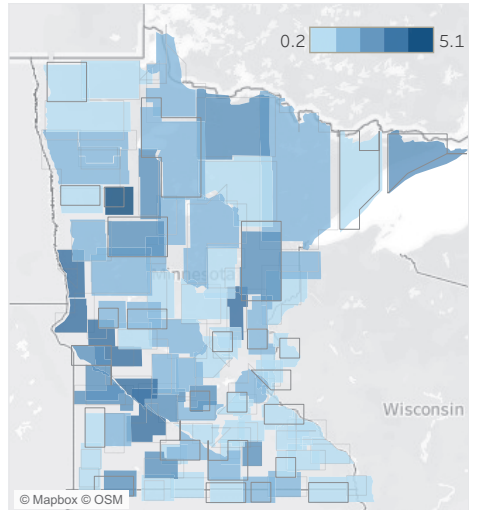
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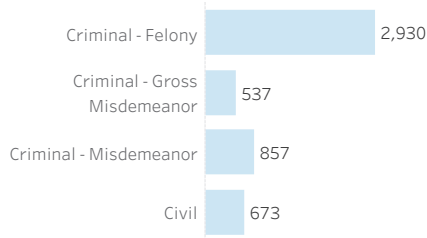
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Number of Jury Trials per 1,000 Adult Residents



Number of Jury Trials by Case Type



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