

MINNESOTA CONSTITUTIONAL STUDY COMMISSION



BILL OF RIGHTS COMMITTEE REPORT

This report constitutes committee recommendations to the Constitutional Study Commission. See the Final Report for the Commission's action which in some cases differed from the committee recommendations.

November, 1972

COMMITTEE

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COMMISSION ACTION ON ELECTIVE FRANCHISE PROPOSALS

P. 5, Par.2 - The Commission voted not to allow those who will be 18 by the time of the general election to vote in the primary if not 18 by that time.

P. 6, Section 2, relating to loss of residency, was not accepted by the Commission.

COMMISSION ACTION ON THE BILL OF RIGHTS PROPOSALS

P. 15 The section on Inviolability of the Body was rejected by the Commission.

P. 14-18 Because of considerable objection to the wording of the Committee's original proposals when they were initially presented to the full Commission, the Bill of Rights Committee decided to withdraw the recommended sections on the Mentally Disabled, Equality of Rights, and the Right to Know.

In general, the objections opposed singling out specific groups for inclusion in the Bill of Rights or adding what might be considered legislative matter to the Constitution.

The Committee therefore introduced a proposed equal protection and due process section to replace the withdrawn sections, the wording of which is almost identical to that of the fourteenth amendment of the U.S. Constitution:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. The Legislature shall have power to enforce, by appropriate legislation, the provisions of this section.

It was hoped that this section might be used to protect the rights enunciated in the withdrawn proposals without encountering the same objections or drafting problems. The Commission adopted the equal protection and due process section unanimously, together with

two resolutions prepared by the Committee in the interests of furthering the objectives outlined in its report:

The Legislature should implement the above section by providing legislation to protect groups which have suffered inequities and discrimination, and in particular to assure due process rights to the mentally ill or mentally retarded, and provide protection for all persons regardless of race, religion, sex, national or social origin, physical handicap, or mental illness or mental retardation.

The Legislature should implement the above section by providing legislation designed to protect the individual's right of access to information collected and preserved relative to him.

P. 20 Although the Committee believed that the sections on treason and lands declared allodial were obsolete, some questions were raised by the Revisor of Statutes office just before the Commission hearing. Since there was not time to consider the ramifications of these comments, the Committee withdrew its recommendation for the deletion of these sections.

I. INTRODUCTION

The Bill of Rights Committee of the Minnesota Constitutional Study Commission was given the responsibility of studying two articles of the Constitution: Article I, the Bill of Rights, and Article VII, the Elective Franchise.

The work of the Bill of Rights Committee differed in some important respects from that of many of the other committees. One of the obvious reasons is that we had more than one article to study. Because of the nature and length of Article VII and the kinds of changes proposed therein, we found it desirable to construct a new form for that article, whereas our recommendations for the Bill of Rights deal only with individual sections. Our committee undoubtedly heard testimony on more individual issues than did other committees, not allowing the kind of detailed consideration some committees were able to give a single problem. We were impressed by the interest shown by citizens in constitutional change and hope that the Legislature will give careful attention to the problems which they raised.

In addition to presenting our final recommendations, the purpose of this report is to provide a record of the issues presented to the committee and the discussion and study which they engendered. It is our hope that the report will thus serve as a useful foundation for the citizens and Legislature

of Minnesota in their own consideration of the Bill of Rights and Elective Franchise articles of the Constitution. With the report is submitted a complete file of testimony, memoranda and correspondence.

In the course of its study the committee conducted three public hearings: all-day hearings in the State Capitol on April 6 and June 21 and a morning hearing on the campus in Moorhead. In addition to public testimony, we reviewed the recommendations of the 1948 Constitutional Commission, looked at the language of other state constitutions and of the Model State Constitution drawn up by the National Municipal League, and pondered a considerable number of suggestions received in writing. We had the good fortune to have before us the very helpful recommendations of the Structure and Form Committee and background papers prepared by the committee's research assistant, Mr. Joseph P. Hudson of the University of Minnesota Law School, and by staff assistant Jon Schroeder. Professors Fred Morrison and Alan Freeman of the Law School provided invaluable advice in what must have seemed to them an endless round of consultations. And finally the committee would like to thank Mrs. Betty Rosas, Commission Secretary, for her good assistance.

II. ARTICLE VII: THE ELECTIVE FRANCHISE

A. INTRODUCTORY NOTE

The democratic goal is to involve the people as much as possible in their government, and constitutions should enhance that attempt. With this in mind, the Bill of Rights Committee began its study of Article VII. In addition to reviewing the testimony and correspondence presented to it, the committee took notice of the increasing mobility of the population and the renewed interest in participating in the political process expressed by many. At the same time the committee wished to keep the Constitution free of unnecessary detail, cumbersome to change and tiresome to read.

The committee began work with the knowledge that some changes in Article VII were required to make it conform to recent federal constitutional developments. The report of the Structure and Form Committee made a number of suggested improvements in the style of the article, and the Bill of Rights Committee itself saw the need for other changes in the interests of clarity and flexibility. In addition, the committee recommends some substantive changes to allow persons qualified to vote in a general election to vote in the primary, to reduce the state residency requirement for voting to thirty days, and to lower the age for holding office to 18 (the latter opposed by one member).

The committee has gone over the whole article very carefully and submits a proposed new article which incorporates

all of these changes. However, if the Legislature wishes to propose some of these changes immediately, or if it fears that certain of the provisions might endanger passage of the whole if combined, it may wish to consider the recommendations separately.

B. RECOMMENDED CHANGES

ELECTIVE FRANCHISE, Section 1

Changes: Voting age changed from 19 to 18 years; state residency requirement changed from six months to 30 days; change to allow persons who will be 18 in time to vote in the general election to participate in the primary; stylistic changes suggested by the Structure and Form Committee (including incorporation of former section 2 into this section); substitution of "who is judged mentally disabled or impaired under procedures established by law" for "who may be non compos mentis or insane"; addition of "except as provided by the Legislature" following the listed restrictions on voting.

Comment: The change in voting age was made to comply with the Twenty-Sixth Amendment to the United States Constitution. A recent decision of the U.S. Supreme Court makes it necessary to change the residency requirement. In Dunn v. Blumstein the court held that Tennessee's durational residency requirements of one year in the state and three months in the county were unconstitutional but clearly approved a 30-day period (equivalent to Tennessee's waiting period between the use of registration and the election). The Minnesota constitutional requirement of six

months was invalidated by the decision in Keppell v. Donovan affirmed by the Supreme Court. The Bill of Rights Committee recommends the substitution of 30 days to make the durational requirement for residency within the State consistent with that within the precinct. Local registrars seem to manage effectively with the present precinct requirement, and Secretary of State Arlen Erdahl assured the committee that there is no need for a more restrictive state residency requirement.

The committee also recommends that those eligible to vote in a general election be allowed to participate in the candidate selection process. They are already permitted to take part in the precinct caucuses so it seems reasonable to allow them also to vote in the primary.

Since the committee believes that it is desirable for the Constitution to be written in language meaningful to the citizens of the State and because of its concern that persons not be disenfranchised arbitrarily or unnecessarily, it is recommending a substitution for the non compos mentis phrase in former section 2.

The addition of the final phrase, "except as provided by the Legislature", would provide greater flexibility in the restrictions on voting. The committee heard testimony urging the removal of the constitutional restrictions on the voting rights of felons and those who are mentally disabled or impaired, but believes that the suggested addition would allow the Legislature to provide any changes or safeguards felt necessary by the people of the State.

RESIDENCE LOST IN CERTAIN CASES, Section 2

Changes: Replaces former Sections 3 and 4; no substantive change.

Comment: Here the committee attempted to clarify by replacing outmoded language ("seminary of learning," "almshouse or asylum," etc.) and by underlining the fact that the courts consider intent to establish residency within the State as paramount. The committee heard testimony regarding the pro's and con's of students voting in college communities as opposed to their place of origin, and it appears to us that the suggested language would serve as a helpful guideline for students and local election officials, permitting those students who consider their college community as their place of residence to vote there.

Although former Section 4 was written in the form of a restriction ("No soldier, seaman or marine...shall be deemed a resident of this State in sonsequence of being stationed within the same."), the United States Supreme Court ruled in Carrington v. Rash that no state can deny residency to a serviceman stationed within it if he intends to make such state his home indefinitely.

LEGISLATURE TO PROVIDE FOR THE EXERCISE OF SUFFRAGE, Section 3

Changes: Replaces Article V, Sec. 2, providing for state canvassing board and sending election returns to the Secretary of State. (The Structure and Form Committee suggested relocating Article V, Sec. 2 in Article VII.)

Comment: This gives the Legislature a general mandate to provide

for the administration of elections without encumbering the Constitution with unnecessary detail or tying the process to a state office (Secretary of State) which may not exist in the future if some current proposals are adopted.

UNIFORM OATH AT ELECTIONS, Section 4

Changes: No change in wording; formerly Article XV, Sec. 3.

Comment: Relocated from Miscellaneous Provisions Article, which the Structure and Form Committee has divided and relocated; the subject matter is appropriate to the Elective Franchise Article.

CIVIL PROCESS SUSPENDED ON ELECTION DAY, Section 5

Changes: None.

ELECTION BY BALLOTS, Section 6

Changes: None.

RIGHT TO HOLD OFFICE, Section 7

Changes: Lowers the age for holding office from 21 to 18.

Comments: While the committee was divided on this issue, two members felt that persons eligible to exercise the franchise should also be able to run for elective office. This provision would still be subject to age requirements set elsewhere for certain offices (the Governor, Lieutenant Governor and Congressmen must be 25, and U.S. Senators must be 30); and candidates would have to obtain support from other age groups to win. Prior to the passage of the amendment to lower the voting age

in 1970, there was no distinction in the Minnesota Constitution between the minimum voting age and the age for holding office, and the present mention of 21 in Section 7 is confusing if read with Section 25 of Article IV: "Senators and representatives shall be qualified voters of the State..."

The committee member opposed to lowering the age to 18 fears that some young people will not yet have the necessary maturity and experience to serve in elective office.

OFFICIAL YEAR OF THE STATE, Section 8

Changes: Stylistic only.

C. PROPOSED ARTICLE

Article VII. Elective Franchise

ELECTIVE FRANCHISE. Section 1. Every person of the age of 18 years or more who has been a citizen of the United States for three months and who has resided in this State and in the precinct for thirty 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 thirty days preceding the election shall be prescribed by law. Any person eligible to vote in a general election shall be entitled to vote in the primary election next preceding that general election. A person not meeting the above requirements; a person who has been convicted of treason or felony, unless restored to civil rights; and a person under guardianship, or who is judged mentally disabled or impaired under procedures established by law, shall not be entitled or permitted to vote at any election in the State except as provided by law.

PLACE OF RESIDENCE. Sec. 2. For the purpose of voting, a person shall not be presumed to have gained residence in this State, nor to have lost such residence, solely by reason of his presence or absence in the service of the United States or while a student in any educational institution or while an inmate of any public institution, but this presumption may be rebutted by evidence that the person intended to establish such residence.

LEGISLATURE TO PROVIDE FOR THE EXERCISE OF SUFFRAGE. Sec. 3. The Legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for absentee voting, the administration of elections and the nomination of candidates.

UNIFORM OATH AT ELECTIONS. Sec. 4. The Legislature shall provide for a uniform oath or affirmation to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

CIVIL PROCESS SUSPENDED ON ELECTION DAY. Sec. 5. During the day on which an election is held, no person shall be arrested by virtue of any civil process.

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

RIGHT TO HOLD OFFICE. Sec. 7. Every person who by the provisions of this article is entitled to vote at any election is eligible for any office elective by the people in the district wherein he has resided thirty days previous to the election, except as otherwise provided in this Constitution or the Constitution and Law of the United States.*

OFFICIAL YEAR OF THE STATE. Sec. 8. The official year of the State of Minnesota shall commence on the first Monday of January in each year, and all terms of office terminate at that time. The general election shall be held on the first Tuesday after the first Monday in November. The general election shall be held biennially in each even-numbered year.

* The change proposed in this section was opposed by one member of the committee

D. NON-ADOPTED PROPOSALS

1. Representative John W. Johnson submitted a proposed constitutional amendment to provide for three-day elections in order to make it easier for everyone in the state to vote. Some of the objections raised: conflict with federal provision for a single day election, and expense and difficulty of administration. Perhaps current proposals to make election day a holiday would be a preferable way to raise the percentage able to vote, though it admittedly would not take care of the problem of bad weather.

2. The Minnesota Civil Liberties Union suggested elimination of the age requirement for holding office on the theory that this would enable the electorate to choose officials from any age group. The majority of the committee believes that it is reasonable and desirable to have the same qualification for holding office as for exercising the franchise, while the other member holds that the requirement for holding office should be even higher.

3. A suggestion was submitted requesting an amendment to former Section 2 to permit expunging of a felon's record after a prescribed number of years. It is the opinion of the committee that this is not a constitutional issue but something that can be handled by statute.

4. David Kennedy, Assistant Senate Counsel, raised the question of a possible conflict between Section 7 of Article VII and Section 1 of Article XI, which says that the Legislature may provide for "qualification for office" of officers of local government units. (Section 7 permits a citizen of 21 to hold any office for which he may vote, with the previously stated exceptions.) Does this refer

to rules for filing, oaths, etc., or does it permit the setting of substantive qualifications? The committee notes the potentiality for confusion and conflict but is satisfied with the language of Section 7 in the article before us.

III. ARTICLE I: BILL OF RIGHTS

A. THE BILL OF RIGHTS TODAY

It is fitting that in most state constitutions the Bill of Rights forms the first article because its guarantees to the citizenry are of such a fundamental nature. A Bill of Rights seeks to define those rights and liberties necessary for the development of a free and equal society and to protect these rights from the power of government. The Bill of Rights in a state constitution operates as a limitation on state governments. The Bill of Rights in the federal constitution has also been in part applied to the states through decisions of the United States Supreme Court.

Even though much of the federal Bill of Rights has been applied to the states by its incorporation into the Fourteenth Amendment, there is still reason to have separate guarantees in state constitutions. Such guarantees cover rights not considered part of the federal Bill of Rights or federal rights not applicable to the states. Also, since U.S. constitutional history is always in the process of changing, there is no certainty that the rights applied to the states or the incorporation doctrine itself will remain the same. Moreover, provisions in a state constitution may be interpreted more liberally by a state court than federal constitutional language. In a federal system it is more appropriate for people "to look first to the state constitution and to the state courts for the vindication of personal liberties that may be challenged by state law or state action. They can have a reasonable expectation of such protection only if the state courts look upon the state Bill of Rights as a vital instrument for the defense and advancement of personal and political liberty."*

*Model State Constitution: National Municipal League, 6th edition, 1970, p.27.

Not only must a Bill of Rights be examined from the viewpoint of the needs of the people of an individual state, but it must also be considered in light of changes in our society. "Ideas concerning the fundamental character of a right may change."* People in different eras may need guaranteed protection for different rights, as shown by revision of and addition to Bills of Rights. Recent experience in other states shows a renewed interest in reexamining Bills of Rights, and since there was no Bill of Rights Committee during the work of the Minnesota Constitutional Commission of 1948, it appears to have been some time since such a study was made here. Governor Wendell Anderson's address to the Legislature requesting a constitutional study commission was entitled "Challenge of a New Day", and it was in this spirit that the committee sought to look at Minnesota's Bill of Rights.

The committee is generally satisfied with the Minnesota Bill of Rights, but believes desirable the deletion of obsolete provisions and the addition of several new sections. We are grateful to the many persons who shared their concerns with us in testimony, in writing, or by phone and also to our researcher, Joseph Hudson, who provided us with a study of the judicial interpretation and history of the article. Although we considered a host of issues, others which we find of interest (such as the right of privacy and problems of eavesdropping or wiretapping, Indian rights, etc.) were not raised before us. On the question of Section 16 and the prohibition against giving preference to any religious establishment, we deferred to the Education Committee, which held a hearing on the problem of state aid to religious schools and recommended no change.

* W. Brooke Graves, Problems in State Constitutional Revision, Public Administration Service, Chicago, 1960, p.164.

In our recommendations we have attempted to incorporate the changes which we feel are most needed at the present time.

B. RECOMMENDED CHANGES

1. New Sections

RIGHTS OF THE MENTALLY DISABLED: No person shall be disenfranchised or deprived of his rights or restrained in his physical person on the basis of mental disability or impairment unless by the law or judgment of his peers.

Comment: Despite a better record than many states and the passage in 1967 of the Minnesota Hospitalization and Commitment Act, testimony to our committee and other sources of information indicate that in Minnesota the right of due process is not assured to those who are mentally disabled or impaired. A recent issue of Bench and Bar of Minnesota has an article on "Involuntary Commitment in Minnesota" which asserts that "despite substantive and procedural protections granted by the act, since the effective date of the act in 1968 many patients have not been afforded a full and fair commitment hearing. Reports by review boards at state hospitals, complaints filed by patients, studies undertaken by mental health associations regarding commitment practices and several lawsuits raising the issue of fair hearing and adequate representation, all lead to the conclusion that some present practices violate the mandate of the act." On August 11, 1972 a class action suit was filed in U.S. District Court in Minneapolis on behalf of state mental patients whose "provisional discharges" have been revoked without hearings; plaintiffs seek to have the 1967 act declared unconstitutional because it provides that such discharge may be revoked without notice or the opportunity to be heard.

There are those who say we need a new national attitude toward the mentally ill or retarded. The Washington Post in an editorial on March 15, 1972 hailed a recent federal court order in Alabama as a possible new beginning; in Wyatt v. Stickney a U.S. district judge ordered state officials to set up a human rights committee in the state hospital and to implement a multi-page set of standards drawn up by the plaintiffs and entitled "Minimum Constitutional Standards for Adequate Habilitation of the Mentally Retarded." Incorporated in these standards are rights brought up in our committee hearings: the right to due process, the right of self-determination or consent to treatment, the right to treatment, etc.

The State Department of Public Welfare proposed that language concerning the mentally disabled or impaired be added parenthetically to Section 2 of the Bill of Rights, which serves as Minnesota's civil due process guarantee, but the committee prefers to add a separate section, thereby emphasizing a constitutional guarantee for the rights of the mentally disabled.

INVIOABILITY OF THE BODY: No person shall be compelled to undergo procedures involving surgery, convulsive electroshock, confinement of person or bodily movements, or any procedure causing irreversible physiological effects unless informed consent of the person or his guardian is given or unless appropriate procedures have been followed to obtain legal approval for their application in such instances.

Comment: This section is obviously closely allied with the previous one. While the committee considered combining them into one article,

it decided not to in order that this section could also offer protection against such things as forced sterilization.

EQUALITY OF RIGHTS: Neither the State nor any of its instrumentalities shall deny any person the equal protection of the law. The Legislature shall provide by law for protection of persons against discrimination in the provision of housing, education, employment, public accommodations, public facilities and services on account of race, color, creed, religion, sex, national or social origin, or physical or mental handicap.

Comment: Because of Minnesota's progressive tradition it surprises some people to discover that there is no general guarantee of equality of rights in the State Constitution. Many states do have such a section in their constitutions, and of course the United States Constitution has the Fourteenth Amendment guarantee of equal protection of the law amplified by a steadily increasing amount of case law. Minnesota does have a relatively good civil rights law, but it does not cover all of the categories needing protection. Furthermore, it is important to make clear that equality of rights is a fundamental and permanent policy in the State of Minnesota.

The committee quickly agreed that it should propose such an amendment and then struggled for a long time with various alternatives. While the committee wished to propose the strongest possible kind of guarantee for the rights of the people of this State, and especially for groups which have been discriminated against, it also wished to avoid adding legislative detail to the Constitution. The committee believes that the suggested language will be clear to the courts which must interpret it. And it is the committee's intent

that the Legislature implement the policy of the amendment through legislation directed also against private discrimination.

Most of the suggested classifications have already been singled out in the State's civil rights law for protection. Sex, however, is presently prohibited only in the area of employment, and the committee heard testimony from sixteen different persons (the largest number speaking to the committee on any given issue), giving witness to the varying forms of discrimination against women citizens of the state. These persons favored a separate equal rights amendment, but the majority of the committee preferred to combine the categories needing protection into one constitutional guarantee. The committee feels that another category needing special mention is social origin. We live in a time when inequities hidden within the whole web of our society are being seen with new awareness and sensitivity, and the committee believes that neither gender nor social origin should prevent a person from developing to his or her full potential.

The committee also recognizes that the problems of the physically and mentally handicapped have been overlooked for too long. Only the Illinois Constitution of 1970 has a provision against discrimination faced by the handicapped, although several states have such statutes, and an amendment to the Civil Rights Act of 1964 has been introduced in Congress which would cover federally assisted programs. The handicapped have many types of disabilities, but they all are apt to face difficulty in obtaining equal educational or employment opportunity. Public transportation may be completely unavailable, public buildings and public services inaccessible. They often face arbitrary regulations imposed by

governmental units and private businesses. The committee is not blind to some of the problems inherent in the guarantee of equal rights to handicapped citizens and taxpayers, but we are confident that the Legislature can provide for their resolution. Exceptions can be made as in the Illinois Constitution: "All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer."

RIGHT TO KNOW: Any organization, corporation, or government entity keeping a file on an individual shall notify that individual of the existence of the file and allow him or her to examine it. This provision shall be subject to such reasonable regulation as the Legislature may impose.

Comment: This proposal is a modification of an amendment submitted by Richard J. Runbeck and represents protection for the individual in an information-gathering age. As Mr. Runbeck points out, "Those who control the information which affects a person's life or livelihood control the future and destiny of that person." This amendment would assure the individual of the right to know about and examine information on himself as it appears in the files of public or private agencies and would give him the opportunity to challenge its accuracy.

It is not the intent of the committee to restrict the freedom of the press or to hinder criminal investigations conducted by governmental agencies. Such exemptions could be written into the regulations imposed by the Legislature.

The committee believes it would also be desirable for the Legislature to require that no organization, corporation or government

agency may disseminate information on record concerning an individual without recording the nature and substance of all disclosures, including the name of all persons, organizations, or agencies requesting the information.

RIGHT TO BEAR ARMS: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.*

Comment: The federal right to bear arms has not been incorporated into the Fourteenth Amendment to apply to the states, but many state constitutions have a section guaranteeing the right to bear arms. In some it is worded in absolute terms while others provide that the Legislature may regulate this right. While a majority of the committee believes that the right to bear arms belongs in the Minnesota Bill of Rights, the committee does not wish to foreclose reasonable legislative measures for the control of crime and therefore prefers the above language, taken from the Illinois Constitution, to that of the proposal submitted by The Committee for Effective Crime Control.**

2. Other Changes

(a) IMPRISONMENT FOR DEBT: PROPERTY EXEMPTION, Section 12:
Add the following sentence at the end of the section: "The Legislature may reasonably regulate the form and notice of such liens."

Comment: Since some feel that the mechanics lien law in Minnesota operates unfairly against property owners, Attorney General Warren

* Opposed by one member of the committee.

** The right of a citizen of this state to acquire, possess, and use arms for recreation, for marksmanship training, or for defense of home, person, property, or the state shall not be abridged. A license or registration tax or fee shall ever be imposed on this right.

Spannaus suggests the addition of a requirement that the mechanic or materialman give notice to the owner at the time labor or materials are furnished. The intent of the committee is to allow the Legislature to do this.

(b) Recommended Deletions:

1) TREASON DEFINED, Section 9.

This appears to be obsolete today; levying war against the state or adhering to its enemies is a problem for the national government rather than for an individual state.

2) LANDS DECLARED ALLODIAL: LEASES, WHEN VOID, Section 15.

Obsolete; also recommended for deletion by 1948 Constitutional Commission.

3) NO LICENSE TO PEDDLE, Section 18.

Structure and Form Committee recommends moving to Article XIII.

(c) Recommended Addition:

1) The Legislature shall not abridge the right of the people to assemble and to petition the government for redress of grievances.

Comment: This addition was recommended for Section 2 by the 1948 Constitutional Committee. The Bill of Rights Committee considers the right of assembly to be an important one and notes that it is found in most state constitutions. The committee recommends that it be added to the Bill of Rights either as a separate section or as part of Section 3.

C. NON-ADOPTED PROPOSALS:

1. An equal rights amendment similar to the federal one now before the states for ratification was favored by many people testifying before the committee, in fact receiving more support than any other proposal made. (An alternative was also submitted which would cover private discrimination as well.) The majority of the committee preferred to include sex with the other categories to be protected in the proposed new section guaranteeing the equality of rights. One member supported a separate equal rights amendment because of the fact that courts might otherwise apply the traditional equal protection "rational basis" test for discrimination based on sex which would provide insufficient protection.

2. A proposal was made by Jack Baker and Dennis Hilger to amend Section 16 to include "jus societatis congeneratae" at the end of the first sentence for the purpose of protecting the individual's right to love. Mr. Baker subsequently proposed the alternative of including "societatis congeneratae" in a general equal protection section. The majority of the committee opposed the proposals on the ground that it is not possible to include every group in the constitution; one member would support constitutional protection for non-heterosexuals but was opposed to the Latin language offered.

3. A great deal of interest was evidenced in prisoners' rights. Inmates at St. Cloud and Stillwater expressed their interest in testifying to the committee but were unable to attend a hearing; the committee was sent a copy of "The Pillar" (published by St. Cloud inmates) for March 2, 1972, containing a prisoners' bill of rights which is being included in the record of testimony submitted to the

Commission files. Chief among those testifying before the committee on this subject were David Fogel, Commissioner for the Department of Corrections, and Thomas Murton of the Murton Foundation for Criminal Justice, Inc., and the University of Minnesota. Mr. Fogel believes that no constitutional change is necessary to safeguard these rights which can be guaranteed by administrative and legislative action although he would favor an amendment allowing felons to vote by absentee ballots. Mr. Murton feels that while 95% of what he advocates could be accomplished without amending the Constitution (prisoners' right to counsel at disciplinary hearings, freedom from censorship, end to indeterminate sentencing, right to fair compensation for work, etc.), there remains a need for a guarantee of basic human rights for prisoners; he pointed to the United Nations 1955 Bill of Rights for prisoners as a model. No proposed language for a section in the Minnesota Constitution was presented to the committee, which felt that the kinds of detailed concerns brought to our attention were matters for the Legislature.

4. Finally, a number of proposals made to the committee were not discussed at length because the committee felt they were not constitutional issues, or because too little information was available as background, or because there was little apparent public interest. These include:

- a. creation of a constitutional office of ombudsman
- b. abortion (pro and con)
- c. Indian treaty rights as they relate to inter-racial marriages
- d. rights of juveniles
- e. the right to adequate housing, to available and adequate health care, to the benefits of higher education and to legal assistance without regard to the individual's ability to pay

IV. SUMMARY OF RECOMMENDATIONS

Presented here in capsule form are the main recommendations of the Bill of Rights Committee to the Minnesota Constitutional Study Commission; for clarification, amplification and the reasoning of the committee the reader is referred to Sections II and III of the committee report.

ARTICLE VII. ELECTIVE FRANCHISE

The committee believes that a number of changes are needed in this article because of obsolete, unclear, and archaic provisions. Because other changes also seem desirable we recommend a revision of the entire article. The complete wording of the proposed article appears on page 9 of the report, but the major changes would:

1. lower the voting age from 19 to 18 (to comply with U.S. Constitution)
2. reduce state residency requirement for voting from 6 months to 30 days
3. allow those who will be 18 in time to vote in a general election to also vote in the preceding primary election
4. allow the Legislature to make provision for the restoration of voting rights to felons or the mentally disabled or impaired
5. allow the Legislature to provide for the administration of elections (to replace constitutional provision for state canvassing board)
6. lower age for holding office from 21 to 18 *

ARTICLE I. BILL OF RIGHTS

The committee proposes the deletion of Sections 9 and 15, the removal of Section 18 to Article XIII, and the following additions to the Minnesota Bill of Rights:

1. Rights of the mentally disabled: No person shall be disenfranchised or deprived of his rights or restrained in his physical person on the basis of mental disability or impairment unless by the law of the land or judgment of his peers.

* one member dissenting

2. Inviolability of the body: No person shall be compelled to undergo procedures involving surgery, convulsive electroshock, confinement of person or bodily movements, or any procedure causing irreversible physiological effects unless informed consent of the person or his guardian is given or unless appropriate procedures have been followed to obtain legal approval for their application in such instances.
3. Equality of Rights: Neither the State nor any of its instrumentalities shall deny any person the equal protection of the law. The Legislature shall provide by law for the protection of persons against discrimination in the provision of housing, education, employment, public accommodations, public facilities and services on account of race, color, creed, religion, sex, national or social origin, or physical or mental handicap.
4. Right to know: Any organization, corporation or government entity keeping a file on an individual shall notify that individual of the existence of the file and allow him or her to examine it. This provision shall be subject to such reasonable regulation as the Legislature may impose.
5. Right to bear arms: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.*
6. Addition to the end of Section 12: "The Legislature may reasonably regulate the form and notice of such liens."
7. Guarantee of the right of assembly as recommended by the 1948 Constitutional Commission.

* one member dissenting

V. APPENDIX

A. Testimony Before the Committee:

1. Hearing in St. Paul on April 6, 1972*

Thomas Murton, Murton Foundation for Criminal Justice, Inc.
and the University of Minnesota
Anne Truax, Minnesota Women's Center and Chairman of the
Twin Cities Women's Action Coalition
Deonne Parker and George Stephenson, Minnesota Civil Liberties Union
David Ziegenhagen, Mental Health Association of Minnesota
Lu Stocker, State Republican Chairwoman
Kathy Olson, President of Twin Cities chapter of the
National Organization of Women
Jackie Moren, University YWCA
Sherry Lurk, Emma Willard Task Force on Education
Cynthia Attwood, University of Minnesota Law School
Janet Dietrich, Minnesota Women's Political Caucus
Helene Borg, State League of Human Rights Commissions
Mrs. Joseph Brink, St. Joseph
Congressman Donald Fraser
Commissioner David Fogel, Department of Corrections
Miriam Karlins, Director of Mental Health Education in the
Minnesota Department of Public Welfare
Dr. Phyllis Kahn, Minnesota Women's Political Caucus
Betty Howard, State Department of Human Rights
Ellen Dresselhuis, President of Women's Equity Action League
Dr. Eugene Eidenberg, University of Minnesota Equal Opportunities Compliance Officer
Delores Orey, Ramsey County Legal Assistance
Martha Kahn, Minnesota Civil Liberties Union
E. Floyd, Minneapolis

2. Hearing in Moorhead on May 4, 1972

David Strauss, student body president, Moorhead State College
Bernice Arett, Minnesota Women's Political Caucus

3. Hearing in St. Paul on June 21, 1972

John Martin and Jon Willand, Committee for Effective Crime Control
Byron Starnes, Assistant Attorney General
Richard W. Runbeck, University of Minnesota Law School
Franklin Knoll, Executive Director of the Minneapolis Urban Coalition Action Council
R. Michael Wetherbee, Legal Counsel for the Minnesota Civil Liberties Union
Charles Van Heuveln, Handi-Registration, United Cerebral Palsy
Peter Benzian, Minnesota Public Interest Research Group
Rev. Robert Lovering, Director of Social Services for United Cerebral Palsy of Minneapolis
Lorraine Arvidson, Secretary of United Blind of Minnesota, Inc.

*Since initial public response indicated a special interest in the rights of women and of persons in state institutions, the first hearing was scheduled to focus on these issues.

Robert Lindstrom, Epilepsy League of Minnesota
 Rev. Barbara Andrews, Assistant Pastor of Edina Community
 Lutheran Church
 Gene O'Neil, Executive Director of United Cerebral Palsy
 of Greater St. Paul, Inc.
 John DuRand, Executive Director of Occupational Training
 Center, Inc.
 Jack Baker, President of the Minnesota Student Association
 Dennis Hilger, Minneapolis
 Alice Cowley, St. Paul
 Darla St. Martin, Women for Universal Human Rights
 Mrs. Joseph Brink, St. Joseph
 Thomas Mooney, Minnesota Citizens Concerned for Life

B. Letters and Written Statements or Memoranda Submitted to Committee

Representative John W. Johnson
 Secretary of State Arlen I. Erdahl
 William Merlin of Merlin, Starrs and Kiefer
 John Milton, Ramsey County Commissioner
 Attorney General Warren Spannaus
 Committee for Effective Crime Control
 Morris Hursh, Department of Public Welfare
 Professor Joyce A. Hughes, University of Minnesota Law School
 (also a member of the Commission)
 Cynthia Attwood, University of Minnesota Law School
 Congressman Donald Fraser
 Milton A. Kludt, Judge in Norman County
 L. W. Binger, Chairman of the Governor's Commission on Employment
 of Handicapped Persons
 Mark C. Erspamer
 Minnesota Home Economics Association
 University YWCA
 District Judge John B. Friedrich
 LeAnne M. Nelson
 Joseph Bright, Revisor of Statutes
 Earl Zaiser, St. Paul

C. Internal Research - Staff Reports

"The Minnesota Bill of Rights: An Overview," Joseph P. Hudson
 Memorandum on Durational Residency Requirements, Jon Schroeder
 Memorandum on removal of state canvassing board from the Consti-
 tution, Jon Schroeder

D. Those Invited to Testify

American Indian Movement, Minneapolis
 American Indian Movement, St. Paul
 Mrs. Joseph Brink
 John Broady
 Dr. Frank Brown, State Reformatory
 Business and Professional Women, St. Paul
 Business and Professional Women, Minneapolis
 Minnesota Home Economics Association
 Shakopee Medwakantan Sioux Community

Urban Coalition of Minneapolis
Ramsey County Bar Association
National Organization for Women
League of Minnesota Human Rights
Minneapolis Urban League
Grand Portage Reservation Business Committee
Episcopal Church Women
Minnesota Chippewa Tribe
Upper Sioux Indian Community
Human Rights Commission
Red Lake Bank of Chippewa Indians
Citizens League
Lower Sioux Indian Community in Minnesota
Minnesota Citizens Concerned for Life
University of Minnesota Womens Liberation
St. Paul Urban League
Minnesota Civil Liberties Union
Minnesota Political Caucus
National Association for Advancement of Colored People
Dave Olmscheid
Prairie Island Indian Community
League of Women Voters
Minnesota Bar Association
Hennepin County Bar Association
Hennepin County Mental Health
Fond Du Lac Reservation Business Committee
Minnesota Council of Churches
Upper Midwest American Indian Center
Minnesota Public Interest Research Group
Urban Coalition of St. Paul
Womens Equity Action League
Womens Political Caucus
Young Women's Christian Association
Zonta Club of Minneapolis
Committee for Effective Crime Control
Indian Affairs Commission
Human Relations Commission
Rep. John Johnson