

Tuesday, March 21, 2023

To: Anna Borgerding
Committee Administrator
Public Safety Finance and Policy Committee
100 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

RE: MACDL Support of Clemency Reform Bill in Omnibus

Dear Judiciary Finance and Civil Law Committee,

My name is Ryan Else and I am the Legislative Chair for the Minnesota Association of Criminal Defense Lawyers. I write to strongly urge you to support the clemency reform package in HF 2788.

MACDL supports these reforms because the clemency process in Minnesota is so fundamentally broken that for quite some time most criminal defense lawyers advise their clients that it is simply not available to them because denial is almost a foregone conclusion. The source of the problem is the unanimity requirement because when any one member of the pardon board is philosophically opposed to the granting of pardons, the power nullified. The people of Minnesota deserve to have this this constitutionally-established process for achieving justice.

Court action recently challenged this unanimity requirement. The Minnesota Supreme Court held that legislature had the discretion to change the current process in *SHEFA v. Ellison*, No. A21-0830 (Minn: 2022). The *Shefa* Court found Minn. Const. art. V, § 7 ambiguous as to the unanimity requirement, saying a legislative fix consistent with this bill's governor-plus-one system would be one way to resolve the issue. The Court stated, "the Legislature could adopt a voting scheme that allowed a pardon to be granted under any of the following circumstances: the governor and attorney general vote to grant the pardon; the governor and chief justice vote to grant the pardon; or the governor, attorney general and chief justice all vote to grant a pardon."

Having a viable clemency process is necessary to an effective criminal justice system. As I heard Commissioner of the Department of Corrections Paul Schnell testify last year, our justice system needs to provide more routes to rehabilitation and restoration of offenders. Clemency promotes both as the application process requires an offender to prove up the effectiveness of their rehabilitation and, if successful, a pardon restores them to the community of law-abiding citizens. This provides hope that reduces the despair and desperation that drives much criminal activity. Pardons granted to those who have completed prison terms—historically, a large percentage of all clemencies granted—have a unique ability to confer forgiveness on those who have served their time. Commutations can cover the gaps created by glaring disparities among judges when other second-chance methods send cases back to courts for review.

This issue is also non-partisan, evidenced by the fact that the states that exercise their pardon power most are solidly conservative states that are otherwise tough on crime. This is because once the offender has been punished sufficiently, they no longer pose a public safety risk. For example, South Dakota uses its clemency power as much as 3 times

more than Minnesota and South Carolina is one of the national leaders in the exercise of such powers of mercy. President Reagan has the highest clemency rate since 1980 and Gov. Mike Huckabee was one of the strongest users of the power.

Finally, the bill's establishment of a commission that makes recommendations to the board of pardons is a necessary fix to the logistical problems posed by getting three of the most powerful people in Minnesota in the same hearing. The petitions require an expansion of the bandwidth of the process to analyze cases and protect public safety while still providing this constitutional right to meaningfully request a pardon. The commission-recommendation system will greatly reduce the strain on the system of trying to get the Governor, Attorney General, and Chief Justice in the same place regularly to perform their duties, whereas under the current system they can only get together 2 days a year.

Minnesotans deserve all the rights provided for in their constitution, including the right to request a pardon and have that request considered seriously. The current system has proven to be unworkable as one member of the board is able to frustrate the intent of that right. This bill is a well-considered repair of that system that is consistent with the Supreme Court's consideration of this issue and should become law. For these reasons, MACDL urges you to pass these reforms.

My email is ryan@brockhunterlaw.com and my cell is 612-232-8767. Thank you for your consideration of this information.

Sincerely,

Ryan Else –
Legislative Chair for Minnesota Association of Criminal Defense Lawyers (MACDL)