

Nebraska State Legislature



June 19, 2023

Governor Jim Pillen
State Capitol
P.O. Box 94848
Lincoln, Nebraska 68509-4848

RE: Starting a Dialogue to Advance our Shared Commitment to Smart Criminal Justice Reform by Expanding Pardons for Marijuana Possession to Address Racial Injustice and Strengthen Second Chance Opportunities for Nebraskans

Dear Governor Pillen,

Greetings and congratulations again on the completion of your first legislative session. We sincerely appreciate your efforts to work collaboratively with the Legislature and remain impressed with your commitment to an open dialogue between state leaders and your commitment to identifying and building on our shared public safety goals including thoughtful reforms. There can be no doubt that when we work together all Nebraskans benefit. As such, we write today in advance of the upcoming meeting of the Board of Pardons this week to urge you and other members of the Board to consider and work with all stakeholders over the coming months to vision and execute a plan to improve second chance opportunities to benefit more Nebraskans with the power of pardons.

Background:

On October 6, 2022, President Joe Biden issued a proclamation that pardoned federal convictions for simple marijuana possession offenses.¹ This is a full, unconditional, and categorical pardon for federal and District of Columbia convictions. The pardon removed barriers to housing, employment, and educational opportunities for thousands with qualifying convictions.

In his statement announcing his proclamation, the President urged all Governors to take similar steps in their states to address state law convictions for marijuana possession.²

I urge you, and all members of the Board of Pardons to direct the Board of Pardons to develop an administrative process to encourage eligible people to seek pardons for simple marijuana possession convictions. This type of thoughtful and restorative relief is consistent with your

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/06/granting-pardon-for-the-offense-of-simple-possession-of-marijuana/>

² <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/>

support of historic and meaningful smart justice reform efforts, such as LB 50 just this past session. This common ground common sense approach we have forged together thanks to the leadership of Senator Wayne and Senator McKinney is a critical first step in our work together to address mass incarceration and racial injustice in Nebraska which are grave and persistent issues. However, we must also use other tools available to us in state government in addition to policy reform such as a more robust pardons process.

Nebraska is uniquely positioned to make the most of this opportunity. Many Nebraskans have convictions for marijuana possession. A troubling characteristic of our current state of law is that there is a clear racial disparity to marijuana prosecution: a black Nebraskan is 4.65 times more likely to be arrested for marijuana possession than a white Nebraskan.³ While first offense marijuana possession is an infraction under Nebraska law, an infraction is nevertheless a criminal sanction⁴ which often carries significant collateral consequences that follow a person for years after they have resolved their case. Unlike many other states, we have not modified our criminal laws relating to cannabis or marijuana to regulate or decriminalize simple possession crimes. Nineteen states, two territories, and the District of Columbia have moved forward with a more sensible drug policy and have legalized small amounts of cannabis for adults.⁵ We may disagree on matters of reform or decriminalization of marijuana, but we can surely agree that those people who have served their time or paid their fine should be able to move on with their lives.

We have the means to meet this demand. The Board of Pardons has the power to “remit fines and forfeitures, and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment.”⁶ This power belongs to no other branch of government and the Board has the unfettered discretion to grant or deny a pardon for any reason or no reason at all.⁷ With this power, the Board of Pardons can effectively and deftly be deployed to benefit eligible Nebraskans. For instance, the Board of Pardons could proactively grant pardons for eligible Nebraskans, by working with the State Court Administrator’s Office or the Nebraska Commission on Law Enforcement and Justice to identify such convictions.

As you know, the Board of Pardons on which you serve will hold its first public meeting to consider pardons and commutations on June 22, 2023. We look forward to seeing how the current Board operates. From our review of the meeting agenda, we observed a number of applicants seeking relief for marijuana convictions. We encourage you and the Board to consider the pending applications favorably and to initiate a discussion to ensure Nebraska does its part as contemplated in the Presidents Executive Order.

We look forward to working with you and all stakeholders on this important project and also encourage you and the members of the board to think even more boldly to consider revitalizing the Board of Pardons role in addressing other injustices such as the case of Earnest Jackson.

³ <https://www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform>

⁴ Neb.Rev.Stat. §28-104; *State v. Cerros*, 312 Neb. 230 (2022); *State v. Sassen*, 240 Neb. 773 (1992).

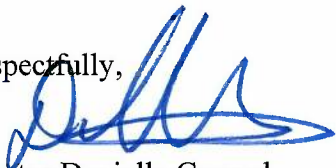
⁵ <https://www.ncsl.org/civil-and-criminal-justice/cannabis-overview>

⁶ Nebraska Constitution Article IV, §13

⁷ *State v. Castaneda*, 287 Neb. 289, 313 (2014)

Thank you in advance for your commitment to public service and for your consideration of these matters. We look forward to your timely response.

Respectfully,



Senator Danielle Conrad
District 46



Senator Terrell McKinney
District 11

State Senator Justin Wayne
District 13

cc: Members of Board of Pardons (Attorney General Mike Hilgers, Secretary of State Bob Evnen); State Senators.