

Firearms - Deferred Adjudication

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.411.htm>

GOVERNMENT CODE
TITLE 4. EXECUTIVE BRANCH
SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION
CHAPTER 411. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS
SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION
SUBCHAPTER H. LICENSE TO CARRY A CONCEALED HANDGUN

Sec. 411.171. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1302, Sec. 14(1), eff. June 14, 2013.

(2) "Chemically dependent person" means a person who frequently or repeatedly becomes intoxicated by excessive indulgence in alcohol or uses controlled substances or dangerous drugs so as to acquire a fixed habit and an involuntary tendency to become intoxicated or use those substances as often as the opportunity is presented.

(3) "Concealed handgun" means a handgun, the presence of which is not openly discernible to the ordinary observation of a reasonable person.

(4) "Convicted" means an adjudication of guilt or, except as provided in Section [411.1711](#), an order of deferred adjudication entered against a person by a court of competent jurisdiction whether or not the imposition of the sentence is subsequently probated and the person is discharged from community supervision. The term does not include an adjudication of guilt or an order of deferred adjudication that has been subsequently:

(A) expunged;
(B) pardoned under the authority of a state or federal official; or
(C) otherwise vacated, set aside, annulled, invalidated, voided, or sealed under any state or federal law.

(4-a) "Federal judge" means:

(A) a judge of a United States court of appeals;
(B) a judge of a United States district court;
(C) a judge of a United States bankruptcy court; or
(D) a magistrate judge of a United States district court.

(4-b) "State judge" means:

(A) the judge of an appellate court, a district court, or a county court at law of this state;

(B) an associate judge appointed under Chapter 201, Family Code; or

(C) a justice of the peace.

(5) "Handgun" has the meaning assigned by Section [46.01](#), Penal Code.

(6) "Intoxicated" has the meaning assigned by Section [49.01](#), Penal Code.

(7) "Qualified handgun instructor" means a person who is certified to instruct in the use of handguns by the department.

(8) Repealed by Acts 1999, 76th Leg., ch. 62, Sec. 9.02(a), eff. Sept. 1, 1999.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 10.01(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 9.01(a), 9.02(a), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1084 (H.B. [1831](#)), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 594 (H.B. [41](#)), Sec. 8, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 6.06, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 11.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1259 (H.B. [559](#)), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1302 (H.B. [3142](#)), Sec. 14(1), eff. June 14, 2013.

Sec. 411.1711. CERTAIN EXEMPTIONS FROM CONVICTIONS. A person is not convicted, as that term is defined by Section [411.171](#), if an order of deferred adjudication was entered against the person on a date not less than 10 years preceding the date of the person's application for a license under this subchapter unless the order of deferred adjudication was entered against the person for:

(1) a felony offense under:

(A) Title 5, Penal Code;

(B) Chapter 29, Penal Code;

(C) Section [25.07](#) or [25.072](#), Penal Code; or

(D) Section [30.02](#), Penal Code, if the offense is punishable under

Subsection (c)(2) or (d) of that section; or

(2) an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense listed in Subdivision (1).

Added by Acts 2005, 79th Leg., Ch. 1084 (H.B. [1831](#)), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 11.01, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. [743](#)), Sec. 7, eff. September 1, 2013.

Sec. 411.172. ELIGIBILITY.

(a) A person is eligible for a license to carry a concealed handgun if the person:

(1) is a legal resident of this state for the six-month period preceding the date of application under this subchapter or is otherwise eligible for a license under Section [411.173\(a\)](#);

(2) is at least 21 years of age;

(3) has not been convicted of a felony;

(4) is not charged with the commission of a Class A or Class B misdemeanor or equivalent offense, or of an offense under Section [42.01](#), Penal Code, or equivalent offense, or of a felony under an information or indictment;

(5) is not a fugitive from justice for a felony or a Class A or Class B misdemeanor or equivalent offense;

(6) is not a chemically dependent person;

(7) is not incapable of exercising sound judgment with respect to the proper use and storage of a handgun;

(8) has not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense or of an offense under Section [42.01](#), Penal Code, or equivalent offense;

(9) is fully qualified under applicable federal and state law to purchase a handgun;

(10) has not been finally determined to be delinquent in making a child support payment administered or collected by the attorney general;

(11) has not been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the tax collector of a political subdivision of the state, or any agency or subdivision of the state;

(12) is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests;

(13) has not, in the 10 years preceding the date of application, been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony; and

(14) has not made any material misrepresentation, or failed to disclose any material fact, in an application submitted pursuant to Section [411.174](#).

(b) For the purposes of this section, an offense under the laws of this state, another state, or the United States is:

(1) except as provided by Subsection (b-1), a felony if the offense, at the time the offense is committed:

(A) is designated by a law of this state as a felony;

(B) contains all the elements of an offense designated by a law of this state as a felony; or

(C) is punishable by confinement for one year or more in a penitentiary; and

(2) a Class A misdemeanor if the offense is not a felony and confinement in a jail other than a state jail felony facility is affixed as a possible punishment.

(b-1) An offense is not considered a felony for purposes of Subsection (b) if, at the time of a person's application for a license to carry a concealed handgun, the offense:

(1) is not designated by a law of this state as a felony; and

(2) does not contain all the elements of any offense designated by a law of this state as a felony.

(c) An individual who has been convicted two times within the 10-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a license under this subchapter. This subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to show that the person is a chemically dependent person.

(d) For purposes of Subsection (a)(7), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person:

(1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;

(2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:

(A) is in remission but is reasonably likely to redevelop at a future time; or

(B) requires continuous medical treatment to avoid redevelopment;

(3) has been diagnosed by a licensed physician, determined by a review board or similar authority, or declared by a court to be incompetent to manage the person's own affairs; or

(4) has entered in a criminal proceeding a plea of not guilty by reason of insanity.

(e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):

(1) involuntary psychiatric hospitalization;

(2) psychiatric hospitalization;

(3) inpatient or residential substance abuse treatment in the preceding five-year period;

(4) diagnosis in the preceding five-year period by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

(A) schizophrenia or delusional disorder;

(B) bipolar disorder;

(C) chronic dementia, whether caused by illness, brain defect, or brain injury;

(D) dissociative identity disorder;

(E) intermittent explosive disorder; or

(F) antisocial personality disorder.

(f) Notwithstanding Subsection (d), a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subsection (d) or listed in Subsection (e) is not because of that disorder or condition incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides the department with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

(g) Notwithstanding Subsection (a)(2), a person who is at least 18 years of age but not yet 21 years of age is eligible for a license to carry a concealed handgun if the person:

(1) is a member or veteran of the United States armed forces, including a member or veteran of the reserves or national guard;

(2) was discharged under honorable conditions, if discharged from the United States armed forces, reserves, or national guard; and

(3) meets the other eligibility requirements of Subsection (a) except for the minimum age required by federal law to purchase a handgun.

(h) The issuance of a license to carry a concealed handgun to a person eligible under Subsection (g) does not affect the person's ability to purchase a handgun or ammunition under federal law.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 10.01(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 9.03(a), 9.04(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 255, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 486 (H.B. [322](#)), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 11.03, eff. September 1, 2009.

<https://www.texasattorneygeneral.gov/opinions/opinions/49cornyn/op/2001/htm/jc0396.htm>

Texas Attorney General's Opinion

Office of the Attorney General - State of Texas
John Cornyn

July 10, 2001

Mr. Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
5805 North Lamar Boulevard, Box 4087
Austin, Texas 78773-0001

Opinion No. JC-0396

Re: Whether a person who has been pardoned for a felony conviction is subject to section 46.04 of the Penal Code, and related questions (RQ-0349-JC)

Dear Mr. Davis:

Under section 46.04 of the Penal Code, a "convicted" felon commits an offense if he or she unlawfully possesses a firearm. Tex. Pen. Code Ann. § 46.04(a) (Vernon 1994). You ask whether a convicted felon who has been pardoned is convicted for the purposes of section 46.04.(1) Although a pardon that is not for subsequent proof of innocence does not obliterate the underlying offense, a full, unconditional pardon generally erases the conviction's consequences. See *Jones v. State*, 147 S.W.2d 508, 510 (Tex. Crim. App. 1941); *Warren v. State*, 74 S.W.2d 1006, 1007 (Tex. Crim. App. 1934). For this reason, we conclude that a felon who has been pardoned without condition is not subject to section 46.04 and does not violate section 46.04 by possessing a firearm. The fact that the pardoned felon may remain convicted is irrelevant.

You similarly ask whether a person whose felony conviction has been "set aside" under article 42.12 of the Texas Code of Criminal Procedure is convicted for the purposes of section 46.04 of the Penal Code. Request Letter, *supra* note 1, at 1. We assume that you refer to the procedure under article 42.12, section 20 by which a judge may set aside a defendant's verdict or permit the defendant to withdraw a plea. See Tex. Code Crim. Proc. Ann. art. 42.12, § 20(a) (Vernon Supp. 2001). Because a defendant whose verdict is set aside or who is permitted to withdraw a plea under article 42.12, section 20 is generally "released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty,"*id.*, we conclude that a defendant whose guilty verdict has been set aside or who has been permitted to withdraw a plea is, like a pardoned felon, not subject to section 46.04 of the Penal Code.

Section 46.04 of the Penal Code restricts firearm possession by a convicted felon:

(a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(b) An offense under this section is a felony of the third degree.

Tex. Pen. Code Ann. § 46.04 (Vernon 1994). Thus, no convicted felon may possess a firearm for five years after the felon's release from confinement or supervision. See *State v. Mason*,

980 S.W.2d 635, 638 (Tex. Crim. App. 1998) (en banc). After that five-year period, the convicted felon may possess a firearm only at "the premises at which the person lives." See id.; see also Tex. Dep't of Pub. Safety v. McLendon, 35 S.W.3d 632, 633 (Tex. 2000) (concluding that, in general, defendant whose adjudication has been deferred remains convicted).

Your questions require us first to determine an appropriate definition for the term "convicted" in section 46.04. Section 46.04 itself does not define the term. Consequently, we must look elsewhere.

You suggest that we apply the definition of "convicted" in section 411.171 of the Government Code, which defines various terms for the statutes providing for a license to carry a concealed handgun. See Tex. Gov't Code Ann. § 411.171(4) (Vernon Supp. 2001); Request Letter, supra note 1, at 1. Under section 411.171(4), the term "convicted" generally encompasses a defendant who has been adjudicated guilty or whose order of adjudication has been deferred under article 42.12, section 5 of the Code of Criminal Procedure, but the term does not include a defendant who has been pardoned:

"Convicted" means an adjudication of guilt or an order of deferred adjudication entered against a person by a court of competent jurisdiction whether or not the imposition of the sentence is subsequently probated and the person is discharged from community supervision. The term does not include an adjudication of guilt or an order of deferred adjudication that has been subsequently:

(A) expunged; or

(B) pardoned under the authority of a state or federal official.

Tex. Gov't Code Ann. § 411.171(4) (Vernon Supp. 2001). A convicted felon is ineligible to carry a concealed handgun. See id. § 411.172(a)(3).

* * * * *

Yours very truly,

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Private Attorney Opinion

http://caldwellscd.org/index_files/Page342.htm

FELONY DEFERRED ADJUDICATION: When a person has been placed on Deferred Adjudication, the judge has indicated that there is sufficient evidence to find the defendant guilty, but the case is put on “hold”, and the defendant is placed on probation for a specific number of years, subject to the conditions of probation. The defendant has not been found guilty and had punishment assessed at this stage of the trial, therefore, there is no felony conviction or interruption of a defendant’s rights except that he may not purchase, or receive any firearms. If a probationer’s Deferred Adjudication is revoked, the Judge may assess the maximum punishment allowed by law.