



# TEXAS DEPARTMENT OF PUBLIC SAFETY

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RQ-0349-JC

February 13, 2001

Certified Mail/Return Receipt Requested  
# 7099 3400 0004 7759 3982

John C. Cornyn  
Attorney General  
Price Daniel, Sr. Building, 8<sup>th</sup> Floor  
209 West 14<sup>th</sup> Street  
Austin, Texas 78701

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FEB 15 2001

FILE # MC-41886-01  
I.D. # 041886

Re: Request for Opinion

OPINION COMMITTEE

Dear General Cornyn:

The Department requests an Attorney General opinion to define the term "convicted" as related to Section 46.04 of the Texas Penal Code, "Unlawful Possession of Firearm by Felon." Is an individual who has received a pardon or a conviction set aside under Article 42.12 of the Texas Code of Criminal Procedure for a felony offense subject to the firearm restrictions imposed by Section 46.04?

Government Code Section 411.171(4), which contains the requirements for a concealed handgun license, states that the term "convicted" does not include an adjudication of guilt that has been subsequently expunged or pardoned under the authority of a state or federal official. Therefore, the Department has issued concealed handgun licenses to individuals who have received pardons for felony convictions.

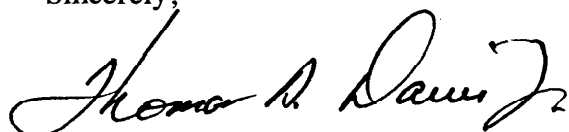
However, the concealed handgun statute, Government Code Section 411.172(a)(9) also requires that an applicant be fully qualified under state and federal law to purchase a handgun. Penal Code Section 46.04 makes it unlawful for a person who has been convicted of a felony to possess a firearm at any location other than the person's residence. Further, Title 18, United States Code, section 922(g)(1) makes it unlawful for any person who has been convicted of a crime punishable by imprisonment for a term exceeding one year to ship, transport, possess or receive firearms or ammunition in or affecting interstate or foreign commerce. For the purposes of Title 18, any conviction which has been expunged or set aside, or for which a person has been pardoned or has had civil rights restored, shall not be considered a conviction, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not

ship, transport, possess or receive firearms, *or unless the person is prohibited by the law of the jurisdiction from receiving or possessing any firearm.* Therefore, if individuals who have received pardons for felonies are still subject to the provisions of Penal Code Section 46.04, they are not eligible for a license despite the provisions of Government Code Section 411.171(4).

While individuals who have felony convictions set aside under Article 42.12, Code of Criminal Procedure are not eligible for a concealed handgun license, the question of whether the provisions of Penal Code Section 46.04 apply to these individuals is relevant to the Department. When an application for a concealed handgun license is received from an individual who is not eligible to possess a firearm, the Department must determine whether to send the application to local prosecutors for possible criminal charges. Therefore, if an individual with a conviction set aside is still restricted under Penal Code Section 46.04 and applies for a concealed handgun license, he may be subject to criminal charges.

The Department requests this opinion to aid peace officers in the enforcement of Penal Code Section 46.04 and to guide the Department in issuing concealed handgun licenses. Please do not hesitate to contact me if we can be of any assistance.

Sincerely,

A handwritten signature in black ink, reading "Thomas A. Davis, Jr." in a cursive style.

Thomas A. Davis, Jr.  
Director

TAD:lab