



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL  
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ATTORNEY GENERAL'S OPINION NO. 86-16

Sheriff Vaughn Killeen  
7200 Barrister  
Boise, ID 83704

Per Request for Attorney General's Opinion

RE: Felony Convictions

We have received through your counsel, Mr. Larry Richards, your request for a legal opinion. Usually, we refer legal questions from sheriffs back to the county prosecuting attorney since it is the prosecutor's duty to advise county officials. Idaho Code § 31-2604(3). However, yours was the first among several requests from different agencies on a question prompted by recent amendments to the federal firearms laws. Therefore, we have undertaken the following analysis.

QUESTIONS PRESENTED

The question you pose is: "When is a person considered to have been convicted of a felony in Idaho?" As you indicated in your letter, this question is important in determining when there has been a violation of the federal Gun Control Act of 1968 which, pursuant to a recent amendment, prohibits the possession and transfer of firearms by persons convicted of a felony, as defined by state law. We shall focus our analysis upon the emphasized words.

### CONCLUSION

A person who is pardoned or who has successfully completed the period of a withheld judgment and had his guilty plea or conviction negated or expunged, may possess and transact firearms without violating the federal Gun Control Act. It is our opinion, however, that during the probationary period of a withheld judgment and during and after the term which a person serves on probation with a suspended sentence or on parole, such person is a convicted felon for the purposes of the Gun Control Act.

### ANALYSIS

Under the recent federal amendment, Public Law No. 99-308, the prohibitions of the Gun Control Act are directed against those persons convicted for a "crime punishable by imprisonment for a term exceeding one year." Idaho Code § 18-111 defines a felony offense as any crime which is punishable with death or by imprisonment in the state prison. Under Idaho law a person is sent to the state prison only in cases where the term exceeds one year. Therefore, reading these provisions conjointly, it is apparent that once an Idaho court accepts a guilty plea or guilty verdict in a case where the person may be imprisoned in the state penitentiary in excess of one year, that person becomes a convicted felon for the purposes of federal firearms laws.

Under Idaho Code § 19-101, no person can be punished for a public offense except upon a legal conviction. As the Idaho Supreme Court stated in State v. Wagenius, 99 Idaho 273, 581 P.2d 319 (1978), the word "conviction" is susceptible of two meanings -- an ordinary or popular meaning which refers to the finding of guilt by plea or verdict, and a more technical meaning which refers to the final judgment entered following a plea or verdict of guilty. The court in Wagenius noted that its "prior decisions have not been totally consistent" in determining which meaning to employ in Idaho. 99 Idaho at 277. In construing the statute at issue in Wagenius, the court concluded that "conviction occurs when a verdict or plea of guilty is accepted by the court." Id. at 278.

At least one court has considered what constitutes a conviction under Idaho law for the purposes of the federal Gun Control Act. The federal court for the district of Idaho

reached the conclusion that once a person has entered a plea of guilty or has been convicted by a jury on a felony offense, that person is a convicted felon even though judgment has not been entered:

This Court adopts the view that a "conviction" is the stage of a criminal proceeding where the issue of guilt is determined and a "sentence" is the second stage in criminal proceeding whereupon the Court decrees by judgment the sentence defendant is to receive.

U. S. v. Locke, 409 F.Supp. 600, 603 (D.C. Idaho 1976)

Such a view is in harmony with the Wagenius decision where the court concluded for purposes analogous to the issue here under consideration that a de facto conviction occurs when a verdict or plea of guilty is accepted by a court even before a final judgment is entered. Because of an amendment to Idaho Code § 18-310(2), intervening since Locke and Wagenius, we consider the question further.

After a guilty plea is entered or a guilty verdict returned, a criminal case may take one of several courses: The judge may withhold judgment; the judge may impose judgment after which the defendant will pay his debt to society by serving a probation or by serving a prison term or by serving prison time followed by parole; or the defendant may be pardoned by the Commission for Pardons and Parole. We will briefly address these in reverse order, considering the impact of each category upon the concept of "conviction."

The Commission for Pardons and Parole is a constitutional body vested with the unreviewed power to pardon any who are convicted of crimes. Article 4, § 7, Idaho Constitution, and Idaho Code § 20-240. This power is used sparingly, usually in cases where it is clear that a convicted person is, in fact, innocent. Public Law No. 99-308 expressly provides that any conviction which has been expunged or set aside or for which a person has been pardoned is not considered a conviction for purposes of the Gun Control Act unless such pardon or expungement explicitly forbids the person from shipping, transporting, possessing or receiving firearms. It requires no

further analysis to conclude that a person who has received a pardon is not a convicted felon for present considerations.

A major category of persons affected by the Gun Control Act is that group of persons upon whom a felony judgment of conviction is imposed and who either are placed upon probation or upon parole. The state legislature has attempted to diminish the pariah status of such persons. "(A)ny such person may lawfully exercise all civil rights which are not political during any period of parole or probation." Idaho Code § 18-310(1) (adopted July 1, 1972). "Political rights" would be those consistent with direct or indirect participation in establishing or administering government; such as, the right of suffrage, the right to hold public office, and the right of petition. See, Black's Law Dictionary, p. 1487, "Rights."

The legislature has gone further to facilitate the reintegration of felons into society once they have completed their terms of probation, parole or incarceration. "Upon the final discharge of a person convicted of any felony except treason, a person shall be restored to the full rights of citizenship. ... '[F]inal discharge' means satisfactory completion of imprisonment, probation or parole as the case may be." Idaho Code § 18-310(2) (adopted March 31, 1981). "Civil rights," which is probably what the legislature intended when it used the phrase, "full rights of citizenship," contemplates those rights of every citizen not connected with the organization or administration of government and including such rights as property, marriage, contract, protection of law, etc. In other words, rights appertaining to a person by virtue of his citizenship in the state. See, Black's Law Dictionary, p. 1487, "Rights."

It is our conclusion, despite these statutory changes, that restoration to full rights of citizenship does not dispel the fact of a felony conviction. Idaho Code § 18-310(2) does not extend a right of expungement to a convicted felon. Such a person remains a convicted felon as much for purposes of the federal Gun Control Act, as for other rules and statutes. If such a person appears as a witness in any court proceeding he may, under both the Idaho and federal rules of evidence, be impeached as a convicted felon (IRE § 609; FRE § 609). A prior felony conviction may be taken into consideration at time of sentencing (ICR § 32 and Idaho Code § 19-2520C) and in the setting of bail (ICR § 46). Though returned to full rights of

citizenship, a person may be prosecuted as a persistent violator if he has been previously convicted of two felonies. (Idaho Code § 19-2514.) In these other contexts, the courts and legislature have provided that a conviction may be taken into consideration to the disadvantage of the person convicted despite the statutory restoration to "full rights of citizenship" under Idaho Code § 18-310(2). A conviction for felony is a historical fact which does not waft away without an expungement. Therefore, it is our conclusion that for purposes of the federal Gun Control Act, a person remains convicted of a felony after release from imprisonment, probation, or parole.

Under procedures available in Idaho, a person who has been convicted of a felony may have judgment of that conviction withheld. Idaho Code § 19-2601(3) and Idaho Criminal Rule 33(d) allow a court, in its discretion, to withhold judgment of a conviction for a specified period of time based on certain conditions or sanctions. Since the use of a withheld judgment is a kind of probation, a convicted felon who has a withheld judgment imposed on him remains a de facto felon, as discussed above, until he satisfies the conditions of the probation and applies to have the guilty plea set aside. U. S. v. Locke, 409 F.Supp. 600 (D.C.Idaho 1976). Upon satisfactory completion of the terms or conditions of the withheld judgment, and affirmative action by the court to dismiss the charge, the person's felony conviction is negated. It is a nullity and the effect is as if it had never been rendered at all. State v. Cliett, 96 Idaho 646, 649, 534 P.2d 476 (1975). Thereafter, such a person could possess firearms without being in violation of federal law. However, during the period of a person's de facto conviction, as defined above, and until the satisfactory completion of any and all terms of his probation pursuant to a withheld judgment, followed by an order of the court that the entry of the plea be expunged, a person would be considered by Idaho law to be a convicted felon for the purposes of the Federal Gun Control Act.

I hope this information answers your question and provides the guidance you requested. If we can be of any further assistance, please call or write.

AUTHORITIES CONSIDERED

Art. 4, § 7, Idaho Constitution

Idaho Code § 18-310(1)(2)

Idaho Code § 19-2514

Idaho Code § 19-2520C

Idaho Code § 20-240

Idaho Code § 31-2604(3)

State v. Cliett, 96 Idaho 646, 649, 534 P.2d 476 (1975)

U. S. v. Locke, 409 F.Supp. 600, 603 (D.C.Idaho 1976)

State v. Wagenius, 99 Idaho 273, 581 P.2d 319 (1978)

FRE § 609

ICR § 32

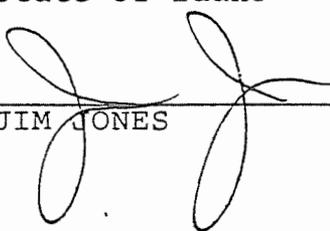
ICR § 36

IRE § 609

Black's Law Dictionary

DATED this 19<sup>th</sup> day of December, 1986.

ATTORNEY GENERAL  
State of Idaho

  
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Sheriff Vaughn Killeen  
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ANALYSIS BY:

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cc: Idaho Supreme Court  
Supreme Court Library  
Idaho State Library