

October 11, 2001  
Opinion 01-49

Mr. Robert R. Fauchaux, Jr.  
State Representative, District 57  
St. John District Office  
197 Belle Terre Boulevard  
P.O. Box 1960  
LaPlace, LA 70069-1960

Dear Representative Fauchaux:

Your request for an opinion of this office has been forwarded to the undersigned for research and reply. As I understand it, your question is as follows:

If a person was charged with Carnal Knowledge of a Juvenile, entered a plea of guilty to Contributing to the Delinquency of a Juvenile, was sentenced to two years in prison, completed that sentence, and meets all of the requirements for a first offender pardon, can that person get the record of the conviction expunged?

Although the offender's plea was not specifically mentioned in your question, it is the assumption of this office that since the original charge was Carnal Knowledge of a Juvenile, the specific provision of La. R.S. 14:92 to which the offender has pled guilty is La. R.S. 14:92(A)(7). La. R.S. 14:92(A)(7) prohibits the performing of any sexually immoral act by anyone over the age of seventeen, with any child under the age of seventeen.

Article 4, Section 5 (E) (1) of the Louisiana Constitution outlines the pardon provisions in Louisiana:

The governor may grant reprieves to persons convicted of offenses against the state and, upon favorable recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender convicted of a non-violent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony shall be pardoned automatically

upon completion of his sentence, without a recommendation of the board of Pardons and without action by the governor.

As discussed in an earlier opinion, see La. Atty. Gen. Op. No. 95-293, there are significant differences between an automatic first felony offender pardon and a gubernatorial pardon. A gubernatorial pardon, which is broader in scope and effect than an automatic first felony offender pardon, restores the offender to the status of innocence. A pardon issued by the governor removes the guilt and restores both rights and privileges to the offender. In State v. Adams, 355 So. 2d 917 (La. 1978) the court quoted Ex Parte Garland, 71 U.S. 333, 380 (1866) which stated, "...when the pardon is full, it releases the punishment and blots out the existence of the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense." Adams, supra, at 922.

While the gubernatorial pardon restores all rights and privileges, the first felony offender pardon simply restores the offender's rights of citizenship, such as the right to vote, work or hold public office. Unlike the gubernatorial pardon, the automatic pardon is not equivalent to an acquittal or a dismissal of the prosecution. The existence of the conviction is not altered. The expungement of one's criminal record following an automatic pardon is a privilege, not a right, and therefore is left to the discretion of the court.

There are specific instances in which the court's discretion in ordering the expungement of an offender's criminal record has been restricted. La. R.S. 44:9 prohibits the expungement of records in regard to individuals convicted of a sex offense involving a minor. La. R.S. 44:9 (E) (2) states: "No court shall order the expungement or destruction of any record of the arrest and prosecution of any person convicted of a sex offense as defined by R.S. 15:542(E), involving a child under the age of seventeen years. The provisions of this Paragraph shall apply to all records of any proceedings, order, judgment, or other action under Code of Criminal Procedure Article 893." For the purpose of La. R.S. 15:542(E) a sex offense specifically includes conviction for the perpetration or attempted perpetration of La. R.S. 14:92(A)(7), the same offense which the offender in your question has pled guilty. La. R.S. 44:9 clearly shows the legislature's intent concerning the expungement of sex offenders' records.

Article 893 D (2) of the Louisiana Code of Criminal Procedure provides further support that the expungement of one's criminal record following an automatic pardon is a privilege and not a right. Article 893 provides in pertinent part, "Upon motion of the defendant, if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution." This language demonstrates the expungement of criminal records is left to the discretion of the court. Leaving

this decision in the hands of the court is characteristic of a privilege not a guaranteed right.

Thus, consistent with previous La. Atty. Gen. Op. No. 95-293, both La. R.S. 44:9 and LSA-C.Cr.P. Art 893 confirm the expungement of one's record following a first felony offender pardon is not a guaranteed right, but instead is a privilege left to the discretion of the court. An offender convicted of Contributing to the Delinquency of a minor, who has received his automatic pardon, is not permitted this privilege.

I hope this opinion has satisfactorily answered your questions. Please call us should you require any further assistance. With warmest regards, I remain

Very truly yours,

RICHARD P. IEYOUB  
Attorney General

By: \_\_\_\_\_  
ROBERT J. HILDUM  
Assistant Attorney General

RJH/vc/jy

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Louisiana Constitution, Article VI, Section 5 (E)

La. Atty. Gen. Op. No. 95-293

La. R.S. 44:9

La. R.S. 14:92

La. R.S. 15:542

LSA- C. Cr. P. Art. 893

*State v. Adams*, 355 So.2d 917 (La. 1978)

16-A CRIMINAL LAW PROCEDURE

Consistent with previous La. Atty. Gen. Op. No. 95-293, both La. R.S. 44:9 and LSA-C. Cr. P. Art 893 confirm the expungement of one's record following a first felony offender pardon is not a guaranteed right, but instead is a privilege left to the discretion of the court. An offender convicted of Contributing to the Delinquency of a minor, who has received his automatic pardon, is not permitted this privilege.

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