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DEPARTMENT OF JUSTICE
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16 CRIMINAL LAW – Crimes & Offenses
47-A FIREARMS & FIREWORKS

La. R.S. 14:95.1; La. Const. art. IV, § 5; La. R.S. 15:572;
18 U.S.C. § 922

The Honorable Nancy Landry
Louisiana House of Representatives,
District 31
P.O. Box 53529
Lafayette, Louisiana 70505

Louisiana Revised Statute 14:95.1 prohibits certain listed felons from possessing firearms until ten years have passed since the date of completion of their sentence, probation, parole, or suspension of sentence without the conviction of any new felony. This prohibition is unaffected by the receipt of a first offender pardon under La. Const. art. IV, § 5(E)(1) and La. R.S. 15:572(D). Once a felon cannot be prosecuted by virtue of La. R.S. 14:95.1(C), his civil rights have been restored as they pertain to a prior Louisiana conviction such that the felon cannot be prosecuted under 18 U.S.C. § 922(g).

Dear Representative Landry:

This office is in receipt of your request for an opinion of the Attorney General regarding issues related to gun possession. Specifically, your questions are:

(1) Can a person who was convicted of a non-violent felony offense more than ten years ago and who has received a first offender pardon possess or purchase a firearm under Louisiana or federal law?

(2) Are felons who receive a first offender pardon excluded from eligibility for qualification to obtain a concealed handgun permit if they are not restricted by court order from owning a firearm?

(3) Did Act No. 221 of the 2014 Regular Session change the standard of review regarding background checks with respect to the purchase of firearms?

Regarding the first question, certain felons are prohibited from possessing firearms in Louisiana under Louisiana Law by virtue of a prior conviction of a felony. Those felonies are listed in La. R.S. 14:95.1(A). Although those felonies include all crimes of violence (as defined in La. R.S. 14:2(B)), the prohibition extends to some non-violent felonies, such as a simple burglary.

Your first question asks about a person convicted of a non-violent felony more than ten years ago who has since received a first offender pardon. Under La. R.S. 14:95.1(C), Louisiana's prohibition upon possession of firearms by felons

does “not apply to any person who has not been convicted of any felony for a period of ten years from the date of completion of sentence, probation, parole, or suspension of sentence.” Neither the date of the underlying offense nor the date on which the defendant is sentenced is relevant to the running of the ten-year period.

The receipt of an automatic first offender pardon by the State of Louisiana is also irrelevant to this inquiry. See *State v. Eberhardt*, 2013-2306 (La. 07/01/14), 145 So.3d 377, 387, n. 7 (discussing, *inter alia*, *State v. Wiggins*, 432 So.2d 234, 236-37 (La. 1983); *State v. Riser*, 30,201 (La. App. 2nd Cir. 12/12/97), 704 So.2d 946, 949-50; La. Const. art. IV, § 5(E)(1); La. R.S. 15:572(D)); see also *United States v. Washington*, 544 F. App'x 365, 366-68 (5th Cir. 2013); La. Atty. Gen. Op. No. 03-0176; La. Atty. Gen. Op. No. 92-654. These cases and opinions show that a first offender pardon does not allow a person to possess a firearm if they are subject to the prohibitions contained within La. R.S. 14:95.1.

Federal law contains a broader prohibition upon felons from possessing firearms in Louisiana. The statute, 18 U.S.C. § 922(g)(1), states:

It shall be unlawful for any person... who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.¹

This statute applies to any crime where the possible imprisonment exceeds one year, but does not include “Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices...” 18 U.S.C. § 921(a)(20)(A). Notwithstanding this narrow exception, the federal prohibition is quite broad: “both an armed robber and tax evader lose their right to bear arms on conviction under § 922(g)(1).” *United States v. White*, 593 F.3d 1199, 1206 (11th Cir. 2010).²

¹ Note that the definition of a felony under 18 U.S.C. §922(g)(1) differs slightly from Louisiana state law, which defines a felony as “any crime for which an offender may be sentenced to death or imprisonment at hard labor.” La. R.S. 14:2(A)(4); see also 18 U.S.C. § 921(a)(20)(B) (noting that if a state classifies a crime as a misdemeanor and is punishable by a term of imprisonment of two years or less, 18 U.S.C. §922(g)(1) would not prohibit that person from possessing a firearm).

² Note that felons are not the only persons disqualified from firearm possession in Louisiana. For example, La. R.S. 14:95.10 and 28 U.S.C. § 922(g)(9) contain prohibitions upon firearm possession for persons who have committed certain misdemeanors related to domestic violence.

This federal prohibition has an important limitation. A portion of 18 U.S.C. § 921(a)(20) exempts certain felons from its firearm prohibition:

Any... [person who] has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.³

In *United States v. Dupaquier*, the Fifth Circuit Court of Appeals considered whether a felon who possesses a firearm in Louisiana, but can no longer be prosecuted by operation of La. R.S. 14:95.1(C), has had his civil rights restored such that he cannot be prosecuted under 18 U.S.C. § 922(g)(1). 74 F.3d 615, 617-19 (5th Cir. 1996). The Court found that, if a felon in possession of a firearm can no longer be prosecuted under state law because of La. R.S. 14:95.1(C), then he cannot be prosecuted under federal law for possessing a firearm in Louisiana because his civil rights have been restored under 18 U.S.C. § 921(a)(20). *Id.*

Finally, with respect to your first question, possession and purchase go hand-in-hand. Federal law prohibits a federally licensed firearms dealer "from selling a gun to anyone it knows, or has reasonable cause to believe," that the buyer would be prohibited from purchasing the firearm by 18 U.S.C. § 922(g), which includes "felons, drug addicts, and the mentally ill, to list a few." *Abramski v. United States*, 134 S.Ct. 2259, 2263 (2014) (discussing, *inter alia*, 18 U.S.C. § 922(d)). Louisiana state law more broadly prohibits persons from illegally supplying felons with firearms and ammunition. See, generally, La. R.S. 14:95.1.1; La. R.S. 14:95.1.2; La. R.S. 14:95.1.3.

Your second question is related to the first. Louisiana law allows persons to obtain permits to carry a concealed firearm statewide if they qualify under La. R.S. 40:1379.3. The receipt of a first offender pardon does not change the requirements of the statute, such as La. R.S. 40:1379.3(C)(6), which prohibits persons from qualifying for a permit if they are ineligible to possess a firearm by virtue of having been convicted of a felony. See, e.g., La. R.S. 14:95.1 and 18 U.S.C. § 922(g)(1). If a person is not allowed to possess a firearm by virtue of a felony, that person cannot qualify to carry a concealed firearm.

³ Again, the language here concerning pardons would not apply to Louisiana's first offender pardon. *Riser*, 704 So.2d at 950 ("What is now clear, however, is that the *Wiggins* decision holds that La. R.S. 14:95.1 is applicable to individuals, like this defendant, who have received the automatic, first offender pardon pursuant to [La. Const.] Art. 4, § 5(E)(1)."); see also *Washington*, 544 F. App'x at 366-67.

Louisiana also allows the sheriff of any parish to issue a permit for persons to carry a concealed firearm within that parish, as well as within any contiguous parish with which the sheriffs have a reciprocity agreement. *See, generally*, La. R.S. 40:1379.1.1(A) and (B). A first offender pardon does not change the requirements for the issuance of such a permit. La. R.S. 40:1379.1.1(A); *see also* La. R.S. 40:1379.1.1(C)(2).

Your second question implies that restrictions upon a felon's ability to carry a firearm emanate from a particular court order. However, the restrictions upon felons from possessing firearms contained in La. R.S. 14:95.1 exist by operation of law, predicated upon the fact of a conviction of a felony listed in the statute.⁴

Finally, Act 221 of the 2014 Regular Session of the Louisiana Legislature added the following language to La. R.S. 40:1379.3(K) and (T) with respect to background checks:

K. The department shall execute a thorough background investigation, including a criminal history check, of every applicant for the purpose of verifying the qualifications of the applicant pursuant to the requirements of this Section. For purposes of this Subsection, a background check shall be defined as a computer check of available on-line state records, and, if warranted, the fingerprints may be forwarded to the Federal Bureau of Investigation for a national criminal history record check. *In addition, the department shall submit an inquiry on every applicant to the National Instant Criminal Background Check System of the Federal Bureau of Investigation.*

* * *

T. (1) Possession of a current and valid concealed handgun permit issued pursuant to this Section shall constitute sufficient evidence of the background check required pursuant to 18 U.S.C. 922(t) *provided that the appropriate waiver has been granted by the Bureau of Alcohol, Tobacco, Firearms and Explosives...*

La. Legis. 2014 Reg. Sess. Act 221, § 1 (H.B. 1066) (italics indicate additions).

You asked whether this language changes the standard of review. It does not. The language requires the Department of Public Safety and Corrections to take additional steps prior to the issuance of a permit to carry a concealed firearm (i.e. submitting an inquiry to the National Instant Criminal Background Check

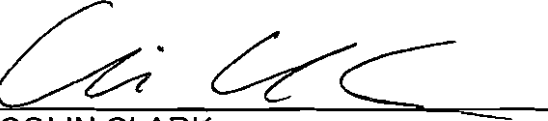
⁴ A court order, however, can restrict persons from possessing firearms who are ineligible to possess them by virtue of a mental illness. *See* La. R.S. 28:57(A).

System). The review process will now include additional information to help the department determine whether the applicant is qualified for a statewide permit to carry a concealed firearm. However, the department is still responsible for evaluating whether the applicant is qualified to receive a permit. See La. R.S. 40:1379.3(A)(1) and (H)(2). The review process for a person who is denied a permit was not changed by Act 221. See La. R.S. 40:1379.3(P).

We trust that this adequately answer the questions that you have posed. Should you have any further questions, or concerns, please do not hesitate to contact this office.

Very truly yours,

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