



TODD ROKITA
ATTORNEY GENERAL

February 2, 2024

OFFICIAL OPINION 2024-1

Lieutenant Neal Foreman
Legal Counsel, Indiana State Police
100 North Senate Ave., IGC-N
Indianapolis, IN 46204

RE: Supplement to Official Opinion 2019-6

Dear Lt. Foreman:

The Office of the Attorney General (OAG) received your request for an official opinion on whether an expungement under the Indiana Code restores the civil rights of individuals convicted of certain felonies, including the right to purchase or possess a firearm. Please note, the OAG previously issued Official Opinion 2019-6 concerning the restoration of firearm rights under Indiana's expunction statutes. This opinion updates and supplements Official Opinion 2019-6, and is put forth due to the misapplication of Indiana law by the Federal Bureau of Investigation (FBI) and is meant to clarify the firearm rights of an individual convicted as a serious violent felon under Ind. Code § 35-47-4-5, who subsequently has that crime expunged.

QUESTION

Does an expungement restore a felon's firearm rights when convicted of a serious violent felony under Ind. Code § 35-47-4-5?

BRIEF ANSWER

Yes, because an expungement restores civil rights with no firearm restrictions. Although Indiana's expungement process is inapplicable to certain felonies, Ind. Code § 35-38-9-10(c) provides that an expungement fully restores a person's civil rights, including the rights to vote, hold public office, serve as a juror, and be a "proper person" under Indiana law to purchase or possess a firearm. If the legislature intended to create a similar prohibition for serious violent felonies, it could have done so, and the absence of such an exception indicates a legislative intent to restore the civil rights of these individuals.

BACKGROUND

Recently, the OAG has become aware of several instances of the FBI taking a stance contrary to Indiana law and to the detriment of the civil rights of Indiana citizens. The FBI has denied the right to purchase or possess firearms to Indiana citizens who have successfully had certain categories of felony convictions expunged in Indiana courts.

ANALYSIS

“A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

U.S. Const., amend. II

The people shall have a right to bear arms, for the defense of themselves and the State.

Ind. Const., Art. I, § 32

Our federal and state constitutions provide our people the right to possess and carry a firearm, and any limitations proscribing this right must be very narrow and clearly justified. In Indiana, a person who has been convicted of a federal or state offense punishable by a term of imprisonment exceeding one year may not knowingly or intentionally carry a handgun. Ind. Code § 35-47-2-1.5(b)(1). He or she is not a “proper person” to carry a handgun under Indiana law. Ind. Code § 35-47-1-7(2). However, a convicted felon may apply for expungement of a felony conviction under Ind. Code § 35-38-9-3 (Class D and Level 6 felonies) or Ind. Code §§ 35-38-9-4 and -5 (all other qualifying felonies). Once a felony conviction is expunged, a person’s civil rights are “fully restored, including the right to vote, to hold public office, to be a proper person under IC 35-47-1-7(2), and to serve as a juror.” Ind. Code § 35-38-9-10(c). And a person whose record is expunged “shall be treated as if the person had never been convicted of the offense.” Ind. Code § 35-38-9-10(e).

Indiana’s expungement process is inapplicable to certain felonies:

- a sex or violent offender under Ind. Code § 11-8-8-5;
- a person convicted of official misconduct under Ind. Code § 35-44.1-1-1;
- a person convicted of any homicide offense under Ind. Code ch. 35-42-1;
- a person convicted of any human and sex trafficking offense under Ind. Code ch. 35-42-3.5;
- a person convicted of any sex crime offense under Ind. Code ch. 35-42-4;
- a person convicted of two (2) or more felony offenses that involved the unlawful use of a deadly weapon and were not committed as part of the same episode of criminal conduct; and
- a person convicted of a felony that resulted in the death of another person.

Ind. Code §§ 35-38-9-3(b), -4(b), and -5(b). These are the only disqualifying felonies listed in Indiana’s expungement statutes.

The FBI has recently asserted that expungement does not restore a felon’s firearm rights when convicted of a serious violent felony under Ind. Code § 35-47-4-5. In doing so, the FBI appears to be improperly relying upon the serious violent felony statute as a means of denying firearm rights to individuals obtaining expungements for certain felony convictions under Indiana law. The FBI may be relying on the OAG’s previously issued Official Opinion 2019-6, in particular, footnote 4, which states: “Indiana courts have not determined whether a person convicted of a serious violent felony, *see* IC 35-47-4-5, has civil rights fully restored by an expunction [expungement].”

While it is true that the Indiana courts have not dealt with this issue, the Indiana Legislature has spoken unequivocally as to what categories of felonies are eligible for expungement consideration. Ind. Code §§ 35-38-9-3(b), -4(b), and -5(b) list the felony convictions for which expungement is not available. However, access to expungement can only be restricted on these grounds. Serious violent felonies as a class under Ind. Code § 35-47-4-5 are not listed as exceptions to expungement. The legislature could have included them, but it chose not to. “We may not read into a statute that which is not the expressed intent of the legislature; thus, it is just as important to recognize what a statute does not say as it is to recognize what it does say.” *Jones v. Lofton*, 201 N.E.3d 676, 679 (Ind. Ct. App. 2022) (citation omitted). By default, most of the individual felonies found at Ind. Code § 35-47-4-5 cannot be expunged because they are already prohibited under Ind. Code §§ 35-38-9-3(b), -4(b), and -5(b)—but not because of their status as serious violent felonies.

Importantly, the Indiana General Assembly clearly knows how to carve out an exception to the restoration of civil rights, including the right to possess a firearm, notwithstanding the availability of expungement for a specific conviction. Specifically, in Ind. Code § 35-38-9-6(f), the Indiana legislature made clear that expungement of a conviction for a “crime of domestic violence” (as defined by Ind. Code § 35-31.5-2-78) does not restore the right to possess a firearm:

(f) Expungement of a crime of domestic violence under section 2 of this chapter does not restore a person’s right to possess a firearm. The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with IC 35-47-4-7.

If the legislature intended to create a similar exception as to convictions for “serious violent felonies,” it clearly had the option to do so; yet it did not. It would be contrary to basic rules of statutory construction to conclude that this omission was happenstantial. *See Jones v. Lofton, supra.*

CONCLUSION

In Indiana, a person who commits a serious violent felony and then has their felony conviction successfully expunged in a court, must be treated as if they had never been convicted of the offense. With the exceptions statutorily prescribed for certain disqualifying felonies, expungement restores all civil rights, including the right to vote, to hold public office, to serve as a juror, and to be a “proper person” under Indiana law to purchase or possess a firearm. If the legislature intended to create a similar prohibition for serious violent felonies, it could have done so, and the absence of such an exception indicates a legislative intent to restore the civil rights of these individuals.

Sincerely,

A handwritten signature in black ink that reads "Todd Rokita". The signature is written in a cursive style with a large, sweeping initial "T".

Todd Rokita
Attorney General of Indiana

William H. Anthony, Chief Counsel, Advisory
Hilari A. Sautbine, Supervising Dep. Attorney General
Donald L. Hannah, Deputy Attorney General