



Office of the Attorney General  
State of Connecticut

March 7, 2016

Martin R. Libbin  
Director of Legal Services  
State of Connecticut Judicial Branch  
Court Operations Division  
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Dear Attorney Libbin:

You have requested an opinion, on behalf of Judge Patrick L. Carroll III, Chief Court Administrator, and the Judicial Branch, concerning whether the records associated with a conviction for which a conditional pardon has been granted are subject to erasure under state law. We conclude that they are not.

You indicate that current practice of the Board of Pardons and Paroles (Board) and the Judicial Branch has been to treat conditional pardons as requiring erasure. You further indicate that the Board has issued pardons, for which the certificate of pardon is captioned "CERTIFICATE OF PARDON \*(NO PISTOL/REVOLVER/HANGUN)" and which purports to grant a "full, complete, absolute and \*Conditional pardon (as noted above)...." Finally, you state that your office was asked about these "\*Conditional pardons" in light of varying practices of state and national criminal history record systems regarding a pardon or expungement imposing restrictions on the ability to possess firearms and that you have concerns about the treatment of these "\*Conditional pardons" as requiring erasure.

**Absolute and Conditional Pardons**

In Connecticut, the pardoning power is vested in the legislature, which has delegated its exercise to the Board. *McLaughlin v. Bronson*, 206 Conn. 267, 271 (1988); *Palka v. Walker*, 124 Conn. 121 (1938). Section 54-130a of the General Statutes provides that the Board "shall have authority to **grant pardons, conditioned, provisional or absolute**, or certificates of rehabilitation for any offense against the state at any time after the imposition and before or after the service of any sentence." Conn. Gen. Stat. § 54-130a(b) (emphasis added).

The Board's statutory authority thus permits it to issue three types of pardons: absolute, conditioned<sup>1</sup> and provisional. Provisional pardons are defined by statute as "a form of relief from barriers or forfeitures to employment or the issuance of licenses granted to an eligible offender by the [Board]...." Conn. Gen. Stat. § 54-130e(a)(8). Absolute and conditioned pardons, however, are not statutorily defined.<sup>2</sup> In the absence of statutory definitions, we may turn to the common understanding of words expressed in contemporaneous dictionaries, including legal dictionaries where, as here, a legal term is used. *State v. Menditto*, 315 Conn. 861, 866-67 (2015).

A pardon is generally understood to be "[a]n act of grace from the governing power which mitigates the punishment the law demands for the offense and restores the rights and privileges forfeited on account of the offense." *Black's Law Dictionary* 1002 (5th ed.). An absolute pardon is commonly defined as a pardon that "frees the criminal without any condition whatever." *Id.* at 1003. By contrast, a conditional pardon is "[o]ne to which a condition is annexed, performance of which is necessary to the validity of the pardon." *Id.*; *accord State ex rel. Forbes v. Caperton*, 481 S.E.2d 780, 784 (W.Va. 1996).

It is axiomatic that a pardon cannot at once be both absolute and conditional. An absolute pardon relieves a person from the penalties and legal disabilities associated with a conviction without any condition, while a conditional pardon does so with some condition or limitation attached to it. To place a condition on a pardon – for example, the condition that the pardoned person is ineligible to obtain a handgun permit – obviously makes the pardon conditional, and not absolute.

### **Erasure and Conditional Pardons**

Under state law, criminal records under certain prescribed circumstances are subject to erasure. For such erased criminal records, "[t]he clerk of the court or any person charged with retention and control of erased records by the Chief Court Administrator or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or information pertaining to any charge erased..." Conn. Gen. Stat. § 54-

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<sup>1</sup> The statute refers to "conditioned" pardons. The pardons you reference use the term "conditional." We discern no difference in meaning and treat those terms as synonymous for purposes of this opinion.

<sup>2</sup> The Board's regulations define "pardon" as "the conditional or absolute release from the legal penalties resulting from the conviction of a crime...." Conn. Agencies Regs. § 54-124a(j)(2)-1(6). The regulations do not define the terms "conditional" or "absolute."

142c(a). "Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath." Conn. Gen. Stat. § 54-142a(e)(3).

The erasure statute expressly provides that absolute pardons result in erasure of criminal records associated with the conviction. Conn. Gen. Stat. § 54-142a(d)(2) ("Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased."). Section 54-130a expressly provides that provisional pardons does not result in erasure. Conn. Gen. Stat. § 54-130a(e) ("The granting of a provisional pardon or certificate of rehabilitation does not entitle such person to erasure of the record of the conviction of the offense or relieve such person from disclosing the existence of such conviction as may be required.") The statutes, however, are silent as to conditional pardons.

The failure of the legislature to state explicitly whether conditional pardons implicate the erasure of criminal records, however, does not mean that erasure applies. First, it is telling that the legislature only expressly provided that absolute pardons result in erasure of criminal records. Conn. Gen. Stat. § 54-142a(d)(2). Prior to 2006, the Board had authority to issue absolute pardons and conditional pardons. By the express language of the statute, only absolute pardons resulted in erasure. Where, as here, the statutory context shows that the legislature knew how to convey its intent expressly, the failure to do so implies that the legislature did not intend to include the absent language. *Marchesi v. Board of Selectmen*, 309 Conn. 608, 618 (2013). The clear implication of expressly providing for erasure in the case of absolute pardons is that erasure was not to follow from a conditional pardon.

This conclusion is not altered by the legislature's later amendment that expressly provides that provisional pardons do not result in erasure. In 2006, the legislature granted the Board the additional authority to grant provisional pardons, which differ from conditional and absolute pardons in that they are intended only "to relieve an eligible offender of barriers or forfeitures" relating to employment or licensure resulting from a conviction. Conn. Gen. Stat. § 54-130e(b). In so amending the Board's authority, the legislature expressly stated that such provisional pardons did not "entitle such person to erasure of the record of conviction of the offense...." Conn. Gen. Stat. § 54a-130a(e). Given this context, it would be unreasonable to infer that, by making clear the new provisional pardons were not to result in erasure, the legislature meant or understood conditional pardons to do so, when the language prior to 2006 implied erasure did

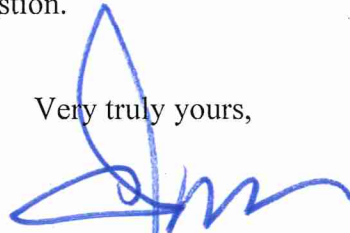
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not follow from a conditional pardon. Courts will not supply language that the legislature chose to omit. *DiLieto v. County Obstetrics & Gynecology Group, P.C.*, 316 Conn. 790, 803 (2015). In sum, only records associated with a crime for which one has received an absolute pardon are subject to erasure under the statutes.

Your inquiry specifically references pardons the Board has described as "full, complete, absolute and \*Conditional." Although it is not entirely clear what the Board intended by this description, for purposes of erasure, such pardons should be treated as conditional. They place a condition – in the case of the example you reference, a limitation on possession of handguns – on the pardon. As you noted, this conclusion is consistent with recent decisions by the Freedom of Information Commission. *Wood, et al. v. Chairperson, State of Connecticut Board of Pardons and Paroles, et al.*, Dkt. No. FIC 2013-082, ¶ 145 (Jan. 30, 2014) (concluding that an "absolute pardon subject to condition" is a conditional pardon for purposes of erasure), *aff'd on other grounds, Wood v. FOIC*, 2015 WL 601517 (Conn. Super. Jan. 21, 2015); *Wood, et al. v. Executive Director, State of Connecticut Board of Pardons and Paroles*, Dkt. No. FIC 2013-359, ¶ 42 (May 28, 2014) (same). Accordingly, erasure does not apply to the records associated with the convictions that are the subject of such pardons.

We trust this is responsive to your question.

Very truly yours,



GEORGE JEPSEN  
ATTORNEY GENERAL