



January 14, 2022

The Honorable Shane Barnett
Mississippi House of Representatives, District 86
Post Office Box 1018
Jackson, Mississippi 39215-1018

Re: Possession of Weapon by Convicted Felon

Dear Representative Barnett:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, there is much confusion surrounding the types of knives convicted felons are allowed to possess, and you want clarification on a number of issues. You state that your questions deal specifically with convicted felons.

Questions Presented

1. You reference language in Mississippi Code Annotated Section 97-37-1, which prohibits any person from “carr[ying] concealed or about one’s body. . . .” certain enumerated weapons, including a butcher knife. You ask whether a convicted felon who has not received an expungement or other relief from the court would be violating any law if he “possessed” (not carrying or concealing) a butcher knife in the kitchen of his home for food preparation?
2. Would that same person be violating the law if he had in his possession a “pocketknife” (folding, to include those with a locking blade) in his pocket while driving, at his home, or at his place of employment?
3. Your next question has four parts and pertains to a previous opinion issued by this office stating a convicted felon could possess and hunt with a traditional bow or a cross bow since those weapons were not prohibited by Section 97-37-5:
 - a. What is a traditional bow?

- b. A newer version of the cross bow has arrows propelled by CO2 and is called an “air bow.” Would it be a violation of Section 97-37-5?
 - c. If a felon were to hunt alone with a legal bow, what type of knife could he carry on his person in the event he harvested a deer and needed to field dress it and carry it out of the woods?
 - d. If a convicted felon is confined to bow hunting but is with friends who have firearms on their person or carried in their hands and completely under their control, would he be violating the law by accompanying them?
4. Are there any state laws that prohibit knives of a certain measured blade length and/or a pocketknife that locks in the open position until the spring release is activated allowing it to close? Does such a knife have to be carried in the pocket, or as a folding knife, can it be carried on the belt in a knife holster, especially in the case of a convicted felon if he is allowed to carry it in his home, vehicle, or place of employment.

Brief Response

1. It is a violation of Section 97-37-5 for a convicted felon to possess a butcher knife. Possession may be actual or constructive, and the determination of such is a question of fact.
2. A pocketknife is not among the enumerated weapons prohibited by Section 97-37-5.
3. A bow and arrows and a crossbow are not among the enumerated weapons prohibited by Section 97-37-5. It is not a violation of that section for a convicted felon to possess a knife that is not listed among those that are prohibited. Whether a felon is in possession of a firearm while hunting with others is a question of fact to be determined by a court of competent jurisdiction.
4. This office is unaware of any statute regulating the length of knife blades. Whether a pocketknife with a spring release qualifies as a switchblade or any other knife prohibited by Section 97-37-5 is a question of fact that must be determined by a court of competent jurisdiction.

Applicable Law and Discussion

As an initial matter, pursuant to Section 7-5-25, official opinions of the Attorney General only address prospective questions of law; they may not address fact questions. MS AG Op., *Barton* at *2 n.2 (May 17, 2021) (identifying questions of fact as one of various kinds of questions that cannot be addressed by official opinion). Many of your questions about weapons require a factual determination, and this office is unable to respond to those questions with an official opinion.

In your request, you state that your questions pertain specifically to convicted felons and their ability to carry or possess certain weapons. Your first question, however, references Section 97-37-1, which pertains to concealment of deadly weapons, and its applicability is broad and not restricted to felons. Miss. Code Ann. § 97-37-1 (1). Section 97-37-5, however, is specific to

convicted felons and enumerates the weapons that are unlawful for a felon to possess: “any firearm or any bowie knife, dirk knife, butcher knife, switchblade knife, metallic knuckles, blackjack, or any muffler or silencer for any firearm. . . .” Miss. Code Ann. § 97-37-5 (1). As the Mississippi Supreme Court has stated, both statutes regulate weapons, but “it is a limitation on two different areas —the carrying of concealed weapons (the statute also prescribes penalties for convicted felons found in possession of a concealed weapon) and the possession of firearms and other weapons by convicted felons.” *James v. State*, 731 So. 2d 1135, 1138 (Miss. 1999). A violation of Section 97-37-5 constitutes a felony, and only an individual who has been pardoned, received relief from disability, or received a certificate of rehabilitation is exempt from this section. Miss. Code Ann. § 97-37-5 (1).

Section 97-37-5 does not define any of the four enumerated knives. However, the Mississippi Court of Appeals noted two definitions of butcher knife: “a large, very sharp knife for cutting or trimming meat” and “a heavy-duty knife, usually six to eight inches long having a broad rigid blade that curves slightly at the tip.” *Ware v. State*, 263 So. 3d 675, 678 (Miss. Ct. App. 2018) (internal quotations and citations omitted). You first ask about a convicted felon possessing a butcher knife by having one in his kitchen for food preparation. The statute clearly prohibits a convicted felon from possessing a butcher knife. Miss. Code Ann. § 97-37-5 (1). Section 97-37-5 employs a strict liability standard, and the possession of one of the enumerated knives, i.e., butcher knife, is prohibited, regardless of its intended use. *Summerall v. State*, 41 So. 3d 729, 737 (Miss. Ct. App. 2010). “Possession can be actual or constructive.” *Weaver v. State*, 282 So. 3d 1217, 1220 (Miss. Ct. App. 2019). The ultimate resolution of your first question requires a factual determination in a court of law.

Second, you ask about the same individual possessing a pocketknife in his pocket while at home, in his car, or at his place of employment. As to the possession of pocketknives by convicted felons generally whether in the car, at home or at work, the statute specifically prohibits four types of knives: bowie knives, dirk knives, butcher knives, and switchblade knives. Miss. Code Ann. § 97-37-5 (1). The Mississippi Supreme Court has stated that it is not a crime for a convicted felon to possess just any knife. *Thomas v. State*, 126 So. 3d 877, 879 (Miss. 2013). Instead, “only possession of those knives enumerated in the statute is a crime.” *Id.* A pocketknife is not one of the knives enumerated in the statute. However, whether a particular knife falls within the prohibited statutory categories is a factual determination.

Next, you ask several questions about hunting with bows and what kinds of bows would be a violation of the statute. In an opinion previously issued by this office, this office stated that a convicted felon could possess and hunt with “a traditional bow and arrow or cross bow.” MS AG Op., *Maples* at * 2 (Feb. 13, 2004). What constitutes a traditional bow and whether a CO2-powered “air bow” is approved for hunting are questions best addressed to the Mississippi Department of Wildlife, Fisheries, and Parks, the regulatory agency for hunting in Mississippi. Miss. Code Ann. §§ 49-1-29 and 49-7-1.1. However, crossbows and bows and arrows are not among the enumerated weapons prohibited in Section 97-37-5, and in this context only, this office is of the opinion that it is not a violation for a convicted felon to be in possession of those items.

As to the type of knife a convicted felon may carry while hunting, again, the statute clearly states which knives are unlawful for a convicted felon to possess. Miss. Code Ann. § 97-37-5.

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As to your hypothetical question about a convicted felon hunting with friends carrying firearms, we refer you to our response to your first question regarding actual and constructive possession. In responding to a similar question in a previously issued opinion, this office stated that such a question must be answered by a court of competent jurisdiction on a case-by-case basis. MS AG Op., *Lee* at *1 (June 5, 2009).

Your last question asks about knives with blades of a certain length and pocketknives with a spring release. This office is unaware of any statute regulating the length of knife blades. We have already stated that a pocketknife is not one of the four knives convicted felons are prohibited from possessing. However, whether a pocketknife with a spring release constitutes a switchblade or any other prohibited knife is a question of fact and one for a court of competent jurisdiction to determine. It is unlawful for a convicted felon to possess a switchblade. Miss. Code Ann. § 97-37-5.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Misty Monroe*

Misty Monroe
Special Assistant Attorney General