



INFORMATION BULLETIN

MARIJUANA AND FIREARMS IN CALIFORNIA

FEBRUARY 22, 2021

CRPA has received numerous questions from California gun owners following the changes to California law allowing the recreational use of marijuana. As a reminder, any use of marijuana constitutes a prohibition on firearm ownership and/or possession under federal law, regardless of California allowing its recreational use. The following information has been prepared to assist our members, gun owners, and firearm dealers regarding this issue.

I. FEDERAL LAWS CONCERNING MARIJUANA AND FIREARMS

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) revised the Firearm Transaction Record ([Form 4473](#)) in May of 2020. This form is used by all federally licensed firearm dealers, including California licensed firearm dealers, to process the sale or transfer of a firearm. As part of the changes to this form, ATF has now clarified question 21.e to now ask prospective firearm purchasers:

Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?

Warning: *The use or possession of marijuana remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.*

This language is based in part on the prohibition under section 922(d)(3) of Title 18 of the United States Code prohibiting the sale or transfer of any firearm or ammunition to any person that is “an unlawful user of or addicted to any controlled substance,” which includes marijuana. Similarly, section 922(g)(3) prohibits any person who is an unlawful user of or addicted to any controlled substance “to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition.”

Note that question 21.e only asks if you are an unlawful user or addicted to marijuana *in a present tense*. In other words, the question is not asking if you were *previously* a user of or addicted to marijuana. Which also means if you are not *currently* a user of or addicted to marijuana, you may truthfully answer “no” to question 21.e.

In relation to the above, the Ninth Circuit in 2016 issued an opinion in the case of [Wilson v. Lynch](#), which challenged the federal statutes prohibiting the possession and acquisition of firearms by persons who

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have been issued medical marijuana cards under their respective state's laws. In upholding the federal restrictions as constitutional, the court concluded that even though medical marijuana users are less likely to commit violent crimes, and perhaps even less likely than other illegal drug users to interact with law enforcement officers or make illicit drug purchasers, such arguments "are not sufficient to overcome Congress's reasonable conclusion that the use of such drugs raises the risk of irrational or unpredictable behavior with which gun use should not be associated."

II. CALIFORNIA ISSUES CONCERNING MARIJUANA AND FIREARMS

Even if you can truthfully answer no to question 21.e, prior criminal convictions involving marijuana may still present problems for individuals seeking to purchase a firearm in California. By way of example, a felony conviction for a marijuana related offense is generally considered "a crime punishable by imprisonment for a term exceeding one year" according to section 922(d)(1). Individuals with such convictions must answer yes to question 21.b. on the 4473.¹ And even if the individual were to answer "no," the required background check would likely result in a denial.

But even if an individual's prior conviction for a marijuana-related offense is not one that would prohibit firearm ownership under federal law, the California Department of Justice ("DOJ") may nevertheless deny an individual if their conviction occurred less than one year old. This is also true if the individual was never convicted. In such situations, DOJ will assume the individual is "addicted" to marijuana within the meaning of the federal restriction. Should an individual attempt to purchase a firearm during this time, they will likely receive a denial letter from DOJ stating the following as the reason for the denial:

DRUGS: Any person addicted to the use of any narcotic drug. Federal Brady Act includes all drug related misdemeanor charges (except those involving alcohol/tobacco) where the arrest occurred within the past year and: 1) a conviction is present in the record; or 2) DOJ has attempted and is unable to obtain disposition information; or 3) the subject was placed on diversion and there is no indication that both the diversion was successfully completed and that the court has entered the appropriate orders expunging the record.

The above language appears to reflect a policy decision from DOJ as applied to arrests and/or convictions for drug-related offenses (including marijuana) occurring within the past year. If you are denied a firearm purchase and receive such a letter, consult an experienced firearms attorney to discuss your options.

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¹ An individual with such a conviction may be able to truthfully answer "no" to question 21.b if they later obtained post-conviction relief that restored the person's right to own and possess firearms. In California, this can generally be accomplished by reducing the felony conviction to a misdemeanor or obtaining a full and unconditional pardon from the governor. Individuals with such convictions should consult an attorney experienced in restoring firearm rights following felony convictions to determine what options may be available to them.

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