

Testimony of CeaseFirePA Before the Joint Hearing of the House Judiciary and House Health Committees

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Introduction

The mission of CeaseFirePA is to end the epidemic of gun violence across the Commonwealth and our country through education, coalition-building and advocacy. We are the largest gun violence prevention organization in Pennsylvania and work to reduce gun violence in all its forms, stop the flow of illegal guns into our communities and keep guns out of the hands of those who should not have them.

Pennsylvania suffers over 1500 gun deaths a year¹, including homicides, suicides and unintentional shootings. Pennsylvania is one of a growing number of states where gun deaths have outpaced deaths due to car accidents.² This is striking, given that 90% of American households have access to a car, while just under 33% of American households have a gun.³ We should learn from our successful history of using regulation to make cars and driving safer, that regulation of firearms based on data and evidence can help save lives without unduly burdening the rights of law abiding citizens.

Towns and municipalities across the Commonwealth are struggling with the problem and looking for tools to address it. It is up to our legislators in Harrisburg to give them these tools.

We thank the Committees for holding this joint hearing and for the opportunity to present testimony. We believe that the opportunity for discussion and debate about these critical issues is the most effective way to examine solutions and reach consensus.

The Intersection of the Legalization of Medical Marijuana and Regulation of Firearms

Under Pennsylvania law, it is now legal for individuals to possess and use marijuana for medical purposes if they possess a validly issued patient Medical Marijuana Card. However, possession of medical marijuana continues to constitute a violation of federal law. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("the ATF"), possession of a Medical Marijuana Card and the use of medical marijuana renders one a prohibited purchaser and possessor of firearms. Therefore, ATF expects someone in possession of a Medical Marijuana Card to answer

¹ Centers For Disease Control and Prevention, WISQARS Fatal Injury Data, https://webappa.cdc.gov/sasweb/ncipc/DataRestriction_inj.html. This testimony is using 2015 Pennsylvania data compiled in WISQARS.

² Violence Policy Center, *Gun Deaths Vehicle Deaths in 21 States and District of Columbia (Jan. 2016)*, <http://www.vpc.org/studies/.gunsvs cars16.pdf>

³ *Id.*

yes on the background check form that questions whether the individual is an "unlawful user of or addicted to any controlled substance." 18 U.S.C. § 922(g)(3), and 27 C.F.R. § 478.32(a)(3). In fact, just possessing a Medical Marijuana Card makes one a prohibited purchaser under federal law, even if the individual has not used the card to fill a prescription.

However, the identities of those who have been issued Medical Marijuana Cards in Pennsylvania are not being shared with JNET, and therefore are not searchable by the Pennsylvania Instant Check System (PICS).⁴ Accordingly, if someone is unaware of the conflict between state and federal law and is unaware that possession of a Medical Marijuana Card makes them "an unlawful user of [a] controlled substance," they may incorrectly fill out the background check form and may be able to purchase a firearm or seek a concealed carry license. If, however, they ask the seller or Sheriff's designee about that question during the background check process and volunteer that they possess a Medical Marijuana Card, they will be denied the firearm or concealed carry license. Moreover, if they have incorrectly filled out the form and that is later discovered, they could be prosecuted for lying on that form.

Thus, the Pennsylvania State Police website offers the following information:

It is legal under Pennsylvania law for the holder of a validly issued patient Medical Marijuana Card to possess approved forms of medical marijuana. However, as per the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE), the possession of medical marijuana remains a violation of federal law, and possession of a valid Medical Marijuana Card and/or the use of medical marijuana makes you an "unlawful user of or addicted to any controlled substance" who is prohibited by federal law from the purchase or acquisition, possession, or control of a firearm pursuant to 18 U.S.C. § 922(g)(3), and 27 C.F.R. § 478.32(a)(3).

The BATFE's position is set forth in its September 21, 2011, Open Letter to all Federal Firearms Licensees, which states in part that "[t]herefore, any person who uses or is addicted to marijuana, regardless of whether his or her State has passed legislation authorizing marijuana use for medicinal purposes, is an unlawful user of or addicted to a controlled substance, and is prohibited by Federal law from possessing firearms or ammunition." Likewise, the mere possession of a Medical Marijuana Card will give rise to an inference that you are an "unlawful user of or addicted to" a controlled substance, pursuant to 27 C.F.R. § 478.11.

Therefore, it is also unlawful for you to apply for, possess or renew a Pennsylvania License to Carry Firearm (LTC), because you are "[a]n individual who is prohibited from possessing or acquiring a firearm under

⁴ <https://pittsburgh.cbslocal.com/2018/01/12/medical-marijuana-registry-removed-state-computer-system/>

the statutes of the United States.” (Pennsylvania Consolidated Statutes Chapter 18, Section 6109(e)(1)(xiv)).⁵

The intersection of Pennsylvania's medical marijuana program and the current firearms regulations under Pennsylvania and federal law has created a difficult problem. Someone who is engaging in legal behavior under Pennsylvania law may have unknowingly become a prohibited purchaser and possessor of firearms under federal law. Moreover, the question must arise whether someone using medical marijuana should be held to a different standard than someone using other prescription medication or alcohol. Why regulate them differently? Is there any evidence to support that someone using medical marijuana is a higher risk of harming themselves or others than someone using other prescription medication or alcohol? And if not, why are we singling out this type of medical prescription?

Although CeaseFirePA supports strong federal and Pennsylvania background check systems, we believe this current situation is very problematic. However, this is not a problem Pennsylvania can solve alone, despite its efforts to minimize the impact by removing the identification of Medical Marijuana Card holders from JNET. This problem requires a federal solution.

Conclusion

We appreciate the Committees' attention to the issue and highlighting the sometimes unintended consequences that come from new programs and policies. We believe that the opportunity to discuss and debate these issues is the best path forward to develop policy solutions and look forward to further hearings by these Committees on other issues that are of great concern to the people of this Commonwealth.

⁵ <https://www.psp.pa.gov/firearms-information/Pages/Firearms-Information.aspx>.