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## Guns and Drugs: A Brief History of 18 U.S.C. § 922(g)(3)

Federal law, 18 U.S.C. § 922(g)(3), prohibits possession, use, reception, exportation, or sale of a firearm by anyone who “is an unlawful user of or addicted to any controlled substance” under the Controlled Substances Act (CSA). In *United States v. Hemani*, the Supreme Court may decide whether 18 U.S.C. § 922(g)(3), as applied to the defendant, violates the [Second Amendment](#). This In Focus sketches legislative developments related to 18 U.S.C. § 922(g)(3). It concludes by identifying considerations for Congress.

### Historical Federal Regulation of Drugs: Selected Examples

For more than a century, Congress has regulated drugs, recognizing their potential for abuse. For example, in 1914, Congress enacted the Harrison Narcotics Act, Pub. L. 63-223, [requiring](#) “every person who produces, imports, manufactures, compounds, deals in, dispenses, sells, distributes, or gives away opium” or certain other narcotics to register with collectors of internal revenue, pay a special tax, and keep certain records. In 1951, Congress passed the Durham-Humphrey Amendment, Pub. L. 82-215, which [mandated](#) a prescription for the sale of a drug that is habit-forming or that is not safe for use except under the supervision of a licensed practitioner. In the Drug Abuse Control Amendments of 1965, Pub. L. 89-74, Congress, among other things, [restricted](#) the manufacture, compounding, and processing of depressant and stimulant drugs. In 1970, Congress and President Nixon enacted the CSA, Title II of the Comprehensive Drug Abuse Prevention and Control Act (Pub. L. 91-513), which [authorized](#) the Attorney General to categorize certain drugs across five schedules based on their potential for abuse, potential for physical or psychological dependence, and accepted medical use.

### Early Categorical Firearms Prohibitions

Though the categories have shifted over time, for decades Congress has made it unlawful for certain classes of individuals to receive or possess firearms. For example, in the Federal Firearms Act of 1938 (FFA), Pub. L. 75-785 (which is distinct from the National Firearms Act of 1934), Congress [responded](#) to the rise in organized crime by, in relevant part, [prohibiting](#) two categories of individuals from receiving a firearm (in interstate or foreign commerce): any person (1) convicted of a “[crime of violence](#),” or (2) who is a “[fugitive from justice](#),” that is, a person who has fled to “avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.”

In the 1960s, Congress and the executive branch became increasingly concerned about drugs and associated gang violence, with Congress debating and enacting pertinent laws and the executive convening commissions and calling for legislative action. For example, in the Drug Abuse

Control Amendments of 1965, Congress [found](#) and declared that the use of depressant and stimulant drugs imperils public safety on the highways. The statute did not address drugs in the context of firearms.

A 1967 report from the President’s Commission on Law Enforcement and Administration of Justice further addressed drugs in relation to crime. The Commission [stated](#) that, “Drug addicts, to support their habits, were stealing millions of dollars’ worth of property every year and contributing to the public’s fear of robbery and burglary.” The Commission similarly observed that heroin addicts generally commit [crimes](#) of the “fund-raising variety.” With respect to firearms, the Commission [recognized](#) that “practically anyone—the convicted criminal, the mental incompetent, or the habitual drunkard—can purchase firearms” in states with lenient laws. The Commission posited therefore that “dangerous or potentially dangerous persons should be prohibited from purchasing firearms,” [recommending](#) specifically that states should prohibit specific classes of persons, “such as habitual drunkards, drug addicts, mental incompetents, persons with a history of mental disturbance, and persons convicted of certain offenses,” from possessing firearms.

In 1967, the House Judiciary Committee also held a number of hearings on crime control, which touched upon drug addicts access to firearms. The Chair reflected the sentiment of the Committee when he stated: “[O]ur goal is primarily the reduction of crime by making it much more difficult for those who are not skillful in the use of firearms or unable to use firearms, imbeciles, drunkards and drug addicts and those kinds of people who should not have easy access to guns.” Committee members and those giving testimony referred primarily and repeatedly, consistent with the Chair’s remarks, to “[drug addicts](#)” and “[narcotics addicts](#)” as subjects of firearm restrictions.

These deliberative efforts culminated in the passage of the [Omnibus Crime Control and Safer Streets Act of 1968](#), Pub. L. 90-351 (OCCSSA). The omnibus statute, signed into law on June 19, 1968, [repealed](#) the FFA and in its place [prohibited](#) the receipt of firearms (in interstate or foreign commerce) by individuals, including (1) anyone under indictment for a felony, (2) anyone convicted of a felony, or (3) a fugitive from justice. In what the Supreme Court later [characterized](#) as a provision that was “hastily passed, with little discussion, no hearings and no report,” the OCCSSA also made it [unlawful](#), in 18 U.S.C. § 922(h), for anyone in five categories to possess a firearm (in commerce or affecting commerce): (1) “felons,” (2) “veterans who are other than honorably discharged,” (3) “mental incompetents,” (4) “aliens who are illegally in the country,”

and (5) “former citizens who have renounced their citizenship.”

### The Gun Control Act of 1968

Shortly thereafter, on October 22, 1968, Congress passed and the President signed the [Gun Control Act of 1968](#), Pub. L. 90-618 (GCA), a statute designed to strengthen federal firearms laws, build upon the omnibus statute, and [keep](#) firearms out of the hands of “presumptively risky people.” A House report [explained](#) that the House Judiciary Committee [agreed](#) to an [amendment](#) to the initial bill that added a category of prohibited persons from *receiving* a firearm: “anyone who is an unlawful user of or addicted to marihuana, any depressant or stimulant drug (as defined in sec. 201(v) of the Federal Food, Drug, and Cosmetic Act), or a narcotic drug (as defined in sec. 4731(a) of the Internal Revenue Code of 1954).” This prohibition would be predicated on an [adjudication](#) or “court order.” Moreover, Congress did hear testimony that at least some states [“registered](#) drug addicts.”

Section 102 of the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-159, [requires](#) all federally licensed firearms dealers to use the National Instant Background Check Information System (NICS) to conduct background checks on prospective buyers before completing a firearm sale. Today’s NICS contains records of unlawful drug users as well. The NICS check [identifies](#) whether there is a record indicating that the applicant is ineligible to purchase a firearm due to Section 922(g)(3) or another prohibited category. Currently, there are a [total](#) of 23,211 records in the NICS indices for individuals who are considered unlawful users of or addicted to a controlled substance and, in 2024, NICS [denied](#) 10,179 under Section 922(g)(3).

The GCA does not define the difference between an unlawful user or an addict of the relevant drugs. The aforementioned Presidential Commission on Law Enforcement and Administration of Justice [observed](#) a conflation of terms: that the “people who abuse [drugs] are usually called ‘addicts’ and ‘users,’” [adding](#) that the “terms have been used carelessly.” During House floor debates, a Member of Congress explained that the statute “forbids the sale of a firearm to or receipt of a firearm by fugitives, persons under indictment, unlawful users of marihuana or other drugs or mental defectives,” [stressing](#) that the bill would “prevent juveniles, drug addicts and criminals from illicitly obtaining weapons.” Another Member similarly [recounted](#) on the floor that the statute would prohibit “all [firearms] traffic in regard to minors, felons, fugitives, narcotic addicts, the mentally incompetent, and those under indictment for a crime,” though the bill text at the time mentioned an “unlawful user” of particular substances, specifically “marijuana, dangerous drugs or narcotics.”

The categorical prohibition applicable to an individual who is an “unlawful user of or addicted to marihuana, any depressant or stimulant drug” was originally [codified](#) as 18 U.S.C. § 922(h)(3), and because it did not appear until 1968, unlike the prohibitions on violent offenders and fugitives, a court [commented](#) that the prohibition “does not have deep roots.” In modern times, this provision accounts

for 5.3% of individuals sentenced for a categorical firearm prohibition violation, according to government [data](#).

### The Firearm Owners’ Protection Act and Other Laws

In 1986, the Firearms Owners’ Protection Act (FOPA), Pub. L. 99-308 [amended](#) the GCA. A stated [motivation](#) for amending the GCA was that the right to “keep and bear arms under the second amendment to the United States Constitution ... require[s] additional legislation to correct existing firearms statutes and enforcement policies[.]” A federal court, quoting a House report, [noted](#) that FOPA was designed to “relieve the ‘burdens’ the 1968 Act imposed on lawful firearms users while simultaneously strengthening ‘the ability of law enforcement to fight violent crime and narcotics trafficking.’” There does not appear to be in the legislative history of FOPA substantive discussions of the statutory distinction between “unlawful user” and a person “addicted to” a controlled substance. Instead, Congress prohibited the *possession* of firearms by prohibited persons, [considered](#) and enacted “minor and technical” amendments that tied the definition of a qualifying drug in the statute to the CSA, which became law subsequent to the GCA; and restyled 18 U.S.C. § 922(h)(3) to 18 U.S.C. § 922(g)(3). This addition provided definitions from the CSA to reduce confusion about what drugs were included in 18 U.S.C. § 922(g)(3). FOPA also [authorized](#) individuals denied the right to possess arms under 18 U.S.C. § 922(g)(3) to apply to the Attorney General for relief to regain the possession right. In 1992, Congress [defunded](#) this relief program. Despite the long-standing funding restriction, the relief program has received new [attention](#) under the current Trump Administration.

### Implications for Congress

In *Hemani*, the Supreme Court may clarify the constitutionality of 18 U.S.C. § 922(g)(3). The opinion may offer broader guidance on the constitutionality of other categorical prohibitions, and the constitutional bounds within which Congress may enact any future, new categorical prohibitions. Congress may decide to refrain from further action. Congress also remains free to amend Section 922(g) in response to relevant court rulings and other considerations. As it does so, Congress may take account of these rulings as it weighs any such amendments.

Congress may also consider the empirical research on drugs and firearm violence. In viewing such scholarship, Congress could consider a targeted approach that is informed by evidence that the [relationship](#) between drugs and firearm violence may be limited to specific drugs and specific types of drug behavior such as drug dealing. Congress may also consider the [research](#) on controlled and noncontrolled substances that are absent from the regulatory framework, such as the [relationship](#) between alcohol abuse and firearm violence. This and other literature may inform congressional debates on possible amendments to Section 922(g)(3).

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