



FROM COUNSEL

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The Lautenberg Amendment

REFERENCES:

- DODI 6400.06, Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, 21 August 2007 (Chg. 1, 20 Sep 11)
- AR 600-20, Army Command Policy, 6 November 2014

Q: WHAT IS THE LAUTENBERG AMENDMENT?

A. The Domestic Violence Amendment to the Gun Control Act of 1968 (Section 922, Title 18, United States Code (18 USC 922)), the Lautenberg Amendment, makes it unlawful for any person to transfer, issue, sell or otherwise dispose of firearms or ammunition to any person whom he or she knows or has reasonable cause to believe has been convicted of a misdemeanor crime of domestic violence. It is unlawful for any person who has been convicted of a misdemeanor crime of domestic violence to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The Lautenberg Amendment applies to all Soldiers throughout the world, including those in hostile fire areas.

Q: HOW DOES THE LAUTENBERG AMENDMENT APPLY TO A SOLDIER?

A. A Soldier with a qualifying conviction cannot own, use, possess, transport, or receive any individual firearm or ammunition, even a government owned firearm issued for military duties or training. It is also a crime for anyone, including armorers and commanders, to issue a firearm to anyone they know, or have reason to believe, has a conviction for domestic violence. Lautenberg applies both on and off post and when assigned or deployed overseas. Soldiers with a qualifying conviction will be denied favorable personnel action in accordance with AR 600-8-2. The flag may be removed if the qualifying conviction is expunged or set aside by competent authority. Lautenberg restrictions do not apply to crew served weapons or ammunition such as tanks, missiles and aircraft.

Q: WHAT IS DOMESTIC VIOLENCE FOR PURPOSES OF THE LAUTENBERG AMENDMENT?

A: The crime of domestic violence is an offense that involves the use or attempted use of physical force, or threatened use of a deadly weapon committed by:

1. a current or former spouse; or
2. a parent or guardian of the victim; or
3. a person with whom the victim shares a child in common; or
4. by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent or guardian; or
5. a person who was similarly situated to a spouse, parent, or guardian of the victim. Persons who are similarly situated to a spouse include two people who are residing at the same location in an intimate relationship with the intent to make that place their home.

Q: WHAT IS A QUALIFYING CONVICTION FOR A LAUTENBERG AMENDMENT VIOLATION?

A: A state or Federal conviction for a misdemeanor crime of domestic violence and any general or special court-martial for an offense that otherwise meets the elements of a crime of domestic violence, even though not classified as a misdemeanor or felony. A qualifying conviction does not include a summary court-martial conviction or the imposition of nonjudicial punishment under UCMJ, ART. 15.

By DoD policy, a state or Federal conviction for a felony crime of domestic violence adjudged on or after 27 November 2002, will be considered a qualifying conviction for purposes of this regulation and will be subject to all the restrictions and prohibitions of this regulation. A person will not be considered to have a qualifying conviction unless the convicted offender was represented by counsel or knowingly and intelligently waived the right to counsel, and, if entitled to have the case tried by a jury, the case was actually tried by a jury; and, the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense, or had civil rights restored; unless the pardon, expungement, or restoration of civil rights provides that the person may not ship, transport, possess, or receive firearms.

Q: WHAT SHOULD I DO IF I HAVE A QUALIFYING CONVICTION?

A: If you have a qualifying conviction:

1. Inform your command and complete DD Form 2760. The information gathered on the DD Form 2760 cannot be used against you in a criminal prosecution (civilian or UCMJ) for conduct which occurred prior to completing the form. You can be punished for failing to inform your command or for knowingly providing false information.
2. Consult with a Legal Assistance Attorney about disposing of any Privately Owned Weapons.
3. Seek to have the conviction set aside, expunged, or pardoned. Only the court which imposed the original conviction can do this. A Commander may, but is not required to, defer administrative action for up to one year to allow the Soldier to get the qualifying conviction expunged in civilian court.
4. If efforts to remove the conviction are unsuccessful, Soldiers may request resignation IAW AR 600-8-24 (officers) or separation under Secretarial plenary authority IAW AR 635-200 (enlisted)

Q: WHAT ARE MY OBLIGATIONS AS A COMMANDER?

A: A Commander will:

1. Ensure that all Soldiers who have a qualifying conviction are notified that it is unlawful to possess, ship, transport, or receive firearms, and ammunition;
2. In coordination with HQDA, Commanders will also implement a program of instruction to educate all Soldiers on the domestic violence amendment to the Gun Control Act and DA policy;
3. Notify Soldiers that they have an affirmative, continuing obligation to inform Commanders or supervisors if they have, or later obtain, a qualifying conviction and that the revised DD Form 2760 (Qualification to Possess Firearms or Ammunition) will be made available to those Soldiers who come forward to report a qualifying conviction in compliance with their obligation to do so;
4. Inform Soldiers that neither the information nor evidence gained by filling out the DD Form 2760 may be used against them in any criminal prosecutions for a violation of 18

USC 922, including prosecutions under the UCMJ, based on a violation of 18 USC 922 for conduct that occurred prior to the completion of the DD Form 2760;

5. Company and Battery-level Commanders will collect completed DD Form 2760 and file it in the Soldier's local military personnel file in accordance with AR 600-8-104 and AR 25-400-2;

6. Ensure that procedures are implemented to track domestic violence arrests and convictions in the civilian community. This procedure should include regular coordination with local law enforcement and judicial agencies;

7. Display an excerpt of the regulation prominently outside all arms rooms and all facilities in which Government firearms or ammunition are stored, issued, disposed, or transported;

8. Consult with your unit trial counsel regarding any Privately Owned Weapons;

9. Report all Soldiers identified with qualifying convictions to HQDA using the Assignment Consideration Code (ASCO) L9 (Lautenberg Amendment).

Q: CAN A SOLDIER RECEIVE ADVERSE ADMINISTRATIVE ACTION?

A: Commanders may initiate separation for the conduct that led to the conviction or for the conviction itself. However, Commanders may take reasonable steps to accommodate Soldiers with qualifying convictions, prior to initiating separation (such as granting a reasonable time, up to one year) to seek expungement or a pardon of the qualifying conviction. Accommodation is discretionary and may be denied based on the facts of the case. A Commander may, but is not required to, defer administrative action for up to one year to allow the Soldier to get the qualifying conviction expunged in civilian court.

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