

Lautenberg Amendment

CPT Katherine Sickendick, XVIII Airborne Corps LAO

A soldier and spouse get into a fight, the police are called, and eventually the soldier is found guilty of a crime of domestic violence. Now the soldier's command wants to initiate separation because they can't carry a weapon. Can the command do this? What can the soldier do about it?

The above scenario unfortunately can and does happen. If a person has been convicted of a misdemeanor or felony crime of domestic violence, the Lautenberg Amendment to the Gun Control Act makes it unlawful for them to ship, transport, possess, or receive firearms or ammunition, including a government owned firearm issued for military duties or training. Qualifying convictions can come from a state, federal, or military court, and they include No Contest pleas to domestic violence crimes. Summary Court-Martial convictions, Article 15s, pending domestic violence charges and determinations from the Case Review Committee (CRC) do not count as qualifying convictions.

A conviction for domestic violence will have an immediate negative effect on a military career. A soldier subject to the Lautenberg Amendment provisions is barred from reenlisting, attending most service schools, being promoting, PCSing or deploying overseas, and serving in certain units. In addition, the soldier will be flagged and processed for separation from service. Lautenberg applies both on and off post, and applies to soldiers assigned or deployed overseas. It is also a crime for anyone, including unit armorers and commanders, to issue a firearm to anyone they know or have reason to believe has a conviction for domestic violence.

Many questions arise about restraining orders and the Lautenberg Amendment. An active domestic violence restraining order can prohibit an individual from possessing, purchasing, selling, or using firearms and ammunition off-duty, but there is a legal exception allowing soldiers to carry and use firearms and ammunition pursuant to military duties. Violating the Lautenberg provisions off-duty could result in a civilian prosecution with a penalty of up to 10 years in prison and a \$250,000 fine. Also, commanders may take other administrative or judicial action based on the conduct leading to the restraining order.

If a Soldier thinks they have a qualifying conviction, they should inform their command and complete DD Form 2760 because they can be punished for failing to inform the command or for knowingly providing false information. The information gathered on the DD Form 2760 cannot be used against the Soldier in a criminal prosecution (civilian or UCMJ) for conduct which occurred prior to completing the form. The next step is to try to have the conviction set aside, expunged, or pardoned by going through the court which imposed the original conviction. A Soldier's command can extend their ETS by up to 1 year in order to give them more time to do this. If the Soldier cannot remove the conviction, they can request resignation under AR 600-8-24 (officers) or separation under AR 635-200 (enlisted).

If you have questions regarding the Lautenberg provisions you can contact the XVIII Airborne Corps Legal Assistance Office at 910-396-0396 or 6113. The office is located on the first floor of the soldier support center in Wing D and is open Monday, Tuesday, and Friday from 0900-1630, on Wednesday from 1300-1630, and on Thursday from 0730-1630. For more information please visit our website at <http://www.bragg.army.mil/directorates/osja/Pages/LegalAssistance.aspx>