



**XVIII Airborne Corps and Fort Bragg
Office of the Staff Judge Advocate
Legal Assistance Office**



INFORMATION PAPER – LAUTENBERG

WHAT IS THE LAUTENBERG AMENDMENT AND WHERE CAN I FIND THE LAW?

The Lautenberg Amendment to the Gun Control Act makes it unlawful for any person who has been convicted of a misdemeanor or felony crime of domestic violence to ship, transport, possess or receive firearms or ammunition. The full text of the law can be found at Title 18 United States Code, Section 922 (18 U.S.C §922). The maximum civilian punishment for violating the law is up to 10 years in prison and a \$250,000 fine.

WHAT DOES THIS MEAN FOR SOLDIERS?

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. Lautenberg restrictions do not apply to crew served weapons or ammunition such as tanks, missiles and aircraft.

When a command discovers a Soldier has a qualifying conviction the following actions will occur IAW AR 600-20 paragraph 4-23(d):

- Barred from re-enlisting and Soldiers on indefinite status will be given an ETS date within 12 months of HQDA receiving notice of the conviction
- Barred from commissioning as an officer. Officers with a qualifying convictions will be given an ETS date within 12 months of HQDA receiving notice of the conviction
- Flagged and denied favorable personnel action IAW AR 600-8-2
- Barred from attending any service school where the course of instruction includes firearms or ammunition.
- Barred from attending any service school which incurs an Active Duty service obligation
- Selection boards for school, command, and promotion will be instructed to consider the conviction when considering potential for future service
- Barred from promotion
- May be processed for elimination (officers) or involuntary discharge (enlisted)
- Barred from mobilization or deployment on any mission requiring possession of firearms or ammunition
- Barred from assignment to any TOE/MTOE units (aka Line Units). Must be reassigned to TDA unit and barred from any position allowing access to firearms or ammunition (including access for supervisory or property accountability purposes)
- Barred from overseas assignment. Soldiers already overseas will comply with current assignment instructions

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WHAT COUNTS AS A QUALIFYING CONVICTION?

A person has a qualifying conviction if:

- (1) The person was convicted, in **state or federal court or any general or special court-martial**, of a misdemeanor or felony crime and the offense has, as an element, the use or attempted use of physical force or threatened use of a deadly weapon;
- (2) The convicted offender was, at the time of the offense, a current or former spouse, parent, or guardian of the victim, or a person with whom the victim shared a child, or a person who was living with the victim as a spouse, parent or guardian, or a person with whom the victim cohabited in an intimate relationship;
- (3) The prosecution has not been deferred or the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense.

WHAT DOES NOT QUALIFY AS A CONVICTION FOR LAUTENBERG?

- (1) Summary Court-Martial convictions, non-judicial punishment under Article 15 of the UCMJ, and deferred prosecutions from certain other states are not qualifying convictions.
- (2) Pending charges of domestic violence are not qualifying convictions.
- (3) A Case Review Committee (CRC) determination that allegations of abuse are substantiated does not mean that a soldier has a qualifying conviction. Commanders determine whether a qualifying conviction is the factual basis for substantiated abuse.

Although the above do not bar a Soldier from handling firearms, they can still have a serious impact on his or her military career including: bars from Drill Sergeant or Recruiter duty, potential denial or revocation of security clearance, and potential adverse administrative action (NCOER/OER, GOMOR, Bar to Reenlistment, and/or separation proceedings)

WHAT ABOUT RESTRAINING ORDERS?

Certain sections of the United States Code (18 U.S.C §922(d)(8) and (g)(8)) also make it a crime for anyone subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner from shipping, transporting, possessing or receiving firearms or ammunition. Many civilian restraining/protective orders contain language referencing this statute and Lautenberg. However, another portion of the law (18 U.S.C §925 a(1)) provides an exemption to the restraining order provision (and many other gun laws) for firearms used, transported, received, possessed, used, etc. by any Department or Agency of the United States.

This means an active domestic violence restraining order prohibits Soldiers from possessing, purchasing, selling, or using firearms and ammunition off-duty, but they can still carry and use firearms and ammunition pursuant to military duties. Violating the provisions off-duty could result in a civilian prosecution with a maximum penalty of up to 10 years in prison and a \$250,000 fine. Commanders may take other administrative or judicial action based on the conduct leading to the restraining order.

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WHAT SHOULD I DO IF I 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 command has discretion to extend ETS by up to 1 year for this purpose.
- (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)

WHAT ARE MY OBLIGATIONS AS A COMMANDER?

AR 600-20 requires commanders to:

- Instruct all Soldiers on the Lautenberg Amendment on an annual basis
- 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
- Inform Soldiers of their affirmative, on-going obligation to notify commanders or supervisors if they have, or receive, a qualifying conviction.
- Provide DD Form 2760 to any Soldier reporting a qualifying conviction.
- Investigate any Soldier the commander knows or has reasonable cause to believe has a qualifying conviction and order the Soldier to complete a DD Form 2760.
- Company and Battery level Commanders will collect completed DD Forms 2760 and file them in the soldier's local military personnel file IAW AR 600-8-104 and AR 25-400-2.
- Immediately retrieve government-issued firearms and ammunition from any Soldier known or reasonably believed to have a qualifying conviction. Consult with your unit trial counsel regarding any Privately Owned Weapons. Advise the soldier to consult with a Legal Assistance Attorney for guidance on lawful disposal/sale of any privately owned firearms and ammunition.
- Report effected soldiers on the Unit Status Report (USR) as non-deployable under the code LA.
- Report effected soldiers to HQDA by using the assignment consideration code (ASCO) L9. Refer to MILPER Message 09-071, 25 March 2009, for further guidance
- Take the personnel actions listed in paragraph 4-23(d) of AR 600-20, including flagging the Soldier and transferring to meaningful duties within a local TDA unit.

A commander has discretion to allow Soldiers reasonable time to have the conviction expunged or pardoned. A Soldier can be extended up to 1 year to accomplish this. The circumstances of the conviction, overall duty performance of the Soldier, and concerns for good order and discipline should all be considered in determining accommodation of Soldiers seeking time to overturn qualifying convictions. See AR 600-20 paragraph 4-23(c)(8) for more information.