

# Information Paper Concerning the Lautenberg Amendment

The following information is extracted from AR 600-20 and is provided for your information. Therefore, if you are found to have committed this act and are punished in a method that classifies as a conviction the following information will apply to you.

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 also 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. This chapter applies to all Soldiers throughout the world, including those in hostile fire areas.

*Definitions.* For the purpose of this paragraph only, the following definitions apply:

(1) *Crime of domestic violence.* An offense that involves the use or attempted use of physical force, or threatened use of a deadly weapon committed by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person who was similarly situated to a spouse, parent, or guardian of the victim. 30 AR 600-20 • 7 June 2006  
Persons who are similarly situated to a spouse include two persons who are residing at the same location in an intimate relationship with the intent to make that place their home.

(2) *Qualifying conviction.* 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 non-judicial punishment under Article 15, UCMJ. 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, or the person knowingly and intelligently waived the right to have the case 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. (3) *Security clearance.* If a completed security clearance investigation reveals that a Soldier has a qualifying conviction, then the investigation will be referred to the Soldier's chain of command for appropriate action consistent with this regulation.

(3) *Commander.*

(a) Unless otherwise stated, the senior mission commander is as delineated in General Order No. 4 (2002), Assistant Chief of Staff for Installation Management (ACSIM). Delegation of authority is authorized.

(b) For the U.S. Army Reserve, unless otherwise stated, the commander is the commander of the appropriate Army Reserve Command (U.S. Army Reserve Command, 7th ARCOM, 9th RRC, USACAPOC, HRC-St. Louis). Delegation of authority is authorized.

c. *Commander's responsibilities.*

(1) The commander will ensure that all Soldiers who have a qualifying conviction are notified that it is unlawful to possess, ship, transport, or receive firearms and ammunition as prohibited in this regulation.

(2) In coordination with HQDA, the commander will implement a program of instruction to educate all Soldiers on the domestic violence amendment to the Gun Control Act and the policy as stated in this regulation. Instruction will normally be provided on an annual basis. In addition to formal instruction, an extract of this chapter will be prominently displayed outside unit arms rooms and all facilities in which government firearms or ammunition are stored, issued, disposed, or transported.

(3) The commander will notify Soldiers that they have an affirmative, continuing obligation to inform commanders

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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. Soldiers will also be notified 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. 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.

(4) The commander will ensure that policy and procedures are in place to enforce the provisions of this chapter if privately owned firearms or ammunition are permitted in government quarters. The commander will also ensure that policy and procedures are in place in morale, welfare, and recreation activities and other government sponsored or sanctioned activities on their installation that engage in the transfer or sale of firearms or ammunition.

(5) The commander will 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.

(6) If a commander knows or has reasonable cause to believe that a Soldier has a qualifying conviction, then the commander should take all reasonable action to investigate. Soldiers with qualifying convictions must be identified and reported to HQDA to ensure compliance with the law. A commander at any level may initiate the investigation by ordering the Soldier to complete DD Form 2760. Soldiers who have or may have a qualifying conviction should be referred to a legal assistance attorney. A legal assistance attorney will also be available to assist the Soldier in seeking expungement of a qualifying conviction or a pardon.

(7) If a commander knows or has reasonable cause to believe that a Soldier has a qualifying conviction, then he or she will immediately retrieve all government-issued firearms and ammunition and advise the Soldier to consult with a legal assistance attorney for guidance on lawful disposal or sale of any privately owned firearms and ammunition. Individuals with qualifying convictions are exempt from weapons qualification in accordance with AR 350-1 and will not be assigned individual weapons or ammunition.

(8) Accommodation: Domestic violence is incompatible with Army values and will not be tolerated or condoned. However, soldiers will be given a reasonable time to seek expungement of or to obtain a pardon for a qualifying conviction and may extend up to one year for that purpose. The following factors will be considered in the commander's determination:

(a) Whether the Soldier attempted to conceal his conviction. In no event will Soldiers be accommodated who have made false statements on the DD Form 2760.

(b) Whether firearms or deadly weapons were used in the offense that formed the basis for the Soldier's domestic violence conviction.

(c) Whether the conviction is recent or remote in time.

(d) Whether there were incidents of domestic violence before or after the qualifying conviction. In no event will Soldiers be accommodated who have more than one qualifying conviction.

(e) Whether serious injury was caused during the crime of domestic violence.

(f) Whether the Soldier cooperated with law enforcement or investigating authorities.

(g) Whether circumstances suggest the probability of future incidents of domestic violence.

(h) Whether the Soldier has expressed remorse or regret or has entered counseling.

(i) Whether the Soldier has satisfied the judgment of the court.

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(j) The length and character of service of the Soldier, the ability and potential of the Soldier, and the needs of the Army for the skills of the Soldier.

(k) Whether accommodation of the Soldier is consistent with actions taken in similar cases.

(l) Whether accommodation of the Soldier would be consistent with good order and discipline and public safety.

(9) Commanders must detail soldiers whom they have reason to believe have a qualifying conviction to meaningful duties that do not require bearing weapons or ammunition. Commanders may reassign soldiers to local table of distribution and allowances unit positions that deny them access to weapons and ammunition. Commanders will not appoint or assign soldiers with qualifying convictions to leadership, supervisory, or property accountability positions that would require access to firearms or ammunition.

### *d. Personnel policies.*

(1) *Enlistment/reenlistment.* Enlistment of applicants with a qualifying conviction is prohibited and no waivers will be approved. Soldiers with a qualifying conviction will be barred from reenlistment and are not eligible for the indefinite reenlistment program. Soldiers in the indefinite reenlistment program will be given an expiration of term of service (ETS) not to exceed 12 months from the date HQDA is notified of the qualifying conviction. Enlistment and reenlistment policy and procedures for active Army are provided in AR 601–210. Reenlistment policy and procedures for Army Reserve are provided in AR 140–111. Applicants who have enlisted in the Delayed Entry Program who are found to have a qualifying conviction will be separated from the Delayed Entry Program.

(2) *Commissioning/appointment.* Applicants with a qualifying conviction will not be approved for commissioning in accordance with AR 135–100 and are ineligible for voluntary indefinite status in accordance with AR 135–215. Officers with a qualifying conviction will be separated not later than 12 months from the date HQDA is notified of the qualifying conviction.

(3) *Flags.* 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.

(4) *Attendance at service schools.* Soldiers with a qualifying conviction are not authorized to attend any service school where instruction with firearms or ammunition is part of the curriculum. Commanders will counsel soldiers that inability to complete service schools may affect future promotion or retention. Soldiers with a qualifying conviction may not attend any school that requires an active duty service obligation; AR 350–100 and AR 621–1 apply.

(5) *DA selection board guidance.* Selection boards for school, command, and promotion will be instructed that appropriate consideration should be given to qualifying convictions in evaluating the Soldier's potential for future service.

(6) *Promotion.* Enlisted Soldiers with a qualifying conviction may not be promoted to the next higher grade in accordance with AR 140–158 and AR 600–8–19. Officers with a qualifying conviction may not be promoted to the next higher grade in accordance with AR 135–155 and AR 600–8–29.

(7) *Separation/retention policy.* Officers on active duty may request release from active duty, submit requests for unqualified resignation, or be processed for elimination under the provisions of AR 600–8–24. Reserve Component (RC) officers not on active duty may submit requests for unqualified resignation or be processed for involuntary separation in accordance with AR 135–175. Enlisted Soldiers on active duty may request voluntary separation for the convenience of the Government under Secretarial plenary authority as specified in AR 635–200. They also may be processed for involuntary discharge under the misconduct provisions of AR 635–200 on the basis of the misconduct that resulted in the qualifying conviction, or for involuntary separation under Secretarial plenary authority if the commander does not believe that discharge for misconduct is warranted. The misconduct and Secretarial plenary authority provisions of AR 135–178 also apply to voluntary or involuntary separation of RC enlisted Soldiers not on active duty. The foregoing separation provisions do not apply to Soldiers with statutory military retirement sanctuaries.

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(8) *Mobilization/deployment.* All Soldiers known to have, or whom commanders have reasonable cause to believe have, a qualifying conviction are not mobilization assets and are nondeployable for missions that require possession of firearms or ammunition.

(9) *Utilization.* Commanders must detail Soldiers whom they have a reason to believe have a qualifying conviction to meaningful duties that do not require bearing weapons or ammunition. Commanders may reassign Soldiers to local table of distribution and allowances unit positions that deny them access to weapons and ammunition. Commanders will not appoint or assign Soldiers with qualifying convictions to any supervisory or to any property accountability positions that require access to firearms or ammunition.

(10) *Assignment.* All Soldiers will complete a DD Form 2760 prior to receipt of permanent change of station orders in accordance with AR 614–6. Soldiers with a qualifying conviction are not eligible for overseas service in accordance with AR 614–30. Assignment of Soldiers with a qualifying conviction will be restricted in accordance with AR 600–8–11 and AR 140–10. Soldiers with a qualifying conviction will not be approved for entry into the Active Guard Reserve Program in accordance with AR 135–18.

(11) *Evaluation reports.* A qualifying conviction is an appropriate subject for comment in an evaluation report in accordance with AR 623–3.

(12) *“Sanctuary” statutes.* This regulation and its policies are subject to the “sanctuary” provisions of Section 1176, Title 10, United States Code (10 USC 1176), Section 12686, Title 10, United States Code (10 USC 12686), Sections 637 and 580(a) (4) (C), Title 10, United States Code (10 USC 637(a) and 580(a)(4)(C)).

### *e. Reporting requirements.*

(1) Commanders will add Soldiers identified as nondeployable under this chapter to unit status reports. Personnel identified will be added to the non-deployable total under the code LA in accordance with AR 220–1, chapter 4, paragraph 10, subparagraph E (PSPER non-available report).

(2) Active Army will report qualifying convictions using assignment consideration code (ASCO) L9 (Lautenberg Amendment}. Army Reserve will enter Lautenberg data as ASG–CONS “L9” in T APDB–R, database table IAF–T. Refer to current MILPER messages for further guidance.

(3) The Army National Guard Directorate (NG–ARH–S) will report for Army National Guard. The Army Reserve Command will report for U.S. Army Reserve. Biannual reports will be made (15 January) and (15 July) to HQDA (DAPE–MPE). The IRR, Standby Reserve, and Retired Reserve are not subject to reporting requirements.