

THE LAUTENBERG AMENDMENT AND HOW IT AFFECTS THE SERVICEMEMBERS

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The Lautenberg Amendment to the Gun Control Act of 1968 became effective 30 September 1996. It affects Soldiers who have been convicted of domestic violence or who are subject to a restraining order.

Amendment in General

The Lautenberg Amendment makes it a felony for anyone convicted of a misdemeanor crime of domestic violence such as an assault or attempted assault on a family member, to ship, transport, possess, or receive firearms or ammunition. The purpose of this Amendment is to get and keep firearms out of the hands of those individuals with domestic violence convictions. There is no exception for military personnel engaged in official duties.

The amendment also makes it a felony for anyone to sell or issue a firearm or ammunition to a person with a domestic violence conviction. This includes commanders and non-commissioned officers who furnish weapons or ammunition to Soldiers, if they know or have reason to believe the Soldiers have qualifying convictions.

Qualifying Conviction

The amendment only applies to a qualifying conviction. A qualifying conviction consists of two elements; (1) a misdemeanor domestic violence crime, and (2) a conviction.

First, a misdemeanor domestic violence crime is an offense that is a misdemeanor under federal or state laws. The crime must include the use or attempted use of physical force, or the threatened use of a deadly weapon. The criminal act is considered domestic violence when the offender is the current spouse, the former spouse, the parent, or the guardian of the victim. The offender can be someone who shares a common child with the victim, cohabitates or used to cohabit with the victim, or is similarly situated to a spouse, parent, or guardian of the victim.

Second, the offender must be convicted of a domestic violence crime through any of the following: a state court, federal court, special court-martial, or a general court-martial. However, a conviction does not include convictions from a summary court martial, Article 15 non-judicial punishment, deferred prosecution or diversion in a state or federal court, or convictions that are later set-aside or expunged.

Impacts of the Amendment

Once these two elements are met, a Soldier cannot own, possess, or be issued either military or privately owned firearms and ammunition. An exception to this rule is major weapon systems and crew-served weapons which are not covered by the Amendment. Military personnel have an affirmative, continuing obligation to notify the command of qualifying convictions. A

qualifying conviction can potentially bar a Soldier from re-enlistment, transfer a Soldier to duties not requiring the bearing of weapons or ammunitions, or prohibit a Soldier from deployments for missions requiring the possession of firearms or ammunitions.

Conclusion

If you have a qualifying misdemeanor conviction for domestic violence, the Lautenberg Amendment may affect your military career. If you have any questions or concerns regarding the Lautenberg Amendment, please contact the Ft. Leavenworth Legal Assistance Office at 913-684-4944. Bring all related court documents to your legal assistance appointment. If you do not have these documents in your possession, make sure to request copies from the court clerk where you received the conviction so that your legal assistance attorney can give you the most accurate legal advice.