



FORT SILL LEGAL ASSISTANCE



LAUTENBERG AMENDMENT

The Lautenberg Amendment to the Gun Control Act makes it a felony for any person convicted of a domestic violence misdemeanor crime after 30 September 1996 to buy, sell, transfer, possess, or transport ammunition or firearms. It is also a felony to knowingly sell or transfer ammunitions or firearms to any such person. There is no exception for military, law enforcement or other government personnel. Thus any military member who has a qualifying conviction is prevented from possessing any sort of firearm, to include a government issued 9mm pistol, M16 rifle, or M4 carbine. While crew-served weapons are outside the scope of Lautenberg, military personnel with qualifying convictions may not handle the ammunition for individual weapons. Department of the Army policy states that personnel with qualifying convictions cannot hold supervisory positions over personnel who possess or handle firearms or ammunition, even though such supervisors would not handle or possess firearms or ammunitions personally.

Qualifying Convictions

A "qualifying conviction" is a conviction (which includes felonies per DOD Policy) of a person for a crime of violence where the victim is in a special relationship to the offender. The crime of violence must have an element of "the use or attempted use of physical force, or the threatened use of a deadly weapon" in the statutory definition of the crime. The state law where the conviction occurred will determine what the elements of the crime of violence are, and thus whether or not the crime falls within the scope of the Lautenberg Amendment. The offender must have the relationship of a current or former spouse, parent, or guardian to the victim of the crime; be currently cohabitating or has cohabitated with the victim as a parent, spouse, or guardian; or was similarly situated to the victim.

Effects on Military Career

The immediate effects of a qualifying conviction under the Lautenberg Amendment are two-fold. First, the person must be removed from any position where he or she handles or possesses a firearm or ammunition, or supervises others who handle or possess firearms or ammunition. Second, the person will be placed in "Non-Deployable Status."

The long-term effects are considerable. Soldiers with qualifying convictions will be flagged and may not attend service schools where instruction with individual weapons is part of the curriculum, including NCOES schools. Also, the Soldier may not be considered for leadership, supervisory, or property accountability positions that would give them access to firearms or ammunition. Soldiers may receive a reprimand and are not eligible for overseas assignments. Soldiers may be administratively separated from the Army based on either the civil misdemeanor conviction or the underlying conduct that led to the conviction. Soldiers may not reenlist. Soldiers impacted by this policy may seek a voluntary separation with the approval of the Secretary of the Army.

Expungement

The possibility of erasing the conviction, known as an "expungement," depends on the state law where the conviction occurred. In Oklahoma, there is only a narrow opportunity for expungement. It requires that after conviction, the sentence must be deferred and that the terms of the deferral are successfully completed. Under Oklahoma law, a successfully-completed deferred sentence does not result in a conviction and thus the record can be sealed, removing the conviction from the scope of the Lautenberg Amendment. However, if the sentence was not deferred, or was deferred, but not successfully completed, the conviction will not be eligible for expungement and the Soldier will fall within the scope of the Lautenberg Amendment. The other possibility is that the convicted Soldier may petition the Governor for a pardon of the offense. The state law where the conviction occurred determines the procedures for applying for a pardon. If a pardon is granted, then Lautenberg will not apply. However, many states require a waiting period before a pardon will even be considered and a Soldier may already have finished his or her term of military enlistment before the pardon can even be requested.

Legal Assistance

Regulations prohibit Army legal assistance attorneys from representing persons charged with criminal offenses. However, a legal assistance attorney can assist you with determining whether you have a Lautenberg Amendment issue.

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This Information Paper provides only basic information and is not intended to serve as a substitute for personal consultation with a Legal Assistance Attorney. To schedule an appointment with a Legal Assistance Attorney, please contact the Legal Assistance Office at (580) 442-5058. The Fort Sill Legal Assistance Office is located on the 4th Floor of Building 4700 (Welcome Center) at 4700 Mow-Way Road, Fort Sill, Oklahoma 73503.