



## ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

653<sup>d</sup> TRIAL DEFENSE TEAM, WEST REGION  
UTAH NATIONAL GUARD  
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REPLY TO  
ATTENTION OF

NGJA-UT-TDS

6 March 2011

MEMORANDUM FOR Utah Army National Guard Soldiers

SUBJECT: Felonies and the Lautenberg Amendment Affecting Arms and Ammunition

1. **Summary.** Depending on State law, and the type of Felony conviction, there may be a restriction on your possession of firearms, and even if there is an exception to possession while in a duty status, that exception often is affected by laws that provide that certain felonies have no exception or for multiple felonies. If you have a felony, you should presume that it adversely affects your National Guard Status, and just like Lautenberg, take action to have it removed from your record, or possibly reduced from felony to misdemeanor. Many things are time sensitive, so changes to the nature of a conviction, such as reduction from a felony to misdemeanor usually need to be done during the course of probation, whereas expungement occurs after a period of time passes after the conviction. In all circumstances, consult with a private attorney and/or judge advocate about the affect the particular conviction(s) may have on your military career and options you may have.

2. **The Lautenberg Amendment.** The Federal Gun Control Act of 1968, as amended in 1996, makes it a federal felony for anyone who has a qualifying misdemeanor conviction for domestic violence to ship, transport, possess, or receive firearms or ammunition. Army regulations have made the act applicable to domestic violence felonies.

a. It is also a felony for you to issue or dispose of firearms or ammunition to anyone with a qualifying conviction if you know, or should know, about the conviction.

b. To qualify as a conviction under the Lautenberg Amendment, there must be:

(1) A conviction, not a mere arrest; AND

(2) The crime must have involved the use or attempted use of force, or the threatened use of a deadly weapon; AND

(3) At the time of the crime, the Soldier/Airman must have had a particular relationship with the victim, such as current or former spouse, parent/guardian, or the like.

c. In Utah, the charging instrument may reflect domestic violence but don't let that designation or lack thereof be the only thing that makes you think you have or don't have a

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domestic violence conviction. Any State law designation of domestic violence is just that, a State law designation and whether Federal Law considers it a violation is based on those matters in subparagraph b above.

d. Based on Lautenberg and Army Regulation, any offense that has as an element the use or attempted use of force, or the threatened use of a deadly weapon on someone with whom you had the "qualifying" relationship, may be domestic violence under FEDERAL Law even if Utah does not recognize such when the charges are plead.

e. Whenever a Soldier is charged with something that appears that it may be a Lautenberg violation then the Soldier should have their civilian attorney coordinate with a Legal Assistance Attorney about recommended courses of action.

f. There is no time limit on how old or recent the conviction need be, and all qualifying convictions, no matter their age, are covered under the law.

g. If you have a qualifying conviction, do not accept possession of firearms or ammunition, military or otherwise. To do so violates the law and subjects you to criminal prosecution, as well as possible adverse administrative action by the military.

3. If you know of someone in the your State National Guard who has a qualifying conviction, tell them they need to work to address the issue and that they should speak with a civilian or military attorney. Under some rules, and depending on your position, you may have a duty to report this fact to your Commander or First Sergeant, and you must not issue that person firearms or ammunition. Issuing firearms or ammunition to someone who has a qualifying conviction, which you know or should have known about, is also a federal felony, which would subject you to criminal prosecution and adverse administrative action.

4. Remember, it is not a federal felony under the Lautenberg Amendment to merely have a qualifying conviction. You are committing a felony only if you have such a conviction, and then possess firearms or ammunition. Therefore, if you have a qualifying conviction, or may have one, it is in your interest to avoid possessing firearms or ammunition and violating the Lautenberg Amendment.

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5. If you have a qualifying conviction, or if you are unsure whether you have one, you may contact the State Judge Advocate office for legal assistance (referrals may be made to TDS depending on your State's options to provide certain services), and or opt to see your Commander (remembering that such contact is not privileged and your communication to the commander may be repeated and used against you). Your access to firearms and ammunition will be suspended, but you will also be referred to a legal assistance attorney, who will work with you to find out if you have a qualifying conviction. If you do not have such a conviction, your access to weapons and ammunition will be restored. If you have a qualifying conviction, it is in your interest to know, so you can avoid violating the Lautenberg Amendment, thereby committing a federal felony. In that case, your legal assistance attorney will explore with you your legal options to obtain relief from the Lautenberg Amendment's restrictions.
6. Each State has different rules on whether a conviction can be "expunged" and removed from your record, whether the case has to be reopened and somehow the case dismissed anew, or whether you have to seek a pardon from the Governor. In any event, ignoring the issue is not the answer.
7. Many of you may be wondering what may happen to your military career if you have a qualifying conviction under the Lautenberg Amendment. Each State addresses the policy differently but remember that you cannot possess firearms or ammunition and that means you cannot perform your Soldier duties; and as a result your ability to perform your National Guard duty is significantly restricted. Commonly, you may expect a counseling from your line commander or supervisor, probably in writing, and allowed a reasonable period of time to clear the problem, or be processed for separation. If you have a qualifying conviction, it is possible that you may never be able to legally possess weapons or ammunition again. What is certain is that if you knowingly violate the Lautenberg Amendment, you are committing a crime and the consequences on your civilian life and military career will likely be much worse than if you merely have a qualifying conviction.
8. POC is the undersigned.



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