



**STRATEGY
RESEARCH
PROJECT**

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**THE LAUTENBERG AMENDMENT AND ITS IMPACT
ON THE U.S. ARMY**

BY

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and its Impact on

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by

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ABSTRACT

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In 1996, Senator Frank Lautenberg introduced an amendment to the Gun Control Act of 1968, which makes it a crime for any person convicted of a misdemeanor crime of domestic violence to ship, transport, possess or receive firearms or ammunition. This law also makes it a felony for another person to sell or otherwise dispose of a firearm to any person who qualifies as a convicted domestic violence misdemeanant.

What strategic impact does this amendment have on the Army? The amendment does not give government employees an exemption to perform official duties. Therefore, all military personnel, including the reserve components and DoD civilian personnel are prohibited from possessing a firearm or ammunition if they have a qualifying domestic violence conviction.

This paper will discuss the DoD reaction and guidance on this matter and enumerate the possible impact on personnel policies and readiness in the U.S. Army.

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INTRODUCTION

In the last several years, legislation has been passed that has dramatically changed the manner in which we respond to Domestic Violence.

The Violence Against Women Act (VAWA), represents a national consensus that we will not tolerate having our mothers, our sisters and our daughters beaten and abused by the men who profess to love them.¹

Senator Joseph Biden, made this quote as he pushed the Violence Against Women Act through the Senate in 1994. This was a starting point for new legislation to end the cycle of abuse against women.

Since the Violence Against Women Act (VAWA) was signed into law in 1994, we no longer treat domestic violence as "just a family matter." Law enforcement, the courts, and medical communities have come together in a collaborative effort to end the violence against women and children in our communities and families. Society has changed their belief that wife/partner abuse is inevitable and private. It is now believed to be avoidable and criminal.²

According to figures from the National Coalition Against Domestic Violence (NCADV), 95 percent of adult physical abuse victims are women. There are at least 4 million reported incidents of domestic violence against women every year and, on average, 10 women a day are killed by their batterers. These

figures are compounded by the fact that 70 percent of men who abuse their female partners also abuse their children.³

Firearms and domestic violence do not mix well. According to statistics taken from literature published by the Pennsylvania Coalition Against Domestic Violence:

- When a domestic violence assault is fatal, firearms are the weapon of choice about 70 per cent of the time.⁴
- Among victims of violent crime, almost one-third face an offender with a firearm.⁵
- Seven of ten homicides in the United States in 1993-1994 were committed with firearms.⁶
- Firearm associated family and intimate assaults are twelve times more likely to be fatal than those not associated with firearms.⁷
- Firearm associated domestic homicides are 7.8 times more likely in households with guns than in homes without guns.⁸
- Firearm owners with training are more likely to inappropriately store firearms, both loaded and unloaded, than those without formal training.⁹

In an attempt to reduce these figures, a recent amendment to the Federal Gun Control Act of 1968 by New Jersey Senator Frank Lautenberg, has added a ninth category to the list of persons disqualified to own or possess a firearm.

This amendment, Title 18 of the United States Code (U.S.C.) section 921(a), which was part of the 1997 Omnibus Appropriations Act (section 658 of the Treasury Department Appropriations Act Public Law 104-208), effective September 30, 1996, makes it a

felony violation for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, receive or possess any firearm or ammunition.¹⁰ This includes anyone that was convicted of a misdemeanor crime of domestic violence prior to the effective date of the new law. The amendment also makes it a felony for any person knowingly to sell or otherwise dispose of any firearm or ammunition to a domestic violence misdemeanant.¹¹

MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

What is a misdemeanor crime of domestic violence? As defined in the 1996 amendment to the Gun Control Act of 1968, a misdemeanor crime of domestic violence means an offense that:

- Is a misdemeanor under Federal or State law;
- Has, as an element, the use or attempted use of physical force, or threatened use of a deadly weapon, and;
- Was committed by a current or former spouse, parent, or guardian of the victim or; a person with whom the victim shared a child in common, or; a person who was cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or; a person who was similarly situated to a spouse, parent, or guardian of the victim.¹²

This definition includes all misdemeanors that involve the use or attempted use of physical force, if the offense is committed by one of the defined parties as listed above. This holds true whether or not the state statute or local ordinance specifically defines the offense as a domestic violence

misdemeanor. Most states or local jurisdictions do not have specific domestic violence crimes. Assailants are charged under general criminal provisions of state law, e.g. harassment, simple assault, false imprisonment, terroristic threats or aggravated assault.

Misdemeanor as used in Title 18 U.S.C., Section 922(d)(9) and (g)(9), includes any offense under State law or local ordinance punishable by imprisonment of one year or less. The law states that a person must be convicted of a state misdemeanor to be under Federal firearms disabilities. A conviction under this law does not include, a summary court-martial or nonjudicial punishment imposed under Article 15, Uniform Code of Military Justice (UCMJ).

However, a person is not considered to have been convicted of a misdemeanor crime of domestic violence unless:

- The 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, by guilty plea or otherwise, 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.
- Deferred prosecutions or similar alternative dispositions in civilian courts are not considered convictions for the purposes of this law.

The law also amended Title 18 U.S.C., section 925(a) (1), so that employees of government agencies convicted of a qualifying misdemeanor would not be exempt from section 922(d) (9) and (g) (9) with respect to their receipt or possession of firearms or ammunition. As written, this law more commonly known as the "Lautenberg Amendment", applies to those convicted of any proscribed misdemeanor at any time, even if the conviction occurred prior to the law's effective date of September 30, 1996. The law will prohibit personnel with a qualifying conviction, both military and civilian, to lawfully possess or receive firearms or ammunition for any purpose, including performing their lawful duties. The impact of this amendment on all governmental agencies is significant.

DOMESTIC VIOLENCE SNAPSHOT

Statistics prove that the military is not immune from domestic violence. According to The Army Family Advocacy Program:

- In 1996, over 9,400 reports of spouse abuse were reported, 6,300 were substantiated.
- Over 7,500 child abuse cases were reported, 3,200 were substantiated.
- In the seven year period between, 1989 and 1996, 39 spouses and 117 children died as a result of abuse in Army families.
- Most victims are female civilians and the abusers are most often male, active duty soldiers between 18 and 31 years old.

- The majority of the reported incidents occur on military installations.¹³

IMPLEMENTATION PLAN

Although the Lautenberg Amendment became law on September 30th, 1996, the Department of Defense (DoD) had not published any guidance on this matter until June 10, 1997. Two obvious reasons come to mind; first the military was hopeful that the law would be amended to exclude government employees and secondly, DoD realized the implementation process would be costly not only in the identification process but in accession/retention, readiness and morale. Issuing a weapon to a soldier who has a qualifying conviction for domestic violence exposes commanders, armorers and soldiers to felony criminal prosecution under Lautenberg. This places command in an untenable position.

In the original Gun Control Act (GCA), government employees were exempt from the GCA. However, the 1996 Lautenberg Amendment, amended Title 18 U.S.C. section 925 to deny this official use exemption for individuals convicted of misdemeanors involving domestic violence.¹⁴ This applies to Active, Reserve and Civilian employees of the government.

Because these amendments are incorporated into the Uniform Code of Military Justice (UCMJ) by article 134, clause three, which states: "crimes and offenses not capital", it was incumbent upon Judge Advocate General's (JAGs) to advise commanders of the

ramifications and encourage them to take reasonable measures to protect themselves and their soldiers.¹⁵

ORIGINS OF THE AMENDMENT

The Lautenberg Amendment created the gun ban for those persons convicted of a misdemeanor crime of domestic violence, effective September 30 1996. It received a great deal of opposition from pro gun advocates who were initially successful keeping the bill in committee from March through August of 1996.

However, the Lautenberg amendment enjoyed a favorable 97-2 vote in the Senate and he was able to get a companion bill through the house and attached to the Appropriations Act for fiscal year 1997, in September of 1996. Gun-rights supporters, led by Congressman Robert Barr of Georgia, a former federal prosecutor, quietly removed the exemption for military and law enforcement, from the Lautenberg Amendment. Congressman Barr and his supporters apparently hoped the prospect of disarming the military and police would force Congress to kill the measure. They were wrong. Much to their chagrin, the revised amendment was approved during a marathon session to pass the appropriations budget.¹⁶

SERVICES' REACTION

DoD was hopeful that several new amendments would rectify their problem. One of the amendments was House of Representatives Bill (HR) 26, sponsored by Congressman Barr, which would exempt misdemeanor domestic violence convictions that occurred prior to September 30, 1996. Congressman Bart Stupak from Michigan, introduced HR 445 in January, 1997, several days after HR 26 was introduced. This proposal would reinstate the exemption for government agencies that Barr had taken out of the Lautenberg Amendment in September of 1996.¹⁷ Both HR 26 and 445 along with several other amendments have not been passed, and as a result, the Lautenberg Amendment stands as approved on September 30, 1996.

Belatedly, in June 1997, nine months after the Lautenberg Amendment was passed into law, a draft copy of the DoD policy for implementing the amendment was issued by the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).¹⁸

The first draft of the DoD policy included the following:

- Directs that commanders and supervisors must take immediate steps to retrieve weapons and ammunition from any service member who has a conviction for a misdemeanor crime of domestic violence.
- Advises qualified individuals to dispose of their personal weapons/ammunition in a proper manner. Those that have weapons/ammunition are in violation of the law.
- Defines who is covered by the law.
- Does not include non-judicial punishments (NJPs).

- Specifies that civilian employees must be dealt with according to contractual agreements.
- Does not suggest permanent adverse action on anyone based on passed (prior to 30 September 96) qualifying offenses at this time.
- Does not apply to outside the Continental United States (OCONUS).
- Defines from the DoD perspective, what a weapon is; at this time it does not include heavy military weapons or ammunition.
- Directs each service to assign a working group representative by July 10, 1997.
- Mandates that a progress report be conducted by October 1, 1997.¹⁹

Responses to the draft implementation plan from all services began to arrive at the Office of the Under Secretary of Defense for Personnel and Readiness within weeks. None of the services' input was very positive. The Marines were first to respond and the other services followed in the order as listed. The following suggestions and recommendations were made:

United States Marine Corps

- Heavy weapons do not fall under the firearms provision of the law therefore, DoD is free to interpret the law with regards to heavy weapons.
- It would not be overly difficult for services to ascertain that all necessary elements of the misdemeanor offense occur.
- Referring to Department of Justice (DOJ) agencies, they have used a self-certification process to determine if employees qualify under the new law. Release from the Attorney General to use this procedure was approved.

- DoD should provide some type of interim guidance to avoid services from conducting costly detailed investigations of service members.
- OCONUS application is not covered by the law and should not be considered.
- The USD(P&R) memorandum assumes more than the law specifically requires; identification of all service members, OCONUS personnel, and heavy weapons.
- It provides the services with flexibility in determining what course of action to take if a service member qualifies; a Marine is a rifleman, and cannot function without the ability to carry a weapon.²⁰

United States Air Force

- The services must be allowed to reallocate personnel in order to prevent under-utilization of affected personnel in specialty duties that require the use of firearms. (This may have been included because a pilot that flies tactical missions is required to carry a handgun and this would ground that person from tactical missions but not non-tactical flights).
- Most other responses directed DoD to comply with, not exceed requirements of the law.²¹

The Joint Staff

- Precluding the Services from taking personnel actions is not realistic, some members will become non-deployable.
- How long should a service be expected to hold an individual in a non-deployable status?
- Can a service member be reassigned or retrained and does this warrant the expense?
- What, if any, reenlistment eligibility is there? Non-deployable status will affect unit readiness.
- Failure to take timely personnel action may result litigation.

- Will the Services be required to identify military and civilians who qualify under the new law?²²

Assistant Secretary of the Army

- The Army cannot comply with the law because all service members are expected to carry a weapon.
- The Office of Secretary of Defense should support legislative initiatives to exempt government entities or pursue legislation to exempt DoD employees that handle weapons, rather than implementing the interim guidance.²³

Assistant Secretary of the Navy (Personnel and Readiness)

- Once notified of the law, DoD personnel who do not comply with the requirements do so at their own risk.
- Urges DoD to pursue legislative initiatives to exempt DoD personnel who perform official duties that require use of weapon(s).
- Need guidance soon to avoid unintentional violations of the law.
- Expand the policy to begin screening new accessions or reenlistments.
- Similar requests as the USAF on following the law, not creating one.²⁴

OASD, Reserve Affairs

- Requested to appoint a representative from the Reserve Components on the working group.
- Concurred with the draft policy as written.²⁵

As enumerated above, the services had a multitude of questions and concerns in reference to the draft policy for implementing the Lautenberg Amendment. The USD(P&R) acted on

many of the issues immediately. It conducted research on the actual intent of the Lautenberg Amendment, added a representative from the Reserve Components, and removed weapons from those service members that were subject to or may be subject to, the amendment.

PUBLIC REACTION

The law had only been in effect for one year (September 30, 1997), when the author, Senator Lautenberg, was touting the success of his amendment. "One year ago today, on the day President Clinton signed my Domestic Violence Gun Ban into law, Washington stood up to the gun lobby and said no. No more guns for wife-beaters and no more guns for child abusers....Washington stood up and said yes,...that abused women and battered children have a right to live in homes without guns in their faces and fear in their eyes."²⁶

The news release lists a survey that was taken by USA Today newspaper during 1997 and found that, only about 860 police officers out of 700,000 nationwide would be affected. A preliminary survey performed by the Senator's office of 30 of the country's largest police departments, found that only 42 officers were affected out of 78,000.²⁷

Needless to say, the Senator as well as several domestic violence advocate groups, were wondering when the Department of Defense would implement a policy and how many service

members/civilians the policy would affect? If the Department of Justice had acted on the amendment in November of 1996, established policy and implemented that policy, he wondered what was happening at the Pentagon?

Some of the questions were answered on October 22, 1997, when the Assistant Secretary of Defense for (Force Management Policy) issued the *DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act for Military Personnel*. The following is a summation of the contents of that memorandum:

- Summary court-martial convictions, nonjudicial punishment (NJP), or deferred prosecutions were deemed not covered by the amendment.
- Major military weapons systems (aircraft, tanks, missiles) were defined as not covered by the amendment.
- DoD personnel Outside the Continental United States (OCONUS) are included as a matter of policy.
- Immediate withdrawal of authority to possess military weapons/ammunition was directed for personnel covered by this amendment. This included a directive to properly dispose of personal weapons/ammunition.
- Directed that military personnel be identified with a qualifying conviction.
- Mandated that DoD personnel shall certify, in writing, that they do not qualify. This certification is voluntary however, failure to certify, may result in revocation of authority to possess a weapon or ammunition.
- Directed that personnel who do not know if they qualify shall be granted a reasonable amount of time to obtain the necessary information. Commanders will suspend the authority to possess firearms or ammunition during this period of time.

- Precluded adverse personnel action against service members convictions on domestic violence violations prior to September 30, 1996.
- Provided for service members that qualify, with a conviction after the effective date of September 30, 1996 may be discharged or separated if either apply.
- Mandated commanders and supervisors to grant service members a reasonable amount of time to obtain expungements or pardons.
- Provided guidance for service members to be reclassified, reassigned or given temporary details.
- Removed waiver provisions for individuals entering the military that have been convicted of domestic violence offenses.
- Reiterated applicability of the law to DoD civilians; Stated that other guidance will be forthcoming.
- Directed the formation of a Joint Service Working Group not later than November 1, 1997, to resolve associated personnel policy issues and to develop a final DoD policy.
- Required reports on the implementation of the amendment by January 15, 1998.²⁸

Due to the complexity of the issues, DoD enlisted the aid of the Treasury and Justice Departments to insure that upon implementation, the DoD policy would cover all areas and personnel prescribed by law. According to the USD(P&R), the interim policy for military personnel achieved those goals, without detracting from readiness or violating individual rights. A similar policy for DoD civilians would be implemented after contract/labor issues were settled.²⁹

Senator Lautenberg was given a briefing on the DoD Implementation Plan. During the course of the briefing, he voiced a number of concerns with the Interim Policy. The first concern was that it took the DoD a year to react to the amendment and then only with an *interim* policy.

The Senator's major concern was the delay in implementation of a policy. He noted that the issues of DoD were not significantly different than those of the Department of Justice (DOJ), yet the DOJ was able to implement their policy within two months. His concerns about the interim policy were answered with the response that the basic policy is intact, only personnel policies and process issues were being researched in greater depth. He stated that this would have been a great opportunity for DoD to "step out positively on a gender issue", in light of the recent sexual harassment charges against it.³⁰

He wanted an explanation as to why summary court martial convictions were not treated as misdemeanors for purposes of his amendment. DoD's explanation detailed that the Uniform Code of Military Justice (UCMJ) does not entitle a service member to counsel in summary courts, that there is no right to a jury trial, and that these cases are not decided by a judge. All are necessary elements for misdemeanor convictions of domestic violence. He was not happy, but acknowledged that all of these elements are required.

THE JUDGE ADVOCATE GENERAL'S GUIDANCE

Guidance from The Judge Advocate General's Office was issued on October 31, 1997. The Judge Advocate General (TJAG), advised that the JAG Corps will provide prompt and effective assistance to service members in defining the applicability of the Lautenberg Amendment. In order to meet the challenges of the Lautenberg Amendment, legal assistance attorneys would have a role in implementing the interim policy. The memorandum basically paraphrased the Lautenberg Amendment and the DoD interim policy in offering the following advise:

- Service members with questions about the Lautenberg Amendment should be referred to legal assistance attorneys for an explanation of the terms and conditions of the amendment.
- Attorneys should explain the ramifications of the amendment especially to those service members that may have civilian convictions pending.
- Attorneys are to assist service members, to the extent possible, in obtaining pardons, expungements or other non-qualifying documentation that would release them from liability.
- If the service member has a qualifying element to Lautenberg or seeks advise on military justice matters, they should be referred to the Trail Defense Service.³¹

In addition, TJAG took upon the task of compiling guidance on how all states and territories treat issues related to the Lautenberg Amendment, and would disseminate that information throughout the active and reserve components. With numerous unanswered questions on the interim policy, a long list of

compiled guidance seems unlikely to be forthcoming in the immediate future. As a reminder, TJAG advised that the DoD interim policy on Lautenberg has not been approved by the Secretary of the Army.

WORKING GROUP MEETING AGENDA

The Lautenberg Implementation Working Group Military Personnel Process Action Team met on November 18, 1997 to discuss issues that were raised from the Interim Policy that was issued on October 22, 1997. As the draft policy working group had done before, the interim policy working group raised additional questions, concerns and recommendations. A synopsis of the working groups agenda consisted of the following questions:

Scope Questions

- Does the DoD interim policy apply to all reserve component service members, (i.e. Active, IRR, retired etc.)?
- Does the policy apply to Junior Reserve Officer Training Corp instructors, cadets, delayed entry personnel, etc.?

Process Questions

- Is use of the DD form 2760 necessary? This form was used to certify that those service members with uncontrolled access to firearms/ammunition did not qualify under the Lautenberg Amendment.
- What procedures should be used to screen recruits?
- Should Services be permitted to develop and use alternative forms?

- Should changes be made to DD 2760?
- How/where should the forms be maintained?
- What is a reasonable time to complete the survey of personnel within each service to determine if they have a qualifying conviction?
- What procedure will be used to track those that have qualified convictions?
- What are the consequences for refusing to complete the DD 2760 or other certification forms?
- Must those service members that are OCONUS with qualifying convictions be immediately reassigned?
- Privacy Act issues?

Military Personnel Questions

- Is the language used in the interim policy restricting Commanders/supervisors from taking steps to discharge service members with convictions prior to the effective date mandatory or discretionary?
- Does the policy restricting permanent adverse action include bars to reenlistment, suspension of security clearances, suspension of favorable actions, etc.?
- What constitutes a reasonable time, when granting service members time to pursue an expungement or records check?

Civilian Personnel Questions

- What procedures should be developed at armories or rod and gun clubs?
- What procedures should be established for new applicants for DoD positions?
- How to handle periodic checks for qualifying convictions?

- Should a similar DD form used by service members be developed for civilians?
- When management is made aware that an employee has a qualifying conviction what steps should be taken. (transfer, restructure job position, etc.)?
- What personnel action should be taken concerning employees who have qualifying convictions?
- Does this apply to DoD civilians OCONUS?

Legal Questions

- Does crew served weapons include M60 machine gun and ammo, M249 semi-automatic weapon (SAW), grenades, and claymore mines? Define what weapons are major weapons systems?
- When would Article 31 rights apply for a service member that admits a qualifying conviction and had drawn a weapon or ammunition?
- What actions should a commander take if a service member with a qualifying conviction was drawing a weapon/ammunition prior to completing the form?
- Are there any restrictions on the use of the form since it may constitute evidence?
- Do foreign convictions apply as misdemeanor crimes of domestic violence to qualify for the Lautenberg Amendment?

Other DoD Actions

- Should DoD propose legislation to modify Lautenberg?
- Should DoD develop policies concerning other gun control categories?
- What procedures should be established for reporting information concerning those personnel discovered to have qualifying convictions to the FBI?

- What guidance has Department of Treasury or Office of Personnel Management released?³²

SUPPORTING ANALYSIS AND DISCUSSION

There are several issues that need to be addressed before the Lautenberg Amendment can be properly implemented. Commanders cannot establish procedures to ensure compliance with the law until the ambiguities within the law are clarified at the DoD level.

Immunity Clause

In order to avoid unnecessary litigation and to eliminate the reluctance of some members to complete the certification forms (i.e. DD 2760) truthfully, the Department of Defense should request that the Secretary of Defense and the Attorney General, grant a blanket immunity clause to all DoD employees questioned as to whether they have a prior qualifying domestic violence conviction. This would absolve a member from any criminal prosecution for a violation of Title 18, U.S.C., section 922(g)(9), *possessing a firearm or ammunition with a qualifying misdemeanor conviction*, without the knowledge of the new law. DOJ has issued a similar grant of immunity for their employees.³³ This would alleviate any questions of Article 31(a) UCMJ violations when requiring service members to answer questions that may incriminate them.

Retroactivity of Statute

The Office of the Secretary of Defense should support legislative initiatives to exempt DoD employees that have qualifying convictions which occurred prior to the Lautenberg Amendment of September 30, 1996. Some members of the advocacy community would be willing to give up the retroactivity, but would not accept an "official use exception."³⁴

Ex Post Facto Issues

Many people within DoD and several private organizations have questioned the constitutionality of the gun ban for those that have a qualifying domestic violence misdemeanor conviction. The issue is whether Title 18, U.S.C. 922 (d) (9) and (g) (9), violates the ex post facto clause of the constitution. A law violates the ex post fact clause if it "imposes a punishment for an act which was not punishable at the time it was committed, or if it imposes additional punishment to that earlier prescribed."³⁵

Beating women and children cannot be condoned, nor should there be batterers in the military or in law enforcement, however, it is difficult to accept a person losing a career for an indiscretion that occurred years before (a law becoming effective) when they were young and foolish. People that plead guilty to misdemeanor violations of domestic abuse years ago, may have been able to seek a different resolution had they known what the "coming attractions" had to offer. "Critical to relief under the Ex Post Facto Clause is not an individual's right to less

punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated."³⁶

Does Lautenberg violate the ex post facto clause? No. The law does not increase the penalty for the misdemeanor conviction. It regulates firearms acquisitions and possession that occur after the new law took effect therefore there should not be a violation. However, I do feel that a successful challenge might be made to the new law as applied to a person that has a qualified conviction who was in lawful possession of a firearm or ammunition before the effective date of the amendment, and who does nothing more after the effective date than continuing to possess the same firearm without any notice of the change in the law.³⁷

Expungement or Pardon

For those service members that may have qualifying convictions, the TJAG has stated that legal assistance attorneys will help soldiers determine if they have qualifying convictions, assist in seeking expungements or pardons for the convictions, and explain their future career options.³⁸ If the soldier has a conviction and the legal assistance attorney is unsuccessful in obtaining an expungement or pardon, the soldier should be immediately processed for discharge. An exception to this policy might be for a soldier that has eighteen years of service, reclassify or reassign the service member to a non-warfighting

position that would enable the soldier to fulfill the required years for retirement.

DoD Policy

All employees of the DoD should be covered by this policy. Reserve Component services as well as civilians should meet the same standards as the Active Components. Those Reserve Component soldiers that are on Inactive Ready Reserve status should be screened only when called to duty. Civilians qualifying for a domestic violence misdemeanor should have the same requirements and opportunities afforded them as a service member. All job announcements should include the averments of the Lautenberg Amendment to avoid hiring a person that qualifies under the law.

IMPLICATIONS

In analyzing the Lautenberg Amendment, there are a number of strategic implications for the Army and the Department of Defense. Strategic implications that may effect the DoD within the next five to ten years due to the Lautenberg Amendment are;

- Unit readiness, due to non-deployable service members;
- Retention;
- Accessions;
- Security clearances;
- Training;
- and the loss of critical specialty personnel such as pilots and military police to mention a few.

RECOMMENDATIONS TO RESOLVE SPECIFIC ISSUES INCLUDE:

a. That service members that have a qualifying conviction should be given a reasonable amount of time to verify the qualification or obtain an expungement/pardon. A reasonable amount of time should be six months extending only after the exemption is granted while awaiting administrative procedures to be finalized.

b. That a working group be formed to screen the services to determine what effects this amendment has on readiness. A working group should be formed to develop a standard manner to define the variables and collect the data to avoid spurious variables. All the information that is collected would be subject to privacy act requirements and a procedure would need to be developed for safe keeping of the data.

c. That the current definition of firearms as defined by DoD be defined commensurate with Title 18 U.S.C. section 921 (a) (3). A firearm includes; **any** weapon which will or is designed to or may be converted to expel a projectile by the action of an explosive;...the frame or receiver of any such weapon; any firearm muffler or silencer; or...any destructive device.³⁹ Ammunition includes; ammunition or cartridge cases, primers, bullets or propellant powder designed for use in **any** firearm.⁴⁰ Destructive device is defined as; **any** explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar

device.⁴¹ DoD defines a weapon as other than major weapons systems or crew served weapons. Many would agree that any object that propels a projectile by means of an explosive is a firearm and the DoD should not limit any of the aforementioned categories.

d. That each service be allowed the flexibility to reassign, reclassify or discharge personnel depending on the circumstances. Since the end of the Cold War, the services' have reduced the number of soldiers on active duty however, DoD has increased the restrictions on accession and retention considerably. By being more restrictive, the services' have a smaller segment of society to choose from, Lautenberg has decreased the pool even more. The unintended consequences of non-selection for entry or promotion because of the new law will have an adverse effect on the ability of the services' to meet their mission, at least for the next five to ten years.

Allowing each service the flexibility to reassign, reclassify or discharge will work best in this scenario. An example of the impact is in the Air Force, where the attrition rate for pilots is significant. A pilot that qualifies under Lautenberg would not be able to fly combat missions because a pilot is required to possess a handgun. Although the pilot is out of the combat operations, he could be retrained to fly non combat missions. Army 2010, requires massive movements of troops and equipment in

short periods of time, if the pilots are not available to fly, that will present a significant problem.

e. And finally, DoD should extend the misdemeanor prohibitions to include felony domestic violence convictions. As Acting Assistant Secretary of Defense Francis M. Rush, Jr. stated, "We believe that this is a reasonable step to preclude what might be perceived as an anomalous policy." Additionally, and not part of the Lautenberg Amendment, DoD should reevaluate protection from abuse orders issued by civilian authorities, especially where weapons possession restrictions are involved.

CONCLUSION

As U.S. Representative Bob Barr stated in a letter to House Judiciary Committee Chairman Henry Hyde, "Numerous provisions in the Omnibus Consolidated Appropriations Act of 1997 were rushed through the Congress....that received no Judiciary Committee review....that potentially has immediate impact on public safety." His concerns are based on military personnel and police officers that may lose their jobs because they have qualifying convictions under the Lautenberg Amendment.

While this may be true, there should also be concern for the victims, both partners and children of batterers, that continue to be abused. If those that are abused are apathetic or fearful about reporting abuse we have failed. If we continue to foster the cycle of domestic violence, citizens will choose not to

report crimes or press charges, that will effect the quality of leadership, law enforcement and justice in this country.

If the National Military Strategy is to assist new states to develop into democracies, then non-violent democracies should be our goal, both at home and abroad. The Lautenberg Amendment attempts to restrict violators from access to those tools that endanger society. As executors of policy, the Armed Forces must set the example by complying with federal law and enforcing those values in support of the Constitution which it is sworn to defend.

ENDNOTES

¹ Senator Joseph R. Biden Jr., Turning The Act Into Action. National Resource Center on Domestic Violence, Harrisburg, PA.. October, 1994, 5.

² Jane E. Stuehling and Barbara J. Hart Esq., Domestic Violence Legal Advocacy Practice, Pennsylvania Coalition Against Domestic Violence, Harrisburg, PA.. 1997, core 2.

³ Heike Hasenauer, "Taking on Domestic Violence", Soldiers, Vol. 52, No. 10, October 1997, 34.

⁴ J. Bonderman, Firearms and Domestic Violence, Stopping Violence Against Women Using New Federal Laws: Study Guide. Washington, D.C.. 1996.

⁵ M.W. Zawitz, Guns Used in Crime, Bureau of Justice Statistics, Department of Justice. July, 1996.

⁶ Ibid.

⁷ L.E. Saltzman, et al., Weapon Involvement and Injury Outcomes in Family and Intimate Assaults, 267 Journal of American Medical Association. 3043, 3045, 1992.

⁸ A.L. Kellermann, et al., Suicide in the Home in Relation to Gun Ownership, 327 New England Journal of Medicine 467, 470, 1992.

⁹ D. Hemenway, S.J. Solnick and D.R. Azrael, Firearms Training and Storage. 273 Journal of American Medical Association. 46, 1995.

¹⁰ United States Code, Title 18, Crimes and Criminal Procedure, sec. 921(a). (1996).

¹¹ Ibid.

¹² United States Code, Gun Control Act of 1968, Congressional and Administrative News. 90th Congress-2nd session, 1968. Vol. 1, 1397. as amended.

¹³ Hasenauer, 35.

¹⁴ Major Einwechter and Captain Christiansen, Abuse Your Spouse and Lose your Job: Federal Law Now Prohibits Some Soldiers From Possessing Military Weapons. The Army Lawyer, The Judge Advocate General's School, U.S.Army, Charlottesville, VA.. August, 1997, 26.

¹⁵ Ibid., 26.

¹⁶ Mark Thompson, A Farewell To Arms, Time, Washington, D.C.. October 6, 1997, vol. 150 no. 14.

¹⁷ Nick Adde, Services May Find Spouse Abuse Disarming/Law Would Keep Guns From Everyone Convicted of Domestic Crime. Navy Times, September 1, 1997, no. 48, 6.

¹⁸ Mark Astrella, Gary D. Brose, Rebecca L. Harper, Young Yeol Oh and Eric P. Woelper, DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act

for Military Personnel. Position Paper, Washington, D.C..
December, 1997, 3.

¹⁹ Office of the Under Secretary of Defense (Personnel and Readiness). DoD Implementation Plan for Domestic Violence Misdemeanor Law, First Draft. Washington, D.C.. June 10, 1997.

²⁰ Colonel B.M. Youngs, Review of the Joint Staff Memorandum on DoD Interim Policy Implementing Domestic Violence Misdemeanor Amendment to Gun Control Act. Headquarters United States Marine Corps, Washington, D.C.. June 20, 1997.

²¹ Colonel William J. O'Meara, DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act. Headquarters United States Air Force, Washington, D.C.. July 14, 1997.

²² Vice Admiral Dennis Blair, DoD Implementation Plan for Domestic Violence Misdemeanor Law. The Joint Staff, Washington, D.C.. July 18, 1997.

²³ Sara Lister, DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act. Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), Washington, D.C.. August 19, 1997.

²⁴ Bernard Rostker, Comments on the DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act. Assistant Secretary of the Navy (Personnel and Readiness), Washington, D.C.. September 8, 1997.

²⁵ Charles Cragin, Coordination on DoD Interim Policy-Domestic Violence Misdemeanor Firearms Law. Office of the Assistant Secretary of Defense (Reserve Affairs), Washington, D.C.. September 17, 1997.

²⁶ Senator Frank Lautenberg, On The One-Year Anniversary Of His Domestic Violence Gun Ban, Senator Frank Lautenberg Unveils DOJ Report: News release from Senator Lautenberg, Washington, D.C.. September 30, 1997, 1.

²⁷ Ibid., 2.

²⁸ Assistant Secretary F. Pang, DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act for Military Personnel. Office of the Assistant Secretary of Defense (Force Management Policy), Washington, D.C.. October 22, 1997.

²⁹ Office of the Assistant Secretary of Defense (Public Affairs). Defense Department Policy Issued to Implement Amendment to Gun Control Act. News Release, Washington, D.C.. 22 October, 1997.

³⁰ Lieutenant Colonel Bernard P. Ingold, Memorandum on briefing with Senator Lautenberg. Office of the Under Secretary of Defense (Personnel and Readiness), Washington, D.C.. October 22, 1997.

³¹ Office of The Judge Advocate General. Interim Guidance On Lautenberg Amendment, memorandum. Washington, D.C.. October 31, 1997, 1-2.

³² Colonel Allan C. Brendsel, Memorandum For Members Of Lautenberg Implementation Group Military Personnel Process Action Team, agenda. Office of the Under Secretary of Defense (Personnel and Readiness), Washington, D.C.. November 14, 1997, 2-4.

³³ Eleanor D. Acheson, Model Letter to State and Local Agencies. Washington, D.C.: Office of the Deputy Attorney General, December 5, 1996, 5.

³⁴ Barbara J. Hart Esq., Pennsylvania Coalition Against Domestic Violence Legal Director. Harrisburg, PA. February, 1998.

³⁵ Dorothy Schrader, Gun Ban For Persons Convicted Of Misdemeanor Crime Of Domestic Violence: Ex Post Facto Clause And Other Constitutional Issues. Congressional Research Service, Washington, D.C.: December 30, 1996, 4.

³⁶ Ibid.

³⁷ Ibid., 5.

³⁸ Colonel Charles C. Ware, Interim Implementation of Lautenberg Amendment. Carlisle Barracks, PA.: February 27, 1998, 2.

³⁹ Title 18 U.S.C., section 921(a)(3).

⁴⁰ Ibid., section 921(a)(17)(A).

⁴¹ Ibid., section 921(a)(4)(A).

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