

INFORMATION PAPER

DAJA-AL
1 December 2003

SUBJECT: 27 November 2002 Department of Defense Guidance on the Lautenberg Amendment (LA) for military personnel (DOD LA Guidance).

1. Purpose. To provide information on the DOD LA Guidance and the Army Implementation Message.
2. Facts. The LA to the Gun Control Act of 1968 became effective on 30 September 1996. The LA applies to all soldiers and Army civilian employees and makes it a felony for any person convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. The transfer, issuance, or sale of firearms to such persons is also a felony. DOD issued interim implementing guidance concerning the LA in October 1997.¹ The latest DOD LA Guidance was issued on 27 November 2002.²
3. 27 November 2002 DOD LA Guidance. The latest DOD LA Guidance includes the following new provisions:
 - a. A conviction for an offense meeting the definition of a “**felony** crime of domestic violence” adjudged on or after 27 November 2002 shall, by DOD policy, be considered a qualifying conviction for purposes of the DOD LA Guidance.
 - b. DOD military personnel have an **affirmative, continuing obligation** to inform commanders or supervisors if they have, or later obtain, a qualifying conviction.
 - c. DD Form 2760 (Qualification to Possess Firearms or Ammunition) has been redrafted and reissued. If a Military Department chooses to require that all or some of its military members certify whether or not they have a qualifying conviction, then the new DD Form 2760 shall be used for such certifications.
 - d. The Military Departments may promulgate regulations governing permanent adverse personnel actions, including discharges, that may be taken with respect to military members who have a qualifying conviction.
 - e. If a completed security clearance investigation reveals that a military member has a qualifying conviction, then the investigation shall be referred to the requesting DOD component for action consistent with this policy.

¹ Memorandum, Assistant Secretary of Defense, to the Secretaries of the Military Departments, subject: DoD Interim Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act for Military Personnel (22 October 1997).

² Memorandum, Under Secretary of Defense, to the Secretaries of the Military Departments, subject: Department of Defense Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act for Military Personnel (27 November 2002).

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f. Each Military Department shall implement a program to periodically inform its military members of the LA, its consequences, and this policy.

g. All DOD components shall post notices about the LA and the DOD LA Guidance in all facilities in which Government firearms or ammunition are stored, issued, disposed of, or transported.

h. Military Departments shall issue policies and procedures to ensure compliance with the LA with respect to privately owned firearms under Government control and in Government quarters.

i. Military Departments shall issue policy governing the transfer of firearms and ammunition to individuals in morale, welfare, and recreation activities and other Government-sponsored or -sanctioned activities to ensure compliance with the LA.

4. 27 October 2003 Army Message. On 27 October 2003, the Army issued an implementing message.³ It closely tracks the 27 November 2002 DOD LA Guidance and reiterates much of the personnel guidance in the Army's previous LA implementing messages.⁴ The following paragraphs highlight the new guidance in 27 October 2003 Army Message.

a. *DD Form 2760*. Previously, the Army did not use DD Form 2760. However, the Army will now use the revised and reissued DD Form 2760. Accordingly, if a commander knows or has reasonable cause to believe that a soldier has a qualifying conviction, then that commander should take all reasonable action to investigate. A commander may initiate the investigation by ordering the soldier to complete DD Form 2760. Soldiers will 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 U.S.C. § 922, including prosecutions under the UCMJ for conduct that occurred prior to the completion of the DD Form 2760. Company and battery-level commanders will collect completed DD Forms 2760 and file them in the soldier's local military personnel file IAW AR 600-8-104⁵ and AR 25-400-2.⁶

³ See Message, 221927Z OCT 03, HQDA, subject: HQDA Message in Final Implementation of the Lautenberg Amendment to the Gun Control Act of 1968.

⁴ See Message, 151100Z JAN 98, HQDA, subject: HQDA Message on Interim Implementation of the Lautenberg Amendment; Message, 211105Z MAY 99, HQDA, subject: HQDA Guidance on Deployment Eligibility, Assignment, and Reporting of Soldiers Affected by the Lautenberg Amendment; Message, 172023Z MAY 02, HQDA, subject: Reporting of Soldiers affected by the Lautenberg Amendment; and Message, DTG 231120Z MAY 02, MILPER MESSAGE 02-165, subject: Procedural Guidance on the Reporting of Soldiers Affected by the Lautenberg Amendment.

⁵ *Military Personnel Information Management/Records* (27 April 1992).

⁶ *The Army Records Information Management System (ARIMS)* (18 March 2003).

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b. *Memorandums of Agreement.* A May 2002 Army Message⁷ required installation/agency commanders and their supporting judge advocates to establish memorandums of agreement with local law enforcement and civil court agencies to ensure adequate systems are in place for tracking arrests and convictions off-post, to include emergency protective orders and domestic violence orders. This requirement has been superseded. The 27 October 2003 Army Message requires commanders to ensure that procedures are implemented to track domestic violence arrests and convictions off-post through regular coordination with local law enforcement and judicial agencies, but does not require actual memorandums of agreements.

c. *Accommodation.* The 27 October 2003 Army Message indicates that commanders are only required to make reasonable efforts to accommodate soldiers with qualifying convictions consistent with the limitations of this message and based on the needs of the Army. If a soldier with a qualifying conviction cannot reasonably be accommodated, then the chain of command may initiate separation.

5. The 27 October 2003 Army Message Does Not.

a. *Notification.* Establish how often commanders must notify soldiers of the LA guidance. The specifics will be left to the senior mission commander.

b. *Accommodation.* Clearly articulate the degree of accommodation required for soldiers with qualifying convictions. The specifics will be left to the senior mission commanders.

c. *Self-certification.* Provide comprehensive guidance on conditions under which soldiers may be required to “self-certify” using DD Form 2760. The specifics will be left to the senior mission commander.

d. *Discharge.* Delineate whether discharge based on a qualifying conviction alone is authorized.⁸ We anticipate that this issue will be clarified with changes to AR 635-200⁹ and AR 600-8-24.¹⁰

⁷ Message, DTG 231120Z MAY 02, MILPER MESSAGE 02-165, subject: Procedural Guidance on the Reporting of Soldiers Affected by the Lautenberg Amendment.

⁸ Discharge based on the underlying conduct has always been permitted. However, the DOD LA Guidance specifically authorizes the Army to take adverse personnel actions based solely on the qualifying conviction (even those that occurred before 30 September 1996, the effective date of the LA).

⁹ *Enlisted Personnel* (1 November 2000).

¹⁰ *Officer Transfers and Discharges* (3 February 2003).