



ANG Selected Force Awareness Training (SFAT)
LAUTENBERG AMENDMENT

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Refresher Training





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Overview



- Purpose
- What is a Qualifying Conviction
- Effects of a Qualifying Conviction
- Conclusion

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Date: 19 Mar 2014

Interaction: *Facilitator Read:* The Air National Guard's commitment to combating Domestic Violence is of utmost importance. Due to the Lautenberg Amendment, certain convictions can directly affect your ability to possess a firearm and in turn affect your military career. Today we will discuss the Lautenberg Amendment and its purpose. What is a qualifying conviction, and the effects of a qualifying conviction.

Notes and Comments: *Topic Title* – Once the script is read transition to the next slide.



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Purpose

- Prohibits anyone with a qualifying conviction from owning or possessing a firearm
- No military exception
- Prohibits the military from issuing a weapon to a person who is reasonably believed to have a qualifying conviction

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Read: In 1996, Congress passed the Lautenberg Amendment.

The amendment prohibits anyone who has been convicted of a misdemeanor crime of domestic violence from possessing or receiving any firearm or ammunition

There is no military or law enforcement exception to this law. The amendment also makes it a felony for any person to give a firearm or ammunition to any person he or she reasonably believes has a qualifying conviction. This includes a conviction by a State Court, Federal Court, or a General or Special Court Marital.



Qualifying Conviction

- What is a qualifying conviction?
 - The use or attempted use of **physical force**, or the threatened use of a **deadly weapon**
 - When committed by:
 - A current or former spouse, parent, or guardian of the victim,
 - A person with whom the victim shares a child in common,
 - A person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian
 - A person similarly situated to a spouse, parent, or guardian of the victim

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Read: Just because you aren't convicted of domestic violence, you may still have a qualifying conviction. The Department of Defense has interpreted the Lautenberg Amendment as any misdemeanor conviction which involves the use or attempted use of physical force or the threatened use of a deadly weapon by a certain persons.

When the act is committed by a spouse or former spouse, a parent or guardian, or a person with whom the victim shares a child in common, it is a qualifying conviction. It also includes any time a person who is or has cohabitated with someone as if they were a spouse, parent or guardian or any person similarly situated to a spouse, parent or guardian of the victim is convicted of a crime involving violence.

This means if your conviction was for violence or even threats of violence against an ex or current boyfriend or girlfriend, you may have a qualifying conviction based upon the Lautenberg Amendment.



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Qualifying Conviction

- Includes **all** misdemeanors that involve the use or attempted use of physical force if the offense is committed by one of the defined parties
 - Disorderly Conduct
 - Simple Assault
 - Assault
 - Battery
- Unless the conviction is expunged or removed.

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Read: It is important to note that the Lautenberg Amendment is not limited to the conviction itself. It looks to the relationship between the perpetrator and the victim. Even if you plead guilty to simple battery or disorderly conduct instead of domestic battery, the Lautenberg amendment may apply.

The only exception is if the conviction is expunged, pardoned, or otherwise removed, or you have your rights to possess a firearm reinstated, the Lautenberg Amendment applies.



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Effects of a Qualifying Conviction

- Continuing obligation to report a qualifying conviction
- Individuals with a qualifying conviction shall not be granted a waiver for entrance into military service
- Retrieve all government-issued firearms and ammunition
- Suspend the authority to possess government-issued firearms or ammunition
- Must dispose of their privately owned firearms and ammunitions lawfully

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Read: When a person is convicted of a qualifying offense, they have a duty to report the conviction to the command. This is a continuing obligation under the DoD Instructions. Your obligation does not end at your initial enlistment. Any time you are convicted of a qualifying offense, you must report the conviction, even if the conviction does not occur after you joined the military. Failure to report a qualifying conviction is a violation of a direct order and punishable under the UCMJ. It also places you and anyone who provides you with a weapon in violation of federal law.

If you do have to disclose a qualifying conviction, disclosure should be made with a DoD Form 2760. Using this form will grant certain protections to the service member. If you think that may have a qualifying offense, you should consult your area defense counsel. If you do not know who your area defense counsel is, your legal office should be able to provide you with the contact information.

There are many effects of a qualifying conviction. You cannot be

granted a waiver to enter in to military service.

The command must take all steps to retrieve government issued firearms and ammunition and suspend the authority to possess them. A service member will also be counseled that they must lawfully dispose of any personal ammunition or firearms.



Effects of a Qualifying Conviction

- A Lautenberg offense may lead to adverse personnel actions, including separation
- Separation will comply with sanctuary provisions
- No access to firearms/ammunition

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Read: Adverse actions, including separation, may be imposed by the command due to a qualifying conviction.

Any separations must take into account any sanctuary provisions, but if the member is not separated, they must be reassigned to a position that does not involve access to firearms or ammunition.



Let's Talk...

- What should you do if you are convicted of an offense involving the use or attempted use of physical force, or the threatened use of a deadly weapon?
- My civilian attorney plead me down from a conviction of domestic battery to a disorderly conduct. Do I still have to report this?

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Read: You have an obligation to report any qualifying conviction. To do this, you should request a DoD Form 2760 and give this to your first shirt or commander. The DoD Form 2760 will guarantee you certain protections under the law. While your JAG may be a good source of information, you should also consult your Area Defense Counsel to protect your rights.

Yes. The key here is that under the DoD guidance, it is the facts and circumstances of the conviction rather than the conviction itself that matters. If the victim of the act is one of the covered persons, then the conviction may still qualify under the Lautenberg Amendment.

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Reference(s)

- 18 U.S.C. § 922
- DoD Instruction 6400.06 *Domestic Abuse Involving DoD Military and Civilian Affiliated Personnel*

Facilitator:

Read:



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Conclusion

Qualifying convictions is a broad concept

Cannot own or possess firearms, NO exceptions

Continuing obligation to report

Consult JAG or ADC for specific questions

Facilitator: In conclusion, you should be aware that the Lautenberg is not limited to convictions for domestic battery. The law looks to the relationship between the perpetrator and the victim. If you are determined to have a qualifying conviction, you may not possess a weapon or ammunition and you have a continuing obligation to report this with a DD Form 2760. If you need further advice in this subject, you should contact your Area Defense Counsel or a JAG.

Discuss: