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FM DA WASHINGTON DC//DAPE-MPE-RC//

TO ALARACT

INFO RUEADWD/DA WASHINGTON DC//DAPE-MPE-RC//

BT

UNCLAS ALARACT 131/2003

SUBJECT: HQDA MESSAGE ON FINAL IMPLEMENTATION OF THE LAUTENBERG AMENDMENT TO THE GUN CONTROL ACT OF 1968

1. REFERENCES:

- A. HQDA (DAPE-MPE) MESSAGE 151100Z JAN 98, SUBJECT: HQDA MESSAGE ON INTERIM IMPLEMENTATION OF THE LAUTENBERG AMENDMENT.
- B. HQDA (DAPE-MPE) MESSAGE 211105Z MAY 99, SUBJECT: HQDA GUIDANCE ON DEPLOYMENT ELIGIBILITY, ASSIGNMENT, AND REPORTING OF SOLDIERS AFFECTED BY THE LAUTENBERG AMENDMENT.
- C. HQDA (DAPE-MPE) MESSAGE 172023Z MAY 02, SUBJECT: REPORTING OF SOLDIERS AFFECTED BY THE LAUTENBERG AMENDMENT.
- D. MILPER MESSAGE 02-165, DTG 231120Z MAY 02, SUBJECT: PROCEDURAL GUIDANCE ON THE REPORTING OF SOLDIERS AFFECTED BY THE LAUTENBERG AMENDMENT.
- E. 27 NOVEMBER 2002 DOD MEMORANDUM, SUBJECT: DEPARTMENT OF DEFENSE

(DOD) POLICY FOR IMPLEMENTATION OF DOMESTIC VIOLENCE MISDEMEANOR AMENDMENT TO THE GUN CONTROL ACT FOR MILITARY PERSONNEL.

2. THIS MESSAGE SUPERSEDES REFERENCES A THROUGH D ABOVE. THIS MESSAGE PROVIDES HQDA POLICY FOR IMPLEMENTING THE DOMESTIC VIOLENCE AMENDMENT TO THE GUN CONTROL ACT OF 1968 (18 U.S.C. SECTIONS 922) (THE LAUTENBERG AMENDMENT) FOR MILITARY PERSONNEL. THIS MESSAGE APPLIES TO ALL SOLDIERS THROUGHOUT THE WORLD, INCLUDING THOSE IN HOSTILE FIRE AREAS. GUIDANCE FOR CIVILIAN EMPLOYEES WILL BE ISSUED SEPARATELY. MORE DETAILED DEFINITIONS OF KEY TERMS ARE FOUND IN REFERENCE E ABOVE, AVAILABLE AT [HTTP://WWW.DTIC.MIL/WHs/DIRECTIVES/CORRES/DIR3.HTML](http://www.dtic.mil/whs/directives/corres/dir3.html). CHANGES TO THE APPROPRIATE ARMY REGULATIONS WILL BE FORTHCOMING.

3. IN GENERAL:

A. THE LAUTENBERG AMENDMENT MAKES IT UNLAWFUL FOR ANY PERSON TO TRANSFER, ISSUE, SELL, OR OTHERWISE DISPOSE OF FIREARMS OR AMMUNITION TO ANY PERSON WHOM HE OR SHE KNOWS OR HAS REASONABLE CAUSE TO BELIEVE HAS BEEN CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE. IT IS ALSO UNLAWFUL FOR ANY PERSON WHO HAS BEEN CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE TO RECEIVE ANY FIREARM OR AMMUNITION THAT HAS BEEN SHIPPED OR TRANSPORTED IN INTERSTATE OR FOREIGN COMMERCE.

B. A "CRIME OF DOMESTIC VIOLENCE" IS AN OFFENSE THAT INVOLVES THE USE OR ATTEMPTED USE OF PHYSICAL FORCE, OR THREATENED USE OF A DEADLY WEAPON; COMMITTED BY A CURRENT OR FORMER SPOUSE, PARENT, OR GUARDIAN OF THE VICTIM; BY A PERSON WITH WHOM THE VICTIM SHARES A CHILD IN COMMON; BY A PERSON WHO IS COHABITING WITH OR HAS COHABITED WITH THE VICTIM AS A SPOUSE, PARENT, OR GUARDIAN; OR BY A PERSON WHO WAS SIMILARLY SITUATED TO A SPOUSE, PARENT, OR GUARDIAN OF THE VICTIM. PERSONS WHO ARE SIMILARLY SITUATED TO A SPOUSE INCLUDE TWO PERSONS WHO ARE RESIDING AT THE SAME LOCATION IN AN INTIMATE RELATIONSHIP WITH THE INTENT TO MAKE THAT PLACE THEIR HOME.

C. A "QUALIFYING CONVICTION" IS A STATE OR FEDERAL CONVICTION FOR A "MISDEMEANOR CRIME OF DOMESTIC VIOLENCE" AND ANY GENERAL OR SPECIAL COURT-MARTIAL CONVICTION FOR AN OFFENSE THAT OTHERWISE MEETS THE

ELEMENTS OF A "CRIME OF DOMESTIC VIOLENCE," EVEN THOUGH NOT CLASSIFIED AS A MISDEMEANOR OR FELONY. A QUALIFYING CONVICTION DOES NOT INCLUDE A SUMMARY COURT-MARTIAL CONVICTION OR THE IMPOSITION OF NONJUDICIAL PUNISHMENT UNDER ARTICLE 15, UCMJ. BY DOD POLICY, A STATE OR FEDERAL CONVICTION FOR A FELONY CRIME OF DOMESTIC VIOLENCE ADJUDGED ON OR AFTER 27 NOVEMBER 2002, SHALL BE CONSIDERED A QUALIFYING CONVICTION FOR PURPOSES OF THIS MESSAGE AND SHALL BE

SUBJECT TO ALL THE RESTRICTIONS AND PROHIBITIONS OF THIS MESSAGE.

D. A PERSON SHALL NOT BE CONSIDERED TO HAVE A QUALIFYING CONVICTION UNLESS THE CONVICTED 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; 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.

E. IF A COMPLETED SECURITY CLEARANCE INVESTIGATION REVEALS THAT A SOLDIER HAS A QUALIFYING CONVICTION, THEN THE INVESTIGATION SHALL BE REFERRED TO THE SOLDIER'S CHAIN OF COMMAND FOR APPROPRIATE ACTION CONSISTENT WITH THIS MESSAGE.

4. COMMANDER'S ACTIONS:

A. THE SENIOR MISSION COMMANDER, OR HIS OR HER DELEGEE, MUST ENSURE THE IMMEDIATE IMPLEMENTATION OF THIS MESSAGE. SENIOR MISSION COMMANDERS WILL ALSO ENSURE THAT ALL SOLDIERS WHO HAVE A QUALIFYING CONVICTION ARE NOTIFIED THAT IT IS UNLAWFUL TO POSSESS, SHIP,

TRANSPORT, OR RECEIVE FIREARMS AND AMMUNITION AS PROHIBITED IN THIS MESSAGE.

B. THE SENIOR MISSION COMMANDER, OR HIS OR HER DELEGEE, WILL IMPLEMENT A PROGRAM TO PERIODICALLY INFORM ALL SOLDIERS OF THE LAUTENBERG AMENDMENT, THE POLICY AS STATED IN THIS MESSAGE, AND ITS CONSEQUENCES. SENIOR MISSION COMMANDERS SHALL ENSURE THAT THIS MESSAGE IS PROMINENTLY DISPLAYED OUTSIDE UNIT ARMS ROOMS AND ALL FACILITIES IN WHICH GOVERNMENT FIREARMS OR AMMUNITION ARE STORED, ISSUED, DISPOSED, OR TRANSPORTED.

C. THE SENIOR MISSION COMMANDER, OR HIS OR HER DELEGEE, WILL NOTIFY SOLDIERS THAT THEY HAVE AN AFFIRMATIVE, CONTINUING OBLIGATION TO INFORM COMMANDERS OR SUPERVISORS IF THEY HAVE, OR LATER OBTAIN, A QUALIFYING CONVICTION AND THAT THE REVISED DD FORM 2760 (AVAILABLE AT [HTTP://WWW.DIOR.WHS.MIL/FORMS/DD2760.PDF](http://www.dior.whs.mil/forms/dd2760.pdf)) SHALL BE MADE AVAILABLE FOR THOSE SOLDIERS WHO COME FORWARD TO REPORT A QUALIFYING CONVICTION IN COMPLIANCE WITH THEIR OBLIGATION TO DO SO. SOLDIERS WILL ALSO 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, BASED ON A VIOLATION OF 18 U.S.C. ' 922,

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 600-8-104 AND AR 25-400-2. ALL PRE-COMMAND COURSES WILL EDUCATE COMMANDERS ON THEIR RESPONSIBILITIES UNDER THIS MESSAGE.

D. THE SENIOR MISSION COMMANDER, OR HIS OR HER DELEGEE, WILL ENSURE THAT POLICY AND PROCEDURES ARE IN PLACE TO ENFORCE THE LAUTENBERG

AMENDMENT IF PRIVATELY OWNED FIREARMS OR AMMUNITION ARE PERMITTED IN GOVERNMENT QUARTERS. THE SENIOR MISSION COMMANDER, OR HIS OR HER DELEGEE, WILL ALSO ENSURE THAT POLICY AND PROCEDURES ARE IN PLACE IN MORALE, WELFARE AND RECREATION (MWR) ACTIVITIES AND OTHER GOVERNMENT-SPONSORED OR -SANCTIONED ACTIVITIES ON THEIR INSTALLATION WHICH ENGAGE IN THE TRANSFER OR SALE OF FIREARMS OR AMMUNITION.

E. THE SENIOR MISSION COMMANDER, OR HIS OR HER DELEGEE, WILL ENSURE THAT PROCEDURES ARE IMPLEMENTED TO TRACK DOMESTIC VIOLENCE ARRESTS AND CONVICTIONS OFF-POST. THIS PROCEDURE SHOULD INCLUDE REGULAR COORDINATION WITH LOCAL LAW ENFORCEMENT AND JUDICIAL AGENCIES.

F. SOLDIERS WITH QUALIFYING CONVICTIONS MUST BE IDENTIFIED AND REPORTED TO ENSURE COMPLIANCE WITH LAW. 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 WHO HAVE OR MAY HAVE A QUALIFYING CONVICTION SHOULD BE REFERRED TO A LEGAL ASSISTANCE ATTORNEY. A LEGAL ASSISTANCE ATTORNEY WILL ALSO BE AVAILABLE TO ASSIST THE SOLDIER IN SEEKING EXPUNGEMENT OR PARDON OF A QUALIFYING CONVICTION. SOLDIERS WILL BE GIVEN A REASONABLE TIME TO SEEK EXPUNGEMENT OF OR TO OBTAIN A PARDON FOR A QUALIFYING CONVICTION AND MAY EXTEND UP TO ONE YEAR FOR THAT PURPOSE.

G. IF A SOLDIER HAS A QUALIFYING CONVICTION, OR IF THERE IS REASONABLE CAUSE TO BELIEVE THE SOLDIER HAS A QUALIFYING CONVICTION, THEN THE COMMANDER WILL IMMEDIATELY RETRIEVE ALL GOVERNMENT-ISSUED FIREARMS AND AMMUNITION AND ADVISE THE SOLDIER TO CONSULT WITH A LEGAL ASSISTANCE ATTORNEY FOR GUIDANCE ON LAWFUL DISPOSAL OR SALE OF THE PRIVATELY-OWNED FIREARMS AND AMMUNITION.

5. PERSONNEL POLICIES:

A. UTILIZATION POLICIES: COMMANDERS MUST DETAIL SOLDIERS WHOM THEY HAVE REASON TO BELIEVE HAVE A QUALIFYING CONVICTION TO MEANINGFUL DUTIES THAT DO NOT REQUIRE BEARING WEAPONS OR AMMUNITION. COMMANDERS MAY REASSIGN SOLDIERS TO LOCAL TABLE OF DISTRIBUTION AND ALLOWANCES

UNIT POSITIONS THAT DENY THEM ACCESS TO WEAPONS AND AMMUNITION. COMMANDERS WILL NOT APPOINT OR ASSIGN SOLDIERS WITH QUALIFYING CONVICTIONS TO LEADERSHIP, SUPERVISORY, OR PROPERTY ACCOUNTABILITY POSITIONS THAT WOULD REQUIRE ACCESS TO FIREARMS OR AMMUNITION. SOLDIERS WITH QUALIFYING CONVICTIONS ARE NOT AUTHORIZED TO ATTEND ANY SERVICE SCHOOL WHERE INSTRUCTION WITH FIREARMS OR AMMUNITION IS PART OF THE CURRICULUM. COMMANDERS WILL COUNSEL SOLDIERS THAT INABILITY TO COMPLETE SERVICE SCHOOLS MAY IMPACT FUTURE PROMOTION AND RETENTION.

B. MOBILIZATION/DEPLOYMENT POLICY: ALL SOLDIERS KNOWN TO HAVE, OR WHOM COMMANDERS HAVE REASONABLE CAUSE TO BELIEVE HAVE, A QUALIFYING CONVICTION ARE NOT MOBILIZATION ASSETS AND ARE NONDEPLOYABLE FOR MISSIONS THAT REQUIRE POSSESSION OF FIREARMS OR AMMUNITION.

C. ASSIGNMENT POLICY: SOLDIERS WITH A QUALIFYING CONVICTION ARE INELIGIBLE FOR OCONUS ASSIGNMENT. OCONUS-BASED ACTIVE ARMY AND ACTIVE GUARD RESERVE (AGR) SOLDIERS WITH QUALIFYING CONVICTIONS WILL COMPLETE THEIR PRESCRIBED TOURS. ALL OCONUS-BASED ACTIVE ARMY SOLDIERS (INCLUDING RESERVE SOLDIERS ON EAD) AND AGR SOLDIERS WITH HQDA-ISSUED ASSIGNMENT INSTRUCTIONS WILL CONTINUE TO COMPLY WITH THEIR ASSIGNMENT INSTRUCTIONS. SOLDIERS WILL NOT BE CURTAILED FROM

THEIR OCONUS ASSIGNMENTS. THEY WILL DEPART ON THEIR ESTABLISHED

DEROS. FOR THE PURPOSE OF THIS MESSAGE, OCONUS DOES NOT INCLUDE ALASKA, HAWAII, AND PUERTO RICO.

D. GENERAL RETENTION POLICY: NOTHING STATED HEREIN RESTRICTS A COMMANDER'S AUTHORITY TO INITIATE SEPARATION FOR A SOLDIER BASED ON THE CONDUCT THAT LED TO THE QUALIFYING CONVICTION OR FOR THE CONVICTION ITSELF. HOWEVER, A COMMANDER MAY MAKE REASONABLE EFFORTS TO ACCOMMODATE SOLDIERS WITH QUALIFYING CONVICTIONS CONSISTENT WITH THE LIMITATIONS OF THIS MESSAGE AND BASED ON THE NEEDS OF THE ARMY. DUE CONSIDERATION SHOULD BE GIVEN TO THE SOLDIER'S PARTICULAR SKILLS OR TRAINING. IF APPROPRIATE, SOLDIERS MAY BE TEMPORARILY ACCOMMODATED PENDING A BAR TO REENLISTMENT OR A LATER-INITIATED INVOLUNTARY SEPARATION. A SOLDIER'S INABILITY TO PERFORM CERTAIN MISSIONS DURING A SPECIFIC RATING PERIOD DUE TO A QUALIFYING CONVICTION MAY BE APPROPRIATE COMMENTS FOR EVALUATIONS AND EFFICIENCY REPORTS. THE DECISIONS OF ONE COMMANDER WILL NOT BIND THOSE OF A HIGHER OR SUBSEQUENT COMMANDER. THIS POLICY AND ADDITIONAL IMPLEMENTATION GUIDANCE WILL BE INCORPORATED IN AR 600-20 AND OTHER APPROPRIATE REGULATIONS.

E. ENLISTMENT RETENTION POLICY: ENLISTED SOLDIERS WITH A QUALIFYING

CONVICTION SHALL NOT BE GRANTED A WAIVER FOR ENLISTMENT OR REENLISTMENT AND ARE INELIGIBLE FOR THE INDEFINITE REENLISTMENT PROGRAM. SOLDIERS WITH QUALIFYING CONVICTIONS WHO HAVE REENLISTED FOR OPTIONS THAT REQUIRE A CONUS-BASED PCS WILL PROCEED TO THEIR NEW DUTY ASSIGNMENT. OCONUS SOLDIERS WITH QUALIFYING CONVICTIONS MAY RECEIVE NEW ASSIGNMENT INSTRUCTIONS FROM U.S. ARMY HUMAN RESOURCES COMMAND. ENLISTED SOLDIERS WITH QUALIFYING CONVICTIONS WHO HAVE REENLISTED FOR RETRAINING IN AN MOS WHERE INSTRUCTION INCLUDES WEAPONS OR AMMUNITION TRAINING WILL BE DELETED FROM ASSIGNMENT INSTRUCTIONS AND MAY SUBMIT A DA FORM 4187 THROUGH COMMAND CHANNELS FOR VOLUNTARY SEPARATION FROM THE ARMY.

F. OFFICER RETENTION: OFFICERS WITH QUALIFYING CONVICTIONS MAY REQUEST RELEASE FROM ACTIVE DUTY OR SUBMIT AN UNQUALIFIED RESIGNATION. RESERVE COMPONENT OFFICERS NOT ON ACTIVE DUTY MAY ALSO SUBMIT AN UNQUALIFIED RESIGNATION. RESERVE COMPONENT OFFICERS NOT ON ACTIVE DUTY MAY BE RECOMMENDED FOR INVOLUNTARY SEPARATION.

G. REPORTING REQUIREMENTS: THE "SANCTUARY" PROVISIONS OF 10 U.S.C. '1176, 10 U.S.C. '12686, 10 U.S.C. '12646, 10 U.S.C. '637(A), AND 10 U.S.C. ' 580(A) (4) (C), HAVE PRIORITY OVER THE SEPARATION PROVISIONS OF THIS MESSAGE.

(1) ACTIVE ARMY: ALL SOLDIERS IDENTIFIED WITH QUALIFYING CONVICTIONS WILL BE REPORTED TO HQDA USING THE ASSIGNMENT CONSIDERATION CODE (ASCO) L9 (LAUTENBERG AMENDMENT). REFER TO MILPER MESSAGE 02-165, DTG 231120Z MAY 02, FOR FURTHER GUIDANCE.

(2) RESERVE COMPONENTS. THE ARMY NATIONAL GUARD DIRECTORATE (NGB -ARH) WILL REPORT FOR ARMY NATIONAL GUARD. THE ARMY RESERVE COMMAND WILL REPORT FOR THE USAR. COMMANDER, U.S. ARMY HUMAN RESOURCES COMMAND, WILL SUBMIT ALL AGR AND INDIVIDUAL MOBILIZATION AUGMENTEE (IMA) MEMBER INPUT. THE IRR, STANDBY RESERVE, AND RETIRED RESERVE ARE NOT SUBJECT TO THIS REPORTING REQUIREMENT. E-MAIL REPORTS WILL BE SUBMITTED OF THE NUMBER OF SOLDIERS WITH QUALIFYING CONVICTIONS AND THE NUMBER OF SOLDIERS WHO ARE BELIEVED TO HAVE SUCH CONVICTIONS BIANNUALLY (15 JANUARY AND 15 JULY) BEGINNING 15 JANUARY 2004, TO HQDA, OFFICE OF THE DEPUTY CHIEF OF STAFF, G-1, AT: DAPE-MPE@HQDA.ARMY.MIL.

(3) UNIT STATUS REPORTING: COMMANDERS WILL CONTINUE TO ADD SOLDIERS

IDENTIFIED AS NONDEPLOYABLE UNDER THIS POLICY TO UNIT STATUS REPORTS (USR). PERSONNEL IDENTIFIED WILL BE ADDED TO THE NON-DEPLOYABLE TOTAL UNDER THE CODE LA IAW AR 220-1, CHAPTER 4, PARAGRAPH 10, SUB PARAGRAPH E (PSPER NON-AVAILABLE REPORT).

H. THIS MESSAGE AND ITS POLICIES ARE SUBJECT TO THE "SANCTUARY" PROVISIONS OF 10 U.S.C. '1176, 10 U.S.C. '12686, 10 U.S.C. '637(A), AND 10 U.S.C. ' 580(A)(4)(C).

I. EXPIRATION DATE OF THIS MESSAGE CANNOT BE DETERMINED.

J. POINTS OF CONTACT FOR HQDA ARE MR DEVINE AT DSN 225-7961, COMMERCIAL (703) 695-7961 OR EMAIL: JAMES.DEVINE@HQDA.ARMY.MIL, OR COL MANSKE AT DSN 225-7992, COMMERCIAL (703) 695-7992 OR EMAIL: ELTON.MANSKE@HQDA.ARMY.MIL.

EXPIRATION DATE CANNOT BE DETERMINED.

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