

INFORMATION PAPER

SUBJECT: Guidance on HQDA message 16 October 2003 SUBJECT: Final Implementation of the Lautenberg Amendment.

1. PURPOSE: To highlight important updates to HQDA guidance (Message, HQDA, 161400Z OCT 03, subject: Final Implementation of the Lautenberg Amendment) on the reporting of soldiers affected by the Lautenberg Amendment, to include deployment eligibility, assignment and retention of all Active Component, Reserve Component and National Guard soldiers.

2. SUMMARY: The Lautenberg Amendment to the Gun Control Act makes it unlawful for any person who has been convicted of a misdemeanor or felony crime of domestic violence to ship, transport, possess or receive firearms or ammunition. The amendment also makes it a crime for any soldier, including armorers and commanders, to issue a firearm to anyone they know, or have reason to believe, has a conviction for domestic violence. The M-60 machine gun and squad automatic weapons are considered individual weapons for the purpose of this law. However, the Lautenberg Amendment does not affect crew served weapons such as tanks, missiles and aircraft.

3. DEFINITIONS:

a. Effected soldiers: Those soldiers known to have, or whose commanders have reason to believe have, a “qualifying conviction” for a misdemeanor or felony crime of domestic violence.

b. Qualifying conviction: A person has a qualifying conviction if:

(1) The person was convicted, in state or federal court or any general or special court-martial, of a misdemeanor or felony crime and the offense has, as an element, the use or attempted use of physical force or threatened use of a deadly weapon;

(2) The convicted offender was, at the time of the offense, a current or former spouse, parent, or guardian of the victim, or a person with whom the victim shared a child, or a person who was living with the victim as a spouse, parent or guardian, or a person with whom the victim cohabited in an intimate relationship;

(3) The prosecution has not been deferred or the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense.

(4) Colorado law authorizes deferred sentences for persons who plead guilty to committing an act of domestic violence. Participation in this “Diversion Program,” administered

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by the El Paso County District Attorney's Office, requires a guilty plea and constitutes a qualifying conviction for purposes of the Lautenberg Amendment. The qualifying conviction exists for the duration of the Program, and upon successful completion the guilty plea is withdrawn and the charge is dismissed. Once the charges are dismissed there is no longer a "qualifying conviction" for purposes of the Lautenberg Amendment.

c. What does not qualify:

(1) Summary Court-Martial convictions, non-judicial punishment under Article 15 of the UCMJ, and deferred prosecutions from certain other states are not qualifying convictions.

(2) Pending charges of domestic violence are not qualifying convictions.

(3) A Case Review Committee (CRC) determination that allegations of abuse are substantiated does not mean that a soldier has a qualifying conviction. Commanders determine whether a qualifying conviction is the factual basis for substantiated abuse.

4. COMMANDER'S ADMINISTRATIVE INSTRUCTIONS: See attached Memorandum, OSJA 7th Infantry Division and Fort Carson, 17 Dec 03, subject: Responsibilities and Obligations for Final Implementation of the Lautenberg Amendment.

5. Commanders and staff requiring assistance with Lautenberg Amendment issues should contact their servicing Trial Counsel or the Administrative and Civil Law Division, at 526-0618. Soldiers requiring individual advice should contact the Legal Assistance Division of the Office of the Staff Judge Advocate at 526-5572.