



COMDTINST 10100.1
APR 14 2009

COMMANDANT INSTRUCTION 10100.1

Subj: COAST GUARD POLICY ON THE POSSESSION OF FIREARMS AND/OR
AMMUNITION BY COAST GUARD MILITARY PERSONNEL

Ref: (a) OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997
(P.L. 104-208, Title VI, Section 658, 110 Stat. 3009.371)

1. PURPOSE. This Instruction provides interpretative guidance and implementation direction to comply with the requirements imposed by the Lautenberg Amendment to the Gun Control Act of 1968 regarding the possession of firearms and/or ammunition by those Coast Guard members who have been convicted of a misdemeanor crime of domestic violence.
2. ACTION. Area, district and sector commanders, commanders of maintenance and logistics commands, Commander Deployable Operations Group, commanding officers of headquarters units, deputy/assistant commandant for directorates, Judge Advocate General, and special staff offices at Headquarters shall ensure that the provisions of this Instruction are followed. Internet release is authorized.
3. DIRECTIVES AFFECTED. None.
4. PROCEDURES. No paper distribution will be made of this Manual. Official distribution will be via the Coast Guard Directives System CD-DVD. An electronic version will be located on the websites located at CGWEB, <http://cgweb2.comdt.uscg.mil/CGDirectives/Welcome.htm>, and W WW website, <http://www.uscg.mil/directives>.
5. DISCUSSION.
 - a. Background. Reference (a) (The “Act”) contained a provision – the “Lautenberg Amendment” – that amended the Gun Control Act of 1968 to make it a felony for any person convicted of a “misdemeanor crime of domestic violence” to ship, transport, possess, or receive firearms or

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ammunition. This provision also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person, whom he or she knows or has reasonable cause to believe has been convicted of such a misdemeanor.

In addition, the “Act” also amended federal firearms laws so that government employees, including law enforcement and military personnel, who have been convicted of a “qualifying” misdemeanor would not be lawfully able to receive or possess firearms and ammunition required to perform their official duties. Violations of the “Act” are felonies punishable by imprisonment for up to ten years and a maximum fine of \$250,000.

b. Definitions:

- (1) “Misdemeanor crime of domestic violence” is defined as an offense that:
 - a. is a misdemeanor under federal or state law, and
 - b. has, as an element, 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 cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
- (2) Firearm: The term “firearm” means (a) any weapon (including a starter gun) which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; and (c) any firearm muffler or firearm silencer; or (d) any destructive device. The “Act” does not apply to the operation and maintenance of fixed or crew served weapons systems and ammunition.
- (3) Possession: For purposes of this Instruction, the term “possession” includes both “active possession” and “constructive possession,” whether authorized or unauthorized. Active possession of a firearm or ammunition exists when the firearm or ammunition is in the immediate possession of the person. Constructive possession exists when a person does not have actual possession but instead knowingly has the power and at a given time to exercise dominion and control over the firearm or ammunition, either directly or through others. Possession need not be exclusive but may be joint with others.
- (4) Qualifying conviction: The term “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 non-judicial punishment under Article 15, UCMJ or alternative civilian disposition arrangements, including deferred prosecutions. “Qualifying conviction” also does not include convictions that have been expunged or for which a military member has received a pardon. The Coast Guard will also apply this policy to felony convictions for domestic violence adjudged on or after the date of this memorandum.

- (5) Restraining order: For purposes of this instruction, the term “restraining order” applies to military protective orders or a civil court order which was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and includes a finding that such person represents a credible threat to the physical custody of such intimate partner or child.
6. APPLICABILITY OF THE ACT. The “Act” applies to all misdemeanor domestic violence convictions, including convictions that occurred at any time prior to or after the 30 September 1996 passage of the law. This is true regardless of whether the statute or ordinance under which a member was convicted specifically defines the offense as a domestic violence misdemeanor.
6. POLICY. Domestic violence is incompatible with Coast Guard service and contrary to our core values. It detracts from readiness and will not be tolerated. Protection of spouses and children from domestic violence is paramount. The Lautenberg Amendment furthers this end by denying perpetrators access to weapons following a conviction and for the duration of restraining orders; however, timely and effective intervention to prevent domestic violence remains a command responsibility executed with the assistance of the Coast Guard’s Family Advocacy Program. In addition to the actions directed below to comply with the Lautenberg Amendment, unit commanders, commanding officers and officers-in-charge shall continue to take all appropriate measures, to include restricting access to weapons, whenever they deem it necessary to protect military spouses and children from domestic violence.
7. PROCEDURES.
 - a. Accession Points: The Coast Guard Recruiting Command shall screen all applicants for enlisted or officer accession programs and will not access anyone who has a misdemeanor or felony domestic violence conviction, unless the applicant has been granted an expungement or pardon of the domestic violence conviction. All applicants shall complete and sign DD Form 2760 (Qualification to Possess Firearms or Ammunition). The DD Form 2760 will be made a part of the member’s permanent PDR.
 - b. Required screening. Commanding officers and officers-in-charge shall ensure that all members under their command complete and sign DD Form 2760 upon member reporting to the unit. Subsequent completion and submission shall be conducted annually at a minimum. The DD Form 2760 shall be included in the member’s PDR. Commands shall submit copies to SECCEN of all DD Form 2760’s in which a member reports that they have a qualifying conviction or when the member indicates that they “do not know”. Commands shall also ensure that all applicants are screened for positions or attendance at any training which requires or may require access to firearms or ammunition to ensure that no one is appointed to such a position if they have a qualifying conviction. Commanding officers and officers-in-charge may require any member to complete and sign DD Form 2760 upon demand.
 - c. Member reporting requirements. Members shall notify their supervisor if they have or believe they may have a qualifying conviction. Furthermore, members will immediately notify their supervisor if they receive a qualifying conviction at any time during their Coast Guard career. Members should be referred to a legal assistance attorney for the purpose of determining whether they have a qualifying conviction. Notification of a qualifying conviction shall be made using

DD Form 2760. When completing the DD Form 2760, providing false or fraudulent information, or failing to self report may be grounds for criminal and/or administrative proceedings to include disciplinary action under the Uniform Code of Military Justice. Military members shall also immediately notify their supervisor if they become the subject of a restraining order.

- d. Contracted Protective Forces. Commanding officers of facilities with contracted protective forces (e.g., civilian police, guard or security services) shall ensure that the Contracting Officer's Technical Representative (COTR) remind contractors of the "Act" and ascertains the actions taken or planned to maintain compliance with the "Act". Contracting Officers shall include the requirements of this Instruction and "Act" in solicitations, and resulting contracts, for protective forces. The COTR, on behalf of the contracting officer, shall ensure compliance with these requirements. The COTR is to coordinate in advance with the contracting officer concerning any new data deliverable or change in performance. At a minimum, the Coast Guard must be informed that the contractor is complying with the guidance contained in this Instruction.
- e. Issuance of firearms and ammunition. Commanding officers and officers-in-charge will ensure that persons under their command do not issue government-owned or privately-owned firearms or ammunition to persons whom they know or have reasonable cause to believe have been convicted of a misdemeanor crime or domestic violence. This prohibition also applies to members who are the subject of a restraining order or military protective order for the duration of the order. Personnel known to have such convictions will be advised both on the application of the "Act" and the manner in which they may effect lawful disposition arrangements for personally owned firearms and ammunition presently in government custody. This restriction applies to active duty and reserve members, civilian employees and contractors.
- f. Mandatory retrieval of firearms and ammunition. Commanding officers and officers-in-charge shall take steps to immediately retrieve government-owned firearms and ammunition from the custody of individuals known to have been convicted of misdemeanor crimes of domestic violence and will take steps necessary to deny these persons access to government-owned firearms and ammunition.
- g. Required Command Counseling. Enclosure (2) contains a sample CG-3307, Administrative remarks which will be used to counsel a member any time a military protective order or civilian restraining order is issued. Counseling shall also be completed, and documented per enclosure (3), upon learning of a qualifying conviction of domestic violence.
- h. Disposition of affected personnel. Commanding officers and officers-in-charge shall ensure that military personnel known to have been convicted of qualifying domestic violence misdemeanors are temporarily reassigned to duties that do not include either access to or possession of firearms or ammunition. The military member will have one year to obtain an expungement or pardon of the domestic violence conviction. If no expungement or pardon is obtained for the qualifying conviction, then the member may be allowed to complete his or her current enlistment and/or be discharged, separated or allowed to retire (if applicable) IAW Chapter 12 of the Personnel Manual, COMDTINST M1000.6 (series). The one year period authorized for the military member to obtain an expungement or pardon from the qualifying conviction, does not bar, delay, or suspend a command's authority or responsibility to consider and/or initiate administrative separation actions at any time IAW Chapter 12 of the Personnel Manual if the underlying act(s) of domestic violence

from which the qualifying conviction springs justify administrative separation. Steps may be taken to ensure the best use of military personnel discovered to have qualifying convictions, such as requesting a change of rating, reassignments, etc. Separation of military personnel shall comply with existing statutory military retirement sanctuaries (See 10 U.S.C. 1176(a) (regular and reserve members); 10 U.S.C. 637(a)(5) (regular officers); 10 U.S.C. 580(a)(4)(C) (regular warrant officers); 10 U.S.C. 12646(e)(1) (reserve commissioned officers); 10 U.S.C. 12686 (reserves on active duty). A member in any of these sanctuaries who has a “qualifying conviction” and would otherwise be separated under Coast Guard regulations shall be given meaningful duties that do not entail access to firearms or ammunition until they are retired upon first attaining eligibility.

- i. Affirmative and continuing obligation to report. Commanding officers and officers-in-charge shall advise all personnel of the provisions of this policy. All commands shall also post notices about the domestic violence amendment and this policy in all facilities where firearms or ammunition are stored, issued, disposed of, and transported. The notice shall include information that all personnel have an affirmative, continuing obligation to inform their supervisors if they have, or later obtain, a qualifying conviction or restraining order, and that any statements made on DD Form 2760 will not be used in a prosecution for violating the Gun Control Act.

8. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this directive and have been determined to be not applicable.

9. FORMS/REPORTS: The forms referenced in this Instruction are available in USCG Electronic Forms on the Standard Workstation or on the Internet: <http://www.uscg.mil/forms/>, CG Central at <http://cgcentral.uscg.mil/>, and Intranet at <http://hqssweb1.main.ads.uscg.mil/CGForms/>. DD Form 2760, Qualification To Possess Firearms or Ammunition, is available at: <http://www.dtic.mil/whs/directives/infomgt/forms/forminfo/forminfo2303.html>.

J. A. BRECKENRIDGE /s/
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Human Resources

- Encl: (1) DD Form 2760, Qualification to Possess Firearms or Ammunition
(2) Administrative Remarks, Sample CG-3307 for Restraining Order or Military Protective Order
(3) Administrative Remarks, Sample CG-3307 for Conviction of Misdemeanor Domestic Violence

QUALIFICATION TO POSSESS FIREARMS OR AMMUNITION		
PRIVACY ACT STATEMENT		
<p>AUTHORITY: 18 U.S.C. 922(g)(9); E.O. 9397.</p> <p>PRINCIPAL PURPOSE(S): To obtain information to determine if you have been convicted of a crime of domestic violence which would disqualify you from shipping, transporting, possessing or receiving either Government-issued or private firearms or ammunition and to determine if reassignment, reclassification, detail or other administrative action is warranted. Your Social Security Number is solicited solely for purposes of verifying your identity.</p> <p>ROUTINE USE(S): To the Department of Justice so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufacturers or dealers) to determine whether individuals are qualified to receive or possess firearms and ammunition.</p> <p>DISCLOSURE: Mandatory for all personnel who are required to certify. Failure to provide the information may result in (1) (military only) the imposition of criminal or administrative penalties for failing to obey a lawful order, and (2) (civilian only) the imposition of administrative penalties, to include removal from Federal service. However, neither your answers nor information or evidence gained by reason of your answers can be used against you in any criminal prosecution for a violation of Title 18, United States Code, Section 922(g)(9), including (military only) prosecutions under the Uniform Code of Military Justice, based on a violation of Section 922(g)(9), for conduct which occurred prior to the completion of this form. The answers you furnish and any information resulting therefrom, however, may be used against you in a criminal or administrative proceedings if you knowingly and willfully provide false statements or information.</p>		
SECTION I - INSTRUCTIONS		
<p>An amendment to the Gun Control Act of 1968 (18 U.S.C. 922) makes it a felony for anyone who has been convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. It is also a felony for any person to sell or otherwise dispose of a firearm to any person so convicted.</p> <p>The Department of Defense has, by policy, expanded the prohibitions contained in Title 18 Section 922(g)(9) to those military or civilian personnel who have felony convictions for crimes of domestic violence. Convictions of crimes of domestic violence do not include summary court-martial convictions, the imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions (or similar alternative dispositions) in civilian courts. Furthermore, a person shall not be considered as having committed a "crime of domestic violence" for purposes of the firearms restriction of the Gun Control Act unless all of the following elements are present:</p> <p>(1) the person was convicted of a crime;</p> <p>(2) the offense has as its factual basis the use or attempted use of physical force, or threatened use of a deadly weapon;</p> <p>(3) the convicted offender was at the time of the offense:</p> <p style="margin-left: 20px;">(a) a current or former spouse, parent or guardian of the victim,</p> <p style="margin-left: 20px;">(b) a person with whom the victim shared a child in common,</p>	<p>(c) a person who was cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or</p> <p>(d) a person who was similarly situated to a spouse, parent, or guardian of the victim;</p> <p>(4) the convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel;</p> <p>(5) if entitled to have the case tried by jury, the case was actually tried by jury or the person knowingly and intelligently waived the right to have the case tried by jury;</p> <p>(6) 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.</p> <p>If you have ever received a domestic violence conviction: (1) you may not possess any firearm or ammunition; and (2) you must return any Government-issued firearm or ammunition to your commander or immediate supervisor; and (3) you must take steps to relinquish possession of any privately owned firearms or ammunition. Furthermore, any previously issued authorization to possess a firearm or ammunition is revoked.</p> <p>If you have any questions, or you are uncertain if you have such a conviction, you may wish to contact a legal assistance attorney, if eligible, or a private attorney, at your own expense.</p>	
SECTION II - QUALIFICATION INQUIRY <i>(Complete and return to your commander or immediate supervisor within 10 days of receipt)</i>		
1. HAVE YOU EVER BEEN CONVICTED OF A CRIME OF DOMESTIC VIOLENCE AS DESCRIBED ABOVE: (Initial and date)		
YES	NO	I DON'T KNOW <i>(Provide explanation on reverse)</i>
2. IF YOU ANSWERED "YES" TO THE FIRST QUESTION, PROVIDE THE FOLLOWING INFORMATION WITH RESPECT TO THE CONVICTION:		
a. COURT/JURISDICTION	b. DOCKET/CASE NUMBER	
c. STATUTE/CHARGE	d. DATE SENTENCED (YYYYMMDD)	
3. CERTIFICATION. I hereby certify that, to the best of my information and belief, all of the information provided by me is true, correct, complete, and made in good faith. I understand that false or fraudulent information provided herein may be grounds for criminal and/or administrative proceedings, to include (if civilian) adverse action, up to and including removal, and (if military) disciplinary action under the Uniform Code of Military Justice. I further understand that I have a continuing obligation to inform my Commander or Supervisor should I be convicted of a crime of domestic violence in the future.		
a. NAME <i>(Last, First, Middle Initial)</i>	b. RANK/GRADE	c. SOCIAL SECURITY NUMBER
d. ORGANIZATION	e. SIGNATURE	f. DATE SIGNED <i>(YYYYMMDD)</i>

Sample CG-3307 for Restraining Order or Military Protective Order

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-3307 (Rev.10-08)	ADMINISTRATIVE REMARKS		
<p>Entry Type: Performance and Discipline (P&D - ##)</p> <p>Reference: (a) Coast Guard Policy on the Possession of Firearms and/or Ammunition by Coast Guard Military Personnel, COMDTINST 10100.1(series)</p> <p>Responsible Level: Unit</p> <p>Entry:</p> <p>(DATE): In accordance with reference (a), you are advised that as the subject of a _____(restraining order, military protective order) issued on _____(date), you are prohibited from accessing or possessing firearms or ammunition as explained in the Coast Guard Policy on the Possession of Firearms and/or Ammunition by Coast Guard Military Personnel, COMDTINST 10100.1 (series), for the duration of the order. You are advised that this prohibition is a violation of federal law and applies to personally owned firearms and ammunition as well as government owned firearms and ammunition. Possession of any firearm or ammunition, including those previously privately owned, for the duration of the order, is a violation of the law as contained in 18 U.S.C. Section 922 and if you are found to be in possession of a firearm, you may be prosecuted by the civilian authorities or punished under the Uniform Code of Military Justice.</p> <p style="text-align: center;">A. B. SEA, CAPT, USCG Commanding Officer</p> <p>(DATE): I acknowledge the above entry, and fully understand the restrictions and prohibitions described above.</p> <p style="text-align: center;">J. P. JONES</p>			
1. NAME OF PERMANENT UNIT		2. NAME OF UNIT PREPARING THIS FORM	
3. NAME OF MEMBER (Last, First, MI)	4. EMPLOYEE ID NUMBER	5. GRADE/RATE	6. PAGE 7

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Sample CG-3307 for Conviction of Misdemeanor Domestic Violence

U.S. DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG-3307 (Rev.10-08)	ADMINISTRATIVE REMARKS		
<p>Entry Type: Performance and Discipline (P&D - ##)</p> <p>Reference: (a) Coast Guard Policy on the Possession of Firearms and/or Ammunition by Coast Guard Military Personnel, COMDTINST 10100.1(series)</p> <p>Responsible Level: Unit</p> <p>Entry:</p> <p>(DATE): In accordance with reference (a), you are advised that as the result of a conviction for domestic violence on _____ (date), you are permanently prohibited from accessing or possessing firearms or ammunition as explained in the Coast Guard Policy on the Possession of Firearms and/or Ammunition by Coast Guard Military Personnel, COMDTINST 10100.1 (series). You are advised that this prohibition is federal law and applies to personally owned firearms and ammunition as well as government owned firearms and ammunition. Possession of any firearm or ammunition, including those previously privately owned, is a violation of the law as contained in 18 U.S.C. Section 922 and if you are found to be in possession of a firearm, you may be prosecuted by the civilian authorities or punished under the Uniform Code of Military Justice.</p> <p style="text-align: right;">A. B. SEA, CAPT, USCG Commanding Officer</p> <p>(DATE): I acknowledge the above entry, and fully understand the restrictions and prohibitions described above.</p> <p style="text-align: center;">J. P. JONES</p>			
1. NAME OF PERMANENT UNIT	2. NAME OF UNIT PREPARING THIS FORM		
3. NAME OF MEMBER (Last, First, MI)	4. EMPLOYEE ID NUMBER	5. GRADE/RATE	6. PAGE 7

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