
CONSEQUENCE OF CONVICTION VETERANS AND SOLDIERS



Robert E. Webb, Jr.
Milwaukee Trial Division
819 N. 6th Street
Milwaukee, WI

REFERENCES

- AR 635-200 Enlisted Separation Regulation
- AR 135-178 Army Reserves and National Guard Separation
-www.apd.army.mil
- NAVY-MILPERSMAN Section 1910
-www.jag.navy.mil
- AIR FORCE Instructions 36-3208
-www.afjag.af.mil

STATUS

- ACTIVE DUTY
- RESERVES (MOBILIZED)
- NATIONAL GUARD (STATE DUTY)

MILITARY CONVICTIONS

- GENERAL COURTS MARTIAL
- SPECIAL COURTS MARTIAL
- SUMMARY COURTS MARTIAL

DISCHARGE

- CHARACTERIZATION
 - DISHONORABLE DISCHARGE
 - BAD CONDUCT DISCHARGE (GCM)
 - BAD CONDUCT DISCHARGE (SPCM)
 - OTHER THAN HONORABLE
 - GENERAL UNDER HONORABLE
 - HONORABLE DISCHARGE

DISMISSAL/REDUCTION

- OFFICERS
 - CONFINED
 - DISMISSED
 - RELIEVED
- ENLISTED
 - CONFINED
 - LOSS OF RANK

ADMINISTRATIVE

- DRUG ARREST
 - GUN CONTROL ACT OF 1968
- ALCOHOL ARREST
 - LETTER OF REPRIMAND/PAY
- DOMESTIC VIOLENCE ARREST
 - LAUTENBERG AMENDMENT
- FELONY VS. MISDEMEANDOR

GUN Control Act of 1968

It shall be unlawful for any person: “who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.”

Overview Lautenberg Amendment

- The Gun Control Act of 1968
 - Denied Felons ability to possess firearms
 - Fugitives from justice
 - Unlawful user of control substances
 - Public Interest Exception
 - Exempted state and federal employees
 - Police Officers and Military Members
- The Violence Against Women Act of 1994
 - Protective/Restraining Orders

Overview cont'd

- The Lautenberg Amendment - 1996
 - Amended the Gun Control Act of 1968
 - Makes it a felony for anyone convicted of a “misdemeanor crime of domestic violence” to ship, receive, or possess firearms or ammunition
 - Revoked the public interest exception

Purpose of Lautenberg Amendment

- To get and keep firearms out of the hands of those individuals with domestic violence convictions.

Violence Against Women Act of 1994

- Prohibits a subject of a domestic violence restraining order from possessing firearms and ammunition
- 18 U.S.C. § 922(g)(8)
 - anyone subject to a qualifying restraining order cannot possess a firearm or ammunition
 - does not include significant others/dating relationship per Wis. Stat. 813.12(1)(ag)
 - 27 C.F.R. §178.11; Bureau of ATF, “Federal Firearms Regulations Reference Guide,” ATF P 5300.4, p. 152 (2000)

18 U.S.C. §922(d)(9)

- It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person ... has been convicted in any court of a misdemeanor crime of domestic violence.
-

18 U.S.C. §922(g)(9)

- It shall be unlawful for any person ... who has been convicted in any court of a ~~misdemeanor crime of~~ domestic violence, to ship or transport ..., or possess ..., any firearm or ammunition; or to receive any firearm or ammunition
-

18 U.S.C. §921(a)(33)

- "misdemeanor crime of domestic violence" means an offense that--
 - (i) is a misdemeanor under Federal or State law; and
 - (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon,
-

18 U.S.C. §921 (a)(33)

- “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 similarly situated to a spouse, parent, or guardian of the victim.”

“MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE”

Wis. Stat. 947.01: *“whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.”*

Does Wis. Stat. 947.01 trigger the ban?

- Open Letter to All State and Local Law Enforcement Officials by BATF
 - “All misdemeanors that involve the use or attempted use of physical force.”
 - “Whether or not the statute or local ordinance specifically defines the offense as a domestic violence misdemeanor”
 - *United States v. Lewitzke*, 176 F.3d 1022, 1025 (7th Cir. 1999)

Elements to trigger the Firearm Ban

- Conviction of a State or Federal Criminal Statute: *Wis. Stats: 813.12; 940.19(1); 940.20(1m); and 940.225 (1), (2) and (3); 947.01 and;*
- Offender is current or former spouse, parent or guardian of the victim; share a child or cohabitating or cohabitated; and persons “similarly situated” to a spouse, parent or guardian and;
- Factual basis must state an element of use or attempted use of physical force

What is a “Conviction” ?

- Determined by State or Federal law
- “Nolo Contendere”/No Contest pleas
 - same effect as a plea of guilty for sentencing but may not be considered as an admission of guilt for any other purpose.
- “Hold open” and Amendment to Disorderly Conduct
- Does not include deferred prosecution agreements pursuant to Wis. Stat. 971.37

Deferred Prosecution Agreements

- DPA does not trigger the firearm disability
- A guilty plea as a condition of the DPA that amends the criminal complaint to a lesser charge does trigger the firearm disability; if the plea contains an element of use or attempted use of physical force against the protected class of individuals after completion of the DPA.

STATUTORY EXCLUSION

- 18 U.S.C §921(a)(33)(B)(i)

A person shall not be convicted, unless:

- the client was represented by counsel, or knowingly and intelligently waived right to counsel
 - Entitled to a trial by jury, the case was tried by a jury, or
 - Client must have knowingly and intelligently waived right to trial, by guilty plea. *State v. Bangert*, 131 Wis.2d 246 (1986)
- *United States v. Akins*, 243 F.3d 1199 (9th Cir. 2001)

Relief from Disabilities

- Expunge the criminal conviction. *Wis. Stat. 977.01*
- Set Aside
- Client's criminal conviction is pardon.
- Client's civil rights were restored. *Wis. Stat. 304.078*

Restoration of Civil Rights

- “Person obtains a restoration of civil rights by serving out his or her term of imprisonment or otherwise satisfying his or her sentence.” *Wis. Stat. 304.078(2)*
- A civil right was not specifically restored by the department or other supervising agency. *See Wis. Stat. 941.29(a)*
- *United States v. Corrales*, 183 F.3d 1116 (9th Cir. 1999)

Cont'd

- Is a client's civil rights restored after a misdemeanor conviction?
- *Wis. Stat. 939.60:*
 - *A crime punishable by imprisonment in the Wisconsin state prisons is a felony.*
 - *Every other crime is a misdemeanor.*

Firearms Disabilities for Nonimmigrant Aliens

- It is unlawful for any person who is an alien illegally or unlawfully in the U.S. to ship or transport any firearm or ammunition in interstate or foreign commerce, or receive any firearm
- Possess any firearm or ammunition in or affecting commerce
- Public Law 105-277 Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999
- Enhanced enforcement of the general prohibition on nonimmigrant aliens possessing and receiving firearms