

**ASSISTANT SECRETARY OF DEFENSE**  
4000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-4000

FORCE MANAGEMENT 21 **NOV** 1997  
POLICY

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR OF ADMINISTRATION AND MANAGEMENT  
DIRECTORS OF DEFENSE AGENCIES  
DEFENSE PARTNERSHIP COUNCIL

SUBJECT: DoD Interim Policy for Implementation of Domestic Violence Misdemeanor  
Amendment to the Gun Control Act for Civilian Personnel

This directive-type memorandum provides interim DoD policy for implementing an amendment to the Gun Control Act of 1968 (18 U.S.C. § 922) for civilian employees, both appropriated and nonappropriated fund. On October 22, 1997, I issued a similar directive-type memorandum providing interim DoD policy regarding the implementation of this law for military personnel.

This amendment to the Gun Control Act makes it a felony for anyone who has been convicted of a misdemeanor crime of domestic violence to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. It is also a felony for any person to sell or otherwise dispose of a firearm to any person so convicted.

The law pertains to anyone who has ever been convicted of a domestic violence misdemeanor. The statute defines this as being 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, 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.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless

"(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

"(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

"(aa) the case was tried by a jury, or

"(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise,

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law under the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

Conviction of a "misdemeanor crime of domestic violence" does not include a summary court-martial conviction or imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions (or similar alternative dispositions) in a civilian court.

The domestic violence firearms law should not be construed to apply to major military weapons systems or "crew served" military weapons and ammunition (tanks, missiles, aircraft, etc.) absent an opinion from the Department of Treasury to the contrary. With respect to all DoD civilian personnel, the amendment shall be construed to apply outside United States territory as a matter of DoD policy.

You should ensure that supervisors and managers take reasonable steps to determine whether DoD civilian personnel have qualifying convictions. One approach would be to have each employee whose position requires or entails shipping, transporting, possessing, receiving, or disposing of firearms or ammunition, read and initial the attached or a similar memorandum, a copy of which should be provided to the employee. Please take steps to ensure that your personnel do not issue firearms or ammunition to DoD employees (including NAF employees) or other persons whom they know or have reasonable cause to believe have been convicted of a misdemeanor crime of domestic violence.

Affected organizations, including those with civilian law enforcement agents and employees who possess firearms or ammunition, shall take steps to meet their labor relations and partnership obligations on the implementation of this law and in accordance with existing personnel policies and procedures.

For civilian personnel found to have a qualifying conviction, you should retrieve all Government-issued firearms and ammunition and suspend their authority to possess firearms or ammunition. You should refrain from taking permanent adverse personnel action, using other than standard personnel procedures, against an employee based solely on a qualifying misdemeanor conviction for domestic violence. If practicable, consistent with mission needs and applicable laws and regulations, you may take interim steps to ensure the best use of civilian personnel discovered to have qualifying convictions.

This memorandum is effective immediately.

Francis M. Rush, Jr.

Acting Assistant Secretary of  
Defense

Attachments:

As stated

## **MEMORANDUM**

TO: All Civilian Employees Authorized to Possess Government-Issued  
Firearms and Ammunition

FROM: (Department Heads]

There has been a recent change in the law pertaining to possession of firearms or ammunition. On September 30, 1996, Title 18, United States Code, Section 922(g)(9) took effect, making it illegal for anyone who has been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition. "Misdemeanor crime of domestic violence" is generally defined as any offense -- whether or not explicitly described in a statute as a crime of domestic violence -- which has, as its factual basis, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by the victim's current or former domestic partner, parent, or guardian. The term "convicted" is generally defined in the statute as excluding anyone whose conviction has been expunged or been set aside, or has received a pardon. It also does not include nonjudicial punishment (Article 15, UCMJ action) or a summary court-martial conviction. A summary of the statute is attached. Please carefully review it.

This provision applies to persons convicted at any time prior to or after the

passage of the September 30, 1996 law. Moreover, there is no exemption for law enforcement officers and agents. If you have ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute, continued retention of any firearm or ammunition, whether Government-issued or privately owned, may subject you to felony criminal penalties including a sentence of imprisonment of up to ten years and a fine of up to \$250,000, as well as administrative action.

If you are affected by this statute: (1) you may not possess any firearm or ammunition; and (2) you must immediately return any Government-issued firearm or ammunition to [your supervisor]. Furthermore, since the statute makes it illegal for you to possess any firearm or ammunition, any previously issued authorization to possess a firearm or ammunition is hereby revoked.

In addition, you have an affirmative duty on an ongoing basis to notify your supervisor if you have or believe you may have a qualifying conviction. Moreover, you are required to immediately notify your supervisor if you receive a qualifying conviction in the future.

If you have any questions, you may contact [your immediate supervisor, agency ethics officer, union representative], or private attorney.

Initial and date