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Domestic Violence Offender Gun Ban

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This article is about a United States law. For other related topics, see [Outline of domestic violence](#).

The **Domestic Violence Offender Gun Ban** often called "**the Lautenberg Amendment**" ("Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence", Pub.L. 104–208^[1] 18 U.S.C. § 922(g)(9)^[2]) is an amendment to the Omnibus Consolidated Appropriations Act of 1997 enacted by the 104th United States Congress in 1996, which bans access to firearms by people convicted of crimes of domestic violence. The act is often referred to as "the Lautenberg Amendment" after its sponsor, Senator Frank Lautenberg (D - NJ).

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Summary [edit]

The act bans shipment, transport, ownership and use of guns or ammunition by individuals convicted of misdemeanor domestic violence, or who are under a restraining (protection) order for domestic abuse that falls within the criteria set by 18 U.S.C. § 922(g) (8). The act also makes it unlawful to knowingly sell or give a firearm or ammunition to such persons.

The definition of 'convicted' can be found in the chapter 18 U.S.C. § 921(a)(33)(B)(ii) and has exceptions:

- (33) (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 of 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.

Court history [edit]

This law has been tested in federal court with the case *United States v. Emerson* (No. 99-10331) (5th Cir. 2001).^[3] See also U.S. v. Emerson, 231 Fed. Appx. 349 (5th Cir. 2007) (Same defendant seeking review of judgment). The case involved a challenge to the Constitutionality of 18 U.S.C. § 922(g)(8)(C)(ii), a federal statute that prohibited the transportation of firearms or ammunition in interstate commerce by persons subject to a court order that, by its explicit terms, prohibits the use of physical force against an intimate partner or child. *Emerson* does not address the portion of the Lautenberg Amendment involving conviction for misdemeanor domestic violence. It was initially overturned in 1999 for being unconstitutional, but that case was reversed upon appeal in 2001.^[citation needed]

The case *Gillespie v. City of Indianapolis, Indiana*, 185 F.3d 693 (7th Cir. 1999) also challenged this law, and the case was rejected.^[citation needed] The *ex post facto* aspects of the law were challenged with:

- United States v. Brady*, 26 F.3d 282 (2nd Cir.), cert. denied, 115 S.Ct. 246 (1994) (denying *ex post facto* challenge to a 922(g)(1) conviction) and
- United States v. Waters*, 23 F.3d 29 (2nd Cir. 1994) (*ex post facto* based challenge to a 922(g)(4) conviction).

Both of the challenges were denied.

Likewise this law was invoked in *United States v. Jardee* ^[4] where it was ruled that the threat of being subjected to the gun ban did not turn an otherwise "petty" crime into a "serious" one requiring a jury trial.

Most recently, *United States v. Castleman* (2014) challenged the application of the law to misdemeanor convictions which did not involve "the use or attempted use of physical force". In a 9-0 decision, the United States Supreme Court held that Castleman's conviction of "misdemeanor domestic assault" did qualify as a "misdemeanor crime of domestic violence" under Tennessee state law. Specifically holding that the "'physical force" requirement is satisfied by the degree of force that supports a common-law battery conviction — namely, offensive touching", thereby preventing him from possession of firearms. ^[5]

See also [edit]

- Gun Control Act
- Firearm Owners Protection Act

External links [edit]

- Department of Justice Criminal Resource Manual
- The Consumer Law Page Article
- Misdemeanor Crime of Domestic Violence archive
- The Emerson Case

References [edit]

- ↑ "PUBLIC LAW 104-208"
- ↑ "Criminal Resource Manual 1117 Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence"
- ↑ "FindLaw for Legal Professionals - Case Law, Federal and State Resources, Forms, and Code"
- ↑ "Order striking jury trial" (PDF). Retrieved 2010-03-13.
- ↑ *United States v. Castleman* (2014) , March 26, 2014.

Categories: United States federal criminal legislation | United States federal firearms legislation | 1997 in law

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