



Texas Military Department

Instruction

TMDI 5210.02

18 August 2021

NGTX-JHR

SUBJECT: Texas Military Department (TMD) Guidance on Reporting of Those Affected by 18 United States Code (USC) 922, Firearms and Ammunition Possession Prohibition

1. **PURPOSE.** This directive establishes guidance for implementation of National Guard Bureau (NGB) memorandum issued 04 August 2020 with the subject line: Notification to Soldiers Affected by 18 USC 922, Firearms and Ammunition Possession Prohibition
2. **REFERENCES.** See enclosure 1.
3. **APPLICABILITY AND SCOPE.** This directive applies to all uniformed members of the Texas Army National Guard (TXARNG) and the Texas Air National Guard (TXANG).
4. **POLICY.**
 - a. In accordance with Title 18 USC Section 922(g)(3) which prohibits the possession, purchase or transferring of firearms and ammunitions by unlawful users of/addicted to controlled substances, unit commanders will advise all service Members affected by prohibitions/disabilities under section 922.
 - b. For illicit drug use, advise Service Members affected by Section 922 using the following statement. TXARNG will utilize DA Form 4856 Developmental Counseling Form. "AS YOU ARE AN UNLAWFUL USER OF A CONTROLLED SUBSTANCE IN ACCORDANCE WITH 18 USC 922(g)(3), YOU ARE NOW PROHIBITED BY 18 USC 922 FROM PURCHASING, POSSESSING, RECEIVING, OR SHIPPING ANY PERSONALLY OWNED FIREARMS OR AMMUNITION FOR ONE (1) YEAR FROM THE LATER OF, THE DATE THE DRUG OFFENSE WAS DISCOVERED (POSITIVE UNRINIALYSIS) OR THE DATE OF ADJUDICATION OF YOUR DRUG OFFENSE (NON-JUDICIAL PUNISHMENT OR COURT-MARTIAL). VIOLATIONS OF 18 USC 922 ARE A FEDERAL CRIME. YOU MUST DIVEST YOURSELF OF ANY PERSONALLY OWNED FIREARMS AND AMMUNITION BY DOING THE FOLLOWING: TRANSFER TO A FEDERAL FIREARMS LICENSED DEALER, GIVE TO A LOCAL BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS (ATF) OFFICE AND COMPLETE AN ABANDONMENT FORM, OR TRANSFER OR SELL THE FIREARM TO A NON-PROHIBITED THIRD PARTY. PROHIBITED THIRD PARTIES INCLUDE ANYONE PROHIBITED UNDER SECTION 922 AND ANYONE EMPLOYED

BY YOU OR RESIDING WITH YOU. YOU HAVE BEEN PROVIDED WITH A COPY OF THE FREQUENTLY ASKED QUESTIONS ON DIVESTING FIREARMS.”

c. For prescription medication use, state: “IN ACCORDANCE WITH 18 USC 922(g)(3), YOU ARE ORDERED TO IMMEDIATELY PROVIDE ANY PRESCRIPTIONS POTENTIALLY ASSOCIATED WITH THIS POSITIVE URINALYSIS TO YOUR CHAIN OF COMMAND. FAILURE TO PROVIDE A VALID PRESCRIPTION BY THE CLOSE OF THE NEXT UNIT TRAINING ASSEMBLY MAY CAUSE YOUR POSITIVE RESULT TO BE REPORTED FOR ENTRY INTO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NCIS). ONCE ENTERED INTO NCIS, YOU WILL BE PROHIBITED BY 18 USC 922 FROM PURCHASING, POSSESSING, RECEIVING, OR SHIPPING ANY PERSONALLY OWNED FIREARMS OR AMMUNITION FOR ONE (1) YEAR FROM THE LATER DATE OF, THE DATE THE DRUG OFFENSE WAS DISCOVERED (POSITIVE URINALYSIS) OR THE DATE OF ADJUDICATION OF YOUR DRUG OFFENSE (NON-JUDICIAL PUNISHMENT OR COURT-MARTIAL). VIOLATIONS OF 18 USC 922 ARE A FEDERAL CRIME. YOU MUST DIVEST YOURSELF OF ANY PERSONALLY OWNED FIREARMS AND AMMUNITION BY DOING THE FOLLOWING: TRANSFER TO A FEDERAL FIREARMS LICENSED DEALER, GIVE TO A LOCAL BUREAU OF ALCHOL, TOBACCO, AND FIREARMS (ATF) OFFICE AND COMPLETE AN ABANDONMENT FORM, OR TRANSFER OR SELL THE FIREARM TO A NON-PROHIBITED THIRD PARTY. PROHIBITED THIRD PARTIES INCLUDE ANYONE PROHIBITED UNDER SECTION 922 AND ANYONE EMPLOYED BY YOU OR RESIDING WITH YOU. YOU HAVE BEEN PROVIDED WITH A COPY OF THE FREQUENTLY ASKED QUESTIONS ON DIVESTING FIREARMS.”

5. DEFINITIONS. None.

6. RESPONSIBILITIES.

a. Drug Testing Coordinators will ensure mass dissemination of guidance and offer assistance in maintaining a medical review process that is in line with the standards set forth in Army Regulation (AR) 600-85 and Air Force Manual (AFMAN) 44-197.

b. Within seven days from receiving a positive result, Army Substance Abuse Program (ASAP) Staff will notify the appropriate commander, the Medical Review Officer (MRO) and the Office of the General Counsel. Air Drug Demand Reduction (ADDR) Staff will notify the appropriate commander, MRO, and Wing Staff Judge Advocate.

c. ASAP/ADDR Staff will seek a final prescription review from the Medical Review Officer (MRO) 24 hours prior to reporting illicit and unauthorized prescription positive results to the National Guard Bureau (NGB) for National Incident Criminal Background Check System (NICS) reporting.

d. Medical Review Officers will report their findings to ASAP/ADDR Staff within 90 days of receiving a request for a positive drug test review request. An MRO will, at the request of the ASAP/ADDR Staff, provide a final review prior to reporting illicit and unauthorized prescription positive results to the NGB for NICS reporting.

e. Service Members who violate section 922 by possessing, purchasing, or transferring firearms and ammunition may be criminally liable for committing a federal crime. Violation of section 922(g) is a federal felony offense. Those subject to this provision, may seek advice from Army Trial Defense Services (TDS)/Air Area Defense Counsel (ADC) for additional information concerning the implications of this provision of law. Service Members may seek the advice of civilian counsel at their own expense.

f. Commanders will encourage counseled Soldiers and Airmen who tested positive for a prescription drug to fill out and return DD 2870.

g. Commanders will not store personally owned firearms in unit arms rooms without first consulting with the Office of the General Counsel or their servicing Command Judge Advocate. Commanders and/or the chains of commands are not authorized to provide legal advice on the implications of this law to Service Members.

7. INFORMATION REQUIREMENTS. N/A.


8. RELEASABILITY. Unlimited.

9. EFFECTIVE DATE. This directive is effective immediately and will expire two years from the date of publication unless sooner rescinded or superseded.

10. POINT OF CONTACT. Point of contact for this policy is the J1, Director of Manpower and Personnel at 512-782-6725.

2 Encls

- 1. References
- 2. Frequently Asked Questions


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DISTRIBUTION:

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GS-13
J1 - Issuance



TMD
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Enclosure 1

References.

18 USC 922(g)(3), Unlawful User of/Addicted to Controlled Substances, 04 Dec 2015

AR 600-85, The Army Substance Abuse Program, 28 Nov 2016

Air Force Manual (AFMAN) 44-197, Air Force Civilian Demand Reduction Program, 24 Jan 2019.

NGB Memorandum, Subject: Notification to Soldiers Affected by 18 USC 922, Firearms and Ammunition Possession Prohibition, dated 04 Aug 2020

DD Form 2870, Authorization for Disclosure of Medical or Dental Information, 01 Dec 2003.

Enclosure 2

Frequently Asked Questions

1. What are my options for divesting myself of firearms that I am no longer allowed to possess?

A: Your primary options to divest firearms are: return the firearm to a Federal Firearms Licensee (FFL); abandon the firearm to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF <https://atf.gov>); or transfer/sell the firearm to a third party (cannot be employed by you or reside with you) through an FFL.

2. Can I lawfully transfer my firearm to an individual who lives in another state?

A: Generally, for a person to lawfully transfer a firearm to an unlicensed person who reside out of State, the firearm must be shipped to a Federal Firearms Licensee (FFL) within the recipient's State of residence. The recipient will be able to receive the firearm from the FFL upon completion of an ATF Form 4473 and a background check. More information is available on the process at the ATF website at www.atf.gov and <http://www.atf.gov/firearms/faq/unlicensed-persons.html>

3. Can I lawfully ship firearms directly to a Federal Firearm Licensee in any State through the mail?

A: Any person may ship firearms directly to a licensee in any State. Handguns and other concealable firearms are not to be mailed through the United States Postal Service and must be shipped via private common or contract carrier.

4. Can I store my firearms in the unit arms room?

A: Commanders may allow Soldiers to store firearms in the unit arms room during a term of disability (i.e. a one-year prohibition due to a positive urinalysis or referral of felony charge to General Court-Martial)