

New Developments

Administrative & Civil Law

Inquiries Regarding Off-Post Gun Ownership

On 2 January 2013, President Barack Obama signed into law the 2013 National Defense Authorization Act (NDAA), Public Law 112-239.¹ Its ostensible purpose, as indicated by its full title, is “to authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.”²

Among its voluminous provisions is section 1057, which specifically amends section 1062(c) of the Ike Skelton National Defense Authorization Act of 2011, Public Law 111-383.³ Importantly, section 1057

Authorize[s] a health professional that is a member of the Armed Forces or a civilian employee of the Department of Defense or a commanding officer to inquire if a member of the Armed Forces plans to acquire, or already possesses or owns, a privately-owned firearm, ammunition, or other weapon, if such health professional or such commanding officer has reasonable grounds to believe such member is at risk for suicide or causing harm to others.⁴

Therefore, section 1057 clarifies and delineates the limits under which commanders operate when dealing with off-post gun ownership by servicemembers who may cause harm to themselves or others.⁵

Under section 1062(a) of the 2011 NDAA, the Secretary of Defense was proscribed from prohibiting, issuing requirements relating to, collecting, or recording *any* information relating to the lawful acquisition, possession, ownership, carrying, or other use of a privately owned firearm, privately owned ammunition, or another privately owned weapon by a member of the Armed Forces or civilian employee of the Department of Defense (DoD) on non-DoD owned or controlled property (i.e., issuing orders regarding

off-post ownership of firearms).⁶ The Secretary of Defense was also called upon to destroy any such records then in existence within ninety days of the 2011 NDAA enactment.⁷ In contrast, section 1062(c) allowed for the creation and maintenance of records relating to or regulating the possession, carrying, or other use of firearms by servicemembers when engaged in their official duties, while wearing the uniform, or with respect to matters “relating to an investigation, prosecution, or adjudication of an alleged violation of law . . . including matters related to whether a member of the Armed Forces constitutes a threat to the member or others.”⁸

Section 1057 clarifies and expands the final clause of section 1062(c).⁹ It does so by explaining:

(1) only inquiries (not records) may be made regarding off-post firearms;

(2) who may make these inquiries (commanders, health professionals that are members of the Armed Forces, or health professions that are civilian employees of the DoD);

(3) when these inquiries may be made (when the health professional or commander has reasonable grounds to believe the servicemember is at risk for suicide or causing harm to others); and

(4) what may be the subject of an inquiry (whether the servicemember plans to acquire, already possesses, or owns a privately owned firearm, ammunition, or other weapon).¹⁰

Section 1057 does not provide a commander the ability to prohibit the purchase of off-post firearms or to order their confiscation in the event a servicemember is perceived to be a danger to himself or others.¹¹ However, if a commander has knowledge that a servicemember owns or possesses

¹ See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632, 1632–1714.

² *Id.*

³ See § 1057, 126 Stat. at 1938 (“Rule of construction relating to prohibition on infringing on the individual right to lawfully acquire, possess, own, carry, and otherwise use privately owned firearms, ammunition, and other weapons.”).

⁴ *Id.*

⁵ *Id.*

⁶ See Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Pub. L. No. 111-383, § 1062(a), 124 Stat. 4137, 4363.

⁷ See *id.* § 1062(b), 124 Stat. at 4363.

⁸ See *id.* § 1062(c), 124 Stat. at 4363 (emphasis added).

⁹ See *id.* § 1057, 126 Stat. at 1938.

¹⁰ *Id.*

¹¹ *Id.*

firearms at his off-post residence, the commander maintains the inherent authority to order the servicemember to relocate on-post until his mental state can be fully ascertained.¹²

Therefore, section 1057 provides commanders some flexibility when dealing with issues associated with servicemember distress balanced against constitutional rights.

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¹² See generally U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY ch. 4 (18 Mar. 2008) (RAR, 20 Sept. 2012).