

# Defining Dishonor in the Gun Control Act

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# Veterans and Guns

- 51% of veterans report gun ownership
  - Male sex, conservative political ideology, rural residence, home ownership, cumulative trauma burden, and alcohol use/disorder strongest positive association with gun ownership in veteran community (Fischer et al. *Firearm Ownership Among a Nationally Representative Sample of U.S. Veterans*, Am. J. Preventative Med. 2023)
- Mass shootings and veterans

# The Gun Control Act of 1968 and Veterans

## 18 U.S.C. § 922 – Unlawful Acts

(g) It shall be unlawful for any person--  
(6) who has been discharged from the  
Armed Forces **under dishonorable  
conditions**;

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.

# Military Discharges – Punitive Discharges

(RCM 1003(8))

- Dishonorable Discharge
  - Conditions of dishonor
  - GCM only
  - Usually civilian felony equivalent OR
  - Military offenses requiring severe punishment
- Dismissal
  - DD for Officers
- Bad Conduct Discharge
  - Less severe than DD
  - Bad-conduct rather than serious offense
  - Repeated minor offense warranting punitive separation

# Military Discharges – Administrative Separation and Characterization of Service

(DODINST 1332.14)

- Honorable
  - Service meets standards of acceptable conduct and performance
- General (Under Honorable Conditions)
  - Honest and faithful service, positive aspects of performance outweigh negative
- Other Than Honorable
  - One or more significant departures from expectations
    - Assault, abuse of position, disregard for superior authority, endangering NatSec/health and wellness of fellow servicemembers or other persons

# The GCA Revisited and *Jimenez*

There are two other forms of “punitive separation”: a “dismissal,” which is reserved for commissioned officers, and a “bad-conduct discharge,” which is generally for less serious offenses. The legislative history of Section 922(g)(6) suggests that all of these discharges as well as any other discharge “on conditions less than honorable” were meant to be included. Because Jimenez was dishonorably discharged, we focus on that form of separation. We leave it up to future courts to determine which others fall within the meaning of “discharged from the Armed Forces under dishonorable conditions.”

- United States v. Jimenez, 895 F.3d 228, 237 (2d Cir. 2018) (internal citations omitted)

# The GCA History Continued

18 U.S.C. 922(g)(6)

- Russell Long, the original GCA, and “other than honorable conditions”
- Olin Teague, and an amendment to “conform the description of concerned veterans under [the GCA] with the description of veterans eligible for veterans’ benefits” under 38 U.S.C. § 101(2)

# “Dishonorable Conditions” & “Veterans”

(38 U.S.C. § 101(2), 38 C.F.R. § 3.12)

- The term “veteran” means a person who served in the active military, naval, or air, or space service, and who was discharged or released therefrom under **conditions other than dishonorable**” 38 U.S.C. § 101(2)
- “Conditions other than dishonorable” defined at 38 C.F.R. § 3.12
  - Dishonorable discharge
  - Conscientious objectors
  - Any GCM sentence
  - Deserter
  - Alien requesting release during period of hostilities
  - Discharge (other than honorable conditions) resulting from AWOL period 180 days or more
  - Discharge (other than honorable) in lieu of trial (regulatory bar)
  - Mutiny, espionage, or spying (regulatory bar)
  - Offenses involving moral turpitude (generally conviction of a felony)
  - Willful and persistent misconduct
    - Minor misconduct w/in 2 years; major misconduct w/in 5 years
      - Minor=not punishable by DD or confinement 1yr+



# “Dishonorable Conditions” and “Veterans” Continued

*Garvey v. Wilkie*, 972 F.3d 1333,  
1337-39 (Fed. Cir. 2020)

- Congressional history in GCA tracks that of G.I. Bill and subsequent legislation establishing definition of “veteran” and “dishonorable condition.”
- Congress chose to use “dishonorable conditions” instead of “dishonorable discharge,” which is a term of art in the military.
- Failure to receive a DD at a GCM does not preclude finding of “dishonorable conditions.”

# Summary & Questions: “Dishonorable Conditions” in the GCA

- 18 U.S.C. § 922(g)(6) prohibits firearm possession by those discharged from the Armed Forces under “dishonorable conditions”
- Common analysis that “dishonorable conditions” mean “dishonorable discharge” are likely mistaken
  - Statutory interpretation and comparison to VA statutes
  - Legislative history indicating symmetry with definition of “veteran”
- Impact on veteran gun ownership
- Next big question: Constitutionality of interpretation post-*Bruen*?

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Thank you for your service, and for your time today!

