

# MILITARY DIVORCE GUIDE

HOW TO SURVIVE  
DIVORCE IN THE  
MILITARY

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# **OPERATION DIVORCE: HOW TO PREPARE**

Divorce is a difficult process. A part of your life is coming to an end and you're going to face some challenges. Luckily, the military has given you some tools that will be useful. Much like using the military decision making process or a risk assessment tool to address a problem, the best way to get through a divorce is to be prepared and have a plan. It is important that you step away from your emotions and take the time to look at your divorce strategically. Define the things that are important to you, identify what's at risk, establish your desired outcome, and recognize the limits of an acceptable outcome. In most cases you will have to accept some losses. Divorce is never two people walking away with everything they both want.

This guide will provide valuable information to help you plan your approach to your divorce. Try to be objective and clear about your goals and, like with any mission, be ready to adapt to changes. It will also direct you to resources for more information. If you identify potential issues, it is smart to use any resource available to you to get a clear picture of how to address the issue.

This divorce guide has been prepared for military families: for the husbands, wives, mothers, and fathers who serve our country. This guide will explain many common questions about divorce, such as: child custody, child support, alimony, and the federal and military laws that apply when service members get divorced.

While this guide provides an overview of the divorce process, it is not a substitute for legal representation. You should speak with a Washington State divorce lawyer or an attorney in the correct venue for your situation, to get advice about your specific circumstances. If you need a Washington divorce lawyer, we are here to help. You can call us anytime at (877) 866-7393 to speak with an experienced divorce attorney who understands your situation, or go to our website [DivorceLawyersForMilitary.com](http://DivorceLawyersForMilitary.com).

# **JURISDICTION AND STATE LAW**

Divorce for military members is still handled in local civilian courts, even if you live on a military installation. State laws control all aspects of the divorce of a service member, unless a specific federal law or regulation requires otherwise. State laws determine parenting plans, custody, visitation, child support, spousal support, and property and debt division.

Military lawyers (JAG Corps) may advise service members in legal matters, but will not represent service members in a divorce. They can help with matters like an emergency revocation of a Power of Attorney. JAG officers can also notarize separation agreements that outline agreed division of assets between two parties and they can provide advice. They cannot be your legal representative in a civilian courtroom. If you contact your JAG office they can tell you what assistance they can provide for your situation. Private legal counsel must be retained if you decide to use a lawyer.

As a member of the armed forces, you have rights and responsibilities under the Uniform Code of Military Justice. While there are other issues in life you may resolve through the military court system, divorce won't be one of them.

## **WHERE CAN I GET DIVORCED?**

In order for a court to hear a case, it must have jurisdiction. This means that the court has authority over the parties in the matter and the power to decide issues in the case. In many divorce cases, jurisdiction is established by one of the parties being a resident of the state.

Some states, such as Washington, have an exception for service members stationed on military bases within the state. If you or your spouse is a service member stationed in Washington, your divorce can be heard in Washington family court.

Jurisdiction is an important legal component to filing for divorce. If you have children and your spouse decides to leave Washington and take the kids without your approval, you should file immediately. Every day that your kids are not in the state is a day closer to Washington courts losing jurisdiction over them. The same is true if you are deployed. An attorney can file for you while you are out of the country to keep the divorce in Washington.

To summarize, your divorce can be heard in Washington if either party in the case is one of the following:

- A resident of Washington
- A service member stationed in Washington
- Married to someone who is a resident of Washington

## **SHOULD I GET DIVORCED IN WASHINGTON?**

As a member of the armed services, you may have a choice regarding where you file for divorce. If you have that opportunity, Washington State law offers many benefits you should consider. Unlike other states, child support is calculated based on a set formula using both parents' incomes. Washington law does not default child custody to mothers. There is also a unique law allowing members of the military to assign their visitation time to another person while they are deployed.

# **THE DIVORCE PROCESS**

## **DIVORCE PETITION**

The divorce process formally starts when one spouse files paperwork with the family court. In the state of Washington, the technically correct term for divorce is Dissolution of Marriage. The legal document that starts a divorce is called a Petition for Dissolution of Marriage.

This legal document must be correctly completed and filed at the superior court in the proper county, usually where you re-side. It's important to be sure that the documents are being filed in the correct location. A copy of the filed petition must also be served on (officially provided to) the other spouse, who must then formally respond in writing to the information in the petition.

Washington is a No-Fault Divorce state. The only grounds for dissolution of marriage, in Washington, are Irreconcilable Breakdown of the Marital Relationship. There is no need to claim or prove marital misconduct.

Once filed, the divorce cannot be finalized until after a 90-day waiting period has elapsed. If the parties reach agreement on all the issues involved in the divorce, and the proper documents are filed with the court, a judge will order the marriage dissolved.

## **TEMPORARY ORDERS**

During the 90-day waiting period, the court will enter Temporary Orders. These court orders control temporary child custody and child visitation, child support, spousal support, and property & debt division. Temporary orders can also be used to protect bank accounts and other financial investments.

The divorce can be finalized after 90 days IF the parties reach agreement on all the issues involved in the divorce. However, you should be aware that most cases take more than 90 days to reach agreement.

The temporary orders stay in effect until the dissolution (divorce) is finalized. If you have to go to trial, the judge will decide on the issues that the parties have not been able to agree on. Most decisions made by the judge during the divorce process, and at the time of trial, will rely heavily on the temporary orders that have been in place since early in the divorce process.

Temporary orders are important and should not be taken lightly. They set the tone for the entire process, including some of the most important issues involving children and finances. You should work to get the temporary orders as close as possible to what you hope the final terms of your divorce to be.

## **AGREEMENT, MEDIATION, OR TRIAL**

If agreement cannot be achieved, the court will schedule a settlement conference or mediation to assist in reaching a compromise agreement. If the parties are still not able to agree to all the terms of the divorce, the court will schedule a trial.

## **DIVORCE DECREE**

At the end of the proceeding the court will issue a Decree of Dissolution of Marriage. This document contains the final rulings of the court. Changing the terms of this decree requires a formal divorce modification, which happens very rarely. Do not expect that you can easily change the terms of your divorce at a later date.

# **MANAGING CUSTODY AND VISITATION**

While divorce ends a marriage, it doesn't end your bond with your children, or your right to raise them. As a parent and a soldier, you serve your country to keep America safe for those you love the most. There is nothing more important than spending time with your children. Our law firm is dedicated to helping military parents get the custody and visitation they deserve.

## **CUSTODY CHALLENGES**

Your military service duty may require you to be outside the state or even the country for extended periods of time. If your deployment involves prolonged, frequent, or unpredictable periods of separation from the children, your ex-spouse may challenge you over custody.

In Washington, the legal term for full custody is Residential Placement. Courts can be reluctant to award residential placement to parents who are active duty military if they have an unpredictable schedule. This makes it challenging for service members to win full or joint custody of their children.

We believe you shouldn't be punished for choosing to dedicate your life to protecting our country. Your self-sacrificing military service is heroic and should be recognized by the court. If you want custody of your children, we're ready to stand by your side and fight for your rights in court. We know you want what's in the best interest of your children. Our attorneys work closely with military parents. We work with you to show the courts why you will be the best care provider for your children and how they will benefit from their time with you.

It is important to note that the state where the children have resided the majority of the previous six months will generally have jurisdiction over child custody and parenting plans.

## **FLEXIBLE VISITATION SCHEDULES**

Even if you choose not to, or are unable to have your children live with you full time, you want to be able to spend as much time with them as possible. During the divorce process, you and your attorney will negotiate a Parenting Plan which will detail a visitation schedule.

Fair visitation can be challenging for service members. If you are active duty military, your schedule can be unpredictable. You might not be able to pick your children up from school because you don't have a 9-to-5 schedule. That doesn't mean you don't deserve full visitation with your children. If you are located somewhere other than where the kids reside, you can still pursue extended summer visitation along with other reoccurring school break periods.

As we mentioned before, temporary orders are important and set the tone for the final orders. If you file and concede custody in the initial paperwork, you will have to argue why that should no longer be the case in future. We also mentioned that keeping jurisdiction is important. If your spouse moves out of the state and you don't file to keep the case in Washington, you will take on the task of proving why the kids should have to move back, or arguing other issues in a different court in a distant state.

## **SCRA PROTECTION AND TEMPORARY CUSTODY**

The Service Members Civil Relief Act (SCRA) protects active duty service members from untimely litigation and default judgments, and it allows service members to request a 90-day stay (or halting) of court proceedings. SCRA usually protects military parents from default judgments in custody and support matters, but SCRA protection is not automatic or absolute. While courts are required to respect the provisions of SCRA, they must also consider the best interests of the children.

During a divorce this can lead a judge to rule in favor of the non-military parent, even while the service member is deployed or out-of-state and unable to attend the hearing. In such cases, the court weighs the best interest of the children against the protections of SCRA. The best way to convince a judge to honor the rights afforded by the SCRA is to have an attorney there to represent you.

A divorce lawyer experienced in military divorce can properly argue that respecting SCRA is in the best interest of the children and their military parents. You can trust our law firm to make sure you get fair treatment while you're deployed. If you want to learn more about SCRA, you can also visit [DivorceLawyersForMilitary.com](http://DivorceLawyersForMilitary.com).

## **ASSIGNING VISITATION RIGHTS**

Military parents have a unique legal right in Washington State. As a service member, you can assign your visitation rights to another person while you are deployed. Washington law only provides this right to members of the military. This means that while you're away, your children may spend your visitation time with a person of your choosing. For example, your mother (your children's grandmother) could spend your visitation time with the children during your deployment.

While this is currently the law in Washington, it's a new and untested legal concept. Your spouse may challenge your right to assign your visitation to someone else. Additionally, this law may not survive constitutional or Supreme Court challenges. You're likely to have greater success if the assignee of the visitation right is closely related to your children (such as an adult sibling or grandparent).

# **UNDERSTANDING FINANCIAL SUPPORT**

Service members going through divorce have many financial issues to consider, including how much child and spousal support they will be paying each month. In addition to state law, military regulations set standards for the financial support of dependents during and after divorce. It's important to understand when these regulations apply, and the requirements you must meet.

## **WHAT IS FINANCIAL SUPPORT?**

Financial support refers to required support payments for dependents of service members. It is determined by a court order, written mutual agreement, and/or in accordance with regulations by each military branch. Depending on your branch of service, you may pay additional military ordered support along with any state directed child or spousal support. A service member who fails to pay financial obligations runs the risk of facing punitive action under the Uniform Code of Military Justice (UCMJ).

## **FAMILY SUPPORT GUIDELINES**

Once you have separated from your spouse, you may be required to pay financial support for your spouse and children. From a military standpoint, separation starts once you stop living with your spouse, so support payments may be required even before you file for divorce.

The amount of support will be dependent on your branch of service, income, and the specific details of your family. For example, if your spouse is also active military or your family lives in government housing, no additional support may be required.

Generally speaking, any court order setting forth financial support obligations is what must be followed. Absent a court order, any mutual agreement between you and your spouse is what should be followed. If you are working off of a mutual agreement, it is in your best interest to have some proof of the order. If it is just a verbal agreement, there is a risk that you will not be able to protect yourself if your spouse says you haven't been providing the full amount that was agreed. Absent a court order and mutual agreement, each branch of military has set rules to determine how much financial support is due. These rules apply only if there is no valid court order or mutual agreement. There is no obligation for the agreed or court ordered amount to be based off of the military standard calculation.

## **GARNISHMENT FOR CHILD SUPPORT AND MAINTENANCE**

Child support and maintenance payments are controlled by state law. Military pay can be garnished for child support and maintenance. Some forms of military pay, such as Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS), are exempt from garnishment. A full list of funds exempt from garnishment is made at 5 C.F.R. §581.104. Depending on the circumstances, up to 50-60% of a service member's disposable earnings may be garnished.

## **UNDERSTAND YOUR RIGHTS**

As a parent, you'll want to make sure you do everything necessary to take care of your children. You may be less excited about paying your ex-spouse money every month. The attorneys of Divorce Lawyers for Military have the experience in state and military law to help you understand all your rights regarding financial support. We'll make sure your support obligations are fair and meet the requirements of Washington divorce law and military regulations. We'll also strongly oppose any requests by your spouse for excessive and unreasonable spousal support.

## **SUPPORT GUIDELINES BY MILITARY BRANCH**

The following is a brief summary of minimum support requirements by military branch. These minimum support requirements are, generally, only enforced in the absence of any state order for support.

# **ARMY**

If you are receiving credit for payment of rent, utilities, mortgage, interest due on loans, and real property insurance payments, you are likely obligated to pay minimum support to your spouse and dependents. If no support order has been issued by the court, and you and your spouse have not signed a written agreement, your minimum support requirements are calculated based on the following conditions:

- Family unit not in government housing: Basic Allowance for Housing II – With Dependents (BAH II – WITH).
- Family unit in government housing: No support unless supported family member moves out of government housing.
- Family members within the family unit residing at different locations: Pro-rata share of BAH II – WITH to each family member not residing in government housing. No additional support for family members residing in government housing.
- Service member married to another person on active duty in any service: No support unless required by court order or by agreement.

For complete information and possible changes to Army financial support regulations, please review AR 608-99, Family Support, Child Custody, and Paternity (2003).

# NAVY

If no court order or agreement between you and your spouse exists, the minimum support requirements listed below will apply. Per Navy regulation, these amounts are only used as a guideline and can be increased or decreased as the facts and circumstances warrant.

- Spouse only: 1/3 of gross pay.
- Spouse and one minor child: 1/2 of gross pay.
- Spouse and two or more children: 3/5 of gross pay.
- One minor child: 1/6 of gross pay.
- Two minor children: 1/4 of gross pay.
- Three minor children: 1/3 of gross pay.

For further information and possible changes to Navy minimum support regulations, please consult 32 C.F.R. § 733.3.

Don't lose what you fought hard to earn. Keep the maximum amount of your benefits possible. Talk to an experienced attorney at (360) 866-7393 or go to [DivorceLawyersforMilitary.com](http://DivorceLawyersforMilitary.com)

# MARINE CORPS

If no state court has issued an order and you or your spouse have not signed a written agreement, after receiving a complaint of nonsupport to a commanding officer, the following minimum support requirements will be used to determine the amount of support to be provided:

The amount to be paid is based on the number of family members entitled to support. This does not include former spouses (regardless of whether or not financial support is provided to them) or a spouse that is also an active duty military service member. It does, however, include children with another active duty service member.

<b><i>Total Number of Family Members</i></b>	<b><i>Share of Monthly BAH/OHA</i></b>
<b><i>1</i></b>	<b><i>1/2</i></b>
<b><i>2</i></b>	<b><i>1/3</i></b>
<b><i>3</i></b>	<b><i>1/4</i></b>
<b><i>4</i></b>	<b><i>1/5</i></b>
<b><i>5</i></b>	<b><i>1/6</i></b>
<b><i>6 or more</i></b>	<b><i>1/7</i></b>

So, if there was a spouse and a child the marine would be obligated to provide 1/3 BAH for each. If the marine is providing support to the family members in other ways that do not benefit the marine (i.e. paying rent or utilities), the commanding officer could reduce or eliminate the marine's "cash" support obligation. This also applies to family members that continue to reside in base housing. Whatever calculations are made, the final amount cannot be more than 1/3 the marine's gross pay.

For complete information and possible changes to the minimum support requirements of the Marine Corps, please see MCO P5800.16-V9, Chapter 15.

# AIR FORCE

Air Force regulations are based on a pro-rata share of Non-Locality Basic Allowance for Housing. Air Force policy does have stipulations to protect airmen from paying support to abusers or a spouse that is in jail. There is also an 18 month limit on the Air Force's mandate to provide support. Here are some key points regarding support in Air Force policy:

- Service members must provide the pro-rata share of Non-Locality Basic Allowance for Housing to family members not residing in government housing.

This is calculated by using:

$(1 / \# \text{ of family members}) \times \text{Non-Locality Basic Allowance for Housing}$

Example of spouse and child:

$(1/3) \times \$1,500 = \$500 \text{ per family member} = \$1000/\text{mo support owed}$

- Members must also comply with the financial support provisions of a court order or written support agreement.
- If a complaint of non-support is received from a family member, the service member must prove financial support.
- The Air Force will recoup the with-dependent rate basic allowance for housing received by the member during periods of non-support.

For more information and possible changes to the minimum support requirements of the Air Force, please see AFI 36-2906, Personal Financial Responsibility (1998).

# COAST GUARD

The following minimum support requirements will apply in the absence of a court order:

- Spouse Only: Basic Allowance for Housing Differential (BAH-DIFF) plus 20% of basic pay.
- Spouse and one minor or handicapped child: BAH-DIFF plus 25% of basic pay.
- Spouse and two or more minor or handicapped children: BAH-DIFF plus 30% of basic pay.
- One minor or handicapped child: 16.7% of basic pay.
- Two minor or handicapped children: 25% of basic pay.
- Three or more minor or handicapped children: 33% of basic pay.

For more information and possible changes, please see Coast Guard Discipline and Conduct Manual Section 2.E.3.c. (COMDTINST M1600.2, Issued 29 Sep 2011).

Diligently keep records of payments made to or on-behalf of your spouse. Also keep detailed record of expenses paid for your children (i.e. sports, daycare, lessons).

# **SURVIVOR BENEFITS PLAN**

## **HOW YOUR SURVIVOR BENEFITS PLAN WILL BE AFFECTED BY DIVORCE**

If you're a military retiree, it's important that you understand how divorce affects your Survivor Benefits Plan (SBP). Your soon to be ex-spouse is likely the current beneficiary of the plan. This section will explain your options, including when you can re-move a spouse and who else can be the beneficiary. Decisions made now can affect you for many years to come. It is important that you make knowledgeable and well-reasoned decisions.

A SBP is an annuity program that provides continuing benefits to beneficiaries selected by you in the event of your death. You must be retired or retirement-eligible active duty to qualify for a SBP. Beneficiaries may be your spouse, your children, or both your spouse and children.

### **COMMUNITY PROPERTY**

During a divorce, your SBP will be included with other community property. Community property is the shared property of the marriage, the assets and debts which must be equitably divided by the court. Since community property must be equitably divid-ed, you and your spouse may decide that you will continue pro-viding SBP coverage or the court may order that it continue.

There are benefits and drawbacks to continuing or ending coverage. There may also be alternatices to assigning your SBP benefits to your (ex) spouse. To ensure you make the right choice as part of an overall community property strategy, you'll need a Washington state divorce attorney who understands your SBP.

Another option is to allow your spouse to take out a private life insurance policy. This would require you to sign the plan allowing them to have it, but would then free up your SCRA to assign to the person you would like it to be assigned to.

It is important to note that if the divorce occurs after retirement, former spouse coverage is not automatic. You have one year to elect former spouse coverage and file such with the Defense Financial and Accounting Service.

## **SPOUSAL BENEFITS AND COVERAGE**

One of the drawbacks to covering a former spouse is that you can't cover a new spouse. Your SBP cannot be divided between a current spouse and a former spouse. If your former spouse is the beneficiary of your SBP and you remarry, your new spouse cannot be a beneficiary.

## **COVERING CHILDREN**

Depending on the specific SBP you have, you may be able to switch the benefits from your ex-spouse to your children. This would allow your children to directly receive benefits.

Making the right decision concerning your SBP during a divorce takes experience with both Washington State family law and military regulations. The attorneys at Divorce Lawyers For Military have the first hand legal experience you need to help you make these decisions. Protect your rights and assets in di-vice court. Visit us online at [DivorceLawyersForMilitary.com](http://DivorceLawyersForMilitary.com) or call us at (877) 866-7393 to speak with a military divorce attorney who understands your situation.

# **RETIREMENT AND DISABILITY**

## **BENEFITS**

Military disability and retirement benefits are the rewards for a career of putting your life on the line to defend the country. If you were injured protecting this country, you deserve to receive military disability benefits. If you are going through divorce, it's important to speak with an experienced attorney to understand how divorce may affect your military disability benefits.

## **RETIREMENT AND DISABILITY**

The Uniformed Services Former Spouses Protection Act permits, but does not require, states to treat a service member's retirement benefits as property to be divided in accordance with state divorce laws. As a general rule, Federal law prohibits states from awarding a former spouse over 50% of a service member's disposable retirement benefits.

Washington is a community property state. That means that your retirement benefits will be part of the community property divided during the divorce. Community property is the shared property of the marriage, the assets and debts which must be equitably divided by the court during the divorce. Only the benefits you earned while both married and in the service are considered community property. This also means you can negotiate the division of other assets to keep your full pension.

## **HOW ARE BENEFITS CALCULATED**

Most retirement calculations are done using the "High-3" formula. This takes the highest three years of base pay during service and puts that into the formula ( $2.5\% \times \text{years of service} \times \text{highest 3 years of base pay}$ ). For a divorce, this calculation takes place at the time of the decree.

Meaning, service members still in the service can increase their overall retirement pay by receiving promotions or increasing time of service after the divorce is finalized without increasing their financial obligation to their former spouse.

There are other formulas for calculating retirements for service members who enlisted prior to 1980 (Final Pay formula), elected to have a mid-career bonus (REDUX formula), or enrolled in the Blended Retirement System (only applies if service was entered on/after Jan. 1, 2018 or opted into the system).

## **HOW BENEFITS ARE DIVIDED**

Disability retired pay is not divisible or disposable under the Uniformed Services Former Spouses Protection Act. If you receive half of your retirement benefits in the form of disability pay and your former spouse is entitled to 50% of your disposable retirement pay, he/she will receive 50% of the retirement benefits, but not 50% of the disability pay.

The amount of retirement funds available for division equals your full retirement benefits minus the portion designated as disability retirement benefits.

If you are disabled but able to continue service, or if a disability is discovered after you retire, you have the option of waiving a portion of your normal retirement benefits and having those benefits replaced with disability retirement benefits. These are paid by the Department of Veteran's Affairs. In this way, you can reduce the amount of divisible retirement benefits while not reducing the total benefits received. This results in a smaller portion of benefits available to your former spouse. This concept also applies if you already have an agreed division of retirement benefits and elect to have it reduced in order to receive disability pay. A Supreme Court ruling in 2017 (*Howell v. Howell*) established that waiving the right to retirement benefits that cause a decrease in divisible pay is beyond the power of a state court to order a requirement to offset with compensation.

In 2003, Congress passed legislation that will allow some service members to receive disability benefits without waiving any normal retirement benefits. The affected service members keep their normal retirement benefits and have disability retirement benefits added to the total amount received. This legislation was phased in until it's fully implemented in 2014. However, only service members with 20 or more years of qualifying service and a Department of Veteran's Affairs disability rating of 50% or greater qualify. For those who qualify, obtaining Department of Veteran's Affairs paid disability retirement benefits does not reduce their divisible retirement benefits (or how much is owed to a former spouse).

Disability retirement pay is counted as income for purposes of calculating child support and maintenance payments.

This means even though a State court can't order you to pay a portion of your disability retirement benefits to your former spouse, receiving a large disability retirement payment can increase your payment obligations via a higher child support and maintenance award.

## **DEFENSE FINANCE AND ACCOUNTING SERVICE**

Retirement and disability retirement benefits are paid to service members by the Defense Finance and Accounting Service, which is the accounting firm for the Department of Defense. If you were married for 10 or more years of your military service, and your former spouse is awarded part of your benefits, he/she will receive his or her portion directly from the Defense Finance and Accounting Service.

## **NO PAYMENTS UNTIL RETIREMENT**

If your former spouse is awarded a portion of your retirement benefits, it is important to know that no benefits will be paid out until you actually retire. Federal law prohibits a court from forcing you to retire.

## **COMPLETION OF PAYMENTS**

Payments from retirement benefits will cease upon death. Therefore, any portion of benefits awarded in a divorce will stop if the service member or the former spouse dies.

## **KEEP YOUR FAIR SHARE**

The information above may seem complicated and overwhelming. Trying to understand the effect of divorce on your military benefits is difficult. While you may be tempted to dismiss it, it's extremely important to your future. You put your life at risk to earn those benefits, and deserve to keep the maximum amount possible.

Don't lose what you fought hard to earn. Keep the maximum amount of your benefits possible. Talk to an experienced attorney at (360) 866-7393 or go to [DivorceLawyersforMilitary.com](http://DivorceLawyersforMilitary.com)

No one should be subjected to domestic violence. If your relationship is violent, it's important that you seek assistance immediately, whether you are on the giving or receiving end of the violence. If you are the victim, protection is available. If you are the perpetrator, help is available. Your legal rights in divorce, your family, and your military service must be protected.

## **DOMESTIC VIOLENCE IN THE MILITARY**

Accusations of domestic violence, especially threats of violence, are not uncommon during divorce. Sadly, due to the pressure and stress brought on by divorce, spouses can make exaggerated or misleading claims of domestic violence. This is a serious danger for anyone, but especially for men and women who serve in the military. A conviction for domestic violence could end your military career.

### **KEEP YOUR COOL**

All service members going through divorce need to fully understand the lasting consequences that even an accusation of domestic violence can have on their lives and future. Orders of protection, restraining orders, and even arrests for domestic violence can come from words spoken in anger and taken as a verbal threat. Don't ever hesitate to walk away from a heated situation. Take a deep breath when you feel overwhelmed, and figure out what you need to do to keep your cool. Always avoid any situation with your spouse or ex that may lead to a physical confrontation.

### **DOMESTIC VIOLENCE CONVICTIONS**

A service member who is convicted of domestic violence faces a range of adverse consequences, including state law responses and remedies. A service member may be disciplined by the military, up to and including a court martial, for engaging in domestic violence. A domestic violence conviction can impact future promotions and the longevity of your career.

## **MILITARY PROTECTIVE ORDERS**

The military takes charges of domestic violence extremely seriously. The military justice system often works faster than civilian courts. If you have been accused before military authorities of domestic violence, you will have less opportunity to appear in court and challenge the charges than in civilian cases. It's always best to avoid any situation that could result in an accusation of domestic violence.

Commanding officers may issue military protective orders, which are similar to civilian orders of protection. These orders can include a prohibition on the service member contacting a domestic violence victim, or ordering the service member to reside in the barracks. Military protective orders require no advance notice to the service member or hearing. Military protective orders are not enforceable in civilian courts, but violating such an order is a violation of a direct order and carries the military penalties associated with such. The issuing of military protective orders does not preclude a civilian court from issuing orders of protection. Service members can be under both military protective orders and civilian orders of protection at the same time.

Once a domestic violence report is made, the commanding officer may order the service member and family to participate in the Family Advocacy Program, where a Case Review Committee will find the domestic violence allegations substantiated, suspected, or unsubstantiated.

## **LAUTENBERG AMENDMENT**

Under the Lautenberg Amendment, anyone, including a service member, with a misdemeanor conviction of domestic violence is barred from possessing or using firearms. If a service member is convicted of misdemeanor domestic violence, he or she is not allowed to possess or use a gun, even in the course of standard military duties. Similarly, it is a crime for anyone, including other service members, to give an offending service member a gun.

If a service member is required to be proficient in firearm use and demonstrate such, be ready to stand guard, or be able to perform any other activity requiring the possession of a firearm, this prohibition can lead to a discharge for inability to perform duties.

In other words, under the Lautenberg Amendment, a domestic violence conviction can end your service career.

## **ISSUES DUE TO MILITARY SERVICE**

As a member of the armed services, you risk life and limb to keep America safe. Over the course of your service, you have experienced traumatic events few civilians could ever comprehend. Military service takes a tremendous physical and emotional toll. As a result of your dedicated service to our country, you may bare physical and emotional scars. You may suffer from conditions such as Post-Traumatic Stress Disorder. Your spouse may be tempted to use the emotional wounds you suffered in war to paint you as an unfit parent, claim you are a threat to others, or even accuse you of domestic violence.

If there has, in fact, been domestic violence and there is justification for court protection, you still have rights and it is important that you have an attorney and an advocate to ensure the restrictions placed on you are fair.

If a protective order has been entered against you, it's very important that you totally comply with the order, even if you disagree with it. DO NOT violate the court order; you can fight legally to change it. You do not need to suffer untrue accusations silently.

If you are a victim of, or being accused of domestic violence, call (360) 866-7393 to speak with a lawyer who understands military and civilian law.

## Questions to Ask Yourself

Objectively assess your current relationship with your spouse; relationship with your children; immediate needs; financial situation; and divorce priorities. Write down your answers to these questions, and bring your answers to your initial consultation with your divorce attorney.

1. What are your primary concerns and goals in this divorce? What are your priorities? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
2. What do you believe are your spouse's priorities in the divorce? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
3. What is the status of the relationship with your spouse? Is it openly hostile? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Is it possible for you to have a constructive conversation with your spouse about the divorce issues?  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Is your spouse represented by an attorney? Name? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. Are there children? Is your spouse pregnant? *(Please provide names and dates of birth.)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- a. What is the quality of your relationship with each child? \_\_\_\_\_  
\_\_\_\_\_
  
- b. What is the quality of your spouse's relationship with each child? \_\_\_\_\_  
\_\_\_\_\_
  
- c. What parenting tasks do you perform on a daily, weekly or monthly basis? \_\_\_\_\_  
\_\_\_\_\_

d. What parenting tasks does your spouse perform on a daily, weekly or monthly basis? \_\_\_\_\_

\_\_\_\_\_

e. What is your goal for a Parenting Plan? \_\_\_\_\_

\_\_\_\_\_

7. What is your rank and time in service? \_\_\_\_\_

\_\_\_\_\_

8. What is your spouse's occupation and monthly income (rank and time in service if dual military)?

\_\_\_\_\_

9. Is there any reason that your spouse cannot work outside of the household? \_\_\_\_\_

\_\_\_\_\_

10. List your assets. \_\_\_\_\_

\_\_\_\_\_

11. List your debts and obligations. \_\_\_\_\_

\_\_\_\_\_

12. Are your basic needs handled for the time being? *If not, what are options for getting them handled on a temporary basis?* \_\_\_\_\_

\_\_\_\_\_

13. Who currently lives in the family home? \_\_\_\_\_

\_\_\_\_\_

14. What issues do you agree upon with your spouse? \_\_\_\_\_

\_\_\_\_\_

15. What issues do you and your spouse disagree on? \_\_\_\_\_

\_\_\_\_\_

16. What do you see as the major problem in reaching an agreement with your spouse? \_\_\_\_\_

\_\_\_\_\_

17. Describe what you see as the best outcome for your divorce. \_\_\_\_\_

\_\_\_\_\_

This divorce guide has been specially prepared for military families: For the husbands, wives, mothers, and fathers who serve in the armed forces. This guide answers many common questions about divorce, including child custody, child support, alimony, and other topics. It also covers the federal and military laws that apply when service members get legally separated and divorced.

This guide provides a brief overview of an ever-changing policy but does not address every legal issue that could arise in divorce.

While this guide provides an overview of the military divorce process, it's not a substitute for legal representation. You should speak with a Washington State divorce lawyer for advice about your specific circumstances. If you want to speak with a divorce attorney, we are here to help.

## DIVORCE LAWYERS FOR MILITARY

[www.DivorceLawyersForMilitary.com](http://www.DivorceLawyersForMilitary.com)

(360) 866-7393

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