

Domestic Violence – The Camouflage Connection

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Military families are routinely subject to increased stress with the demands of military readiness and frequent deployments. With the increased number of deployments in the last twelve years, this stress has increased on servicemembers and their families. Complicating matters and increasing family stress is the prevalence of post-traumatic stress disorder (“PTSD”) experienced by servicemembers returning from numerous deployments to Iraq and Afghanistan.¹ Unfortunately, one way this stress often manifests itself is through incidents of family violence.

This article discusses domestic violence in the context of military families. First, the article reviews the background of the Department of Defense’s approach to addressing domestic violence issues. Second, this article examines those resources and remedies available to the military to address domestic violence (e.g., courts martial, military protective orders, and family advocacy programs). As we examine the resources and remedies available through the military, this article will also discuss the interplay between these military remedies and civilian remedies for domestic violence as well as their impact on the servicemember.

¹ The effects of PTSD can inhibit the servicemember’s ability to reintegrate himself or herself post deployment, sometimes resulting in family issues and even criminal issues for the servicemember. It is not uncommon for the servicemember to seek ways to self-medicate symptoms of PTSD through drugs and alcohol, compounding family issues.

1. Background and Overview of the Department of Defense’s View and Approach to Domestic Violence.

The Department of Defense (“DoD”) has recognized that domestic violence is an issue in military families. On August 21, 2007, the DoD issued DoD Instruction Number 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel.” It stated that DoD policy is to prevent and eliminate domestic abuse in the Department of Defense and to provide for the safety of victims; hold abusers appropriately accountable for their behavior; and coordinate the response to domestic abuse with the local community.² This Instruction establishes that each commander has the duty and authority to do the following in response to a domestic violence situation:

- 1) Administer military justice under the Uniform Code of Military Justice (“UCMJ”);
- 2) Investigate domestic violence as they would any other criminal matter;
- 3) Establish restricted reporting procedures for victims of domestic violence;
- 4) Counsel servicemembers regarding misconduct;
- 5) Ensure victims and family members are aware of appropriate medical, mental health, and other assessments, treatments, and referrals that are available through the military or civilian agencies;
- 6) Ensure safe housing has been secured for the victim and/or family;
- 7) Provide victim information about the Family Advocacy Program (“FAP”), victim advocate services, and legal services;
- 8) Issue Military Protective Orders (“MPOs”) where appropriate;

² DoD Instruction Number 6400.06 Paragraph 4.1, August 21, 2007. A copy of the DoD Instruction can be found online at <http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf>.

- 9) If the abuser is a civilian, cooperate with civil authorities for appropriate criminal investigation, and possibly barring the individual from the installation;
- 10) Ensure that a safety plan is put in place;
- 11) Document incidents of domestic violence; and
- 12) Refer servicemembers, where appropriate, for clinical intervention services.³

2. **Military Responses to Domestic Violence.** The military commander has several tools at his or her disposal in dealing with a domestic violence situation. The family law practitioner needs to be aware of these remedies and their impacts, whether that attorney represents the servicemember or the spouse.

A. **Military Justice.** Commanders have the authority to punish servicemembers under the UCMJ.⁴ Such punishment includes both judicial and non-judicial punishment. Judicial punishment is criminal; while non-judicial punishment is administrative in nature. However, both can have long term impacts on a servicemember and his or her career, and this in turn can negatively impact the spouse and family.

Offenses under the UCMJ may include:

- 1) Article 92. *Failure to Obey Order or Regulation.* Article 92 provides:
Any person subject to this chapter who—
 - (1) violates or fails to obey any lawful general order or regulation;
 - (2) having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or
 - (3) is derelict in the performance of his duties;

³ DoD Instruction Number 6400.06 Paragraph 6.1, August 21, 2007. The list provided herein is not an exhaustive list of the duties and authority of unit commanders. See the DoD Instruction for the entire list.

⁴ A complete copy of the UCMJ can be found online at <http://www.ucmj.us/>.

shall be punished as a court-martial may direct.

2) Article 128. *Assault*. Article 128 provides:

a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.⁵

3) Article 133. *Conduct unbecoming an Officer and a Gentleman*. Article 133 provides:

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.⁶

4) Article 134. *General Article*. Article 134 provides:

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and

⁵ UCMJ. Article 128. Available online at <http://www.ucmj.us/>.

⁶ UCMJ. Article 133. Available online at <http://www.ucmj.us/>.

crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.⁷

The guidelines for non-judicial punishment are found under Article 15 of the UCMJ. This Article outlines methods for which Commanders can administer punishment for minor offenses.

Article 15(b) of the UCMJ provides that “any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial–

(1) upon officers of his command–

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdictions or an officer of general flag rank in command–

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month’s pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month’s pay per month for three months;

⁷ UCMJ. Article 134. Available online at <http://www.ucmj.us/>.

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes

the reduction, by an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.”⁸

Beware of the unintended consequences of judicial and nonjudicial punishment on the family unit. A conviction under UCMJ can result in imprisonment, forfeiture of pay, and forfeiture of retirement for the servicemember. Similarly, nonjudicial punishment can likewise have long-reaching consequences for the family with the impact that it will have on future promotions and career advancement. A zealous commander may believe that harsh punishment under Article 15 will remedy a situation when in practice a forfeiture of the servicemember's pay and allowances and extra duty may worsen the tensions at home or take funds away from an already financially strapped family. While this article does not suggest that the abuser should not be appropriately punished for his or her actions, it is important that the family law practitioner understand the subsequent effects of such punishments.

B. Military Protective Orders (MPOs).

Unit commanders may issue Military Protective Orders (MPOs) to an active duty servicemember to protect a victim of domestic abuse/ violence or child abuse (the victim could

⁸ UCMJ. Article 15. Available online at <http://www.ucmj.us/>.

be another servicemember or a civilian). To qualify, one must be in a heterosexual⁹ relationship with the abuser and be the spouse/ ex-spouse, current or former intimate partner, or have a child in common. A victim, victim advocate, installation law enforcement agency, or Family Advocacy Program clinician may request a commander to issue an MPO.

Pursuant to DoD Instruction 6400.06, a commander “shall issue and monitor compliance with an MPO when necessary to safeguard a victim, quell a disturbance, and maintain good order and discipline while a victim has time to pursue a protection order through a civilian court, or to support an existing civilian protective order.”¹⁰ This implies that it is not DoD’s intent that an MPO stand alone without a civilian protective order (CPO); rather the MPO should supplement the CPO. The MPO lasts until it is terminated or the commander issues a replacement order.¹¹

The consequence of violating an MPO is punishment as a criminal offense under the UCMJ (see the discussion above – Article 92, Failure to Follow Direct Order or Regulation). 10 U.S.C. § 1567(a) also provides that military authorities shall notify local civilian law enforcement agencies of the issuance of an MPO. The commander is required to notify regarding the existence of the MPO, the individuals involved, any changes to the MPO, and the termination of the MPO.¹² However, there is no requirement that local law enforcement enforce an MPO. Therefore, it is often advisable that the victim not only get an MPO, but also a civilian protective order. 10 U.S.C. § 1561(a) provides that “a civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.”¹³

⁹ The regulations have not yet been changed to reflect the repeal of the “Don’t Ask – Don’t Tell” policy.

¹⁰ DoD Instruction 6400.06, Paragraph 6.1.2.1.

¹¹ 10 U.S.C. § 1567.

¹² 10 U.S.C. § 1567a

¹³ 10 U.S.C. § 1561a.

MPOs may order the abuser (referred to as "the subject") to:

- have no contact or communication (including face to face, by telephone, in writing, or through a third party) with you or members of the your family or household;
- stay away from the family home whether it is on or off the installation;
- stay away from the children's schools, child development centers, youth programs and your place of employment;
- move into government quarters (barracks);
- leave any public place if the victim is in the same location or facility;
- do certain activities or stop doing certain activities;
- attend counseling; and/or
- surrender his or her government weapons custody card.

Commanders may tailor the Order to meet the specific needs of the situation.

An MPO is only enforceable while the servicemember is assigned to the unit that issued the order; therefore, when the servicemember is transferred to a new unit, the order shall no longer be valid. If the victim still believes that the MPO is necessary to keep him or her safe, the victim, a victim advocate, or a FAP staff member may ask the commander who issued the MPO to contact the new commander to advise him or her of the MPO and to request the issuance of a new one. The commander who issued the MPO is expected to recommend to the new command that a new MPO be issued when the servicemember is transferred to a new command and an MPO is still necessary to protect the victim, although this does not always occur.

Commanders can only issue MPOs against the servicemember; civilian abusers cannot be subject to MPOs. They may only be subject to a civil protection order issued by a state or tribal

court. However, a commanding officer may order that the civilian abuser stay away from the installation.

C. **Family Advocacy Programs.**

The DoD Directive 6400.1 provides that each of the services shall establish Family Advocacy Programs at each of the installations.¹⁴ The purpose of such programs is to further DoD policy to:

“4.1. Prevent child abuse and domestic abuse involving persons identified in section 2., above, through public awareness, education, and family support programs provided by the FAP, and through standardized FAP programs and activities for military families who have been identified as at-risk of committing child abuse or domestic abuse.

4.2. Promote early identification and coordinated, comprehensive intervention, assessment, and support to persons identified in section 2., above, who are victims of suspected child abuse or domestic abuse, as defined by this Directive.

4.3. Provide appropriate resource and referral information to persons not identified in section 2., above, who are victims of alleged child abuse or domestic abuse.

4.4. Provide assessment, rehabilitation, and treatment, including comprehensive abuser intervention, that supplement appropriate administrative or disciplinary action, to persons identified in section 2., above, who are alleged to have committed child abuse and domestic abuse.

¹⁴ DoD Directive 6400.1, August 23, 2004. Available online at <http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf>.

4.5. Cooperate with responsible civilian authorities and organizations in efforts to address the problems to which this Directive applies.

4.6. Cooperate with responsible civilian authorities in efforts to address the problems to which this Directive applies.”¹⁵

In turn, each of the services has published its own regulations establishing a Family Advocacy Program. The Army’s program is outlined in Army Regulation 608-18.¹⁶ The Navy’s program is set out in SECNAVINST 1752.3B.¹⁷ The Air Force’s program is found in AFI 40-301.¹⁸ The Marine Corps’ program can be found at MCO P1700.24.¹⁹ The Coast Guard’s program is at COMDINST 1750.7C.²⁰

The purpose of the Family Advocacy Program is to “promote public awareness within the military community and coordinate professional intervention at all levels within the civilian and military communities, including law enforcement, social services, health services, and legal services.”²¹

The FAP provides assistance to victims and military families through prevention of domestic violence, education, and counseling. Every installation has a victim advocacy office. The victim advocate will assist the abused individual in seeking MPOs and CPOs as well as getting access or information regarding other assistance that may be locally available whether it is military provided or through a civilian agency. The victim advocate is also available to help the Command develop safety plans as the situation requires.

¹⁵ DoD Directive 6400.1, Section 4, August 24, 2004.

¹⁶ Available at www.apd.army.mil/pdf/r608_18.pdf.

¹⁷ Available at <http://doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1752.3B.pdf>.

¹⁸ Available at <http://www.e-publishing.af.mil/shared/media/epubs/AFI40-301.pdf>.

¹⁹ Available at

<http://www.newriver.marines.mil/Portals/17/Documents/MCO%20P1700.24B%20W%20CH%201.pdf>.

²⁰ Available at http://www.uscg.mil/directives/ci/1000-1999/CI_1750_7C.pdf.

²¹ Taken from Army Regulation 108-18, Section 1-5.

D. **Lautenberg Amendment.** 18 USC 922 makes it a felony for any of the following persons to possess a firearm, ammunition or explosives: Any person who has (or is):

- (1) been convicted of any crime punishable by more than one (1) year in prison;
- (2) been convicted of a misdemeanor for domestic violence; or
- (3) subject to a court order that finds that person “represents a credible threat to the physical safety of an intimate partner or child of that partner” and restrains that person from “harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.”²²

Obviously, the mandate of 18 U.S.C. § 922 is an extreme remedy designed to protect the past victims of an offender and society at large. 18 U.S.C. § 922 makes no exception for those whose daily employment requires their ability to carry and use firearms (e.g., servicemembers, police officers).

In some cases, it may be theoretically possible for a servicemember with a court order sufficient to invoke the mandate of 18 U.S.C. § 922 to continue to serve in some capacity. In reality, most commanders who are made aware of servicemembers subject to a court order invoking 18 U.S.C. § 922 will begin administrative separation proceedings.

As a result, family law practitioners should carefully counsel their clients regarding the extreme results which may arise from a court order invoking 18 U.S.C. § 922.

²² In order to invoke 18 USC 922, the court order cannot merely be an ex parte temporary order; rather, the order must have resulted from actual notice to the servicemember and the opportunity for the servicemember to participate in the hearing from which the order arises. Also, the court order must include “a finding that such person represents a credible threat to the physical safety of such intimate partner or child” or by its terms explicitly prohibit “the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.”

E. **Transitional Compensation.** 10 U.S.C. § 1059 establishes Transitional Compensation as an extreme remedy available for dependents of certain active duty servicemembers who have been abused by the servicemember.²³ It is important to always remember that Transitional Compensation is only available under certain, very specific circumstances. These are:

- The offending servicemember must be serving on active duty for thirty (30) or more days;
- The offending servicemember must have been discharged pursuant to court martial or administrative separation²⁴; and
- The basis for the servicemember's separation must result from the abuse of the dependent.

Pursuant to 10 U.S.C. § 1059, the 2013 Transitional Compensation rates as defined by 38 U.S.C. § 1311 (Dependency and Indemnification Compensation) are as follows²⁵:

- (1) \$1,215.00 paid to a spouse;
- (2) \$215.00 paid to a child age less than 18;
- (3) \$255.00 paid to a child age 18 – 23 and enrolled full-time in post-secondary education;
- (4) \$513.00 to a disabled child;

Additional points to remember are:

²³ 10 USC 1059 is implemented by DoD through DoD Instruction 1342.24, "Transitional Compensation for Abused Dependents." Available online at <http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf>.

²⁴ This shall also include a pre-trial agreement.

²⁵ DIC rates typically change each year.

- Transitional compensation is generally paid for 36 months unless the servicemember's remaining active duty service obligation was less than 36 months at the time of discharge. In this event, transitional assistance shall be paid for the remaining months of active duty service obligation or for 12 months if the remaining obligation is less than twelve months.
- Transitional Compensation payments are not subject to income tax.
- During the period of Transitional Compensation payments, the recipient shall be authorized to use military commissary and post exchange facilities. Recipients are also eligible for Tricare is forfeited by the abused spouse if, during the period of payments, that spouse cohabitates with the offending servicemember or if the spouse remarries.
- There are many intricate details to the Transitional Compensation program. Family law practitioners need to be thoroughly familiar with the benefits of Transitional Compensation and review closely 10 U.S.C. § 1059 and 38 U.S.C. § 1311, or else they should consult with a military family law practitioner, local Judge Advocate or the Transitional Compensation Point of Contact at the servicemember's assigned post/base.

F. **Interim Family Support.**

Covered above are the establishment of MPOs, CPOs, and safety plans, all of which may require the separation of a servicemember from his or her spouse and/or family. When this separation occurs, it may be necessary to ensure that there is some temporary financial support provided by the servicemember to the spouse and/or family. There is no single, cohesive DoD standard for interim or temporary family support in the absence of a court order or consent

agreement between the parties. Instead, each of the branches of military service and the U.S. Coast Guard have published administrative regulations which address family support matters.

As a prerequisite, it is important for the practitioner to recognize that these regulations apply only under the following conditions:

1. The servicemember must be on active duty, not in the Guard or Reserve in drill status;
2. There must be no existing court order addressing child support or alimony; and
3. There must be no existing consent order or agreement addressing child support or alimony between the parties.

1) The Army addresses family support in Army Regulation (AR) 608-99, which may be found at http://www.army.mil/usapa/epubs/pdf/r608_99.pdf. This regulation is extensive and instructive regarding the Army's overall perspective of military family support and compliance with state court orders regarding domestic matters. In short, AR 608-99 is a good reference for all practitioners who may frequently handle domestic cases involving soldiers.

AR 608-99 requires a "pro rata" share of the Basic Allowance for Housing With Dependents (BAH WITH) rate be paid to each supported dependent. Generally, the interim support amount is calculated as: $(1 \div \text{the total number of supported family members}) \times (\text{the servicemember's BAH rate})$. For example, if a major and his wife separate and they have no children, the BAH WITH rate is \$1,297.80. The major has only one supported family member, his wife. In this example, the entire BAH WITH allowance of \$1,297.80 must be paid to her.

Also, AR 608-99 is punitive under the UCMJ (see the discussion above regarding Article 92, Failure to Follow Order or Regulation) when soldiers fail to comply with its provisions. However, there is no provision for recoupment of arrears, so even if a soldier is to be convicted under the UCMJ, commanders cannot lawfully order that arrears be paid. Finally, AR 608-99

also vests the soldier's commander with the discretion to modify the support requirement under a variety of circumstances (e.g., where the spouse's income exceeds that of the soldier). The soldier bears the burden by a preponderance of evidence that a modification is warranted under the regulation.

2) The United States Marine Corps (USMC) addresses family support in Marine Corps Order (MCO) P5800.16a, which may be found at <http://sja.hqmc.usmc.mil/Pubs/P5800/15.pdf>. MCO P5800.16a parallels AR 608-99 in many respects (e.g., modification of support and burden of proof). Like AR 608-99, it also is punitive if violated, but only after non-support is brought to the commander's attention. The general support requirement is the greater of either a fixed amount provided in the Order or the actual housing allowance received (unlike the Army's BAH WITH rate). Regardless of which rate applies, the USMC will not require that the amount exceed 1/3 of the Marine's gross monthly pay. Like the Army regulation, MCO P5800.16a should be reviewed carefully.

3) The United States Navy addresses family support in Naval Military Personnel Manual (MILPERSMAN) 1754-030, which may be found at <http://www.mfr.usmc.mil/HQ/Chaplains/Instructions/MILPERSMAN%201754-010%20SEA%20LEGS%20FAMILY%20SUPPORT%20PROGRAM.pdf>. The general support requirements are based on a fraction of the servicemember's base pay; the scale for which is provided in the Manual. The Navy also provides a method for modification, albeit at higher command levels than the Army and USMC. Violations may also be administratively or criminally prosecuted.

4) The Coast Guard publishes a single 1,502 page personnel manual entitled, Coast Guard Personnel Manual, which may be found at http://www.uscg.mil/directives/cim/1000-1999/CIM_1000_6A.pdf. In Chapter 8.M., *Support of Dependents*, much of the same

language used by the Navy and USMC demonstrates the Coast Guard's commitment to honoring family support obligations. General interim support requirement is a portion of the Basic Allowance for Housing and the servicemember's base pay.

5) The United States Air Force has no regulation approaching the thoroughness of the other services. In fact, Air Force Instruction 36-2906, which may be found at <http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf>, only states that allotments from a servicemember's pay may be had pursuant to other statutory authority (e.g., state court orders). There is no specific amount set out for support payments.

G. **Military Retired Pay**. In the instances where the servicemember is the abuser and is eligible for retirement at the time the domestic violence incident occurs, the servicemember's spouse may still in certain instances receive his or her portion of the servicemember's military retired pay.

10 U.S.C. § 1408(h)(2) provides:

“(2) A spouse or former spouse, or a dependent child, of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security);

(B) in the case of eligibility of a spouse or former spouse under paragraph (1)(A), the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse; and

(C) in the case of eligibility of a dependent child under paragraph (1)(B), the other parent of the child died as a result of the misconduct that resulted in the termination of retired pay.”²⁶

However, if the former spouse who is receiving benefits under this section remarries, that former spouse will lose those benefits.²⁷ The benefits can be reinstated if the marriage is later terminated by the death of that new spouse or by annulment.²⁸

Additionally, the spouse/victim may also be entitled to medical and dental care and commissary and exchange store access:

“(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a

²⁶ 10 U.S.C. § 1408(h).

²⁷ 10 U.S.C. § 1408(h)(7)(A).

²⁸ 10 U.S.C. § 1408(h)(7)(B).

retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.”²⁹

H. **Remedies if the Abuser is a Civilian.** Naturally, the commander has no authority over civilians (including the dependents of servicemembers). However, in some cases, where the dependent has received the benefit of travel expenses and on-installation housing in overseas locations under the command’s “sponsorship” of dependents abroad, the commander may revoke such command sponsorship for abuse. Otherwise, the commander may bar the offending civilian from the installation or pursue criminal charges against the civilian if the abusive conduct occurs on the installation.

1) **Bar to the installation.** The installation commander has authority to ban from the installation any civilian (including a servicemember’s dependent or spouse) whom the commander deems to be a threat to the servicemember, other servicemembers or persons residing or working on the installation.

2) **Coordination with civil authorities.** If the installation commander bars the civilian from the installation, the commander may coordinate with local civil authorities to notify

²⁹ 10 U.S.C. § 1408(h)(9)(A) and (B).

them of the ban. In addition, on many military installations local civil authorities have concurrent jurisdiction with military authorities. Even on those bases where civil authorities do not have concurrent jurisdiction, federal jurisdiction extends over civilians on the installation not subject to the UCMJ.

3) Federal Criminal Jurisdiction. As stated above, in cases where the military installation or a part of the installation has no concurrent state court criminal jurisdiction, the only remedy for criminal violations committed by the non-military abuser is referral to the federal magistrate court which has jurisdiction over the installation. In cases where non-military abusers have committed criminal acts on military installations, the family law practitioner should inquire of the local Staff Judge Advocate whether the local Office of the United States Attorney (Department of Justice) and the federal magistrate court will exercise jurisdiction over the offense.

3. Additional Resources for the Practitioner.

- 1) Women's Law.Org. at www.womenslaw.org.
- 2) Battered Women's Justice Project at www.bwjp.org. See also the new e-learning project that has just been launched by the Battered Women's Justice Project at http://www.bwjp.org/elearning_course.aspx. The course targets military and civilian advocates for military families experiencing intimate partner violence.
- 3) The Military Divorce Handbook, Mark E. Sullivan (American Bar Association, 2d Ed., 2011).
- 4) National Online Resource Center on Violence Against Women, www.vawnet.org.