

DOMESTIC VIOLENCE; MILITARY RESPONSE AND REGULATIONS
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1. Domestic violence is an important issue in our society and, likewise, within the military community. This article explains military regulations and programs designed to prevent, limit, and respond to allegations of domestic violence. Although much of this article applies to all of the armed forces, emphasis is placed on the procedures within the Marine Corps, of which I am most familiar.

2. MILITARY JUSTICE.

a. *Generally.* Military Justice refers to those procedures relating to courts-martial, including pretrial restraint, charge, pretrial hearing, trial, conviction, sentencing, clemency, review, and appeal. Military Justice also refers to those procedures under Article 15 of the Uniform Code of Military Justice (UCMJ) by which a commander is authorized to adjudicate and punish minor offenses without resort to the court-martial process. Although military justice related decisions are often difficult and momentous, the procedures are fairly straightforward. With very few exceptions; such as special procedures relating to capital offenses, the same rules apply regardless of the offense charged or suspected. Most of the rules concerning military justice are contained in The Manual for Courts-Martial. The Manual contains rules of evidence and procedure, a definition of all of the crimes and the elements thereof, an explanation of these offenses, and the maximum authorized sentence for each offense. Its appendices include the UCMJ, and a section by section detailed analysis of the rules, procedures, and offenses, with reference to the most important cases on each. The Manual is remarkably well organized and user friendly, particularly when compared to most state penal codes. At chapter V, the Manual also provides rules for nonjudicial punishment, including the maximum punishments and the circumstances in which Commanders may impose such punishment for minor offenses. The Manual for Courts-Martial can be found on line from a variety of sources, including the following:

<http://www.jag.navy.mil/documents/mcm2008.pdf>

<http://www.marines.mil/news/publications/Pages/MANUAL%20FOR%20COURTS-MARTIAL.aspx>

<http://www.apd.army.mil/pdf/files/mcm.pdf>

b. *Pretrial Restraint.* Rules for Court Martial (RCM) 304 and 305 are the principal regulations concerning in the imposition of pretrial restraint upon a service member suspect. Restraint may take the form of conditions on liberty (most often used overseas), restriction to specified limits, or confinement in jail. Confinement under RCM 304

contemplates the prosecution of the suspected offender by court-martial. After all, it is called “pretrial” restraint. Accordingly, the person initially ordering the confinement and the Commander reviewing such confinement must have probable cause to believe that the person to be restrained committed an offense triable by court-martial. Although not a particularly career enhancing move, the most junior lieutenant may therefore order the Sergeant Major of the Marine Corps to be restrained. Only the Commanding Officer can order pretrial restraint upon an officer.

c. *Pretrial Confinement.*

(1) *Imposition of Pretrial Confinement.* As with other forms of restraint, pretrial confinement may be imposed by any officer upon any enlisted person. Pretrial confinement may be imposed upon officers only by the commanding officer. In accordance with RCM 305, pretrial confinement requires (1) probable cause that an offense triable by court-martial was committed by the suspect, (2) that it is foreseeable that the accused will either commit serious misconduct if not confined or will fail to show up for trial, and (3) that lesser forms of restraint are inadequate. Military regulations make no provision for the posting of a bail bond.

(2) *Review of Pretrial Confinement.* Within 48 hours, the Commanding Officer is required to review the adequacy of pretrial confinement. As a practical matter, such review has already taken place, as the Commanding officer himself is generally the person who orders the initial imposition of pretrial confinement. Within 72 hours, the Commander is required to produce a written decision memorandum setting forth the reasons for pretrial confinement. Within seven days of the imposition of pretrial confinement, a hearing will be conducted before a neutral and detached magistrate who will examine the lawfulness of the pretrial confinement. For good cause, the hearing may be extended such that it occurs no more than ten days from the imposition of pretrial confinement. Though the accused has the right to free military counsel at the hearing, it is a fairly informal affair in which the rules of evidence do not apply. Upon request, the magistrate conducting the hearing may reconsider his earlier decision if presented with significant information not previously considered. After the charges have been referred for trial, the accused may also request that the military judge examine both the imposition of pretrial confinement and its nature. Improper pretrial confinement, or unduly harsh conditions of pretrial confinement may result in the judge directing credit against the accused’s sentence over and above the day for day credit to which the accused is already entitled.

(3) *Relationship to Speedy Trial.* Per RCM 707, the accused must be brought to trial within 120 days after the preferral of charges or the imposition of pretrial restraint, whichever comes first. Delays caused by the accused are not counted against the government. The remedy for the denial of a speedy trial is invariably the dismissal of the charge. Thus, speedy trial issues present yet another reason for a commander not to undertake pretrial restraint lightly or prematurely; it begins the speedy trial clock. Note that 120 days is the outer limit of delay; a judge may determine that the accused has been denied a speedy trial prior to the 120 day mark. The government must proceed with

“reasonable diligence” in its progress towards trial to avoid a violation of the speedy trial requirement imposed by UCMJ Article 10. U.S. v Kossman 38 MJ 258 (CMA 1993).

3. MILITARY PROTECTIVE ORDERS

a. *Generally.* As seen above, a Commander can direct pretrial restraint or even pretrial confinement, but his ability to do so is circumscribed. The Commander must contemplate trial by court-martial and he must have the requisite probable cause. In a word, in order to direct restraint pursuant to the military justice model, the Commander must conclude that the accused has committed a crime warranting such restraint. Furthermore, the decision to impose restraint will be reviewed quickly, first by a magistrate and then, at the accused’s request, by a judge. Finally, pretrial restraint triggers the speedy trial clock. Accordingly, the imposition of pretrial restraint may not be the preferred tool in a variety of cases: when the facts are unclear, where some form of sanction other than court-martial is contemplated, or where the facts have not yet been investigated sufficiently such that trial may begin in the near term. The Commander may choose to protect good order and discipline by using a different tool, the Military Protective Order (MPO). Such an order directs the service member to stay away from a particular person and / or a particular place. There are no hearing requirements, and there is no requirement to find fault. For example, if the Commander receives information indicating that an active duty Marine and his civilian spouse have had a violent altercation, he may direct the Marine to stay away from his spouse... regardless of whether he believes the Marine committed an offense. Per Department of Defense Instruction (DoDI) 6400.06, Commanders may issue an MPO regardless of whether a Civilian Protection Order (CPO) has been issued. Such MPOs can be more restrictive than the CPO, but can not otherwise contradict the CPO.

b. *Procedure.* The Commander may issue an MPO upon hearing of facts that, in his opinion, warrant its issuance. The information may come in any form, and need not be in writing, so long as it is sufficient to convince the Commander that an MPO is appropriate. The MPO may be issued at the request of one of the battling spouses or without a request. It may even be issued, or kept in force, despite the express request of the parties for its removal. There is no requirement that the MPO be in writing, though for practical reasons, it almost always is. The lack of procedures makes the MPO a very quick and important tool in preventing further instances of domestic violence. Victim advocates at installation community counseling centers can assist victims to obtain an MPO. Military directives caution Commanders to ensure that the MPO is tailored to the circumstances. For example, the Commander may fashion the order in such a way that the service member, without endangering the spouse, can obtain military uniforms and other necessities from his house and visit his children. Additionally, an impenetrable “no direct or indirect contact of any kind” order may be counterproductive, even to the extent of prohibiting the spouses’ respective attorneys from negotiating a marital separation agreement.

c. *Enforcement of Military Protective Orders.* An MPO can only be directed towards a person that is subject to military discipline; that is, except in rare

circumstances, upon an active duty military service member. Violation of an MPO - regardless of the place of the violation, whether on the installation or not - is punishable as a criminal offense under the Uniform Code of Military Justice (UCMJ). Further, a service member violating the MPO may, as a result of such violation, be confined or restrained pending military trial for violating that order, subject to the requirements at RCM 304, 305.

d. *Civilian Enforcement of MPO.* In accordance with federal law [10 USC 1657a] military authorities must put local civilian law enforcement agencies on notice of the issuance of the MPO. However, there is no statutory requirement for civilian law enforcement to take any action with respect to the MPO. Further, violation of the military's order is not a punishable civilian offense.

4. CIVILIAN PROTECTION ORDERS

a. *Generally.* A civilian judge may restrain a service member from contacting or going near another person, such as a spouse. Such state court orders generally involve the filing of some kind of complaint or form with the clerk, an initial decision by a judge concerning a temporary, ex parte order, and hearing rights for the defendant some ten days later at which the judge will determine whether the person to be restrained committed some act of domestic violence and poses a continuing threat. Orders pursuant to N.C. Gen. Stat 50B are an example.

b. *Collateral Effects of CPO, Firearms Prohibition.* Under Federal law, a person subject to a qualifying CPO is prohibited from possessing a firearm [18 USC 922(g)(8)]. A CPO triggers this prohibition if (1) it is a final order, and (2) the defendant received actual notice of the hearing and had an opportunity to participate, and (3) the CPO restrains the defendant from harassing, stalking, or threatening the intimate partner or child; or restrains the defendant from engaging in other conduct that would place the partner or child in reasonable fear of bodily injury; and (4) the order includes a finding that the defendant is a credible threat to the physical safety of the partner or child; or prohibits the use, attempted use, or threatened use of physical force against the partner or child that would reasonably be expected to cause bodily injury. The prohibition does not apply to weapons provided to the defendant by the United States, a state, or any political subdivision thereof. [18 USC 925(a)(1)]. Note that no such exception exists for persons prohibited from possessing a firearm by reason of the commission of a misdemeanor crime of domestic violence, the so called "Lautenberg Amendment" to the federal gun control act[18 USC 922(g)(9)].

c. *Enforcement of CPO aboard the Military Installation.* Jurisdiction aboard military installations varies widely. On some installations, concurrent jurisdiction exists; that is, both the federal government and the local state have the authority to prosecute criminal offenses committed on the installation. Other installations are enclaves of exclusive federal jurisdiction; the state has no authority to prosecute offenses occurring thereon. Some installations contain areas of concurrent jurisdiction and other areas of exclusive federal jurisdiction. Regardless of the type of jurisdiction generally applicable

to a military installation, the Armed Forces Domestic Security Act [10 USC 1561a] carves out a special rule concerning CPOs. They “shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued the order.” It would appear therefore, that a civilian judge can punish violations of the CPO occurring on Base, notwithstanding exclusive federal jurisdiction for all other purposes. The statute charges the secretary of Defense to prescribe implementing regulations, and so he has, at section 6.1.3 of Department of Defense Instruction (DoDI) 6400.06. In case the statute left any doubt, the DoDI provides that “Any person who violates a CPO while on a military installation is subject to the imposition of sanctions by the court issuing the order.” Furthermore, DoDI 6400.06 provides:

-that Commanders shall take all reasonable steps to give the CPO full force and effect on all DoD installations within the jurisdiction of the court that issued such order.

-that Commanders “may” establish procedures for registering a CPO on the installation;

-that all persons subject to a CPO shall comply with the provisions and requirements of such order whenever present on a military installation;

-that active duty servicemembers failing to comply with a CPO may be subject to administrative and/or disciplinary action under the UCMJ; and

-that civilians, including DoD employees, may be barred from the installation for failing to comply with a CPO. In addition, DoD civilian employees may be subject to appropriate administrative or disciplinary action in appropriate circumstances.

5. FINANCIAL SUPPORT OF DEPENDENTS

a. *Generally.* The focus of this article is domestic violence rather than financial support of dependents; thus, a detailed discussion of dependent support is not provided here. Nonetheless, at least a word about financial support to dependents is appropriate, as the two subjects are often inextricably bound in practice. Abusive spouses may not be inclined to provide financial support; indeed, a tight reign on finances is often a means by which the abuser exercises power and control over the victim. Further, fear of impecuniousness may dissuade spouses from reporting domestic violence.

b. *Service Regulations.* Each of the armed forces has promulgated a regulation requiring the active duty service member to provide adequate and continuous support of his/ her dependents. The regulations vary widely; however, the general scheme in each case (with the exception of the Air Force) is to require a specified monthly dollar amount based on certain pay and allowances. The regulations then designate circumstances in which some level of command may grant an exception. The Air Force regulation merely directs the service member to provide support to family members but is silent as to the amount or any other details. Although the Commander has no authority to garnish wages, failure to abide by the service dependent support regulation may subject the service

member to administrative sanction, administrative discharge, and criminal penalties. The regulations are listed below, as well as where they may be found on line.

Army

-AR 608-99 (Oct 29, 2003)

-On line at

- <http://www.army.mil/usapa/> (Official Army Orders and Directives Site)
- <http://legalassistance.law.af.mil/> [Joint Forces Legal Assistance Site. Go to Legal Assistance Topics/Family Law / Dependent Support]

Marine Corps

- MCO P5800.16A (Legal Administration Manual, see ch 15)

-On line at:

- <http://www.marines.mil/news/Publications/Pages/orders.aspx> (Official Marine Corps Orders and Directives Site. Click on MCO P and then scroll down to the desired order.)
- <http://www.marines.mil/unit/mcieast/sja/Pages/default.aspx> (SJA Marine Corps Installations East. Go to Legal Assistance / Domestic Relations / USMC Dependent Support Regulation)
- <http://legalassistance.law.af.mil/> [Joint Forces Legal Assistance Site. Go to Legal Assistance Topics/Family Law / Dependent Support]

Air Force

-AFI 36-2906 January 1, 1998

-On line at

- <http://www.e-publishing.af.mil/otherpublishingsites.asp> (type Instruction # in search box)
- <http://legalassistance.law.af.mil/> [Joint Forces Legal Assistance Site. Go to Legal Assistance Topics/Family Law / Dependent Support]

Navy

-NAVPERS 15560 (Navy Personnel Manual, MILPERSMAN) section 1754-30

-On line at

- <http://www.navy.mil/navypublicationinstruction.html> (Click on “Personnel Manual” and go to the desired section)
- <http://www.npc.navy.mil/NR/exeres/6A7860BA-8C22-40CB-9FE5-5651311E8F1B.htm>
(Naval Personnel Command)
- <http://legalassistance.law.af.mil/> [Joint Forces Legal Assistance Site. Go to Legal Assistance Topics/Family Law / Dependent Support]

Coast Guard

-COMDTINST M100.6A (Coast Guard Personnel Manual) Section 8M

-On line at:

- <http://isddc.dot.gov/OLPFiles/USCG/010564.pdf>
- <http://legalassistance.law.af.mil/> [Joint Forces Legal Assistance Site. Go to Legal

6. FAMILY ADVOCACY: COMMUNITY COUNSELING SERVICES

a. *Generally.* Each of the armed forces has established a Family Advocacy Program (FAP) to address family related issues, including domestic violence prevention, education, and counseling. Such programs include a mechanism for victims of abuse to obtain the aid of victim advocates and counselors. Victim advocates will assist abused persons to obtain an MPO and / or CPO, to assess the situation, to access any other needed services, and to establish a safety plan as needed. The FAP will obtain statements from those concerned, as well as any available records bearing on the allegations of abuse, and will present the information to a multidisciplinary case review committee (CRC), which will make a determination as to the whether the allegation is substantiated. In Marine Corps, the CRC will also assign a numerical score indicating the severity of the incident. Following a CRC substantiation of an allegation of abuse, the FAP will make recommendations as to counseling and treatment and forward such recommendations to the suspect's Commanding Officer. The pertinent service regulations are listed below:

Army:	AR 608-18
Navy:	SECNAVINST 1752.3B
USAF:	AFI 40-301
USMC:	MCO P1700.24
USCG:	COMDINST 1750.7C

b. *Victim advocate services.* FAP services will begin in one of two ways; either the victim reports an allegation of abuse, or the FAP manager learns of some allegation of abuse through some sort of official incident report, such a military or civilian police report. Victims going to the community counseling center will initially see a victim advocate (VA). The VA will interview the complainant and help to address the complainant's needs. The VA will help devise a safety plan, which may include assisting the victim to obtain a CPO and / or an MPO should the victim so desire and admission to a battered spouses' shelter. The VA may advise of pertinent regulations, such as financial support regulations, and provide information concerning community resources available. Appropriate referral will be made to address medical / psychological issues.

c. *Restrictive Reporting.* Victims may be reluctant to report abuse, fearing adverse consequences to the service member's career and potential adverse effects on the spouse's income earning capacity. Accordingly, the Department of Defense has promulgated a "restrictive reporting" option. Thus, the victim can access VA services without authorizing the VA to report the incident to members of the command. There are exceptions: the VA will make disclosure as may be necessary to comply with a court order, to prevent serious and imminent harm to the victim or others, or to comply with state or federal law mandatory reporting; e.g., NC Gen Stat 7B-301 concerning child abuse. Notwithstanding any restrictive reporting, the command may investigate and address an incident of abuse if it learns about it through an independent source.

d. *Incident Review and Assessment.* A multidisciplinary Case Review Committee (CRC) will meet to consider allegations of spouse or child abuse. The CRC typically includes representation from the medical, legal, and law enforcement communities in addition to clinical counselors. Neither the suspect nor his attorney has the right to attend a meeting of the CRC, although a command representative will be present and has the right to vote on the case. Further, the suspect may provide written materials for CRC consideration. Any written or verbal statement made by the suspect to a counselor during the course of the incident assessment interview will be relayed by that counselor to the CRC for consideration. Such statement will be considered notwithstanding the absence of Miranda / Article 31 rights warning. The CRC will also review any other available evidence: victim statements, police reports, medical reports, photographs, witness statements, and pertinent information provided by the command. By majority vote, the CRC will determine whether the preponderance of the evidence substantiates the allegation of abuse. If the evidence is insufficient to substantiate the allegation, the CRC will determine whether the incident shall be categorized as “unsubstantiated / unresolved” or “unsubstantiated / did not occur.” Using regulatory guidelines, Marine Corps CRCs will then assess the level of severity of the incident from 1-5, with five the most severe. The CRC will recommend appropriate counseling designed to address the abuse and any other related issues, such as alcohol dependence. The CRC has no authority to direct the suspect to attend counseling sessions; rather, the commander will typically issue appropriate orders acting on the CRCs recommendations. The suspect’s progress through the recommended counseling will be monitored and assessed not less than every 90 days. The CRC report may also “suggest” counseling or referral to various community services for the victim.

e. *Reconsideration / Appeal of CRC Decision.* The Command, or any of the affected parties, may request that the CRC reconsider its original decision, but reconsideration will be made only on the grounds that the CRC failure to substantially follow the prescribed procedures, or that new information is available. Marine Corps regulations do not contain any provisions for further review. Per Army Regulation 608-18, the Commander of the Medical Treatment Facility (MTF) “may” forward the case for review by the Commander of the United States Army Medical Command.

f. *Treatment and Counseling.* Domestic violence related counseling programs include, but are not necessarily limited to, the following:

-CORE ISSUES. Six 2 hr sessions. Conflict, power, emotional management, impulse control.

-DOMESTIC CONFLICT & CHILDREN. Impact of DV on children. One 3 hr session

-RELATIONSHIP SKILLS. Four 2 hr sessions. Listening, expressing feelings, identifying & changing distorting thinking, negotiation, problem solving, managing anger.

-MEN'S PERSPECTIVE. Four 2 hr sessions addressing power and control tactics, internalized family and cultural norms.

-WOMEN'S GROUP. Six 2 hr sessions. Community resources, safety planning, self esteem, marriage, children. Other topics as appropriate.

Military dependents may also seek a private health care provider through TriCare, the military medical insurance program. Active duty service members may also seek assistance through a private health care provider, but TriCare will not pay for such counseling unless the member was referred by a military health care provider (who will generally not make such referral unless required treatment is unavailable within the armed forces.) DoD funded "Short term, non medical counseling" (face to face, on line, or telephonic) is also available through Military One Source. Additional information at information <http://www.militaryonesource.com/MOS/About/CounselingServices.aspx>

Referral for additional counseling and treatment may be made, including counseling for collateral issues, such as alcohol dependence, psychological counseling or assessment, and financial management.

7. COLLATERAL EFFECTS OF CRC DETERMINATIONS: USMC

a. *Fitness reports.* The Marine Corps Personal Services Manual, MCO P1700.24B, at section 5003.7 is clear and unambiguous. It requires the reporting senior to mark a fitness report as "adverse" if the CRC substantiated an instance of spouse or child abuse of severity level III or higher. MCO P1610.7F, the Performance Evaluation System Manual, is somewhat out of sync with the Personal Services Manual. It provides, at section 4003.6b a non-exhaustive list of circumstances that may result in an adverse fitness report. Included in that list of circumstances are: substantiated child or spouse abuse of severity level IV or V or a "subsequent" finding of severity level III. This section also requires, as a prerequisite to such derogatory report, that the Marine be afforded a "due process determination by the commanding officer that the MRO [Marine Reported On] is culpable." Neither order describes what such "due process" determination entails.

b. *Administrative Separation.* Per section 5003.9 of MCO P1700.24B, the Commander "shall" initiate processing for administrative separation after a second substantiation of child or spouse abuse at level III or higher when (1) rehabilitation, education, and counseling was previously provided, or (2) the service member refused or failed to cooperate with the recommended treatment, or (3) the service member failed to meet conditions of a court order or probation. Notwithstanding the above, a commander may initiate discharge processing based on a single incident when the Commander determines that the member has no potential for further service. The Commander is not authorized to direct the discharge of the Marine; rather, the CO can initiate the administrative process. That is, the Commander will provide the member with written notice of his intent to discharge the Marine for misconduct, usually with an other than honorable characterization of discharge, and advise the Marine of his various rights in the

matter, including the right to a appointed counsel and a hearing before a board of officers. Marine Corps Order P1900.16F, the Marine Corps Separation and Retirement Manual (MARCORSEPMAN) lists the authorized grounds for administrative separation. Those grounds do not include domestic violence, per se. However, separations for domestic violence may be pursued under other, more generic grounds for separation, such as:

-Minor disciplinary infractions (Para 6210.2): At least three instances of minor infractions within the current enlistment. Separation processing may not be initiated unless the Marine has previously received a written counseling /warning in accordance with paragraph 6105. Such counseling includes a notice of deficiencies, recommendations for corrective action and assistance available, an explanation of the consequences of failure to successfully undertake the corrective action, and a reasonable opportunity for the Marine to undertake the corrective action.

-Pattern of Misconduct (Para 6210.3): A documented series of at least three instances of minor disciplinary infractions within the current enlistment of a nature which has been or would have been appropriately punished under Article 15, UCMJ. Counseling per section 6105 is required prior to separation processing.

-Commission of a Serious Offense (Para 6210.6): This basis exists if the Marine committed a military or civilian offense and (1) a punitive discharge is authorized for the same or a closely related offense under the UCMJ, and (2) the specific circumstances of the offense warrant separation. Note that a military or civilian conviction is not required for discharge under this provision.

-Civilian Conviction (Para 6210.7) : Commanders may process Marines under this provision when domestic or foreign authorities have convicted a Marine “or taken action which is tantamount to a finding of guilty,” when the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ or the sentence by civilian authorities “includes confinement for six months or more without regard to suspension or probation.”

8. TRANSITIONAL COMPENSATION.

a. *Generally.* Service members found to have committed an act of domestic violence may be administratively separated from the armed forces or may be punished by court-martial and awarded a punitive discharge as part of the sentence. In either case, the member’s career comes to an abrupt end, as does his ability to provide support to dependents through his military pay. In order to encourage victims of domestic violence to come forward and also to provide for continuing financial support to victims, Federal law [10 USC 1059] authorizes the United States to pay, upon a proper request, financial compensation to dependents whose spouse was punitively discharged or administratively separated from the armed forces as a result of a dependent abuse offense. The Commanding Officer or unit legal officer fills out most of the required form [Department of Defense Form DD 2698] and certifies the information therein prior to the applicant signing the document. The form is then sent via the designated service representative to

the Defense Finance and Accounting Service (DFAS). The Community Counseling Center can help with this process and will often be more familiar with application procedures than the command involved.

b. *Amount and Duration of Payments.* The monthly amount of compensation is statutorily tied to those amounts provided for Dependency Indemnity Compensation [38 USC 1311], that is, payments made to the surviving spouse as a result of a service connected death. The monthly amount is currently \$1,091 per month, with an additional \$271 per dependent child. Payments last for 36 months, or the unserved portion of the member's military enlistment contract, whichever is less. However, the duration of benefits shall not be less than twelve months.

c. *Commencement of Benefits.* The transitional compensation statute provides that, in the case of a court-martial, compensation begins when the sentence is announced by the court, if that sentence includes a punitive discharge or forfeiture of all pay and allowances. If there is a pretrial agreement between the accused and the United States wherein the government agrees to suspend that portion of the sentence that would otherwise qualify the victim for transitional compensation, then payment is not authorized until the commander who convened the court takes action on the sentence, and such action approves an unsuspended forfeiture of all pay and allowances or an unsuspended punitive discharge. Such approval might occur, notwithstanding a pretrial agreement calling for suspension, if the accused failed to comply with the conditions or terms of the suspension. In the case of an administrative separation, the statute calls for transitional compensation to commence "as of the date separation action is initiated by the commander of the member pursuant to such regulations, as determined by the secretary concerned."

c. *Forfeiture of benefits.* The benefits provided to the spouse of the separated service member shall cease as of the date the recipient remarries. The payments do not resume in the event of a subsequent divorce. Benefits also cease as of the date the recipient cohabits with the perpetrator and they shall not thereafter be resumed. In addition, in the case of a child victim, a spouse is ineligible for benefits if s/he was an active participant in the dependent abuse offense or actively aided or abetted the member to commit the offense. The recipient is required to notify DFAS within 30 days of ineligibility to receive payments. Further, the recipient must certify annually continuing eligibility for payments.

d. *Commissary, Exchange, and Medical Benefits.* While receiving transitional compensation, the victim shall have the same commissary and exchange privileges as a dependent of a service member on active duty. The recipient is also eligible for medical benefits for as long as transitional compensation is received. In the rare case wherein the separated service member is retirement eligible, the spouse may be entitled to certain benefits, including medical benefits, under Title 10, U.S. Code, section 1408f, the Uniformed Services Former Spouse Protection Act (USFSPA). If so, the spouse must choose which benefits provision to use. A detailed analysis of benefit eligibility for spouses of retirement eligible service members is beyond the scope of this article.