

FORMER SPOUSES' RIGHTS

(The Uniformed Services Former Spouses Protection Act)



JOINT BASE ANDREWS LAW CENTER

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This handout outlines former military spouses' entitlement to benefits and retirement pay.

FULL MILITARY PRIVILEGES FOR FORMER SPOUSES: THE 20/20/20 RULE

Full benefits (medical, commissary, exchange, theater, etc.) are extended to a former spouse if:

- The parties were married for at least 20 years;
- The military member performed at least 20 years of service creditable for retirement; and
- There was at least a 20-year overlap of the marriage and the military service.

LIMITED PRIVILEGES FOR FORMER SPOUSES: THE 20/20/15 RULE

A former spouse is entitled to limited privileges, including medical benefits for one year from the date of divorce, dissolution, or annulment if:

- The parties had been married for 20 years;
- The military member performed at least 20 years of service creditable for retirement; and
- There was at least a 15-year overlap of the marriage and military service.

TERMINATION OF PRIVILEGES

Eligibility for privileges ends if the former spouse remarries. If the subsequent marriage ends by divorce or death, benefits (except medical care) can be reinstated.

If the former spouse is covered by an employer-sponsored health care plan, medical care is not authorized. However, when the former spouse is no longer covered by the employer-sponsored plan, military medical care benefits may be reinstated upon

application by the former spouse. If a spouse is only receiving limited privileges, reinstatement cannot extend beyond the original 1-year entitlement.

PRIVATE HEALTH INSURANCE

Former spouses who will lose medical coverage are eligible to purchase up to 36 months of health insurance through the Continued Health Care Benefit Program (CHCBP). The program is intended to provide benefits similar to TRICARE. For more information, please visit: www.humana-military.com or call Humana Military at 1-800-444-5445.

MILITARY RETIREMENT PAY

The Uniformed Services Former Spouses' Protection Act (USFSPA) allows (but does not require) a court to award a former spouse a portion of retired pay when dividing property. The court, however, cannot award more than 50% of the military member's "disposable retired pay," which is the gross monthly pay entitlement, less authorized deductions. Additionally, in order to consider retired pay in dividing property, the court must have jurisdiction of the military member by reason of the member's residence in the court's territorial jurisdiction (other than because of military service), domicile in the court's territorial jurisdiction, or consent to the court's jurisdiction.

In Maryland, Virginia, and Washington, D.C., military pensions are considered marital property and can be divided in property division.

DIRECT PAYMENT OF RETIRED PAY

If awarded a portion of retired pay, a former spouse can apply to the Defense Finance and Accounting Service (DFAS) to receive direct payment of the award. To qualify for direct payment, however, the former spouse must have been married to the military member during at least 10 years of the military member's active duty service. If the former spouse is entitled to direct payments, DFAS must begin direct payment to the former spouse within 90 days after receipt of the court order. If the military member is not yet retired, payments will begin no later than 90 days after the military member retires.

To apply for direct payment, the former spouse should submit a completed, signed application (DD Form 2293), along with a certified copy of the court order to DFAS. For information on the requirements of the application form, please visit: <http://www.dfas.mil/garnishment.html>

Direct payments only terminate in accordance with the terms of the court order, or upon the death of the military member or former spouse.

SURVIVOR BENEFIT PLAN

Unless the military member elects former spouse coverage, a former spouse loses coverage under a Survivor Benefit Plan (SBP) 1 year after divorce. For divorces finalized after 14 November 1986, military members may be court-ordered to elect former spouse SBP coverage upon retirement. A court-ordered SBP election will only be enforced if the spouse requested that the election be deemed on the military member's behalf, in writing, within 1 year of the date of the court order.

CHILDREN'S BENEFITS

Unmarried children up to 21-years-old (including stepchildren who are adopted by the military member) may keep their medical benefits after divorce. A stepchild not adopted by the military member, however, loses eligibility once the divorce is final. An unmarried child may be covered until 23-years-old if he or she is in school full-time. Entitlements for incapacitated children are handled under special rules.

Children residing in the household of a separated spouse continue to be eligible for commissary privileges until the divorce is final. Once the divorce is final, children residing in the house of a former spouse who is not extended commissary privileges are not considered to be members of the authorized military member's household for purposes of commissary privileges.

Children continue to be entitled to use the exchange and theater after the divorce if they are dependent on the military member for over 50% of their support.

If you have any questions, please schedule an appointment with a legal assistance attorney by calling (240) 612-5750.