

## Military Domestic Problems

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**D**omestic violence happens so much in the military that the Department of Defense has made it an item of specific concern. First Sergeants and military police absolute hate domestic call-outs because the solutions are never clear cut. More often than not, the victims of domestic violence refuse to cooperate because they perceive a threat to their spouse's career.

In most cases, husbands abuse wives, but that's not always true. If the abuser is a civilian, the military has no control over the matter. In most cases, all the military can do is turn the information over the civilian authorities. Installation commanders do have the power to bar civilians from military installations, and will exercise that power to protect military members from abusive civilian spouses, if necessary.

If the abuser is a military member, domestic violence situations are handled on two separate tracks: The military justice system and the Family Advocacy system. It's important to realize that these are two separate systems, not connected. Family advocacy is an **identification, intervention, and treatment** program -- not a punishment system. It's entirely possible that the Family Advocacy Committee will return a finding of "substantiated abuse," but there will be insufficient legally admissible evidence to allow punishment under the provisions of military justice.

On the other hand, one should realize that the Family Advocacy system does not enjoy the right of "confidentiality" under military law (such as chaplains and attorneys), and evidence gathered and statements made during Family Advocacy investigations may be used in military justice proceedings.

If the incident(s) happen off base, civilian agencies may be given jurisdiction on the legal side, but Family Advocacy should still be notified. Off base, local police may or may not report the incident to base officials. DoD officials are currently working to develop memoranda of understanding with civilian law enforcement authorities to establish such reporting procedures.

Regulations **require** military and DOD officials to report any suspicion of family violence to Family Advocacy, no matter how small. This includes commanders, first sergeants, supervisors, medical personnel, teachers, and military police.

In many cases, when responding to a domestic situation, the commander or first sergeant will order the military individual to reside in the dormitory/barracks until the Family Advocacy investigation is completed. This may be accompanied by a "military protective order," which is a written order prohibiting the military member from having any contact with the alleged victim. Many bases have an "abused dependent safeguard" system, where the first sergeant or commander can place the family members in billeting under an assumed name.

When domestic violence is reported to Family Advocacy, the agency will assign a caseworker to assess the victim's safety, develop a safety plan, and investigate the incident. Throughout the process, victims' advocates ensure that the victim's medical, mental health and protection needs are being met. Family Advocacy officials will also interview the alleged abuser. The alleged abuser is informed of his/her rights under the provisions of [Article 31 of the UCMJ](#), and does not have to speak to the investigation officials, if he/she chooses not to.

If child abuse is involved, regulations **require** that local child protection agencies be notified, and participate in the process.

After the investigation, the case is then presented to a multidisciplinary case review committee with representatives from the Family Advocacy Program, law enforcement, staff judge advocate, medical staff and chaplain. The committee decides whether the evidence indicates abuse occurred, and arrives at one of the following findings:

**Substantiated.** A case that has been investigated and the preponderance of available information indicates that abuse has occurred. This means that the information that supports the occurrence of abuse is of greater weight or more convincing than the information that indicates that abuse did not occur.

**Suspected.** A case determination is pending further investigation. Duration for a case to be "suspected" and under investigation should not exceed 12 weeks.

**Unsubstantiated.** An alleged case that has been investigated and the available information is insufficient to support the claim that child abuse and/or neglect or spouse abuse did occur. The family needs no family advocacy services.

In making these determinations, the Committee uses the following definitions for abuse:

**Child Abuse and/or Neglect.** Includes physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or combinations for a child by an individual responsible for the child's welfare under circumstances indicating that the child's welfare is harmed or threatened. The term encompasses both acts and omissions on the part of a responsible person. A "child" is a person under 18 years of age for whom a parent, guardian, foster parent, caretaker, employee of a residential facility, or any staff person providing out-of-home care is legally responsible. The term "child" means a natural child, adopted child, stepchild, foster child, or ward. The term also includes an individual of any age who is incapable for self-support because of a mental or physical incapacity and for whom treatment in a Military Treatment Facility is authorized.

**Spouse Abuse.** Includes assault, battery, threat to injure or kill, other act of force or violence, or emotional maltreatment inflicted on a partner in a lawful marriage when one of the partners is a military member or is employed by the Department of Defense and is eligible for treatment in an MTF. A spouse under 18 years of age shall be treated in this category.

Based on the committee's recommendations, the commander decides what action to take regarding the abuser., The commander determines whether to order the individual into treatment, and/or to seek to impose disciplinary procedures under the Uniform Code of Military Justice. The commander may also seek to obtain the [discharge](#) of the service member from the military.

Victims often hesitate to report abuse because they fear the impact it will have on their spouse's career. A recent DOD study found that service members reported for abuse are 23 percent more likely to be separated from the service than nonabusers and somewhat more likely to have other than honorable discharges. The majority who remain in the military are more likely to be promoted more slowly than nonabusers.

Many military spouses don't know that federal law gives financial protection to the spouse if the member is discharged for an offense which "*involves abuse of the then-current spouse or a dependent child.*" It doesn't matter if the discharge is a punitive discharge imposed by a [court-martial](#), or an administrative discharge initiated by the commander. The key is that the reason for the discharge must be for a "dependent abuse" offense.

The term "involves abuse of the then-current spouse or a dependent child" means that the criminal offense is against the person of that spouse or a dependent child. Crimes that may qualify as "dependent-abuse offenses" are ones such as sexual assault, rape, sodomy, assault, battery, murder, and manslaughter. (This is not an exhaustive or exclusive listing of dependent-abuse offenses, but is provided for illustrative purposes only.)

At the time of this article, the current authorized payment is \$850 per month. If the spouse has custody of a dependent child or children of the member, the amount of monthly compensation to the spouse shall be increased for each child by \$215. If there is no eligible spouse, compensation paid to a dependent child or children, is paid in equal shares to each child.

The duration of the payments cannot exceed 36 months. If the military member had less than 36 months of obligated military service at the time of the discharge or imposition of the court-martial sentence, then the duration of the payments will be the length of the member's obligated service, or 12 months, whichever is greater.

If a spouse receiving payments remarries, payments terminate as of the date of the remarriage. Payment shall not be renewed if such remarriage is terminated. If the payments to the spouse terminate due to remarriage and there is a dependent child not living in the same household as the spouse or member, payments shall be made to the dependent child.

If the military member who committed the abuse resides in the same household as the spouse or dependent child to whom compensation is otherwise payable, payment shall terminate as of the date the member begins residing in such household.

If the victim was a dependent child, and the spouse has been found by competent authority designated by the Secretary concerned to have been an active participant in the conduct constituting the criminal offense or to have actively aided or abetted the member in such conduct against that dependent child, the spouse, a dependent child living with the spouse shall not be paid transitional compensation.

In addition to the transitional benefits, if the military member was eligible for retirement, and was denied retirement because of the criminal offense, the spouse can still apply to a divorce court for a division of retired pay under the provisions of the Uniformed Services Former Spouse Protection Act, and the military will honor the payments. (Note: Under this provision, such payments terminate upon remarriage).

Even if a domestic violence case is handled off base via the civilian criminal court system, criminal conviction of even a misdemeanor involving domestic violence can end a service member's military career. The 1996 Lautenberg Amendment to the Gun Control Act of 1968 makes it unlawful for anyone who has been convicted of a misdemeanor of domestic violence to possess firearms. The law applies to law enforcement officers and military personnel.