



# LEGAL BRIEF

## MILITARY ENTITLEMENTS UPON SEPARATION OR DIVORCE

March 2026

PREPARED BY:  
CREECH LEGAL OFFICE  
Bldg 271, Perimeter Rd, Creech AFB, Nevada  
Phone: 702-404-0881

---

*Being married to a military member entitles family-member spouses to a wide variety of benefits and privileges. These benefits are derived from the military spouse's status as a military member and are dependent upon that status. A divorce directly impacts the benefits to which a family-member spouse is entitled. This pamphlet is designed to cover the impact of separation and divorce on these military entitlements.*

### **I. Military Member:**

- May collect basic allowance for housing at the “dependent” or “difference” rate if the divorce decree or separation agreement stipulates child support. The amount of BAH is based on the individual's grade and may be terminated if not properly used to support dependents.
- May be authorized military family quarters if the military member has physical custody of the children.

### **II. Dependent Spouse:**

- Loses all benefits—I.D. card, medical care, commissary, Base Exchange, and use of all base facilities—upon the final divorce decree. (Exception: See Uniformed Services Former Spouse Protection Act [hereinafter USFSPA] below). If there is a court-approved separation or interlocutory divorce, the dependent spouse retains all benefits/privileges until the divorce is final.
- Not authorized base housing, even if dependent spouse has custody of dependents and even if purported right is given in the divorce decree.
- Not automatically authorized alimony or child support payments by allotment.
- May be authorized a division of military retirement pay (See USFSPA below).

### **III. Dependents:**

- Authorized medical care at military facilities (regardless of who has custody).
- Authorized retention of unlimited I.D. card if in the custody of the military spouse.

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE CREECH AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**



- Authorized retention of limited I.D. card if in custody of non-military spouse—typically limited to medical facilities and the base theater. However, access to the Base Exchange may be authorized if child is with nonmilitary spouse and is unmarried, under 21, legitimate or illegitimate, adopted or step-child, and more than 50 percent dependent on the military sponsor for financial support.
- Benefits end at age 21, marriage, or at age 23 if full-time student.

#### IV. Other Factors:

- On-base quarters may not be stipulated as part of a settlement, divorce decree, or separation agreement. On-base quarters are a benefit of the military member only, and the military member does not have an absolute right to on-base quarters.
- Commanders may not order military members to initiate allotment actions to satisfy child support or alimony payments. They also may not order military members to make support payments although they may take administrative action for failure to provide support as required by AFI 36-2906 and UCMJ Article 134. However, courts of competent jurisdiction may order such support.
- Involuntary allotments for child and spousal support are possible (see USFSPA rights and benefits below).
- Garnishment action may be initiated against federal wages for nonpayment of child support or alimony, but you must follow individual state rules on initiation and issuance of garnishment order.

#### V. Uniformed Services Former Spouse Protection Act (USFSPA): Overview

*Divorce in the military can be confusing because domestic situations are governed by a mix of federal statutes, state divorce laws and procedures, and military regulations. The Uniformed Services Former Spouse Protection Act (USFSPA) is a federal law that provides certain benefits to former spouses of military members.*

The USFSPA is a critical federal law that influences how benefits are handled post-divorce. It does not automatically grant any benefits, but it authorizes state courts to make decisions on certain entitlements.

- What the USFSPA does:
  - Allows state courts to treat disposable military retired pay as marital property to be divided in a divorce.
  - Provides a method for a former spouse to receive payments directly from the Defense Finance and Accounting Service (DFAS).
  - Grants continued healthcare, commissary, and exchange benefits to certain long-term former spouses.
- What the USFSPA does NOT do:
  - It does not require courts to divide retired pay or establish a set formula for division. All divisions are determined by state law and the court order.

#### VI. USFSPA: Immediate Impact on Spouse & Dependent Benefits

*Note: During a legal separation (before the divorce is final), a dependent spouse generally retains all benefits and privileges.*

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE CREECH AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**



Upon a final divorce decree, the former spouse's status as a military dependent ceases.

Benefit	Status for Former Spouse	Status for Dependent Children
Military ID Card	Terminated immediately upon final divorce.	Retain ID card and associated privileges.
TRICARE Health Care	Terminated. (See exceptions below for 20/20/20 Test).	Remain eligible for TRICARE until age 21 (or 23 if a full-time student), regardless of custody.
Base Facilities	Loss of access to Commissary, Exchange (PX/BX), and MWR facilities.	Retain access. Specific access may depend on the type of ID card issued based on custody arrangements.
Base Housing	Not authorized, even if granted custody of children in the divorce decree. On-base housing is a benefit for the service member.	May reside in on-base housing only if in the physical custody of the service member.

### The 20/20/20 Test

The USFSPA also permits former spouses to continue receiving commissary, exchange, and health care benefits after a divorce in certain cases. In order to qualify for continued benefits, a former spouse must show that the servicemember served at least 20 years of creditable service, that the marriage lasted at least 10 years and that the period of the marriage overlapped the period of service by at least 20 years. A former spouse who meets these requirements is known as a 20/20/20 former spouse and is entitled to full commissary, exchange and health care benefits. These benefits include TRICARE and in-patient and out-patient care at a military treatment facility. Former spouses who do not meet these requirements lose their commissary and exchange privileges once the divorce is final.

In cases where the servicemember served 20 years of creditable service, the marriage lasted 20 years, but the period of the marriage overlapped the period of service by only 15 years the former spouse is entitled to full military medical benefits only for a transitional period of one year following the divorce. After this year of coverage, the spouse may purchase a DoD-negotiated conversion health policy. Full coverage also requires that the former spouse does not remarry nor enroll in an employer-sponsored health insurance plan. Former spouses who are neither 20/20/20 nor 20/20/15 former spouses are not entitled to any military health benefits after a divorce. But, they are eligible for the DoD Continued Health Care Benefit Program, a premium based temporary health care coverage program for 36 months of coverage

### VII. USFSPA: Direct Payment of Retired Pay:

A significant financial aspect of a military divorce is the division of retired pay.

Topic	Description
State Court Authority	State courts can divide a service member's "disposable retired pay" as marital property. The portion is determined by the court order, not a military formula.

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE CREECH AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**



**The 10/10 Rule** This is often misunderstood. It does not determine if a spouse gets a share of retirement. It is a rule for direct payment from DFAS. To qualify for direct payment, the marriage must have lasted at least 10 years, overlapping with at least 10 years of the member's creditable military service. If the 10/10 rule is not met, the service member is still obligated to pay the former spouse directly per the court order.

---

**Blended Retirement System** For members under the Blended Retirement System (BRS), the pension portion is treated as described above. However, the Thrift Savings Plan (TSP) is a separate asset and is divided according to a specific Retirement Benefits Court Order.

### State Jurisdiction

To enforce orders dividing retired pay as property, the state court must have had jurisdiction over the member through one of the following ways:

- The member's residence is in the territorial jurisdiction of the court (other than because of military assignment);
- The member's domicile is in the territorial jurisdiction of the court;
- The member consents to the jurisdiction of the court; or
- The member indicates his or her consent to the court's jurisdiction by taking some affirmative action in the legal proceeding.

The 10/10 rule and the jurisdictional requirement do not apply to enforcement of child support or alimony awards under the USFSPA.

**Direct Payments will Terminate:** Direct payments will terminate on these events, whichever comes first:

- Terms of the court order are satisfied
- Death of the retired servicemember
- Death of the former spouse

**Procedure for Request for Direct Pay:** The former spouse must send the following items to the designated agent of the member's uniformed service:

- Signed DD Form 2293, "Application for Former Spouse Payments from Retired Pay"
- A copy of the court order
- Other accompanying documents that provide for payment of child support, alimony or division of property, certified by an official of the issuing court within the previous 90 days

**Notification to the designated agent can be made by:**

- Regular mail
- Email
- Fax
- Certified mail

**No later than 30 days after effective service, the Defense Finance and Accounting Service:**

- Will send written notice to the affected member at the last known address
- Will consider any response received from the servicemember

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE CREECH AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**



- May reject any request for direct pay that does not satisfy requirements
- Will NOT honor the court order whenever it is shown to be defective, modified, superseded or set aside

### VIII. USFSPA: Survivor Benefit Plan

No later than 90 days after effective service, the Defense Finance and Accounting Service will make payment to the former spouse and inform him or her of the amount to be paid, or send the former spouse an explanation of why the court order was not honored.

#### Survivor Benefit Plan (SBP) & Support Enforcement

Topic	Description
Survivor Benefit Plan (SBP)	SBP is an annuity paid to a designated beneficiary after a retiree's death. A court can order a service member to designate their former spouse as the SBP beneficiary, providing a continued income stream after the member's passing. This must be explicitly ordered in the divorce decree.
Child Support & Alimony	While commanders cannot force a member to pay support, they can enforce regulations against failing to support dependents (AFI 36-2906). State courts can order garnishment of military pay or retirement pay to satisfy child support and alimony obligations.
Direct Payment Application	To apply for direct payments of retired pay from DFAS, a former spouse must submit DD Form 2293 along with a certified copy of the court order. DFAS will then notify the service member and, if all requirements are met, begin payments.

**Impact of the Designation:** Generally, when a retired servicemember passes away, retired pay stops unless the servicemember enrolled in the Survivor Benefit Plan. The Survivor Benefit Plan is a monthly benefit paid to the designated beneficiary of a retired servicemember who has passed away. Under the USFSPA, a former spouse can be designated as a Survivor Benefit Plan beneficiary if the spouse was previously listed as a spouse beneficiary and one of the following conditions exist:

- The servicemember voluntarily keeps the former spouse as a beneficiary; or
- A court orders the servicemember to keep the former spouse as a beneficiary

If the servicemember and spouse get divorced after the servicemember's retirement, the former spouse's coverage will be the same amount as the spouse coverage. If the servicemember and spouse get divorced before the servicemember's retirement, the specific coverage level should be directed by court order. A former-spouse beneficiary is not eligible to receive monthly benefits if the former spouse remarries before age 55, and such ineligibility continues for the duration of the remarriage but may be restored if the remarriage ends.

until alternative coverage can be obtained, if they enroll within 60 days of losing full military health care benefits.

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE CREECH AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**



**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE CREECH AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**