



Submittals
with Her

National Military Family Association

6000 Stevenson Avenue, Suite 304
Alexandria, Virginia 22304
(703) 823-NMFA
FAX (703) 751-4857

Former Spouse

The U.S. Supreme Court decision *McCarty v. McCarty*, 26 June 1981, held that existing federal law precluded the award of military retirement benefits as marital property upon divorce. In the same decision, the Court "invited" congressional action. Congress responded with the Former Spouse Protection Act (FSPA), Public Law 97-252 (Title 10 U.S. Code, Sec. 1408 etc. seq.), effective 1 February 1983. FSPA overtook the *McCarty* decision and returned to state courts the right to consider military retired pay as property upon divorce.

- A division can range from nothing to a MAXIMUM of 50% of disposable retired pay, at the discretion of the court. Disposable retired pay was generally defined as the retired or retainer pay minus:
 - obligations of the member to the United States, including court-martial ordered fines
 - properly withheld federal, state, or local income taxes
 - amounts deducted to pay for a court ordered Survivor Benefit Plan for the former spouse
 - amounts received as veterans or military disability pay

The FY 91 Defense Authorization Act (P.L. 101-510) redefined disposable pay and no longer allows federal, state or local income taxes to be subtracted. This provision was effective for divorces and separations after 4 February 1991.

- In states that formerly divided military retired pay, FSPA allowed modification of decrees to award retirement benefits only for those divorces which occurred between the *McCarty* decision and the enactment of FSPA - the so called "window period". State courts have supremacy in family law cases. Some states ignored this provision of FSPA and opened divorces granted prior to 26 June 1981. P.L. 101-510 specifically disallows this practice and allowed payments made as a result of such action to cease in November of 1993.

- Retired pay awarded as property is not affected by remarriage.
- FSPA allows direct payment of retired pay from the service finance center of the member, upon presentation of a valid court order, for alimony, child support, or property division.
 - Direct payment of retired pay as property is authorized only if the marriage lasted at least 10 years during 10 years of the member's creditable service.
 - Direct payments cannot exceed 50% of disposable retired pay divided as property; an additional 15% can be paid on a garnishment order (such as child support).
 - A valid court order must certify that the service member's rights were observed under the Soldiers and Sailors Civil Relief Act of 1940.

SURVIVOR BENEFIT PLAN

The 1983 Former Spouse Protection Act allowed the service member to designate a former spouse as the beneficiary of the Survivor Benefit Plan (SBP). However, the member could change the designation to a new spouse upon remarriage. State courts were given

the option to order the service member to participate in the Survivor Benefit Plan with the former spouse designated as the beneficiary, effective 14 November 1986 by Public Law 99-661. When the former spouse is designated as the SBP beneficiary and the agreement is incorporated in or ratified by a court order, the servicemember may NOT change beneficiaries without written concurrence from the former spouse. To assure coverage under SBP, the former spouse should submit a written request and a court-certified copy of the court order to the Defense Finance Accounting Service (DFAS). Public Law 104-201 (effective 9/28/96) allows court orders to be faxed or sent by e-mail. (NMFA recommends such a transmission be followed up with "return receipt requested" mail). The request and copy of the court order MUST be filed with DFAS within one year of the date of the court order.

MILITARY BENEFITS

• Medical

- An unremarried former spouse, married to a service member for 20 years during which the member served 20 years creditable toward retirement (a 20/20/20 former spouse), is entitled to military medical care on a space available basis and to CHAMPUS.
- Unremarried former spouses, married for 20 years, 15 of which were concurrent with 20 years of the service member's service creditable toward retirement (a 20/20/15 former spouse) and whose divorce occurred before 1 April 1985, were granted space available military medical care and CHAMPUS eligibility effective 1 January 1985 by Public Law 98-525.
- An unremarried 20/20/15 former spouse whose divorce occurred after 1 April 1985 is entitled to space available military medical care and CHAMPUS for one year from the date of divorce. These former spouses, as well other former spouses who do not qualify for any kind of military medical care, have the right to enroll in the Department of Defense (DoD) Continued Health Care Benefit Program (CHCBP). Coverage under this plan is almost identical to that of CHAMPUS and covers preexisting conditions including pregnancy. The plan must be purchased quarterly and former spouses may retain the plan for 36 months after the loss of eligibility for military medical care. The quarterly cost of the plan is \$993 for singles and \$1,996 for families (effective 1 May 1997).
- Former spouses who have employer sponsored medical insurance are not eligible for military medical care or CHAMPUS. If the employer sponsored insurance is optional, former spouses may decline that insurance and remain under CHAMPUS.
- Medical benefits cease upon remarriage and can never be reinstated.

• Commissary and Exchange Privileges

- A 20/20/20 former spouse is entitled to full commissary and exchange privileges.
- The entitlement to these privileges ceases upon remarriage but can be reinstated if the remarriage ends because of death or divorce.

Additional Information: *A Guide for Military Wives Facing Separation or Divorce* may be obtained from EXPOSE (Ex-Partners of Servicemen/women for Equality), P.O. Box 11191, Alexandria VA 22312, (703) 941-5844. The cost is \$3.00 for EXPOSE members and \$5.00 for non-members. This guide contains all the Uniformed Services former spouse legislation passed since the McCarty decision. It also gives practical information on selecting an attorney.