



NMSAO

NATIONAL MILITARY SPOUSE ADVOCACY ORGANIZATION

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Military Spouses are at immense risk of being *legally* abandoned by their Spouses. UNIFORMED SERVICEMEMBER SPOUSE AND FAMILY PROTECTION ACT (USFFPA)

Military Spouses and Children are neither enlisted or drafted members of the United States Military however, together they stand united with the sacrificial and patriotic Military Servicemember while serving our Nation. They are, by virtue of marriage, the cornerstone of stability for Servicemembers, their Families and our Nation.

*Military Spouses and Children, more than ever before, are being **legally** abandoned and deserted by their Servicemember Spouse/Parent. **Abandonment** is defined as a deliberate act to leave a Spouse (husband or wife) without discussing it, obtaining consent, and in some cases, without notifying the Spouse of their departure. In most cases, the abandoned family is left helpless and without resources due to the language in regulations and the lack jurisdictional enforcement or interest by command and responsible agencies. **Desertion** is willful abandonment, especially of one's spouse without consent, in violation of legal or moral obligations.*

In 2003 Congress enacted the Servicemembers Civil Relief Act (SCRA) as an improvement to the 1940 Soldiers and Sailors Civil Relief Act (SSCRA). The intent of the SCRA was to protect the Servicemember's family, but increasingly it has been used against the family and has caused irreparable harm to their quality of life. The SCRA provides a wide range of protection(s) for those either entering, being called to active duty, or being deployed. One of those protections is to suspend certain civil obligations for deployed military personnel. This enables the Servicemember to devote their full attention to duty, relieving stress for themselves and their families. One specific example of an SCRA "protection" is the misuse of **Pending Civil Trials**. When an incident arises where the Military Servicemember has abandoned and or deserted their Spouse, the Spouse is left without any legal recourse. The Spouse follows protocol by going directly to the Command and the Base Legal Assistance (JAG Office), at which time they are directed to the civil courts to mediate/litigate. Through the protection(s) afforded by the SCRA the Servicemember is protected and empowered.

The National Military Spouse Advocacy Organization (**NMSAO**) believes that our elected officials need to introduce and enact legislation for a Military Spouse Protection Act. The Act addresses specific issues and gaps in current regulations and benefits such as those listed below:

1. Housing Money Fraud / Spousal Abandonment (BAH)

Presently: Servicemembers are entitled to a tax free housing allowance called Base Housing Allowance (BAH). A problem occurs when the Servicemember receives the allowance but does not support the family with it.

Proposed Solution: A provision to allow the Military Spouse, following 30 days of separation, to directly petition the Defense Financial Accounting System (DFAS) for one-half of the housing allowance.

2. Servicemembers Group Life Insurance (SGLI)

Presently: Servicemembers are provided with a \$400,000.00 Life insurance which can be left to anyone. It does not have to be a Spouse or a family member. The law stipulates that if the Spouse is removed as beneficiary, the Spouse must be notified.

The Law states:

"A member's Spouse will be notified of any reductions in coverage below the maximum amount if:



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- the Spouse is beneficiary; and
- the reduction is the first election for less than the maximum coverage; or
- the reduction decreases coverage below the amount of coverage elected at the first reduction.

If the Spouse isn't notified, that does not change the Servicemember's selection. The failure to notify a Spouse of the election for reduced Insurance does not affect the validity of the election."

Proposed Solution: Provide for the military Spouse to purchase and own a separate SGLI policy on the Servicemember at the same premium and for the policy amount that the service member owns. Secondly, the Spouse must be notified of the Servicemember's SGLI selection and agree to the change by signing the same document. Failure to notify a Spouse of the election for reduced insurance negates the validity of the election.

3. Survivor Benefit Plan (SBP)

Presently: The SBP is an insurance plan that will pay your surviving Spouse a monthly payment (annuity) to help make up for the loss of your retirement income. The plan is designed to protect the survivors against the risks of the Servicemembers early death, the survivor outliving the benefits, and inflation. Military Servicemembers are required to complete and submit form DD 2656 (SBP) as they process out of military service/retire. If the service member elects to deny coverage for their Spouse and/or family member(s), they *must* do so with the Spouses consent. Servicemembers frequently create an "error or injustice" when completing this form by denying coverage for the Spouse and/or family member(s) *without* the Spouse's knowledge.

Proposed Solution: All rulings against the former Spouse in a state court where they were required to pay monies for the SBP premium and where an "error or injustice" took place, a federal preemption motion maybe filed to release the Spouse/former Spouse of the state ruling. This federal preemption will have all monies be retroactively refunded to the Spouse/former Spouse plus all legal fees paid to fight for federal law to be upheld. These monies owed to the Spouse/former Spouse will be collected from the military Servicemember's retired pay until the debt is paid in full or if the military Servicemember prefers to refund the amount owed in full.

4. Death Gratuity (DG)

Presently: The Servicemember's death gratuity can be left to any living person. The beneficiary does not have to be the Spouse or a family member. Even though the Spouse, must be given notification when there is a change to a beneficiary, there is no enforcement when this notification does not take place.

Proposed Solution: Enact a law that states: when notification is not given, death gratuity must be distributed "By Law".

5. "Widows' Tax"

Presently: Surviving Spouse(s) of Servicemember(s) pay a tax on survivor benefits paid to the Spouse in the event the Servicemember dies as a result of their military service. It is the government's policy that widows/widowers cannot collect both the survivor's benefits *and* the full annuity benefits from the



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insurance purchased from the Defense Department. **This is known as the SBP-DIC offset.** In order to collect on the insurance purchased for them when their Servicemember Spouse was alive, the surviving Spouse do not remarry or if they remarry before the age of 57.

Proposed Solution: Congress must pass a law to revoke the SBP-DIC offset. Period. There are approximately 54,000 surviving Spouses being affected by these policies, and due to the ongoing United States engagements around the world the number continues to grow.

6. Medical Services

Presently: Lifetime medical benefits are awarded to the Spouse when they meet the criteria for 20/20/20 (20 years of service, 20 years of military service and 20 years overlapping of the marriage and military service) only. If the Servicemember is discharged due to a disability such as PTSD the Spouse loses eligibility to access the medical care she/he had been receiving.

Proposed Solution: Evaluate Servicemember's eligibility for life time medical care based on the Servicemembers service related acuity/disability. This allows a ruling to be made, on a case by case basis providing the Servicemember, Spouse and family immediate members continued health coverage when the Servicemember does not meet the 20/20/20 rule.

7. Education Benefits

Presently: Servicemembers' have 2 types of educational benefits available to themselves and immediate family members, the Post-9/11 GI Bill and The Spouse and Dependents' Educational Assistance (DEA) program. The Post-9/11 GI Bill has a special provision that allows career Servicemembers to share all or a portion of their GI Bill (education) benefits with *immediate* family member(s), including Stepchildren not adopted by the Servicemember and excluding dependent Grandchildren. The DEA program provides education and training opportunities to *eligible* dependents of *certain* veterans. To be *eligible*, one must be the dependent son, daughter, (including not adopted step-Children) or Spouse of:

- A veteran who died or is permanently and totally disabled as the result of a service-connected disability. The disability must arise out of active service in the Armed Forces.
- A veteran who died from any cause while such service-connected disability was in existence.
- A service member missing in action or captured in line of duty by a hostile force.
- A service member forcibly detained or interned in line of duty by a foreign government or power.
- VA determines has a service-connected permanent and total disability; *and*
 - at the time of VA's determination is a member of the Armed Forces who is hospitalized or receiving outpatient medical care, services, or treatment; *and*
 - Is likely to be discharged or released from service for this service-connected disability.

Proposed Solution: The family unit has changed. Single parent, blended and same sex marriages has become a social norm and so is the growing number of Children being raised by their grandparent(s). Extend the transferability of both the Post 9/11 GI Bill and the DEA to dependent Grandchildren. This would allow the benefit to be used by a growing segment of the "dependent" population.



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8. Preliminary Legal Services

Presently: Spouses cannot access a Servicemember's Military documents. These federal documents are needed by civil or state court judges in divorce actions. In most cases of abandonment and desertion, the Spouses are unable to retain legal representation due to costly legal retainers, therefore are forced to represent themselves.

Proposed Solution: Military Spouses and civilian courts must have access to all documents pertaining to the civil matter being litigated. Any divorce is difficult but military divorce is complex therefore access must be granted to the following:

(1) the date they are eligible for lifetime healthcare. Some Spouses miss being eligible for 20/20/20 benefits by one month, one week, or even one day. A civil court judge needs to know this prior to signing a divorce decree.

(2) Judges need to know the service member's taxable and nontaxable pay. Most Servicemembers do not present their total income. They do not include BAH (nontaxable), Professional Pay, or Military Separation Pay or Travel Pay. Without this information a judge cannot render an equitable assignment of support.

The National Military Spouse Advocacy Organization (**NMSAO**) strongly believes that elected officials need to introduce and enact legislation for the Uniformed Servicemember Spouse and Family Protection Act (USSFPA). The Act would address specific issues and gaps in current regulations and benefits such as SGLI, the Death Gratuity, Medical Care, Housing Allowance disbursement, Preliminary Legal Services, and Educational Benefits. NMSAO has taken the initiative to draft this new bill.

As it stands right now, where there are specific and measurable rules, they are routinely broken. Where there is implied fairness there is blatant injustice. And where civilian Spouses and families have defined and proven legal track to follow, Military Spouses and Families are left to navigate their way through the Civil *and* Military legal systems. Change is overdue and the NMSAO is committed to protecting the rights of Military Spouses and Families through Advocacy, Accountability, Integrity and Respect.

Follow us at www.NMSAO.org or on www.facebook.com/NationalMilitarySpouseAdvocacyOrganization