

LEXSTAT 10 USC 1059

UNITED STATES CODE SERVICE
Copyright © 2006 Matthew Bender & Company, Inc.,
one of the LEXIS Publishing (TM) companies
All rights reserved

*** CURRENT THROUGH 109TH CONGRESS 2ND SESSION ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART II. PERSONNEL
CHAPTER 53. MISCELLANEOUS RIGHTS AND BENEFITS

Go to Code Archive Directory for this Jurisdiction

10 USCS § 1059

§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

(a) Authority to pay compensation. The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b). Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.

(b) Punitive and other adverse actions covered. This section applies in the case of a member of the armed forces on active duty for a period of more than 30 days--

(1) who is convicted of a dependent-abuse offense (as defined in subsection (c)) and whose conviction results in the member--

(A) being separated from active duty pursuant to a sentence of a court-martial; or

(B) forfeiting all pay and allowances pursuant to a sentence of a court-martial; or

(2) who is administratively separated, voluntarily or involuntarily, from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

(c) Dependent-abuse offenses. For purposes of this section, a dependent-abuse offense is conduct by an individual while a member of the armed forces on active duty for a period of more than 30 days--

(1) that involves abuse of the spouse or a dependent child of the member; and

(2) that is a criminal offense specified in regulations prescribed by the Secretary of Defense under subsection (k).

(d) Recipients of payments. In the case of any individual described in subsection (b), the Secretary shall pay such compensation to dependents or former dependents of the individual as follows:

(1) If the individual was married at the time of the commission of the dependent-abuse offense resulting in the separation, such compensation shall be paid to the spouse or former spouse to whom the individual was married at that time, including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse.

(2) If there is a spouse or former spouse who is or, but for subsection (g), would be eligible for compensation under this section and if there is a dependent child of the individual described in subsection (b) who does not reside in the same household as that spouse or former spouse, compensation under this section shall be paid to each such dependent child of the individual described in subsection (b) who does not reside in that household.

10 USCS § 1059

(3) If there is no spouse or former spouse who is (or but for subsection (g) would be) eligible under paragraph (1), such compensation shall be paid to the dependent children of the individual described in subsection (b).

(4) For purposes of this subsection, an individual's status as a "dependent child" shall be determined as of the date on which the individual described in subsection (b) is convicted of the dependent-abuse offense or, in a case described in subsection (b)(2), as of the date on which the individual described in subsection (b) is separated from active duty.

(e) Commencement and duration of payment.

(1) Payment of transitional compensation under this section--

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence--

(i) as of the date the court-martial sentence is adjudged if the sentence, as adjudged, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or

(ii) if there is a pretrial agreement that provides for disapproval or suspension of the dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances, as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this *title [10 USCS § 860(c)]* (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes an unsuspended dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and

(B) in the case of a member being considered under applicable regulations for administrative separation from active duty in accordance with such regulations (if the basis for the separation includes a dependent-abuse offense), shall commence as of the date on which the separation action is initiated by a commander of the member pursuant to such regulations, as determined by the Secretary concerned.

(2) Transitional compensation with respect to a member shall be paid for a period of not less than 12 months and not more than 36 months, as established in policies prescribed by the Secretary concerned.

(3) (A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction by a court-martial for a dependent-abuse offense and each such conviction is disapproved by the person acting under section 860(c) of this *title [10 USCS § 860(c)]* (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this *title [10 USCS § 860(c)]*, remitted, set aside, suspended, or mitigated to a lesser punishment that does not include any such punishment, any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

(B) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is disapproved by competent authority under applicable regulations, payment of transitional compensation in such case shall cease.

(C) Cessation of payments under subparagraph (A) or (B) shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that payment of the transitional compensation will cease. The recipient may not be required to repay amounts of transitional compensation received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(f) Amount of payment.

(1) Payment to a spouse or former spouse under this section for any month shall be at the rate in effect for that month for the payment of dependency and indemnity compensation under section 1311(a)(1) of title 38.

(2) If a spouse or former spouse to whom compensation is paid under this section has custody of a dependent child of the member who resides in the same household as that spouse or former spouse, the amount of such compensation paid for any month shall be increased for each such dependent child by the amount in effect for that month under section 1311(b) of title 38.

(3) If compensation is paid under this section to a child or children pursuant to subsection (d)(2) or (d)(3), such compensation shall be paid in equal shares, with the amount of such compensation for any month determined in accordance with the rates in effect for that month under section 1313 of title 38.

(g) Spouse and former spouse forfeiture provisions.

(1) If a former spouse receiving compensation under this section remarries, the Secretary shall terminate payment of such compensation, effective as of the date of such marriage. The Secretary may not renew payment of compensation under this section to such former spouse in the event of the termination of such subsequent marriage.

10 USCS § 1059

(2) If after a punitive or other adverse action is executed in the case of a former member as described in subsection (b) the former member resides in the same household as the spouse or former spouse, or dependent child, to whom compensation is otherwise payable under this section, the Secretary shall terminate payment of such compensation, effective as of the time the former member begins residing in such household. Compensation paid for a period after the former member's separation, but before the former member resides in the household, shall not be recouped. If the former member subsequently ceases to reside in such household before the end of the period of eligibility for such payments, the Secretary may not resume such payments.

(3) In a case in which the victim of the dependent-abuse offense resulting in a punitive or other adverse action described in subsection (b) was a dependent child, the Secretary concerned may not pay compensation under this section to a spouse or former spouse who would otherwise be eligible to receive such compensation if the Secretary determines (under regulations prescribed under subsection (k)) that the spouse or former spouse was an active participant in the conduct constituting the dependent-abuse offense.

(h) Effect of continuation of military pay. In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order--

- (1) suspends, in whole or in part, that part of a sentence that includes forfeiture of the member's pay and allowance; or
- (2) otherwise results in continuation, in whole or in part, of the member's pay and allowances.

(i) Coordination of benefits. The Secretary concerned may not make payments to a spouse or former spouse under both this section and section 1408(h)(1) of this *title* [10 USCS § 1408(h)(1)]. In the case of a spouse or former spouse for whom a court order provides for payments by the Secretary pursuant to section 1408(h)(1) of this *title* [10 USCS § 1408(h)(1)] and to whom the Secretary offers payments under this section, the spouse or former spouse shall elect which to receive.

(j) Commissary and exchange benefits.

(1) A dependent or former dependent entitled to payment of monthly transitional compensation under this section shall, while receiving payments in accordance with this section, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the armed forces on active duty for a period of more than 30 days.

(2) If a dependent or former dependent eligible or entitled to use commissary and exchange stores under paragraph (1) is eligible or entitled to use commissary and exchange stores under another provision of law, the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under such other provision of law rather than under paragraph (1).

(k) Regulations.

(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy). The Secretary of Homeland Security shall prescribe regulations to carry out this section with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations prescribed under paragraph (1) shall include the criminal offenses, or categories of offenses, under the Uniform Code of Military Justice (chapter 47 of this *title* [10 USCS § 801 et seq.]), Federal criminal law, the criminal laws of the States and other jurisdictions of the United States, and the laws of other nations that are to be considered to be dependent-abuse offenses for the purposes of this section.

(l) Dependent child defined. In this section, the term "dependent child", with respect to a member or former member of the armed forces referred to in subsection (b), means an unmarried child, including an adopted child or a stepchild, who was residing with the member at the time of the dependent-abuse offense resulting in the separation of the former member and--

- (1) who is under 18 years of age;
- (2) who is 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support; or

10 USCS § 1059

(3) who is 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support.

(m) Exceptional eligibility for dependents of former members.

(1) The Secretary concerned, under regulations prescribed under subsection (k), may authorize eligibility for benefits under this section for dependents and former dependents of a former member of the armed forces in a case in which the dependents or former dependents are not otherwise eligible for such benefits and the Secretary concerned determines that the former member engaged in conduct that is a dependent-abuse offense under this section and the former member was separated from active duty other than as described in subsection (b).

(2) In a case in which the Secretary concerned, under the authority of paragraph (1), authorizes benefits to be provided under this section, such benefits shall be provided in the same manner as if the former member were an individual described in subsection (b), except that, under regulations prescribed under subsection (k), the Secretary shall make such adjustments to the commencement and duration of payment provisions of subsection (e), and may make adjustments to other provisions of this section, as the Secretary considers necessary in light of the circumstances in order to provide benefits substantially equivalent to the benefits provided in the case of an individual described in subsection (b).

(3) The authority of the Secretary concerned under paragraph (1) may not be delegated.

HISTORY:

(Added Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle E, § 554(a)(1), 107 Stat. 1663; Oct. 5, 1994, P.L. 103-337, Div A, Title V, Subtitle C, § 535(a)-(c)(1), Title X, Subtitle G, § 1070(a)(5)(A), 108 Stat. 2762, 2855; Feb. 10, 1996, P.L. 104-106, Div A, Title VI, Subtitle D, § 636(a), (b), Title XV, § 1503(a)(8), 110 Stat. 367, 511.)

(As amended Oct. 17, 1998, P.L. 105-261, Div A, Title V, Subtitle G, § 570(a), (b), 112 Stat. 2032; Nov. 25, 2002, P.L. 107-296, Title XVII, § 1704(b)(1), 116 Stat. 2314; Nov. 24, 2003, P.L. 108-136, Div A, Title V, Subtitle G[H], § 572(a), (b)(1), (c), 573(a), 574, 117 Stat. 1484, 1485, 1486.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The subtitle designator "H" has been inserted in brackets in the credits relating to Title V of Division A of Act Nov. 24, 2003, P.L. 108-136, in order to indicate the probable intent of Congress to maintain alphabetical continuity in designating the subtitles in such Title.

Amendments:

1994. Act Oct. 5, 1994 redesignated this section, formerly *10 USCS § 1058*, as *10 USCS § 1059*; substituted the section heading for one which read: "§ 1058. Dependents of members separated for dependent abuse: transitional compensation"; substituted subsec. (e) for one which read:

"(e) Commencement and duration of payment.

(1) Payment of transitional compensation under this section shall commence as of the date of the discontinuance of the member's pay and allowances pursuant to the separation or sentencing of the member and, except as provided in paragraph (2), shall be paid for a period of 36 months.

"(2) If as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of--

"(A) the unserved portion of the member's period of obligated active duty service; or

"(B) 12 months.";

redesignated subsecs. (j) and (k) as subsecs. (k) and (l), respectively; and added new subsec. (j).

1996. Act Feb. 10, 1996, in subsec. (a), added "Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program."; in subsec. (c)(2), substituted "subsection (k)" for "subsection (j)"; in subsec. (d), in the introductory matter, substituted "the case of any individual described in subsection (b)" for "any case of a separation from active duty as described in subsection (b)" and substituted "individual" for "former member", in para. (1), substituted "individual" for "former member" and "individual" for "member", in para. (2), substituted "individual described in subsection (b)" for "former member" in two places, in para. (3), substituted "individual described in subsection (b)" for "former member" and, in para. (4), substituted "individual described in subsection (b)" for "member" in two places; and, in subsec. (g)(3), substituted "subsection (k)" for "subsection (j)".

1998. Act Oct. 17, 1998 (applicable as provided by § 570(c) of such Act, which appears as a note to this section), in subsec. (d), in para. (1), deleted "(except as otherwise provided in this subsection)" following "shall" and inserted ", including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse", in para. (2), substituted "is or, but for subsection (g), would be eligible" for "(but for subsection (g)) would be eligible" and substituted "compensation under this section" for "such compensation" and, in para. (4), substituted "For purposes of this subsection" for "For purposes of paragraphs (2) and (3)"; and, in subsec. (f)(2), substituted "has custody of a dependent child of the member who resides in the same household as that spouse or former spouse" for "has custody of a dependent child or children of the member".

2002. Act Nov. 25, 2002 (effective on 3/1/2003 pursuant to § 1704(g) of such Act, which appears as *10 USCS § 101* note), in subsecs. (a) and (k)(1), substituted "of Homeland Security" for "of Transportation".

2003. Act Nov. 24, 2003, in subsec. (b)(2), inserted ", voluntarily or involuntarily,".

Such Act further (applicable as provided by § 572(d) of such Act, which appears as a note to this section), in subsec. (e), in para. (1)(A), substituted "shall commence--" and cls. (i) and (ii) for "shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and", in para. (2), substituted "a period of not less than 12 months and not more than 36 months, as established in policies prescribed by the Secretary concerned" for "a period of 36 months, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of--

"(A) the unserved portion of the member's period of obligated active duty service; or

"(B) 12 months",

and, in para. (3)(A), substituted "conviction is disapproved by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) or set aside, or each such punishment applicable to the member under the sentence is disapproved by the person acting under section 860(c) of this title, remitted, set aside, suspended, or mitigated" for "punishment applicable to the member under the sentence is remitted, set aside, or mitigated".

Such Act further (applicable as provided by § 573(b) of such Act, which appears as a note to this section), added subsec. (m).

Other provisions:

Applicability of section. Act Nov. 30, 1993, P.L. 103-160, Div A, Title V, Subtitle E, § 554(b), 107 Stat. 1666; Oct. 5, 1994, P.L. 103-337, Div A, Title X, Subtitle G, § 1070(b)(5), 108 Stat. 2856 (effective as of 11/30/93, and as if included in Act Nov. 30, 1993 as enacted, as provided by § 1070(b) of Act Oct. 5, 1994); Feb. 10, 1996, P.L. 104-106, Div A, Title VI, Subtitle D, § 636(c), 110 Stat. 367, provides:

"(1) The section of title 10, United States Code, added by subsection (a)(1) shall apply with respect to a member of the Armed Forces who, after November 29, 1993--

10 USCS § 1059

"(A) is separated from active duty as described in subsection (b) of such section; or

"(B) forfeits all pay and allowances as described in such subsection.

"(2) Payments of transitional compensation under that section in the case of any person eligible to receive payments under that section shall be made for each month after November 1993 for which that person may be paid transitional compensation in accordance with that section."

Oct. 17, 1998 amendments; prospective applicability. Act Oct. 17, 1998, P.L. 105-261, Div A, Title V, Subtitle G, § 570(c), 112 Stat. 2032, provides: "No benefits shall accrue by reason of the amendments made by this section [amending subsecs. (d) and (f) of this section] for any month that begins before the date of the enactment of this Act."

Policies for duration of transitional compensation under subsec. (e)(2), as amended Nov. 24, 2003. Act Nov. 24, 2003, P.L. 108-136, Div A, Title V, Subtitle G[H], § 572(b)(2), 117 Stat. 1485, provides: "Policies under subsection (e)(2) of *section 1059 of title 10, United States Code*, as amended by paragraph (1), for the duration of transitional compensation payments under that section shall be prescribed under such subsection not later than six months after the date of the enactment of this Act."

Application of Nov. 24, 2003 amendments of subsec. (e). Act Nov. 24, 2003, P.L. 108-136, Div A, Title V, Subtitle G[H], § 572(d), 117 Stat. 1485, provides: "The amendments made by this section [amending subsec. (e) of this section] shall apply only with respect to cases in which a court-martial sentence is adjudged on or after the date of the enactment of this Act."

Application of Nov. 24, 2003 addition of subsec. (m). Act Nov. 24, 2003, P.L. 108-136, Div A, Title V, Subtitle G[H], § 573(b), 117 Stat. 1485, provides: "The authority under subsection (m) of *section 1059 of title 10, United States Code*, as added by subsection (a), may be exercised with respect to eligibility for benefits under that section only for dependents and former dependents of individuals who are separated from active duty in the Armed Forces on or after the date of the enactment of this Act."

Interpretive Notes and Decisions:

Where convening authority agreed to defer automatic forfeitures and reduction in rank under plea agreement, but instead provided transitional compensation to appellant's spouse, alternate relief achieved objective of plea agreement, and appellant was not entitled to further relief. *United States v Lundy* (2003, ACCA) 58 MJ 802, 2003 CCA LEXIS 143, revd, remanded (2004, CAAF) 60 MJ 52, 2004 CAAF LEXIS 592, mandate issued (2004, CAAF) 60 MJ 276.

Where pretrial agreement provided that spouse of servicemember would received waived forfeitures at servicemember's prior pay grade of E-6, but mandatory reduction in grade only provided for forfeitures at pay grade E-1, payment of forfeitures at reduced pay grade was breach of pretrial agreement requiring remedial action; even though spouse also received compensation as dependent-abuse victim under 10 USCS § 1059, spouse was not precluded from receiving compensation from both waived forfeitures and victim payments and, thus, victim compensation did not constitute substitute for deficient waived forfeitures. *United States v Lundy* (2004, CAAF) 60 MJ 52, 2004 CAAF LEXIS 592.