Military Legal Assistance Issues: Current Military Family Law Issues

Thursday, October, 2018  8:45 AM Eastern

Presented by
ABA Standing Committee on Legal Assistance for Military Personnel
ABA Center for Professional Development
Military Domestic Violence & Co-occurring Conditions

BRIAN CLUBB
MILITARY & VETERANS ADVOCACY PROGRAM
BATTERED WOMEN’S JUSTICE PROJECT
This project was supported by Grant No. 2015-TA-AX-K058 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.
Who is BWJP?

The Battered Women’s Justice Project is a national non-profit technical assistance and training provider.

We develop and promote innovations in policy and practice that improve the response to intimate partner violence (IPV) by the civil, criminal, and military justice systems.

Programs include:

- Military & Veterans
- Firearms
- Child custody
- Probation
- Protection orders
- Criminal justice responses

www.bwjp.org
Overview

Terminology
Magnitude
Risk
Intersection of Co-occurring Conditions
Context
Military Response
Terminology

**Domestic Violence (DV)**

Most known and used term

Criminal statutes usually require violence, threat of violence, or violation of domestic violence protection order

In some states, victims include siblings, parents, and other adult relatives
## Terminology

<table>
<thead>
<tr>
<th>Domestic Violence (DV)</th>
<th>Intimate Partner Violence (IPV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Most known and used term</td>
<td>More specific; commonly used by advocates, researchers, and others in the field</td>
</tr>
<tr>
<td>Criminal statutes usually require violence, threat of violence, or violation of domestic violence protection order</td>
<td>Physical, sexual, or psychological harm</td>
</tr>
<tr>
<td>In some states, victims include siblings, parents, and other adult relatives</td>
<td>Limited to current or former partners or spouses</td>
</tr>
</tbody>
</table>
Terminology

**Battering**

An ongoing pattern of coercion, intimidation, and emotional abuse, reinforced by use and threat of physical and/or sexual violence

“Batterers Intervention Programs” or BIPs

Not all domestic violence offenders are batterers
Military Definitions

Domestic Violence

Offense under USC, State law, or Uniform Code of Military Justice (UCMJ)

Use, attempted use, or threatened use of force or violence, or

Violation of a lawful protection order

DoD Instruction 6400.06, Domestic Abuse
Commandant (Coast Guard) Instruction 1752.1, Family Advocacy Program
# Military Definitions

<table>
<thead>
<tr>
<th><strong>Domestic Violence</strong></th>
<th><strong>Domestic Abuse</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Offense under USC, State law, or Uniform Code of Military Justice (UCMJ)</td>
<td>Domestic violence or a pattern of behavior resulting in emotional or psychological abuse, economic control, and/or interference with personal liberty</td>
</tr>
<tr>
<td>Use, attempted use, or threatened use of force or violence, or</td>
<td></td>
</tr>
<tr>
<td>Violation of a lawful protection order</td>
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</tbody>
</table>

*DoD Instruction 6400.06, Domestic Abuse*

*Commandant (Coast Guard) Instruction 1752.1, Family Advocacy Program*
# Lifetime IPV Victimization

<table>
<thead>
<tr>
<th>Category</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical violence</td>
<td>32.4% (39.1 mil)</td>
<td>28.3% (32.3 mil)</td>
</tr>
<tr>
<td>Severe physical violence</td>
<td>23.2% (28 mil)</td>
<td>13.9% (15.9 mil)</td>
</tr>
<tr>
<td>Contact sexual violence</td>
<td>16.4% (19.7 mil)</td>
<td>7.0% (8 mil)</td>
</tr>
<tr>
<td>Stalking</td>
<td>9.7% (11.7 mil)</td>
<td>2.3% (2.6 mil)</td>
</tr>
<tr>
<td>Any IPV-related impact</td>
<td>27.4% (33 mil)</td>
<td>11.0% (12.6 mil)</td>
</tr>
</tbody>
</table>

*CDC’s National Intimate Partner and Sexual Violence Survey - State Report (2017)*
# Lethal IPV

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Homicide Victims</td>
<td>21%</td>
<td>79%</td>
</tr>
<tr>
<td>• Killed by Current or Former Intimate Partners</td>
<td>↓ 37%</td>
<td>↓ 3%</td>
</tr>
<tr>
<td>➢ By Firearms</td>
<td>22%</td>
<td>1.5%</td>
</tr>
</tbody>
</table>
Military and Domestic Abuse

65% of spouse abuse victims and 71% of IPV victims were women (85% of active duty servicemembers are male)

Highest rates of spouse abuse in lowest enlisted ranks; majority of offenders were slightly more senior enlisted

No statistical significant increases in spouse abuse over several years; moderate increases in IPV and sexual abuse

8 of 9 offenders in lethal incidents were male; 7 of 9 were active duty; Firearms most common method

DoD Report on Child Abuse and Neglect and Domestic Abuse in the Military for FY16
DoD Office of Military and Family Readiness Policy
IPV Risk Markers

• History of violent behavior toward family members (including children), acquaintances, and strangers

• History of physical, sexual, or emotional abuse toward intimate partners

• Use of or threats with a weapon

• Threats of suicide

• Estrangement, recent separation, or divorce

• Use of drugs or alcohol daily

• Antisocial attitudes and behaviors and affiliation with antisocial peers
IPV Risk Markers (Cont’d)

- Presence of other life stressors, including employment/financial problems or recent loss
- History of being a witness or victim of family violence in childhood
- Evidence of mental health problems and/or a personality disorder (i.e., antisocial, dependent, borderline traits)
- Resistance to change and lack of motivation for treatment
- Attitudes that support violence toward women

Hotaling & Sugarman, 1986; Kropp & Hart, 2000; Pence & Lizdas, 1998; Roehl & Guertin, 2000; Sonkin, 1997; Straus, 1992
Military & Military Family Issues

- Mobility and geographic separation
- Deployments and reunification
- Firearms, hand-to-hand combat training, combat experience
- Medical and psychological sequelae from war zone deployments
- Military Sexual Assault/Military Sexual Trauma
- Suicide
## Victim Issues

<table>
<thead>
<tr>
<th>GENERAL</th>
<th>MILITARY &amp; VETERAN-RELATED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fear of violence/reprisals</td>
<td>Fear negative effect on military career</td>
</tr>
<tr>
<td>Threats to recant/drop charges</td>
<td>Loss of access to services and benefits</td>
</tr>
<tr>
<td>Fear of losing children</td>
<td>Lack of knowledge of civilian resources</td>
</tr>
<tr>
<td>Financial concerns/dependence</td>
<td>Isolation and lack of support system</td>
</tr>
<tr>
<td>Shame and embarrassment</td>
<td>Caretaker role and guilt</td>
</tr>
<tr>
<td>Reluctance to become involved with police and courts</td>
<td></td>
</tr>
<tr>
<td>Trauma/mental health issues</td>
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</tbody>
</table>
Substance Use Disorders (SUDs) and IPV

Both IPV perpetration and victimization are often co-occurring for people seeking alcohol and drug treatment.

IPV perpetrators 2-3 times more likely to use illicit drugs and abuse or be dependent on alcohol or other drugs, or have serious mental illness [Lipsky et al., 2011]

While NOT causal, alcohol consumption (particularly binge drinking) linked to severity of IPV perpetration (Fals-Steward, 2003; Gerlock, 2012: NRI-04-040)

More alcohol consumption before violent IPV incidents among veterans and servicemembers [Marshall et al., 2005]
Co-occurring Conditions & IPV
Post-traumatic Stress Continuum

Combat and Operational Stress
- Expected and predictable emotional, intellectual, physical and/or behavioral reactions of those exposed to stressful events in war or military operations.

Acute Stress Response
- Includes most components of PTSD, but lasts 2 days-4 weeks
- Presence of dissociative symptoms (numbing, detachment, decreased awareness of surroundings)
Posttraumatic Stress Disorder (PTSD)

*DSM-V*

**Criteria A:** Traumatic event

**Criteria B:** Intrusive symptoms

**Criteria C:** Persistent avoidance

**Criteria D:** Negative alterations in cognitions and mood

[Negative beliefs about self and others, fear/horror/anger/guilt/shame]

**Criteria E:** Marked alterations in arousal

[hypervigilance, paranoia, anger, irritability, verbal or physical aggression, startle, concentration problems, sleep]

**Criteria F,G,H:** > month, distress & impairment, not due to medication, substance use, or other illness
Rates of PTSD

Estimates across service eras of veterans vary from 18% veterans to as high as 35%

Close to 25% of soldiers, with deployment to Iraq, met definition of PTSD at long-term follow-up (Vasterling, et al., 2016)

PTSD is an enduring, consequence of warzone participation
PTSD and IPV

Most military servicemembers and veterans with PTSD do not become abusive or violent.

Veterans w/PTSD report significantly higher rates of generally violent behaviors and aggression than veterans w/o PTSD.

Studies have consistently found veterans w/PTSD have higher incidence of IPV perpetration than veterans w/o PTSD.

Correlation vs. Causation

Gerlock, Szarka, Cox, & Harel, 2016; Gerlock, 2004; Orcutt, King, & King, 2003; Sayers, Farrow, 18 Ross, & Oslin, 2009
<table>
<thead>
<tr>
<th>PTSD SYMPTOMS</th>
<th>IPV TACTICS</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Avoidance (Self-imposed Social Withdrawal)</td>
<td>• Social Isolation (Victim from Family/Friends, Economic Control)</td>
</tr>
<tr>
<td>• Negative Cognitions &amp; Mood (Anger, Inability to experience Positive Emotions)</td>
<td>• Emotional Abuse (Suspicion, Jealousy, Accusations)</td>
</tr>
<tr>
<td>• Arousal (Hypervigilance, Irritability, Recklessness)</td>
<td>• Intimidation/Threats</td>
</tr>
<tr>
<td>• Re-experiencing (Flashbacks &amp; Nightmares)</td>
<td>• Physical/Sexual Assaults (outside of Flashbacks &amp; Nightmares)</td>
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Traumatic Brain Injury (TBI)

Traumatic brain injury: Disruption of brain function and disturbance of consciousness caused by an external injury to the head. A TBI may also occur when there is loss of consciousness and brain hypoxia secondary to strangulation.
Cognitive Functioning: Loss of consciousness, working memory problems, impaired attention, slowed thinking and reasoning processing, and communication problems

Emotional Functioning: Depression, anxiety, irritability/rage, and mood swings

Behavioral Functioning: Agitation, aggression, acting on impulse, not caring about things, and sleep disturbance

Physical Functioning: Headaches, pain, visual problems, dizziness/vertigo, and seizures
TBI and IPV

Aggressive behavior after a moderate to severe TBI is common and generally seen within the first year after injury. However, this aggression may also be associated with a major depression and pre-injury substance abuse. Both TBI and PTSD may include an element of paranoia. Current research on the intersection of TBI and IPV includes findings on TBI secondary to victimization. Strangulation (just once) related to a significant increase in risk of homicide (Gwinn, March 2015).
<table>
<thead>
<tr>
<th>TBI SYMPTOMS</th>
<th>IPV TACTICS</th>
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</thead>
<tbody>
<tr>
<td>• Depression</td>
<td>• Social Isolation (Victim from Family/Friends, Economic Control)</td>
</tr>
<tr>
<td>• Memory Problems</td>
<td>• Emotional Abuse (Suspicion, Jealousy, Accusations)</td>
</tr>
<tr>
<td>• Pain, Headaches</td>
<td>• Intimidation/Threats</td>
</tr>
<tr>
<td>• Sleep Disturbance</td>
<td>• Physical/Sexual Assaults</td>
</tr>
<tr>
<td>• Impulsiveness</td>
<td></td>
</tr>
<tr>
<td>• Irritability</td>
<td></td>
</tr>
<tr>
<td>• Aggression</td>
<td></td>
</tr>
<tr>
<td>• Rage, Mood Swings</td>
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TBI Symptoms and IPV Tactics

Case Example

Wife of a Vietnam veteran:

“I know he got blown up in Vietnam. I can understand him forgetting things. I even understand him getting angry. I just don’t understand...anytime when I take a weekend to work at the arts and crafts fairs he calls me all day long. He calls me awful names. He accuses me of having affairs and sleeping with other men. Now just when am I supposed to do that...In between selling a bracelet and an earring?”
TBI Symptoms and IPV Tactics

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In this example, she identifies the general problems with memory and anger that can be associated with a TBI.

But, she correctly points out how a TBI doesn’t seem to explain his ongoing name-calling, accusations, and constant monitoring of her through the phone calls. This is an example of IPV.
Screening, Assessment, and Intervention Model for Intimate Partner Violence Perpetration and Co-Occurring Combat-related Conditions

Presents a model for understanding and responding to military and veteran-related IPV

Examines IPV’s relationship to co-occurring conditions common among current and former servicemember

Includes screening tools for these conditions and IPV perpetration
Contexts of IPV

Violence in exercise of coercive control (Battering)

- Patterned set of behaviors
- Coercion and intimidation distinguish it from non-battering
- Entrapment essential goal

Non-battering use of violence (Situational)

- NOT part of an attempt to establish an ongoing position of dominance in a relationship or in response to being battered
Contexts of IPV (Cont’d)

Pathological violence
- Substance abuse
- Psychological problems (e.g., depression, mental illness, PTSD, TBI)

Violent resistance
- Broader strategy by victims to stop or contain abuse, including violence directed at the abuser
- Battered Women’s Syndrome
- Imperfect self-defense

All IPV can lead to serious bodily injury or death.
Military Response to IPV
Key Military Players

- Military Commanders
- FAP Staff
- Health Care Providers
- Judge Advocates
- Military Law Enforcement
- Chaplains
Commanders/Commanding Officers

Unit vs. Base Commanders

Responsible for good order & discipline

Executive and judicial authority over their servicemembers at all times, but not over civilians

Report known or suspected domestic violence

Ensure victim access to advocacy, reporting, medical, housing, etc.

Issue protective and support orders
Family Advocacy Program (FAP)

Military command’s primary tool for addressing family violence

Promotes prevention, early identification, reporting and treatment of child and intimate partner abuse

Protects and secures victim safety

Promotes recovery of victims and rehabilitation for offenders

Works with commanders to hold offenders accountable
Military Law Enforcement

Investigate reports and collect evidence

Ensure victims are informed of available domestic abuse services

Inform victims of procedures for obtaining a protection order; ensure civilian protection orders are given full force & effect

Encourage victims to seek medical care; arrange transport as needed

Notify FAP immediately of an incident
Judge Advocates

Staff
Prosecutors
Defense
Legal assistance
Special Victims Counsel (Army & Air Force)/Victims Legal Counsel (Navy, Marine Corps, & Coast Guard)
Health Care Providers

Provide private screening
Conduct a thorough assessment
Document the abuse thoroughly
Document suspicion of abuse, even if the patient did not disclose abuse
Make referrals to appropriate services to include FAP
Chaplains

May be a source of information and support for victims, depending on their level of knowledge about IPV

Upon learning of an IPV incident, should provide basic referrals to appropriate services

IPV victims and abusers are entitled to privileged communication with a chaplain
Restricted Reporting

Allows victims to seek medical care, counseling, and advocacy services without notifying the command or military law enforcement.

Disclosure must be made to a FAP advocate/supervisor or military healthcare provider.

Exceptions include:

- To prevent or lessen serious or imminent threat
- Suspected child abuse
- Mandatory reporting requirements
Federal Gun Control Act  
18 USC 922(g)

Prohibits possession and ownership of firearms and ammunition to anyone:

- Convicted of a **misdemeanor crime of domestic violence** (Lautenberg Amd) (§922(g)(9))
  - Restoration by pardon, expungement, or restoration of civil rights (§921(a)(33)(B)(3)); conviction must no longer be used for any purpose

- Subject to **qualifying court orders** (§922(g)(8))
  - Official use exemption (§925(a)(1))
Armed Forces Domestic Security Act
10 U.S.C 1561a

Gives civilian protection orders (CPOs) the same force and effect on military installations and property as in civilian communities

- Any injunction or other order
- Temporary or Permanent
- Issued by a civil or criminal court
- Containing language protecting one party from the other that meets due process requirements
Registration of Civilian Protection Orders

A commander may establish procedures for registering a CPO on a DoD installation, but failure to register the order shall not be reason for a commander, having knowledge of the order, to fail to give it full force and effect. (DoD Instr 6400.06, Sec. 6.1.3.2.)
Official Use Exemption

18 U.S.C. §925(a)(1)

Limited exception for government employees subject to qualifying court orders (not convictions)

Must be authorized or required to receive or possess a duty weapon to perform official duties

Must be pursuant to federal, state or local statute, regulation, or official departmental policy

Does not apply to personal firearms
CPOs & The Servicemembers Civil Relief Act

Court must appoint an attorney if it appears that defendant is military servicemember

Cannot enter judgment before appointment

Must grant minimum 90-day stay if 1) attorney cannot contact servicemember or 2) there appears to be a defense for which the defendant’s presence is required

No exclusion for restraining/protection orders
Military Protective Orders (MPOs)

Commanding officers can issue MPOs to servicemembers that:

- Prohibit contact
- Stay away from designated areas, either on or off installation
- Vacate military housing
- Attend counseling
- Surrender government issued firearms; dispose of personal firearms on installation
MPOs

Can be more restrictive than existing civilian order

Cannot be issued to civilians

Not enforceable by civilian law enforcement or civilian courts

Not available if victim makes restricted report

Do not trigger federal firearms and ammunition restrictions

DoD policy to input MPOs to NCIC-POF for duration of order

Pending elimination of expiration dates
Incident Determination Committee (IDC) Clinical Case Staffing Meeting (CCSM)

IDC/CCSM model separates administrative and clinical review/case management process

IDC is an administrative forum, not a disciplinary proceeding

Allegations “substantiated” by the IDC entered into Service’s Central Registry (includes sexual abuse, emotional abuse, and neglect)
Military Support Orders

Service regulations require servicemembers to provide “adequate support” to their family members.

Commanders have the authority to issue military support orders.

May be obtained quicker than a civil court.

Amount may be determined by a Service-specific formula.

Civil courts are not bound by these formulas and often order higher support amounts.
Transitional Compensation for Abused Family Members (TCAFM)

Temporary monetary payments and benefits to family members of servicemembers who are separated from the military due to dependent-abuse

12 months (min) to 36 months (max) of payments, based on current Dependency and Indemnity Compensation (DIC) rates
Representing Victims of Intimate Partner Violence Connected with the Military

Provides legal and military policy information needed by civil attorneys representing survivors and victims of intimate partner violence who are connected with the military. Topics covered include:

- Protection orders
- Service of process
- Support
- Accountability
Contact Information

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