

# A HANDBOOK FOR MILITARY FAMILIES



★ Helping You with Child Support ★

U.S. Department of Health and Human Services  
Administration for Children and Families  
Office of Child Support Enforcement

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## Foreword

Thank you for serving our country.

Military service provides rewarding opportunities and experiences. There are also challenges when family members serve in the active duty military or are called to federal service while in the National Guard or Reserve forces. One area we want to assist you with is child support.

Military service can be hard on a family. Domestic issues may arise at any point during a member's military service, but they seem especially prevalent at pre-deployment, during deployment, and after the return home. According to Pentagon statistics, the start of *Operation Enduring Freedom* in Afghanistan brought an increase in military divorces.<sup>1</sup> The divorce rate is important to child support because the Pentagon reported in 2011 that approximately 44 percent of active duty members and 43 percent of Reserve and National Guard members are parents. In addition, the Pentagon estimates that 30,000 soldiers become unwed fathers each year.

As a service member, or spouse or former spouse of one, you have unique child support needs. All branches of the armed forces offer parenting programs and resources to strengthen military families. This handbook supplements those resources by providing information you might need regarding paternity establishment, child support, access/visitation, and child custody. First line supervisors and military commanders may also find this a handy addition to a leadership toolkit.

We understand this may be uncharted territory for you, so we have included a Frequently Asked Questions section at the end of each chapter and a glossary of terms at the end of the publication. For more detailed information, please read the general Child Support Enforcement Handbook that is available on the federal Office of Child Support Enforcement website in both English ([www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement](http://www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement)) and Spanish ([www.acf.hhs.gov/programs/css/resource/nuestros-hijos-nuestra-responsibilidad](http://www.acf.hhs.gov/programs/css/resource/nuestros-hijos-nuestra-responsibilidad)).

Service members do not need the added stress of family issues when they are trying to safeguard our freedom. While studies show that children do better when they are cared for and supported by two loving parents, we know that being together is not always the best option. We hope this handbook will help your child support issues go more smoothly if you are ever in this situation.

Thank you — and your family — for your service.

Vicki Turetsky  
Commissioner, Office of Child Support Enforcement

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<sup>1</sup> See <http://www.military.com/daily-news/2013/01/23/military-divorce-rate-down-slightly-in-2012.html>. The military divorce rate in 2001 was 2.6 percent. By 2009, the military divorce rate had climbed to 3.6 percent. That rate decreased to 3.5 percent in 2012. The divorce rates released by the Pentagon do not include data on Reserve and National Guard members or on service members who divorced after leaving the military. *Births, Marriages, Divorces, and Deaths: Provisional Data for 2009*, National Vital Statistics Report, Vol. 58, No. 25, Centers for Disease Control and Prevention (August 27, 2010). Military and civilian divorce rates cannot be accurately compared due to the differences in how they are tracked.

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## Organization of the Handbook

We divided this handbook into chapters so you can find the information you need quickly and easily. The main chapters address the following topics:

- **The Child Support Program**—overview, general information, and legal resources;
- **Location of Noncustodial Parents**—state, federal, and military resources;
- **Paternity Establishment**—acknowledgments, court orders, genetic testing, military processes;
- **Support Establishment**—financial obligations and health care coverage;
- **Support Enforcement**—military regulations, income withholding, enforcement methods, medical support requirements;
- **Modifying Existing Support**—laws and procedures available to parents;
- **Intergovernmental Cooperation**—terms; overview; rules and agreements governing situations that cross state, tribal, or federal borders; Status of Forces Agreements;
- **The Servicemembers Civil Relief Act**—history, application in child support situations, invoking protections; **and**
- **Access, Visitation, Custody, and Parenting Time**—overview, laws and regulations, resolution of parenting time issues, family care plans, and custody orders.

We also included a [\*Questions and Answers\*](#) (Q&A) section at the end of each chapter. We wrote the first set for situations that pertain to [\*Custodial Parents\*](#) and tailored the second group for [\*Noncustodial Parents\*](#). Chapter VII has two sets of Q&A because it has two parts.

There are two appendices at the end. The first is a glossary of major terms we used and the second lists the addresses to all the websites we referenced in this handbook. The websites listed were current on the date of publication, but may have changed since then. OCSE is not responsible for the contents of any "off-site" web page referenced by the websites.

### For More Information

This handbook gives you basic information. To find out more information about child support, see your local child support office. The telephone numbers for state child support agencies are in telephone directories, usually under the state/county social services agency, or on the state's child support website. State websites often provide addresses and phone numbers for local offices. You can find a list of state and tribal child support agency contacts on the federal Office of Child Support Enforcement (OCSE) website, [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts). Tribal programs are also listed on OCSE's Intergovernmental Reference Guide web page by tribe, <https://extranet.acf.hhs.gov/irg/welcome.html>, and on the State and Child Support Agency Contacts page by state, [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts).

We hope you find this information useful. If you have any questions about the content of this publication, please contact the OCSE Public Inquiry Branch at [OCSEHotline@acf.hhs.gov](mailto:OCSEHotline@acf.hhs.gov).



## I. The Child Support Program

This chapter explains the child support program. You may interact with the child support program as a custodial parent or a noncustodial parent.

### **Mission of the Child Support Program**

Congress created the Child Support Program in 1975. People often call it the IV-D Program because Title IV-D of the Social Security Act created it. There is a federal Office of Child Support Enforcement (OCSE). OCSE regulates the Title IV-D program and provides outreach. Each state operates a state child support agency, as do more than 50 tribes. These child support agencies are often called IV-D agencies. They provide the day-to-day processing of child support cases.

The mission of the child support program is to enhance the well being of children by assuring that help in obtaining child support, including financial and medical, is available through locating parents, establishing paternity, establishing fair support obligations, and monitoring and enforcing those obligations. In addition to these core services, the child support program provides innovative services to families to assure that parents have the resources they need to support their children and raise them in a positive way.

*The child support program serves one in four children in the country.*

### **Services Provided by the Child Support Program**

Originally, the primary purpose of the child support program was to recover welfare costs. Over the years, Congress has passed laws that embrace a broader mission for the program to obtain reliable support for children as they grow up. These days, 94 percent of collected support is paid directly to families. The result is a gradual shift in the child support program toward a family-centered model.

The child support program provides core services in the area of location of parents, paternity establishment, support order establishment and enforcement, and order modification. As state child support programs move to a more family-centered model, they have begun to:

- Encourage parents to participate in the establishment of child support orders.
- Educate parents about the child support program.
- Establish realistic child support orders.
- Use automated systems to discover missed payments as early as possible.
- Notify noncustodial parents about missed payments before the agency takes enforcement actions.
- Modify (change) a support order to ensure that it stays consistent with a parent's ability to pay.
- Reduce that portion of child support debt owed to the government if noncustodial parents start paying current support.
- Pass through more support to families in public assistance cases instead of keeping it to repay the state for cash assistance.

For more details on this, read the *2012 Child Support Handbook*, [www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement](http://www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement).

Most child support agencies are eager to work with military representatives and both parents. There is usually a military liaison within the state or local child support agency. Reach out to the child support agency whenever you have issues or need to do some problem-solving. Be proactive. (See Chapter VI on Modification of Support for tips on being proactive.)

### **Recipients of Child Support Services**

The child support program provides services automatically to families receiving help under the Temporary Assistance for Needy Families (TANF) program or whose children are entitled to Foster Care Maintenance payments. Families wanting help from the child support program, who are not receiving TANF or foster care help (or have not received such assistance in the past), must apply for services through a state child support agency or one of the tribes running a child support program. There is an application fee of \$25, which many states absorb. Both custodial parents and noncustodial parents can apply for child support services.

### **Focus of Services**

Federal law requires child support agencies to provide services related to the financial support of children. In certain circumstances, the law also requires the agencies to provide spousal support enforcement services. There is currently no legal requirement that they provide access and visitation services. However, increasingly child support agencies participate in collaborative efforts to mediate access/visitation and custody issues. For further discussion, see the Chapter IX on Access, Visitation, Custody, and Parenting Time.

### **Legal Representation**

When needed, government attorneys or private attorneys under contract help child support agencies process IV-D cases. These attorneys have a relationship with the agency; they do not represent parents. A parent may hire a private attorney and still receive IV-D services. However, it is not necessary to hire an attorney in order to seek child support through a IV-D agency. The child support agency will assist in filing legal actions related to child support.

### **Questions and Answers for Custodial Parents**

#### **Do I have to be receiving public assistance in order to get help from a state child support agency?**

No, you do not have to receive public help in order to receive child support services. You are eligible for services from a state child support agency if you are:

- A parent (mother or father) or person with custody of a child who needs help to establish a child support or medical support order or to collect support payments.
- A parent or person with custody of a child who has received help under the Temporary Assistance for Needy Families (TANF), Medicaid, and federally assisted Foster Care programs.

- A parent (mother or father) who wants help to have a child support order reviewed to see if it is still fair and three years have passed since the most recent review, or there has been a substantial change of circumstances.

### **Where do I apply for help in obtaining child support?**

If you have received help under TANF, Medicaid, or federally assisted Foster Care programs, you do not have to apply for child support services; you automatically receive child support services. If you have not received such help, you can apply for child support services through the state or local child support office. Usually, applying to a child support agency in your state is most effective; however, you have the right to apply to the agency in another state if that will result in better service. The telephone numbers for state child support agencies are in telephone directories, usually under the state/county social services agency, or on the state's child support website. These sites are listed at [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts).

### **Can someone else receive information about my child support case while I'm deployed?**

Yes. You may designate another person to receive information about your case while you are away. To designate this person, complete the state agency form authorizing the release of information, and file it with the child support office handling your case. Many state and local child support agencies require this form even if you have completed a military Power of Attorney designating someone to act on your behalf. When you return from deployment, you can complete a form revoking the authorization for release of information.

## ***Questions and Answers for Noncustodial Parents***

### **Can noncustodial parents receive services from a state child support agency?**

Yes, if you are a noncustodial parent, you can receive child support services if you are:

- An unmarried father who wants to establish paternity in order to establish a legal relationship with your child.
- A noncustodial parent whose case is not in the IV-D child support program but who wants to make payments through the program so that there is an official record of payments.
- A parent (mother or father) who wants help to have a child support order reviewed to see if it is still fair and three years have passed since the most recent review, or there has been a substantial change of circumstances.

### **Where do I apply for help if I want to establish that I'm the dad of my child or if I want to change a child support order I already have?**

You can apply through the state or local child support office. Usually, applying to the child support agency in your state is most effective; however, because there are no residency requirements for IV-D services, you can apply to receive services in any state.

The telephone numbers for state child support agencies are in telephone directories, usually under the state/county social services agency, or on the state's child support agency website. These sites are listed at [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts).

### **If I'm paying child support under a support order that the child support agency is enforcing, do I need to let the agency know if I'm deployed?**

Yes. Before you deploy (or join active duty military service), contact the child support agency that handles your support case to:

- Inform the agency that you will be deployed (or are joining the military) and what the length of your military commitment will be.
- Provide changes in your address, wages, and health care coverage for your children.
- Request a review of your support order for possible modification if your financial circumstances have changed since the order was issued.
- Sign a form authorizing the release of information if you want to designate someone to speak on your behalf about your child support case. The signed authorization will allow the child support agency to discuss your case with your designee. The military Power of Attorney you completed will not necessarily enable your designee to receive information about your child support case while you are deployed.

### **Can someone else receive information about my child support case while I'm deployed?**

Yes. You may designate another person to receive information about your case while you are away. To designate this person, complete a state form authorizing the release of information and file it with the child support office handling your case. When you return from deployment, you can complete a form revoking the authorization for release of information. The military Power of Attorney you completed will not necessarily enable your designee to receive information about your child support case while you are deployed.

### **If I'm paying child support under an order that the child support agency is enforcing, what should I do after I return from deployment, return to a non-federal Reserve/Guard status, or terminate my military service?**

After you return from deployment, return to a non-federal Reserve/Guard status, or terminate your military service, contact the child support agency that handles your support case to:

- Inform the agency of your return or discharge.
- Provide changes in your address, wages, and health care coverage for your children.
- Request a review of your support order for possible modification if your financial circumstances have changed since the order was last issued or modified.

### **II. Location of Noncustodial Parents**

This chapter of the handbook is primarily written for custodial parents who are filing a claim for paternity establishment or support and need to know the location of the other parent in order to provide that person legal notice. Due to the nature of military service, the residential address and duty station (work address) for active component members of the military frequently change. In addition, due to national security concerns, there are instances when the military is prohibited from disclosing the residence or work address for a given member. This is particularly true during time of war where the military's disclosure of residence or duty stations may indicate troop movements. If you are the custodial parent and do not know the location of the military parent, the child support program can help locate the member. However, child support agencies are prohibited from sharing location information directly with you.

#### **State and Federal Locate Resources**

The federal Office of Child Support Enforcement operates the Federal Parent Locator Service (FPLS). The FPLS includes the National Directory of New Hires (NDNH), which receives information from:

- The Internal Revenue Service, the Department of Defense, the National Personnel Records Center (including quarterly wage data for federal employees), the Social Security Administration, and the Department of Veterans Affairs.
- State Directories of New Hires.
- State Workforce Agencies.

The NDNH contains new hire records, quarterly wage records for almost all employed people, and unemployment insurance claims.

States also operate a locator service called the State Parent Locator Service (SPLS). State and tribal child support agencies, with due process and security safeguards, can get information from the following sources:

- State and local governments (for example, vital statistics; state tax files; real and titled personal property records; occupational and professional licenses and business information; employment security agencies; public assistance agencies; motor vehicle departments; and law enforcement departments).
- Records of private entities like public utilities and cable television companies (such as names and addresses of individuals and their employers as they appear in customer records).
- Credit bureaus.
- Information held by financial institutions, including asset and liability data.
- The State Directory of New Hires, to which employers must report new employees.

Location services are also available to learn the whereabouts of a parent or child in order to make or enforce a custody or visitation determination. Authorized persons to receive address information include<sup>2</sup>:

- Any agent or attorney of any state who has the authority/duty to enforce a child custody or visitation determination.
- A court, or agent of the court, having jurisdiction to make or enforce a child custody or visitation determination.

A child's parent is not an authorized person for access or custody purposes.

### **Military Locate Resources**

With the possible exception of the Army, each military branch maintains a locator service that will provide immediate family members and government officials with location information free of charge. Others are charged a small fee. More information is available through the DoD Knowledge Base website,

[https://kb.defense.gov/app/answers/detail/a\\_id/646/session/L3RpbWUvMTM3MDQ1Mjc2NS9zaWQvdWFuOFEtcmw%3D](https://kb.defense.gov/app/answers/detail/a_id/646/session/L3RpbWUvMTM3MDQ1Mjc2NS9zaWQvdWFuOFEtcmw%3D).

In order to process a request, the military's locator service needs the service member's full name and Social Security number. If you know the member's date of birth, rank, and location and time period of the member's last duty station, you should also provide that information. In deciding when to contact one of these offices, keep in mind that military records may run up to 90 days behind reassignments.

#### **Air Force**

Air Force Personnel Center

Attn: DPDIDL

550 C St West, Ste 50

Randolph AFB, TX 78150-4752

(210) 565-2660

[www.afpc.af.mil/library/airforcelocator.asp](http://www.afpc.af.mil/library/airforcelocator.asp)

#### **Army**

(By mail only)

Army World Wide Locator Service

Enlisted Records & Evaluation Center

8899 East 56th Street

Indianapolis, IN 46249-5031

[www.army.mil/contact/](http://www.army.mil/contact/), "Additional Frequently Asked Questions" section, "Locator Service"

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<sup>2</sup> 42 U.S.C. § 663(d).

### **Marine Corps**

Marine Locator

Headquarters US Marine Corps

Personnel Management Support Branch (MMSB-17)

2008 Elliot Road

Quantico, VA 22134-5030

(703) 784-3941/3942/3943

(800) 268-3710

[www.marines.mil/FAQs.aspx](http://www.marines.mil/FAQs.aspx), “Personnel Locator”

### **Navy**

Navy Worldwide Locator

Bureau of Naval Personnel

PERS 1

5720 Integrity Drive

Millington, TN 38055-3120

(901) 874-5672

(866) 827-5672

[www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx](http://www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx)

### **Coast Guard**

(By mail or email only)

Commander

Personnel Service Center

US Coast Guard Stop 7200

4200 Wilson Blvd., Suite 1100

Arlington, VA 20598-7200

Email: ARL-PF-CGPSCCGlocator@uscg.mil

[www.uscg.mil/locator/](http://www.uscg.mil/locator/)

Most large military bases maintain legal assistance offices. The legal assistance attorneys’ duties include helping military spouses and dependent children obtain the service member’s military address. They are not legally required to assist parents who have never been married to the service member.

### **Questions and Answers for Custodial Parents**

#### **What if I do not know where the noncustodial parent is currently stationed?**

You can ask for help from your local child support agency. Unless protected, child support agencies can use the Federal Parent Locator Service (FPLS) to locate the current duty station of a parent who is in any of the uniformed services.

You can also get help from the noncustodial parent’s military branch. With the possible exception of the Army, each military branch maintains a locator service that will provide immediate family members and government officials with location information free of charge. More information is available through the DoD Knowledge Base website,

[https://kb.defense.gov/app/answers/detail/a\\_id/646/session/L3RpbWUvMTM3MDQ1Mjc2NS9zaWQvdWFuOFetcmw%3D](https://kb.defense.gov/app/answers/detail/a_id/646/session/L3RpbWUvMTM3MDQ1Mjc2NS9zaWQvdWFuOFetcmw%3D).

In order to process a request, the military's locator service needs the service member's full name and Social Security number. If you know the member's date of birth, rank, and location and time period of the member's last duty station, provide that information also. In deciding when to contact one of these offices, keep in mind that military records may run up to 90 days behind reassignments.

### **Air Force**

Air Force Personnel Center

Attn: DPDIDL

550 C St West, Ste 50

Randolph AFB, TX 78150-4752

(210) 565-2660

[www.afpc.af.mil/library/airforcelocator.asp](http://www.afpc.af.mil/library/airforcelocator.asp)

### **Army**

(By mail only)

Army World Wide Locator Service

Enlisted Records & Evaluation Center

8899 East 56th Street

Indianapolis, IN 46249-5031

[www.army.mil/contact/](http://www.army.mil/contact/), "Additional Frequently Asked Questions" section, "Locator Service"

### **Marine Corps**

Marine Locator

Headquarters U.S. Marine Corps

Personnel Management Support Branch (MMSB-17)

2008 Elliot Road

Quantico, VA 22134-5030

(703) 784-3941/3942/3943

(800) 268-3710

[www.marines.mil/FAQs.aspx](http://www.marines.mil/FAQs.aspx), "Personnel Locator"



### **Navy**

Navy Worldwide Locator

Bureau of Naval Personnel

PERS 1

5720 Integrity Drive

Millington, TN 38055-3120

(901) 874-5672

(866) 827-5672

[www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx](http://www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx)

### **Coast Guard**

(By mail or email only)

Commander

Personnel Service Center

US Coast Guard Stop 7200

4200 Wilson Blvd., Suite 1100

Arlington, VA 20598-7200

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[www.uscg.mil/locator/](http://www.uscg.mil/locator/)

Most large military bases maintain legal assistance offices. The legal assistance attorneys' duties include helping military spouses and dependent children obtain the service member's military address. They are not legally required to assist parents who have never been married to the service member. Additionally, if you know the unit or company of the service member, location is much easier; usually you can find the unit on the internet, providing a starting point for your locate inquiry.

### **Questions and Answers for Noncustodial Parents**

**My ex-spouse won't let me see my children, in violation of our custody order. I don't even know where my children are living now. Can my lawyer or I ask the Federal Parent Locator Service (FPLS) to find the address of my ex-spouse and children?**

Not directly. Parents are not authorized persons who can obtain address information in order to enforce a custody or visitation order. However, you or your attorney can submit a request to the court having jurisdiction to make or enforce the child custody or visitation determination and ask the court to make a request to use the FPLS through the local or state child support agency.

**I am on active duty. Why do I need to let the child support agency know my new duty station?**

If you have a child support case, it is important that you receive information on a timely basis. Such communication may include information on how to make a timely challenge to an order or whom to contact if you have questions about your case. Child support orders cannot be retroactively modified (changed) so you always want to make sure you are proactive about your case.

### **III. Paternity Establishment**

Under state law, a child born during marriage is presumed to be the child of those married parents. When a child is born outside of a marriage, his or her paternity must be legally established for the child and parents to have certain legal rights and responsibilities. This chapter of the handbook focuses on what either parent can do to legally establish paternity of a child.

#### **Acknowledgment of Paternity**

Putting the father's name on the child's birth certificate does not legally establish paternity. However, a parent can legally establish paternity without going to court. If a father acknowledges paternity by signing a written admission or voluntary acknowledgment of paternity, that is a legal determination of paternity. All states have programs under which birthing hospitals give unmarried parents of a newborn born in that state the opportunity to acknowledge the father's paternity of the child. States must also help parents acknowledge paternity up until the child's eighteenth birthday through vital records offices or other offices that the state designates. Parents do not have to apply for child support services when acknowledging paternity. An acknowledgment of paternity becomes a legal finding of paternity unless the man who signed the acknowledgment denies that he is the father within 60 days. Generally, he can challenge the finding of paternity only based on fraud, duress, or material mistake of fact.

#### **Court Order of Paternity**

A judicial order, entered by agreement or following a court or an administrative hearing, can establish paternity. Paternity can also be established by a default order if the man was served notice of a paternity hearing but did not appear.

The legal finding of paternity creates the basis for the obligation to provide support. A court or an agency cannot establish a financial support order for a child who is born to unmarried parents until paternity has been established.

#### **Genetic Testing**

If a man is not certain that he is the father, the child support agency can arrange for genetic testing. The parties do not have to live in the same state. These tests are simple to take and highly accurate.

#### **DEERS Enrollment for Health Care**

Children born to unmarried parents, when at least one parent is a military member, are entitled to military health care and enrollment in the Defense Enrollment Eligibility Reporting System (DEERS) if:

- There is an order establishing paternity;
  - The child is dependent upon the member for more than 50 percent of his or her support;
- or**

- The military member acknowledges the child by signing a voluntary acknowledgment of paternity.

Children who do not reside with the member are also eligible for such health care and enrollment in DEERS.

### *Questions and Answers for Custodial Parents*

#### **Why should I establish paternity?**

Once paternity is legally established for a child born to unmarried parents, that child has the same legal rights as any child born to married parents. These rights include health care coverage, inheritance, and certain types of benefits such as social security, life insurance, pension payments, and veteran's benefits. Many people do not realize that **a child may not be able to claim these benefits from the father, unless legal paternity has been established.** The child also has a chance to develop a relationship with the father, and to develop a sense of identity and connection to the "other half" of his or her family. Studies show that children whose fathers take active roles in their upbringing lead lives that are more successful. Establishment of paternity is also important for the health of the child. The medical history of both parents is important information for doctors to have in order to treat the child more effectively now, and later as an adult.

#### **How can I establish paternity?**

If the father acknowledges paternity, you can establish the child's paternity through the voluntary acknowledgment process. Every state has a voluntary acknowledgment program. Both parents must sign the paternity acknowledgment form before a notary. Birthing hospitals have the form, as do bureaus of vital statistics and child support agencies. Only the biological father and mother should sign the form. If you are not sure who the biological father is, you may contact the local child support agency to arrange a genetic test.

A genetic test involves tissue samples (often from the inside of the cheek) of the man, mother, and child. Genetic test results can establish the probability of paternity to such a high extent that they often result in a legal presumption of paternity; however, in most states they do not automatically result in a legal establishment of paternity. The tests can also exclude a man who is not the biological father.

If the father does not voluntarily acknowledge paternity, a court or an administrative agency can adjudicate paternity. This requires the filing of a legal action. Each party in a contested paternity case must submit to genetic tests at the request of either party or the child support agency.

#### **Do both of us have to live in the same state in order to sign an acknowledgment or affidavit to establish paternity?**

No. The acknowledgment of paternity form can be mailed to a parent in any location. For example, if the father has been deployed or is stationed overseas, the form can be mailed to him at his current duty station. If he decides to sign it, he must sign it in front of a notary public and mail it back. After you both have signed the acknowledgment of paternity, you can send the completed notarized form to the Office of Vital Statistics in the state where the child was born.

#### **My boyfriend is on a military base abroad and I am about to have his baby. How can I establish paternity and get an order for support?**

Once you have had your baby, you can establish paternity and get a support order by applying for child support services at your local child support agency. If your boyfriend is willing to sign documents to acknowledge paternity and agree to support, then the agency can usually help prepare a consent order outlining your agreement. The order will establish paternity and a child support payment amount based on the state's support guidelines. Once there is a support order, the agency or court will also establish an income withholding order to collect support from your boyfriend's income. Since he is in the military, the Defense Finance and Accounting Service (DFAS) will process the income withholding. If he is on a naval ship or lives on a military base abroad and will not acknowledge paternity, it may be necessary to wait until he returns to the United States for genetic testing to be done.

### **Is there a fee to sign an acknowledgment or affidavit to establish paternity?**

No. There is no fee to sign an acknowledgment of paternity. Nor is there a fee for the notary service if the parents come to a child support agency or military legal assistance office to have their signatures on the acknowledgment notarized. Some notaries outside the child support agency may charge a small fee for their notary service. There is no fee to send the notarized acknowledgment of paternity to the Office of Vital Statistics. There is a small fee to get a copy of the child's updated birth certificate.

### **What happens after paternity is established?**

A legal finding of paternity is the basis for a financial support order. You can ask a child support agency to help you get a child support order. The child support caseworker may discuss the child's financial and health care needs with the father and what he is required to pay for child support according to the state child support guidelines. If a court issues a child support order later, it may also include terms of custody, visitation, and other parental rights.

### **Do I need a lawyer to amend the birth certificate?**

No. You do not need a lawyer to amend the birth certificate. You can use a paternity acknowledgment form, a court order, or an administrative determination of paternity to request an amendment of the certificate in the state where the child was born, regardless of where you reside or the father resides. Please contact the Office of Vital Statistics, or the city or county court system that handles the family courts or juvenile and domestic relations courts where you live in order to determine what steps you need to take or paperwork you need to file.

Many cities and counties allow amendment of a birth certificate using forms available from the Office of Vital Statistics or the equivalent state office. Others will allow you to work with the clerk of the court to file the necessary paperwork but others may require a hearing.

## Questions and Answers for Noncustodial Parents

### **Why should I establish paternity?**

Even if you plan to marry the child's mother after the child is born, establishing paternity helps to protect the relationship between you and the child from the very start.

Once paternity is legally established, you as the child's father have access and custody rights just like the mother does. The child has a chance to develop a relationship with you and a sense of identity and connection to the "other half" of the family. Research indicates that children whose fathers take active roles in their upbringing lead lives that are more successful.

Paternity establishment also provides you and the child with legal rights to Social Security benefits, life insurance benefits, and inheritance. By establishing paternity, you ensure the child has legal rights to other benefits as well, such as veteran's benefits and health care coverage. For example, in order for a child to be enrolled in TRICARE, the military requires proof that a court has determined paternity, that the child is dependent upon the member for more than 50 percent of his or her support, or that the military member has signed a voluntary acknowledgment of paternity. Many people do not realize this, but **a child born to unmarried parents may not be able to claim these benefits from his or her father unless there is a legal determination of paternity.**

Establishment of paternity is also important for the health of the child. The medical history of both parents is important information for doctors to have in order to treat the child more effectively now, and later as an adult.

In addition to rights, the establishment of paternity results in responsibilities. As the legal parent of the child, you have a responsibility to provide financial support.

### **How can I establish paternity?**

If you acknowledge that you are the child's father, you can establish the child's paternity through the voluntary acknowledgment process. Every state has a voluntary acknowledgment program. Both parents must sign the paternity acknowledgment form before a notary, but they can sign it at different locations. See the response to the question below. Birthing hospitals have the form, as do bureaus of vital statistics and child support agencies. Only the biological father and mother should sign the form. If you are not sure that you are the biological father, you may contact the local child support agency about arranging a genetic test.

### **I'm going to be deployed at the time of my child's birth. Can I acknowledge paternity before the child is born?**

In nonmarital cases, some states will allow the service member to acknowledge paternity before the child's birth. These states may require that the member be on active duty and have military orders showing that he cannot be present at the child's birth. Signing a paternity acknowledgment form prior to the child's birth may be appropriate if you are certain that the child is yours. Because of the legal consequences of signing a paternity acknowledgment, if you are uncertain of your paternity, you should delay signing the acknowledgment and request genetic testing after the child is born.

### **Do both of us have to live in the same state in order to sign an acknowledgment of paternity?**

No. Parents can sign the acknowledgment of paternity form in any location. For example, if you are deployed, the form can be mailed to you at your current duty station. If you decide to sign it, you must do so in front of a notary public and mail it back to the custodial parent or child support agency. After both parents have signed the paternity acknowledgment form, the completed notarized form can be sent to the Office of Vital Statistics in the state where the child was born. Sometimes the child support agency can help; it may keep an electronic copy for its records. If one of you is overseas, the Red Cross or a local military legal assistance office may be able to help coordinate signatures.

### **Is there a fee to sign an acknowledgment of paternity?**

No. There is no fee to sign the paternity acknowledgment form. If you and the custodial parent come to a child support agency or military legal assistance office to have your signatures notarized, there is no fee for the notary service. Some notaries outside the child support agency may charge a small fee for their notary service. There is no fee to send the notarized paternity acknowledgment form to the Office of Vital Statistics. There is a small fee to get a copy of your child's updated birth certificate.

### **I am on active duty. My girlfriend had a baby. I've been paying support through a voluntary military allotment. Recently, after an argument, she told me the child wasn't mine. Do I have to keep paying support?**

If there is no court order establishing paternity and you have not signed a paternity acknowledgment form, then you have no legal obligation to pay support. Nor are there any military regulations requiring you to provide financial support in that circumstance. Because you are paying through a voluntary allotment, you may terminate that allotment at any time. If you stop the voluntary allotment, your commanding officer should make sure that you are not receiving BAH at the WITH DEPENDENTS rate based solely on the support of the child.

However, if you stop the allotment and a court or an administrative agency later determines that you are the father, you may be ordered to pay retroactive support; in some states that is for a certain time period, and in other states it can be back to the child's birth. For that reason, if there is a chance that the child is yours, it is advisable to contact the local child support agency and apply for services. The agency will help you coordinate genetic testing. The genetic testing can conclusively exclude someone from paternity or establish a probability of paternity that can be as high as 99.99 percent.

### **What happens if I am not sure that I am the father?**

If you are not sure if you are the father, you may request genetic testing. This painless test involves tissue samples (often from the inside of the cheek) of the man, mother, and child. Genetic test results can establish the probability of paternity to such a high extent that they often result in a legal presumption of paternity. The tests can also exclude a man who is not the biological father.

### **If genetic tests are necessary, who pays for them?**

If the state child support agency orders the tests, the state must pay the cost of the testing. If the tests establish a high probability that you are the father, some states will seek reimbursement from you for the test costs; the costs are usually less than \$300 per child. If a party disputes the original test result, he or she can pay for a second genetic test and the state must then obtain additional testing.



### **I am active duty military. If I acknowledge paternity and want to provide financial support, how can my commander help me?**

According to regulations governing active duty military, if you acknowledge paternity and agree to provide financial support, you can ask your commander to help you:

- Obtain the appropriate available housing/dependent allowance.
- Understand what you need to do to complete a voluntary allotment for the child.
- Get a military identification card for your child.
- Obtain ordinary leave, consistent with military requirements, in order to marry your child's mother.

### **If I acknowledge paternity and want to provide financial support, how can the child support agency help me?**

If you acknowledge paternity and want to provide financial support, you can apply for IV-D child support services in order to establish a child support order. The child support agency will seek the establishment of a financial support order based on a numerical formula called a child support guideline. Once the court or agency establishes a support order, payments will go through the State Disbursement Unit, and you will have a record of your payments. See Chapter IV on Support Establishment.

### **I am active duty military. How do I provide health care benefits for my children, if I'm not married to their mother?**

#### Step 1: Establish paternity

Establishing paternity is the first step to providing health care benefits for children born of unmarried parents. A court order establishing parentage is one way to legally determine parentage and dependent status. According to a January 28, 2008, Memorandum for Secretaries of the Military Departments, service members can also use a voluntary paternity acknowledgment form to establish dependency for health care benefits. Both you and the mother must sign the paternity acknowledgment form, a sample of which is available online at [www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity](http://www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity). Because each state has its own acknowledgment form, you must use the acknowledgment from the state where your child was born. You can get the form at any birthing hospital in that state or from the local child support agency.

#### Step 2: Go to military ID card issuance site

The protocol allows you, as the military sponsor, to go to the nearest military installation with an ID card issuance site (a specific service affiliation is not required) to determine dependent child status. You will need the child's birth certificate and a copy of the paternity order or signed acknowledgment form. As the sponsor, you will sign an Application for Identification Card/DEERS Enrollment (see DD Form 1172, [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf)). Once the military technician validates the order or acknowledgment/affidavit of paternity, the technician will scan the documents into the Defense Enrollment Eligibility Reporting System (DEERS) database and the child is automatically enrolled to receive TRICARE coverage. There is no cost.

If the mother is the custodial parent, it is also possible for her to go the nearest military installation with an ID card issuance site. She will need to bring the child's birth certificate, a copy of a paternity order or a signed paternity acknowledgment form, and your signed Application for Identification Card/DEERS Enrollment (see DD Form 1172, [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf)). Once the installation military

technician validates the court order or voluntary paternity acknowledgment form, the technician will scan the documents into the DEERS database and the child is enrolled to receive coverage.

**If I'm not married to my child's mother, can my child get military health care without a court order?**

Yes. There are three basic requirements:

- You may acknowledge paternity voluntarily through state procedures without a court order. This is most easily done by both of you signing a voluntary paternity acknowledgment form. Once the acknowledgment is filed with and accepted by the state's Vital Records Office, you will be listed as the father on the birth certificate.
- You must apply for dependency status. For that, you will need the child's birth certificate and a copy of the paternity acknowledgment form. The military personnel office will review the application for completeness. Once all requirements are met, the office will verify the child as your dependent. Depending upon the child's age and where the child is living, you may also need to get the child an ID card. If your child is 10, you as the sponsor must get an ID card for the child. If your child is less than 10, the child can usually use your ID card. However, children under age 10 should have their own ID cards when they are in the custody of a parent who is not eligible for TRICARE benefits or who is not the custodial parent after a divorce. If needed, the military personnel office will issue the child a military dependent ID card or provide you with paperwork and instructions so someone else can help the child obtain one.
- The child must then be registered with DEERS, a computerized system that keeps track of all recipients authorized to receive certain defense department benefits. Once registered, the child will be eligible for treatment in a military facility, if space is available, or treatment under TRICARE from a civilian hospital. See [www.tricare.mil](http://www.tricare.mil).

**I am getting ready to deploy and want to ensure my child can get health care while I'm gone. I know I need to take a copy of my paternity acknowledgment form with me to the military ID card issuance site in order to establish dependency. How can I get a copy of the form that I signed?**

It is advisable that you keep copies of all legal documents, including a signed paternity acknowledgment. If you do not have a copy, you may be able to get a copy through the child support office that is handling your case. Unfortunately, in states that are closed record states, it may be difficult to obtain a certified copy of the signed acknowledgment without a court order. In these states, the original form, along with the child's birth certificate, is placed in a sealed file. The Vital Records Office will not provide a copy without a court order.



**I am active military and have a child from a previous relationship who lives with his mother. Is that child eligible to receive health care while I'm deployed?**

Yes. All of your children are eligible to receive military health care so long as the following steps have occurred:

- A military installation with an ID card issuance site has determined that the child is your dependent.
- The military office has registered the child in DEERS.

## IV. Support Establishment

When a person has children, that person assumes legal, moral, and financial duties. Those duties exist, regardless of whether the parents live together or apart and regardless of whether the parents were married when the children were born. When parents do separate, it is critical that they continue to both provide financial and emotional support for their children. This chapter discusses processes available through the military, and through state proceedings, for the formal payment of child support.

### **Family Support Guidelines under Service Regulations**

Each branch of the military has regulations requiring support for a member's dependents. If there is no support order, or written agreement between the parties, these regulations apply. The amount considered "adequate support" varies, depending upon the service branch.

- Air Force 36-2906: [www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf](http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf)
- Army Regulation 608-99: [http://armypubs.army.mil/epubs/pdf/R608\\_99.pdf](http://armypubs.army.mil/epubs/pdf/R608_99.pdf)
- Navy & Marine Corps Support Guidelines: [www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part733.pdf](http://www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part733.pdf) and [www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part734.pdf](http://www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part734.pdf)
- Coast Guard (Chapter 2.E of the Personnel Manual, Commandant Instruction M1600.2): [www.uscg.mil/directives/cim/1000-1999/CIM\\_1600\\_2.pdf](http://www.uscg.mil/directives/cim/1000-1999/CIM_1600_2.pdf)

### **ARMY**

The Department of the Army sets minimum support requirements. See AR 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY (2003). Soldiers must comply with the following:

1. The financial support provisions of a court order or the financial support provisions of a written agreement in the absence of a court order.
2. Minimal support requirements in the absence of a court order or written agreement as outlined in the table below for a soldier receiving credit for payment of rent, utilities, mortgage, interest due on loans, and real property insurance payments.

Situation	Level of Support
<b>Single-family units</b>	
Family unit not in government housing	Basic Allowance for Housing II - With Dependents (BAH - WITH)
Family unit in government housing	No support unless supported family member(s) move(s) out of government housing, then the soldier will provide BAH II - WITH
Family members within the family unit residing at different locations	Pro-rata share of BAH II - WITH to each family member not residing in government housing No additional support for family members residing in government housing

Situation	Level of Support
<b>Single-family units</b>	
Soldier married to another person on active duty in any service	No support unless required by court order or by agreement
<b>Single-family unit where Soldier married to active duty spouse <i>but with</i> children from marriage <i>or</i> prior marriage</b>	
Soldier does not have custody of any children and the children do not reside in government quarters	BAH Differential (BAH-DIFF) to the military member having custody of the child or children
Soldier does not have custody of any children and the children reside in government quarters	No additional support
Soldier has custody of one or more children	No support for a child or the children in the custody of the other military member
<b>Multiple family units</b>	
Family members in government housing	No additional support
Each family member not in government housing	Pro-rata share of BAH II - WITH

A pro-rata share =  $1/(\text{Total number of supported family members}) \times \text{BAH II - WITH}$

### NAVY

Navy requirements for support are found in 32 C.F.R. § 733.3.<sup>3</sup> The Navy requires a member to comply with a court order or agreement between the parties. If there is no agreement or court order, then the following guidelines apply:

Situation	Level of Support
Spouse only	1/3 of gross pay
Spouse and one minor child	1/2 of gross pay
Spouse and two or more children	3/5 of gross pay
One minor child	1/6 of gross pay

<sup>3</sup> See also Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members); art. 5800-10 (Paternity Complaints).

<b>Situation</b>	<b>Level of Support</b>
Two minor children	1/4 of gross pay
Three minor children	1/3 of gross pay

The above chart is a guideline and is “not intended as a fixed rule” and “actual support may be increased or decreased as the facts and circumstances warrant.” See 32 C.F.R. § 733.3(a)(2).

Gross pay includes basic pay and BAH, but not hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence pay. See 32 C.F.R. § 733.3(b)(2).

### MARINE CORPS

Marine Corps requirements for dependent support are found in 32 C.F.R. § 733.3.<sup>4</sup> In the absence of a court order or an agreement, the following is the guide for Marine support obligations:

<b>Situation</b>	<b>Level of Support</b>	
	<b>Amount(s)</b>	<b>Up to a Maximum of</b>
<b>Civilian spouse</b>		
Single family in government housing (civilian spouse)	\$200.00 per supported person	1/3 gross pay, per month
Single family not in government housing (civilian spouse)	Either \$200.00 per supported family member, or BAH WITH, whichever is greater	1/3 gross pay, per month
Multiple families (not including a spouse in the armed forces)	Either \$200.00 per supported family member, or the pro rata share of BAH WITH, whichever is greater	1/3 gross pay, per month
<b>Both spouses in the armed forces</b>		
No children of the marriage	No support obligation, regardless of any disparities in pay grade	N/A
All children of the marriage in the custody of one spouse	Either \$200.00 per supported child, or BAH WITH, whichever is greater	1/3 gross pay, per month
Custody divided between the two parents	Either \$200.00 per supported family member, or the pro rata share of BAH WITH, whichever is greater	1/3 gross pay, per month

<sup>4</sup> See also MC Order P5800.16A (LEGLADMIN), ch. 15 (Dependent Support and Paternity).

Gross pay includes basic pay and BAH, but does not include hazardous duty pay, incentive pay, or basic allowance for subsistence. See 32 C.F.R. § 733.3(c)(1).

### AIR FORCE

The Air Force, unlike its sister services, does not provide specific quantities of support owed to family members. Instead, Air Force policy regarding support provides that each Air Force member is expected to “provide adequate financial support to family members.” See AFI 36-2906, PERSONAL FINANCIAL RESPONSIBILITY, para 3.2.1 (1998). Para. 7.2 states that members must “provide adequate financial support of a spouse or child or any other relative for which the member receives additional allowances for support. Members will also comply with the financial support provisions of a court order or written support agreement.”

Upon receipt of a complaint of non-support by a family member, the Air Force requires the member to prove financial support. The member may not receive BAQ<sup>5</sup> at the with-dependent rate if the member is not providing financial support to his or her spouse or children. If the member does receive BAQ, the Air Force may recoup the BAQ for periods of non-support (para 3.2.3). In addition, the Defense Finance and Accounting Service (DFAS) will cooperate with the family member to implement involuntary collection of support through garnishment or statutory allotments (Attachment 2).

### COAST GUARD

The Coast Guard has established the following support requirements in the absence of a court order:

Situation	Level of Support
Spouse Only	Basic Allowance for Housing Differential (BAH-DIFF) plus 20% of basic pay
Spouse and one minor or handicapped child	BAH-DIFF plus 25% of basic pay
Spouse and two or more minor or handicapped children	BAH-DIFF plus 30% of basic pay
One minor or handicapped child	16.7% (1/6) of basic pay
Two minor or handicapped children	25% (1/4) of basic pay
Three or more minor or handicapped children	33% (1/3) of basic pay

See COAST GUARD DISCIPLINE AND CONDUCT MANUAL Section 2.E.3.c. (COMDTINST M1600.2, Issued 29 Sep 2011).

For this scale, BAH-DIFF is defined as the difference between the BAH with dependents rate and the BAH without dependents rate as calculated for the member.

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<sup>5</sup> AFI 36-2906, dated 1998, has not been rewritten since the term BAQ was replaced by BAH.

### **Voluntary Allotment**

In the absence of any order, a service member can set up a voluntary allotment<sup>6</sup>, asking that money be taken from his or her paycheck and sent directly to the custodial parent. Such assistance will help reduce financial strain until a child support order is established. In addition, this procedure provides an official record of payments that may help the member receive proper credit for payments made prior to the entry of a support order in states that authorize retroactive support. Keep in mind, however, that there is no uniform treatment of voluntary allotments. Some courts may consider the voluntary allotments a gift, since there is nothing in writing indicating its purpose as child support, and may not credit the allotment amount against any retroactive support award. It is therefore advisable that you get an order for support at the earliest time possible.

Because it is a voluntary allotment, the member can stop the allotment at any time.

### **Establishment of an Order**

Establishment of a legal order for child support can benefit both parents. It ensures that both parents know the specific financial obligation. Additionally, the order will usually require payments to go through a centralized State Disbursement Unit so there is an official record of payments. In order to obtain a child support order, either parent can seek legal advice, ask the court about the availability of a pro se process for handling the matter without a lawyer, or apply to receive services from a child support agency.

### **State Child Support Guidelines**

All states have laws or rules establishing child support guidelines. Support guidelines are numerical formulas that the court or administrative agency uses to calculate how much a parent should contribute to a child's financial support; the formulas are based on parental income and economic data on the cost of rearing children. Federal law requires that a court or an agency presume that the guideline amount is the appropriate amount of child support. Support amounts can deviate from the guideline amount. For that to happen, however, the state must find that applying the guideline in that particular case would result in an inappropriate order that is not in the best interest of the child. State support guidelines vary. Some factor in the income of both parents. Others are based on a percentage of the income of the noncustodial parent only, with the assumption that the custodial parent is already contributing to the child's financial well-being. You may call your local child support office or visit the state agency's website to find out about your state's child support guidelines. See [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts).

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<sup>6</sup> If the service member has a support order requiring payment to the custodial parent directly, the member may also use a voluntary allotment as a means to comply with the order.

### **Determining Income of a Military Member**

In determining income, most state support guidelines initially start with “all income,” that is, both taxable and non-taxable income. For military members, that means most states will include base pay (which is based on rank and time in service), any special skills pay (for example, flight pay, hazardous duty pay, career sea pay, and jump pay), bonuses (for example, a lump sum payment for re-enlisting), and allowances such as Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS). The quarterly wage report that the Department of Defense provides to the National Directory of New Hires, operated by the federal Office of Child Support Enforcement (OCSE), includes all income that a military person receives. Such information is also on the member’s Leave and Earnings Statement (LES). Most child support agencies will ask the service member for copies of his or her LES that covers a period of time.

The LES provides a wealth of information that is critical to the order establishment process. The LES has 78 separate fields that include, among other things, the following information:

- All pay the member receives (Base, Special, Incentive, and Bonus) [field 19]
- All allowances and entitlements the member earns [field 10]
- Member’s leave balances [fields 25 – 32]
- Number of dependents the member claims [field 51]
- Member’s declared state of domicile [field 44]

Special skills pay and hazardous duty pay may be for a limited time. Therefore, the fact that it is reflected on one or more LESs does not mean the member will receive such pay all year. In order to ensure that the ordered support amount is appropriate, the service member must let the court or agency know the start and end dates of such pay. In addition, it is important to note that most bonuses are paid at the field level and are not processed by DFAS. As a result, a bonus may be noted on the LES retroactively. This means that the bonus generally does not appear in the earnings for the active pay period (line #33) but can be identified using the year-to-date earnings (line #34). The child support agency or custodial parent will want to check that line to determine whether the member has received any bonuses that should be factored into the guideline calculation.

The LES also identifies whether a given source of income is taxable. Many state child support guidelines initially start with a person’s gross income, but then allow certain deductions before calculating the support obligation based on the person’s net income. Decision-makers vary regarding the treatment of a service member’s nontaxable income (BAS and BAH). The service member can seek information from the child support agency about how the guidelines will treat his or her nontaxable income. It is important that the service member provide accurate income information to the court and/or child support agency to assist in the appropriate calculations.

### **Medical Support**

Current federal law requires every child support order to include a provision for health care coverage. Medical support can take several forms.

The custodial or noncustodial parent may be ordered to:

- provide health insurance if available through his/her employer;

- pay for health insurance (health care coverage) premiums or reimbursement to the custodial parent for all or a portion of the costs of health care coverage obtained by the custodial parent; **and/or**
- pay additional amounts to cover a portion of ongoing medical bills or as reimbursement for uninsured medical costs.

In the civilian sector, health care coverage for a child is potentially available through either of the parents' employers, public coverage, or state health insurance Exchanges (available starting in October 2013). Children of active or retired military members also have access to the military's TRICARE program. See below.

### **Obtaining Medical Support from Military Personnel**

A legal dependent of an active or a retired military member is eligible for services through the Military Health System. This is true regardless of whether the dependent resides with the member, but options are limited to military medical facilities or services obtained through TRICARE—the health care program serving uniformed service members, retirees, and their families. Reservists are not eligible for TRICARE (unless they are serving under federal activation orders), nor are defense department civilian employees. National Guard and Reserve members may be eligible to purchase TRICARE Reserve Select. You can find out more at [www.tricare.mil/trs](http://www.tricare.mil/trs).

To enroll a child in TRICARE, the child must be registered in the Defense Enrollment Eligibility Reporting System (DEERS). DEERS maintains information on the military service person, known as the “sponsor,” and his or her dependents. DEERS is the database used to confirm eligibility for military benefits including health care. A sponsor is automatically registered in DEERS, but the sponsor must enroll his or her family members. When there is a change in information, each family member's eligibility record must be updated separately.

The Defense Manpower Data Center (DMDC) MilConnect website, <https://www.dmdc.osd.mil/milconnect/>, contains more information about the DEERS enrollment process.

The TRICARE website offers detailed information about coverage options at [www.tricare.mil](http://www.tricare.mil). Excerpts are included below.

### **TRICARE Prime**

This is a managed care option offering the most affordable and comprehensive coverage for military families. It is available in the United States in designated Prime Service Areas. Other Prime options are available for active duty service members and their families in remote U.S. areas and overseas. The sponsor must sign a completed enrollment form and submit the form to the regional contractor or local TRICARE Service Center. Under certain circumstances, the custodial parent may enroll the child in TRICARE Prime. In some cases, there are premium payments depending on the military member's status (for example, quarterly premiums for family members of retirees). This program is similar to a civilian health maintenance operation (HMO) policy. There is no deductible, but some services require a co-payment.



### **TRICARE Standard and Extra**

This is a fee-for-service plan that is available to all non-active duty beneficiaries throughout the United States. TRICARE Standard and Extra allow a non-active duty beneficiary to manage his or her own health care by seeking services from any TRICARE-authorized provider. There are no enrollment forms or fees, but there is an annual deductible for outpatient services and cost-shares for most services. Coverage is automatic as long as the information is current in DEERS.

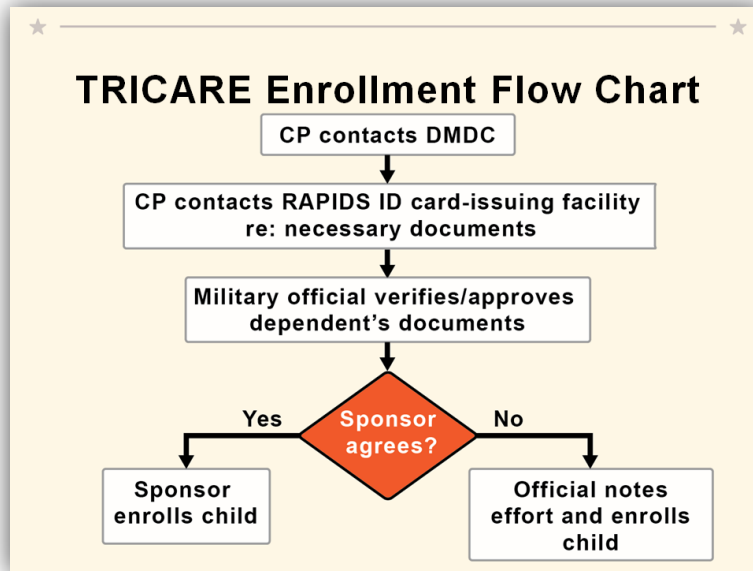
### **Enrollment in TRICARE**

Before any enrollment can occur, the child must be determined to be a military dependent and enrolled in DEERS. (See the next section on how to determine eligibility.) Documents establishing dependency include a court-ordered paternity determination or an acknowledgment of paternity form (if the child's parents were not married), and a birth certificate. The court order only has to establish paternity; it does not have to order financial or medical support.

The easiest way to enroll a dependent into DEERS is to have the military member (sponsor) enroll the child. The military member can go to the nearest military installation or Reserve or National Guard unit with a RAPIDS ID Card Issuing Facility (RAPIDS is the acronym for the Real-Time Automated Personnel Identification Card System). The member can go to any installation; the installation does not have to be specific to the member's service branch. The military member can also enroll the child during pre-deployment processing programs.

The member must bring documents establishing the child's dependent status. If the child was born to unmarried parents, the member must bring a copy of the paternity order or paternity acknowledgment/affidavit in order to establish the child's dependent status. However, each branch of the service may have slightly different procedures, so the member should call in advance to confirm what documents are needed.

As the sponsor, the member will sign an Application for Identification Card/DEERS Enrollment (see DD Form 1172, [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf)). Once the installation military technician validates the documents establishing dependency, the documents are scanned into the DEERS database and the child is automatically enrolled to receive TRICARE coverage. There is no cost associated with the child's enrollment into DEERS.



If the military member does not enroll the child in DEERS, the custodial parent can enroll the child by going to a RAPIDS ID Card Issuing Facility and presenting the appropriate documents to the official who verifies dependent status. Anyone can locate the nearest RAPIDS ID Card Issuing Facilities via the internet at [www.dmdc.osd.mil/rsl](http://www.dmdc.osd.mil/rsl). If internet access is not available, the custodial parent may obtain the information by contacting the Defense Manpower Data Center (DMDC) Support Office Monday through Friday between 9:00 a.m. and 6:30 p.m. (ET) at (800) 538-9552. An advance call to the closest RAPIDS ID Card Issuing Facility is important because branches may have slightly different procedures particularly concerning base access for someone who does not have a defense department identification card.

### Documents Needed to Enroll Child

The custodial parent or sponsor will need to present the following documents to the verifying official:

- The child's birth certificate (usually a certified copy).
- If the child was born to unmarried parents, a legal determination of paternity (for example, a court-ordered paternity finding, an administrative paternity order, or a voluntary paternity acknowledgment signed by both parents).
- If applicable, a court or an administrative order showing the "sponsor" (the military member) has an obligation to provide support for the child.
- Any forms that the local installation requires.

If the sponsor will not sign the enrollment paperwork, the verifying official can sign on the sponsor's behalf if all of the required documents are present. The official will document the failed efforts to obtain the sponsor's signature. The sponsor may not decline coverage of his/her dependent child.

A custodial parent wishing to enroll a child into DEERS by mail should contact a military installation or a Reserve or National Guard unit with a RAPIDS ID Card Issuing Facility. The installation or unit should be the same service branch as the noncustodial parent. The custodial parent will need to provide documentation to prove dependency. One requirement for enrollment

is the Social Security number (SSN) of the noncustodial parent/military member. If the custodial parent does not know the noncustodial parent's SSN, a child support caseworker can obtain the SSN and complete all the required paperwork to initiate the enrollment. The caseworker can fax or mail the paperwork to the appropriate RAPIDS ID Card Issuing Facility. Once the paperwork is completed and approved, the custodial parent will need to take the child to the ID Card Issuing Facility to obtain a military ID card for the child. Children under the age of 10 will need a personal ID card when in the custody of a parent who is not eligible for TRICARE benefits or who is not the custodial parent after a divorce. If needed, the military personnel office will issue the child a military dependent ID card or provide the necessary paperwork and instructions so someone else can help the child obtain one.

### **Medical Care through TRICARE**

#### **Obtaining Medical Care for Your Child after Enrollment**

Once enrolled in DEERS, the child is eligible to receive health care in two ways. The child may be able to obtain health care services and medications from military hospitals and clinics if space is available. The child may also use the cost share medical coverage, TRICARE, with civilian health providers. Getting health care from a uniformed service hospital or clinic, when available, saves money and paperwork. Military bases have Beneficiary Counseling Assistance Coordinators to answer questions custodial parents may have about health care coverage.

TRICARE uses the term "shared" rather than "covered" because the cost is shared by the beneficiary after satisfaction of an annual deductible cost. Parents can submit claims to TRICARE up to a year after treatment. Commencement of military medical benefits is determined by either the child's date of birth or the date(s) of the sponsor's military service, not the DEERS enrollment date.

TRICARE program handbooks explaining coverage are available by writing to TRICARE Management Activity (TMA) Public Affairs Branch Aurora, CO 80045-6900, or by calling (303) 361-1000/1129. The publications are also available electronically at [www.tricare.mil/Publications.aspx](http://www.tricare.mil/Publications.aspx).

#### **How to Learn Whether a Dependent Has Already Been Enrolled in DEERS and is Entitled to TRICARE Benefits**

If you are receiving IV-D child support services, it is easy to learn whether your child has already been enrolled in DEERS and is therefore eligible for TRICARE benefits. There is an electronic match between the Federal Case Registry (FCR), operated by OCSE, and the Defense Manpower Data Center (DMDC), operated by DoD, that provides child support workers with that information. DMDC matches its records against the FCR participants to determine whether a child is eligible for military medical benefits. DMDC reports the results to the FCR, and the FCR transmits the match information to the states every quarter.

Once an active duty or a retired military member and eligible family members are enrolled in DEERS, they have health care benefits. These benefits do not include dental care but TRICARE dental coverage is available at an additional cost to the service member. The custodial parent must follow the procedures in the previous section for enrollment if the child is shown as eligible but not already enrolled in DEERS.

*“TRICARE covers most inpatient and outpatient care that is medically necessary and considered proven. However, there are special rules or limits on certain types of care, while other types of care are not covered at all.”<sup>7</sup>*

A custodial parent (not a child support worker) may confirm eligibility for a child by calling the DMDC Support Office (DSO) telephone center help line at (800) 538-9552. If the custodial parent is divorced from the military person (sponsor) but has a prior DEERS record and can establish that he/she is the child's parent, DEERS can provide eligibility information. If the custodial parent was never married to the sponsor or was never enrolled in DEERS, the parent will first need to provide proof that he or she is actually the parent of the child in question. Acceptable documents include the child's birth certificate that names the parent in question and custody orders. The parent will need to send the documents to DSO for review. Once DSO updates the tracking system, DSO can release specific information to the custodial parent.

### **State Legal Proceedings for Establishment of a Support Obligation**

Some states establish support through court hearings. Others use consent processes or administrative processes. Under each of these processes, the decision-maker uses child support guidelines to establish the order amount, unless there is a finding as to why a deviation is appropriate. The orders are legally binding on the parties.

### **Duration of Support Obligation**

A noncustodial parent usually must pay ongoing support until a child is 18 years of age or has graduated from high school, whichever comes later. Some states require support for a longer time.

### **Questions and Answers for Custodial Parents**

#### **I don't have a court order for support. Until I get one, is there any way I can get support from my ex-spouse who is in the military?**

Yes. Each service branch has regulations and policy requiring the service member to provide adequate support for his or her dependents. The amount considered “adequate support” varies, depending upon the service branch. If there is no written agreement between the parties or no support order, these regulations apply.

In the absence of a court order, you may ask your ex-spouse to establish a voluntary allotment authorizing DFAS to take the money from his or her monthly paycheck and send it directly to you. You should both agree on which guidelines you will use to determine the amount of the voluntary allotment, either the service branch's regulations or your state's support guidelines. Keep in mind that your ex-spouse can stop the allotment at any time because it is voluntary.

If your ex-spouse does not establish a voluntary allotment and is failing to provide support, you may ask the commanding officer for help in getting financial support.

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<sup>7</sup>TRICARE.Mil Covered Services webpage, [www.tricare.mil/CoveredServices.aspx](http://www.tricare.mil/CoveredServices.aspx).

### **If the service member fails to provide support, whom should I contact?**

There are several options depending on the circumstances:

You have a support order	You can contact the local child support agency or court to assist with enforcement. You can contact the service member's commanding officer.
You have an income withholding order and are receiving child support services	You can make sure that the child support agency is aware of the member's military status so that the agency can send the withholding order to the Defense Finance and Accounting Service (DFAS).
You have an income withholding order but are not receiving child support services	You can serve DFAS with the income withholding or garnishment order yourself. Instructions are on the DFAS website: <a href="http://www.dfas.mil/garnishment.html">www.dfas.mil/garnishment.html</a> . You can contact the service member's commanding officer.
You do not have a support order	You can contact the service member's commanding officer or the installation and inquire about receiving support pursuant to the support regulations of the member's service branch. When doing this, include your name; the names of the service member's dependents; the service member's name, rank, and last four digits of the member's Social Security number (if known); and the amount of support in cash or in kind that the member is paying, if any. Attach all pertinent documents such as your marriage certificate, birth certificates, last Leave and Earnings Statement (LES), military orders, and any bills that you have. You can also contact your local child support agency for assistance in establishing a support order.

### **Can a military attorney file court documents for me?**

Normally, only a civilian attorney can represent you in a civilian court. An Armed Forces legal assistance attorney (who may or may not be a judge advocate) can help you find local civilian counsel, can refer you to the local child support office, and may assist in preparing documents that you may file in court yourself. All Active Component members of the Armed Forces (and their family members) are eligible to receive Armed Forces legal assistance. Reserve Component and National Guard members (and their family members) are also eligible under certain circumstances.

### **What military pay is considered when a child support order is established?**

State child support guidelines are based, in part, upon parental income. Some guidelines use gross income; others use net income. State guidelines that use net income vary in the allowable deductions from gross income in order to determine net income. All state guidelines will consider the service member's base pay, special skills pay, and bonuses as part of gross pay. State guidelines will vary in their treatment of non-taxable allowances (BAH and BAS). In many states, the guidelines will treat these allowances as income and include them within the guideline calculation.

### **Where can I go to get information about military pay?**

Military pay is comprised of basic pay; available allowances, such as Basic Allowance for Housing (BAH), and Basic Allowance for Subsistence (BAS) or Separate Rations (Sep Rats); special skill pay (for example, flight pay); and bonuses (for example, reenlistment). The member's Leave and Earnings Statement (LES) provides information about the member's basic pay, allowances, and special pay. The following resources are available on line:

DoD Pay Tables      [www.dfas.mil/militarymembers/payentitlements/militarypaytables.html](http://www.dfas.mil/militarymembers/payentitlements/militarypaytables.html)

Basic Allowance for Housing (BAH)      [www.defensetravel.dod.mil/site/bah.cfm](http://www.defensetravel.dod.mil/site/bah.cfm) (Contains housing tables & a zip code search feature)

Leave and Earnings Statement (LES)      <https://mypay.dfas.mil>

### **Does the military offer health care coverage for my child?**

Yes. TRICARE is the health care program serving Uniformed Service members, retirees, and their families. While activated, National Guard and Reserve members and their families may also enroll in TRICARE Prime. When inactive, but serving in the Selected Reserve, National Guard and Reserve members and their families may be eligible for TRICARE Reserve Select, but they have to pay a monthly premium. See [www.tricare.mil](http://www.tricare.mil) for more information.

### **If I'm not married to my child's father, who is active military, can my child still get health care benefits through TRICARE?**

Yes. A child can get health care benefits through TRICARE so long as the following steps have occurred:

- A military installation or Reserve or National Guard unit with an ID card issuance site has determined that the child is the military member's dependent.
- The military office has registered the child in the Defense Enrollment Eligibility Reporting System (DEERS).

Establishing paternity is the first step to providing health care benefits for children born to unmarried parents. Although you will need a copy of your child's birth certificate, it is not evidence that paternity has been established and that the child is a legal dependent of the member. A court order determining parentage is one way that dependency is determined. Another way is if both of you have a signed and notarized voluntary paternity acknowledgment form. Because each state has its own acknowledgment form, you must use the acknowledgment from the state where your child was born. You can get the form at any birthing hospital in that state, as well as the local child support agency. The sponsor (military member) or you—as the custodial parent of a child born to unmarried parents—can go to the nearest military installation or Reserve or National Guard unit with a RAPIDS ID Card Issuance Facility (a specific service branch affiliation is not required) to register the dependent child's status. RAPIDS Site locator is available at [www.dmdc.osd.mil/rsl/appj/site?execution=e2s1](http://www.dmdc.osd.mil/rsl/appj/site?execution=e2s1).

The easiest way to enroll a dependent in DEERS is to have the military sponsor enroll the child. As the sponsor, the member will sign an Application for Identification Card/DEERS Enrollment (see DD Form 1172, [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf)). Once the installation military official validates the order or acknowledgment/affidavit of paternity, the documents are scanned into the DEERS database and the child is automatically enrolled to



receive TRICARE coverage. There is no cost associated with the child's enrollment into DEERS.

If the military member does not enroll the child in DEERS, you, as the custodial parent, can enroll the child by going to a RAPIDS ID Card Issuing Facility and presenting the appropriate documents to the official who verifies dependent status. Once the installation military technician validates the order or voluntary paternity acknowledgment form, a sample of which is available online at [www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity](http://www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity), the documents are scanned into the Defense Enrollment Eligibility Reporting System (DEERS) database and the child is enrolled to receive coverage.

### **How do I enroll my child in the TRICARE program?**

Before any enrollment in TRICARE can occur, the child must be determined to be a military dependent and registered in DEERS. Each branch of the service may have slightly different procedures. If you are the custodial parent, you must go to the nearest RAPIDS ID Card Issuing Facility and present the appropriate documents to the verifying official. (RAPIDS stands for Real-Time Automated Personnel Identification Card System and refers to the application process through which individuals receive ID cards.) You can find the location of the nearest RAPIDS ID Card Issuing Facility via the Internet at [www.dmdc.osd.mil/rsl](http://www.dmdc.osd.mil/rsl). You can also contact the Defense Manpower Data Center (DMDC) Support Office help line Monday through Friday between 9:00 a.m. and 6:30 p.m. (ET) at (800) 538-9552.

In addition to providing documentation about dependency, you will need the Social Security number (SSN) of the noncustodial parent/military member. If you do not know the member's SSN but you are receiving child support services, the child support caseworker can obtain the member's SSN and complete all the required paperwork to initiate the enrollment.

Before the DEERS enrollment can be completed, the RAPIDS ID Card Issuing Facility will attempt to have the sponsor sign the Application for Identification Card/DEERS Enrollment (see DD Form 1172, [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf)). The amount of time for this process will vary depending on the location and the assignment of the military member. If the sponsor is unwilling to sign, the verifying official may sign on behalf of the sponsor after all efforts to obtain the sponsor's signature have failed and those efforts have been documented. The sponsor may not decline coverage of his/her child.

Once enrolled in DEERS, the child is eligible for health care coverage under TRICARE and should have a military ID card, regardless of the child's age, if he or she is living with the non-military parent. The RAPIDS facility can issue the ID.

### **Questions and Answers for Noncustodial Parents**

#### **How will a separation or divorce affect my military benefits?**

Separation or divorce will affect your status for housing allowances or entitlement to government-owned or leased quarters. Failure to provide actual support for dependents may result in a loss of entitlements at the "with dependents" rate if you have no other dependents physically living with you. Additionally, after a divorce, your former spouse is no longer a "dependent" even if you are required to pay spousal support.

#### **Can a military attorney file court documents for me or represent me in court?**

Normally, only a civilian attorney can represent you in civilian court. An Armed Forces legal assistance attorney (who may or may not be a judge advocate) can help you find local civilian counsel, can refer you to the local child support enforcement office, and may prepare documents that you may file in court yourself. All Active Component members of the Armed Forces (and their family members) are eligible to receive Armed Forces legal assistance. Reserve Component and National Guard members (and their family members) are also eligible under certain circumstances.

**I am active duty military. If I don't want to wait until my court date, is there anything I can do to set up a voluntary allotment for child support?**

You can establish a voluntary allotment of earnings and route money from your pay to your dependents. Military rules strongly encourage members who are separated from their families due to their military service to establish voluntary allotments to provide for the financial support of their dependent family members. Because it is voluntary, you can start this allotment even before a child support order exists. Your commanding officer can help you get the voluntary allotment forms. At a minimum, you should establish the allotment for the amount that your military branch regulation states is adequate. You may also want to review the applicable state child support guidelines and establish the allotment for an amount consistent with those guidelines. Most state child support agencies have on-line guideline calculators accessible through their websites.

**What military pay is considered when a child support order is established?**

State child support guidelines are based, in part, upon parental income. Some guidelines use gross income, others use net income. State guidelines based upon net income vary in the allowable deductions from gross income in order to determine net income. With those variances in mind, all state guidelines will consider the service member's base pay, special skills pay, and bonuses. State guidelines will vary in their treatment of non-taxable allowances (BAH and BAS).

**I heard that the court can't touch my VA disability benefits. Does that mean the court can't consider them as income to me?**

In most circumstances, a court or an agency cannot garnish VA disability benefits for enforcement of child support; that means there usually can be no withholding from your VA disability benefits. However, if you receive VA disability benefits, the amount of those benefits is considered income to you and the court or agency will include them when determining the support guideline amount.

**I am a service member. What should I do if I receive notice of a child support order?**

See someone in the Armed Forces Legal Assistance program or a private attorney, as soon as possible. All Active Component members of the Armed Forces (and their family members) are eligible to receive Armed Forces legal assistance. Reserve Component and National Guard members (and their family members) are also eligible under certain circumstances.

A lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options, and alternatives. Bring a copy of any documents or court papers that you have. You may also want to contact any child support agency identified in the notice or order.

**If I am the service member, how do I enroll my child in the TRICARE program?**

Before your child is eligible for TRICARE, he or she must first be enrolled in the Defense Enrollment and Eligibility Reporting System (DEERS) as your dependent. DEERS maintains the



records of each military member (the sponsor) and his/her registered dependents. It does not cost you anything to enroll your dependent into DEERS and once your child is registered, enrollment in the TRICARE program is automatic.

Because you are the military member and sponsor, the easiest way to enroll your child into DEERS is to go to the nearest military installation or Reserve or National Guard unit with a Real-Time Automated Personnel Identification Card System (RAPIDS) ID Card Issuing Facility (a specific service affiliation is not required). You can also enroll the child during pre-deployment processing programs.

You will need the following documents to enroll your dependent in DEERS:

- The child's birth certificate (usually a certified copy)
- If the child was born to unmarried parents, a legal determination of paternity (for example, a court-ordered paternity finding, an administrative paternity order, a voluntary paternity acknowledgment signed by both parents)
- If applicable, a court or an administrative order showing you (the military sponsor) have an obligation to provide support for the child.

Some local installations require additional forms. It therefore is a good idea to contact the installation before arriving to request DEERS enrollment in order to determine if the installation requires completion of special local forms.

### **If I am a mobilized reserve component member, can I obtain military health care for my children?**

Yes. Family members of a reserve component member ordered to federal active duty for more than 30 consecutive days are eligible for the TRICARE benefits on the first day of the sponsor's order to active duty. The Defense Enrollment Eligibility Reporting System (DEERS) reflects a family members' eligibility for TRICARE benefits. TRICARE Standard and Extra has cost shares (20 percent or 15 percent depending on whether a network provider is selected) and annual \$50 to \$300 deductibles depending on the rank of the sponsor and number of covered family members.

Family members may also be eligible for the TRICARE Prime Remote For Active Duty Family Members (TPRADFM). TPRADFM requires enrollment and may be available to RC families of mobilized/activated RC members if they meet the following criteria: (1) The sponsor must be ordered to active duty for more than 30 consecutive days. (2) The sponsor's residence is located in a TPRADFM Zip Code (typically more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility). (3) The eligible family members must reside with the active duty sponsor at the time of activation or effective date of the orders. (4) The RC member's residential mailing address in DEERS must be the same as the family member. For more information, go to [www.tricare.mil/Welcome/Eligibility/NGRMandFamilies.aspx](http://www.tricare.mil/Welcome/Eligibility/NGRMandFamilies.aspx).

### **V. Support Enforcement**

This chapter provides general information for both custodial and noncustodial parents about support enforcement. Once a support order is established, the expectation is that payments will be made in a timely manner and in the correct amount. Any disruption in payment, even if temporary, can cause financial difficulty for a child. For that reason, federal and state governments have enacted laws providing for the enforcement of support. The goal of some of these laws, such as income withholding, is to prevent support arrears from ever occurring. The goal of other laws is to collect lump sum payments toward arrears, once they do exist. In addition to enforcement tools, state child support programs have become more proactive in addressing reasons parents cannot or do not pay child support, such as lack of employment or orders that no longer reflect their current income or financial circumstances. If you are a noncustodial parent experiencing a reduction in income or loss of employment, it is important that you contact the child support agency to request a review and possible adjustment of the order before support arrears build up. Keep in mind that the Servicemembers Civil Relief Act provides certain protections related to legal proceedings, which may include enforcement actions. See Chapter VIII on the Servicemembers Civil Relief Act for details.

#### **Military Regulations Governing Support Enforcement**

Federal regulations and the rules of each service branch require military members to honor the terms of their child support orders. These military rules give commanding officers the authority to punish members who fail to support their dependents. Below are the federal regulations that govern the collection of child support from members of the military:

- Garnishment processing for all military branches: 5 C.F.R. Part 581
- Army: 32 C.F.R. Part 584
- Navy/Marine Corps: 32 C.F.R. Part 733

Each branch has also developed its own policy regarding support:

- Army Regulation 608-99, Chapter 2 (Family Support, Child Custody, and Paternity)
- Secretary of the Air Force Instruction (SECAF INST) 36-2906, Personal Financial Responsibility
- Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members)
- U.S. Marine Corps, Order P5800.16A Marine Corps Manual for Legal Administration (LEGALADMIN), cha. 15 (Dependent Support and Paternity)
- U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2, cha. 2.E (Sept. 2011)(Supporting Dependents)

#### **Income Withholding**

Congress requires all states to have laws providing that income withholding is a method for noncustodial parents to comply with child support orders. Income withholding means that support payments are deducted from the noncustodial parent's paycheck or other source of income. Some states call the process garnishment, wage withholding, or wage attachment. State law must provide that immediate income withholding is part of the initial support order, without

regard to the existence of arrears (past-due support). This requirement is for orders that the state child support program is handling, as well as for private cases. The only exceptions to immediate income withholding are (1) if the court or agency finds good cause not to order immediate income withholding, or (2) if both parents agree to an alternative arrangement. Where the court or agency does not immediately order income withholding, upon entry of the order, withholding will automatically be triggered if an arrearage equal to one month's payment occurs.

### **Benefits of Income Withholding**

Immediate income withholding is beneficial to both parents. Because income withholding begins as soon as the order is issued, it lessens the likelihood of arrears occurring so long as the noncustodial parent is employed. Immediate income withholding in all cases also helps eliminate the stigma that was formerly associated with support garnishments. Employers now know that employees' payment of support through income withholding means that their employees are being responsible and meeting their support obligations.

If the noncustodial parent has an employer, income withholding for child support is like other forms of payroll deduction, such as income tax, social security, union dues, or any other required payment. Once the employer receives the income withholding order, the employer will follow its directions for deducting a certain amount for support and forwarding the payments to the State Disbursement Unit (SDU). The SDU will then send the withheld money to the custodial parent, often through electronic bank deposit. Income withholding is less effective if the noncustodial parent is self-employed or changes jobs frequently.

### **Limits on the Amount that can be Withheld**

An immediate income withholding is for the amount that the order requires for current support. If an arrearage accrues, the income withholding can be changed to include an additional amount to pay off the arrears. There are limits to the amount of income that an employer can withhold from a person's wages. An employer cannot withhold more than the lower of the garnishment limits within state law or the federal Consumer Credit Protection Act (CCPA). The CCPA limits range from 50 – 65 percent of disposable pay depending upon whether the noncustodial parent has other dependents and how long the noncustodial parent has been in arrears.

### **Military Voluntary Allotment**

Members of the military may establish a voluntary allotment of earnings and route money from their pay to their dependents. Because it is voluntary, the service member can start this allotment even before a child support order exists in the case. A commanding officer will help the member obtain the voluntary allotment forms. While a commander can order a subordinate to obtain a voluntary allotment for his/her family, a commander cannot actually issue the allotment.

A voluntary allotment can help avoid the build-up of unpaid child support during the order establishment process. In addition, this procedure provides an official record of payments that may help the member receive proper credit for payments made prior to the entry of the order in states that authorize retroactive support. The member can revise or stop a voluntary allotment at any time. As noted in the next paragraph, the member should terminate the voluntary allotment once an order is established and income withholding begins.

In addition to voluntary allotments, members of the Armed Forces and civilian defense department employees are subject to involuntary allotments to enforce their support obligations. The most common form of involuntary allotment is an income withholding under state law. The other form of involuntary allotment is one based on a federal statute, 42 U.S.C. § 665. See discussion below. An involuntary income withholding, regardless of the specific form, has priority over a pre-existing voluntary allotment. However, it does not stop the voluntary allotment; the military member must terminate the voluntary allotment if he or she does not want both allotments in place.

### **Income Withholding under State Law**

A military member or civilian defense department employee is subject to state income withholding in order to enforce a child support obligation.

### ***Income Subject to Withholding***

Support can be withheld from the following types of income:

- Military active duty pay (basic pay and certain bonuses, but not BAH and BAS/Sep Rats)
- Military reserve pay
- Military retired pay
- Federal DoD civilian employee pay and civilian retirement pay
- “Any other remuneration for employment”

Veterans’ disability benefits are not subject to withholding unless the member has waived a portion of retired or retainer pay in order to receive such compensation. This situation occurs when a former service member waives part of his or her retired pay (which is taxable) in order to receive Department of Veterans Affairs (VA) disability compensation (which is nontaxable). When this happens, that part of the VA payment that the retiree receives in lieu of the waived retired pay is subject to garnishment. However, if the member’s entitlement or disability compensation is greater than his or her entitlement to retired pay, and the service member waived all of his or her retired pay in favor of disability compensation, then none of the disability compensation is subject to garnishment or attachment.

### ***Defense Finance and Accounting Service (DFAS)***

DFAS processes payroll for all branches of the U.S. Department of Defense (DoD), including the pay for members who are on active duty, in the reserves, and retired from military service. It also processes the pay for civilian DoD employees, but does not process payroll for civilian employees of government contractors working on a military project. The U.S. Coast Guard is within the U.S. Department of Homeland Security and not part of the defense department; it therefore has its own payroll processing center.

The DFAS website for information regarding its services is [www.dfas.mil](http://www.dfas.mil). To reach the page with information about child support income withholding, click on the tab on the left titled *Find Garnishment Information*. That takes the user to a page with information on child support and alimony, including frequently asked questions and answers.

### ***Activated National Guard or Reserve Members***

DFAS processes the pay for members of the National Guard and Reserves who have been activated into federal service. If a National Guard member or Reservist already has an income withholding through his or her civilian employer, the child support agency can transfer the

withholding to DFAS in order to prevent or reduce missed payments. It is important for the activated National Guard member or Reservist to notify his or her employer as soon as possible upon notification of activation and deployment. The employer should then notify the child support agency of the last day of employment, the amount of the last paycheck, the dependents currently enrolled in health insurance through the employer, and what date that coverage will terminate. The service member should also notify the child support agency of his or her call to active duty in order to expedite the agency's transfer of the income withholding order to DFAS or the Coast Guard processing center. In the event there is a gap from when the state withholding stops and the military involuntary allotment begins, the service member is responsible to provide the child support payment directly to the child support agency's State Disbursement Unit.

### ***Returning National Guard or Reserve Member***

When a National Guard member or Reservist returns from deployment, it is important that the member notify the child support agency of the member's separation date. This date is on the DD Form 214, "Certificate of Release or Discharge from Active Duty." Failure to do so may result in the service member's having two income withholding orders in effect – a civilian one and a military one.

### ***Movement from Active Duty to Retired Status***

DFAS is able to track an individual's move from active duty to retirement. This means that DFAS will automatically transfer the child support withholding to the member's retirement pay account if DFAS was previously implementing a child support income withholding order on the same individual when he or she was receiving active duty pay. However, it can take 30 to 60 days for the member's retired pay account to begin paying. This means that there may be a delay in payment. If there is a delay in payment from DFAS, the service member is responsible for sending the child support payment directly to the child support agency's State Disbursement Unit.

### **Federal Statutory Allotment for Child Support**

The federal statutory allotment is an income withholding remedy specifically directed toward the military. Pursuant to the federal statute<sup>8</sup>, a IV-D agency or a court can use this involuntary allotment to enforce both child and spousal support obligations owed by a member of one of the uniformed services on active duty.

There are two prerequisites:

- A court or an administrative order establishing a child support (or spousal and child support) obligation, **and**
- An arrearage in an amount equal to or greater than two months support under the obligation.

There are due process protections to the service member. The designated official in the appropriate uniformed service must receive notice; that official must in turn give notice to the affected member. Before there can be an allotment from the member's pay and allowances, the member must have an in-person consultation with a judge advocate or a legal assistance officer to discuss various factors related to the member's support obligation. However, if 30 days have

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<sup>8</sup> 42 U.S.C. § 665. Implementing federal regulations are at 32 C.F.R. 54.

passed since the member received notice, and it has not been possible to arrange such a consultation, despite continuing good faith efforts, then it is permissible to initiate the federal statutory allotment.

Once DFAS receives notice to begin the allotment, it will withhold the amount necessary to comply with the support order.

### ***Advantages and Disadvantages***

The federal statutory allotment has advantages and disadvantages when compared to the state child support income withholding remedy.

#### Advantages

- It allows the attachment of both BAH and BAS/Separate Rations benefits, which are not attachable by state income withholding.
- Lower state garnishment limits, if provided by state law, do not apply. Only the CCPA limits apply.

#### Disadvantages

- A custodial parent cannot initiate it. Only an “authorized person,” defined as a IV-D child support agency, a court that has the authority to issue a support order, or an agent of such a court, can initiate the federal statutory allotment.
- The noncustodial parent must be a member of the “uniformed” services on active duty (does not include members of the reserve components, retirees, or civilian employees of the military).
- The noncustodial parent must be delinquent in an amount equal to, or greater than, the amount owed for two months of current support payments.
- The allotment will not begin until the member has consulted with a judge advocate of the service or with a law specialist in the case of the Coast Guard, or until 30 days after the notice where it has not been possible to arrange such a consultation in spite of good faith efforts.
- The allotment will include amounts for arrears only if the order provides for an arrearage payback amount. If the order does not, the allotment will only be for current support.

## **The Uniformed Services Former Spouses’ Protection Act**

### ***Overview***

The Uniformed Services Former Spouses’ Protection Act (USFSPA) is a law Congress enacted in 1982 to provide benefits to certain former spouses of military members. It can be used to collect child support from retired military personnel. The USFSPA is located at 10 U.S.C. § 1408.<sup>9</sup> The USFSPA does not automatically entitle a spouse or former spouse to a portion of the member's retired pay; the final court order must award a portion of the member’s military retired pay as property to the member’s spouse or former spouse. The decision whether to award

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<sup>9</sup> The implementing regulation is Department of Defense Financial Management Regulation (DoDFMR), Volume 7B, Chapter 29.



retirement pay is solely in the discretion of the state court and the amount awarded will vary. There is no formula that the court must follow in dividing retired pay.

Court orders enforceable under the USFSPA include final decrees of divorce, dissolution, annulment, and legal separation, and court-ordered property settlements incident to such decrees. The USFSPA also provides a method of enforcing current child support, child support arrears, and current alimony awarded in the court order. **Because the USFSPA enforces court orders for the benefit of a former spouse, DFAS cannot enforce a child support obligation contained in a paternity order.**

### *Initiation of Enforcement under the USFSPA*

In almost all cases, it is the retired spouse of the military member who directly initiates enforcement under the USFSPA. To apply for payments under the USFSPA, a completed Application for Former Spouse Payments from Retired Pay (DD Form 2293, [www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf](http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf)) signed by a former spouse, together with a copy of the applicable court order **certified by the clerk of court**, should be served either by facsimile or by mail, upon the:

Defense Finance and Accounting Service  
Cleveland DFAS-HGA/CL  
P.O. Box 998002  
Cleveland, Ohio 44199-8002  
(888) DFAS-411 888-332-7411  
Fax: 877-622-5930 (toll free)  
216-522-6960 (commercial)  
580-6960 (DSN)

To ensure that the document is processed in a timely and efficient manner, the following information must be included with the fax:

- Member/Employee Social Security number (SSN) - Court Orders/Documents will not be processed if the SSN is not on the document,
- Return phone number, **and**
- Return fax number.

Each fax transmission should only include correspondence for one member or employee. If there are multiple documents for one member, they can be sent in one fax transmission.

### *Application Form*

The application form should state which awards the former spouse is seeking to enforce under USFSPA (i.e., alimony, child support, and/or division of retired pay as property). **If the application does not contain this information, then only awards of retired pay as property will be enforced under the USFSPA.** A former spouse should also indicate the priority of the awards to be enforced in case there is not sufficient disposable retired pay to cover multiple awards.

### *Court Order*

The court order should contain sufficient information for DFAS to determine whether the Servicemembers Civil Relief Act (SCRA) and the USFSPA's jurisdictional requirements have been met.

In order to enforce a court order for a division of retired pay as property, the former spouse must have been married to the military member for a minimum of 10 years while the member was performing 10 years of service creditable towards eligibility for retired pay. If DFAS cannot determine the parties' marriage date from the court order, then the former spouse must submit a photocopy of their marriage certificate. If the former spouse is requesting child support, and the court order does not contain the birth dates of the children, the former spouse must provide photocopies of their birth certificates.

A retired pay as property award must be expressed as a fixed dollar amount or percentage of disposable retired pay. If the parties were divorced prior to the member's retirement, the court order can express the award as an acceptable formula or hypothetical retired pay award.<sup>10</sup>

### ***Maximum Payment Amount***

The maximum that can be paid to a former spouse under the USFSPA is 50 percent of a member's disposable retired pay (even if arrears exist). In cases where there are payments both under the USFSPA and pursuant to an income withholding order/garnishment for child support or alimony, the total amount payable cannot exceed 65 percent of the member's disposable earnings for garnishment purposes. Disposable retired pay is gross retired pay less authorized deductions. The authorized deductions depend on the effective date of the parties' divorce, dissolution, annulment, or legal separation.<sup>11</sup> Changes in the member's authorized deductions will result in a change in the amount the former spouse receives.

The right to payments under the USFSPA stops upon the death of the member or former spouse, whichever occurs first, unless the applicable court order provides that the payments stop earlier.

### **Other Enforcement Methods**

Income withholding is the most effective child support enforcement method. However, income withholding is not always effective, especially if the noncustodial parent is self-employed, moves or changes jobs frequently, or works for cash or commissions. In those circumstances where payment is not regularly made, it may be necessary to enforce the support order through other means. Subject to due process safeguards, states have laws that allow enforcement techniques, such as state and federal income tax refund offset, liens on real or personal property owned by the noncustodial parent, freezing or attachment of bank accounts, license suspension, passport denial, contempt, and criminal nonsupport.

Many of these enforcement remedies are automated. Increasingly, state child support programs are looking closely at their cases to evaluate the noncustodial parent's ability and willingness to pay, and to determine which particular enforcement remedy is most appropriate for a particular case. You can learn more information about each remedy discussed below by reading the general Child Support Enforcement Handbook that is available on the federal Office of Child Support Enforcement website.

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<sup>10</sup> See DoDFMR, Volume 7B, Chapter 29, for examples of each type of award including sample language.

<sup>11</sup> See DoDFMR, Volume 7B, Chapter 29 for further information on authorized deductions.



### **Federal Income Tax Refund Offset**

#### ***Eligibility***

The Federal Tax Refund Offset Program collects past-due support payments from the tax refunds of parents who have been ordered to pay child support. The program is a cooperative effort between the federal Office of Child Support Enforcement, the Department of the Treasury, and state child support agencies. There is no difference in the treatment of military and civilian cases. If a noncustodial parent owes at least \$150 in Temporary Assistance for Needy Families (TANF) past-due support, or at least \$500 in non-TANF past-due support, and the state child support program is enforcing the parent's case, the state child support agency must submit the case to the Office of Child Support Enforcement for tax refund offset. If past-due support is owed to more than one state, each state must submit its case(s).

#### ***Due Process Requirements***

Noncustodial parents receive a written advance notice, called a pre-offset notice, at least 30 days before their case may be submitted for tax refund offset. This notice informs the noncustodial parent of the amount of past-due support owed at the time the notice is sent, the parent's right to contest the arrearage, and procedures and timeframes for contacting the state child support agency to request an administrative review. The actual amount deducted from the tax refund may differ from the amount shown on the pre-offset notice due to the payment or non-payment of child support after the notice is mailed. The state updates the arrearage amount regularly, but is not required to issue a new notice each time the arrearage changes. If the noncustodial parent owes past-due support to more than one state, the parent will receive a separate notice from each state.

At the time of the intercept, Treasury's Bureau of Fiscal Service mails an offset notice to the noncustodial parent stating that all or part of his/her federal tax refund was intercepted (offset) because of the child support debt owed. The notice also advises the noncustodial parent to contact the state child support agency for questions or additional information.

#### ***Distributions of Monies Withheld from Refund***

States may choose how they distribute support collections from the federal tax refund offset program. Some states pass some or all of the collection through to the family. Others apply some or all of the offset to reimburse money owed for TANF provided to the family prior to distributing monies to the family. The state may hold the money for up to six months if the offset involves a joint tax return. This extra time is to allow the spouse of the noncustodial parent to request the return of his or her share of the refund.

### **State Income Tax Refund Offset**

All states with state income tax must have laws that require the offset of state income tax refunds to collect past-due child support. The procedure is nearly identical to the federal income tax refund offset because there must be advance notice to the noncustodial parent with an opportunity to challenge. However, any money collected from the state income tax refund first goes to satisfy current support due for that month, then for past-due support owed to families, and finally to states to repay cash assistance provided the family.

### **Liens on Property**

All states have laws that cause a lien for past-due support to arise automatically against a noncustodial parent's real and personal property. A lien on property does not by itself result in the immediate collection of any money. It only prevents the owner from selling, transferring, or borrowing against the property until the child support debt is paid. States are required to recognize liens issued by another state.

Although child support liens arise by operation of law, each state has its own laws and procedures for "perfecting" liens. Most states require that there be some type of recording of the support order or arrearage amount in a public office, such as the recorder of deeds for real property. Some states maintain a centralized registry for liens. Once a lien is created, it remains a cloud on the title as security for the child support arrearage judgment. That cloud exists until the child support agency or custodial parent releases the lien or it expires.

### **Attachment of a Financial Institution Account**

All states have agreements with financial institutions doing business in their state for conducting a quarterly data match known as the Financial Institution Data Match (FIDM). The match identifies accounts belonging to noncustodial parents who are delinquent in their child support obligations. These accounts include demand deposit, checking, savings, and money-market mutual fund accounts. Once a child support agency identifies such accounts, it may place a lien and levy on the accounts in order to collect the past-due child support. The child support agency must provide a noncustodial parent with certain due process protections before it can attach and seize the parent's financial assets to satisfy child support arrears.

### **License Suspension**

All states are required to have procedures for suspending or restricting licenses of noncustodial parents who are delinquent in their child support payments. The affected licenses are drivers' licenses, professional and occupational licenses (for example, medical license, law license, beautician license), and sporting/recreational licenses. States have varying thresholds of the amount of past-due support that triggers license suspension procedures. A state can also suspend a license if the noncustodial parent fails to comply with a subpoena or warrant related to a child support proceeding.

The state must provide due process protections, which include giving a notice to the noncustodial parent and providing an opportunity to challenge the action. The goal of this remedy is to motivate the noncustodial parent to communicate with the child support agency about his or her child support arrears rather than preventing someone from driving or conducting his or her business. Often the agency and parent are able to work out a payment plan for elimination of the arrears without taking the parent's license.

### **Passport Denial**

Under the Passport Denial Program, [once](#) noncustodial parents are certified by a state as having arrearages exceeding \$2,500, the federal Office of Child Support Enforcement submits their names to the State Department. The State Department then denies the parents U.S. passports when they apply for them or use a passport service. If a parent owes past-due support to more than one state, each state is required to submit its case(s).

Additionally, when noncustodial parents with eligible, certified past-due child support cases use a passport service or apply to the State Department with regard to an existing passport, the State Department can revoke (physically take) or limit the passport. This includes both official and civilian passports. Revocation occurs any time the passport agency or embassy has the passport in hand, such as:

- Renewing an existing passport
- Adding pages to an existing passport
- Repairing/reissuing a damaged passport
- Changing a name or updating a picture
- Accepting an existing passport as proof of identification

Noncustodial parents are not automatically removed from the Passport Denial Program even if their arrearages fall below the \$2,500 threshold.

### ***Due Process Requirements***

A state child support agency must send a noncustodial parent a written advance notice at least 30 days before the state may submit the parent's case for passport denial. The notice informs the noncustodial parent of the amount of past-due support owed at the time the notice is sent, the parent's right to contest the arrearage, and procedures and timeframes for contacting the state child support agency to request an administrative review. If the noncustodial parent owes child support to more than one state, each state will send a separate notice.

When an individual applies for a passport, the State Department denies the application based on the child support obligation owed by the applicant. The State Department sends a notice to the noncustodial parent explaining that it denied the passport application because of past-due child support. The notice advises the applicant to contact the appropriate state child support agency for further information, and provides a listing of each state's contact information.

### ***Steps to Take if a Passport is Denied***

The noncustodial parent must contact the appropriate state or local child support agency to make satisfactory arrangements to pay the past-due support obligation. If more than one state submitted the parent's name to the Passport Denial Program, the parent must reach an agreement with all states involved in order for the passport to be released.

Once the parent has paid off the arrearage and/or reached a payment agreement with the affected state(s), the state(s) will submit a request to the federal Office of Child Support Enforcement to remove the noncustodial parent's name from the program. After the passport denial request is withdrawn, it is still the responsibility of the noncustodial parent to contact the National Passport Information Center (NPIC) at (877) 487-2778 or make an appointment at a regional passport agency to obtain a passport.

### ***Military and Interest Rates***

Sometimes a person's military activation has a "material effect" on the member's ability to pay the state's usual interest rate charged for unpaid child support. In these cases, the member may request that the interest rate charged on the child support arrears that accrued prior to deployment be reduced to six percent for the duration of deployment in accordance with the Servicemembers

Civil Relief Act.<sup>12</sup> See Chapter VIII on the Servicemembers Civil Relief Act. If a child support agency is enforcing the order, the member can make the request to the agency. It may be appropriate for the member to seek help from a military legal assistance office.

### **Judicial Enforcement Remedies**

Child support offices can use the above methods without directly involving the courts. If actions available through the child support program are not successful, state child support agencies can take cases to court for other enforcement actions such as show cause hearings for contempt of court, and criminal prosecutions for nonsupport.

### **Civil Contempt**

In addition to the enforcement remedies noted above, child support agencies and courts often have access to resources that can help parents who face personal barriers to employment, resulting in nonpayment of support. These resources include workforce development agencies that help provide employment training and job placement for noncustodial parents. They also include referrals that can help reduce problems such as alcohol or drug abuse that may interfere with the noncustodial parent's regular employment. Courts often try to be proactive at the beginning of a case, ensuring that the order is realistically based upon the noncustodial parent's ability to pay. There are cases, however, when a noncustodial parent has the ability, but is unwilling, to pay support. For these cases, civil contempt may be an appropriate enforcement tool.

Before a court finds someone in contempt with the possibility of incarceration, the court must ask about the person's ability to pay. States have developed a number of best practices to aid this inquiry, such as appointed counsel for indigent noncustodial parents and the development of financial affidavits seeking information about the noncustodial parent's income and assets. If a court finds the noncustodial parent in contempt, the punishment must be remedial. The goal is compliance with the order. Therefore, if the court finds the person in contempt, the court typically sentences the person to a certain period of incarceration, but allows the parent to "purge" the contempt finding and avoid incarceration by meeting certain terms. The noncustodial parent must be able to fulfill the conditions set; in other words, the noncustodial parent "holds the keys" to his or her cell. The conditions usually include payment of some or all of the arrears.

### **State and Federal Criminal Nonsupport**

In more egregious cases where civil enforcement remedies are not successful in collecting child support despite a parent's ability to pay it, there can be criminal charges brought against the non-paying parent. There are criminal offenses for nonsupport of children at both the state and federal level.

The custodial parent cannot file a criminal nonsupport action; only a prosecuting attorney can. States that have state criminal nonsupport statutes vary as to whether such an offense is a misdemeanor or whether it can also be a felony. State laws also vary as to the elements of the offense. Conviction of nonsupport requires proof beyond a reasonable doubt.

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<sup>12</sup> See 50 U.S.C. app. § 527.

In addition to state laws, there are federal laws that make the nonpayment of child support a criminal offense. There is a misdemeanor offense, as well as a felony offense, depending on the amount of arrearage. Both offenses are limited to cases where the noncustodial parent has failed to pay child support for a child who resides in another state.

It is important to remember that the various enforcement remedies discussed in this chapter are not exclusive. A child support agency may use several remedies at the same time, if necessary.

### **Enforcement of Medical Support**

#### **Who is Eligible**

TRICARE is the military health care program for all uniformed services, including the Coast Guard. TRICARE is available to active duty, retired military, and members of the reserve component who have been recalled to federal active duty. It is not available to civilian employees of the military. To obtain health insurance information on defense and Coast Guard civilian employees, you can contact the human resources office for civilian DoD employees at a nearby military installation.

#### **Process for Enrollment**

An eligible dependent is automatically eligible for TRICARE coverage once the dependent is enrolled in DEERS. The easiest way to enroll a dependent into DEERS is to have the military member (sponsor) enroll the child. There is no cost associated with the child's enrollment into DEERS.

You must provide the following documents to enroll a dependent into DEERS:

- A certified copy of the child's birth certificate, naming the military member as the child's parent
- If the child was born to unmarried parents, a legal determination of paternity (for example, a court order determining paternity, an administrative paternity order, or a notarized voluntary acknowledgment of paternity signed by both parents)
- A court or an administrative order showing the sponsor has an obligation to provide support for the child
- Any other forms required by the local installation.

If the military member does not enroll the child in DEERS, the custodial parent can enroll the child by presenting the above documents to the verifying official at the nearest military installation or Reserve or National Guard unit with a RAPIDS ID Card Issuing Facility (RAPIDS is the acronym for the Real-Time Automated Personnel Identification Card System). You can find the nearest location by visiting [www.dmdc.osd.mil/rsl/](http://www.dmdc.osd.mil/rsl/). Before DEERS enrollment is completed, there must first be an attempt to get the military sponsor to sign the enrollment paperwork. If the sponsor will not sign the paperwork, the verifying official can sign on the sponsor's behalf, provided all of the required documents are present.

If a grandparent is retired from the military *and* the custodian of a dependent child, that grandparent can enroll the child in DEERS, making that child eligible for military health care coverage, either on a base or through TRICARE. Although health insurance remains available to

retired members of the military and their dependents via TRICARE, the co-pay will vary for retired members.

### Options for Coverage

All military bases have Health Benefits Advisors to assist custodial parents with the available options for health insurance coverage. In addition, TRICARE program handbooks explaining coverage are available through the TRICARE website at [www.tricare.mil/Publications.aspx](http://www.tricare.mil/Publications.aspx).

### Obtaining Health Care

When the child is enrolled in DEERS, the child is eligible to receive health care in two ways. First, the child may obtain health care and medications from military hospitals and treatment facilities if space is available. In addition, the child can use the “cost share” medical coverage, TRICARE, with civilian health care providers. Claims to TRICARE “must be filed within one year of the date of service or within one year of the date of an inpatient discharge.”<sup>13</sup> When service from a military hospital or health care facility is available, it is preferable since it is usually less expensive and involves less paperwork.

### Dental Coverage

Dental coverage from the military differs from health care coverage because dental coverage is not automatic. Dependents of military members and retirees do not have dental coverage unless they enroll and pay the premiums. Visit [www.tricare.mil/Dental/TDP.aspx](http://www.tricare.mil/Dental/TDP.aspx) for more information.

### Questions and Answers for Custodial Parents

#### **I am on active duty. Under my current support order, payments are forwarded to me. What happens when I am deployed overseas?**

Child support orders direct support payments to the custodial parent for the care of the child. When you are deployed abroad, your child may go to stay with the noncustodial parent, another family member, or a friend – depending upon your court order, or – in the absence of a court order – your Family Care Plan. However, until your child support order is changed, the State Disbursement Unit will forward child support payments to the address on file for you as the custodial parent. Prior to deployment, you can contact the child support office to discuss how to redirect your child support payments to the person who will be caring for your children while you are deployed. You may have to request a modification of the court order. Alternatively, you can make private arrangements with your bank to allow the caregiver designated in your Family Care Plan to access the debit card or bank account in order to receive the support payments.

#### **Before my ex-spouse’s National Guard unit was activated, I received my child support payments from his civilian employer on a biweekly basis. Will I continue to receive child support biweekly while my ex-spouse is on active duty?**

No. The law requires civilian employers to forward money to the State Disbursement Unit within seven business days from the date it is deducted. However, for service members on active duty, the process is a little different. The Defense Finance and Accounting Service (DFAS) deducts the

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<sup>13</sup> TRICARE Prime Handbook, page 26, “Health Care Claims.”



child support payments from a service member's pay during the work month, January for example, and sends a single payment to the state child support agency on the first business day of the next month. The transfer typically happens on the first day of the month, which, in this case, would be February 1. There may be an adjustment when the first falls on a weekend or federal holiday.

The end result is that you will likely receive your payments on a monthly basis, instead of on the bi-weekly schedule that applied to your former spouse's civilian pay.

**My former spouse/former boyfriend is in the National Guard, and was recently called to active duty. Why don't I receive the full amount of the ordered child support, like I did before he deployed?**

There may be several reasons why you are not receiving the full amount of ordered child support. One common reason, if payment is through income withholding, is that your former spouse or boyfriend is making less money on active duty than when he was employed as a civilian. The Consumer Credit Protection Act (15 U.S.C. § 1673) limits the amount that can be deducted from someone's pay for child support or alimony. The limit ranges from 50 to 65 percent of the person's disposable earnings. If the child support amount exceeds those limits, there may be a gap between the amount of child support that was ordered and the amount that can be withheld from his military pay. Until the order is modified, however, your former spouse or boyfriend owes the amount of support in the order, even if full payment cannot be made through income withholding. If he is making less money while on active duty, he can request the child support agency to review his order for possible modification.

**My support order requires payment on the 15th and 30th of each month. What should I do if I don't receive my child support on time from the service member?**

The Defense Finance and Accounting Service (DFAS) deducts the child support payments from a service member's monthly paycheck and sends those payments to the state child support agency on the first business day of the month following the month from which the payments were deducted. If the first day of the new month falls on a weekend or holiday, however, the payment could be sent during the previous month. In other words, payments withheld from the member's January pay will be sent to the agency on or about February 1. When February 1 is Saturday or Sunday, the payment will be sent on the last business day in January. If you receive your support payments by Electronic Funds Transfer (EFT), you will receive them more quickly than those sent by mail.

If you have not received your child support payment by the 10<sup>th</sup> of the month, please contact the child support agency before contacting the service member, the member's commanding officer, or the local military pay office. Although DFAS and the child support agency will make every effort to process child support payments as soon as possible, there may be times when delays can occur through no fault of the service member.

For checks issued from the accounts of civilian employees of the Department of Defense, please allow seven days from the date of the normal distribution of checks (biweekly cycle).

**Why might my child support stop when the noncustodial parent goes from active duty to retired status?**

Although the Defense Finance and Accounting Service (DFAS) is notified when a member retires, it can take 30 to 60 days for the Office of Retired Pay to create the retired pay account.



DFAS cannot begin withholding support from retired pay until the retired pay account is established, which means there may be a delay in payment. If you are receiving support and know the member is about to retire, please contact your child support agency and DFAS at (888) DFAS-411 (888-332-7411). Please make sure you know the member's Social Security number.

### **Can I use income withholding to collect child support ordered against the U.S. service member by a foreign court?**

In order to enforce a foreign order in the United States, you must first register that order in a state where the service member is residing, or has income or assets. For example, if you have a German court order and the service member returns to the United States, you must get a copy of the German court order and register it in the appropriate U.S. court. The most common way to do that is through the Uniform Interstate Family Support Act (UIFSA). A child support agency can assist you with such matters, including with translation of the order.

The foreign order will be filed with the court, and a notice of registration sent to the service member. There are limited defenses that the member can raise. The most common defense raised to the registration of a foreign support order is that the foreign court that issued the support order did not have personal jurisdiction over the noncustodial parent. If the member fails to raise a defense in a timely manner, or if the court – after a challenge – upholds the registration, the foreign order is confirmed and the U.S. court will order the member to comply with the order's support terms. The court or agency will convert the foreign currency into U.S. dollar equivalent. The court or child support agency can then enforce the order by income withholding.

### **As a former spouse of a military retiree, am I automatically entitled to a portion of the retiree's retired pay?**

No, there is no federal law that automatically entitles a former spouse to a portion of a member's military retired pay; a court order must award a former spouse a portion of the member's military retired pay. The Uniformed Services Former Spouses' Protection Act (USFSPA) accomplishes two things. First, it authorizes (but does not require) state courts to divide military retired pay as a marital asset or as community property in a divorce proceeding. Second, it provides a mechanism for a former spouse to enforce retired pay as a property award by direct payments from the member's retired pay. Retired pay as property payments are prospective only, meaning you cannot collect retired pay arrears under the USFSPA.

### **As a former spouse of a military retiree, can I enforce any other types of court-ordered awards under the Uniformed Services Former Spouses' Protection Act (USFSPA)?**

Yes. The USFSPA also provides for the enforcement of court-ordered current alimony, current child support, and child support arrears. In order to apply for child support arrears, you must submit a court order awarding the arrears that was issued not more than two years before it was submitted for payment. This requirement is in addition to the application requirements. You cannot collect alimony arrears under the USFSPA. Current child support and alimony, as well as child support and alimony arrears, may also be enforced by a state withholding order under 42 U.S.C. § 659 or by a federal statutory military allotment under 42 U.S.C. § 665.

### Questions and Answers for Noncustodial Parents

**I am a member of the National Guard, with an income withholding order at my full time civilian job. How can I make sure that my child support continues to be deducted from my paycheck once I am on active duty?**

If you pay child support and the payments are withheld directly from the paycheck of your civilian job, contact the child support agency as soon as possible after learning of your pending activation. The child support agency can transfer the income withholding from your civilian employer to the Defense Finance and Accounting Service (DFAS) so that your child support will be deducted from your military pay. There may be some delay before the income withholding at DFAS goes into effect. To avoid any lapse in payments during this time, you must send payments yourself to the payment address in your order (which will usually be the address of the child support agency's State Disbursement Unit) until you see the child support deducted from your military pay. Do not send payments directly to the custodial parent. When sending payments to the State Disbursement Unit, make sure you include information identifying your child support case. Most states have payment coupons that you can send in with your payment, which provide the required information.

Your civilian employer should keep the income withholding order on file so that, once you return to work, the income withholding against your civilian wages can resume. When you return from deployment, it is important that you notify the child support agency of your separation date. Failure to do so may result in your having two income withholding orders in effect.

**I'm a Federal Technician and will be deploying soon. Can I call the Defense Finance and Accounting Service (DFAS) myself to have my income withholding order transferred?**

No. A telephone call from you is insufficient. DFAS must receive notice of the transfer from the court or agency that issued the withholding order.

**What should I do if a court has ordered a reduction in payments but the military is still withholding the former amount?**

If a court has ordered a reduction in your child support payments, the Defense Finance and Accounting Service (DFAS) must receive a copy of the modified income withholding order, referencing the same case number that requires DFAS to pay a reduced amount. Therefore, you should send a copy of the most recent court order and income withholding order to DFAS. A legal assistance attorney can help you forward the document to the appropriate office and determine if the document is sufficient. If a child support agency is handling your case, you can also contact the child support office for help.

**If I'm paying my child support under a federal statutory allotment, can I stop it at any time?**

No. The title of the statute is a bit of a misnomer; a federal statutory allotment is not voluntary. Unlike a voluntary allotment, you cannot stop it. A federal statutory allotment is a type of withholding or garnishment against the pay and allowances of an active duty member of one of the uniformed services. It does not stop until the Defense Finance and Accounting Service (DFAS) receives notice of termination from the court or agency that issued the withholding order.

**I'm about to retire from the military but I still owe child support. How can I make sure that the Defense Finance and Accounting Service (DFAS) continues to withhold child support from my retirement pay? Will my current withholding automatically switch over?**

Although DFAS is notified when a military member retires, it can take 30 to 60 days for DFAS Retired and Annuitant Pay to create the retired pay account. DFAS cannot start withholding support payments until the retired pay account is established, so there may be a delay. If you are a member about to retire and have a support obligation that needs to continue, please call the Customer Care Center at (888) DFAS-411 (888-332-7411). If a child support agency is involved, please also notify the child support agency of your pending retirement.

**How can I get a copy of my payment record if the Defense Finance and Accounting Service (DFAS) is withholding money from my paycheck?**

Please contact one of the offices listed below for payment history information. The Office of the Assistant General Counsel for Garnishment Operations does not have access to pay records.

Retired and Annuitant Pay, <a href="http://www.dfas.mil/dfas/retiredmilitary.html">www.dfas.mil/dfas/retiredmilitary.html</a>	800-321-1080
Military Pay, <a href="http://www.dfas.mil/dfas/militarymembers.html">www.dfas.mil/dfas/militarymembers.html</a>	888-332-7411
Civilian Pay, <a href="http://www.dfas.mil/dfas/civilianemployees.html">www.dfas.mil/dfas/civilianemployees.html</a>	800-729-3277

If a child support agency is servicing your case, you can also request a copy of your payment record from the child support agency.

**My child support order was issued in a state that charges 10 percent interest on unpaid child support. Now that my reserve unit has been called to active duty, do I still have to pay that much interest on the arrears I owe?**

The Servicemembers Civil Relief Act (SCRA) limits the amount of interest that may be collected on debts of persons in active military service to six percent per year during the period of military service. This provision applies to all debts incurred prior to the commencement of active duty, including child support obligations. See 50 U.S.C. app. § 527.

**The interest rate reduction does not occur automatically.** For the SCRA limits to apply, you must provide the creditor (which may be the child support agency and/or custodial parent) with written notice and a copy of the military orders calling you to military service and any orders further extending military service.

If the creditor wants relief from the limitations of this section of the SCRA, it will need to prove, to the satisfaction of the court or administrative agency, that military service does not materially affect your ability to pay interest on the child support arrears at a rate more than six percent per year. The burden of proof is on the creditor. “Normally, the key aspect of the inquiry will be into the service member’s finances. It will not stop, however, with a review of the service member’s income. There are times when a person will experience an increase in income because of a mobilization, but the financial situation will worsen. Members activated from the reserve components may find they have two households to maintain and that child care and other expenses have likewise increased.”<sup>14</sup>

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<sup>14</sup> Sec. 6-2, p. 6-3, The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General’s School, United States Army, Charlottesville, Virginia (March 2006).

It is important to note that the six percent limit does not apply if the support amount was ordered after you entered active service. The benefit is only for debts that you had prior to your entry onto active duty.

**I'm in the Army Reserves and have been called to active duty. My support order requires that I provide health insurance coverage for my children. Currently, my children are receiving health coverage through insurance provided by my civilian employer. What will happen to their health insurance coverage once I'm deployed?**

Your call to military duty means that your existing insurance coverage through your civilian employer may end. If that happens, you may enroll your children in the military health care program called TRICARE. Family members of the National Guard and Reserves are eligible for TRICARE health insurance after the service member has been activated for 30 days.

If you notify the child support agency that you will no longer be maintaining your existing health insurance plan, the caseworker in many states will assist you in enrolling your children in TRICARE. If a child support agency is not handling your case, you can contact your nearest TRICARE service center for information and the necessary forms you need to sign in order to obtain health care coverage for your children. TRICARE contact information is at [www.tricare.mil](http://www.tricare.mil). You can also enroll your child during your Soldier Readiness Processing (SRP) or other pre-deployment processing.

If your civilian employer maintains your health insurance coverage during your deployment, the Department of Defense advises that you keep this coverage effective. Once you return to civilian employment, your dependents are no longer eligible for benefits through the military.

**I need a passport but I owe child support. What will happen?**

If you are a service member who is deployed outside the United States, you will receive a military passport for your official use. Your military passport can be suspended or revoked because of child support arrears. Additionally, you may need a civilian passport for certain situations or for personal travel while you are on leave. If you owe \$2,500 or more in child support arrears, the State Department will deny your request for an official or a civilian passport until you make arrangements with the child support agency to pay the child support arrearage you owe.

**Can I deduct child support payments on my income tax return?**

No. The tax treatments of child support and alimony payments are different. Alimony is taxable income to the recipient and deductible by the payor spouse. In contrast, child support is not taxable income to the custodial parent or the child. Nor can the parent who pays child support claim such payments as a deduction on his or her tax return.

**How do I stop the Defense Finance and Accounting Service (DFAS) from withholding child support payments when my child is graduating from high school and past the legal age of majority in the state that issued my support order?**

The answer depends on the method used to start payments. If the payments were made by DFAS because of an income withholding order issued by a child support agency, you will need to contact the child support agency handling the case to have it send DFAS a termination order. The reason for this is that most withholding orders that are issued by child support agencies direct DFAS to withhold "until further order."

If you are a National Guard member or reservist who was called to active duty and has returned to your non-DoD civilian job, and now your civilian job is collecting child support, please contact your local child support agency. Ask the agency to send DFAS a notice to terminate the order that is affecting your reserve pay. Pay statements from your non-DoD civilian job are not sufficient for DFAS to stop withholding.

If no child support agency is involved with your case, you may need to file pleadings with the court to terminate the withholding order.

**I'm a retired military member. How do I stop the Defense Finance and Accounting Service (DFAS) from withholding child support payments when my child is past the legal age of majority in the state that issued my support order?**

If you are a retired military member and DFAS is issuing payments from your retired pay based on an application under the Uniformed Services Former Spouse Protection Act (USFSPA), 10 U.S.C. § 1408, then the language in the divorce decree that details the child support obligation may determine your next steps.

If the decree states when payments are supposed to stop, that language would be controlling. If it does not state when child support should stop, you will need to go back to court to get an order stopping the child support. There is no federal statute that controls this, so it is up to the state court that issued the order to instruct DFAS to terminate the payments.

If DFAS is issuing payments under the USFSPA and the divorce decree does state that payments will stop upon some condition (usually turning 18 and graduated from high school), then you will need to provide DFAS proof that the condition has been satisfied. Acceptable proof of graduation includes a program from the commencement that lists the child's name, or a letter from the school stating the child has graduated or otherwise left school.

A problem arises when DFAS is withholding pay and issuing support payments under the USFSPA, and the divorce decree orders support payments for more than one child. If the divorce decree does not state how much of the payment goes toward each child individually, then you and your former spouse will have to obtain a modified order instructing DFAS on how to proceed when a child emancipates. If it is not spelled out in the order, DFAS will continue to withhold the full amount of support even if one child is emancipated; emancipation of a child does not automatically result in reduction of the child support order unless the award is specified as an amount per child.

**I have been paying my former spouse by a voluntary allotment. Now we have a court order directing payments under the Uniformed Services Former Spouses' Protection Act (USFSPA). Will the voluntary allotment automatically stop when the USFSPA withholding begins?**

The voluntary allotment **will not automatically stop**. If you have been paying your former spouse's award by voluntary allotment and your former spouse has been awarded direct payments under the USFSPA, you must notify DFAS Retired and Annuitant Pay to stop the allotment. DFAS has no authority to stop any of a member's voluntary allotments. If your former spouse is overpaid because an allotment is not cancelled in a timely manner, it will be your responsibility to recover any overpayment.

### VI. Modification of Support

Child support orders should be fair. When a court or an administrative agency initially establishes a support order, it should set a realistic amount based on the parties' incomes. For an order to remain appropriate over time, it is important for the court or agency to periodically review the order to make sure that it continues to reflect the parties' financial circumstances and child's needs. This chapter discusses laws and procedures available to parents to help ensure orders remain appropriate.

States are required to have procedures for the periodic review and adjustment, if appropriate, of child support orders handled by state child support agencies. A state may satisfy this requirement by:

- Reviewing and, if appropriate, adjusting the order according to the state's support guidelines if the amount of the child support under the order differs from the amount that would be awarded according to the guidelines;
- Applying a cost-of-living adjustment to the order according to a formula developed by the state; **or**
- Using automated methods (including automated comparisons with wage or state income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment.

If a state applies a cost-of living adjustment or uses an automated method, the state must have procedures that permit either party to challenge the cost-of-living or automated adjustment, and request a review and, if appropriate, an adjustment according to the support guidelines.

Regardless of the procedure the state uses to conduct a review, one must occur, upon parental request in non-TANF<sup>15</sup> IV-D<sup>16</sup> cases, at least once every three years. Either party may request a review sooner than that based on changed circumstances. A person who has a support order that is not being handled by the child support agency can also file legal papers requesting the court to review the order.

Orders in cases involving service members have a particular need for periodic review. Orders established while a soldier is deployed may be significantly higher due to combat pay and additional allowances based upon deployment. These need to be monitored and modified appropriately to reflect reduced pay when the soldier returns to his or her permanent station. Orders established while a person is in a civilian job may not accurately reflect a person's ability to pay when the National Guard member or reservist is ordered to active duty; the civilian pay income may be much higher or lower than active duty pay.

If your support order does not reflect your current support needs or ability to pay, it is important to check with the local child support agency or court to see if the order is still in line with the state child support guidelines, and to ask how to request a review or modification. You may want

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<sup>15</sup> A non-TANF case is one in which the caretaker is not receiving *Temporary Assistance for Needy Families (TANF)*.

<sup>16</sup> A IV-D case is a case in which the state/local/or tribal child support program established under Title IV-D of the Social Security Act is providing services.



to seek legal assistance. Some states also have procedures for filing a modification request *pro se*, or on your own.

### Questions and Answers for Custodial Parents

#### **I am in the Air National Guard and have a full time civilian job. If I earn less money when I'm on active duty, can I ask the court to order the noncustodial parent to pay more support?**

Yes. If you know you are being called to active duty and you will earn less income, you can ask to have your child support order modified. Be proactive. Procedures for seeking a modification vary among the states. If a child support agency is handling your case, you can ask the agency to review your order to see if an adjustment is appropriate. If a child support agency is not handling your case, you may apply for IV-D child support services or ask the court if there is a *pro se* process that allows you to complete all the legal paperwork yourself. You may also want to seek legal assistance through the installation's JAG office, a legal advisor, or a private attorney.

When a court or an agency reviews a modification request, it considers the parties' current financial circumstances, the needs of the child, and how those factors fit into application of that state's child support guidelines. Some states use a guideline model that is based on a percentage of the noncustodial parent's income. In those states, a change in your income (as the custodial parent) may not affect the child support order. Most states use a guideline model that considers the combined income of both parents. In those states, your change of income may have more impact on the support award. The court or agency in those states will want to know your anticipated date of deployment, rank and years in service, current civilian income, and whether your employer will provide any compensation or benefits during your deployment. Documentation such as military orders, Leave and Earnings statements, civilian pay stubs, and letters from employers are important to support your request.

To help ensure that your petition is given highest priority, it is advisable to write "Guard/Reserve" or "Expected Deployment Date is X" somewhere on the petition or request.

#### **If my support order is modified, will the Defense Finance and Accounting Service (DFAS) automatically change the amount of income it is withholding from my ex-spouse's military pay?**

There is no automatic modification of the income withholding. If your support order is modified, DFAS needs to receive notice of the modification. If a child support agency is handling your case, that agency usually issues the new withholding order. Check with the agency to make sure. Once DFAS receives a copy of an amended income withholding order, it will change the amount of income it withholds from your ex-spouse's military pay.

#### **My child's father is in Iraq. I recently saw a copy of his Leave and Earnings Statement (LES), and he's making a lot more money than when the support order was established. Can I request a modification?**

You may request a review and, if appropriate, an adjustment based on changed circumstances. Keep in mind, however, that the current LES may be high because it includes deployment income. Such income is temporary and ends when the deployment ends. The time remaining in the member's deployment may affect your decision about whether to seek a modification. Also keep in mind that if the order is modified upward to reflect a higher income while the member is



in Iraq, the member can request a downward modification upon his return from deployment if his income decreases.

### Questions and Answers for Noncustodial Parents

**I am in the Air National Guard and have a full time civilian job but I've been called to active duty. Will the amount of my income withholding automatically change when I'm earning less money on active duty?**

No. When your income changes, there is no automatic change in the amount of your support order or income withholding. The Consumer Credit Protection Act (CCPA) may limit the percentage of income that can be withheld from your pay. However, that does not affect the amount you have been ordered to pay. You are still responsible for the full amount of the support obligation. That means that if the amount paid through income withholding is less than your support obligation, you are falling behind each month. And support arrears cannot be retroactively modified.

It is very important that you be proactive about your support case. If you know you have been called to active duty and are going to be deployed, notify the child support agency or the court as soon as possible. If you will be earning less income when you are called for active duty, you can request to have your child support order modified. The procedure for seeking a modification varies among the states. In some states, the state child support agency can assist you, including helping with translation of the order. In other states, there is a *pro se* process that allows you to complete all the legal paperwork yourself. You may want to seek legal assistance from a judge advocate, military legal assistance officer, or private attorney. It is important to start this process as soon as possible because there may be delays due to court calendaring or agency workloads.

To help ensure that your petition is given highest priority, it is advisable to write "Guard/Reserve" or "Expected Deployment Date is X" somewhere on the petition or request.

**I'm a reservist who has been activated. My active duty pay is less than the civilian pay that my support order is based on. How do I have my child support order changed?**

If you earn less income when you are called for active duty, you can request to have your child support order modified. The procedure for seeking a modification varies among the states. In some states, the state child support agency can assist you. In other states, there is a *pro se* process that allows you to complete all the legal paperwork yourself. You may want to seek advice from a judge advocate, military legal assistance officer, or private attorney.

When a court or an agency reviews a modification request, it considers the parties' current financial circumstances, the needs of the child, and the way those factors fit into application of the child support guidelines. Some states use a guideline model based on a percentage of the noncustodial parent's income. Most states use a guideline model that considers the combined income of both parents. Under both models, a change in your income, as the noncustodial parent, may affect the support award. The court or agency will want to know your anticipated date of deployment, rank and years in service, current civilian income, and whether your employer will provide any compensation and benefits during your deployment. Documentation such as military orders, Leave and Earnings statements, civilian pay stubs, and letters from employers will make it more likely that the court will be able to provide appropriate relief.

To help ensure that your petition is given highest priority, it is advisable to write “Guard/Reserve” or “Expected Deployment Date is X” somewhere on the petition or request. If the state has a military liaison, you may also want to contact that person.

**How can I file for a modification after I am deployed?**

If you decide to file for a modification after you have deployed, check with your JAG officer or available legal advisor for general filing information. If a child support agency is handling your case, you may also contact the agency.

**If I file for a modification, will my support order automatically be reduced?**

No. Your support order will not automatically be reduced. The court or agency will review the current financial circumstances of both parties, along with the child’s needs, and compute the guideline support amount. The review may result in an upward modification, a downward modification, or no change.

**If my support order is reduced, will the Defense Finance and Accounting Service (DFAS) automatically reduce the amount of its income withholding?**

No. There is no automatic modification of the income withholding. If your support order is modified, DFAS needs to receive notice of the modification. If a child support agency is handling your case, that agency usually issues the new withholding order. Check with the agency to make sure. Once DFAS receives a copy of an amended income withholding order, it will change the amount of income it withholds from your military pay.

**I recently received notice that my support order is going to be automatically changed through a cost-of-living adjustment. The notice said something about challenging the proposed amount within a certain time period, but I’m getting ready to deploy. Can I just ignore the notice and take care of everything when I get back?**

No, **you should not ignore the notice.** The time frames in the notice have legal consequences. If you have questions about the proposed adjustment, or if you disagree with it, you should seek legal advice through the JAG office, a legal assistance office, or a private attorney. You should also consider contacting the child support agency or court prior to your deployment.

### **VII. Intergovernmental Cooperation**

Service members change locations more than the general population. Because of changes in assignments and deployments, it is common for parents of military families to live in different jurisdictions. They may live in different states. One parent may be a member of a Native American tribe. In some cases, one parent may live in the United States and the other parent may live in a foreign country. These types of child support cases are called intergovernmental cases.

This chapter provides information for custodial and noncustodial parents who live in different jurisdictions. Because an intergovernmental case can be complicated, the Office of Child Support Enforcement (OCSE) recommends that you seek guidance from a legal professional or your local child support agency. The information in this chapter provides an overview of what these types of cases entail. However, it is not a substitute for professional legal advice.

#### **Part One: Interstate/Tribal Cooperation**

All state and tribal child support agencies are required to provide child support services as vigorously for children who live outside their borders as for those under their own jurisdiction. State and tribal Central Registry offices receive incoming intergovernmental child support cases, ensure that the information given is complete, send cases to the right local office, and respond to inquiries from out-of-jurisdiction child support offices. Standard forms make it easier for caseworkers and the courts to find the information they need.

When the parents live in different states, there are particular laws that apply. The main laws are the Full Faith and Credit for Child Support Orders Act, which is a federal law, and the Uniform Interstate Family Support Act (UIFSA), which is a state law.

#### **Terminology**

The military is known for its use of acronyms. The child support world is no different. Here are some of the most commonly used interstate child support terms and acronyms.

**Continuing Exclusive Jurisdiction:** This refers to the special type of jurisdiction that a tribunal (see definition below) must have in order to modify a child support order in the interstate context. The term is more commonly known by its acronym, CEJ.

**Controlling Order:** Sometimes an older case will have two or more valid and enforceable child support orders. The term “controlling order” refers to the order that a tribunal determines is the governing order and therefore entitled to prospective enforcement. The tribunal will make this determination based on rules within UIFSA, and the process is called Determination of Controlling Order (DCO).

**Forum State:** This refers to the state in which the proceeding is held, or decision made.

**Home State:** This refers to the child’s state of residence for the six months immediately before the filing of the UIFSA action. If the child is less than six months old, this term refers to the state where the child has resided since birth.

**Initiating State:** This is the state in which a UIFSA proceeding has been filed, for forwarding to a second state, which is called the responding state.

**Interstate Case:** An interstate case is a case in which two states are involved in processing because the parents live in different states.

**Obligee:** This is the person to whom a support duty is owed. The obligee is usually the custodial parent.

**Obligor:** This is the person who owes a support duty. Once an order has been established, the noncustodial parent is often referred to as the obligor.

**Registration:** This is the process a tribunal uses to file or record a sister state's support order so that it can be recognized, usually as the first step before enforcing or modifying it.

**Responding State:** This is the state in which a proceeding is filed or heard in response to a pleading from an initiating state.

**State:** This term, within UIFSA, refers to a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian Nation or tribe.

**Tribunal:** This is a court, an administrative agency, or a quasi-judicial entity authorized to establish, enforce, or modify support orders, or to determine parentage.

### **Overview of UIFSA**

All states have enacted the Uniform Interstate Family Support Act (UIFSA), which is model legislation.<sup>17</sup> Because the Act has been amended over time, some states have the 1996 version and some have a more recent version. Regardless of which version a state has enacted, the main concepts are the same.

### **One Order World**

Prior interstate laws allowed a court to issue a new support order each time one of the parties moved to a new jurisdiction. This led to conflicting orders that were confusing to parents and judges alike. It was unclear which support amount was controlling; calculation of arrears was a nightmare. The main goal of UIFSA is to create a “one order world.” In other words, the goal is for there to be one controlling support order between the parents at any point in time. UIFSA accomplishes that goal through three main concepts:

- A prohibition against new orders when there is already a support order entitled to recognition.
- Determination of the controlling order in old cases where there are already multiple support orders.

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<sup>17</sup> The Uniform Law Commissioners develop model legislation, which states have discretion to enact. UIFSA is unique because Congress required states to enact it as a condition of receiving federal funds. Tribes are not required to enact UIFSA as a condition of receiving federal funds to operate their IV-D child support programs.

- Recognition of a state's continuing, exclusive jurisdiction (CEJ) to modify its support order in certain circumstances, and rules for where to seek a modification when there is no state with CEJ.

### **Evidentiary Provisions**

UIFSA recognizes the cost and burden of travel in interstate cases. Therefore, it prohibits a responding tribunal from requiring the physical presence of the petitioner at any hearing. It allows for the admission into evidence of certain documents and records, including their transmission by fax machine. It also permits and, in some circumstances, requires that a tribunal allow a party or witness to testify by telephone, audiovisual means, or other electronic means at a location designated by the tribunal. For example, this means that a person could testify via Skype.

### **One-State and Two-State Proceedings**

In order to establish paternity or a support obligation, a court or an administrative agency must have personal jurisdiction over the alleged father or noncustodial parent. One element of personal jurisdiction is notice. Notice refers to an individual's right to be formally informed of a legal proceeding. Depending upon state law and the type of legal proceeding involved, notice may be by personal service; certified or registered mail; or first class mail. Notice is valid if it satisfies the requirements of the forum state.

The other element of personal jurisdiction is contacts between the forum state and the individual party. When a petitioner files a pleading seeking relief from a tribunal in a state, the petitioner submits to that state's jurisdiction. The contacts between the respondent and the forum state are not always as clear.

A respondent is subject to a tribunal's personal jurisdiction if the person lives there. Fairness dictates that a state has authority to decide cases involving its residents. This is the basis for the two-state process used in UIFSA. Under the two-state process, the petitioner in State A (initiating state) files a support action, often with the help of a child support agency. The action is forwarded to the appropriate court or state child support agency in State B (responding state), which is usually the state where the respondent lives. Two states are involved in processing the case, with the forum state being the state where the respondent lives.

*John (petitioner) lives in Iowa and files an action in Iowa against Jane (respondent), which is forwarded to Illinois where Jane resides. Because Jane resides in Illinois, the tribunal in Illinois has personal jurisdiction over her and will oversee the proceedings.*

Sometimes a petitioner can file an action that is heard in the state where the petitioner lives, even if the respondent is not a resident of that state. In that situation, the forum state is the state where the petitioner lives. In order for a petitioner to file a proceeding that is heard in his or her own state, the respondent must have sufficient minimum contacts with the petitioner's state so that it is fair for a tribunal in that state to assert personal jurisdiction over the respondent. A long arm statute lists a number of actions by a nonresident that the state considers sufficient minimum contacts between the nonresident and the forum state in order for a tribunal in the forum state to assert personal jurisdiction over the nonresident. It is called "long arm" jurisdiction because the tribunal is "reaching out" and extending its jurisdiction over a nonresident. UIFSA has a long

arm statute listing a number of bases that allow a tribunal to assert personal jurisdiction over a nonresident in a paternity or support establishment case. Under long arm jurisdiction, an *interstate* case (a case involving more than one state) is converted into an *intrastate* case (a case handled within one state) because only one state's court or agency is involved in the matter.

### **Child and Spousal Support**

#### ***Spousal Support***

You can use UIFSA to establish, enforce, or modify both child support and spousal support. However, many states will not enforce a separation agreement through UIFSA; instead, they require a civil action to enforce a contract. State and tribal IV-D child support agencies do not receive federal funds for the establishment of spousal support. Therefore, most child support agencies do not provide services for the establishment of alimony or spousal support. Child support agencies will assist in the enforcement of spousal support if the spousal support is part of a child support order the agency is also enforcing.

### **Paternity Establishment**

#### ***One-State Long Arm Action***

UIFSA authorizes the establishment of paternity in two ways. If an alleged father has certain minimum contacts with a state (for example, he has resided in the state and provided prenatal expenses or support for the child, or he had sexual intercourse in the state that may have resulted in conception of the child), even if he is not a resident of the state, that state has long arm jurisdiction over the alleged father so a court or an agency in that state can determine paternity. Under long arm jurisdiction, the mother can bring a legal action to establish paternity in the state where she lives, even if the alleged father does not live there. In order to hear the case, the court or agency in the mother's state must find that the alleged father has personal contacts with the state and has received notice of the legal action.

#### ***Two-State Action***

If the alleged father does not have sufficient minimum contacts with the state where the mother lives, the alternative method is for the mother to use a two-state process. Under the two-state process, she will file the paternity action in the state where the alleged father lives. A child support agency or the court in the mother's state usually will help the mother file the action. Once the alleged father is served, any hearing will be in the state where the alleged father lives.

### **Support Establishment**

If there is no existing support order entitled to recognition, UIFSA authorizes the establishment of a support order in two ways.

#### ***One-State Long Arm Action***

If the noncustodial parent has sufficient minimum contacts with the custodial parent's state so that the state can exercise long arm jurisdiction, the custodial parent can bring a support action in his or her own state. In order to hear the case, the court or agency in the custodial parent's state must find that the noncustodial parent has personal contacts with the state and received notice of the legal action. If the tribunal determines that the noncustodial parent has a support obligation, it will establish support using its state support guidelines.



### ***Two-State Action***

If the noncustodial parent does not have sufficient minimum contacts with the state where the custodial parent lives, the alternative method is for the custodial parent to use a two-state process. Under the two-state process, the custodial parent files a support action in the state where the noncustodial parent lives. A child support agency or the court in the custodial parent's state usually will help the custodial parent file the action. Once the noncustodial parent is served, any hearing will be in the state where the noncustodial parent resides. In this case, the noncustodial parent's state support guidelines will apply.

### **Support Enforcement**

#### ***CEJ and Controlling Order***

There are two important concepts to UIFSA's one order world: continuing exclusive jurisdiction (CEJ) and controlling order. Both come into play with regard to enforcement and modification.

CEJ means that a tribunal has exclusive jurisdiction to modify its support order. A tribunal has CEJ if it has issued a support order and the individual obligee, obligor, or child continues to reside in the state where the order was issued.

*CEJ = order + individual party or the child lives in the state.*

The controlling order is the order that governs current support.

#### ***Enforcement When There is One Order***

When there is only one support order, that order is the controlling support order in the case. That order can be enforced in any state. Even if both parties have moved away from the state that issued the order, the order remains the controlling, enforceable order.

#### ***Enforcement When There are Multiple Orders***

For cases that arose prior to 1994<sup>18</sup>, there may be more than one support order in the case and those orders may have been issued by different states. The noncustodial parent/obligor is responsible for paying the highest amount of any of those existing support orders; states should credit payment for a particular time period against the same time period under any other ongoing support orders in effect. In other words, a person does not have to pay twice.

When there are several orders in effect involving the same parties and child, either party can ask a tribunal to determine which is the controlling order. UIFSA has rules that a tribunal must follow in determining the controlling order. Until that determination is made, the noncustodial parent must comply with all existing support orders and, as noted above, must pay the highest amount. Once a tribunal makes that determination, the controlling order will govern the support amount the obligor must pay going forward. The initially determined controlling order will also govern the *duration* of the support obligation, that is, how long the noncustodial parent must pay

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<sup>18</sup> Congress enacted the federal Full Faith and Credit to Child Support Orders Act (FFCCSOA) in October 1994. On that date, every state was required to follow the federal law. FFCCSOA established rules for determining the controlling order and modification jurisdiction that are consistent with the rules in UIFSA, which is a state law that was enacted by all states after FFCCSOA.



support. Arrears under the other old orders are still enforceable, up to the point that a determination of controlling order is made.

### ***Enforcement Remedies***

UIFSA authorizes both one-state and two-state enforcement remedies. A one-state enforcement remedy is direct income withholding. Under direct income withholding, an employer must comply with an income withholding order that it receives from a state, regardless of whether the employer does business in the state that issued the order. The withholding order may include provisions for the payment of current support and arrears, as well as medical support in the form of a periodic cash payment or health insurance coverage. Direct income withholding allows the enforcement action to take place without involving the child support agency or court in the employer's state. Direct withholding is beneficial because withholding begins quickly and bypasses what is often a time-consuming interstate process.

UIFSA provides the noncustodial parent/obligor an opportunity to challenge the direct income withholding, but the parent must raise the challenge in the state where the employer is located. If the parent challenges the withholding, the tribunal or child support agency in the employer's state will become involved.

Registration for enforcement is the two-state enforcement process under UIFSA. Under this procedure, a state's support order is registered, or filed, in a second state where the noncustodial parent has income or assets. The noncustodial parent receives notice of the registration and has an opportunity to contest the registration, the validity of the registered order, or the statement of arrears under the registered order. If the noncustodial parent does not timely raise a valid defense, the registered order is confirmed. The court or agency in the second state can enforce the registered support order using any enforcement remedies available under the laws of the second state.

If an order is registered for enforcement, it is not subject to modification. If either party wants a modification, that person must follow UIFSA's procedures for modification.

### **Modification**

UIFSA recognizes that there are times when a party wants to change a support order. In order to make sure that there is only one controlling support order in a case, UIFSA outlines when a court or an agency has jurisdiction to modify a previous ruling.

### ***One Support Order***

As noted earlier, an important concept in UIFSA is continuing, exclusive jurisdiction (CEJ). A tribunal has CEJ to modify a support order if it issued that support order and at least one of the following—the individual obligee, obligor, or child—continues to reside in that state. As long as a tribunal has CEJ, no tribunal in another state can modify that support order.

An example will help explain the concept. Assume that there is a Texas divorce decree awarding the father custody and ordering the mother to pay him child support. Later, custodial parent Dad decides to remain in Texas with the child when Mom gets transferred to California. As long as Dad continues



to live there, Texas has continuing, exclusive jurisdiction to modify its order. Dad can enforce the order in any state where the mother has property or assets, but no other state can modify the order.

A tribunal “loses” CEJ when all of the individual parties and child(ren) move away or when the individual parties file a written consent with the tribunal that issued the order to have another state exercise modification jurisdiction and assume CEJ. If the state that issued the order no longer has CEJ, the party seeking modification usually must register the support order in the state where the other party lives.

### ***More than One Support Order***

For cases that arose prior to 1994, there may be more than one support order in the case and those orders may have been issued by different states. If a party wants to modify an order, it is important to know which state is the proper place for filing the modification request or petition. If you are the person wanting to change the support order, an attorney or a child support agency can help you determine where to file the modification request.

### ***Exceptions to Modification Rules***

There are three exceptions to UIFSA’s modification rules:

- First, the rules only apply to modification of child support orders. UIFSA has a separate provision governing modification of spousal support orders. Only the original issuing tribunal has CEJ to modify the spousal support order. (NOTE: Child support agencies do not handle the modification of spousal support orders. However, an individual can file a petition for modification using a private attorney or filing *pro se*.)
- The second exception applies when there is a written agreement between the parties. Even if there is a CEJ state, the parties can file written consent in the state that issued the order for another state to modify the order and assume CEJ so long as one of the parties or child is subject to the personal jurisdiction of that second state.
- The third exception applies when there is one support order, no party or child lives in the issuing state, and now everyone lives in the same state. Under UIFSA, the party seeking a modification can register the support order in the state where everyone is living. Going back to our example above, if Dad and the children move to New Jersey, Mom or Dad can register the support order in New Jersey for the purpose of modification.

### ***Registration for Modification***

As noted above, if there is no CEJ state, a petitioner wanting a modification usually registers the controlling support order in the respondent’s state for the purpose of modification. Along with the registration request, the petitioner can seek enforcement of any arrears under the existing support order(s).

### ***Limitations on Modification***

The registering tribunal cannot modify any aspect of the support order that the law of the issuing state would not allow to be modified, including the duration of the obligation of support. The law of the state that issued the initial controlling order determines the duration of support. Once an obligor fulfills that duty, a state cannot place a new support obligation on the obligor by establishing a new support order.

**Example:** A support order is registered in a state where the support duty ends at age 21. The law of the state that issued the order provides that the support duty ends at the later of age 18 or

graduation from high school. Once the child graduates, the registering court cannot modify the order and establish a new support obligation to age 21.

### ***Applicable Support Guidelines***

The law of the forum state (the state in which the proceeding is held) will govern the modification proceeding. That means that the support guidelines of the state conducting the modification proceeding will determine the new support amount.

### **The Full Faith and Credit for Child Support Orders Act**

The Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B, is a federal law that does not require states to pass legislation in order to implement it. Rather, it became law governing all states as soon as then President Bill Clinton signed it in October 1994. It therefore preceded most states' enactment of UIFSA. FFCCSOA includes UIFSA's framework for reaching one controlling order.

Unlike UIFSA, FFCCSOA applies to Indian tribes as well as to states. The result is that courts of all United States territories, states, and tribes must give full faith and credit to a child support order issued by another state or tribe that had jurisdiction over the parties and the subject matter. Full faith and credit means that the tribunal must recognize the order as valid and enforce it.

### **Tribal Cases**

As sovereign nations, tribes have a unique relationship with the federal government. For the first time in the history of the Title IV-D program, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 authorized tribes and tribal organizations to operate full service child support programs. Many tribes operate such programs. These programs are listed on OCSE's Intergovernmental Reference Guide web page by tribe, <https://extranet.acf.hhs.gov/irg/welcome.html>, and on the State and Child Support Agency Contacts page by state, [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts).

*Storytelling for Healing*, a website developed by the Administration for Native Americans, provides information on many topics important to Native American veterans, such as a historical perspective with statistics from previous wars; Post-Traumatic Stress Disorder; the role of ceremony in service and healing; and resources for Native American veterans. The website also provides a DVD that includes interviews with individual veterans discussing issues they face today. See [www.acf.hhs.gov/programs/ana/resource/native-american-veterans-storytelling-for-healing-0?page=1](http://www.acf.hhs.gov/programs/ana/resource/native-american-veterans-storytelling-for-healing-0?page=1).

### **Questions and Answers for Custodial Parents**

#### **My divorce order was issued in Florida, but now my active duty ex-spouse is assigned to Fort Hood, Texas. Can the order still be enforced?**

If you have a valid divorce order issued by Florida, it can be enforced in any state where your ex-spouse has income and assets. One particularly appropriate enforcement remedy is income withholding. If the Defense Finance and Accounting Service (DFAS) receives a copy of the income withholding order, it can begin withholding support from your ex-spouse's military

income. The order is enforceable, even if your ex-spouse no longer lives in the state that issued the support order.

**My support order was established in Texas. I am active duty military. The children and I are now stationed in Virginia. My ex-husband is still living in Texas. I've heard he has changed jobs and is making more money now. I could really use an increase in support since the children are older. How would I go about getting the Texas order modified?**

The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is “Where do the parties and child live?” If an individual party or a child still resides in the state that issued the order, that state has continuing, exclusive jurisdiction to modify the order. Because your ex-husband is still living in Texas, the state that issued the support order, Texas is where you must file your modification action. You may contact your local child support agency or court for help. Note: Texas child support guidelines will determine the amount of any modification.

The only exception is if **both** you and your ex-husband request that the modification action be heard in another state, such as Virginia, by filing a written consent.

**My support order was established in Texas. The children and I are now living in Louisiana. My ex-husband, who is active duty military, is now stationed in Georgia. I could really use an increase in support since the children are older. How would I go about getting the Texas order modified?**

The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is “Where do the parties and child live?” If no party or child still resides in the state that issued the order (Texas in this example), that state no longer has continuing, exclusive jurisdiction to modify the order. Since you are the one seeking modification, you must register the support order in a state—other than your own state of Louisiana—that has jurisdiction over your ex-husband. In other words, you would register the Texas order in Georgia for modification. You may contact your local child support agency or court for help. Because any hearing will be held in Georgia, Georgia child support guidelines will determine the amount of any modification.

**My boyfriend is in the military. If his home of record is Tennessee, is that state also considered his physical residence?**

A service member's home of record is usually the state in which the member enlisted or the member has family ties. The home of record is not necessarily where the member is physically stationed. A state other than the home of record may have personal jurisdiction over a member for legal proceedings. You may contact your local child support agency or court for help in determining which state would have jurisdiction.

**I am a member of the Navajo Nation and have a tribal support order. My former boyfriend is stationed at Fort Carson, Colorado. Will Colorado enforce my tribal support order?**

Yes. States and tribes are required by federal law to recognize and enforce each jurisdiction's valid support orders. You can apply for services with a tribal child support program or with a state child support program. For a list of tribal and state child support agency contacts, go to [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts). Either jurisdiction will assist you in enforcing the tribal support order. One particularly effective

enforcement remedy is income withholding. If the Defense Finance and Accounting Service (DFAS) receives a copy of the tribal income withholding order, it can begin withholding support from your former boyfriend's military income.

### *Questions and Answers for Noncustodial Parents*

**I am getting ready to deploy and want to ensure my child has access to health care while I'm gone. I know I need to take a copy of my paternity acknowledgment form with me to the military ID card issuance site in order to establish dependency, but I signed it in a different state. How can I get a copy of the form that I signed?**

You may be able to get a copy of your signed paternity acknowledgment through the child support office that is handling your case. If your state agency has a military liaison, contact that person since the liaison will understand the urgency of a pending deployment and may have resources for expediting the request. Unfortunately, in states that are closed record states, it may be difficult to get a certified copy of the signed acknowledgment without a court order. In these states, the original form, along with the child's birth certificate, is placed in a sealed file. The Vital Records Office will not provide a copy without a court order. Your base legal assistance office may be able to offer guidance.

**My support order was established in Texas. The children and my ex-spouse are still living there, but I'm active duty and am now stationed in Virginia. If I want to ask for a reduction in support, can I file here in Virginia?**

The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is "Where do the parties and child live?" If an individual party or a child still resides in the state that issued the order, that state has continuing, exclusive jurisdiction to modify the order. Because your ex-spouse is still living in Texas where the support order was issued, Texas is where you must file your modification action. The only exception is if you and your ex-spouse file a written consent requesting that the modification action be heard in another state, such as Virginia. You may contact your local child support agency or court for help. Note: If the hearing is in Texas, Texas child support guidelines will determine the amount of any modification.

**My support order was established in Texas. The children and my ex-spouse are now living in Louisiana. I'm stationed in Georgia. How would I go about getting the Texas order modified?**

The Uniform Interstate Family Support Act contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only order entitled to recognition, the important question is "Where do the parties and child live?" If no party or child still resides in the state that issued the order (Texas in this example), that state no longer has continuing, exclusive jurisdiction to modify the order. Since you are the one seeking modification, you must register the support order in a state—other than your own state of Georgia—that has jurisdiction over your ex-spouse. In other words, you would register the Texas order in Louisiana for modification. You may contact your local child support agency or court for help. Because any hearing will be in Louisiana, Louisiana child support guidelines will determine the amount of any modification.

**I just got served with notice that a Florida support order has been registered in my state for enforcement. The amount of arrears stated is all wrong. But I'm getting deployed in a week and don't have time to take care of this. Can I just ignore the notice, and take care of it when I get back? Doesn't the Servicemembers Civil Relief Act (SCRA) protect me?**

If you have been served with a notice of registration for enforcement, **do not ignore it**. The notice contains important timeframes. If you do not challenge the amount of arrears within that time period, the arrearage amount will be confirmed and you will be unable to challenge it later.

Some military members mistakenly believe that the SCRA automatically protects them from all legal actions. **A stay (the legal term for a postponement) under the SCRA is not automatic.** The SCRA provides for a stay of at least 90 days upon a proper request from the member in administrative and civil matters. If you are unable to appear in a court or in an agency proceeding on the date required because of your active military service, you must request this SCRA protection in writing and include certain information with the request. See Chapter VIII of this document for more on the Servicemembers Civil Relief Act. A judge advocate or legal assistance officer should also be able to provide advice.

### **Part Two: International Cases**

With the ease of international travel, increase in international businesses, and mobility of our military troops, states and the federal government have had to develop legal mechanisms and procedures for handling international child support cases.

#### **Bilateral Agreements**

The federal government has the authority to enter into written agreements with foreign countries for the purpose of enforcing family support obligations. Such countries are referred to as "foreign reciprocating countries" or FRCs.

The one condition is that the country must have established, or begun to establish, procedures for the establishment and enforcement of support for residents of the United States.<sup>19</sup> These procedures must include:

- Procedures to establish child support orders, including procedures to establish paternity if necessary to establish a support order;
- Enforcement procedures;
- Collection and distribution processes for support payments;
- Cost-free services, including administrative and legal services; **and**
- A designated agency to serve as the Central Authority to facilitate enforcement.

Once such a declaration is made, IV-D child support agencies in the United States must provide child support services to such FRCs as if the request for service came from a U.S. state.

An up-to-date list of countries with which the United States maintains reciprocal agreements is available through the web site of the federal Office of Child Support Enforcement

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<sup>19</sup> See 42 U.S.C. § 659A.



([www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries](http://www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries)). As of February 2013, the following countries and Canadian provinces or territories have been designated an FRC:

Australia	Israel
Canadian Provinces/Territories	The Netherlands
Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland/Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon	Norway
	Poland
	Portugal
Czech Republic	Slovak Republic
El Salvador	Switzerland
Finland	The United Kingdom of Great Britain and Northern Ireland
Hungary	
Ireland	

### **The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance**

Recently, the United States actively participated in negotiations to develop the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The Convention requires Contracting Countries to:

- Establish, enforce, and modify child support orders;
- Enforce spousal support orders if they are connected to a child support order;
- Allow spouses to seek relief directly with the courts (not through a government agency) to establish spousal support.

In 2010, the U.S. Senate approved the Resolution of Advice and Consent to the president regarding the Hague Convention. Additional steps must occur before the Treaty can enter into force for the United States.

### **State Reciprocity Arrangements**

UIFSA authorizes the international enforcement of support obligations. Many states have established reciprocal arrangements for child support with foreign countries that are not federally recognized FRCs, for example, the Federal Republic of Germany. Even where there is no reciprocal arrangement, a court can decide to enforce a foreign order if it determines that the foreign jurisdiction has a law or procedures that are substantially similar to UIFSA and satisfy due process.



### **State Child Support Agency Services**

An individual in a foreign country can also apply directly to a state child support agency for child support services. The agency must treat such a request like a request from a resident of another state.

### **Status of Forces Agreement (SOFA)**

The previously mentioned agreements and conventions are child support specific and are not directly related to the military. In contrast, the military often operates under a status of forces agreement, which is an agreement between a host country and a foreign nation with forces stationed in that country. The SOFA is meant to clarify how the foreign military is allowed to operate in the host country. It addresses a number of issues, including legal issues associated with the military such as civil and criminal jurisdiction over the bases. In civil matters, such as the establishment of a child support order, it is not uncommon for the SOFA to provide that courts of the host country have jurisdiction over U.S. personnel and family members stationed in that country. How detailed the SOFA is depends in large part upon how long-term the military presence in the host country is expected to be. Each SOFA is negotiated separately with the host country, although the United States has a multilateral SOFA with NATO members. The United States currently has more than 90 SOFAs.

### **Questions and Answers for Custodial Parents**

**I am a U.S. service member. While I was deployed abroad, I was intimate with a man from that country and got pregnant. Now that the child is born, I need financial assistance for the child. Can I file a support action against a man who lives in another country?**

Yes. You can apply for child support services, and the child support agency will assist you in filing an action. You may also consider hiring a private attorney. If the man has no contacts with the United States that would provide a basis for jurisdiction, you will need to file the action in a country with jurisdiction over him. That will most likely be the country where he lives. That means you will be dependent upon another country's laws, procedures, and legal system.

The U.S. Government has negotiated federal-level reciprocity declarations with several countries. The website for the federal Office of Child Support Enforcement (OCSE) lists countries with which the U.S. has agreements. See [www.acf.hhs.gov/programs/css/international](http://www.acf.hhs.gov/programs/css/international). If there is not a federal agreement, check with your state child support agency to determine if there is a state-level agreement with the country in question. OCSE's Intergovernmental Reference Guide includes information about these international-level agreements. See [www.acf.hhs.gov/programs/css/irg-state-map](http://www.acf.hhs.gov/programs/css/irg-state-map).

These international child support agreements specify procedures for establishing and enforcing child support orders across borders. While requirements for establishing paternity and a support order vary depending on the other country involved, you will need to provide some of the same information as in a domestic case. You should include as much specific information as possible about paternity, your income, and the alleged father's location, income, and employment.

Please be aware that international cases usually take longer to process than domestic cases and the level of help provided foreign petitioners, such as you, will vary greatly.

**I am on active military duty. I want to file a UIFSA support establishment action in the state where I am assigned against a man who lives in another country. Can I make the man appear in the state court UIFSA proceeding?**

No. Under the Uniform Interstate Family Support Act (UIFSA), the physical presence of a nonresident party is not required for the establishment of a support order. Therefore, a state court cannot require the man to attend if he resides in a foreign country, even if he has been served and is subject to the personal jurisdiction of the state court. In your case, UIFSA (2001) allows the man who lives in another country to testify under penalty of perjury by telephone, audiovisual means, or other electronic means.

**I went to my local child support agency for help in filing a support action against a man in another country. How long will it take to get a support order?**

There is no easy answer. U.S. child support agencies must meet certain case processing timeframes. These federal regulations, however, do not apply to foreign countries. The Hague Convention requires timely processing of cases and contains timeframes for providing certain status updates, but it does not contain timeframes for establishing an order.

### *Questions and Answers for Noncustodial Parents*

**I am a soldier stationed in the Federal Republic of Germany (Germany). Recently a German woman obtained a German judgment against me as a result of a paternity action declaring me to be the father of her child and ordering me to pay 143 Euro per month in child support. An American military legal assistance officer has told me that Germany validly acquired jurisdiction over me. Do I have to comply with the order while I'm stationed here?**

Yes. You are required by Army regulations<sup>20</sup> to comply with a foreign support order if:

- The foreign court order has been recognized and enforced by a court within the United States; **or**
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within that country.)

Therefore, if Germany validly acquired jurisdiction over you, you are required to comply with the order and provide financial support to the child in the dollar equivalent of 143 Euro per month. In addition, while stationed in Germany, you may have the dollar equivalent of 143 Euro withheld from your pay each month if you fail to comply voluntarily with the court order (by virtue of the U.S. Army's honoring and implementing the German court garnishment order pursuant to the governing status of forces agreement).

**I am in active service with the Army. I was briefly married to a woman from a foreign country. She has returned to that country and obtained a child support order against me. Do I have to comply with the order? I'm currently stationed in the United States.**

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<sup>20</sup> See AR 608-99, paragraph 2-4.

The Army Regulation (AR) covering these situations, AR 608-99, does not require a soldier to comply with a foreign court order on financial support except in either of the following situations:

- The foreign court order has been recognized and enforced by a court within the United States.
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within Germany.)<sup>21</sup>

Therefore, you only have to comply with the foreign order if it meets one of those situations.

However, the regulation does offer this strong warning, “a soldier who fails to comply with the financial support provisions of a foreign court order, regardless of whether it is enforced by this regulation, does so at his or her own peril. This is particularly true if the soldier is within the jurisdiction of the foreign court or if the foreign court order is later recognized and enforced by a court within the United States.”<sup>22</sup>

If you are involved in a case where there is a court order from a nation that the U.S. does not have a child support reciprocity agreement with and no U.S. state has recognized or enforced the order, the regulation goes on to provide the following guidance: “a soldier is in compliance with this regulation if he or she is providing financial support in an amount required by the foreign court order or by this [Army] regulation, whichever is less.”<sup>23</sup>

**While I was stationed in the Federal Republic of Germany, I was intimate with a German woman. I have since been reassigned to an Army installation in the United States. Recently I received a copy of a German support order for a child I never even knew she had. What do I do?**

You should seek legal advice through the JAG Office or Legal Assistance Office, or from a private attorney.

Army regulations<sup>24</sup> require you to comply with a foreign support order if:

- The foreign court order has been recognized and enforced by a court within the United States; **or**
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within that country.)

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<sup>21</sup> Id.

<sup>22</sup> AR 608-99, paragraph 2-4(d).

<sup>23</sup> AR 608-99, paragraph 2-4(e).

<sup>24</sup> See AR 608-99, paragraph 2-4.

In order for the German order to be recognized by the United States, you must have received due process under U.S. laws. At a minimum, that means you must have received notice of the German action, and Germany must have had personal jurisdiction over you.

If the mother registers the German court order in the United States for enforcement, and the U.S. court finds that you have raised a valid defense to the order, the German order will not be enforceable against you in the United States. Even if a U.S. court determines that the German order is not enforceable in the United States, this does not prevent the U.S. court from establishing a U.S. support order against you if it determines you have a support obligation to this child. That order may also include retroactive support, depending upon the laws in the state conducting the hearing. Remember also that Germany will still consider the order enforceable. If you travel within the European Union, Germany may seek to enforce the order against you.

If you raise a defense to the registration and enforcement of the German order, but the U.S. court finds that you do not have a valid defense and thereby confirms the order, then the German order will be binding upon you in the United States and you must comply with the financial support provisions of the order.

**A woman in the Philippines, where I was once stationed, has filed a UIFSA support action against me in Virginia where I now reside. Can I make her appear in the state court UIFSA proceeding?**

No. Pursuant to the Uniform Interstate Family Support Act (UIFSA), the physical presence of a nonresident party is not required for the establishment of a support order. Therefore, the Virginia court cannot require the woman to attend if she is residing in a foreign country, even if she is the petitioner. In your case, UIFSA (2001) allows the woman who lives in the Philippines to testify under penalty of perjury by telephone, audiovisual means, or other electronic means.

**I am in the United States. A foreign support order was issued against me. It was registered for enforcement in the state where I currently am stationed. The U.S. court found that the foreign country had personal jurisdiction over me, and it recognized the foreign support order. When I am paying support, what date should be applied for converting the foreign country's order amount into a U.S. dollar amount? The date the foreign country entered its order? The date the order was recognized in the United States? Each time I make a payment?**

There is no federal law or regulation on this issue. The Uniform Interstate Family Support Act (UIFSA) and the Hague Convention do not address it. The court or agency will base its decision on state law and procedure. While the U.S. court may order you to pay a set amount of support in U.S. dollars, keep in mind that the court is setting an equivalent amount to the foreign currency amount. Whether payment of the equivalent amount fulfills your support obligation under the foreign order will be determined by the foreign court, based on full payment in the currency of the foreign order.

### VIII. The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA), formerly known as the Soldiers' and Sailors' Civil Relief Act, is a federal law that provides protections to individuals in military service. It is found at 50 U.S.C. app. 501 *et seq.* It is not found in state statutes. The law's purpose is to postpone, suspend, terminate, or reduce the amount of certain civil obligations so that members of the armed forces and certain other individuals can focus their full attention on their military or professional responsibilities without adverse consequences for themselves or their families. The key provisions of the SCRA that apply to cases involving family law are Sections 201, 202, 204 - 207 (codified at 50 U.S.C. app. §§ 521, 522, 524 - 527).

This chapter will provide an overview of the SCRA. Keep in mind that the rights extended under the SCRA are sometimes complicated. If you are a service member, it is important to get advice from your military legal assistance office about how the SCRA applies to your own circumstances. For example, the SCRA frequently conditions the availability of certain rights on whether your ability to meet certain obligations is "materially affected" by your military service. Whether you are "materially affected" can mean different things in different situations. A legal assistance attorney will help you understand your rights under the SCRA and can help you enforce those rights.<sup>25</sup>

At the end of the chapter, you will find websites for additional information as well as sample letters for invoking the SCRA.

#### **Legislative History**

The SCRA, enacted in 2003 and amended several times since, revised and expanded the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), a law designed to ease financial burdens on service members during periods of military service. The SCRA enables service members to devote their time and attention to the defense needs of the Nation by providing protections related to such things as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, automobile repossessions, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance, and income tax payments.

In November 2009, the Military Spouses Residency Relief Act (MSRRA) became law and amended the SCRA. This new law changes some basic rules of taxation that may affect service members and their spouses. Because the law is complicated and its effect will depend on the interpretations of each state, service members and their spouses are encouraged to seek advice from a military legal assistance office.

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<sup>25</sup> From an article on the Servicemembers Civil Relief Act, prepared for Military OneSource with the assistance of Shawn Shumake, Colonel, US Army, Director, Office of Legal Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Christopher Garcia, former Director, Office of Legal Policy, and Christopher B. Rydelek, former Head, Legal Assistance Branch, Judge Advocate Division, Headquarters, U.S. Marine Corps. See [www.militaryonesource.mil/moving?content\\_id=267394](http://www.militaryonesource.mil/moving?content_id=267394).

The most recent amendments to the SCRA were in the Veterans Benefits Act of 2010. One change is an improvement of the ability for service members to terminate cell phone contracts. Basically, any time a member gets orders to go somewhere where he or she cannot get cell phone service for more than 90 days, the member has the right to terminate the contract. In addition, if the service member is on a family plan and moves or deploys, the service can be terminated by the member's mother or father, or whoever is paying for the plan. Another change is that Congress clarified the statutory language regarding the question of early termination charges on residential leases. The new language leaves no doubt that early termination charges are prohibited.

### **Protected Individuals**

The SCRA protects all service members on federal active duty, including:

- Members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on active duty status, or who are absent from duty as a result of being wounded or being granted leave;
- Reserve, National Guard, and Air National Guard personnel who have been activated and are on federal active duty;
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of Title 32, United States Code, for purposes of responding to a national emergency declared by the president and supported by federal funds;
- Public Health Service and National Oceanic and Atmospheric Administration Officers detailed for duty with the armed forces.

Actual deployment while in active military service is not a prerequisite to qualify for the protections of the SCRA.

If you have questions about whether you are covered under the SCRA, contact your nearest Armed Forces Legal Assistance Program office. You can find the nearest location at <http://legalassistance.law.af.mil/content/locator.php>.

If you fall into one of the above categories, the SCRA may also afford certain protections to your dependents, including your spouse, your children, and any individual for whom you provided more than one-half of his or her financial support for the past 180 days. Extension of SCRA protections to dependents varies from section to section of the SCRA.

The SCRA does not protect you or your dependents if you are a civilian working for the Department of Defense or a contractor.



### **Key Parts of the SCRA Related to Child Support and Access/Custody Proceedings**<sup>26</sup>

#### **Court and Administrative Proceedings**

The SCRA provides for an automatic stay of at least 90 days upon a proper request from the member in civil administrative and judicial matters. The member who is unable to appear in court or an administrative hearing on the date required because of active military service must request this SCRA protection in writing and include certain information with the request. After receiving the written request, the judge, magistrate, or hearing officer **must** grant a minimum 90-day delay. This delay is mandatory under the SCRA, unlike the SSCRA, and the member's letter requesting postponement is not an appearance or waiver of any defense by the member. Any additional delay beyond the mandatory 90-day period is within the discretion of the judge, magistrate, or hearing officer.

"This provision is of obvious benefit to members of the Guard and Reserves who are in the middle of litigation but called to rapidly mobilize. It is of benefit to members of the active component when they face suit while deployed or otherwise when they are a significant distance from the courtroom."<sup>27, 28</sup>

This protection does not apply to criminal court or criminal administrative proceedings. You should consult with a legal assistance attorney for the strict statutory requirements before requesting a stay.

#### **Default Judgments**

A member may request the court or agency to re-open a matter and set aside a default judgment if the judgment was entered against the member during the member's period of military service<sup>29</sup> or within 60 days after termination of or release from such military service.<sup>30</sup> The member must send a timely request for such relief (i.e., within 90 days from release from active duty), show the active service materially affected the member's ability to defend against the action, and show that he or she has a good defense. You should consult with a legal assistance attorney to obtain information on possible relief available to you.

#### **Reduced Interest**

A member may reduce the higher interest rates the member pays for any financial obligation (for example, a credit card, loan, mortgage) individually or jointly entered into **before** active service

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<sup>26</sup> The information in this section is largely excerpted from information provided on the website of the U.S. Air Force Legal Assistance. See the SCRA Fact Sheet at <https://aflegalassistance.law.af.mil/las/las.html>.

<sup>27</sup> This is not to say that distance from the proceeding will necessitate a stay, but merely a brief comment on the law's obvious utility.

<sup>28</sup> Section 3-5 of The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

<sup>29</sup> Reserve Component personnel are entitled to most of the Act's "rights and protections" on the date they receive active duty orders, which is before actual active duty. See 50 U.S.C. app. § 516.

<sup>30</sup> 50 U.S.C. app. § 521.



to six percent **if** active service materially affects the member's ability to repay the financial obligation. In addition, the SCRA prohibits the lender from accelerating the principal amount owed, and forgives (vs. defers) the excess interest payments that would have been due under the higher interest rate so that the member is not liable for the excess after he or she is released from active service. This reduced interest rate is effective only during the period of active military duty for most obligations; however, for a mortgage obligation, the reduced interest rate continues for one year following release from military service. Finally, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service.

### **Insurance**

The SCRA provides for reinstatement of health insurance without waiting periods or other penalties, provided the insurance was effective before the active duty period, the insurance was terminated during the active duty period, and certain other conditions exist. The SCRA also provides protection against termination of policy or forfeiture of premiums to members who have individual life insurance policies. For SCRA protection for life insurance policies, the member must submit a written request to the Department of Veteran Affairs.

### **Domicile (Legal Residence)<sup>31</sup>**

The SCRA continues the protection the SCRA granted for domicile and residence. Do not confuse legal residence (domicile) with residence. A person can have as many residences as he/she can afford, but can have only one legal residence (domicile). The domicile is the state where the member resided at some point in time and, while residing there, formed the intent to return to the state after his or her military service ends and remain there indefinitely. Generally, the domicile is the state entered in the member's pay records. A member can maintain the domicile or legal residence in the state in which the member resided before entering active duty. A member does not lose the domicile (legal residence) in a state when absence from that state is due to military orders. A member, however, can change his or her domicile if the member meets the conditions for changing legal residence.

### **Start and Termination of Protections<sup>32</sup>**

The following information is quoted from a guide prepared by the Judge Advocate General's School, U.S. Department of the Army:

Although the SCRA's protections commence no later than when a person enters active military service, there are provisions which expand this coverage. Reserve Component personnel, for example, are entitled to most of the Act's "rights and protections" on the date they receive active duty orders.<sup>33</sup> . . . Furthermore, a servicemember is protected

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<sup>31</sup> The issue of residence is relevant for the purpose of a court's determination of personal jurisdiction. A court must have personal jurisdiction over someone to establish paternity, or to establish a support order.

<sup>32</sup> Information in this section is copied from Section 2-3 of The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

<sup>33</sup> 50 U.S.C. app. § 516(a).

even during “any period which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.”<sup>34</sup>

The SCRA’s coverage *normally* terminates “on the date on which the servicemember is released from military service or dies while in military service.”<sup>35</sup> Other sections of the Act qualify this “period of military service.” For example, the protection calling for the stay of a civil proceeding extends for “90 days after termination of or release from military service.”<sup>36</sup> As to default judgments, “[a]n application [to set aside a default judgment] . . . must be filed not later than 90 days after the date of termination of or release from military service.”<sup>37</sup> Importantly, even when the member has left the service, the right to challenge the default extends for an additional 60 days.<sup>38</sup>

### **Invoking the SCRA**

**Many of the SCRA protections are not automatic.** It is wrong to assume that, because a person is a service member, the member can ignore a court summons or a support order entered in the member’s absence. The SCRA does not protect the member from all judicial proceedings. It is important for the member to be proactive about legal proceedings.

Remember, many SCRA protections require the member to request the protection in a timely manner. For certain SCRA protections (such as interest rates), the member also may have to show that the active military service materially affects his or her ability to pay.

There are times when a service member will want to participate in a hearing rather than asking for a delay. Such is the case when the service member is asking for a modification of child support or alimony due to financial difficulties imposed by deployment, or by mobilization if the person is a Guard/Reserve member. The reduction in pay that most Guard/Reserve members face frequently leads to support arrears with no ability to ask the court to retroactively modify the order since federal law provides that any missed support payment becomes a judgment. In many states, the issue of modification can be resolved without a court hearing on the basis of financial affidavits and supporting documentation provided by the parties and other witnesses. Where a member wishes to give “live” testimony, the member or the member’s attorney should explore any options available for taking testimony electronically. In addition to the telephone, a service member sometimes can obtain access to video teleconferences (VTCs) at commercial or command facilities that allow real-time audiovisual interaction. Testimony via SKYPE is also a possibility. Section 316(f) of the Uniform Interstate Family Support Act (UIFSA) provides for parties to “testify by telephone, through audiovisual means or by any other electronic means.”

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<sup>34</sup> 50 U.S.C. app. § 511(2)(C).

<sup>35</sup> 50 U.S.C. app. § 511(3).

<sup>36</sup> 50 U.S.C. app. § 522.

<sup>37</sup> 50 U.S.C. app. § 521(g)(2).

<sup>38</sup> 50 U.S.C. app. § 521.

The SCRA is a broad act, addressing many issues affecting service members such as foreclosure, eviction as a renter, apartment leases, motor vehicle leases, and cell phone contracts. The U.S. Department of Justice (DOJ), Civil Rights Division, has developed general questions and answers about the SCRA that are accessible through DOJ's website.<sup>39</sup>

If you believe that your rights under the SCRA have been violated, you should contact your nearest Armed Forces Legal Assistance Program office to see if the SCRA applies to your particular situation. Dependents of service members can also contact or visit local military legal assistance offices where they reside. In order to have your SCRA matter reviewed by the DOJ, you must first seek the help of your military legal assistance office. If that office cannot resolve the complaint, it may choose to forward the complaint to the DOJ. The DOJ then will review the matter to determine whether DOJ action is appropriate. However, in emergency situations (such as an imminent foreclosure, eviction, or repossession), you can contact Civil Rights Division's Housing and Civil Enforcement Section:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Housing and Civil Enforcement Section, NWB  
Washington, DC 20530  
(202) 514-4713  
TTY (202) 305-1882  
Email: [fairhousing@usdoj.gov](mailto:fairhousing@usdoj.gov)

Because the SCRA covers many topics, the FAQ sections provide answers to SCRA questions specifically related to child support and access/custody issues.

### *Questions and Answers for Custodial Parents*

#### **How do I know if my former boyfriend is still in the military for purposes of the SCRA?**

You can use the Defense Manpower Data Center's (DMDC) Military Verification service to confirm whether someone is in the military. The website will tell you if the person is currently serving in the military. It is available 24 hours a day. See

[www.dmdc.osd.mil/appj/scra/scraHome.do](http://www.dmdc.osd.mil/appj/scra/scraHome.do).

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<sup>39</sup>See [www.justice.gov/crt/about/hce/documents/scra\\_qa\\_5-26-11.pdf](http://www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf). According to the Department of Justice, they are intended to provide the service member with an overview of the SCRA's protections and the kinds of issues that could arise in connection with military service. They do not constitute legal advice.

**(SCRA) Servicemembers Civil Relief Act**

SSN <input style="width: 150px;" type="text"/>	Repeat SSN <input style="width: 150px;" type="text"/>
Last <input style="width: 150px;" type="text"/>	Last <input style="width: 150px;" type="text"/>
Birth Yr <input style="width: 50px;" type="text"/> Month <input style="width: 50px;" type="text"/>	Birth Yr <input style="width: 50px;" type="text"/> Month <input style="width: 50px;" type="text"/>
First <input style="width: 150px;" type="text"/>	
Middle <input style="width: 150px;" type="text"/>	
<input type="button" value="LookUp"/> <input type="button" value="Erase"/>	

Upon clicking the "LookUp" button, based on the SSN and other personal information furnished, the Department will advise you that it does

1. **Not** possess information regarding whether the individual is on active duty, or
2. Possess information indicating that the individual is on active duty.

When you perform a check, based on the Social Security number (SSN) and other personal information you furnished, the system will indicate either that the Department does not possess information regarding the individual or that the individual is in the military. If the individual is on active duty, the system will show his or her branch of service and the beginning date of active duty status. The system shows this information in a signed printable letter format containing the Department of Defense seal. Although the system will provide the information using either a SSN or a Date of Birth (DOB), you need both pieces of personal information to ensure the accuracy of the identified person.

### Questions and Answers for Noncustodial Parents

**Does the SCRA apply to criminal proceedings, such as a criminal nonsupport prosecution?**

No. It only applies to civil proceedings.

**Does the SCRA apply to civil judicial proceedings?**

Yes, the SCRA applies to civil judicial proceedings.

**Does the SCRA apply to administrative proceedings, such as a challenge to income withholding?**

Yes. The SCRA applies to administrative as well as court proceedings.

**What is the effect on a civil action or proceeding?**

Under the SCRA, a service member may obtain a stay of a civil action or proceeding if the following conditions are met:

- The service member is in active military service<sup>40</sup>;
- The request for a stay is by the member's motion or the tribunal's own motion;
- The service member sends the following documents to the court or agency –

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<sup>40</sup> Or is within 90 days after termination of or release from military service. See 50 U.S.C. app. § 522.

- A letter or other communication from the member stating how the member's current military duties "materially affect" his or her ability to appear and stating a date when the member will be available to appear, **and**
- A letter or other communication from the member's commanding officer stating that the member's current military duties prevent the member's appearance and that military leave is not authorized for the member at the time of the letter.

If the member makes an application for a stay and presents the required documents, the tribunal must stay the action for a period of not less than 90 days. The service member may apply for an additional stay.

**Does the fact that a service member is on active duty automatically mean that the member's current military duties "materially affect" his or her ability to appear?**

No. Department of Defense Directive 1327.06, "Leave Procedures" (September 30, 2011), requires that when a service member requests leave to attend paternity or child support hearings, ordinary leave "shall be granted" unless the service member is serving in a contingency operation or "exigencies of service" require that leave be denied.

**What factors would be examples of when my current military duties "materially affect" my ability to appear in a child support proceeding?**

When applying for a stay, the SCRA requires you to state in a letter or other communication how your current military duties materially affect your ability to appear. There is no federal definition of "material effect."

If your ability to initiate or defend the action is impaired because your military duties prevent you from appearing in court or the administrative forum at the designated time and place, or from assisting in the preparation or presentation of your case, then that would be an example of "material effect." For example, your duties may "materially affect" your ability to appear if your station is distant from the courthouse; if you lack sufficient leave that may be used for travel, preparation, and attendance in court; or if you are on an assignment that precludes the granting of leave to take care of your civil legal affairs.

On the other hand, your current military duties may not materially affect your ability to appear in the child support proceeding if, for example,

- The courthouse is in close proximity to the base, and
- You have a reasonable amount of annual leave accrued that can be used in trial preparation and attendance, **or**
- If the child support agency is willing to coordinate telephonic testimony or your participation via SKYPE.

Although the SCRA does not require it, a statement from you about leave availability is probably a good idea. Similarly, although not required by the SCRA, "it would be best if the commander elaborated on the facts [explaining why your current military duties prevent your appearance and why military leave is not authorized] and, if known, set out a date" for your attendance.<sup>41</sup>

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<sup>41</sup> Sec. 3-5, p. 3-26, The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

### **If I seek a stay under the SCRA and the tribunal grants a stay of the proceedings, how long will the stay last?**

If you, the service member, provide the required letters or communications demonstrating material effect, the court or agency must stay the action for a period of not less than 90 days.

You may apply for an additional stay based on the continuing material effect of military duty on your ability to appear. The request for an additional stay may be made at the time of the initial application or any other time where you are unavailable to defend the action. The same documents are required:

- A letter or other communication from you the member stating how your current military duties "materially affect" your ability to appear and stating a date when you will be available to appear, **and**
- A letter or other communication from your commanding officer stating that your current military duties prevent your appearance and that military leave is not authorized for you at the time of the letter.

Granting the additional stay is within the discretion of the court.

### **How does the SCRA apply if a service member is served with a summons, but fails to appear at the proceeding?**

The SCRA provides that, prior to the entry of a default judgment in a case where the defendant member does not make an appearance, the plaintiff must file an affidavit with the tribunal:

- Stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; **or**
- If the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

If it appears that the defendant is in military service, the tribunal may not enter a judgment until after the court appoints an attorney to represent the defendant. If the appointed attorney cannot locate the service member, actions by the attorney in the case do not waive any defense of the service member or otherwise bind the service member.

If a default judgment is entered in the absence of such an affidavit, the service member can later seek to reopen the default judgment. Even if an affidavit is filed, the member can later seek to reopen the default judgment. The tribunal entering the judgment must, upon application by or on behalf of the service member, reopen the judgment for the purpose of allowing the service member to defend the action if it appears that:

- The service member was materially affected by reason of that military service in making a defense to the action; **and**
- The service member has a meritorious or legal defense to the action or some part of it.

### **If a service member is not physically present at the proceeding, can the tribunal still find that he or she "made an appearance"?**

Yes. For example, if the service member has hired an attorney of record in the proceeding or if he or she has filed pleadings in the case, the tribunal will find that the service member has in fact made an appearance. The section of the SCRA regarding default orders (50 U.S.C. app. § 521) would therefore not apply. However, 50 U.S.C. app. § 522 (regarding stay of proceedings when a service member has notice) could be invoked.

### **Am I, as a service member, entitled to appointed counsel under the SCRA?**

If the plaintiff files an affidavit showing that you, the defendant, are in active military service, the tribunal cannot enter a default order until the tribunal has appointed an attorney to represent you. If the tribunal fails to appoint an attorney, the default judgment is still valid but you can later seek to reopen the judgment. In legal terms, the order is voidable.

### **What does the court-appointed attorney do?**

Under the SCRA, if the defendant is a service member, the appointed attorney is primarily responsible for obtaining a stay of the proceedings until the service member can be present. It is important to note that the acts of an appointed attorney are not binding on the service member and that the attorney cannot waive any of the member's legal rights. A service member will be bound only to the acts of an appointed attorney that the service member has authorized. If the service member authorizes the appointed attorney to perform some act before the tribunal, the tribunal may construe those actions as an appearance by the member.

### **My wife divorced me while I was deployed. My kids are gone. She cleaned out my bank account. How can the SCRA help me?**

If you are a service member, were properly served, and the court entered a default order against you without your participation in the proceeding, the SCRA permits you to ask the court to reopen the default judgment. See 50 U.S.C. app. § 521(g). Five conditions must exist in order for you to reopen a default judgment:

- The tribunal must have entered the default judgment during your military service or within 60 days thereafter;
- You made no appearance;
- You or your legal representative filed an application to reopen the judgment within 90 days after the termination of your military service or during military service;
- You were materially affected by reason of your military service in defending the action; **and**
- You have a meritorious or legal defense to the action, or some part of it.

So long as you did not make an appearance, you can file an application to reopen the divorce judgment during your military service or within 90 days after its termination. You will need to show that your military service materially affected your ability to defend the action, and that you have a meritorious or legal defense to the action or some part of it.

If the order is simply a divorce decree, it may be difficult to establish a meritorious or legal defense. However, if the divorce order contains property settlement provisions, a child support order, or access or custody provisions, you may be able to establish that your deployment materially affected your ability to defend the action and that you have a meritorious or legal defense to part of the action.

The SCRA does not address your wife's removal of funds from a bank account. State law and bank regulations will govern who is the account holder(s) and has the ability to withdraw funds.

### **The court entered a money judgment against me, determining my child support arrears to be more than I think they are. Since the judgment was entered in my absence while I was on active duty, can I ignore it?**

No, you should not ignore it. If the default judgment was entered against you during your military service (or within 60 days after termination of or release from such military service), in



violation of the SCRA, it is merely voidable and not void. That means the judgment remains valid, and is enforceable, until you properly challenge it.

There are a number of things to keep in mind with regard to challenging a default judgment.

- Only certain default judgments can be challenged. The default judgment must have been rendered against you during your period of active duty service or within 60 days thereafter. This excludes judgments rendered before you entered military service or more than 60 days after separation from service.
- There is a time limit for challenging the default judgment. You have 90 days from the end of your active service to file an application to reopen the default judgment. If you discover the default judgment more than 90 days after termination of your military service, it is too late to invoke the SCRA.
- You, the service member, must meet three criteria in order to reopen a default judgment.
  - You must not have made an appearance in the case;
  - You must show that your military service materially affected your ability to defend the suit; **and**
  - You must have a meritorious or legal defense to the action or some part of it. In the question raised, that means you must be able to show that your military service affected your ability to defend the suit (for example, you were stationed in Okinawa at the time of the proceeding) and that you have a meritorious or legal defense (for example, the calculation of arrears is incorrect).

To find detailed information about how to invoke your rights under SCRA, contact your nearest Armed Forces Legal Assistance Program office. You can find the nearest location at <http://legalassistance.law.af.mil/content/locator.php>.

### **Do state interest rates on unpaid child support apply to a military member?**

Yes, with an important limitation. If you incurred the support obligation before entry on active duty, the highest interest rate under the SCRA that the state can charge is six percent. See 50 U.S.C. app. § 527. For the SCRA limits to apply, you must provide the creditor with written notice and a copy of the military orders calling you to military service as well as any orders further extending your military service. You must provide the documentation not later than 180 days after the date of your termination or release from military service.

A court may grant a creditor relief from the limitations of this section of the SCRA if, in the opinion of the court, the ability of the member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the service member's military service. The burden of proof is on the creditor. "Normally, the key aspect of the inquiry will be into the servicemember's finances. It will not stop, however, with a review of the servicemember's income. There are times when a person will experience an increase in income because of a mobilization, but the financial situation will worsen. Members activated from the reserve components may find they have two households to maintain and that child care and other expenses have likewise increased."<sup>42</sup>

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<sup>42</sup> Sec. 6-2, p. 6-3, The Servicemembers Civil Relief Guide, JA 260, prepared by the Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia (March 2006).

It is important to note that the six-percent limit does not apply if the noncustodial parent incurred the support obligation after entry into active service. The benefit is only for those debts that existed prior to the service member's entry on active duty.

### **Can a service member seek a stay of enforcement of a child support order due to his or her active duty?**

Yes, pursuant to the SCRA (50 U.S.C. app. § 524), a tribunal may on its own motion, and must upon application of the member, stay (temporarily halt) an attachment or garnishment action against a service member's property, such as a bank account, if it finds that the service member's compliance with the order is materially affected by reason of the member's military service.

This section of the SCRA applies to an action or proceeding against a service member commenced in a court or an administrative agency before or during the period of the member's military service or within 90 days after such service terminates.

If the member's military service existed at the time the tribunal initially entered the judgment, and the tribunal factored that service into its decision, it is unlikely that the tribunal will later grant a stay of judgment enforcement, assuming compliance with all the requirements of the SCRA.

### **Websites with Additional Information about the SCRA**

To find more information about the SCRA and other laws that protect the rights of service members, visit the U.S. Department of Justice site at [www.servicemembers.gov](http://www.servicemembers.gov).

The U.S. Air Force Legal Assistance website has an overview of the SCRA, as well as FAQs and sample form letters, <https://aflegalassistance.law.af.mil/lass/lass.html>.

Military OneSource provides an overview of the basic SCRA protections, [www.militaryonesource.mil/moving?content\\_id=267394](http://www.militaryonesource.mil/moving?content_id=267394).

You may also wish to contact the military legal assistance office nearest you: <http://legalassistance.law.af.mil> (within the continental United States) or [www.militaryinstallations.dod.mil](http://www.militaryinstallations.dod.mil) (worldwide).

The material in this sample letter<sup>43</sup> represents general legal principles. Although the information below was current as of the date it was drafted, the law is continually changing. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

### SAMPLE LETTER INVOKING STAY OF LEGAL PROCEEDING

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

John D. Doe, Rank, Service Branch  
Address  
City, State 00000

The Honorable Judge's Name  
Address  
City, State 00000

Date

RE: Request for Stay of Proceedings  
Docket/Case #: **XXXXXXXXXX**

Dear Honorable Judge's Name:

Please accept this letter as my formal written request for a stay of proceedings, in the case above, as provided in the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. Section 522. I am an active duty servicemember currently stationed overseas at **[Name of Installation]**.

I am unable to attend the scheduled proceeding because **[briefly explain the situation]**. I will return to the states on **[date]** and will be prepared to proceed shortly thereafter on **[date]**. If you will not stay the proceedings until that date, I request that you appoint counsel to represent me after the initial 90-day stay according to the SCRA, 50 U.S.C. App. Section 522.

Please find the attached letter from my unit commander.

If you have any questions or require any additional information, you may contact me, in writing, at the address listed above.

Sincerely,

John D. Doe, Rank, Service Branch

Attachment:  
Commander's Letter

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<sup>43</sup> This sample letter is from the Air Force Legal Assistance website:  
<https://aflegalassistance.law.af.mil/lass/lass.html>

The material in this sample letter<sup>44</sup> represents general legal principles. Although the information below was current as of the date it was drafted, the law is continually changing. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

### **SAMPLE LETTER RE: 6% INTEREST CAP**

John D. Doe, Rank, Service Branch  
Address  
City, State 00000

Name of Creditor  
Address  
City, State, Zip

Date

RE: Limitation of Interest  
Case #: **XXXXXXXXXX**

Dear Sir or Madam:

This letter is to advise you that I have been ordered to active duty service with the United States Armed Forces. As a result of my military service, I have lost my civilian employment income. I incurred the above referenced child support obligation prior to entry on active duty. My entry into military service has materially affected my ability to make payments.

I entered active duty on \_\_\_\_\_ (date), and am presently on active duty assigned to \_\_\_\_\_ (unit). The Servicemembers Civil Relief Act of 2003, 50 U.S.C. Appendix, Section 527, sets a six percent per annum ceiling on interest charges (including service charges, renewal charges and fees) during the period of a servicemember's military service for obligations incurred prior to the date of entry into active duty when the active duty materially affects the ability to pay.

Since entering active duty, I have experienced [a decrease in salary, an increase in expenses] adversely affecting my ability to pay. Thus, I am requesting an adjustment of the interest on my unpaid child support to reflect the statutory six percent rate. This rate became effective upon my receipt of the order to report for military service, which was on \_\_\_\_\_ (date). See attached copy of the military orders calling me to military service and any orders further extending military service. Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn. The interest over six percent must be forgiven, not just deferred, and my monthly payments must be reduced by the reduction in the interest rate.

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<sup>44</sup> This sample letter is based on one appearing on the Air Force Legal Assistance website: <https://aflegalassistance.law.af.mil/lass/lass.html>. It has been adapted for a child support order.

Please contact me at \_\_\_\_\_(phone or address) with a [revised payment schedule/revised calculation of child support arrears]. Thank you for your understanding and support in this matter.

Sincerely,

John Doe, Rank, Service Branch

**\*\* ENCLOSE A COPY OF YOUR CURRENT LEAVE AND EARNINGS STATEMENT (LES) AND A COPY OF YOUR ORDERS THAT (1) ACTIVATED YOU AS A RESERVIST OR (2) BROUGHT YOU ON ACTIVE DUTY.**

### **IX. Access, Visitation, Custody, and Parenting Time**

Whether or not parents stay together, they are parents for life and their children depend on them. Parents who have a healthy relationship with each other are better able to cooperate and work together for their child's emotional and financial well-being.

#### **Contribution of Child Support Program to Healthy Family Relationships**

The child support program has played a critical role in supporting healthy marriage and couples skill-building programs. Since 2002, the federal Office of Child Support Enforcement (OCSE) has funded projects and grants through which over 15,000 couples and individuals have received healthy marriage, couples skill-building, and child support education.

#### **Relationship between Child Support and Access/Visitation**

Children need both financial and emotional support from their parents. Recognizing the importance of having both parents involved in a child's life, most states factor visitation and custody arrangements into their child support guideline calculations when establishing the appropriate amount of child support.

Custodial parents cannot legally deny visitation rights because noncustodial parents have failed to pay child support. Similarly, noncustodial parents cannot legally withhold child support because custodial parents will not allow them to visit the children. On the "ground" level, however, parents often link the two issues through their behavior. Where the parental relationship is poor, it can lead parents to withhold child support or block access and visitation. In contrast, noncustodial parents who have good relationships with their children may feel a greater commitment to providing for their needs, including paying child support consistently.<sup>45</sup>

Research suggests that where there is healthy parental contact there is also often improved child support payment.

- A 2002 HHS Inspector General study found that a noncustodial parent's participation in access/visitation mediation resulted in increased access rights of the noncustodial parent, visitation by the noncustodial parent, and support payments by the noncustodial parent. The study estimated that monthly child support payments went up by \$56 per case after receiving mediation services.<sup>46</sup>
- According to a 2007 Census Bureau report, a majority (81.7 percent) of the custodial parents due child support payments in 2007 had arrangements for joint child custody or visitation privileges with the noncustodial parent. Among this group, 78.3 percent received at least some child support payments in 2007. Of the custodial parents due child

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<sup>45</sup> Paul Amato. "The Impact of Family Formation Change on the Cognitive, Social and Emotional Wellbeing of the Next Generation." *The Future of Children* 15:2 (2005), 75-96.

<sup>46</sup> Department of Health and Human Services, Office of the Inspector General. "Effectiveness of Access and Visitation Programs." 2002. OEI-05-02-00300. See <http://oig.hhs.gov/oei/reports/oei-05-02-00300.pdf>.

support who did not have either joint custody or visitation arrangements, 67.2 percent received child support payments.<sup>47</sup>

- Another study found that parents who were behind in their child support and received parenting education nearly doubled their child support payments during the 12 months following program participation.<sup>48</sup>

### **Access/Visitation Services Provided by Child Support Program**

Child support agencies are required to provide child support services. In certain circumstances, they are also required to provide spousal support enforcement services. There is currently no legal requirement, however, that child support agencies provide access/visitation services, and therefore most do not directly provide such services.

As noted earlier, all states currently participate in the federal Access and Visitation formula grant program, which is funded separately from the child support program by 42 U.S.C. § 669(b). The AV grant program provides states with funds to administer programs to support and facilitate noncustodial parents' access to and visitation with their children. Services provided through the grants include mediation (both voluntary and mandatory), counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision, and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangement. Services vary among the states. In some states, the child support agency participates in the coordination of services under the grant.

### **Resolution of Parenting Time Issues**

Sometimes parents need help resolving parenting time issues. Some states have used federal Access and Visitation grant money to fund mediation projects through the court, the child support agency, or other community organizations. Local jurisdictions also often fund dispute resolution or mediation services through the courts.

The service member has a number of additional resources available to assist with access/visitation issues. Some are free, such as those offered through military legal assistance offices, military lay advisors and counselors, and non-military advocacy groups. Usually these resources provide counseling and mediation help. Military legal assistance officers do not represent service members in state court.

The service member may also hire a private lawyer to help resolve access and custody issues, and to represent the member in any legal proceeding. There are also *pro se* (self-help) options.

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<sup>47</sup> U.S. Census Bureau. "Custodial Mothers and Fathers and Their Child Support: 2007". [www.census.gov/prod/2009pubs/p60-237.pdf](http://www.census.gov/prod/2009pubs/p60-237.pdf)

<sup>48</sup> Center for Policy Research. Child Access and Visitation Programs: Participant Outcomes. 2006.



## **Definition of Terms**

### **Access, Visitation, or Parenting Time**

States use many legal terms to refer to the time a child spends with each parent. These terms include “access,” “visitation,” and “parenting time.” Parents can agree upon parenting time in a parenting plan or the court can establish parenting time in its order.

### **Joint Custody**

Joint custody is a legal term that can refer to joint legal custody, joint physical custody, or both. Parents with joint legal custody each have authority to make decisions, such as seeking medical treatment, that impact their child. Parents with joint legal custody should consult with each other, where possible, before making major decisions affecting the child’s well-being.

Parents with joint physical custody have an agreement or a court order providing a specified level of care-taking time between each parent and child. Joint physical custody does not mean an exact division of the child’s time with each parent. However, it differs from an arrangement where one parent has sole physical custody and the other parent has visitation or access. In a joint physical custody arrangement, the child spends substantial residential time with each parent. The court most typically awards joint physical custody where the parents agree to the arrangement.

In joint custody cases, usually the parents agree upon, or the court determines, the child’s residence for such purposes as school.

## **Applicable Laws and Regulations**

### **State Laws**

State law varies with regard to custody issues. Some states leave custody totally within the court’s discretion based on the best interest of the child. Some states have a presumption of joint physical custody when the parents are in agreement. A few states claim to have a presumption of joint custody in all cases, which can be challenged based on evidence.

You may have heard the myth that a military parent cannot have primary custody of a child. This is simply not true. Each state has laws regarding custody, and many states require separating or divorcing parents to develop a parenting plan that is flexible enough to meet the job demands of each parent as well as the needs of the child. The Commissioners on Uniform State Laws recently completed a Deployed Parents Custody and Visitation Act, which it hopes state legislatures will enact to address custody and visitation issues that arise when parents are deployed in military or other national service.

### **Military Regulations and Policy**

Each military branch has regulations and/or policy concerning access and custody. In the absence of a court order, the service member must comply with military policy. Where there is a court order, military policy requires compliance with the order. The contents of a court order may be the basis for a lawful order from the member’s commander.

### **Custody Proceedings and the Servicemembers Civil Relief Act**

As noted earlier, the Servicemembers Civil Relief Act (SCRA) provides for an automatic stay of civil administrative and judicial matters for at least 90 days **upon a proper request from the service member**. If a member receives notice that a state proceeding related to custody or access/visitation has been initiated against him or her during a period of military service or within 90 days thereafter, the member has the right under the SCRA to request that the action or proceeding be stayed for a period of at least 90 days. Remember that protection under the SCRA is not automatic. The member must produce a statement showing how his or her military duties materially affect the member's ability to appear and state a date when the member will be available to appear. The member must also produce a statement from his or her commanding officer stating that the member's current military duty prevents his or her appearance and that military leave is not authorized for the member at the time of the statement. The court must grant the initial request for a stay upon production of the required statements.

The member also has the right to request that the court extend such a stay if necessary. The granting of an additional stay beyond the mandatory 90-day period is within the discretion of the court. If the member's request for an extension of a stay is denied, then the court must appoint an attorney to represent the member in the action or proceeding.

Depending upon the issues in the custody or visitation proceeding, the service member may wish to proceed with the hearing rather than delay it. For example, a member who needs an adjustment to visitation rights may elect to request electronic or telephonic testimony rather than allow a delay to affect the situation of the child. Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) permits an individual to testify by telephone, audiovisual means, or electronic means.

It is important for a service member to seek legal advice about invoking the protections of the SCRA as soon as possible after learning of a legal action. He or she may contact the nearest Armed Forces Legal Assistance Program office. See <http://legalassistance.law.af.mil/content/locator.php>. The member may also seek help from a private attorney.

### **Family Care Plan**<sup>49</sup>

A Family Care Plan is a "blueprint" that spells out how the military member's children or incapacitated adults will be cared for in the member's absence – whether the member is deployed, on temporary duty, or otherwise unavailable because of military obligations. It allows for a smooth transition of responsibilities to a spouse or other caregiver when a service member must leave for short or long periods of time. It also assures commanders that the members of the unit will be ready to accomplish their missions with little or no disruption by family issues.

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<sup>49</sup> The information on Family Care Plans is from an article entitled "Preparing a Family Care Plan," developed by Ceridian, which is no longer available. Another resource is "Creating a Family Care Plan for Caregivers," available on the website of Military OneSource. See [www.militaryonesource.mil/phases-new-to-the-military?content\\_id=267568](http://www.militaryonesource.mil/phases-new-to-the-military?content_id=267568).

### **Who Must Have a Family Care Plan?**

Department of Defense Instruction 1342.19 spells out when a Family Care Plan is required. According to that directive, the following members within all active and reserve components and the DoD Civilian Expeditionary Workforce must have a Family Care Plan:

- Single parents with custody of children under 19 years of age.
- Dual military couples with custody of children under 19 years of age. (They must develop a single Family Care Plan that both members sign.)
- Married service members who have custody or joint custody of a child whose noncustodial biological or adoptive parent is not the current spouse of the service member.
- Service members who are solely responsible for the care of children under the age of 19 or adult family members unable to care for themselves. This category includes situations where a service member's spouse is injured, chronically sick, or otherwise unable to care for family members or other dependents.
- Service members who, for any other reason, are primarily responsible for dependent family members. This category includes service members with spouses who speak little or no English or are unable to drive or otherwise gain access to basic resources such as medical care and food.
- Service members who do not fit into any of these categories may also want to develop a Family Care Plan.

Each service has a corresponding directive that explains that branch's guidelines. A member's commander or supervisor can tell the member the resources that are available to help the member create a Family Care Plan that meets his or her service's specific requirements. These resources include installation family centers and legal assistance offices.

### **When Should a Member Make a Family Care Plan?**

When members enter any of the required categories above, they should contact their supervisor or commander about creating a Family Care Plan. Active-duty members have up to 60 days to submit the final Family Care Plan. Reserve component service members must submit their final Family Care Plan within 90 days of alert notification.

It is important that the member update the Family Care Plan when there is a change in family circumstances that results in the member becoming responsible for the logistical, medical, or financial support of another person. This is especially true when a child support or visitation/custody order is issued. At a minimum, the member must annually provide written certification to his or her commander that the Family Care Plan is current.

### **What Must be in a Family Care Plan?**

The requirements for a Family Care Plan may vary somewhat depending on the service or the member's particular circumstances. However, all plans must contain the following basic information:

- The name and contact information of the member's caregiver and alternate caregiver. The caregivers selected must be non-military, at least 21 years of age, and capable of caring for themselves and the member's family. The member must sign a statement certifying that the caregiver has accepted responsibility for the care of the member's family

members. The statement must maintain that the member has provided the caregiver with necessary information and copies of all documents required to be included in the Family Care Plan, such as power(s) of attorney. Note: The existence of a custody order will affect whom the member can designate as caregiver. See discussion below.

- Provisions for short- and long-term absences.
- Financial arrangements that ensure the self-sufficiency and financial security of the family members including documentation of allotments and other financial resources and descriptions of how they will be used. The member must also include a copy of his or her power(s) of attorney with the plan. Note: The existence of a child support order will affect this information.
- Logistical arrangements for transporting family members and/or caregivers to a new location. If the member has different caregivers for short- and long-term absences, the member's plan should address transporting family members from a short-term caregiver to a long-term caregiver in the case of deployment (or other lengthy separation) with little or no notice.
- The name of any noncustodial biological or adoptive parent not named as the caregiver, along with that parent's consent to the Family Care Plan. NOTE -- If the parent will not consent to the third party caregiver, the member must explain the absence of such consent in writing and acknowledge the availability of legal counsel to discuss the associated risks and the best possible course of action (including the possibility of incorporating the family care plan into a temporary order by a court of competent jurisdiction).
- The name of the person the member designates to have temporary responsibility for the member's dependent family members in the event of the member's incapacity or death. If the member has named someone in his or her will to have custody of his or her children in the event of death, the Family Care Plan should still designate someone to be responsible until permanent custody can be established legally. It may or may not be the same person as the caregiver.

### **What are Additional Issues to Address?**

The Family Care Plan may also include specific instructions on arrangements for childcare, educational requirements, health care, and family activities. It may specify the locations of important documents, such as wills, insurance papers, and birth certificates. It may also include arrangements for communication between the member and his or her children during times of short-term and long-term separation.

### **Relationship between a Family Care Plan and a Custody Order**

Although a Family Care Plan is a very useful tool for addressing parenting issues, it does not take the place of a court order related to custody or access/visitation. Therefore, despite the presence of a Family Care Plan, either parent may seek a court order concerning access/visitation and/or custody. Sometimes the process of preparing the Family Care Plan can highlight issues that might warrant seeking a modification of any existing child support or child custody order. If there is a conflict between the Family Care Plan and the court order, the order prevails.

On the other hand, the presence of a court order does not eliminate the need for a Family Care Plan. If a person falls within the required categories of individuals under DoD Instruction 1342.19, he or she must prepare a Family Care Plan. The member should ensure that the Family

Care Plan is consistent with the court order; the member may wish to incorporate certain provisions of the court order into the Family Care Plan.

Even if a member is not required to prepare a Family Care Plan, it may still be beneficial to do so. A Family Care Plan or a non-military Parenting Plan can address the day-to-day parenting issues that most court orders do not address. For example, co-parenting couples may find it helpful to develop a plan for handling everyday childrearing issues like extracurricular activities, religious instruction, tattoos, or piercings.

In addition to military resources, a member may wish to contact his or her local court for information on child access, parenting plans, and child access/custody mediation services.

### *Questions and Answers for Custodial Parents*

**My ex-husband has visitation under our divorce decree. But as an enlisted soldier, he is required to live on base and is unable to exercise his overnight visitations. He doesn't have enough income to rent a hotel room during the visitations. He asked if I would agree to a change in custody. Should I agree to it? If he is named as the custodial parent, he says he can get an exemption from living on post.**

If you have a court order naming you as the primary residential parent and providing your ex-husband with access/visitation at certain time periods, it is important that you seek legal advice before agreeing to a change of those terms. There are significant legal ramifications to a change in custody. It will affect who has primary responsibility for care of the child. It will also affect who has the duty to pay child support.

**We are separated but do not have any court orders. Can we resolve custody through a Family Care Plan?**

No. Although a Family Care Plan can designate the caregiver when the member experiences a short-term or long-term absence, it does not take the place of a court order. You can both consent to the terms of the Family Care Plan, but you should not consider the Plan as “resolving” custody in the sense of an enforceable order. In other words, the Family Care Plan will not protect your rights the way a court order will. State courts have the overriding authority to determine child custody arrangements, in spite of what you have in a Family Care Plan.

**I am active duty military. My ex-spouse and I have two children. If I have custody under a court order, can I designate my new spouse as the caregiver of our children while I am deployed?**

If you have sole physical custody, when you deploy you can't decide on your own to whom you want to transfer custody. A DoD directive requires you to try to notify the noncustodial biological or adoptive parent (in your case, your ex-spouse) as far in advance as practicable of your impending deployment. It also requires you to try to obtain the noncustodial parent's consent to any family care plan that would leave the child in the custody of a third party. If the noncustodial parent does not agree or there is going to be any conflict, you can ask the court to grant a temporary order designating another person to have custody of the child. In some states, you may need to hire a private attorney for legal assistance in filing the action. Only the court with jurisdiction over the civil family matters can make the temporary order. A Military Family Care Plan cannot legally change the terms of a court order. Depending upon the language in the

order, once the deployment ends, the temporary order ends and the parties will be governed by the terms of the original order that was in place prior to the temporary order.

**I am active duty military and the custodial parent under our divorce decree. My former spouse has agreed to my designation in my Family Care Plan of my mother as the caregiver of our child. How can I make sure that my mother receives the child support paid by my former spouse while I'm deployed?**

Depending upon the state, the State Disbursement Unit will continue to send payments to you by check, through a debit card, or through a direct deposit to your bank account, unless it receives an order to the contrary. You may make private arrangements with your bank to allow your mother access to the debit card or bank account in order to reach the support payments. If the deployment is going to be long-term, you may want to ask the court or agency that issued the order to temporarily redirect or assign payments to your mother while she has temporary custody of your child. Once you return from your deployment, you need to make sure the temporary order is terminated and that terms of the original order are reinstated.

**How can I be involved in my child's life while I'm deployed?**

There are many ways to stay connected with your child during deployment, including sending letters, pictures, and video and audio greetings. The military has excellent on-line resources available. In addition to those available through each active duty service branch, you may also wish to review those available through Military OneSource, the National Guard Family Program, and the Reserve Component Resource Center. See also [www.militarychild.org/public/upload/files/Deployment.pdf](http://www.militarychild.org/public/upload/files/Deployment.pdf).

The person caring for your child during deployment can support the child's relationship with you while you are deployed by following a consistent plan of communication. This can be detailed in a court order, outlined in the Family Care Plan, or agreed to in a separate parenting plan.

**Do I need to do anything about my custody order when I return home from a period of deployment?**

Once you are no longer deployed, it is important to notify the child support agency and court of your new address. If there was a temporary custody order in place during deployment, that order usually terminates when the deployment or temporary duty concludes and terms of the original order apply. In some states, it may be necessary to return to court to terminate the temporary order.

### *Questions and Answers for Noncustodial Parents*

**I can't find my child and the custodial parent. What can I do?**

One of the services of the federal Office of Child Support Enforcement (OCSE) is helping to locate children in certain cases. Federal law allows state child support programs to use the Federal Parent Locator Service (FPLS) in parental kidnapping or child custody cases (including cases in which the custodial parent has hidden the child in violation of a visitation order) if:

- A civil action to make or enforce a custody order has been filed in the state courts;
- A criminal custodial interference case is being investigated or prosecuted.

Requests for information from the FPLS in custody and parental kidnapping cases must come from a state child support agency. They cannot come directly from an individual parent. Find



state child support agency telephone numbers, addresses, and web site data for state and tribal child support agency website links on OCSE's web site at [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts). To cover processing costs, states may collect a fee from people using the service.

**I'm the noncustodial parent. I love my kids. I pay my child support. About half the time when I go to pick them up for my weekend, my ex-wife has made other plans for them. It's not fair that the state will enforce my child support obligation but not do anything about my right to see my kids.**

It is in your children's best interest that you continue to spend time with them. Although the child support program currently lacks authority to enforce visitation, many state or local governments have developed procedures for enforcing visitation orders. In addition, the federal government has made funding available to states for developing model programs to ensure that children will be able to have the continuing care and emotional support of both parents. Check with your local family court, clerk of court, or child support agency to see what resources are available to you and to find out about laws that address custody and access/visitation/parenting time.

**If I am the noncustodial/nonresidential parent under a court order, can I designate someone else to exercise my visitation rights while I'm deployed?**

In some states, when the noncustodial parent deploys, state law allows that parent to designate a person who will temporarily exercise the parent's visitation. The court must approve the designated person, using a "best interest of the child" standard.

**We are separated but do not have any court orders. Can we resolve custody through a Family Care Plan?**

Although a Family Care Plan can designate the caregiver when the member experiences a short-term or long-term absence, it does not take the place of a court order. You can both consent to the terms of the Family Care Plan, but you should not consider the Plan as "resolving" custody in the sense of an enforceable order. State courts have the overriding authority to determine child custody arrangements, in spite of what you have in a Family Care Plan.

**How can I be involved in my child's life while I'm deployed?**

It is hard to be away from your children. However, there are many ways to stay connected with your child during deployment, including sending letters, pictures, and video and audio greetings. The military has excellent on-line resources available. In addition to those available through each active duty service branch, you may also wish to review those available through Military OneSource, the National Guard Family Program, and the Reserve Component Resource Center. See also [www.militarychild.org/public/upload/files/Deployment.pdf](http://www.militarychild.org/public/upload/files/Deployment.pdf). If you are a father, you may be interested in *Deployed Fathers & Families: Guide for Military Personnel*, published by the National Fatherhood Initiative, <http://fatherhood.org/page.aspx?pid=516>.

The residential parent or caregiver can support the child's relationship with you while you are deployed by following a consistent plan of communication. This can be detailed in a court order, outlined in the Family Care Plan, or agreed to in a separate parenting plan.



**Do I need to do anything about my custody order when I return home from a period of deployment?**

Once you are no longer deployed, it is important to notify the child support agency and court of your new address. If there was a temporary custody order in place during deployment, that order usually terminates when the deployment or temporary duty concludes and terms of the original order apply. In some states, it may be necessary to return to court to terminate the temporary order.

**After I return from deployment, am I allowed to make up lost visitation/parenting time?**

You may wish to work with the other parent to come up with a schedule for reconnecting with your child. In some cases, it may be appropriate to ask the court to consider ordering additional periods of visitation or residential time. The court will consider what is in the best interest of the child.

## **APPENDICES**

## Appendix 1

### Definition of Terms

*Acknowledgment of Paternity* – a voluntary recognition by a man, or both parents, that the man is the father of a child, usually provided in writing in an affidavit or a similar sworn statement. A notarized acknowledgment of paternity that is signed by both parents constitutes a legal determination of paternity.

*Adjudication* – a legal determination by a court or an administrative agency.

*Administrative procedure* – the method by which an executive agency makes and enforces support orders. It is usually less formal than a judicial procedure, which is usually held in a courtroom, and in which judicial officers make and enforce support orders.

*Arrears/arrearage* – child support payments that are past due.

*Child support agency* – an agency that exists in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands; as well as in more than 50 Native American tribes. It is often called the “IV-D” (pronounced “Four-D”) agency because the federal legislation that established the child support program is in Title IV, Part D of the Social Security Act. The list of state and tribal child support agencies is available at [www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts](http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts).

*Child Support Program* – the federal/state/local and tribal partnerships established under Title IV, Part D of the Social Security Act to locate parents; establish paternity; and establish, modify, and enforce child support orders.

*Consent agreement* – a voluntary agreement or order that both parties enter into and sign.

*Consumer Credit Protection Act (CCPA)* – the federal law that limits the amount that may be withheld from a person’s earnings for child support and commercial debt.

*Continuing Exclusive Jurisdiction (CEJ)* – the legal doctrine that limits the authority of a state or tribe to modify another state’s or tribe’s support order. The doctrine is essential to ensuring only one support order is in effect at any one time. A tribunal has CEJ if it has issued a support order, and one of the parties or a child resides there. If a state has CEJ, it is the only state with jurisdiction to modify the support order, unless there is a written agreement between the parties for another jurisdiction to modify the order.

*Controlling Order* – the order that governs the amount of current support that an obligor must pay for a child.

*Custodial parent* – the person who has primary care, custody, and control of a child. Some states use the term “residential parent.” Some states use the term “custodial party” or “caretaker” if the child resides with a relative, legal guardian, or some other legally responsible adult. When parents are separated or divorced, the court order usually designates which parent is the custodial parent.

*Custody order* – a legal determination that establishes who has care and control of a child, and with whom the child shall live. State and tribal laws vary with regard to custody issues (such as joint custody, sole custody, shared custody).

*Default* – the failure of a defendant to appear, or file a timely answer or response, in a civil case after the person has been served with a summons and complaint.

*Default judgment or default order* – a decision that a tribunal makes when the defendant fails to respond or appear after proper notice.

*Defendant* – the person against whom a civil or criminal proceeding is begun. The defendant in a civil proceeding is also called the “respondent.”

*Disposable pay or disposable earnings* – wages remaining after subtracting mandatory deductions such as: federal, state, and local taxes; FICA and Medicare taxes; unemployment and workers’ compensation insurance; state employee retirement system contributions; and additional deductions mandated by state law.

*Duration of support* – the period during which a parent has an obligation to provide financial support for a child. States have varying laws regarding duration of support.

*Electronic funds transfer (EFT)* – the automated transfer of money from one bank account to another or to a child support agency.

*Enforcement* – the process of obtaining payment of a child support or medical support obligation. The most effective enforcement remedy is income withholding. Other enforcement remedies include federal and state income tax refund offset, license suspension, and seizure of bank accounts.

*Establishment* – the process of determining parentage or obtaining a child support order.

*Federal Case Registry (FCR)* – a national database that maintains key information on IV-D cases and orders, as well as on most non-IV-D child support orders. The FCR receives this information on a daily basis from the State Case Registry that is located in every state. The FCR matches the information with employment information contained in the *National Directory of New Hires* (NDNH), and reports any matches to the appropriate states to help with case processing. The FCR and the NDNH are part of the Federal Parent Locator Service (FPLS) that is operated by the federal Office of Child Support Enforcement.

*Federal Income Tax Refund Offset* – an enforcement remedy under which the Internal Revenue Service intercepts federal income tax refunds of parents who owe child support and sends the money to the federal Office of Child Support Enforcement (OCSE). OCSE in turn sends the money to the appropriate state child support agencies to be applied to the parent’s support arrears.

*Federal Office of Child Support Enforcement (OCSE)* – the federal agency responsible for oversight of the Title IV-D child support program. It writes regulations that govern the state child support agencies, which are responsible for day-to-day processing of child support cases. OCSE also operates the Federal Parent Locator Service, which includes the Federal Case Registry and

the National Directory of New Hires. OCSE is part of the Administration for Children and Families, within the Department of Health and Human Services.

*Federal Parent Locator Service (FPLS)* – A group of data sharing, collection and enforcement systems and telecommunication networks operated by the federal Office of Child Support Enforcement (OCSE) that supports the core mission of the child support program: location of parents, establishment of paternity, establishment of fair and equitable child support obligations, modification of support, and enforcement of support including such measures as income withholding. The FPLS includes the Federal Case Registry (FCR) and the National Directory of New Hires (NDNH). The FPLS also helps prevent improper payments in federal and state benefit programs. There are regulations that govern who is authorized to receive information from the FPLS, what are the authorized purposes for receipt of information, and what type of information may be provided.

*Federally Assisted Foster Care* – a federal/state/tribal program that provides financial support to people, families, or institutions raising children who are not living with their parents.

*Financial Institution Data Match (FIDM)* – a quarterly data match to identify financial accounts that belong to parents who owe past-due child support.

*Finding* – the formal determination by a court or an administrative agency that has a legal effect.

*Full Faith and Credit* – the legal doctrine under which a state or tribe must honor a valid order or judgment entered by another state or tribe.

*Garnishment* – an enforcement remedy under which part of a person's wages and/or other type of income is withheld for the payment of a debt. Some states refer to a garnishment as a “withholding” or an “attachment.”

*Genetic testing* – DNA analysis of inherited factors (usually by tissue or saliva test) of the mother, child, and alleged father that can help prove or disprove that a particular man fathered a particular child.

*Guidelines* – the numerical formulas that states and tribes use to set child support obligations. Support guidelines are based on the income of the parent(s) and other factors as determined by state and tribal law. Tribunals must use guidelines to determine the child support amount, unless there is a written finding that applying the guidelines would be inappropriate in a particular case.

*IV-D (pronounced “Four-D”) Child Support Program* – the federal/state/local and tribal child support programs established under Title IV-D of the Social Security Act.

*Immediate income withholding* – automatic deductions from a noncustodial parent’s income that start as soon as the order establishes a support obligation and the employer receives notice of the order.

*Judgment* – the legally binding decision by a tribunal on the rights and claims of the parties to an action. A judgment may also be called a “decree” or an “order.”

*Jurisdiction* – the legal authority that a court or an administrative agency has over particular persons, certain types of cases, and in a defined geographical area.

*Legal father* – a man recognized by law as the male parent.

*Lien* – a legal claim upon property to prevent its sale or transfer until a debt is satisfied.

*Long arm statute* – a law that permits a state or tribe to claim personal jurisdiction over a nonresident. There must be some meaningful connection between the nonresident and the state or tribe that is asserting jurisdiction in order for a court or an agency to reach beyond its normal jurisdictional border.

*Medicaid program* – a program that provides federally funded medical support for low-income families.

*Medical support* – Health care coverage provided to a child pursuant to a support order. It includes insurance coverage; cash medical support, including payment of health insurance premiums; and payment of health care bills (including dental and eye care). Indian Health Service and TRICARE are acceptable forms of medical support.

*National Directory of New Hires (NDNH)* – a national database containing new hire and quarterly wage information from every State Directory of New Hires and federal agency. It also contains Unemployment Insurance data. OCSE maintains the NDNH as part of the expanded Federal Parent Locator Service.

*Noncustodial parent* – the person who does not have primary care, custody, and control of a child.

*Obligation* – the duty of support that a parent or spouse owes to a child or spouse. A support order usually expresses that obligation as an amount of money that the parent or spouse must pay as financial support or medical support for the child(ren) or spouse.

*Obligee* – the person to whom a duty of support is owed; the person who receives support payments. The obligee is often also called the “custodial parent.”

*Obligor* – the person who has the obligation to provide financial support or medical support; the person who is making support payments. The obligor is often also called the “noncustodial parent.”

*Offset* – the amount of money taken from a parent's state or federal income tax refund to satisfy a child support debt.

*Order* – the legally binding decision by a tribunal on the rights and claims of the parties to an action. An order may also be called a “decree” or “judgment.”

*Parentage* – the legal mother-child relationship or father-child relationship as determined by state or tribal law.

*Paternity judgment* – the legal determination of fatherhood.

*Perfecting a lien* – the procedure a creditor follows to give other creditors notice of his or her lien against certain property. It protects the creditor's interest in the property. The method for perfecting a lien varies among the states. Often, creditors ‘perfect’ a child support lien against

real property by recording terms of the support order or the amount of arrears in the county or state registry of deeds or equivalent office.

*Personal Jurisdiction* – a tribunal’s legal authority over a person. A tribunal must have personal jurisdiction to establish a support order.

*Petitioner* – the person who files a civil action. The petitioner is also called the “plaintiff.”

*Plaintiff* – the person who files a civil action. The plaintiff is also called the “petitioner.”

*Presumption of paternity* – a rule of law under which evidence of a man's paternity (such as genetic test results) creates a legal inference that the man is the father of a child. A rebuttable presumption is one that can be overcome by evidence that the man could not be the child’s father (such as evidence of the man’s sterility). An irrebuttable or conclusive presumption is a final determination of the issue; a court will not allow any contrary evidence to be presented.

*Probability of paternity* – the statistical likelihood that the alleged father is the biological father of the child, as indicated by genetic test results.

*Pro se* – a procedure in which a party represents himself or herself in a legal matter.

*Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)* – federal legislation passed in 1996 that is also known as Welfare Reform. In addition to establishing time limits and work requirements for recipients of public assistance, it required states to enact a number of child support laws in order to receive federal funding. This legislation created the New Hire Reporting program and required the establishment of State and Federal Case Registries.

*Public assistance* – money granted from the state, tribal, or federal government to a person or family for living expenses. Eligibility is based on need and varies among programs. Applicants for certain types of public assistance (for example, Temporary Assistance for Needy Families or TANF) are automatically referred to their state or tribal child support agency for child support services. This allows the state or tribe to seek support payments from the noncustodial parent so the custodial party can become more self-sufficient and the state or tribal government can recoup some of its public assistance expenditures.

*Respondent* – the person against whom a civil action is filed. The respondent is also called the “defendant.”

*Retroactive support* – support for a period prior to the entry date of the order. For example, in paternity cases, state law may require retroactive support to the date of the child’s birth. Some states have laws requiring support retroactive to the date the legal action was filed.

*State Directory of New Hires* - a database maintained by each state that contains information employers report about new hires. Employers must report certain required information within 20 days of hiring an individual. The state sends the data to the National Directory of New Hires.

*State Disbursement Unit* – the single entity in a state that receives and distributes child support payments.



*State Parent Locator Service (SPLS)* – a service operated by state child support agencies to locate parents in order to establish paternity, and to establish and enforce child support obligations. Tribes can access the information through an agreement made with a state.

*State Workforce Agencies (SWAs)* – state agencies that provide Quarterly Wage and Unemployment Insurance Compensation data to the National Directory of New Hires.

*Statute of limitations* – the cutoff point on the length of time a person has to take a particular legal action. State and tribal laws vary on the statute of limitations for collecting child support arrears.

*Stay* – an order by a tribunal that suspends all or some of the proceedings in a case.

*Temporary Assistance for Needy Families (TANF)* – time-limited public assistance payments made to poor families, based on Title IV-A of the Social Security Act. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced Aid to Families with Dependent Children (AFDC) with TANF. The TANF program provides parents with job preparation, work, and support services to help them become self-sufficient. Applicants for TANF benefits are automatically referred to their state or tribal child support agency for child support services. This allows the state or tribe to seek support payments from the noncustodial parent so the custodial party can become more self-sufficient and the state or tribal government can recoup some of its public assistance expenditures.

*Tribal IV-D Program* - A child support program administered by a federally recognized Indian tribe or tribal organization and funded under Title IV-D of the Social Security Act.

*Tribal Organizations* – organizations run by Native American tribes.

*Tribunal* – a court, an administrative agency, or a quasi-judicial entity authorized to establish, enforce, or modify support orders, or to determine parentage.

*Uniform Interstate Family Support Act (UIFSA)* – a law that every state has enacted, which provides a process for establishing, enforcing, and modifying support obligations in cases where the parents live in different jurisdictions. Tribes are not required to enact UIFSA.

*Visitation* – a term for the time a noncustodial parent spends with his or her children. States may also use the term “access” or “parenting time.” Parents can agree upon parenting time in a parenting plan or the court can establish parenting time in its order.

*Wage withholding* – a procedure by which automatic deductions are made from a person’s earnings or other income to pay a debt such as child support. Wage withholding may also be called “income withholding,” “income attachment,” “income assignment,” or “garnishment.”

### Appendix 2

#### List of Websites Used in this Publication

The websites listed here were current on the date of publication, but may have changed since then. All but one of the links direct you to another federal agency. One is a link to a nonprofit organization. We are not endorsing or recommending the organization, but we believe some of its website content may be relevant to or useful for military members and their children. OCSE/ACF is not responsible for the contents of any "off-site" web page referenced in this document.

Links are listed alphabetically by the title of the publication or by the name of the federal agency.

Website	Link
Affidavit in Support of Establishing Paternity, Sample Form	<a href="http://www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity">www.acf.hhs.gov/programs/css/resource/affidavit-in-support-of-establishing-paternity</a>
Application for Former Spouse Payments from Retired Pay, DD Form 2293, February 2008	<a href="http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf">www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2293.pdf</a>
Application for Identification Card/DEERS Enrollment, DD Form 1172	<a href="http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf">www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf</a>
Basic Allowance for Housing (BAH)	<a href="http://www.defensetravel.dod.mil/site/bah.cfm">www.defensetravel.dod.mil/site/bah.cfm</a>
<i>Child Support Handbook</i> , 2012, HHS ACF OCSE	<a href="http://www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement">www.acf.hhs.gov/programs/css/resource/handbook-on-child-support-enforcement</a>
<i>Custodial Mothers and Fathers and Their Child Support: 2007</i> , US Department of Commerce, US Census Bureau	<a href="http://www.census.gov/prod/2009pubs/p60-237.pdf">www.census.gov/prod/2009pubs/p60-237.pdf</a>
<i>Coast Guard Personnel Manual, Chapter 2.E</i> , Commandant Instruction M1600.2, Sept. 2011	<a href="http://www.uscg.mil/directives/cim/1000-1999/CIM_1600_2.pdf">www.uscg.mil/directives/cim/1000-1999/CIM_1600_2.pdf</a>
<i>Code of Federal Regulations</i> Part 733-Assistance to and Support of Dependents; Paternity Complaints (32 C.F.R. § 733.3), Navy & Marine Corps Support Guidelines, 2007	<a href="http://www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part733.pdf">www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part733.pdf</a>

Website	Link
<i>Code of Federal Regulations</i> Part 734-Garnishment of Pay of Naval Military and Civilian Personnel for Collection of Child Support and Alimony (32 C.F.R. § 733.3), Navy & Marine Corps Support Guidelines, 2007	<a href="http://www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part734.pdf">www.gpo.gov/fdsys/pkg/CFR-2007-title32-vol5/pdf/CFR-2007-title32-vol5-part734.pdf</a>
Creating a Family Care Plan for Caregivers on the Military OneSource website	<a href="http://www.militaryonesource.mil/phases-new-to-the-military?content_id=267568">http://www.militaryonesource.mil/phases-new-to-the-military?content_id=267568</a>
DEERS enrollment process on the MilConnect site of the Defense Manpower Data Center (DMDC)	<a href="https://www.dmdc.osd.mil/milconnect/">https://www.dmdc.osd.mil/milconnect/</a>
Defense Finance and Accounting Center (DFAS)	<a href="http://www.dfas.mil">www.dfas.mil</a>
Defense Finance and Accounting Service (DFAS) Civilian Pay	<a href="http://www.dfas.mil/dfas/civilianemployees.html">www.dfas.mil/dfas/civilianemployees.html</a>
Defense Finance and Accounting Service (DFAS) Military Pay	<a href="http://www.dfas.mil/dfas/militarymembers.html">www.dfas.mil/dfas/militarymembers.html</a>
Defense Finance and Accounting Service (DFAS) Pay Garnishment	<a href="http://www.dfas.mil/garnishment.html">www.dfas.mil/garnishment.html</a>
Defense Finance and Accounting Service (DFAS) Retired and Annuitant Pay	<a href="http://www.dfas.mil/dfas/retiredmilitary.html">www.dfas.mil/dfas/retiredmilitary.html</a>
Department of Defense (DoD) Leave and Earnings Statement (LES)	<a href="https://mypay.dfas.mil">https://mypay.dfas.mil</a>
Department of Defense (DoD) Pay Tables	<a href="http://www.dfas.mil/militarymembers/payentitlements/militarypaytables.html">www.dfas.mil/militarymembers/payentitlements/militarypaytables.html</a>
<i>Deployed Father's Guide</i> Produced by the National Fatherhood Coalition	<a href="http://fatherhood.org/page.aspx?pid=516">http://fatherhood.org/page.aspx?pid=516</a>
<i>Effectiveness of Access and Visitation Programs</i> , Report, OEI-05-02-00300, by the Department of Health and Human Services (HHS), Office of the Inspector General written in 2002	<a href="http://oig.hhs.gov/oei/reports/oei-05-02-00300.pdf">http://oig.hhs.gov/oei/reports/oei-05-02-00300.pdf</a>
<i>Family Support, Child Custody, and Paternity</i> , Army Regulation (AR) 608-99	<a href="http://armypubs.army.mil/epubs/pdf/R608_99.pdf">http://armypubs.army.mil/epubs/pdf/R608_99.pdf</a>

Website	Link
<i>Guía para el Cumplimiento del Sustento de Menores (Handbook on Child Support Enforcement)</i> , Spanish Version, ACF OCSE	<a href="http://www.acf.hhs.gov/programs/css/resource/nuestros-hijos-nuestra-responsibilidad">www.acf.hhs.gov/programs/css/resource/nuestros-hijos-nuestra-responsibilidad</a>
Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) Foreign Reciprocating Countries	<a href="http://www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries">www.acf.hhs.gov/programs/css/resource/foreign-reciprocating-countries</a>
HHS, ACF, OCSE, Intergovernmental Reference Guide (IRG)	<a href="https://extranet.acf.hhs.gov/irg/welcome.html">https://extranet.acf.hhs.gov/irg/welcome.html</a>
HHS, ACF, OCSE, IRG: Policy Profiles and Contacts	<a href="http://www.acf.hhs.gov/programs/css/irg-state-map">http://www.acf.hhs.gov/programs/css/irg-state-map</a>
HHS, ACF, OCSE International Division	<a href="http://www.acf.hhs.gov/programs/css/international">http://www.acf.hhs.gov/programs/css/international</a>
HHS, ACF, OCSE State and Tribal Agency Contacts	<a href="http://www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts">www.acf.hhs.gov/programs/css/resource/state-and-tribal-child-support-agency-contacts</a>
<i>How to prepare our children and stay involved in their education during deployment...</i> Pamphlet by the Military Child Education Coalition	<a href="http://www.militarychild.org/public/upload/files/Deployment.pdf">www.militarychild.org/public/upload/files/Deployment.pdf</a>
Military Installations	<a href="http://www.militaryinstallations.dod.mil">www.militaryinstallations.dod.mil</a>
Native American Veterans - Storytelling for Healing page on HHS Administration for Native Americans website	<a href="http://www.acf.hhs.gov/programs/ana/resource/native-american-veterans-storytelling-for-healing-0?page=1">www.acf.hhs.gov/programs/ana/resource/native-american-veterans-storytelling-for-healing-0?page=1</a>
<i>Personal Financial Responsibility</i> , Air Force Instruction (AFI) 36-2906, Jan. 1, 1998	<a href="http://www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf">www.e-publishing.af.mil/shared/media/epubs/AFI36-2906.pdf</a>
Real-Time Automated Personnel Identification Card System (RAPIDS) Issuing Facility	<a href="http://www.dmdc.osd.mil/rsl/">www.dmdc.osd.mil/rsl/</a>
Real-Time Automated Personnel Identification Card System (RAPIDS) Site Locator	<a href="http://www.dmdc.osd.mil/rsl/appj/site?execution=e2s1">www.dmdc.osd.mil/rsl/appj/site?execution=e2s1</a>
SCRA website, Defense Manpower Data Center (DMDC)	<a href="http://www.dmdc.osd.mil/appj/scra/scraHome.do">www.dmdc.osd.mil/appj/scra/scraHome.do</a>

Website	Link
Servicemembers Civil Relief Act (SCRA) on Military OneSource	<a href="http://www.militaryonesource.mil/moving?content_id=267394">www.militaryonesource.mil/moving?content_id=267394</a>
<i>Servicemembers Civil Relief Act (SCRA) Questions &amp; Answers for Servicemembers</i> Fact Sheet provided by the Dept. of Justice	<a href="http://www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf">www.justice.gov/crt/about/hce/documents/scra_qa_5-26-11.pdf</a>
Servicemembers.Gov, “Information Dedicated to the Civil Rights of Servicemembers”, US Department of Justice	<a href="http://www.servicemembers.gov">www.servicemembers.gov</a>
TRICARE	<a href="http://www.tricare.mil">www.tricare.mil</a>
TRICARE Covered Services	<a href="http://www.tricare.mil/CoveredServices.aspx">www.tricare.mil/CoveredServices.aspx</a>
TRICARE Dental Program	<a href="http://www.tricare.mil/Dental/TDP.aspx">www.tricare.mil/Dental/TDP.aspx</a>
TRICARE National Guard/Reserve Members and Families	<a href="http://www.tricare.mil/Welcome/Eligibility/NGRMandFamilies.aspx">www.tricare.mil/Welcome/Eligibility/NGRMandFamilies.aspx</a>
TRICARE Plans	<a href="http://www.tricare.mil/Welcome/Plans.aspx">http://www.tricare.mil/Welcome/Plans.aspx</a>
TRICARE Reserve Select	<a href="http://www.tricare.mil/trs">www.tricare.mil/trs</a>
TRICARE SMART Site for educational materials	<a href="http://www.tricare.mil/Publications.aspx">www.tricare.mil/Publications.aspx</a>
U.S. Air Force Worldwide Locator	<a href="http://www.afpc.af.mil/library/airforcelocator.asp">www.afpc.af.mil/library/airforcelocator.asp</a>
U.S. Armed Forces Legal Assistance	<a href="https://aflegalassistance.law.af.mil/lass/lass.html">https://aflegalassistance.law.af.mil/lass/lass.html</a>
U.S. Armed Forces Legal Assistance Locator	<a href="http://legalassistance.law.af.mil/content/locator.php">http://legalassistance.law.af.mil/content/locator.php</a>
U.S. Army Enlisted Records & Evaluation Center	<a href="http://www.army.mil/contact/">www.army.mil/contact/</a>
U.S. Coast Guard World Wide Locator	<a href="http://www.uscg.mil/locator/">www.uscg.mil/locator/</a>
U.S. Marine Corps Locator	<a href="http://www.marines.mil/FAQs.aspx">www.marines.mil/FAQs.aspx</a>
U.S. Navy World Wide Locator	<a href="http://www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx">www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx</a>

For more information on how the child support system works in your state or tribe, contact your state or tribal child support agency. For general information about the child support program, contact the federal Office of Child Support Enforcement, 370 L'Enfant Promenade, Washington, D.C. 20447, or visit the website at [www.acf.hhs.gov/programs/css](http://www.acf.hhs.gov/programs/css).