

CHAPTER FOURTEEN – MILITARY PARENTS

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CHAPTER FOURTEEN MILITARY PARENTS

INTRODUCTION

Military services and the child support program share the common goal of strengthening military families, including their economic stability. Each emphasizes the importance of personal responsibility and financial readiness. To ensure that child support issues do not cause service members or their families unnecessary stress or hardship, the child support program is working hard to be flexible and responsive to military and veteran parents.

Other chapters in this Guide review federal and state law governing child support issues. This chapter will highlight military regulations and policy that govern child support issues, as well as discuss how the child support attorney can most effectively work with members themselves, their commanders, and military legal assistance offices to resolve child support matters.

MILITARY FAMILIES

All parents who live apart from their children face parenting challenges. Military families face unique challenges. These challenges may include frequent moves, multiple deployments, physical injuries due to combat, post-traumatic stress disorder (PTSD), and traumatic brain injury (TBI). The military and service organizations provide a number of resources for military families. Child support agencies are also increasingly providing outreach, resources, and referral assistance to service members and veterans.

MILITARY ORGANIZATION

In order for the child support attorney to work effectively with military parents, it is important to understand the organization of the Department of Defense and the service branches. The Department of Defense (DoD) is a cabinet level organization with a mission to provide military forces to deter war and to protect the security of our country. There are three military departments under DoD: the Department of the Army, the Department of the Navy, and the Department of the Air Force.

Three of the five military services – Army, Navy, and Air Force – report to their respective military departments. A fourth military service, the Marine Corps, also reports to the Department of the Navy. The United States Coast Guard is under the control of the Department of Homeland Security.

The Department of Defense has over 1.3 million people on active duty within the various services,¹ and another approximately 826,000 serve in the National Guard and Reserve forces. It is important to understand that National Guard members are state employees. They do not become part of DoD until they are federally mobilized under Title 10 of the U.S. Code. In 2019, DoD also employed approximately 732,000 civilian employees.² These military and civilian employees work in 4,800 defense sites worldwide and on hundreds of ships at sea.³ There are over two million military retirees.

Each of the services is responsible for recruiting, training, and equipping its own forces as well as ensuring the good order and discipline of its members. Accountability of service members may "shift" when they are on deployments, exercises, or operations, but these shifts are often temporary and usually have little effect on the child support caseworker or attorney. Military sites are traditionally called forts, bases, camps, and stations, which will be collectively referred to in this chapter as installations. Military installations are located in virtually every state and at locations all over the world. Additionally, members of the Navy, Marine Corps, Coast Guard, and – to a much lesser extent – the Army, often perform duty away from their "home" base on ships afloat at sea around the world, sometimes for months at a time.

MILITARY AUTHORITY AND PAY GRADE

Overview

Each of the services is broken down into units and at each level there is a commander in charge. Ranks are designations given to personnel that represent, in part, their responsibility and authority within the military hierarchy. Generally, rank is broken down into two categories: enlisted and officer. The Navy, Marine Corps, and Army also have Warrant Officers who are officers by virtue of a warrant, and on occasion command smaller military units. They are higher ranking than enlisted members but subordinate to officers. The military pay structure is referred to as "pay grade." With each pay level, there are corresponding ranks. Enlisted personnel are pay grades E-1 through E-9, with the "E" standing for enlisted. Officers are in pay grades O-1 through O-10, with the "O" standing for officer. Warrant Officers are in pay grades W-1 through W-5, with the "W" standing for warrant.

The military services have different names for different ranks, which can be a source of great confusion. For example, a Captain in the Navy is a very senior leader in the pay grade of O-6, while a Captain in the Army, Marine Corps, or the Air Force is in the pay grade of O-3 and is a mid-grade leader. A general

¹ See Defense Manpower Data Center reports, https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp (last visited Nov. 12, 2020).

² <https://www.defense.gov/Our-Story/> (last visited Nov. 12, 2020).

³ *Id.*

rule is that the higher the rank, the more authority that person has, especially those who are in command.

Chain of Command

When processing a child support case that involves a service member, it is always important to try first to contact the member directly. If the member fails to respond to your inquiry, it may be appropriate to “go up the chain of command.” First-line commanders are usually the best place to start. They can resolve most issues that will confront the child support caseworker or attorney. A nonresponsive first-line commander may mean you need to contact the next higher commander in the chain of command. Every installation has an installation commander. That person is the “city manager” for the installation, with authority to control what happens on the installation. However, even the installation commander is limited by statute, regulation, and policy. The level of cooperation may also vary depending upon the commander’s understanding of the role of the child support program.

When it becomes necessary to involve a military commander in a child support matter, the following are some general practice tips.

- Explain exactly what you are seeking and the authority under which you are acting. Military commanders have an obligation to provide for the health, morale, and welfare of their personnel and to ensure those personnel are providing for their families as required by regulation or law. If the commander does not understand the “what, why, and how” of your request, he or she may be less likely to respond. Commanders will require their personnel do the right thing if it is within their authority. The better you explain, the greater the likelihood of a favorable response. Also, commanders have access to military lawyers who serve as their legal advisors. A commander who has all the pertinent facts can get an accurate answer from a legal advisor that will ensure maximum assistance.
- Don’t threaten. A threat to the military will ring hollow and accomplish little. However, factual statements of actions that may occur, stated with tact and diplomacy, will serve to educate the military commander about potential consequences for one of his personnel. All military commanders are concerned about unit readiness, and a service member tied up in civil court proceedings can affect readiness.
- Humanize the situation. Members of the military are held to a higher standard than people generally are in the civilian community. “Doing the right thing” is as important as doing what is legally required. The military understands this. Emphasize it if possible.

- Everyone in the military has a boss. Documented attempts at seeking information and/or assistance from a commander who is nonresponsive will usually generate some movement from that commander's boss.
- Be respectful, reasonable, and understanding. The military is charged with the grave responsibility of defending our country against its enemies. Concerns about personnel security, operational security, and protecting the force are legitimate concerns of military members and commanders. Remember that a commander's hesitancy to release information or provide assistance may be due to overcaution or a regulatory prohibition such as the Privacy Act, but a well-explained rationale for the action that you request will often overcome this hurdle. There may also be situations, such as deployment or security concerns, when the commander will be unable to respond to your request.

Military Rules and Regulations

The military is a rule-driven organization. Most of the regulations in the military are based on federal statutory law. The military is not exempt from the requirements of federal law, except where specifically authorized. Generally, the laws of individual states also apply to military personnel located in those states, just as they apply to all citizens of the state. It is important to note, however, that state laws may or may not apply on military installations, depending on whether the installation has exclusive federal jurisdiction or concurrent jurisdiction. The importance of these distinctions will be discussed later in this chapter in conjunction with Service of Process.

In addition to federal laws of general applicability, the military services have their own rules, regulations, and policies that govern the conduct of their members. DoD, as the parent organization for the Army, Navy, Air Force, and Marine Corps, issues regulations applicable to these services unless specifically exempted. DoD also issues directives and instructions. Each of the military services – Army, Navy, Air Force, Marine Corps, and Coast Guard – also issues regulations. The service regulations that govern paternity, support obligations, and other child and dependent support issues are:

- **Army:** Army Regulation 608-99, Family Support, Child Custody, and Parentage.
- **Air Force:** Air Force Instruction (AFI) 36-2906, Personal Financial Responsibility.
- **Navy:** Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-010 (Paternity Complaints).

- **Marine Corps:** Marine Corps Order P5800.16 – Vol. 9, Marine Corps Legal Support and Administration Manual (LEGALADMIN), (Dependent Support and Paternity).
- **Coast Guard:** U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2 (Discipline and Conduct), Chapter 2.E (Support of Dependents).

In addition to service regulations, military units will often issue their own regulations, as will installation or garrison commanders. These local regulations are usually found on installation or unit websites and may supplement existing service regulations or may cover areas not addressed in other regulations or directives. Finally, each of the services supplements its regulations with policy memoranda that address very specific areas of administration or conduct not covered in other regulations or directives.

MILITARY RESOURCES

In addition to the commander, there are military resources that can assist a child support caseworker or attorney. Many of the resources are service specific, and others are available across DoD.

Installation/Command Legal Offices

Virtually all military installations have legal staff assigned to them, which may consist of military lawyers, civilian lawyers employed by the military, or both. Installation legal offices may be called an Office of the Staff Judge Advocate, a Legal Assistance Office, or commonly, the JAG Office (Judge Advocate General). The lawyers and legal support staff at an installation legal office primarily serve the commanders, their staff, and military members and their families. Therefore, the spouse of a service member can request assistance just as the member can.

The legal assistance office is usually where a military member will go with questions about paternity and child support. Military legal assistance offices can also assist service members in developing Family Care Plans, and provide information about resources related to mediation of parenting time issues. Military lawyers do not represent service members in civil support or custody proceedings. However, they can provide members with general information about child support and custody laws. It is very helpful if child support attorneys establish a relationship with the installation legal assistance office. This can be accomplished through personal meetings and speakers programs. Such interaction will help ensure the military lawyer provides correct information about the child support program, and help the child support attorney learn more about military procedures. It will also result in improved communication and cooperation between the child support agency and the legal assistance office.

Family Life Centers

Larger installations will often have family life centers/family advocacy programs that are designed to improve the quality of life for military members and their families. If the child support agency wants to distribute literature or offer a program to inform parents about paternity establishment and child support obligations, the family life center is a valuable place to contact. Additionally, these programs may be able to assist custodial parents in understanding the wide variety of benefits to which a dependent child of a military member may be entitled.

Identification Card Facilities

Military identification card facilities are located at all large installations. These facilities can provide important information about how a parent obtains a Next Generation Uniformed Services identification card for a child, as well as how to enroll the dependent in the Defense Enrollment Eligibility Reporting System (DEERS). Enrollment in DEERS is required prior to the issuance of an identification card and is also tied to eligibility for medical care under the military health program called TRICARE. (See full discussion of DEERS later in the chapter.)

Internet Sites

The military provides the greatest amount of information about itself on the internet. Virtually every publicly releasable military address, phone number, acronym, regulation, and policy is available through the Internet. The greatest drawbacks, of course, are that information can become outdated quickly, and there is so much available that it can become difficult to navigate and pinpoint the exact information you are seeking. There are sites for DoD and each of its component agencies; each of the military departments and service branches; the reserve components; and almost every installation, base, camp, station, or fort in the world. See Exhibit 14-1. A key to successfully navigating the internet as you search for the answers to your questions is to narrow your search to the lowest applicable level. This means you must determine if your issue is local (does Fort Bragg have a legal assistance office?), service specific (what is the Air Force policy on paternity establishment?), or agency specific (to what Defense Finance and Accounting Service (DFAS) address does one send a withholding order?). Most military Internet sites are user friendly, have search functions, and provide links to other sites.

LOCATION

Title IV-D Locate Resources

It is important to remember that all IV-D locate resources available to the child support office in civilian cases are also available in cases involving the

military. If a custodial parent is unsure whether the noncustodial parent is in the military, a caseworker or attorney may use the public website that the Defense Manpower Data Center (DMDC) has established to learn the current active military status of the individual.⁴ The site requires the creation of an account, and use is restricted to “financial institutions and others with financial and legal transactions with eligible service members for the sole purpose of ensuring that those service members receive Servicemembers Civil Relief Act (SCRA) protections in accordance with 50 U.S.C. Chapter 50.”⁵ The site will ask for the person’s name, either the person’s Social Security number (SSN) or date of birth, and the date on which the restricted user is requesting active duty status. Based on that identifying information, the website will provide a status report. The report will indicate the person’s active duty status on the date requested (referred to as the active duty status date). If applicable, the report will also provide the person’s active duty start date, active duty end date, and service branch. It will not, however, provide the residential or duty address of the service member.⁶

Federal Parent Locator Service. The Federal Parent Locator Service (FPLS) is arguably the most important IV-D locate tool in military cases. If a custodial parent does not know the noncustodial parent’s SSN, a caseworker or attorney may use the FPLS to learn the number, provided they are able to give sufficient identifying demographic information. Additionally, the FPLS matches with several external federal agencies, including the Social Security Administration, the Internal Revenue Service, the Department of Defense, the National Security Agency, the Federal Bureau of Investigation, and the Department of Veterans Affairs (VA). The FPLS sends state locate requests to the external locate sources at least weekly, depending on the locate source. Responses are sent to the state as they are received from the external sources.

The National Directory of New Hires (NDNH) and the Federal Case Registry (FCR) are the central parts of the FPLS. The NDNH receives information from state directories of new hires and state workforce agencies. The FCR receives information from state case registries. States send information as often as daily to the FCR, but at a minimum weekly.⁷ There are daily matches between the NDNH and FCR, and responses are returned to the states within two days. However, because of the timeframes employers and states have for making reports, it may be as long as a month after a person is hired that the

⁴ Servicemembers Civil Relief Act (SCRA) Website, <https://scra-w.dmdc.osd.mil/scra/#/home> (last visited Nov. 11, 2020).

⁵ See Defense Manpower Data Center, Servicemembers Civil Relief Act Website Users Guide, version 5.5 (Aug. 25, 2020). More information about the SCRA and its impact on child support proceedings is later in the chapter.

⁶ The DMDC website does not provide military address information. However, once a caseworker registers the noncustodial parent on the FPLS with a verified SSN, as discussed in the next section, the worker has access to broader information from the DMDC.

⁷ As soon as a state registers a case on the FCR, and the FPLS has verified or corrected the noncustodial parent’s SSN, proactive matching occurs with the NDNH.

NDNH receives the information and can send the state a response from NDNH matching.

There are two NDNH records that are particularly useful for locating service members and identifying their military income. The NDNH New Hire (NH) record provides address information for newly hired military personnel, and the NDNH Quarterly Wage (QW) record provides address and wage information for active duty military members and retirees. Retirees and reservists called back to duty are reported in QW, not NH. In addition, both records include the DoD Agency Status Indicator with the following options:

- A - Active duty employee.
- C - Civilian employee.
- P - Pension or retired employee (QW only).
- R - Reserve employee.

Additionally, the FPLS can return information from DoD when a child support agency submits a locate request for DoD data. The matrix below identifies the DoD locate information about various military populations that is returned to states.

Population	SSN Returned	Address Provided	Annual Military Salary Provided
Active duty	Yes	Unit/duty address	No
Reservists/National Guardsmen	Yes	Unit/duty address	No
Retirees	Yes	Home address	Yes

The DoD locate response provides the following helpful data elements:

DoD Status Code	1 - Civilian DoD 2 - Active duty military 3 - Retired military (pay status) 4 - Reserve military (pay status) 6 - Administrative Office of U.S. Courts (AOUSC) 7 - Civilian Non-DoD 8 - Civilian retiree B - Executive Office of the President (EXOP) employee E - Retired military (non-pay status) F - Reserve military (non-pay status) G - Army Non-Appropriated Fund (Army NAF) employee M - Marine Corps Non-Appropriated Fund (Marine Corps NAF) employee P - Bureau of Personnel Non-Appropriated Fund (BUPERS NAF) T - Army and Air Force Exchange Service (AAFES) X - Navy Exchange Commission Non-Appropriated Fund (NEXCOM) Y - Navy Non-Appropriated Funds (Navy NAF) employee Z - Air Force Moral Welfare Recreation (AFMWR NAF) Space - Information is not available.
DoD Service or Agency Code	The codes are defined in the DTA Manual, Appendix M: Ranks & Grades, located at: https://www.defensetravel.dod.mil/Docs/Training/DTA_App_M.pdf
DoD Pay Grade or Rank	The codes are defined in the DTA Manual, Appendix M: Ranks & Grades, located at: https://www.defensetravel.dod.mil/Docs/Training/DTA_App_M.pdf
Annual Salary – DoD	The numeric annual salary amount in dollars. If the salary is not available, this is all zeros.
Submitting Office Number	1, 7, or B - This is the OPM-assigned submitting office number or personnel office ID (POI)
APO-FPO Indicator	Y - Person's address is 'APO' or 'FPO' Space - Person's address is not 'APO' or 'FPO'

Finally, the FPLS can return information from the VA when a child support agency submits a locate request for VA data. The VA locate response provides the following helpful data elements:

VA Benefit Indicator	1 - Compensation and pension 2 - Education Space - Information not available
VA Date of Death	This is the date of death from the VA's records, in CCYYMMDD format. If the date of death is not available, this is all spaces.
VA Effective Date	This is the effective date of the benefit award, in CCYYMMDD format. If the date is not available, this is all spaces.
VA Amount of Award	This is numeric and has the amount of the veteran benefit award in dollars only. If the award amount is not available, this is all zeros.
VA Suspense Indicator	0 - Receiving payments 1 - Payments temporarily stopped or terminated Space - Information not available
VA Incarceration Indicator	0 - Released 1 - Incarcerated Space - Information not available
VA Retirement Pay Indicator	0 - Not eligible to receive retirement pay 1 - Eligible to receive retirement pay or is receiving retirement pay Space - Information not available
VA Active Reserve	0 - Veteran not active duty 1 - Veteran active duty Space - Information not available
VA Active Reserve Fiscal Year	This is the year the veteran served or is on active reserve. The format is CCYY or spaces, if year is not available.
VA Active Reserve Days	This is the number of days the veteran served on reserve. The format is DDD or spaces, if days are not available.
VA Address Type Code	D - Domestic Address F - Foreign Address M - Military Address Space - Information not available
VA Institution Type Code	PNHC - Private Nursing Home Care VHADC - Veterans Hospital Administration (VHA) Domiciliary Care VHAHC - VHA Hospital Care VHACNHC - VHA Contract Nursing Home Care Space - Information not available
VA Pay Type Code	DRP - Disability Retired Pay RRP - Regular Retired Pay RPR - Retired Pay - Reserves TDRP - Temporary Disability Retired Pay SBP - Survivor Benefit Plan Space - Information not available

OCSE Child Support Portal. In 2010, OCSE implemented the Child Support Portal (Portal), which provides an alternative way for child support staff to request FPLS information. Locate requests submitted through a state system will result in responses sent to the state system. The Portal is a secured internet application that allows staff to submit a locate request outside of their state process to locate sources they select. Requests submitted through the Portal will result in responses sent to the Portal. A state may elect to have a copy of these responses also sent to their state system. The Portal Locate application provides child support staff with direct access to the following FPLS locate sources:

- National Directory of New Hires.
- Department of Defense.
- Federal Bureau of Investigation.
- Internal Revenue Service.
- Social Security Administration.
- Department of Veterans Affairs.

The state administrator determines what type of locate access is available to an agency caseworker or attorney. NDNH data is available immediately through the Portal. Responses from external agencies are returned in a week or less.

In addition, the Portal DoD Entitlement application allows an authorized person to request base pay, bonus pay, and other entitlement both taxable and non-taxable for a Noncustodial Parent (NCP), Putative Father (PF), or Custodial Parent (CP) in an open IV-D case.

The following is a sample of the DoD Entitlement Response Report, including examples of all possible categories of compensation.⁸

⁸ Although the report is dated 2011, it remains a correct example of the information provided.

Report ID: CD0DE01

Department of Health and Human Services

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Report Date: 06/15/2011

Administration for Children and Families

Office of Child Support Enforcement

*** Sensitive Information ***

Department of Defense Entitlement Match

Protected by Privacy Act of 1974

**This notice contains wage and earning information provided by the U.S. Department of Defense.
The information may only be used for the sole purpose of establishing and modifying child support orders.
This information is payments made during the month of 05/2011.**

Request Information

Submitted SSN: 999-XX-9999

User Text: 3469

Submitted Name: JONES, WILLIAM

SSN/Name/Date Information

Service Member Name:	WILLIAM JONES	Initial Military Service Date:	12/31/99
SSN:	999-XX-9999	Expiration Term of Service Date:	
Military Service Code:	Coast Guard	Retired Reserve, Involuntary Discharge or Transfer Date:	12/31/10
Component Code:	Guard	Separation Dropped From Rolls Date:	12/31/10
Military Status Code:	Enlisted	Pay Entry Base Date:	12/31/10
Separation Payment Code:	Readjustment Pay		

Payment Information (taxable amounts)

(fields will not display if \$ amount is equal to zero.)

* This is not a monthly amount.

Basic Pay Amount:	\$500.00	* Selective Reenlistment Bonus Amount:	\$1.09
Officer Saved Pay Amount:	\$1.01	* Regular Reenlistment Bonus Amount:	\$1.00
Health Professionals Saved Pay Amount:	\$1.02	* Nuclear Officer Accession Bonus Amount:	\$1.01
Variable Special Pay Amount:	\$1.03	Career Sea Pay Amount:	\$1.02
Board Certified Pay Amount:	\$1.04	Career Sea Pay Premium Amount:	\$1.03
* Additional Special Pay Amount:	\$1.05	Hostile Fire and Imminent Danger Pay Amount:	\$1.04
* Incentive Special Pay Amount:	\$1.06	Diving Duty Pay Amount:	\$1.05
* Medical Officer Retention Bonus/Multi-year Service Pay Amount:	\$1.07	Hazardous Duty Incentive Pay Amount:	\$1.06
* Nuclear Career Accession Bonus Amount:	\$1.08	Continental United States Cost of Living Allowance Amount:	\$1.06
* Nuclear Qualified Officer Continuation Pay Amount:	\$1.09	* Nuclear Career Annual Incentive Bonus Amount:	\$1.00
* Separation Payment Amount:	\$1.00	Aviation Career Incentive Pay Amount:	\$1.01
* Contract Cancellation Pay Allowances Amount:	\$1.00	* Aviation Officer Continuation Pay Amount:	\$1.02
Foreign Language Proficiency Pay Amount:	\$1.00	Miscellaneous Officer Pay Amount:	\$1.03
* Special Separation Benefit Amount:	\$1.00	Essential Service Pay Amount:	\$1.04
* Voluntary Separation Pay Amount:	\$1.00	Hardship Duty Pay Amount:	\$1.05
Reserve Drill Pay Amount:	\$1.00	Proficiency Pay Amount:	\$1.06
Reserve Active Duty Pay Amount:	\$1.00	* Overseas Extension Pay Amount:	\$1.07
Airborne Warning Control Systems Controller Pay Amount:	\$1.00	* Enlistment Bonus Amount:	\$1.08

Report ID: CDD0E01

Report Date: 06/15/2011

***** Sensitive Information *****
Protected by Privacy Act of 1974

Department of Health and Human Services
 Administration for Children and Families
 Office of Child Support Enforcement
 Department of Defense Entitlement Match

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**This notice contains wage and earning information provided by the U.S. Department of Defense.
 The information may only be used for the sole purpose of establishing and modifying child support orders.
 This information is payments made during the month of 05/2011.**

Payment Information (taxable amounts) continued

Reserve Component Incentive Program Enlistment bonus (six-year, prior service only)
 Payments:

* Reserve Component Incentive Program \$999.01
 Pay Amount:

Reserve Component Incentive Program Educational assistance (converted from bonus)
 Education Payments:

* Reserve Component Incentive Program \$888.02
 Education Pay Amount:

Incapacitation Pay Amount: \$666.04

Reserve Medical Officers Special \$777.03
 Payment Amount:

Payment Information (non-taxable amounts)

(fields will not display if \$ amount is equal to zero.)

* This is not a monthly amount.

Basic Allowance For Housing Differential Amount:	\$1.07	Basic Allowance For Housing Partial Amount:	\$1.09
Basic Allowance For Subsistence Amount:	\$1.08	Family Separation Amount:	\$1.00
Overseas Cost Of Living Allowance Amount:	\$1.01	Overseas Housing Allowance Amount:	\$1.02
Move In Housing Allowance Miscellaneous Amount:	\$1.03	Move In Housing Allowance Security Amount:	\$1.05
Move In Housing Allowance Rent Amount:	\$1.04	Basic Allowance Housing Amount:	\$1.07
* Clothing Equipment Allowance Amount:	\$1.08		

Military Locate Resources

In addition to Title IV-D locate resources, there are military locate resources that exist on the local and national levels. For the best results, use the military member's full name and SSN. Due to the nature of military service, the residence address and duty station for service members frequently change. In addition, there are instances when the military is prohibited by national security from disclosing the residence or work address for a given member. As all branches of the military review their address disclosure procedures, it is becoming more difficult to obtain address information from the military.

Local military locate resources. Local military resources provide locate information that is more limited than national military resources. However, if the child support agency can narrow the location of the service member to a particular installation, the local military resource may be the quickest. The best local military locate resource is the military installation. An installation often maintains a central locator office to keep track of the individuals assigned to that installation. The telephone number for an installation's locator office is available through the installation's information operator. In order to obtain the individual's military unit address, you must have that person's full name and SSN.

The individual's military unit address is important because it allows you to contact the individual and, if the member fails to cooperate, their commanding officers. The military's legal assistance offices are another local locate resource. Most large military bases maintain legal assistance offices. Their duties include assisting spouses and dependent children in obtaining the military service member's military address. (See previous discussion, Installation/Command Legal Offices.)

National military locate resources. Each service maintains a locator service that will provide immediate family members and government officials such as a child support agency with location information free of charge. See Exhibit 14-2. However, the extent of information is different for each service. For example, the Army Data Center will only locate individuals on active duty, while the Air Force will assist in locating active duty individuals, reservists, National Guard, and retirees. For active duty members, the address information that the military locator services provide is the member's unit address, which may include an APO (Air/Army Post Office) or FPO (Fleet Post Office) designation if the member is overseas. To determine the actual geographic location of an APO or FPO address, contact the U.S. Postal Service or the postal office at the nearest military installation.

In order to process a request, the military locator service needs the service member's full name and SSN. The member's date of birth, rank, and location and time period of the member's last duty station is also helpful. In deciding when to contact a military locator service, keep in mind that military

records may run up to 90 days behind reassignments and most military moves occur in the summer.⁹

Usually, members' military addresses are more useful than their home addresses. While members may be away from their home address for several months at a time, they are rarely away from their military address for more than two weeks at a time. In addition, by concentrating efforts on the military address, you are in a better position to request help from an individual's chain of command. If, however, you need the service member's home address, direct your request to the installation personnel officer for the member's duty station. In especially difficult cases where the home address is needed but the military will not provide it, you may need to use the Freedom of Information Act (FOIA).¹⁰ Direct the FOIA request for a service member's home address to the General Counsel for the appropriate branch of the military. See Exhibit 14-3.

If the child support agency needs to locate a service member who is incarcerated in a military confinement facility, the agency representative can contact the legal office or military police of the member's last duty station. It is helpful to provide an approximate date of the member's conviction.

PERSONAL JURISDICTION

In order to establish parentage, establish a support order, or modify a support order, the tribunal must have personal jurisdiction over the respondent. A service member is subject to the personal jurisdiction of the state in which he or she physically resides or has declared as his or her legal domicile. Therefore, if the noncustodial parent service member is temporarily overseas, the child support attorney can file a petition for child support in the service member's state of residence or domicile. A member's residence or legal domicile is not necessarily the same as the member's "home of record."¹¹ The "home of record" is the state from which the member entered the service. The primary purpose of the home of record is to determine military benefits, such as travel entitlements upon separation from the military. It may or may not be the same as the member's state of legal residence or domicile. How does an attorney decide a service member's state of legal residence or domicile? It will depend upon the facts and circumstances,¹² but one of the best sources of information is the

⁹ For that reason, there are usually delays for locate requests received between the months of May and October.

¹⁰ See 5 U.S.C. § 552a (2018).

¹¹ Marion J. Browning-Baker, *No Service, No Divorce Case: Establishing Jurisdiction and Effecting Service of Process*, Law Trends and News, ABA General Practice, Solo & Small Firm Division, Practice Area Newsletter, Vol. 5, No. 2 (Winter 2009).

¹² See *Lilly v. Lilly*, 250 P.3d 994 (Utah App. 2011) (military service members can maintain a domicile in a place where they do not physically reside despite a lengthy absence from the place of domicile).

member's Leave and Earnings Statement (LES).¹³ One of the fields on the LES is the member's home for income tax withholding purposes. The long-arm bases of jurisdiction apply to a nonresident service member, just as they do to civilians. Keep in mind, however, that in addition to contacts with the forum, there must be proper service on the service member.

SERVICE OF PROCESS

As discussed in earlier chapters, an important element of personal jurisdiction is service of process. "Service of process" is the delivery of a legal document to an individual, notifying the person of a claim or charge against the person, or informing the individual of specific acts that he or she is required to perform, such as appearing before a tribunal.

Service on a Member Who Is off Base

Although many military members may live on an installation, the vast majority live in the neighboring communities surrounding the installation. These members can be treated as any other person subject to a state's service of process procedures and jurisdictional requirements. Methods for service of process include mail, voluntary acceptance of service, and personal service by a civilian authority – depending upon the type of action that is being brought. For example, under most state laws, establishment of an initial support obligation requires voluntary acceptance of service or personal service by an authorized official.

Service on a Member Who Is on Base

If a military member resides on a military installation, you can still serve the member with process. However, there are some limitations that will apply.

Service by mail. Many enforcement actions do not require personal service. If service by mail is acceptable under the forum state's law, you can send a first class letter, or a certified or registered letter with return receipt requested – depending on what the law requires – to the obligor's military address. Military facilities and naval craft have post offices so even "return receipt requested" service is available.

Personal service. If the remedy requires personal service, such as with an establishment or a contempt action, service may be more difficult. Military authorities are not responsible for serving process on members of the armed forces. Neither the Judge Advocate General's (JAG) office nor the installation command can force a member to accept services. Sometimes they can facilitate service, as will be discussed later. If the service member must be served formally

¹³ For more information on the Leave and Earnings Statement, see the discussion in this chapter on Support Establishment.

on military property, federal law and military regulations will determine whether the process server may gain access to the installation.

The nature of federal jurisdiction over military installations in the United States varies. Sometimes federal jurisdiction may be so exclusive that a state agency cannot serve process on the installation. In such cases, military commanders will determine where the member will accept service. If the member refuses to do so, the commander may deny the process server access to the installation.¹⁴ In most cases, however, states reserve the right to serve civil and criminal process. This is true on military installations where there is concurrent, or partial, federal legislative jurisdiction. It is also true on military installations where the federal government just has a proprietary interest in the land or buildings.

If the military installation is under concurrent or proprietary jurisdiction, the state has the right to serve process on the installation according to state laws. A sheriff or other proper civilian official may therefore enter the installation, contact the local military police (MP), identify the person to be served, and attempt service. The installation's central point of contact for service of process will facilitate service using the procedure put in place by the installation or garrison commander. For example, some installations arrange for the member to appear at the MP station to accept service. If there is no established procedure, it is useful for the child support attorney to meet with the command, JAG or legal assistance office, and military police to develop such a policy. It is in their interest to establish a service of process liaison so that disruption of military activities is minimal. The attorney can also point out military policy that requires a member to support his or her dependents; the member should not be allowed to use his or her location on base as a way to evade service and avoid family support obligations.

The best way to determine an installation's type of jurisdiction is to call the installation legal office. The installation legal office can also explain policies and regulations governing service of process on the installation. Service of process on an installation is often centralized to control and monitor the presence of civilian law enforcement or other civilian authorities, as well as to provide for an orderly procedure that will have the least impact on the installation and its mission. The installation provost marshal or law enforcement section is the usual conduit.

In addition to an installation's policies and regulations, the service branches are subject to federal regulation. On installations where the state has reserved the right to serve civil process, Army regulations require that commanders first determine where the member wishes to accept service.¹⁵ If the

¹⁴ See 32 C.F.R. § 516.10(d)(1) (2019) (Army) and 32 C.F.R. § 720.20(a)(1) (2019) (Navy).

¹⁵ See 32 C.F.R. § 516.10 (2019). Army Regulation 27-40, Litigation (1994), sets forth the policy of the Army on service of process. It is consistent with the federal regulation.

member declines, “the requesting party [is] allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.” In order to protect against interference with mission accomplishment and to preserve good order, Navy and Marine Corps regulations¹⁶ provide that service cannot be made without the commander’s consent. Where practical, the commanding officer of a naval installation will require that the process be served in his or her presence or in the presence of a designated officer. If the process server is from a state court in the jurisdiction where the naval station is located, regulations provide that the command ordinarily should not prevent service of process as long as delivery is made in accordance with reasonable command regulations. Commanders may designate an appropriate location where the process server and the member can meet privately, and may order the member to that location. The procedures are different if the military installation and the court that issues the process are located in different states. In such cases, military policy does not require the member to accept service. If the service member refuses to accept service, military authorities may notify the process server of the refusal and deny access to the installation.

If a child support attorney experiences problems with service of process on a military installation that cannot be resolved with the base military police, the attorney should call the legal assistance office for the installation involved. Establishing and maintaining a good relationship with the installation legal office will help you greatly in carrying out your duties. Remember, military authorities with questions concerning service of process will ask the installation legal office, or their legal advisor, about what is permissible and what is not. Military members will also often seek legal help from the installation legal assistance office. If a legal assistance attorney contacts you on behalf of a military member about your state’s laws regarding service of process or child support, inform the attorney of the possible consequences for delays in establishing or enforcing an order, such as an award of retroactive support or the accrual of an arrearage. As a last resort, if it appears that command is supporting a member’s evasion of service, it may be necessary to contact the installation’s Inspector General.

Service on a Member Who Is Overseas

Serving process on military members stationed at overseas locations or on a ship can be a bit more difficult compared to service at United States locations.¹⁷ It is important to remember, though, that the same general rules concerning service of process apply.

¹⁶ See 32 C.F.R. § 720.20 (2019).

¹⁷ The date that a service member is eligible for return from an overseas assignment is known as the DEROS (Date Eligible for Return from Overseas). You can find this date in personnel documents; it may be useful in determining whether attempts at overseas service are viable or whether it is better to wait until the service member returns to the United States.

Service by mail. Just as with United States installations, service of process by mail, if permitted by both the forum state and the jurisdiction where the military member is located, is an easy and efficient method of service. Military postal clerks follow the same guidelines as the United States Postal Service. Although the address may be an Army or Air Force Post Office (APO) or Fleet Post Office (FPO), it is still U.S. mail, and again, certified mail and “return receipt requested” services are available. Some countries where military members are deployed do not permit service of process by mail. You should check the State Department’s website¹⁸ to determine whether service by mail is permitted in the country where you intend to serve the military member.¹⁹

If the child support agency attempts service by mail but does not receive a return receipt, prepare a second set of documents and place them in an envelope addressed to the military member, with the return receipt affixed and postage paid. Place this envelope into a larger one and address the outside envelope to the military postal officer for the APO or FPO where the military member is located. Include a memo to the postal official that details your previous efforts to obtain a return receipt. In compliance with military policy, ask that the Military Post Office (MPO) personnel obtain the member’s signature prior to delivering the envelope to the member and send the return receipt back to you. If the member refuses to accept the certified or registered mail, ask that the MPO personnel endorse the document “refused” and return it to you. As long as you have the receipt or label number for the certified mail you sent, you can go to the United States Postal Service website to track the status of the package (or envelope).

Voluntary acceptance of service. If the forum state’s law requires personal service, you can attempt to contact the military member or the commanding officer and request the voluntary acceptance of service. This is often a useful first step. The consequences of failing to abide by a support order, which could lead to an order to show cause for contempt, can have much greater consequences to a military member stationed overseas. That is especially true if the military member is required to return to the United States in order to attend civil proceedings.

The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. In 2007, negotiations were completed on the Hague Convention on the International Recovery of Child

¹⁸ *International Judicial Assistance*, U.S. Dep’t of State, Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-assistance.html> (last visited Nov. 12, 2020).

¹⁹ The Hague Convention on Service Abroad, discussed later, permits a Contracting State to object to service by “postal channels,” and a number of countries have done so. Service by mail in those countries would be improper. See the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, arts. 10 and 21, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, <https://www.hcch.net/en/instruments/specialised-sections/service> (last visited Nov. 12, 2020).

Support and Other Forms of Family Maintenance (Hague Child Support Convention).²⁰ More than 65 countries participated in the negotiations, including the United States. The Convention became effective in the United States on January 1, 2017. As of February 1, 2021, the Convention is in force between the United States and 38 countries.²¹ The Hague Child Support Convention details assistance that Central Authorities are required to provide with regard to applications for support. Among those responsibilities is the requirement to take all appropriate measures “to facilitate service of documents.”²² Pursuant to Article 50, the Hague Child Support Convention does not affect the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. (See subsequent discussion.)

Bilateral arrangements with Foreign Reciprocating Countries. In 1996, federal legislation authorized the Department of State and the Department of Health and Human Services to establish and administer reciprocal child support agreements with other countries.²³ The countries with which the United States has entered into bilateral arrangements are called “foreign reciprocating countries (FRCs).” As of February 1, 2021, the United States has bilateral child support arrangements with all but one of the Canadian provinces and territories and with four countries that are not also Hague Child Support Convention countries: Australia, El Salvador, Israel, and Switzerland.²⁴ An attorney who is having difficulty with service of process in an FRC may be able to seek assistance from the Central Authority in that country. Each FRC must designate a Central Authority to facilitate the processing of child support cases involving its residents and residents of the United States. OCSE has developed numerous Caseworker’s Guides for specific FRCs that provide more information.²⁵

The Hague Convention on Service Abroad. The 1965 Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention) streamlines methods of serving documents originating in one country that is a party to the Convention upon persons residing in another country that is also a party to the Convention. The United States is a party to this Convention. The Hague Conference website²⁶ provides complete details on the contracting countries to this Convention, as well as the methods of service available in each of those countries.

²⁰ See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Nov. 23, 2007, 47 ILM 257, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=131>.

²¹ The United States objected to the accession by Kazakhstan and Guyana.

²² *Id.* at art. 6, § (2)(j).

²³ See 42 U.S.C. § 659a (2018).

²⁴ See <https://www.acf.hhs.gov/css/partners/international> for a current list of foreign reciprocating countries.

²⁵ For more information, see <https://www.acf.hhs.gov/css/partners/international>. From this page one can link to information on processing cases to or from any FRC, copies of the declarations between the U.S. and each FRC, and Caseworker’s Guides.

²⁶ Hague Service Convention, *supra* note 19.

Service of process under the Hague Service Convention is relatively easy and less expensive than some other methods of service abroad. You send your request for service of process to a country's designated Central Authority, which is usually the Ministry of Justice. The names and addresses of the Central Authorities for all member countries are listed in the Convention. The request for service is sent using a Request for Service Form, which you can fill out online.²⁷

The completed form and underlying documents to be served, with accompanying translations, if applicable, should be mailed by "any competent authority or judicial officer" directly to the foreign Central Authority. The court or the child support attorney should execute the portion of the form marked "identity and address of the applicant," and the "name and address of the requesting authority." Reference to the authority for the request must be included in the request. State that the request is made pursuant to Rule 4(c)2(A), United States Federal Rules of Civil Procedure, and any other pertinent federal or state law.

Unless requested otherwise, the Central Authority itself or its designee will serve process according to its country's laws governing the service of process upon persons within the country's jurisdiction. If personal service is required, the form must so note. Generally, there are no fees for service of process through the Central Authority. A Central Authority may bill costs of personal service in a remote location. On the reverse side of the Request for Service form, there is a Certificate of Service form that the Central Authority will return to the requesting party once service is completed.

It is important to remember that a Central Authority may not always be able to serve process on members of the U.S. military stationed in that country. Issues that may prevent service include a Status of Forces Agreement (SOFA) between the United States and the host country.²⁸

Inter-American Convention on Letters Rogatory and Additional Protocol. During the 1970s, countries that were members of the Organization of American States (OAS) entered into a pair of international agreements collectively called the Inter-American Convention on Letters Rogatory and Additional Protocol.²⁹ Similar to the Hague Service Convention, these are in force

²⁷ See *Hague Service Convention—Model Form*, Hague Conference on Private International Law, <https://www.hcch.net/en/instruments/conventions/publications1/?dtid=65&cid=17> (last visited Nov. 12, 2020).

²⁸ A SOFA is an agreement between a host country and a foreign nation stationing forces in that country. The SOFA attempts to clarify how the foreign military is allowed to operate in the host country. It addresses a number of matters, including legal issues such as civil and criminal jurisdiction over the military bases. Some SOFAs address matters concerning service of process on military members located in the country. 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.

²⁹ See Inter-American Convention on Letters Rogatory and Additional Protocol, Jan. 30, 1975, 1438 UNTS 288, 14 ILM 339, <http://www.oas.org/juridico/english/treaties/b-36.html> (last visited Nov. 12, 2020).

with 17 Central and South American countries. The United States has ratified it, noting a reservation only to Article 2b that pertains to evidence. The process for service is similar to the Hague Service Convention, with slight changes made in the forms used and the requirements for certifications by a clerk of court. Another difference is that, unlike the Hague Service Convention, the Inter-American Convention requires that all service requests come from the requesting country's Central Authority. The Central Authority in the United States for the Inter-American Convention is the Office of International Judicial Assistance (OIJA), within the U.S. Department of Justice. For that reason, outbound service requests under the Inter-American Convention must come from OIJA, by way of its contractor ABC Legal. ABC Legal charges no fee to send service requests pursuant to the Inter-American Convention. U.S. litigants, however, must complete and submit to ABC Legal all required forms and obtain the official seal of the U.S. domestic court.³⁰

Personal service by a foreign agent. This method of service is usually expensive. It is imperative that you verify with the State Department's Office of Citizens Consular Affairs or an attorney in the foreign country that you are complying with the country's current law. You may be able to seek assistance with personal service if the State Department and the Department of Health and Human Services have declared the country to be a foreign reciprocating country or political subdivision of a country,³¹ or if your state, as the initiating state, has a reciprocal support agreement with that country.³² In most states, the Attorney General's Office is the place to contact to determine with which countries the state has an agreement.

Letters rogatory. Letters rogatory are requests from a court in the United States to a court in a foreign country seeking assistance in obtaining evidence or in effecting service of process. Letters rogatory are particularly used in countries where no other method of service is available. Preparing letters rogatory can be

³⁰ Instructions on requesting service under the Inter-American Convention can be found in the OIJA Guidance on Service Abroad in U.S. Litigation, <https://www.justice.gov/civil/page/file/1064896/download>. The online USM-272 form is available at <https://www.justice.gov/civil/page/file/914416/download>. Translated Spanish and Portuguese versions of the form can be found at <https://www.abclegal.com/international-service-of-process/forms>.

³¹ 42 U.S.C. § 659a (2018) authorizes the Department of State and the Department of Health and Human Services to enter into agreements with foreign countries for child support enforcement. As noted, the United States has federal reciprocal arrangements in force with the following countries that are not also party to the Hague Child Support Convention: Australia; all the Canadian Provinces and Territories except Quebec; El Salvador; Israel; and Switzerland. See the international page of the website for Office of Child Support Enforcement, <https://www.acf.hhs.gov/css/partners/international> (last visited Feb. 8, 2021).

³² The Uniform Interstate Family Support Act (UIFSA) permits states to establish a reciprocal arrangement for child support with a foreign country or political subdivision. See *Unif. Interstate Family Support Act*, § 308(b) (2008), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e12481bd-ac36-07ba-7d64-7841e9db5e09&forceDialog=0>.

a time consuming, complicated, and frustrating process. Unless no alternative exists, letters rogatory should be your last resort.

Service on a Member Who is on Board a Ship

For military members who are aboard a ship outside U.S. waters, the best method for service of process is through the mail if the forum state's law permits this method. Even military members on a ship will have an APO (Army or Air Force Post Office) or FPO (Fleet Post Office) address in the United States. If you attempted service by mail but did not receive a return receipt, follow the procedures noted earlier to seek assistance in obtaining a return receipt. Explain to the officer-in-charge of the service member's military post office that you never received a return receipt when you mailed the first notice, so you request that proper mailing procedures be followed this time and that you receive a receipt upon the delivery of the enclosed letter to the service member. Naval regulations provide that if the member refuses service by mail, the refusal will be noted and the documents returned to the sender.

If personal service is required by the forum state's law, you can attempt voluntary acceptance of service by the military member. Again, it may be useful to send the member's commanding officer a letter requesting the commander's assistance in service of process. The commander cannot serve the member with process. However, you can ask the commander to explain the consequences if the service member fails to respond to a child support action.

It is more difficult to personally serve the military member when the ship is in port. In times of military alert, the military is unlikely to disclose information about where a ship will dock during voyage. It may be necessary to delay service of process until the ship returns to its "home" port, whether that location is stateside or overseas.

Service on a Member Who Is in Combat

Problems that arise in attempting to serve process on military members can be compounded when the military member is involved in a contingency or combat operation. Military members may be away from their normal stateside or overseas installation for months, and even years, when they are involved in any manner of deployment. These temporary duty locations may not be able to be disclosed or may constantly change within a particular operation. If you are trying to establish an order, you may be better off asking the military to enforce its own support regulations as an interim measure until the member's deployment is over.

SERVICEMEMBERS CIVIL RELIEF ACT

Scope

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918, reenacted in 1940, and updated in 2003 with the enactment of the Servicemembers Civil Relief Act (SCRA).³³ Since 2003, the SCRA has been amended several times. It was recodified in 2015 and is now found at 50 U.S.C. §§ 3901 – 4043.³⁴ It is not found in state statutes. The primary purpose of the SCRA 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.³⁵ The SCRA is not intended to be an answer to all legal problems encountered by a military member.

The SCRA provides this purpose statement that serves as a guide to the courts and administrative tribunals in interpreting the intent of the Act:

The purposes of this Act are:

- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.³⁶

It is important to understand that the SCRA is not a shield that exempts military members from the judicial or administrative process. It is a provision for the suspension of certain civil proceedings during times that a military member's service affects his or her civil rights. The SCRA protects all service members on federal active duty, including:

³³ Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003).

³⁴ Since 1940, when it was called the Soldiers' and Sailors' Civil Relief Act, this statute was located at the Appendix to Title 50, U.S. Code, and references to it read "50 U.S.C. App. ____." Due to a 2015 decision of the Law Revision Counsel, U.S. House of Representatives, all the numbers were changed to reflect recodification into Chapter 50 of Title 50, U.S. Code, beginning with Section 3901.

³⁵ For a detailed explanation of the SCRA, including caselaw, sample forms, and a list of internet resources, see Mark Sullivan, *The Servicemembers' Civil Relief Act: A Guide for Family Law Attorneys*, <https://www.nclamp.gov/media/489004/Sullivan-SCRA-FamLaw-Guide.pdf>.

³⁶ Section 2 of the SCRA, codified as amended at 50 U.S.C. § 3902 (2018).

- Members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on active duty service, or who are absent from duty as a result of being wounded or being granted leave;
- Reserve, National Guard, and Air 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; and
- Commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration in active military service.³⁷

Actual deployment while in active military service is not a prerequisite to qualify for the protections of the SCRA.³⁸ The SCRA does not apply to DoD civilians, contract employees, or military retirees, and most of its provisions do not apply to military dependents directly.

As originally enacted, the SSCRA only applied to judicial proceedings. Under the SCRA, these protections now also cover administrative procedures, such as the administrative child support enforcement remedies mandated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.³⁹ Exhibit 14-4 summarizes the provisions of the SCRA.

Start and Termination of Protections

The SCRA's protections begin no later than when a person enters active military service. However, certain provisions expand this coverage. For example, reservists are entitled to most of the Act's rights and protections on the date they receive active duty orders. A service member is also protected during any period in which the member is absent from duty if the absence is due to sickness, wounds, leave, or other lawful cause.⁴⁰

The SCRA's coverage usually terminates "on the date on which the service member is released from military service or dies while in military service."⁴¹ Other sections of the Act qualify this period of military service. For example, the SCRA protection calling for the stay of a civil proceeding extends for 90 days after termination of or release from military service.⁴² Similarly, an

³⁷ Section 101 of the SCRA, codified as amended at 50 U.S.C. § 3911 (2018).

³⁸ The SCRA applies equally in times of war and in peace, despite the origins of the Act's predecessor (SSCRA) during the first and second World Wars.

³⁹ See Section 101(5) of the SCRA, codified as amended at 50 U.S.C. § 3911(5) (2018).

⁴⁰ See Section 101(2)(C) of the SCRA, codified as amended at 50 U.S.C. § 3911(2)(C) (2018).

⁴¹ See Section 101(3) of the SCRA, codified as amended at 50 U.S.C. § 3911(3) (2018).

⁴² Section 202 of the SCRA, codified as amended at 50 U.S.C. § 3932 (2018).

application to set aside a default judgment must be filed no later than 90 days after the date of termination of or release from military service.⁴³

Stay of Civil Proceedings

A “stay” means that proceedings are put on hold for a certain time period. The stay provisions of the SCRA apply to both judicial and administrative hearings and proceedings. A request for a stay of proceedings may be made at any point of the proceeding, provided it is made during the service member’s service or within 90 days after the member’s termination of or release from military service.⁴⁴

In determining whether a service member is entitled to a stay under the SCRA, the court or administrative tribunal must ask two questions. First, is the service member in active military service? As noted, to be eligible for a stay under the SCRA, a service member must be in military service, or it must be within 90 days after the member’s termination of or release from military service. Second, in support of the motion for a stay, did the member provide the required documents to the court or agency?⁴⁵ If the member makes an application for a stay and presents the required documents (see discussion herein), the court or administrative tribunal **must** stay the action for a period not less than 90 days.⁴⁶

Any stay under 50 U.S.C. § 3932(b) applies to proceedings filed during the member’s military service, even if they relate to obligations that arose before the member joined the service. For example, it would apply to a paternity proceeding that was initiated during the member’s service for a child conceived prior to the member’s entry into military service.

Procedural requirements. The SCRA requires that the service member provide a letter or other communication setting forth facts stating the manner in which the member’s current military duties materially affect the service member’s ability to appear and stating a date when the service member will be available to appear. The service member must also provide a letter or other communication from the service member’s commanding officer stating that the member’s current

⁴³ Section 201(g)(2) of the SCRA, codified as amended at 50 U.S.C. § 3931(g)(2) (2018).

⁴⁴ Section 202 of the SCRA, codified as amended at 50 U.S.C. § 3932 (2018).

⁴⁵ See *Fazio v. Fazio*, 71 N.E3d 157 (Mass. App. Ct. 2017) (while the Act should be liberally construed so as to protect the civil rights of those serving in our armed forces during the tenure of their service, the trial court judge did not abuse her discretion in refusing to grant a stay when the commanding officer’s statement failed to meet the requirements of the Act. The commanding officer’s communication stated that the husband’s unit would be conducting pre-deployment training for two months, including the date the hearing was scheduled, and then mobilizing for a year immediately after the training. There were no details about the husband’s pre-deployment training or explanation about how the requirements of the training mission prevented the husband from taking part of one day to attend a court hearing. Nor did the commanding officer state that the husband could not obtain leave to appear at the hearing at any time during the two months prior to mobilization).

⁴⁶ *Id.*

military duties prevent the member's appearance and that military leave is not authorized for the service member at the time of the letter.⁴⁷

DoD Instruction 1327.06. The fact that a service member is on active duty does not automatically mean that the member's current military duties "materially affect" his or her ability to appear in a civil proceeding. DoD Instruction 1327.06 (Jan. 15, 2021) states:

(11) Court Determination and/or Child Support Leave. When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, ordinary leave shall be granted, unless: (a) The member is serving in or with a unit deployed in a contingency operation; or (b) Exigencies of military service require a denial of such request.

Duration of stay. The tribunal may on its own motion and **shall**, upon application by the service member – which includes the required letters or communications to the tribunal demonstrating material effect – stay the action for a period not less than 90 days.⁴⁸ A service member who is granted a stay of a civil action or proceeding may apply for an additional stay based on continuing material effect of military duty on the service member's ability to appear. The request for an additional stay may be made at the time of the initial application or any other time where the service member is unavailable to defend the action.⁴⁹

The documents that the member must provide for an initial stay request must also be provided in the subsequent application:

- A letter or other communication from the member setting forth facts stating how current military duty requirements materially affect the member's ability to appear and stating a date when the service member will be available to appear; and
- A letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents his or her appearance and that military leave is not authorized for the service member at the time of the letter.⁵⁰

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

Denial of additional stay request. There may be situations when the child support attorney may decide to oppose an additional stay and argue that

⁴⁷ Section 202(b)(2) of the SCRA, codified as amended at 50 U.S.C. § 3932(b)(2) (2018).

⁴⁸ Section 202(b)(1) of the SCRA, codified as amended at 50 U.S.C. § 3932(b)(1) (2018).

⁴⁹ Section 202(d) of the SCRA, codified as amended at 50 U.S.C. § 3932(d) (2018).

⁵⁰ *Id.*

military duty does not materially affect the member's ability to appear. Such situations may include the following:

- The location of the hearing is in close proximity to the member's base or post and the member has a reasonable amount of annual leave accrued that can be used in trial preparation and attendance.
- The child support agency is willing to coordinate telephonic testimony or the member's participation via audiovisual means such as Skype. Note that Section 316(f) of the Uniform Interstate Family Support Act (UIFSA) requires tribunals to permit nonresident parties to "testify by telephone, through audiovisual means or by any other electronic means."⁵¹

If a tribunal, in its discretion, denies an additional stay, it must appoint counsel to represent the service member in the action or proceeding.⁵² The member may appeal the denial, but review is limited to determining whether the trial tribunal abused its discretion and arbitrarily denied the stay; the reviewing tribunal cannot simply substitute its own judgment.

Default Judgments

A default judgment is a judgment entered when a defendant fails to make an appearance at a proceeding, after service of process. 50 U.S.C. § 3931(b)⁵³ provides that, prior to the entry of a default judgment in a case where the defendant does not make an appearance, the plaintiff must file an affidavit with the tribunal:

- Setting forth facts to support either the statement that the defendant is in military service or the statement that the defendant is not in military service; or
- Stating that the plaintiff is unable to determine whether the defendant is in military service.

The affidavit may take any form as long as it is signed and certified, or declared to be true under penalty of perjury. As noted in the location discussion of this chapter, the Defense Manpower Data Center (DMDC) maintains a website that provides verification of whether an individual is in the military service.⁵⁴

It is important to know that section 3931 applies to **any** civil action or proceeding in which the defendant does not make an appearance. If the agency

⁵¹ See Unif. Interstate Family Support Act, § 316 (2008).

⁵² Section 202(d)(2) of the SCRA, codified as amended at 50 U.S.C. § 3932(d)(2) (2018).

⁵³ Section 201(b) of the SCRA.

⁵⁴ See Servicemembers Civil Relief Act (SCRA) Website, <https://scra-w.dmdc.osd.mil/scra/#/home> (last visited Nov. 11, 2020).

files an affidavit showing that the defendant is not in the service, the tribunal can enter a default judgment. If the child support agency fails to file the required affidavit, the tribunal should not enter a default judgment. Unfortunately, in areas without a military population, child support agencies frequently do not include the required affidavit, and tribunals often improperly enter default judgments. If a default judgment is improperly entered, the judgment is voidable. That means a military member is entitled to later reopen the default judgment, if certain conditions are met; however, until such time, the judgment is enforceable and entitled to full faith and credit. In order to avoid the possibility of the default judgment being reopened, it is important for the child support attorney to ensure the child support agency routinely files the required affidavits in all child support legal proceedings.

When an affidavit indicates that the defendant is in military service, the tribunal may not enter a judgment until after the tribunal appoints an attorney to represent the member. If the appointed attorney is unable to locate the defendant, actions by this attorney are not binding on the service member and do not waive any of the service member's defenses.

The filing of a false affidavit is a crime.⁵⁵ Also, the failure to file an affidavit can subject an attorney to disciplinary action if it can be shown that the attorney had knowledge of the service member's military status. Evidence of knowledge includes previous letters to the service member's commander or other correspondence that clearly shows the attorney knew the status of the service member.

Remember, a default judgment obtained in violation of the SCRA is voidable; that means it remains valid and binding until the service member takes affirmative steps to reopen the judgment. The SCRA permits a defendant to ask the tribunal to reopen its default judgment.⁵⁶ Five conditions must exist in order for a service member to reopen a default judgment:

- The tribunal must have entered the default judgment during the member's military service or within 60 days after termination of or release from military service;
- The service member made no appearance;
- The service member or his/her legal representative filed an application to reopen the judgment during military service or no later than 90 days after the date of termination of or release from military service;

⁵⁵ See Section 201(c) of the SCRA, codified as amended at 50 U.S.C. § 3931(c) (2018).

⁵⁶ See Section 201(g) of the SCRA, codified as amended at 50 U.S.C. § 3931(g) (2018).

- The service member was materially affected by reason of his/her military service in defending the action; and
- The service member has a meritorious or legal defense to the action, or some part of it.

The SCRA makes it clear that an application for a stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any defenses.⁵⁷ What would constitute an appearance? That is a factual question, about which courts may differ. Where the member has filed a response, requested genetic testing, and/or filed a financial affidavit with the tribunal, the tribunal will likely rule that the member has made an appearance, and will not consider his or her later failure to appear at the hearing a “default” under the SCRA. The tribunal may also consider a member’s participation in a telephone hearing related to the matter to constitute an appearance.

In deciding whether the military member has made an appearance, the tribunal will also look at actions by an attorney appointed by the tribunal to represent the defendant under 50 U.S.C. § 3931(b).⁵⁸ Actions by an appointed counsel will not bind the member, unless they are authorized by the member. Not only can an attorney’s actions constitute an appearance by the member if they are authorized, but actions by a spouse or other individual pursuant to a power of attorney, either general or specific, may also constitute an appearance if similar action taken by an attorney would constitute an appearance.⁵⁹ It is important to remember that the member’s right to reopen a default judgment does not mean that the judgment will ultimately be reversed. Only upon a showing that all five threshold criteria have been met will the tribunal reopen a default judgment and consider whether to set it aside.

Appointed counsel. Before a tribunal can enter a default judgment in a case where it appears that the defendant is in military service, the tribunal must appoint an attorney to represent the defendant.⁶⁰ The SCRA provides little guidance with respect to the actual responsibilities of the court-appointed attorney. If the defendant is a service member, the appointed attorney is primarily responsible for attempting to locate the service member and obtaining a stay of the proceedings until the service member can be present. It is important to note that if the appointed attorney cannot locate the service member, the acts of the appointed attorney are not binding on the service member and 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

⁵⁷ See Section 202 of the SCRA, codified as amended at 50 U.S.C. § 3932(c) (2018).

⁵⁸ Section 201(b)(2) of the SCRA.

⁵⁹ See Section 109 of the SCRA, codified as amended at 50 U.S.C. § 3920 (2018).

⁶⁰ See Section 201(b)(2) of the SCRA, codified as amended at 50 U.S.C. § 3931(b) (2018).

before the tribunal, the tribunal may construe those actions as an appearance by the member.

Stay or Vacation of Execution of Judgments and Attachments under the SCRA

50 U.S.C. app. § 3934⁶¹ authorizes a tribunal to stay the execution of a judgment, attachment, or garnishment order entered against a service member. Additionally, the section authorizes a tribunal to vacate an attachment or garnishment against a service member's property. The stay provisions of this section are similar to those for a stay of proceedings under 50 U.S.C. §§ 3931 and 3932.⁶²

For a stay or vacation under 50 U.S.C. § 3934: 1) military service must materially affect the ability of the military member to comply with the judgment, attachment, or garnishment action; and 2) the action or proceeding must have begun before or during military service, or within 90 days after military service terminates.

A tribunal may grant the stay on its own motion if it finds material effect. However, the tribunal **must** grant the stay on the motion of the military member unless it finds that military service has no material effect on his or her compliance with the judgment.⁶³ If the member's military service existed, and was considered, at the time the tribunal initially entered the judgment, it is unlikely that a stay of judgment enforcement will be granted, assuming compliance with all of the requirements of the SCRA. A military member can use the stay provisions of 50 U.S.C. § 3934 to stop an enforcement action or to seek a downward modification of his or her child support obligation, where military service has caused a reduction in income. An example is a reservist who is called to active duty and experiences a reduction in income. In such a circumstance, a stay of enforcement of the original child support order may be appropriate. It is important to note, however, that 50 U.S.C. § 3934 does **not** permit retroactive modification of a support obligation.

Tolling the Statute of Limitations

The legally required time limit in which an action or lawsuit must be filed is called a statute of limitations. Statutes of limitation differ depending on the type of legal claim. Statutes of limitation apply to actions filed in all tribunals, including federal court. Tolling means to suspend or hold in abeyance.

50 U.S.C. § 3936⁶⁴ provides for the tolling of statutes of limitation during the time that a person is in military service. The tolling applies regardless of

⁶¹ Section 204 of the SCRA.

⁶² Sections 201 and 202 of the SCRA.

⁶³ Section 204 of the SCRA, codified as amended at 50 U.S.C. § 3934(a) (2018).

⁶⁴ Section 206 of the SCRA.

whether the military member is a defendant or a plaintiff in the proceeding. The cause of action can have accrued either prior to, or during, military service. The one exception is that 50 U.S.C. § 3936 does not apply to federal internal revenue laws. The tolling provisions of 50 U.S.C. § 3936 are automatic once military service is shown. They are self-executing, which means no action is required by the service member. Unlike the stay provisions, there is no requirement for a service member to show that military service materially affected his or her ability to participate in the proceedings.

The tolling of the statute of limitations is double-edged. It applies to service members automatically, whether they are the plaintiffs or defendants. Therefore, any issues concerning the statutes of limitations in a paternity or child support action will fall under the tolling provisions of 50 U.S.C. § 3936.

Maximum Rate of Interest under the SCRA

50 U.S.C. § 3937⁶⁵ of the SCRA limits a service member's obligations or liabilities incurred prior to entry into military service to an interest rate that is not to exceed 6% per year. The 6% interest cap is applicable during the time the service member is in military service. The 6% interest ceiling is available only if:

- The debt or obligation was incurred prior to entry into military service; and
- The service member provides the creditor with written notice of military service and a copy of the military orders calling the service member to military service or extending service.

The interest rate ceiling is not available for debts and obligations incurred while in military service.

A creditor, such as a child support agency, may seek relief from the limitations of 50 U.S.C. § 3937 if, in the opinion of the court, the ability of the service member to pay interest in excess of the 6% ceiling is not materially affected by the service member's military service. Material effect is determined on a case-by-case basis. As a general rule, material effect is present if there is a reduction in income due to military service. This is more applicable to reservists in higher paying civilian jobs. A reservist called to active duty may suffer a drop in income that could materially affect the service member's ability to meet an obligation.

A child support attorney needs to be aware of 50 U.S.C. § 3937 because it can have an impact on interest that has been ordered on an obligation for unpaid child support, if the obligation was incurred prior to the member's entry into military service. However, 50 U.S.C. § 3937 does not require the attorney to

⁶⁵ Section 207 of the SCRA.

initiate anything. It is the service member's responsibility to contact the agency or tribunal and affirmatively invoke its provisions.

PATERNITY ESTABLISHMENT⁶⁶

Military Policy and Regulations

In an action to establish paternity against a member of the military, the child support agency should always first try to directly contact the service member/alleged father. If the member does not respond, paternity establishment is probably the one area of family support where the child support attorney can expect the least amount of assistance from the military. This is **not** because the military views non-marital children as less deserving of support, but rather because, absent a legal paternity determination, there is simply little a military commander can officially do to assist the child support agency.

Military regulations strictly limit the ability of a commander to become involved in civil matters. This is particularly true in civil matters like paternity establishment where no order exists. In paternity establishment cases, a commander's roles are limited to:

- Informing a service member of the claim;
- Informing the member of his legal and moral obligations, if any;
- Referring the member to a military legal assistance attorney if the member has questions about his legal rights;
- Urging the member to provide financial support to the child if, after legal consultation, the member admits paternity; and
- Providing complete, accurate, and timely information to the person or agency bringing the paternity action.⁶⁷

⁶⁶ For a more in-depth discussion of paternity establishment, see Chapter Nine: Establishment of Parentage.

⁶⁷ The military policy cited is from Army Regulation 608-99, Chapter 2 (Family Support, Child Custody, and Parentage), paragraph 3-7 (2020). All branches of the military have similar policies. The Air Force regulation is Air Force Instruction (AFI) 36-2906, Personal Financial Responsibility (2018). The Marine Corps policy is found at U.S. Marine Corps, Order P5800.16 – Vol. 9, Marine Corps Legal Support and Administration Manual (LEGALADMIN), (Dependent Support and Paternity) (2018). The Navy policy is stated in U.S. Dept of Navy, Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-010 (Paternity Complaints) (2006). The Coast Guard policy is found in U.S. Dept of Homeland Security, U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2 (Discipline and Conduct), Chapter 2.E (Support of Dependents) (2020).

In cases where the member admits paternity to the commander and agrees to provide financial support, the commander will assist the member in:

- Obtaining the appropriate available housing allowance;
- Understanding what he needs to do to complete a voluntary allotment for the child;
- Obtaining a military identification card for the child; and
- Obtaining leave, if requested, in order to marry the mother of the child.

The military member may also be entitled to additional allowances for the support of the child, depending on the allowances to which the member is already entitled.

In cases where the military member verbally admits paternity, but refuses to provide financial support, the role of the commander with respect to the subordinate is limited to referring that individual to a legal assistance attorney.

In cases where the military member denies paternity, a commander cannot force a member to cooperate with a child support office in its efforts to establish paternity. However, military policy requires individual members to manage their personal affairs honorably and to comply with lawful orders. It may be helpful for the child support attorney to call upon this policy when appropriate. For example, when direct contact with the military member is unsuccessful, a child support attorney can request that the commander speak with the member to encourage the member to comply with an order for genetic testing. This request should be in writing and explain the consequences of a failure to appear for the testing. Although the military commander cannot force a subordinate to appear for genetic testing, a tribunal can use its contempt powers to enforce an order requiring the member to appear for genetic testing.

Evidence Relative to Paternity Establishment

If the service member does not acknowledge paternity, the Leave and Earnings Statement (LES) of a member in the Army, Air Force, Navy, or Marines may have information that nevertheless evidences a parental relationship. Field 51 of the LES contains codes that identify the type of dependents (such as a spouse and/or child) that the member claims for Basic Allowance for Housing (BAH) purposes. If the member will not voluntarily produce their LES, the child support attorney can serve the member with a Request for Production of Documents.⁶⁸

⁶⁸ See Chapter Eight: Advocacy Skills for Child Support Attorneys.

In addition, the attorney can ask the child support agency to administratively order genetic tests for the purpose of establishing the probability of paternity.⁶⁹

Acknowledgment of Paternity

Because they are federal facilities, military hospitals are not required to participate in the state in-hospital paternity acknowledgment program. However, many medical hospitals voluntarily participate in such programs. The child support attorney can play an important role in helping the hospital and the hospital's legal advisor understand the paternity acknowledgment program and the benefits not only to the child, but also to the parents.⁷⁰

Benefits of Paternity Establishment

Paternity establishment provides the parents and the child with legal rights to Social Security benefits, life insurance benefits, and inheritance. By establishing paternity, 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, a child must be the dependent of a military sponsor. If a child was not born during marriage, the child is not eligible for TRICARE benefits unless there is a legal determination of paternity.⁷¹

SUPPORT ESTABLISHMENT⁷²

Military Policy and Regulations

Similar to its position in paternity cases, the military views the establishment of a child support order as a matter for the civilian courts. Where no support order exists in the case, there is little a commanding officer can do to compel a subordinate to participate in the order establishment process.

It is important to note at the outset that all branches of the military maintain regulations that require service members to support their families. In the absence of a support order or an agreement between the parties on the support amount, the branches vary with regard to the amount of support that is

⁶⁹ See 42 U.S.C. § 666(c)(1)(A) (2018).

⁷⁰ In general, in order to give birth in a military hospital, the mother must be a service member or a dependent of a service member.

⁷¹ See Jan. 28, 2008, Memorandum for Secretaries of the Military Departments, issued by David S. C. Chu, concerning Determinations of Dependency for Health Care Benefits for Out-of-Wedlock Children, accessible in [OCSE-DCL-08-07: DOD Determinations of Dependency for Health Care Benefits for Children Born Out-of-Wedlock](#) (Mar. 7, 2008).

⁷² For a more in-depth discussion of establishment, see Chapter Ten: Establishment of Child Support and Medical Support Obligations.

considered adequate.⁷³ Where the regulations specify a particular amount, it is generally less than the amount called for under most state child support guidelines.⁷⁴ Accordingly, the best practice is to establish a support order in accordance with your state laws and procedures at the earliest opportunity.

In broad statements of policy, all branches of the military prohibit their members from using their military duty to avoid providing financial support to their families. In support order establishment situations, each branch of the military provides additional policy and regulations defining the roles of service members and their commanding officers. For example, Army policy requires that soldiers provide “adequate financial support to their family members” to make certain that “their financial needs and welfare do not become official matters of concern for the Army.”

In cases where the military member is not cooperating with the order establishment process **and** not providing financial support for his/her dependents, it is appropriate for a child support attorney or caseworker to notify the member’s commanding officer of the alleged financial nonsupport. In response to this notification, the commanding officer must meet with the member to determine the validity of the allegation. As part of the inquiry, the commanding officer may take steps to stop the member’s receipt of any dependent-based pay (for example, Basic Allowance for Housing) that the member is not using to meet the needs of these dependents. The commanding officer may also advise the member to consult with a legal assistance attorney.

⁷³ See Air Force, Air Force Instruction (AFI) 36-2906, Personal Financial Responsibility (revised July 30, 2018), https://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2906/afi36-2906.pdf (last visited Jan. 23, 2021); Army Regulation 608-99, Family Support, Child Custody, and Parentage (2020), https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30639-AR_608-99-000-WEB-1.pdf (last visited Jan. 21, 2021); Marine Corps Order P5800.16 – Vol. 9, Marine Corps Legal Support and Administration Manual (LEGALADMIN), Dependent Support and Paternity (2018), https://www.marines.mil/Portals/1/Publications/MCO%205800.16_Volume%209.pdf?ver=2018-05-08-091321-823 (last visited Jan. 21, 2021); Navy Military Personnel Manual (MILPERSMAN) art. 1754-030, Support of Family Members (2006), <https://www.public.navy.mil/bupers-npc/reference/milpersman/1000/1700Morale/Pages/default.aspx> (last visited Jan. 21, 2021); Coast Guard Commandant Instruction (COMDTINST) M1600.2, Discipline and Conduct, Chapter 2.E, Support of Dependents (2020), https://media.defense.gov/2020/Oct/27/2002524777/-1/-1/0/CIM_1600_2.PDF (last visited Jan. 21, 2021).

⁷⁴ The Army’s support requirements, without a support order, are based on the With Dependents rate of the applicable Non-Locality Basic Allowance for Housing (BAH); the specific amount depends on a variety of factors, including number of dependents and other child support orders. In the absence of a support order, the Marine Corps guidance establishes that each family member must receive, at a minimum, a specified pro-rata share of the applicable Basic Allowance for Housing or Overseas Housing Allowance to which the Marine is entitled. The Air Force sets the default amount of support as the With Dependents rate of the member’s Non-Locality Basic Allowance for Housing for that member’s rank. The Navy uses a percentage of gross pay (spouse and minor child is 1/2 of gross pay; one minor child is 1/6 of gross pay). The Coast Guard sets its support for one child at 1/6 of the member’s basic pay or, for a spouse and one child, at the BAH difference plus 25% of the member’s basic pay.

After the commanding officer meets with the member to discuss the allegation of nonsupport, the commanding officer's responsibilities vary depending upon the service branch. The Army requires the officer to respond to the child support office within a reasonable time. If the soldier consents to the commanding officer providing such detail, the commander's reply will include a statement as to whether the soldier admits they have an obligation to provide financial support to their family and, if not, why not. If the member admits they have failed to provide this financial support, the commander will detail the immediate steps the member will take to provide this financial support in the future. For example, the service member can establish a voluntary allotment. However, because it is a voluntary allotment, the member can terminate it at any point.

Voluntary Allotment of Support

As noted, members of the military may establish a voluntary allotment of earnings and direct money from their pay to their dependents. In fact, 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, service members can generate this allotment even before a child support order exists in the case. A commanding officer will help a member obtain the voluntary allotment forms. Additionally, a military member can use myPay to establish the allotment. Although a commander can order a subordinate to obtain a voluntary allotment for his or her family if the member is not supporting them as required by regulation, a commander cannot actually issue the allotment.

There are limited instances when this remedy may be useful in processing child support cases involving the military. In discussions with the member (or the member's attorney) in cases where no support order exists, it is appropriate to point out that a voluntary allotment can help avoid the accumulation of unpaid child support during the order establishment process. In addition, the member should understand that this procedure provides an official record of payments that will help the member get credit for payments made prior to the entry of the order in states that authorize retroactive support. However, from the perspective of the child support program, a voluntary allotment should be viewed as a temporary action until a support order can be established and an income withholding order sent to DFAS.

Determining Income of Service Member

For all states and for tribes participating in the Title IV-D program, the establishment of an appropriate support obligation relies upon a full disclosure of the member's income. In the military, a member's basic pay is frequently not a complete picture of that person's income. Military pay is comprised of basic pay, available allowances (for example, Basic Allowance for Housing (BAH), Basic Allowance for Subsistence or Separate Rations (BAS or Sep Rats)), special skill

pay (for example, flight pay), and bonuses (such as reenlistment).⁷⁵ For all branches of the military, this information is provided on the member's Leave and Earnings Statement (LES).

The LES is a comprehensive document that 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:

- Member's name and SSN [fields 1 – 2].
- 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].
- Type(s) of dependents the member claims [field 51].
- Member's declared state of domicile [field 44].

The child support attorney must understand how to decipher the LES information in order to determine accurately a military member's complete income. For each service, DFAS has published a guide to understanding an active duty LES for that branch.⁷⁶ Note that the LES reports various types of income for the current pay period and for year to date.⁷⁷ The LES also identifies whether a given source of income is taxable. Review the LES carefully to determine the true "net" or "disposable" income available to the member. For example, BAS and BAH are not taxable, so if the state guideline includes these allowances in income,⁷⁸ they should not be reduced by taxes in order to reach "net income," as other types of income may be. Similarly, pay in two situations (serving in a combat zone and performing "qualified hazardous duty") is not taxable. Some allotments are voluntary (such as deductions for retirement accounts) and may not be appropriate reductions from gross earnings for the purpose of support guideline calculations. Also be aware that some special skills and hazardous duty pay may

⁷⁵ Current military pay and allowance information is available on-line at Defense Finance and Accounting Service, <https://www.dfas.mil/> (last visited Nov. 11, 2020).

⁷⁶ See Defense Finance and Accounting Service, *Military Members*, <https://www.dfas.mil/MilitaryMembers/payentitlements/aboutpay/> (last visited Nov. 11, 2020).

⁷⁷ Most bonuses are paid at the field level and are not processed by DFAS. As a result, the bonus is 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). Because it is available income, a tribunal may consider bonuses for the purpose of establishing a support obligation or an arrearage payback amount. However, bonuses paid in the field are usually not attachable for the purpose of enforcing a support order since DFAS learns of the bonus only after the military member has received it.

⁷⁸ See, e.g., La. Rev. Stat. § 9:315(C)(3)(a) (2018); N.J. Supreme Ct. R. 5:6A, App. IX-B (2019).

be for a limited time. An attorney should review at least six months of pay in order to get a complete financial picture.

The child support attorney should also request the member's tax returns. Many service members supplement their basic pay with investment income or second jobs. As noted earlier, however, there is a portion of military pay (for example, BAS and BAH) that is not taxable. Therefore, although tax records may include income not reported on the member's military pay stubs, the pay stubs will report income that does not appear on the member's tax return. It is important to review both documents to ensure an accurate picture of the member's income.

Federal Resources for Obtaining Military Income Information

Payroll data about active and reserve service members and National Guard members is provided to the FPLS through DoD's quarterly wage reporting to the National Directory of New Hires. OCSE then reports that information back to the states. In addition, caseworkers and attorneys may have access to income information through the OCSE Child Support Portal. As noted earlier, the Portal is a secured internet application that provides direct access to FPLS data. One of the applications available through the Portal is the DoD Entitlement Application. This application provides monthly base pay, bonuses, and entitlement pay information. Using the application reduces the need to submit a Freedom of Information Act (FOIA) request, a subpoena, or a Request for Production of Documents if a member refuses to provide the child support office with a copy of a current and complete LES.

Determining Income of Veteran

The easiest way for a child support agency to learn about a veteran's benefits is from the FPLS and the Child Support Portal. A child support attorney can also use a subpoena to obtain such information if the subpoena follows the guidelines set forth in the Privacy Act.⁷⁹

Inclusion of Veterans Benefits in Income of Veteran

Veterans may receive a number of military benefits, including service-connected disability compensation, a VA pension (a needs-based benefit paid to wartime veterans who meet certain age or non-service-connected disability requirements), and education and training benefits.⁸⁰ Many child support

⁷⁹ Find out more information at <https://www.oprm.va.gov/privacy/> (last visited Nov. 12, 2020).

⁸⁰ See U.S. Dep't of Veterans Affairs, *Veterans Benefits Administration Fact Sheets*, <https://benefits.va.gov/BENEFITS/factsheets.asp> (last visited Nov. 12, 2020).

guidelines do not expressly address veterans benefits. When they do, it is usually in the definition of income.⁸¹

The child support attorney should be aware that although veterans disability compensation benefits are exempt from garnishment, federal law does **not** prohibit the consideration of veterans disability benefits in the establishment of a support obligation. The relevant case is *Rose v. Rose*.⁸² The Tennessee courts had found a veteran in contempt when his only means of complying with a support order was to use his veterans benefits received as compensation for a service-connected disability. In upholding the Tennessee decision, the Supreme Court made several statements that are applicable to establishment proceedings.

The Court noted that in setting the noncustodial parent's financial responsibility for child support, the Tennessee trial court had considered, along with other factors identified by a Tennessee statute, the "earning capacity, obligations and needs, and financial resources of each parent." The noncustodial parent's income was then, and still was at the time of the appeal, composed entirely of benefits received from the Veterans and Social Security Administrations. He received monthly: \$1,211 in veterans disability benefits, \$1,806 in veterans aid and attendance benefits, \$90 in veterans dependents' benefits, and \$281 in Social Security disability benefits. The children received an additional \$94 a month in Social Security children's insurance benefits. The Tennessee trial court had ordered the parent to pay \$800/month as child support, in addition to the Social Security children's insurance benefits. When the noncustodial parent began paying only the \$90 in veterans dependent benefits, the custodial parent filed for contempt. The veteran responded that only the Department of Veterans Affairs or the Social Security Administration could require him to pay more in child support.

In discussing the apportionment statute at 38 U.S.C. § 5107 (now codified at 38 U.S.C. § 5307), the Court stated:

The parties cite no legislative history on the meaning of 3107(a)(2), and our search has uncovered nothing of a dispositive nature. Nowhere do the regulations specify that only the Administrator may define the child support obligation of a disabled veteran in the first instance. To the contrary, appellant, joined by the United States as amicus curiae, concedes that a state court may consider disability benefits as part of the veteran's income in setting the amount of child support to be paid.

Later the Court states: "Neither the Veterans' Benefits provisions of Title 38 nor the garnishment provisions of the Child Support Enforcement Act of Title 42

⁸¹ See, e.g., Or. Admin. R. 137-050-0715 (2020); Va. Code Ann. § 20-108.2(C) (2019); Wash. Rev. Code § 26.19.045 (2019).

⁸² *Rose v. Rose*, 481 U.S. 619 (1987).

indicate unequivocally that a veteran's disability benefits are provided solely for that veteran's support.”

SUPPORT ENFORCEMENT⁸³

This section of the chapter identifies the various enforcement remedies and procedures specifically available in cases where the noncustodial parent (active duty, reserves, civilian employee of DoD, retired service member, or National Guardsman activated to federal service) receives wages or other income from the military. 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.

The federal statute and regulation that govern income withholding from federal employees are the ones governing garnishment processing for all military branches: 42 U.S.C. § 659 and 5 C.F.R. Part 581.

Each branch has also developed the following policy regarding support:

- The Army: Army Regulation 608-99, Chapter 2 (Family Support, Child Custody, and Parentage).
- The Air Force: Secretary of the Air Force Instruction (AFI) 36-2906, Personal Financial Responsibility.
- The Navy: U.S. Dept of Navy, Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-010 (Paternity Complaints).
- The Marine Corps: U.S. Marine Corps, Order P5800.16 – Vol. 9 Marine Corps Manual for Legal Administration (LEGALADMIN) (Dependent Support and Paternity).
- The Coast Guard: U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2 (Discipline and Conduct), Chapter 2E (Support of Dependents).

Voluntary Allotment of Support

As noted earlier, members of the military may establish a voluntary allotment of earnings and direct money from their pay to their dependents. While the child support attorney should be aware that a voluntary allotment is an option, it is not an enforcement tool that a child support attorney or caseworker can

⁸³ For a more in-depth discussion of establishment, see Chapter Eleven: Enforcement of Support Obligations.

generate. Only military members can initiate a voluntary allotment. It is also important to understand that members can revise or terminate a voluntary allotment just as easily as they can start one. Therefore, when a child support order exists in a case, the child support attorney should **not** rely upon the voluntary allotment as the mechanism to divert child support from the member's earnings to his or her family.

Involuntary Withholding of Military Income for Support

The main vehicle for involuntarily attaching military income for support is an order/notice to withhold income for child support based on state law.⁸⁴ The federal statutory military allotment⁸⁵ is also available, but this provision in law pre-dates immediate income withholding and is seldom used. Child support agencies will most often use their state child support withholding law (via the OMB-approved *Income Withholding Order/Notice for Support*⁸⁶) to attach military income.

Military income subject to withholding. The following income of a military member or civilian DoD employee is subject to state income withholding to enforce a child support obligation:

- Military active duty pay (basic pay and certain bonuses, **but not** Basic Allowance for Housing (BAH) or Basic Allowance for Subsistence (BAS)/Separate Rations).
- Military reserve and retired pay.
- Federal DoD civilian employee pay and civilian retirement pay.
- “Any other remuneration for employment.”

Military payment processing center. The Defense Finance and Accounting Service (DFAS) processes the pay for military members of the Army, Navy, Air Force, and Marines who are on active duty, in the reserves, and retired from the military. It also processes the pay for civilian DoD employees and members of the National Guard who have been activated into federal service.⁸⁷

When initiating income withholding or the federal statutory military allotment, the child support agency must send the appropriate form to the appropriate payroll processing center. All income withholding orders for active and reserve components, and retired members of the Army, Navy, Air Force, and

⁸⁴ See 42 U.S.C. §§ 659 and 666 (2018).

⁸⁵ See 42 U.S.C. § 665 (2018).

⁸⁶ For a detailed discussion of income withholding, see Chapter Eleven: Enforcement of Support Obligations.

⁸⁷ DFAS maintains a website with information regarding its services at <https://www.dfas.mil/> (last visited Feb. 5, 2021). It includes information on child support garnishments. Note that the Office of Personnel Management processes civilian retirement pay, not DoD and DFAS.

Marines; and all notices to initiate statutory military allotments for uniformed services on active duty, should be sent to: DFAS Garnishment Law Directorate, P.O. Box 998002, Cleveland, OH, 44199-8002, or faxed to 877-622-5930.⁸⁸ (Note: DFAS does **not** process payroll for civilian employees of government contractors working on a military project.)

The Coast Guard processes its own payroll for active duty, reserves, and retired members. For the Coast Guard, you will need to mail or fax the income withholding order to: Commanding Officer (LGL), Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683-3591 or faxed to 785-339-2200.

An involuntary income withholding for support, regardless of the specific form used to implement income withholding, has priority over a pre-existing voluntary allotment.

State income withholding orders for child support. In most support enforcement cases involving a military member, the child support agency should send the OMB-approved *Income Withholding Order/Notice for Support* to the appropriate payroll office listed above. Note that DFAS is able to receive electronic income withholding orders and send withheld earnings electronically (EFT), and all state child support agencies are processing withholdings in that manner. As of January 2021, the Coast Guard is unable to receive income withholding orders electronically; however, it does send payments electronically to the state disbursement units (SDUs).

Due to DFAS's payroll processing requirements, the cut-off date for implementing an income withholding order against an active duty member is the 7th of the month. (This is true for both state income withholding and the federal statutory military allotment.) The cut-off date is the 15th of the month for implementing an income withholding order against a military retiree. DFAS legal staff need up to 15 days to process a withholding request so it sometimes takes up to 60 days before the SDU receives the initial payment.

Note that DFAS does not send the military member a copy of the income withholding order/notice. It is therefore incorrect for a child support agency to assume that DFAS, as the employer, is giving notice to the noncustodial parent of his/her rights and responsibilities. Also keep in mind that when the state child support withholding order ends, the child support agency must notify DFAS in order for the military withholding to cease.

Income withholding when Reservist or National Guard Member is called to active duty. If a noncustodial parent is employed in the civilian sector and is called to active duty, any income withholding order that is in place against the parent's civilian income is not automatically transferred to DFAS. The child support agency must send an income withholding order to the appropriate place

⁸⁸ This is the same address used for garnishment of the pay of civilian DoD employees.

– either DFAS Garnishment Law Directorate in Cleveland, Ohio, or the Coast Guard Pay and Personnel Center in Topeka, Kansas.⁸⁹

Keep in mind that although civilian employers are required to forward money to the SDU within seven business days from the date it is deducted, DFAS deducts the child support payments from a service member's paycheck twice per month and generally sends those payments to the state child support agency once a month on the first business day of the month following the month from which the payments were deducted. (However, please note that there are times when DFAS will send a payment out during the month that it was deducted because the end-of-month payday falls on a weekend or holiday.) It is good customer service to let the custodial parent know, in advance, that the parent will likely receive payments on a different schedule than when the noncustodial parent was paying support through withholding from his or her civilian pay.

Income withholding when a military member retires. If a member goes from active duty to retirement, a new income withholding order is not required. However, because the active duty pay and the retired pay are on completely different pay systems, one of the parties should contact DFAS to inform them that the member has retired so DFAS can transfer the income withholding order from the member's active duty pay to his retired pay.

Please note that once the member has retired, it can take 30 to 60 days for a child support payment to be issued, as the Retired and Annuitant Pay Directorate has to first create the retired pay account. DFAS cannot begin withholding support from retired pay until the retired pay account is established. This means there will be a delay in the initial payment.

The Coast Guard will also automatically move a retiree's income withholding to his or her retired pay.

Uniformed Services Former Spouses' Protection Act (USFSPA). This act⁹⁰ is another avenue available to collect child support from **retired** military personnel. The USFSPA provides a method of enforcing current and/or previously owed (arrears) child support and current alimony if they are awarded in a court order. An income withholding order is not required. The spouse or former spouse can collect child support by submitting a certified copy of the court order that awards the child support, child support arrearages, or alimony along with an Application for Former Spouse Payments from Retired Pay, DD Form 2293. If seeking to collect child support arrearages, there must be a court order determining the total arrearages, and the order cannot be older than two years from the date the designated agent for the appropriate Uniformed Service

⁸⁹ See Defense Finance and Accounting Service, <https://www.dfas.mil/garnishment/cseainfo.html> (last visited Nov. 12, 2020).

⁹⁰ Pub. L. No. 97-252, 96 Stat. 718, 730 (1983), codified at 10 U.S.C. § 1408 (2018). The implementing federal regulations are at DoD 7000.14-R, Department of Defense Financial Management Regulation, Vol. 7B, Ch. 29 (July 2019).

receives it.⁹¹ Court orders must be certified by the clerk of the court that issued the order.⁹²

The USFSPA limits withholding to 50% of disposable retired pay. However, when a USFSPA application, a certified copy of the order, and a certified support income withholding order are submitted, the withholding limit is raised to 65%.⁹³ A limitation to this remedy is that it cannot be used to enforce a support obligation if the parties were not married. Note also that in almost all cases, it is the spouse or former spouse of the retired military member who directly initiates enforcement under USFSPA; the child support agency does not initiate it. Payments paid under the USFSPA are made once a month and are paid directly to the spouse or former spouse.⁹⁴

A former spouse can collect current alimony under the USFSPA, but not alimony arrearages.

Federal military allotment statute. The federal statutory allotment⁹⁵ is a separate and distinct income withholding remedy that is specifically directed toward the military. A child support agency can use it to enforce both child and spousal support obligations owed by a member of one of the uniformed services on active duty. The member must have arrears totaling at least two months' amount of support. The amount of the allotment is the amount necessary to comply with the support order. Because of these two limitations – (1) the allotment is not immediate but requires two months amount of arrears; and (2) it will only be for current support unless the support order specifically sets an arrearage payback amount – DFAS reports that very few cases are submitted via the federal statutory allotment process.

To initiate a federal statutory allotment, there must be a notice from an authorized person requesting the particular military branch to initiate the allotment. An “authorized person” is defined as a Title IV-D agent or attorney, and a court with authority to issue a support order or an agent of the court.⁹⁶

⁹¹ See DoD 7000.14-R, Department of Defense Financial Management Regulation, Vol. 7B, Ch. 29, Para. 290403 (July 2019) for the designated agents for receipt of the application and supporting documents.

⁹² DoD 7000.14-R, Department of Defense Financial Management Regulation, Vol. 7B, Ch. 29, Para. 290401 (July 2019).

⁹³ 10 U.S.C. § 1408(e)(4) (2018); DoD 7000.14-R, Department of Defense Financial Management Regulation, Vol. 7B, Ch. 29, Para. 291001 (July 2019).

⁹⁴ 10 U.S.C. § 1408(d) (2018).

⁹⁵ See 42 U.S.C. § 665 (2018).

⁹⁶ 42 U.S.C. § 665(b) (2018).

The notice can be as informal as a letter, but must include:

- The military member's full name;
- The military member's SSN;
- A statement that the arrears are equal to or greater than the current child support owed for two months;
- A certified copy of the underlying child support order;
- The date the allotment should stop; and
- A statement that the person writing the notice is an "authorized person."

Exhibit 14–5 is a sample letter to request the federal statutory military allotment. Send this notice to the same payroll processing center that receives the OMB-approved *Income Withholding Order/Notice for Support*.

Income Withholding Against Veterans Benefits Received from the Department of Veterans Affairs

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 armed service member waives part of his or her retired pay (which is taxable) in order to receive the disability compensation (which is nontaxable). That part of the veteran's payment that is in lieu of the waived retired pay is subject to garnishment. However, if the member's entitlement or disability compensation is greater than their entitlement to retired pay, and the service member waived all their retired pay in favor of disability compensation, then none of the disability compensation is subject to garnishment or attachment.

DFAS does not process the garnishment of veteran disability compensation. In the limited circumstance when VA disability compensation is garnishable, because it is received in lieu of retirement income, send the income withholding order to the VA regional office serving the veteran.⁹⁷

Apportionment of Veterans Benefits

Availability of apportionment. In certain circumstances part of a veteran's benefits may be "apportioned." An apportionment reduces the amount of the benefit going to the veteran, and instead routes the money to a different beneficiary. 38 U.S.C. § 5307 and implementing regulations⁹⁸ provide for an

⁹⁷ To locate the regional office, go to <https://www.benefits.va.gov/benefits/offices.asp>.

⁹⁸ 38 C.F.R. § 3.450 (2019).

apportionment of all or any part of a veteran's pension, compensation, or emergency officers' retirement pay in the following two circumstances:

- If the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States or any of its political subdivisions.
- If the veteran is not living with his or her spouse, or if the veteran's children are not living with the veteran **and** the veteran is not reasonably discharging his or her responsibility to support the spouse or children.

The statute also provides for apportionment of certain benefits in certain circumstances when the veteran is deceased; and when the veteran is not living with his or her spouse, or if any of the veteran's children are not in his or her custody, and the veteran is receiving a subsistence allowance payable to the veteran under 38 U.S.C., Chapter 31 (Training and Rehabilitation for Veterans with Service-Connected Disabilities) or educational assistance allowance payable on account of dependents under Chapter 34 (Veterans' Educational Assistance).

The statutory provision most relevant to the child support attorney is the one authorizing an apportionment if the veteran is not residing with his or her spouse, or if the children are not residing with the veteran **and** the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support. As noted later, the VA will approve the apportionment only if it will not cause undue hardship for the veteran. The attorney should also be aware of special apportionments authorized under 38 C.F.R. § 3.451. The regulation authorizes a special apportionment of a veteran's pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation when a hardship is shown to exist for a veteran's dependents. The child support attorney cannot seek either apportionment solely in the name of the child support agency; the custodial parent must request them. However, it is important for the attorney to be aware of these provisions in order to inform the custodial parent of their availability and to assist the parent if needed. Receipt of an apportionment may also impact the child support guideline calculation. See the later discussion herein.

Procedure for requesting an apportionment. Implementing regulations are at 38 C.F.R. §§ 3.450 – 3.458. When the custodial parent applies for an apportionment, the Department of Veterans Affairs (VA) will ask the custodial parent to complete VA Form 21-0788: Information Regarding Apportionment of Beneficiary's Reward.⁹⁹ Among the information that the parent must provide are the following:

⁹⁹ VA Form 21-0788 is available at <https://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf>.

- Name of person(s) for whom an apportionment is sought and their relationship to the veteran.
- Amount of support the veteran is contributing to the named person(s).
- The frequency of these contributions.

The form also asks whether the veteran's children have been adopted by another person; if that is the case, the VA will not allow an apportionment.

Part I of the form then asks the requesting party to provide income and net worth. If the requesting party is claiming an apportionment as the custodian of the veteran's child(ren), the form directs the party to report his or her income and net worth and that of the child(ren). Part II of the form solicits information about monthly living expenses.

Pursuant to guidance from OCSE, it is appropriate for the child support agency to write to the VA, using agency letterhead, to request an apportionment review.¹⁰⁰ The letter should be signed by both the appropriate child support agency official and the custodial parent. The agency should address the letter to the VA Regional Office servicing that veteran's benefits. The VA offers a toll free number to determine which regional VA office is appropriate (1-800-827-1000).

Review by the VA. The apportionment process is administrative. The VA will conduct an initial review of the application for apportionment VA Form 21-0788 to determine if one of the following three exceptions applies:

- The amount of the veteran's benefits is too small to be divided between the veteran and his or her children;
- Another person has legally adopted the veteran's children;¹⁰¹ or
- The beneficiary who is receiving the veteran's benefits is the one who is requesting the apportionment (i.e., the veteran cannot ask the VA to send part of his or her check to the children).

If one of these exceptions is present, the VA will not allow an apportionment.

In the absence of an exception, the VA will gather evidence related to two main questions. First, do the children need financial assistance per 38 C.F.R. § 3.451 or do they live apart from the veteran and not receive a reasonable level of support, as stated in 38 C.F.R. § 3.450? Its review will be based on information that the custodial parent has provided. Second, would taking money from the veteran's

¹⁰⁰ See [OCSE-IM-98-03: Financial Support for Children from Benefits Paid by Veterans Affairs](#) (Sep. 25, 1998).

¹⁰¹ However, if the veteran was receiving additional benefits because of these children, the extra benefit that the veteran was receiving could be given directly to the adoptive parent.

benefits cause the veteran financial hardship? To answer that question, the VA will ask the veteran to also complete the form detailing income, net worth, and monthly living expenses. The VA will allow the veteran to give a written statement explaining the support that the veteran has provided his or her children, and why an apportionment would cause the veteran great financial hardship. Keep in mind that the VA's primary obligation is to the veteran. Even if the claimant demonstrates a need, the VA cannot impose undue hardship on the veteran.

Based on its review, the VA will render a decision. In two circumstances, it will deny an apportionment:

- The person seeking the apportionment for child support has not shown that the children have a financial hardship.
- Even if the person seeking the apportionment for child support has shown financial hardship, the veteran has shown that he or she will also suffer financial hardship from the loss of the money. The special apportionment under 38 C.F.R. § 3.451 refers to “undue hardship.”

If, on the other hand, the VA finds that the person seeking the apportionment for child support has shown financial hardship **and** the veteran has not shown that he or she will suffer financial hardship, the VA will grant the apportionment. The veteran has a right to appeal the decision.

Amount of apportionment. The decision to grant an apportionment is discretionary with the VA, as is the amount of any apportionment. It is not subject to trial court review, nor does it need to be based on any child support order. Pursuant to federal regulations governing special apportionments:

The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.¹⁰²

Incarcerated veterans. When a veteran who is receiving disability compensation is incarcerated for more than 60 days¹⁰³ for a felony conviction, the veteran will receive a reduced amount of compensation, beginning on the 61st day of incarceration.¹⁰⁴ If the veteran has a service-connected disability rated at 20% or more, the veteran will not receive such compensation that exceeds the rate of compensation under 38 U.S.C. § 1114(a). If the veteran has a service-connected disability rated at less than 20%, the veteran will not receive

¹⁰² 38 C.F.R. § 3.451 (2019).

¹⁰³ The 60 days do not include any period during which the veteran is participating in a work-release program or is residing in a halfway house. See 38 U.S.C. § 5313(a)(2) (2018).

¹⁰⁴ 38 U.S.C. § 5313 (2018). See also 38 C.F.R. § 3.665 (2019).

such compensation that exceeds one-half of the rate of the compensation under 38 U.S.C. § 1114(a). All or any part of the compensation not paid to the incarcerated veteran may, as appropriate in an individual case, be apportioned as provided by 38 U.S.C. § 5307.¹⁰⁵

Pursuant to federal regulations,¹⁰⁶ the VA will inform the veteran whose benefits are subject to this reduction of the rights of his or her dependents to an apportionment while the person is incarcerated, and the conditions upon which payments to the veteran may be resumed upon his or her release from incarceration. In addition, the VA will notify the veteran's dependents of their right to an apportionment if the VA knows of their existence and can obtain their addresses.¹⁰⁷

The VA may grant an apportionment to the veteran's spouse, child(ren), and dependent parent of all or part of the compensation not paid to the incarcerated veteran. The VA will base its decision on individual need, factoring such things as the apportionee claimant's income and living expenses, the amount of compensation available to be apportioned, the needs and living expenses of other apportionee claimants, as well as any special needs of all apportionee claimants.¹⁰⁸

Effect of apportionment on child support guideline calculation. Very few states expressly address apportioned veterans benefits within their child support guidelines. One state that does is Oregon. Its child support guidelines define "apportioned veterans' benefits" as "the amount the U.S. Department of Veterans Affairs deducts from an obligated parent's Veterans benefits and disburses to the child or to the child's representative payee."¹⁰⁹ Pursuant to the guidelines, the benefits paid to the child based on the parent's disability is included in that parent's income, regardless of whether that parent is expected to pay or receive support. If the veteran becomes the obligated parent, the tribunal may then reduce the resulting cash child support obligation dollar for dollar in consideration of any apportioned veterans benefits; the reduction is discretionary, not mandatory.¹¹⁰

¹⁰⁵ 38 U.S.C. § 5313(b) (2018). See also Veterans Benefits Manual M21-1MR, Part III, Subpart v, Chapter 8, Section B: *Paying Benefits to the Dependent(s) of an Incarcerated Veteran* (2017), https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/local/en-US/portal/55440000001018/content/554400000014272/M21-1-Part-III-Subpart-v-Chapter-8-Section-B-Paying-Benefits-to-the-Dependents-of-an-Incarcerated-Veteran?query=chapter%20%20apportioning%20benefits%20of%20an%20incarcerated%20vet%20eran (last visited Nov. 12, 2020).

¹⁰⁶ 38 C.F.R. § 3.665 (2019).

¹⁰⁷ 38 C.F.R. § 3.665(a) (2019).

¹⁰⁸ 38 C.F.R. § 3.665(e) (2019).

¹⁰⁹ Or. Admin. R. 137-050-0740(1)(a).

¹¹⁰ See Or. Admin. R. 137-050-0740(2).

Medical Support

A legal dependent of an active or retired military member is eligible for services through the military health system. This is true regardless of whether the dependent resides with the member. TRICARE is the health care program serving all uniformed services, including the Coast Guard, retirees, and their families. It is also available to National Guard and Reservist members who have been called to federal active duty for more than 30 days and to their families. It is not available to civilian employees of DoD. To be eligible for care at military medical facilities or receive services through TRICARE, the child must be registered in the Defense Enrollment Eligibility Reporting System (DEERS).

The DEERS database maintains information on the military member, known as the “sponsor,” and the sponsor’s dependents. It is used to confirm eligibility for military benefits including health care. A sponsor is automatically registered in DEERS, but it is the sponsor’s responsibility to enroll family members. Dependent children who are born during marriage, adopted, stepchildren, or nonmarital children of record of a female member are entitled to DEERS enrollment and TRICARE benefit eligibility. Children born to unmarried parents, where the father is the military member, are also entitled to military health care and enrollment in DEERS if there is a legal determination of paternity. According to DoD 2020 eligibility requirements, the following constitute a legal determination of paternity for purposes of DEERS enrollment:

- A court order establishing paternity;
- A consent order of paternity that establishes paternity;
- A Military Staff Judge Advocate (SJA)/Judge Advocate General (JAG) Legal Opinion that establishes paternity; or
- A certified copy of a voluntary paternity acknowledgment.

The voluntary acknowledgment form must be recognized by relevant and applicable state law as establishing legal paternity. That means both parents must sign the voluntary form, with their signatures authenticated by a notary or witness(es), depending on state law. The parents do not have to sign at the same time. Because each state has its own acknowledgment form, the parents must use the form from the state where the child was born.

The easiest way to enroll a dependent in DEERS is for the military member (sponsor) to enroll the child. There is no need for legal involvement. The military member can go to a nearby Uniformed Services ID card issuance site. This is also referred to as a RAPIDS ID card office or facility; RAPIDS is the acronym for the Real-Time Automated Personnel Identification Card System. The member can also enroll the child during pre-deployment processing programs.

In the case of a child born during marriage to a male military member, the member can establish dependency by bringing a certified copy of the child's birth certificate, a certificate of live birth, or an FS-240, Consular Report of Birth Abroad. If the child was not born during marriage, the male military member also needs to bring documentation (see list above) establishing a legal determination of paternity. Complete instructions, including a pre-arrival checklist, are available online.

The military sponsor must complete DD Form 1172-2, Application for Identification Card/DEERS Enrollment form.¹¹¹ A verifying official at the site must validate the documents establishing dependency. Once that is done, the official will register the child, which will automatically result in TRICARE enrollment.

If the military member does not enroll the child in DEERS, the custodial parent can also enroll the child by going to a Uniformed Services ID card issuance site and presenting the appropriate documents to the official who verifies dependent status. The parent or child support agency can use the internet to locate the nearest facility.¹¹² The custodial parent will need to present the same documents that the sponsor would have presented. Note that genetic test results are **not** considered adequate documentation of paternity. If this is a case where the sponsor will not sign the enrollment paperwork, the verifying official can sign on the sponsor's behalf, provided 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 or her dependent child.

If the sponsor is active duty, registration of the child in DEERS automatically results in TRICARE enrollment. DEERS will enroll the child in either TRICARE Prime or TRICARE Select, depending on the child's address in DEERS. If the sponsor or custodial parent wishes to change between TRICARE Prime or Select, there is a limited time period to make that change. Otherwise, they may change coverage during the TRICARE open enrollment season each fall.¹¹³

OCSE considers TRICARE to meet its definition of health care coverage. However, it is not appropriate to send the National Medical Support Notice (NMSN) to the Defense Management Data Center (DMDC) to enforce health care coverage for dependents of active duty military or retired military personnel.¹¹⁴ If the child support agency determines a child is eligible for enrollment, as indicated by the DMDC/FCR match or by the FEIN from the New Hire Report or the Quarterly Wage Report, the agency should ask the custodial

¹¹¹ See Department of Defense Common Access Card, <https://www.cac.mil/> (last visited Nov. 12, 2020).

¹¹² See RAPIDS Site Locator, DMDC, <https://idco.dmdc.osd.mil/idco/#/> (last visited Nov. 12, 2020).

¹¹³ More information about Tricare coverage options can be found at <https://www.tricare.mil/> (last visited Nov. 12, 2020).

¹¹⁴ See policy guidance provided in [*OCSE-PIQ-06-02: Guidance for Sending the National Medical Support Notice to the Defense Manpower Data Center*](#) (Mar. 29, 2006), which remains valid.

parent to either verify enrollment or contact a nearby Uniformed Services ID card issuance site with the proper documentation to initiate enrollment of the dependent in DEERS and TRICARE.

For DoD civilian employees, child support agencies must continue to send the NMSN to the appropriate DoD human resource office. The address for the appropriate HR office is included as part of the new hire and quarterly wage response that is sent as an FPLS match.

ACCESS, PARENTING TIME, AND CUSTODY ISSUES

Although child support agencies continue to focus on core services, they also provide services or work collaboratively with other programs to engage noncustodial parents in the lives of their children, increase noncustodial parent employment, improve family relationships and encourage health marriages, secure health care coverage, and help prevent family violence. One area in which child support agencies are increasingly involved is co-parenting, including parenting time (visitation).¹¹⁵ States receive \$10 million per year in federal funding for the Access and Visitation Program, administered by OCSE. This program supports and facilitates noncustodial parents' access to and parenting time with their children. Services funded by this grant program include mediation, counseling, education, development of parenting plans, supervised visitation, safe exchange services, and development of guidelines for parenting time and alternative custody arrangements. Services vary among the states. Although program services are not limited to parents in the child support program, an increasing number of states are prioritizing services for families with child support cases. In some states, the child support agency participates in the coordination of services along with other agencies. In some states, the child support agency also plays a significant role in ensuring voluntary, agreed upon parenting time plans are included in child support orders. Chapter 15 discusses the relationship between child support, custody, and parenting time arrangements, in depth. This chapter discusses state laws, military regulations, and family resources related to parenting time and custody that specifically impact service members.

State Laws

State laws govern the relationship between individual parents, such as marriage, divorce, separation agreements, parenting time plans, and custody. These laws vary. With regard to custody, some states leave custody totally within

¹¹⁵ Information about the impact of improved visitation/access on the payment of child support can be found at the [OCSE-DCL-07-15: Report on Child Access and Visitation Programs: Participant Outcomes](#) (May 24, 2007), and U.S. Department of Health and Human Services, Office of the Inspector General, OEI-05-02-00300: *Effectiveness of Access and Visitation Programs* (Oct. 2002). See also Office of Child Support Enforcement, [Access and Visitation Grant Program Update: FY2018](#) (Mar. 2020). For more information about the AV Program, see Office of Child Support Enforcement, [Access and Visitation Mandatory Grant Program](#).

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 purport to have a presumption of joint custody in all cases, which can be rebutted based on evidence of the child's best interest. Court rules may also establish requirements related to determination or mediation of parenting time and custody issues. In 2012, the Commissioners on Uniform State Laws approved a Uniform Deployed Parents Custody and Visitation Act¹¹⁶ to address custody and visitation (parenting time) issues that arise when parents are deployed in military or other national service.¹¹⁷ As of January 2021, 14 states have enacted it.¹¹⁸ Other states also have statutory provisions that address custody and parenting time in relation to deployed service members.¹¹⁹

Military Regulations and Policy

Where there is a court order, each service branch's 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. In the absence of a court order regarding visitation, parenting time, or custody, the service member must comply with the policy of their service branch. For example, the Army has regulations that address visitation and custody, including a commanding officer's duties if there is an inquiry regarding a member's failure to return a child.¹²⁰

Resolution of Parenting Time Issues

Sometimes parents need assistance in resolving parenting time issues. Some states have used federal Access and Visitation grant money¹²¹ to fund mediation projects through the court, the child support agency, or other community organizations. Local jurisdictions often fund dispute resolution or mediation services through the courts. The service member has a number of additional resources available to assist with parenting time issues. Some are free, such as those offered through military legal assistance offices, military lay advisors and counselors, and non-military advocacy groups. These resources

¹¹⁶ See

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1c66425c-d649-3b0d-ed7a-85bb363330ee&forceDialog=0>.

¹¹⁷ See Mark E. Sullivan, *Military Custody and Visitation: Problems and Solutions in the Twenty-First Century*, 52 Fam. Ct. Rev. 355 (Jul. 2014).

¹¹⁸ Arkansas, Colorado, Florida, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.

¹¹⁹ See, e.g., Alaska Stat. § 25.20.095 (2019); Cal. Fam. Code § 3047 (2019); Iowa Code § 598.41D (2018); Kan. Stat. Ann. § 23-3217 (2011); Okla. Stat. Ann. § 43-112.7 (2019); Or. Rev. Stat. §§ 107.145 to .146 (2020); 51 Pa. Cons. Stat. Ann. § 4109 (2019). For more information, see Chapter Fifteen: Access and Visitation Time.

¹²⁰ Army Regulation 608-99 Family Support, Child Custody, and Parentage (Nov. 13, 2020).

¹²¹ OCSE has a page on its website dedicated to information to the states on the federal grants for access and visitation: <https://www.acf.hhs.gov/css/grants/current-grants/access-and-visitation-mandatory-grants>.

often provide counseling and mediation assistance. There are also resources targeted to the service member that are accessible through the internet.¹²²

Military legal assistance officers, who are often not licensed to practice law in the jurisdiction where their installation is located, do not represent service members in state court. The service member may hire a private lawyer to help resolve parenting time and custody issues, and to represent the member in any legal proceeding.

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 proceeding related to custody or parenting time 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 specifying a date when the member will be available to appear. The request must include a statement from the 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 initial request for a stay must be granted 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.¹²³

Depending on the issues in the custody or parenting time proceeding, the service member may wish to proceed with the hearing rather than delay it. For example, a member who needs an adjustment to parenting time may decide to request electronic or telephonic testimony rather than allow a delay to affect the situation of the child.¹²⁴

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. Service members may contact the nearest Armed Forces Legal Assistance

¹²² See, e.g., Military One Source, <https://www.militaryonesource.mil/> (last visited Nov. 12, 2020).

¹²³ See generally Sara Estrin, The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings, 27 Law & Ineq. 211 (2009).

¹²⁴ Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) permits an individual to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state.

Program office.¹²⁵ The member may also seek assistance from a private attorney.

Family Care Plan

A Family Care Plan¹²⁶ is a “blueprint” that spells out how the military member’s family 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. These plans demonstrate to the commander that unit members will be ready to accomplish the mission of the unit with little or no disruption by family issues. However, as discussed later, it does not supersede a court order regarding parenting time or responsibility for making legal decisions affecting a child.¹²⁷ Often service members mistakenly believe the contrary.

Who must have a Family Care Plan? According to Department of Defense Instruction 1342.19, the following members within all active and reserve components and the DoD Civilian Expeditionary Workforce are required to 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 are required to 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 in the service member’s absence. 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.

¹²⁵ See Legal Services Locator, U.S. Armed Forces Legal Assistance, <https://legalassistance.law.af.mil/> (last visited Nov. 12, 2020).

¹²⁶ See DoD Instruction 1342.19, Family Care Plans (Nov. 30, 2017), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134219p.pdf>.

¹²⁷ Military OneSource has comprehensive information about Family Care Plans. See Military One Source, *Preparing Your Family Care Plan*, <https://www.militaryonesource.mil/family-relationships/relationships/parents-guardians/preparing-your-family-care-plan> (last visited Nov. 11, 2020), and *How to Create a Family Care Plan for Caregivers*, at <https://www.militaryonesource.mil/military-life-cycle/deployment/preparing-for-deployment/how-to-create-a-family-care-plan-for-caregivers> (last visited Nov. 22, 2020).

- 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. Commanders and supervisors can tell military members about the resources available to help them create plans that meet their service's specific requirements. These resources include installation family support centers and legal assistance offices.

When should a member make a Family Care Plan? Service members should notify their supervisor or commander about creating a Family Care Plan as soon as they enter any of the required categories above. Active-duty members have up to 60 days to submit the final plan. Reserve component service members must submit their final plan within 90 days of alert notification.

It is important that the member updates the Family Care Plan when there is a change in family circumstances that result in the member's becoming responsible for the logistical, medical, or financial support of another person. This is especially true when the court issues a child support, parenting time, or custody order. At a minimum, the member must provide written certification annually 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 branch or the member's particular circumstances. However, all plans must contain the following basic information:

- 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 will be required to sign a statement certifying that the caregiver has accepted responsibility for the care of the member's family members and 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 who is designated as caregiver. See discussion below.
- Provisions for short- and long-term absences.

- Financial arrangements that ensure the self-sufficiency and financial security of the member's family. The member must provide documentation of allotments and other financial resources and describe how they will be used. A copy of the member's power(s) of attorney must be included 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 legally established. 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 child care, school, medical care, and family activities. It may include the locations of important documents, such as wills, insurance papers, and birth certificates. It may also contain arrangements for communication between the member and his or her children during times of short- and long-term separation.

Relationship between Family Care Plan and 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 parenting time. Therefore, despite the presence of a Family Care Plan, either parent may seek a court order concerning parenting time or custody.¹²⁸ Parents sometimes

¹²⁸ See Mark Sullivan, *Third Rail Custody: The Military Case*, 65 Juv. & Fam. Ct. Judges 45 (Winter 2014).

discover issues while they are preparing the Family Care Plan that might cause them to seek modification of an 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 mean that a Family Care Plan is unnecessary. Members who fall within the required categories of individuals under DoD Instruction 1342.19 **must** prepare a Family Care Plan. They should ensure that the Family Care Plan is consistent with the court order and may wish to incorporate certain provisions of the court order into the Family Care Plan.

Even members who are not required to prepare a Family Care Plan may find it 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, discipline, tattoos, and piercings.

In addition to military resources, members may wish to contact their local courts for information on child access, parenting plans, and mediation services.¹²⁹

CONCLUSION

The child support program touches the lives of many military and veteran families. Child support attorneys play an important role not only in ensuring that children can count on reliable support from their military parents, but also in assisting their child support programs to provide supportive services to military families and veterans.

¹²⁹ For more information, see Chapter Fifteen: Access and Parenting Time.

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Exhibit 14-1 Military Websites*

**Current as of November 2020*

Department of Defense

<https://www.defense.gov/> - Official website of the United States Department of Defense.

<https://www.defense.gov/Resources/Military-Departments/DOD-Websites/> - The DoD website with links to the databases of all registered DoD sites.

<https://www.defense.gov/Newsroom/Publications/> - Provides links to DoD reports, fact sheets, memoranda, and other Defense Department communications.

<https://www.dfas.mil/> - Provides information about the Defense Finance Accounting Service.

<https://scra-w.dmdc.osd.mil/scra/#/home> - The link within the website for the Defense Manpower Data Center that provides verification of whether an individual is in the military service.

<https://militarypay.defense.gov/Pay/> - Provides information about military compensation.

<https://legalassistance.law.af.mil/> - Website for U.S. Armed Forces Legal Assistance. Helps locate active duty legal activities offering general legal services to each branch within the continental United States.

<https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf> - DoD Dictionary of Military and Associated Terms (2020).

<https://www.defense.gov/Our-Story/Insignias/> - Provides information about DoD rank insignia.

Army

<https://www.army.mil/> - Official website of the United States Army. Contains links to Army websites, including Army installations and publications.

<https://www.army.mil/soldierresources/> - Provides information about soldier and family resources.

<https://www.usar.army.mil/> - Website for the U.S. Army Reserve.

<https://www.jagcnet.army.mil/legal> - Website for the U.S. Army JAG Corps Legal Information Portal. Includes links for locating a legal assistance office and for obtaining information papers on such topics as family law and the Servicemembers Civil Relief Act.

Navy

<https://www.navy.mil/> - Official website of the United States Navy. The Resources link includes a Navy directory.

<https://www.navyreserve.navy.mil/> - Website for the U.S. Navy Reserve.

<https://www.jag.navy.mil/> - Website for the U.S. Navy Judge Advocate General's Corps. The Legal Services hyperlink allows the user to locate counsel and to seek legal assistance on a number of topics, including family law issues.

Air Force

<https://www.af.mil/> - Official website of the United States Air Force. Contains links to Air Force websites.

<https://www.af.mil/AF-Sites/> - Allows search for Air Force bases within the United States and around the world, with site links to those installations.

<https://www.afreserve.com/> - Website for the U.S. Air Force Reserve.

<https://aflegalassistance.law.af.mil/lass/lass.html> - The Air Force Legal Assistance website. Provides basic information on various legal topics, including family law, and helps members locate the nearest military legal office within the continental United States.

Marine Corps

<https://www.marines.mil/> - Official website of the United States Marine Corps. The link for Families provides a list of official resources and information for Marines and their families.

<https://www.marines.mil/Units> - Provides comprehensive listing of links to U.S. Marine Corps units.

<https://www.marforres.marines.mil/> - Website for the U.S. Marine Corps Forces Reserve. Contains a link to family resources, which includes a link to the MFR Family Readiness page.

<https://www.hqmc.marines.mil/sja/> - Website for the Judge Advocate Division, Headquarters, of the U.S. Marine Corps.

Coast Guard

<https://www.uscg.mil/> - Official website of the United States Coast Guard. Under the Resources tab is information about resources available to support families.

https://www.uscg.mil/Resources/Legal/LMA/Legal_Assistance/ - Website for the Coast Guard Judge Advocate General.

https://www.uscg.mil/Resources/Legal/Legal_Assistance/ - Provides information about the location of legal assistance attorneys and allows a member to download a personal readiness plan.

National Guard

<https://www.nationalguard.mil/> - Official website of the National Guard. Includes links to resources and family programs such as the National Guard Family Program.

<https://www.ang.af.mil/> - Website for the Air National Guard.

<https://www.nationalguard.mil/About-the-Guard/Army-National-Guard/Resources/Family-Services/> - This page of the National Guard website includes information about the Army National Guard family resources and programs.

Department of Veterans Affairs

<https://www.va.gov/> - Official website for the U.S. Department of Veterans Affairs. Includes information on general benefits, employment services, and special initiatives.

<https://www.va.gov/homeless/vjo.asp> - Provides information about the Veteran Justice Outreach (VJO) Program. VJO Specialists are responsible for direct outreach, assessment, and case management for justice-involved veterans in local courts and jails. They also help the veterans navigate the justice system, and work closely with local justice system partners.

<https://www.ptsd.va.gov/> - Website for the National Center for PTSD (Post Traumatic Stress Disorder). The Center does not provide direct medical care, but provides a wealth of information on the prevention, understanding, and treatment of PTSD.

Other Useful Military Websites

<https://www.militaryonesource.mil/> - Military OneSource is a DoD Program that provides resources and support to active-duty, National Guard, and Reserve service members and their families. Services include a call center, specialized consultations, and publications, including publications on child support. The website also includes a link to the location of military installations approved by the individual service branch.

<https://www.yellowribbon.mil/> - Website for the Department of Defense's Yellow Ribbon Reintegration Program. The Yellow Ribbon Reintegration Program is a DoD-wide effort to promote the well-being of National Guard and Reserve members, their families and communities, by connecting them with resources throughout the deployment cycle.

<http://statesidelegal.org/finding-legal-help> - This website has been designed especially to help low-income service members, veterans, and their families. For that reason, it focuses on legal services that are available free of charge.

Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement

<https://www.acf.hhs.gov/css/child-support-professionals/working/military-veterans>

- This page on OCSE's website contains links to publications developed by OCSE for military families and child support agencies who work with service members and veterans on child support issues.

Department of Labor

<https://www.dol.gov/agencies/vets> - This page of the Department of Labor website focuses on Veterans' Employment and Training Services (VETS).

Exhibit 14-2 Military Locator Services

Note: Generally, requests for information by state or federal agencies or law enforcement must be in writing and on official letterhead.

DoD Knowledge Base

Web Link: <https://www.defense.gov/ask-us/faq/Article/1784508/how-can-i-locate-a-service-member-or-veteran-how-can-i-contact-a-service-member/>

General information for locating military members.

Air Force Active Duty, Reserve, Retired, or Air National Guard

Air Force's Personnel Center

Attn: HQ/AFPC/DPDXIDL

550 C Street West, Suite 50

Randolph AFB, TX 78150-4752

(210) 565-2660

(210) 565-1675

<https://www.afpc.af.mil/Support/Worldwide-Locator/>

Army Active Duty Only

(By mail only)

Commander, Army Human Resources Command

ATTN: Locator

1600 Spearhead Div. Ave.

Fort Knox, KY 40122-5400

(888) 276-9472 or (502) 613-4400

Due to security concerns, the Army has closed its World Wide Locator Service to the general public. To access the Army locator, you need an Army Knowledge Online account (that means you need to be a member of the Army, Army National Guard, Army Reserves, Army Retired member, or an Army dependent). Other requests to locate active duty Army members are handled on a case-by-case basis pursuant to a written request.

Marine Corps

Marine Locator

Headquarters US Marine Corps

Personnel Management Support Branch (MMSB-17)

2008 Elliot Road, Room 203

Quantico, VA 22134-5030

(703) 784-3941 / 3942 / 3943

(800) 268-3710

<https://www.marines.mil/FAQ> (See “Miscellaneous,” then “Personal Locator.”)

Navy

Navy World Wide Locator

BUPERS-07 Customer Service Center

5720 Integrity Drive

Millington, TN 38055-3120

(901) 874-5672

(866) 827-5672

Email: Askmncc.fct@navy.mil

Note: The Navy does not release unit addresses over the telephone. Submit your request in writing or call the commercial number for further instructions.

<https://www.navy.mil/Resources/Frequently-Asked-Questions/>, “How do I find a friend or family member in the Navy?”

Coast Guard

(By mail or e-mail only)

Commander

Personnel Service Center

US Coast Guard Stop 7200

2703 Martin Luther King Jr. Ave. SE

Washington, D.C. 20593-7200

(202) 493-1684

Email: ARL-PF-CGPSCCGlocator@uscg.mil

<https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Personnel-Service-Center-PSC/>

Note: *The military locator services provide the member's military address.*

This information is current as of November 2020.

For more information, see <https://www.usa.gov/military-personnel-and-installations>. Most large military bases maintain legal assistance offices. Duties of the legal assistance attorneys include helping military spouses and dependent children obtain the service member's military address. The attorneys are not legally required to assist parents who have never been married to the service member.

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Exhibit 14-3
Sample FOIA Letter

Sample Letter to Request Home Address

[Agency letterhead]

Office of the General Counsel, [identify branch]

Attn: FOIA agent

Address

Address

Re: _____, SSN: _____

Dear Sir or Madam:

I submit this request pursuant to the Freedom of Information Act. I request the home address of the individual identified above. As the head of a government agency engaged in a civil and/or criminal law enforcement activity in this matter, as authorized by state law, I believe that the requested disclosure constitutes a routine use of this information from the member's personnel records.

Additionally, I believe this information is generally releasable in this case under FOIA, notwithstanding the Privacy Act. I am acting in my capacity as the head of a public law enforcement agency on a matter involving the establishment and enforcement of this member's child support obligation, and I require a home address to fully discharge my responsibilities under state law. The public interest in disclosure to achieve child support enforcement outweighs the member's privacy interests, and therefore the release would not constitute an unreasonable invasion of privacy.

A public agency seeks the information. It will not be used for commercial purposes or for anyone's commercial gain. In view of this fact, and since the search should not require more than two hours and fewer than 100 pages are being requested, I assume that there are no fees charged for the search and any reproduction. If fees must be assessed, please notify me so I can make appropriate arrangements.

I certify that I am authorized by law to collect this information. Please send your response to my attention at the letterhead address. If you need any further information in order to process this request, please call me at [phone number].

Sincerely,

[The director of a civil or criminal law enforcement agency should sign this letter.]

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Exhibit 14-4 **A Guide to the SCRA**

The Servicemembers Civil Relief Act (SCRA) is a federal statute found at 50 U.S.C. §§ 3901–4043. It is not found in state codes. Formerly known as the Soldiers' and Sailors' Civil Relief Act, it was enacted in 2003 and has been amended several times since then. The key provisions of the SCRA that apply to cases involving family law are Sections 201, 202, and 204–207, codified at 50 U.S.C. §§ 3931, 3932, and 3934–3937.

- 1. *To whom does the SCRA apply?*** The SCRA applies to a "person in the military service of the United States." That definition includes:
 - Members of the U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) who are on federal 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 State Code, for purposes of responding to a national emergency declared by the president and supported by federal funds; and
 - Commissioned officers of the Public Health Service and National Oceanic and Atmospheric Administration Officers in active military service.

The Act does not protect military retirees, civilians working for the Department of Defense (DoD), or DoD contractors.

- 2. *Does the SCRA apply to criminal proceedings, such as a criminal nonsupport prosecution?*** No. It only applies to civil proceedings.
- 3. *Does the SCRA apply to civil judicial proceedings?*** Yes.
- 4. *Does the SCRA apply to administrative proceedings, such as a challenge to income withholding?*** Yes.
- 5. *What is the effect on a judicial proceeding?*** Under the SCRA, a service member may obtain a stay if the following conditions are met:
 - The service member is on active military service, or within 90 days after termination of or release from military service;

- The request for a stay is by the member's motion or the tribunal's own motion; and
- The service member sends the following documents to the court or agency:
 - 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.

6. ***What does "materially affect" mean?*** There is no federal definition of the phrase "materially affect." The service member may provide information about how his or her military duties impair or prevent an appearance before the tribunal at the designated time and place, or from assisting in the preparation or presentation of his or her case.
7. ***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 Instruction 1327.06, "Leave Procedures" (Jan. 14, 2021), 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.
8. ***If a service member seeks a stay under the SCRA and the tribunal grants a stay of the proceedings, how long will the stay last?*** The tribunal may on its own motion and shall, upon application by the service member, which includes the required letters or communications to the tribunal, stay the action for a period of not less than 90 days. At the time of the initial application or any other time where the service member is unavailable to defend the action, the service member who is granted a stay of a civil action or proceeding may apply for an additional stay based on continuing material effect of military duty on the service member's ability to appear.
9. ***How does the SCRA apply if a service member is served with a summons, but fails to appear at the proceeding?*** Section 201(b) of the

SCRA, codified at 50 U.S.C. § 3931(b), provides that, prior to the entry of a default judgment in a case where the defendant does not make an appearance, the plaintiff must file an affidavit with the tribunal:

- Setting forth facts to support either the statement that the defendant is in military service or the statement that the defendant is not in military service; or
- Stating that the plaintiff is unable to determine whether the defendant is in military service.

The affidavit may take any form so long as it is signed and certified, or declared to be true under penalty of perjury.

10. ***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 who has filed pleadings in the case on behalf of the service member, the tribunal will find that the service member has in fact made an appearance. The SCRA’s provisions regarding default orders therefore will not apply.
11. ***Is a service member entitled to appointed counsel under the SCRA?*** If the affidavit filed by the plaintiff shows that the defendant is on active military service, the tribunal cannot enter a default until the tribunal has appointed an attorney to represent the service member. If the tribunal fails to appoint an attorney, the default judgment is still valid but the member can later seek to reopen the judgment. In legal terms, the order is voidable.
12. ***What does the court-appointed attorney do?*** Under the SCRA, if the defendant is a service member, the appointed attorney is primarily responsible for trying to locate the service member and for obtaining a stay of the proceedings until the military member can be present. A service member will be bound only to the acts of an appointed attorney that the service member has authorized. Without such authority, the acts of an appointed attorney are not binding on the service member and the attorney cannot waive any of the member’s legal rights.
13. ***In the absence of an affidavit regarding military service, if the tribunal enters a default judgment against a service member, such as a default paternity order, can the service member reopen the default judgment?*** Yes. Section 201(g) of the SCRA, codified at 50 U.S.C. § 3931(g), permits a defendant to ask the tribunal to reopen its default judgment. Five conditions must exist in order for a service member to reopen a default judgment:

1. The tribunal entered the default judgment during the member's military service or within 60 days after termination of or release from military service;
 2. The service member made no appearance;
 3. The service member or his or her legal representative filed an application to reopen the judgment within 90 days after the termination of or release from military service;
 4. The service member was materially affected by reason of his or her military service in defending the action; and
 5. The service member has a meritorious or legal defense to the action, or some part of it.
- 14. *What does the SCRA say about the statute of limitations?*** Section 206 of the SCRA, codified at 50 U.S.C. § 3936, provides for the tolling (stopping) of the statute of limitations during the time that a person is in military service. The tolling applies regardless of whether the service member is a defendant or a plaintiff in the proceeding. The cause of action may have accrued either prior to, or during, military service. Unlike other provisions within the SCRA, this section does not require the service member to show that military service materially affected his or her ability to participate in the proceeding. The SCRA only applies to the period before bringing a suit; it does not affect time periods within a suit.
- 15. *Do state interest rates on unpaid child support apply to a military member?*** Yes, with an important limitation. If the support obligation was incurred before entry on active duty, the SCRA limits the interest rate that can be charged to 6% per year. The limitation only applies during the time the service member is in military service. See Section 207 of the SCRA, codified at 50 U.S.C. § 3937.

In order for the 6% limit to apply:

- The debt or obligation must have been incurred prior to entry into military service;
- The service member must provide the creditor with written notice of military service and a copy of the military orders calling the service member to military service and any orders extending military service; and
- The service member must provide such notice not later than 180 days after the date of the member's termination or release from military service.

Once the service member provides the creditor with such timely notice and a copy of orders, interest in excess of 6% that would otherwise have been incurred but for the SCRA prohibition is forgiven. A creditor may apply for relief from the 6% limitation on interest. A tribunal may grant the creditor relief if, in the opinion of the tribunal, the ability of the service member to pay interest upon the obligation or liability at a rate in excess of 6% per year is not materially affected by reason of the service member's military service.

It is important to note that the 6% limit does not apply if the support obligation was incurred after entry into active service.

16. ***Can a service member seek a stay of enforcement of a child support order due to his or her active duty?*** Yes, pursuant to Section 204 of the SCRA, codified at 50 U.S.C. § 3934, a tribunal may, on its own motion, stay the execution of any judgment or order entered against the service member, and vacate or stay an attachment or garnishment against a military member's property or money, if it finds that the service member is materially affected by reason of military service in complying with the judgment or order. It ***must*** grant the stay on the motion of the military member unless it finds that military service has no material effect on his or her compliance with the judgment or order. The section applies to an action or a proceeding commenced in a court, or an administrative agency against a service member before or during the period of the service member's military service or within 90 days after such service terminates.
17. ***If I need more information about the SCRA, are there official websites that can provide such information?*** Yes. 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 <https://www.justice.gov/servicemembers> (last visited Nov. 12, 2020).

The U.S. Air Force Legal Assistance website has an overview of the SCRA, as well as FAQs and sample form letters. Its website is linked through the home page for the Air Force Judge Advocate General's Corps, <https://www.afjag.af.mil/> (last visited Nov. 12, 2020).

Military OneSource (<https://www.militaryonesource.mil/>) provides an overview of the basic SCRA protections, <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act> (last visited Nov. 12, 2020).
18. ***Are there state laws that apply to service members, in addition to the SCRA?*** Yes, some states have them. Make sure you check your state statutes to see if they give military personnel special rights or protections.

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Exhibit 14-5
Sample Letter Requesting Federal Statutory Military Allotment
(Not an Official Form)

[Use agency letterhead]

Commander

[Appropriate Military Payment Processing Center Address]

Reference: [Name and SSN of military member]

Dear Sir or Madam:

This letter is notice of delinquent support payments and a request for the initiation of the statutory allotment pursuant to 42 U.S.C. § 665.

[Identify military member] is subject to a court or administrative order (certified copy enclosed) requiring him/her to pay current child support in the amount of [identify amount and payment schedule] [if appropriate, add “plus an amount of xxx toward elimination of arrears of xxx”]. He/She has failed to meet this obligation and arrears exceed the total amount due under the order for two months. [If appropriate, insert “In addition, a portion of the arrearage pertains to payments that are more than 12 weeks overdue.”]

I request initiation of a statutory allotment from the member’s active duty pay in the amount of [identify amount], the monthly support obligation [if appropriate, add “and arrearage payment”] due under the order. Please direct the payment to this address:

[Provide the name/address of the appropriate state payment location and explain what information must accompany the payment.]

Please continue the allotment until [insert termination date] or such earlier date as this agency may later advise you.

I certify that I am an “authorized person” as defined by 42 U.S.C. § 655(b) and 32 C.F.R. Part 54. I am an agent of a state with an approved Title IV-D program under the Social Security Act, and my duties include seeking recovery of child and spousal support. Thank you for your attention to this matter.

[Authorized agent signature]

Enclosure (certified copy of court or administrative child support order)

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