

Module 5

Obtaining Evidence from the Military

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-1:** (title slide).
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to **Module 5**.
3. Ask the participants if they have any experience in trying to obtain evidence from the military concerning child support or paternity establishment, or have attempted to obtain financial information.
4. Tell the participants to ask questions as they arise and to share any experiences or issues they have encountered.
5. Explain the learning goal and objectives of the module.

What you need to know

1. It takes approximately one hour, 15 minutes to complete this module.
2. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

Equipment/Supplies:

- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

PowerPoint Slides:

- 5-1: **Module 5** (title slide)
- 5-2: Paternity Establishment
- 5-3: Genetic Testing
- 5-4: Financial Information/Evidence
- 5-5: Medical Information/Evidence
- 5-6: The Privacy Act and FOIA
- 5-7: Evidence from Overseas Locations
- 5-8: The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters
- 5-9: Evidence from Overseas Locations (cont'd)
- 5-10: Exercise Scenarios
- 5-11: Summary

Handouts:

- 5-1: Review Exercises

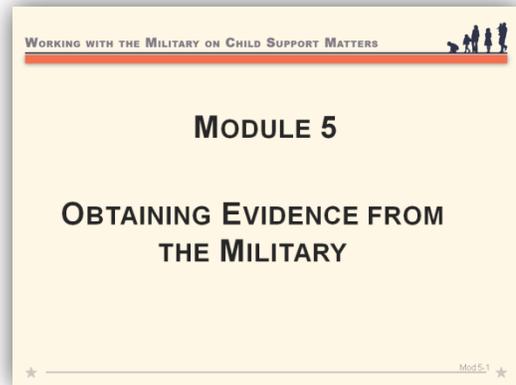
MODULE 5: OBTAINING EVIDENCE FROM THE MILITARY

Time: 1 hour, 15 minutes

5.1 OBTAINING EVIDENCE FROM THE MILITARY

5.1.1 Learning Goals

- Each participant will understand the rules and established procedures for obtaining evidence and information relevant to paternity and child support proceedings against military personnel.



5.1.2 Learning Objectives

- Given an interactive lecture and case study, participants will identify the procedures they can use to obtain genetic testing in paternity cases involving military members, and the limitations on obtaining such evidence.
- Given an interactive lecture and case study, participants will explain the procedures for obtaining financial records and information from the expanded Federal Parent Locator Service (FPLS) and the Defense Finance and Accounting Service (DFAS) for the purpose of establishing and enforcing a child support obligation.
- Given an interactive lecture and case study, participants will explain the procedures for obtaining medical enrollment information from the expanded FPLS and the Defense Enrollment and Eligibility Reporting System (DEERS) for the purpose of enforcing a medical support obligation.
- Given an interactive lecture and case study, participants will identify the various authorities that can assist in, and the procedures available for, collecting information or evidence from service members located outside of the United States or its waters.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-2: Paternity Establishment**.
2. Tell participants that without voluntary cooperation by the military member, the military does not have any established method to force compliance for a request for genetic testing to establish paternity.
3. Emphasize to the participants that commanders are required to answer paternity inquiries and inform military members of their legal and moral obligations. Remind the participants of the role that military legal assistance attorneys have.

What you need to know

The role of the military is limited in paternity establishment. Commanders cannot order their personnel to submit to genetic testing in order to establish paternity.

5.2 PATERNITY EVIDENCE

In the child support arena, the area where the military is most like any other employer is in paternity establishment. That is, the military and its commanders cannot compel military personnel to provide genetic samples or information for the purpose of establishing paternity.

Paternity Establishment

- A civilian matter
- Moral and legal obligations of members
- Commander obligations on inquiry

Mod 5.2

All of the military services have the same bottom line concerning paternity establishment. It is essentially a civilian matter to be determined in a civil forum. The services provide the same general guidance with respect to inquiries that pertain to paternity matters involving a military member: Counsel the military member on his legal and moral obligations, and advise him to seek legal counsel on the matter.

Of course, the voluntary cooperation of the military member will expedite the establishment of paternity. To obtain this cooperation, you should first try to contact the military member. Inform him of the paternity allegation and of the process for voluntarily acknowledging paternity. If the member denies paternity, advise him of the availability of genetic testing.

If your initial attempts to obtain voluntary cooperation go unanswered, do not hesitate to contact the member's commander. Policies as to what information a caseworker may divulge will vary from state to state. Ensure that you are aware of your state's privacy protections regarding information about the custodial parent. Always consider obtaining a signed release from the custodial parent that will permit you to disclose such information as is necessary in order to obtain assistance from a service member's commander. For example, it is usually helpful to detail your unsuccessful efforts to obtain a response from the member and to ask the commander for assistance in having the service member cooperate with the civilian authorities.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-2: Paternity Establishment**.
2. Explain a military member's general obligations with respect to conduct that may be discrediting.
3. Explain that commanders are greatly concerned about the adverse impact on readiness and operations that civil actions can have.
4. Discuss the following obligations of a commander with respect to a paternity inquiry:
 - Inform the member of his legal and moral obligations
 - Refer the member to legal counsel concerning his rights and obligations
 - Urge the soldier to provide financial support to his child if he admits paternity
 - Provide a reply to the requestor.

What you need to know

It is important to remember that although the military sees the establishment of paternity as a civilian matter that is most properly dealt with through civilian channels, a commander has a stake, and often a regulatory obligation, to discuss matters of paternity with one of his or her members. All military members are obligated to be responsible for, and to take care of, personal matters in a manner that does not bring discredit or disrepute upon the military. Civil legal proceedings can potentially affect and interfere with the performance of a military member's assigned duties. Explain to the commander the possible actions that can be taken if the voluntary cooperation of the military member is not received. Emphasize that you are not asking the commander to force or coerce the member into acknowledging paternity, but merely seeking the member's voluntary cooperation to submit to genetic testing. Of course, a threatening tone or tenor to your request will not aid you. However, a respectful, factual statement of the process and its variant negative consequences is appropriate.

For Army personnel, you can request the commander to have the member fill out Department of the Army Form 5459 dated Oct. 2003, Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Inquiries. Once signed by the soldier, this form permits access to Army records that will allow you to obtain necessary information pertaining to a paternity action.

Military commanders are also obligated by regulation to take certain actions with respect to paternity issues and inquiries. For example, *Army Regulation 608-99, Family Support, Child Custody, and Paternity*, 29 October 2003, requires a commander, upon receipt of a paternity inquiry, to:

- Investigate the inquiry and provide complete, accurate, and timely information to the individual making the inquiry;
- Inform the military member of his legal and moral obligations, if any;
- Refer the member to an attorney for legal assistance if he has questions about his legal rights;

TRAINING NOTES

What you need to say/do

Display **PowerPoint Slide 5-3: Genetic Testing.**

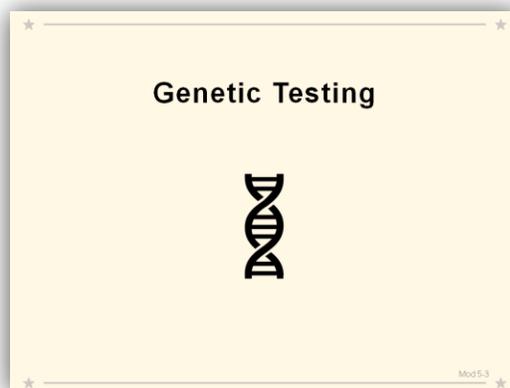
What you need to know

Pursuant to a 1995 Executive Order requiring the federal government to act as a model employer, all military hospitals and birthing centers are required to provide the same paternity acknowledgment services as civilian hospitals.

- Urge the soldier to provide financial support to the child if, after legal consultation, the soldier admits paternity;
- Reply to the requestor as to whether the military member admits or denies paternity, and whether the member will provide financial support.

Depending upon whether the soldier admits or denies paternity, the regulation provides further direction to the commander.

If attempts to obtain the voluntary cooperation of the member fail, the options available for obtaining evidence become more limited. A military commander cannot ordinarily order a military member to submit to genetic testing in order to establish paternity.



A court or an administrative order that requires a military member to submit to a genetic test adds to the consequences if the member does not comply, but it does not necessarily permit any additional assistance from the military.

TRAINING NOTES

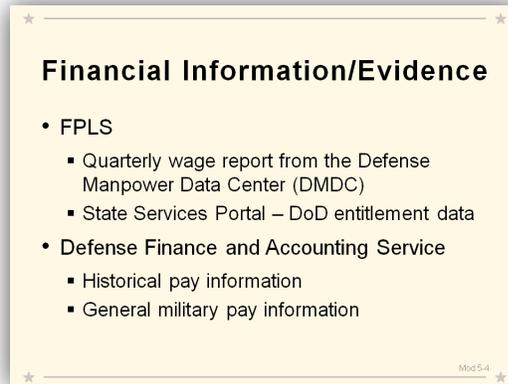
What you need to say/do

1. Prior to beginning section 5.3, display **PowerPoint Slide 5-4: Financial Information/Evidence**.
 2. Emphasize that child support agencies should not seek verification of current wage information from the Defense Finance Accounting Service (DFAS). Rather, they should seek such information through a request to the FPLS. See <http://www.acf.hhs.gov/programs/css/fpls>.
 3. Discuss the type of wage information that is provided to the FPLS by the Defense Manpower Data Center (DMDC).
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What you need to know

Financial information is necessary for establishment, enforcement, and modification proceedings. For information on enforcement, see **Module 7**.

5.3 FINANCIAL INFORMATION/EVIDENCE



You can obtain a military member’s pay and employment information through a request to the Federal Parent Locator Service (FPLS), which includes the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR).

All newly hired (recruited) military personnel are reported within 20 days to the NDNH. In addition, DoD’s Defense Manpower Data Center (DMDC) sends quarterly wage data to the NDNH. This includes wage information on the following: Active Duty, Reserve, and National Guard members; Military Retirees (quarterly wages only); and Coast Guardsmen (Active, Reserve, and Retired) (part of the Department of Homeland Security). Automatic matching occurs whenever new or updated information is added to the FCR or NDNH, and matches are sent to the relevant state child support agencies.

5.3.1 Information Included in the Quarterly Wage Report

The quarterly wage (QW) report provided to the NDNH by DMDC includes all income received by a military service person. The following chart lists all the income categories that could be included in a QW report.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence.**
 2. Point out the types of pay information that are included in a quarterly wage report from the DMDC. It is not necessary to review the chart in its entirety.
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What you need to know

Military Status	Supplemental Pay Type
ACTIVE	
	Amount of Accrued Leave Pay
	Amount of Contract Cancellation Pay and Allowances
	Amount of Separation Payment
	Basic Allowance for Housing [note: not attachable for child support]
	Basic Allowance for Subsistence [note: not attachable for child support]
	Career Sea Pay
	Career Sea Pay Premium
	Diving Duty Pay
	Enlistment Bonus
	Essential Service Pay
	Family Separation Allowance Type I
	Family Separation Allowance Type II
	Foreign Duty Pay
	Foreign Language Proficiency Pay
	Hazardous Duty Incentive Pay I
	Hazardous Duty Incentive Pay II
	Hazardous Duty Incentive Pay III
	Hostile Fire Pay
	Nuclear Officer Accession Bonus
	Overseas Extension Pay
	Proficiency Pay
	Regular Reenlistment Bonus Pay
	Rental Charge for Inadequate Government Quarters
	Selective Reenlistment Bonus

TRAINING NOTES

What you need to say/do

Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence.**

What you need to know

Military Status	Supplemental Pay Type
ACTIVE – OFFICERS ONLY	
	Additional Special Pay
	Aviation Career Incentive Pay
	Aviation Officer Continuation Pay
	Board Certified Pay
	Incentive Special Pay
	Miscellaneous Officer Pay
	Medical Officer Retainer Bonus (MORB)/ Nurse Bonus Amount
	Nuclear Career Accession Bonus
	Nuclear Career Annual Incentive Bonus
	Nuclear Qualified Officer Continuation Pay
	Saved Pay
	Saved Pay for Health Professionals
	Variable Special Pay
RESERVES	
	Airborne Warning and Control Systems (AWACS) Controller Pay
	Aviation Career Incentive Pay
	Basic Ad Pay
	Career Sea Pay
	Diving Duty Pay
	Foreign Duty Pay
	Foreign Language Proficiency Pay
	Hazardous Duty Incentive Pay I
	Hazardous Duty Incentive Pay II
	Hazardous Duty Incentive Pay III
	Hostile Fire Pay and/or Imminent Danger Pay
	Monthly Basic Pay
	Reserve Component Incentive Program Education Payments
	Reserve Component Incentive Program Payments
	Separation Pay
	Special Pay for Reserve Medical Officers Payments

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence.**
2. Explain how caseworkers can use the State Services Portal to obtain DoD entitlement data.
3. The Defense Finance and Accounting Service (DFAS) is the central agency for all financial matters within the Air Force, Army, Marines, and the Navy. The Coast Guard maintains its own financial information. DFAS and the Coast Guard can provide historical pay information for the members they service.

What you need to know

States may establish connectivity to the FPLS State Services Portal in order to receive locate and income information through it. As of March 2013, not all states have established such connectivity. States may also decide which applications they want to access.

Quarterly Wage reports on retired military (persons who were formerly on Active or Reserve/National Guard Duty) and retired Coast Guard members are also provided to the FPLS. These records are coded "P" (for pension).

The Department of Veteran Affairs also provides relevant income information. It reports to the FPLS the type of benefit that a veteran is receiving, indicating whether it is 1) compensation and retirement, or 2) education.

5.3.2 FPLS External Requests for Income Information

In 2010, the Office of Child Support Enforcement implemented the State Services Portal (SSP). The SSP is a secured internet application that provides direct access to FPLS data. One of the applications available to states is the DoD Entitlement Data application. This application provides a monthly breakdown of base pay, bonuses, and other financial allowances for members of the military. The information is similar to that provided on a Leave and Earnings (LES) statement. The person must be an active military service member or a reservist; this match does not provide information on retired service members. DoD military retiree income is available through the FPLS SSP Locate application. Also, a caseworker cannot use this application to request income information on alleged fathers; DoD will only provide information on those persons who have a legal responsibility to the child—those members for whom parental responsibility has been established.

5.3.3 Requests for Historical Payroll Data of Military Personnel

The Department of Defense and the Coast Guard will not respond to requests for verification of wages of active and reserve/national guard military personnel because, as noted above, this information is already provided to the FPLS through quarterly wage reporting to the NDNH. However, there is an exception for historical payroll data.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence.**
 2. In order to receive historical pay information from DFAS, the agency must send DFAS either a Freedom of Information Act (FOIA) request or a subpoena signed by a judge. The Coast Guard will only respond to a written FOIA request.
 3. Point out that neither DFAS nor the Coast Guard will accept computer-generated requests for historical wage information.
 4. Review the appropriate place to send requests for historical pay information.
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What you need to know

Information about FOIA is provided in Section 5.5 of this module.

The Defense Finance and Accounting Service (DFAS) keeps military pay and allowance information for individual military members within the Air Force, Army, Marines, and the Navy, as well as for DoD civilians and retirees. The Coast Guard maintains its own pay and allowance information. DFAS and the Coast Guard will respond to an individual, written Freedom of Information Act (FOIA) request for information regarding a military person's pay history (records more than one year old). You may mail or fax the FOIA request on your agency's letterhead stationery. DFAS will also respond to a request for a noncustodial parent's Leave and Earnings Statement (LES), if a subpoena is submitted to DFAS. The subpoena must be signed by a state or federal judge before it will be accepted for processing.

The request for historical payroll data must comply with the following requirements:

- The name and SSN of the military member must be included.
- A signature is not required, but the caseworker's name or the name of a higher authority must appear on the request. DFAS and the Coast Guard will not accept computer-generated requests for pay histories. All computer-generated requests will be destroyed.

Send the requests to the pay site listed below, depending on the branch of service.

**Army (Active Duty FEIN is 359990000 and Reserve Duty FEIN is 351819323),
Air Force (Active Duty FEIN is 849990000 and Reserve Duty FEIN is
849980000).**

DFAS Indianapolis
Corporate Communications
DFAS-HAC/IN, Attn: FOIA/PA Office
8899 East 56th Street
Indianapolis, IN 46249-0150
Fax: (317) 510-8802 (faxed requests accepted)

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence.**
2. Continue to review the appropriate place to send requests for historical pay information.
3. General information on military pay and allowances is online at the DFAS website. Explanations of the various pay and entitlements, as well as the current DoD pay scale, are also located at the website.
4. Direct the participants to **Module 1** for explanations concerning pay grade and rank.

What you need to know

Navy (Active Duty FEIN is 349990000 and Reserve Duty FEIN is 349980000), Marine Corps (Active Duty and Reserve Duty FEIN is 539990000), Retired Military Pay (FEIN is 340727612).

DFAS Cleveland
DFAS-HAC/CL
1240 East 9th Street
Cleveland, OH 44199-8006
Fax: (216) 522-6530 (faxed requests accepted)

Coast Guard (Active Duty, Reserve Duty, Retired Military Pay FEIN is 529980000).

Commanding Officer (LGL)
U.S. Coast Guard
Pay and Personnel Center
444 SE Quincy Street
Topeka, KS 66683-3591
Phone: (785) 339-3595
Fax: (785) 339-3788
Email: PPC-DG-LGL@uscg.mil

5.3.4 General Military Pay Information

General military pay information is available on the DFAS website at www.dfas.mil, and is also covered in **Module 6**. Information on military pay and allowance amounts is available to the public. Data on current pay entitlements, housing allowances, special pay (hazardous duty, language proficiency, etc.), cost of living adjustments, drill pay for reservists, etc., are all available on the DFAS website, as well as numerous other websites and publications. The obvious problem is determining the entitlements to a particular military member. Knowing the pay entry basic date (or the number of years of service), pay grade, duty location, military occupational specialty, and other particular aspects of a military member's service is necessary for an exact determination of military pay for a specific individual. However, these pay resources can be helpful in making estimates and getting a general idea of the pay and allowances being received.

TRAINING NOTES

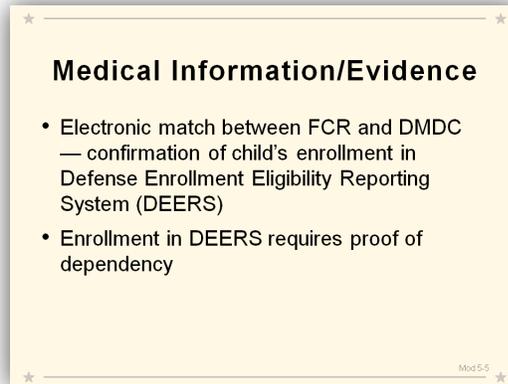
What you need to say/do

1. Display **PowerPoint Slide 5-5: Medical Information/Evidence**.
 2. Explain the relationship between the Defense Eligibility Enrollment Reporting System (DEERS) and TRICARE.
 3. Describe the electronic FCR/DEERS data match.
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What you need to know

This medical data match only includes active duty military and retirees.

5.4 MEDICAL INFORMATION/EVIDENCE



The Defense Enrollment and Eligibility Reporting System (DEERS) is the database used to confirm eligibility for various military benefits including health care. It maintains information on the military service person, known as the “sponsor,” and the sponsor’s dependents. In order to receive medical care from the military through TRICARE, an individual must be enrolled in DEERS.

The Federal Case Registry (FCR)/DEERS medical match began in December 2005. The Defense Manpower Data Center (DMDC) matches the FCR participants against its records and reports back the results. The FCR transmits the match information to the states every quarter. The electronic match identifies children who are already enrolled in DEERS and therefore eligible for TRICARE medical benefits, children who are eligible to be enrolled in TRICARE because of a parent’s service in the military, or children previously removed from TRICARE. The match only includes active duty or retired military members, not reservists. Due to this match, a child support worker should not send the National Medical Support Notice to the DMDC.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-5: Medical Information/Evidence**.
 2. Explain how a custodial parent can determine if a child is enrolled in DEERS.
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What you need to know

For more information about enrolling a child in DEERS and enforcing medical support, see **Module 6: Military Establishment Procedures** and **Module 7: Military Enforcement Procedures**.

A custodial parent (not a child support worker) may confirm eligibility for a child by calling the DMDC Support Office (DSO) telephone center help line at (800) 538-9552. If the custodial parent is divorced from the military member (sponsor) but has a prior DEERS record and can establish that he or she is the child's parent, DEERS can provide eligibility information. Custodial parents who were never married to the sponsor or were never enrolled in DEERS will first need to provide proof that they are actually the parent of the child in question. Acceptable documentation includes a birth certificate for the child naming the parent and custody orders. Documents will need to be sent to the DSO to be reviewed and the tracking system updated before officials can release specific information to the custodial parent.

According to military representatives, in the overwhelming majority of cases in which IV-D agencies inquire about insurance coverage, the dependents are already enrolled in DEERS; the service member has simply never informed the custodial parent or the custodial parent has forgotten.

TRAINING NOTES

What you need to say/do

1. In discussing other avenues for obtaining financial and medical information, point out that there are federal laws that may prevent the release of information.
2. Display **PowerPoint Slide 5-6: The Privacy Act and FOIA**.
3. Tell participants that the Freedom of Information Act (FOIA) is a disclosure statute, requiring the release of material unless an exemption applies. The Privacy Act, 5 U.S.C. § 552a, prohibits the disclosure of personal information without an individual's consent. Under FOIA, an agency must disclose information unless one of the seven exemptions applies. Under the Privacy Act, an agency cannot disclose personal information unless one of the 12 exceptions applies. The Privacy Act and FOIA are meant to be consistent with one another.

What you need to know

Information that is often needed from the military in a child support or paternity action is generally exempt from disclosure because it is personal information that is protected by the Privacy Act. Exemption 6 under FOIA is the most often cited exemption for non-disclosure of personal information about military members. Exemption 6 permits the withholding of all information about individuals in personnel, medical, and similar files if its disclosure would constitute a clearly unwarranted invasion of personal privacy. Exemption 1 relates to information that is classified in the interest of national security. This exemption can relate to information on military members who are in classified units, where release of information about the unit members is prohibited.

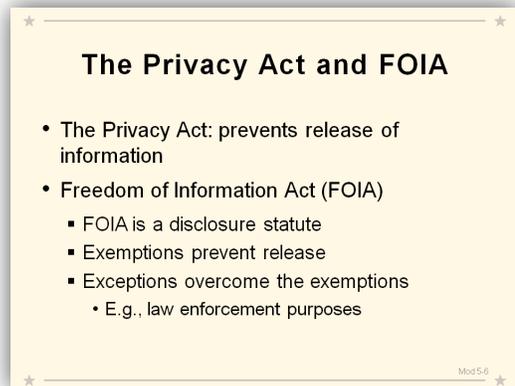
5.5 OTHER AVENUES FOR OBTAINING FINANCIAL/MEDICAL INFORMATION

Other military sources may also provide pay and medical information. For example, voluntary cooperation from the military member is always an option. The military member's commander may also be a source of information.

The military is limited in the circumstances in which it may release information that is kept in a system of records about one of its members. The Privacy Act precludes the release of most personal information about a military member to third parties. In addition, matters of personnel and operational security may preclude the release of not only information about a specific individual, but also other information, such as addresses, locations, and schedules of military units and their members.

Unlike the Privacy Act, the Freedom of Information Act (FOIA) is a disclosure statute. It requires the release of information that is kept in a system of records by the government unless it falls under one of the seven exemptions from disclosure. Personal information that is usually required for child support or paternity actions falls within those

exemptions and therefore generally cannot be disclosed under FOIA. There are, however, exceptions under the Privacy Act that permit the government to release information that can be useful to establish and collect child support. When child support personnel want to get information released under FOIA, the most commonly used exception they cite is the one that permits disclosure for law enforcement purposes. The sample FOIA letter in **Module 2** provides a template for such a request. Another relevant exception under the Privacy Act permits disclosure of personal information if the disclosure is pursuant to a court order.



TRAINING NOTES

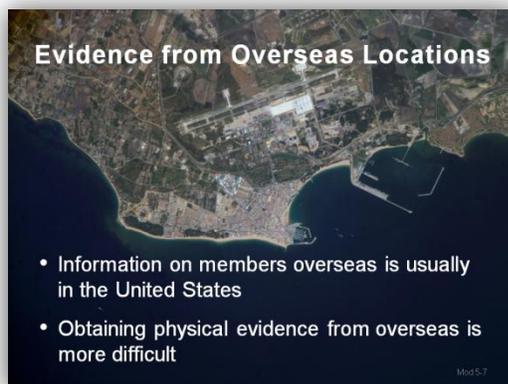
What you need to say/do

1. Display **PowerPoint Slide 5-7: Evidence from Overseas Locations**.
2. Explain to the participants that obtaining evidence, which is physically located in an overseas location, is more difficult than in the United States. However, fortunately they can find most information on overseas military members through resources in the United States (i.e., DFAS).

What you need to know

1. 5 U.S.C. § 552a(b)(7) provides an exception to exemption 6 dealing with personal information. It permits disclosure for law enforcement purposes. Subsection (b)(7) provides disclosure to an instrumentality of any governmental jurisdiction within the United States for a civil or criminal law enforcement activity if law authorizes the activity. The head of the requesting agency must make the written request to the agency that maintains the record. The request must specify the law enforcement purpose for which the record is requested and the particular record requested.
2. 5 U.S.C. § 552(b)(11) also permits disclosure if the disclosure is pursuant to a court order.

5.6 EVIDENCE FROM OVERSEAS LOCATIONS



Obtaining evidence from the military on members located in overseas locations is a more difficult task. **Module 3** on service of process provides a more thorough discussion of the methods and procedures available to accomplish various tasks associated with child support and paternity actions. If military members choose not to cooperate and they are stationed overseas, a court or an administrative order is required.

The previous sections of this module are applicable to obtaining information from members stationed overseas. Remember that income and financial information for an overseas military member is obtained through the same means as for a member stationed stateside. DFAS is the processing center for all members of the Air Force, Army, Marines, and Navy, regardless of location. Also, commanders' regulatory obligations are the same no matter where the member is located.

TRAINING NOTES

What you need to say/do

1. Display **PowerPoint Slide 5-8: The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters**.
 2. Refer participants to **Module 3** on service of process for procedures dealing with a country's Central Authority.
-

What you need to know

1. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters is an important method for obtaining evidence from military members overseas. The procedures are similar to obtaining service of process overseas, including letters of request directed to a country's Central Authority.
2. Keep in mind that many of the signatory countries to the Convention have added certain reservations (called "Declarations") to their compliance with the Convention.
3. The Convention in its entirety is reprinted each year in the international volume of the Martindale-Hubbell Legal Directory, along with each signatory country's Declarations.
4. Much of the material on the Hague Conventions may not be relevant to caseworkers in their day-to-day activities. Senior staff and attorneys are a more likely audience for in-depth discussions of the Hague Evidence Convention. Evaluate the needs of the participants and tailor your discussion accordingly.

5.6.1 Obtaining Evidence through the Hague Evidence Convention

One important difference for cases involving military members in overseas locations is application of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. As of August 2012, 57 countries are signatories to the convention, including most countries in which military members are stationed.



The purpose of The Hague Evidence Convention is to facilitate the production of evidence for use in foreign courts in an effort to reconcile different, often conflicting, discovery procedures in civil and common law countries. The Hague Evidence Convention requires the designation of central authorities in each country to receive and handle requests for evidence. The Convention applies to civil and commercial matters and cannot be used in a criminal nonsupport action. The Hague Evidence Convention provides procedures for deposing voluntary witnesses and for obtaining non-testimonial evidence. In addition, Letters of Request under the Convention may be used to obtain evidence from a noncooperative military member stationed in a Hague Evidence country where compliance is likely only if a foreign court gets involved. To use a Letter of Request, review the following checklist:

1. A IV-D attorney should prepare a brief motion to his or her local court requesting that the court issue a Letter of Request. Attached to the motion should be the Letter of Request containing the questions you want the military member to answer or a list of the documents you want the member to produce.
2. There is no required form for the Letter of Request, although the Convention details what information the Letter must include. It is recommended that attorneys use the model Letter of Request that is found after the text of the Convention.

TRAINING NOTES

What you need to say/do

1. Continue to display **PowerPoint Slide 5-8: The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters**.
2. Note that free services under a federal bilateral child support agreement may include that country's assistance with requests for evidence, making it unnecessary to rely upon the more cumbersome process under the Hague Evidence Convention.

What you need to know

3. The attorney should not attach any documents in support of the motion. All of the relevant information should be in the Letter of Request. No cover letter is required.
4. Only a judicial authority can issue a Letter of Request.
5. If the foreign country where the member is located so requires, you must have translations of the document prepared and certified.
6. The clerk of court (or you) should transmit the original Letter of Request and one true copy by international airmail to the designated Central Authority for the foreign country. Contact information for the Central Authorities designated under the Convention may be found at http://www.hcch.net/index_en.php?act=conventions.authorities&cid=82.
7. Although most signatory countries will accept a Letter of Request in either English or French, it is also a good idea to include a translation into the language of the country to which you are sending the Letter of Request.

Upon receipt, the country's Central Authority is required to "expeditiously" send the Letter of Request to the appropriate local court having jurisdiction. The Letter of Request can ask that answers be given under oath or sworn and that a transcript be taken. However, the foreign court does not have to comply with such requests if the procedure is "incompatible" with the country's own laws or is "impossible" to perform.

Written answers to the questions or the requested documents will be sent back to the U.S. court that issued the Letter of Request. The foreign country cannot charge any fees, except for special procedures, experts, and interpreters. If you do not get a response after a few months, you should contact the Central Authority for a status report.

Note that free services under a federal bilateral child support agreement may include that country's assistance with requests for evidence, making it unnecessary to rely upon the Hague Evidence Convention.

TRAINING NOTES

What you need to say/do

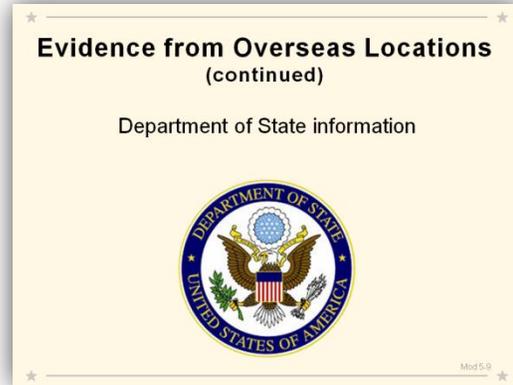
1. Before discussing Letters Rogatory, display **PowerPoint Slide 5-9: Evidence from Overseas Locations (cont'd)**.
 2. Tell the participants that when issues concerning obtaining evidence from overseas locations arise, the Department of State website is an extremely valuable source of information. The website is http://travel.state.gov/law/judicial/judicial_2514.html.
-

What you need to know

U.S. courts have inherent authority to issue Letters Rogatory requesting foreign judicial assistance.

5.6.2 Obtaining Evidence Outside the Hague Evidence Convention

In countries that are not parties to the Hague Evidence Convention, the only way to force an unwilling military member stationed abroad to appear for a deposition or to produce documents is through the courts of that country. While this may be accomplished in some countries by obtaining local counsel to petition the court directly, in other instances letters rogatory are required. Letters Rogatory are formal requests for judicial assistance from a court in one country to a court in another country transmitted via diplomatic channels. The foreign court may take testimony without placing the member under oath. The response returned to the U.S. court may be a summary of the military member's answers rather than a verbatim transcript.



Letters rogatory can be time consuming and cumbersome so they should be an alternative for seeking evidence only when other methods have been unsuccessful. Another drawback is that the Department of State cannot waive its fee for the transmission of letters rogatory in support cases.

If you intend to use a letter rogatory to seek evidence from a military member stationed overseas, the Department of State is the best source of information. You can go to http://travel.state.gov/law/judicial/judicial_2514.html for information related to obtaining evidence from abroad. You can find information about preparing letters rogatory at http://travel.state.gov/law/judicial/judicial_683.html. Detailed information on the Hague Evidence Convention may also be found on the website of the Hague Conference on Private International Law at http://www.hcch.net/index_en.php?act=text.display&tid=23.

TRAINING NOTES

What you need to say/do

1. For subsection 5.5 of this Module, display **PowerPoint Slide 5-10: Exercise Scenarios**.
2. Refer participants to **Handout 5-1: Review Exercises** in the Appendix. Divide the participants into groups of four or five people. Allow them about 10 minutes to read and discuss the scenarios and solutions among themselves. At the end of 10 minutes, lead an interactive discussion of the scenarios and possible answers.
3. Encourage the participants to ask questions concerning the material presented in the module.
4. Display **PowerPoint Slide 5-11: Summary**.
5. Preview the topics that will be discussed in **Module 6**.

What you need to know

5.7 EXERCISES

Refer to **Handout 5-1: Review**

Exercises in the Appendix. Identify the issues and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the scenarios.

Exercise Scenarios

- Read scenarios
- Answer questions
- Ask questions

Mod 5-10

5.8 SUMMARY OF MODULE 5

In this module, we discussed:

- compliance with genetic testing orders,
- resources for obtaining financial and medical information, and
- The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters.

Summary

- Compliance with genetic testing orders
- Resources for obtaining financial and medical information
- The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters

Mod 5-11

5.9 PREVIEW OF MODULE 6

In the next module, we will discuss the following topics:

- federal regulations governing paternity and order establishment,
- military policies and rules governing the chain of command's involvement in a IV-D paternity and support order establishment case,
- establishment of an appropriate child support obligation based on the complete earnings information for an individual in the military, and
- interpretation of a military *Leave and Earnings Statement*.