

# A HANDBOOK FOR MILITARY FAMILIES



★ Helping You with Child Support ★

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

Updated 2022

## Foreword

If you are an active-duty service member, a member of the National Guard or Reserves, or a military family member, I want to thank you for serving our country.

Military service provides rewarding opportunities and experiences. Military life events can also strain family relationships. Military members move much more frequently than civilians do and are often separated from their families for months at a time. Domestic issues may arise at any point during a member's military service, but they seem especially prevalent at pre-deployment, during deployment, and after the return home. According to Pentagon statistics, the start of Operation Enduring Freedom in Afghanistan brought an increase in military divorces.<sup>1</sup>

Although the divorce rate has declined the past 10 years, it still remains higher than it was prior to 2001.<sup>2</sup> The divorce rate impacts child support because approximately 32.2% of the Active Duty and Selected Reserve population in 2019 were married with children and 5.9% were single with children.<sup>3</sup>

All branches of the armed forces offer parenting programs and resources to strengthen military families. This handbook supplements those resources by providing information you might need regarding paternity establishment, child support, access and visitation, and child custody. First line supervisors and military commanders may also find this a helpful addition to a leadership toolkit.

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

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

Tanguler Gray  
Commissioner, Office of Child Support Enforcement

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<sup>1</sup> See <http://www.military.com/daily-news/2013/01/23/military-divorce-rate-down-slightly-in-2012.html>. The military divorce rate in 2001 was 2.6%. With the start of Operation Enduring Freedom in 2001, that rate increased. By 2009, the military divorce rate had climbed to 3.6%. The increase was higher in some branches; for example, the Army divorce rate rose by almost 50%. Since 2009, the overall military divorce rate for active duty members has steadily decreased to 3.1% in 2019.

<sup>2</sup> See Department of Defense, 2019 Demographics: Profile of the Military Community. The divorce rates released by the Pentagon do not include data on Coast Guard personnel, Reserve and National Guard members, or on service members who divorced after leaving the military. Military and civilian divorce rates cannot be accurately compared to the total U.S. divorce rate due to the differences in how they are tracked.

<sup>3</sup> See Center for Disease Control, National Marriage and Divorce Rate Trends (provisional 2018), <https://www.cdc.gov/nchs/data/dvs/national-marriage-divorce-rates-00-18.pdf>.

## Table of Contents

### Contents

Foreword.....	i
Table of Contents .....	ii
Organization of the Handbook .....	1
For More Information .....	2
I. The Child Support Program.....	3
Mission of the Child Support Program.....	3
Services Provided by the Child Support Program.....	3
Recipients of Child Support Services.....	4
Focus of Services.....	4
Legal Representation .....	4
<i>Questions and Answers for Custodial Parents</i> .....	5
<i>Questions and Answers for Noncustodial Parents</i> .....	5
II. Location of Noncustodial Parents .....	8
State and Federal Locate Resources.....	8
Military Locate Resources.....	9
<i>Questions and Answers for Custodial Parents</i> .....	11
<i>Questions and Answers for Noncustodial Parents</i> .....	11
III. Paternity Establishment.....	12
Acknowledgment of Paternity .....	12
Court Order of Paternity.....	12
Genetic Testing.....	12
DEERS Enrollment for Health Care .....	13
<i>Questions and Answers for Custodial Parents</i> .....	14
<i>Questions and Answers for Noncustodial Parents</i> .....	16
IV. Support Establishment.....	22
Family Support Guidelines Under Service Regulations .....	22
Voluntary Allotment.....	28
Establishing a Legal Order.....	28
State Child Support Guidelines.....	28

Determining Income of a Military Member.....	29
Medical Support .....	30
Obtaining Medical Support from Military Personnel.....	30
Enrollment in DEERS.....	30
Medical Care through TRICARE .....	32
Confirmation of Enrollment of Child in DEERS and TRICARE.....	33
State Legal Proceedings for Establishment of a Support Obligation.....	34
Duration of Support Obligation.....	34
<i>Questions and Answers for Custodial Parents.....</i>	<i>34</i>
<i>Questions and Answers for Noncustodial Parents .....</i>	<i>38</i>
V. Support Enforcement.....	41
Military Regulations Governing Support Enforcement.....	41
Military Voluntary Allotment.....	41
Income Withholding.....	42
Benefits of Income Withholding.....	42
Limits on the Amount that can be Withheld.....	42
Military Income Subject to Withholding Under State Law.....	43
Defense Finance and Accounting Service (DFAS).....	43
<i>National Guard or Reserve Members.....</i>	<i>44</i>
<i>Movement from Active Duty to Retired Status .....</i>	<i>44</i>
Federal Statutory Allotment for Child Support.....	44
The Uniformed Services Former Spouses' Protection Act.....	45
<i>Overview.....</i>	<i>45</i>
<i>Initiation of Enforcement under the USFSPA.....</i>	<i>45</i>
<i>Application Form.....</i>	<i>46</i>
<i>Court Order.....</i>	<i>46</i>
<i>Maximum Payment Amount.....</i>	<i>47</i>
Other Enforcement Methods .....	47
Federal Income Tax Refund Offset.....	48
<i>Eligibility .....</i>	<i>48</i>
<i>Due Process Requirements.....</i>	<i>48</i>
<i>Distributions of Monies Withheld from Refund.....</i>	<i>48</i>

State Income Tax Refund Offset.....	48
Liens on Property.....	49
Attachment of a Financial Institution Account.....	49
License Suspension.....	49
Passport Denial.....	49
<i>Due Process Requirements</i> .....	50
<i>Steps to Take if a Passport is Denied</i> .....	50
Military and Interest Rates.....	51
Civil Contempt.....	51
State and Federal Criminal Nonsupport.....	51
Enforcing Medical Support Through Tricare.....	52
<i>Who is Eligible?</i> .....	52
<i>Process for Enrollment</i> .....	52
<i>Options for Coverage</i> .....	53
<i>Obtaining Health Care</i> .....	53
<i>Dental Coverage</i> .....	53
<i>Questions and Answers for Custodial Parents</i> .....	54
<i>Questions and Answers for Noncustodial Parents</i> .....	56
VI. Modifying Existing Support.....	61
<i>Questions and Answers for Custodial Parents</i> .....	62
<i>Questions and Answers for Noncustodial Parents</i> .....	63
VII. Intergovernmental Cooperation.....	65
Part One: Interstate/Tribal Cooperation.....	65
Important Terms.....	65
Overview of UIFSA.....	66
One Order World.....	66
Evidentiary Provisions.....	67
One-State and Two-State Proceedings.....	67
Child and Spousal Support.....	68
Paternity Establishment.....	68
<i>One-State Long-Arm Action</i> .....	68
<i>Two-State Action</i> .....	68

Support Establishment.....	68
<i>One-State Long-Arm Action</i> .....	69
<i>Two-State Action</i> .....	69
Support Enforcement.....	69
<i>Enforcement When There is One Order</i> .....	69
<i>Enforcement When There are Multiple Orders</i> .....	69
<i>Enforcement Remedies</i> .....	69
Modification.....	70
<i>Exceptions to Modification Rules</i> .....	71
<i>Registration for Modification</i> .....	71
<i>Limitations on Modification</i> .....	71
<i>Applicable Support Guidelines</i> .....	71
The Full Faith and Credit for Child Support Orders Act.....	72
Tribal Cases.....	72
<i>Questions and Answers for Custodial Parents</i> .....	72
<i>Questions and Answers for Noncustodial Parents</i> .....	74
Part Two: International Cases.....	75
The Hague Child Support Convention.....	75
Bilateral Agreements.....	76
State Reciprocal Arrangements.....	77
Substantially Similar Laws.....	77
State Child Support Agency Services.....	77
Status of Forces Agreement (SOFA).....	77
<i>Questions and Answers for Custodial Parents</i> .....	78
<i>Questions and Answers for Noncustodial Parents</i> .....	79
VIII. The Servicemembers Civil Relief Act.....	82
Protected Individuals.....	82
Court and Administrative Proceedings.....	83
Default Judgments.....	84
Reduced Interest.....	84
Insurance.....	84
Start and Termination of Protections.....	85

Invoking the SCRA.....	85
<i>Questions and Answers for Custodial Parents.....</i>	<i>86</i>
<i>Questions and Answers for Noncustodial Parents.....</i>	<i>87</i>
IX. Access, Visitation, Custody, and Parenting Time.....	95
Relationship Between Child Support and Access/Visitation.....	95
Role of Child Support Program in Building Healthy Family Relationships.....	95
Resolution of Parenting Time Issues.....	95
Definition of Terms.....	96
<i>Access, Visitation, or Parenting Time.....</i>	<i>96</i>
<i>Joint Custody.....</i>	<i>96</i>
Applicable Laws and Regulations.....	96
<i>State Laws.....</i>	<i>96</i>
<i>Military Regulations and Policy.....</i>	<i>97</i>
Custody Proceedings and the Servicemembers Civil Relief Act.....	97
Family Care Plan.....	98
Who Must Have a Family Care Plan?.....	98
When Should a Member Make a Family Care Plan?.....	99
What Must be in a Family Care Plan?.....	99
What are Additional Issues to Address?.....	100
Relationship Between a Family Care Plan and a Custody Order.....	100
<i>Questions and Answers for Custodial Parents.....</i>	<i>101</i>
<i>Questions and Answers for Noncustodial Parents.....</i>	<i>102</i>
Appendix.....	105
<i>Definition of Commonly Used Terms.....</i>	<i>105</i>

## Organization of the Handbook

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

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

We also included a ***Questions and Answers*** (Q&A) section at the end of each chapter. We wrote the first set for situations that pertain to ***Custodial Parents*** and tailored the second group for ***Noncustodial Parents***. Chapter VII has two sets of Q&A because it has two parts. Unless otherwise noted, the chapters and questions make no assumptions about which parent is a service member.

The appendix at the end is a glossary of major terms we used in the Handbook.



## **For More Information**

This handbook gives you basic information. Contact your local child support office to find out more about child support and get the services you need. State websites provide addresses and phone numbers for local offices. You can also find a list of state and tribal child support agency contacts on the federal Office of Child Support Enforcement (OCSE) website, <https://www.acf.hhs.gov/css/contact-information/state-and-tribal-child-support-agency-contacts>. Tribal child support programs are also listed by tribe on OCSE's website at <https://www.acf.hhs.gov/css/training-technical-assistance/tribal-child-support-agency-contacts>.

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

## **I. The Child Support Program**

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

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

The mission of the child support program is to enhance the well-being of children by assuring that help in obtaining child support, including financial and medical, is available through locating parents, establishing paternity, establishing fair support obligations, and monitoring and enforcing those obligations.

Congress created the Child Support Program in 1975. People often call it the IV-D Program because Title IV-D of the Social Security Act created it. The child support program is a partnership among the federal government, states, tribes, and local programs with major support from stakeholders in the private and nonprofit sectors. Basic responsibility for administering the day-to-day operation of the program is given to states and tribal child support agencies, but the federal government plays a major role in policy, oversight, monitoring, system and program support, outreach, and research.

Each state operates a state child support agency, as do 60 tribes. These child support agencies are often called IV-D agencies. They provide the day-to-day processing of child support cases.

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

Originally, the primary purpose of the child support program was to recover welfare costs. Over the years, Congress has passed laws that embrace a broader mission for the program to obtain reliable support for children as they grow up. These days, more than 90% of collected support is paid directly to families. The result is a gradual shift in the child support program toward a family-centered model.

The child support provides core services to locate parents, establish paternity, and establish, enforce and modify child support orders. The program further provides innovative services to families to assure that parents have the resources they need to support their children. As state child support programs move to a more family-centered model, they have begun to:

- Encourage parents to participate in the establishment of child support orders
- Educate parents about the child support program
- Establish realistic child support orders
- Use automated systems to discover missed payments as early as possible
- Notify noncustodial parents about missed payments before the agency takes enforcement actions
- Modify (change) a support order to ensure that it stays consistent with a parent's ability to pay

- Reduce that portion of child support debt owed to the government if noncustodial parents start paying current support
- Pass through more support to families in public assistance cases instead of keeping it to repay the state for cash assistance

For more details on this, read the OCSE Child Support Handbook, <https://www.acf.hhs.gov/css/outreach-material/handbook-child-support-enforcement>.

Being proactive is one of the most important things you can do as a responsible parent. Most child support agencies are eager to work with military representatives and both parents. There is often a military liaison within the state or local child support agency. Reach out to the child support agency whenever you have issues or need to do some problem-solving.

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

The child support program provides services automatically to families receiving help under the Temporary Assistance for Needy Families (TANF) program or whose children are entitled to Foster Care Maintenance payments. Families wanting help from the child support program who are not receiving TANF or foster care help (or have not received such assistance in the past) must apply for services through a state child support agency or one of the tribes running a child support program. There is an application fee of up to \$25, which many states absorb. Both custodial parents and noncustodial parents can apply for child support services. In cases where the family has never received TANF, there is also an annual fee of \$35 if the state has collected at least \$550 of support. The state agency can retain the \$35 annual fee from support collected (but not from the first \$550 collected), have the applicant pay the fee, recover the fee from the noncustodial parent, or pay the fee out of state funds.

### **Focus of Services**

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

### **Legal Representation**

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

## *Questions and Answers for Custodial Parents*

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

No, you do not have to receive public assistance in order to receive child support services. There are no income eligibility requirements for child support services. You are eligible for services from a state child support agency if you are:

- A parent (mother or father) or person with custody of a child who needs help to establish a child support or medical support order or to collect support payments.
- A parent or person with custody of a child who has received help under the Temporary Assistance for Needy Families (TANF), Medicaid, and federally assisted Foster Care programs.
- A parent (mother or father) who wants help to have a child support order reviewed to see if it is still fair and three years have passed since the most recent review, or there has been a substantial change of circumstances.

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

If you have received public assistance under TANF, Medicaid, or federally assisted Foster Care programs, you do not have to apply for child support services; you automatically receive child support services. If you have not received such assistance, you can apply for child support services through the state or local child support office. Usually, applying to a child support agency in your state is most effective. However, you have the right to apply to the agency in another state if you think that will result in better service. The telephone numbers for state child support agencies are on the state's child support website. These sites are listed at <https://www.acf.hhs.gov/css/contact-information/state-and-tribal-child-support-agency-contacts>

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

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

## *Questions and Answers for Noncustodial Parents*

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

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

- An unmarried father who wants to establish paternity in order to establish a legal relationship with your child.
- A noncustodial parent whose case is not in the IV-D child support program but who wants

to make payments through the program so there is an official record of payments.

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

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

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

The telephone numbers for state child support agencies are on the state's child support agency website. These sites are listed at <https://www.acf.hhs.gov/css/contact-information/state-and-tribal-child-support-agency-contacts>.

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

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

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

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

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

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

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

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

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

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

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

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

- 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
- State Directories of New Hires
- State Workforce Agencies

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

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

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

Location services are also available to learn the whereabouts of a parent or child in order to make or enforce a custody or visitation determination. Authorized persons under federal law who can receive address information include<sup>4</sup>:

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

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

### **Military Locate Resources**

Each military branch 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. Others are charged a small fee. The extent of information the locator service can provide is different for each service. For example, the Army Data Center will only locate individuals on active duty, while the Air Force will help locate active-duty individuals, Reservists, National Guard, and retirees. More information is available through the USA.gov website, <https://www.usa.gov/military-personnel-and-installations>.

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

#### **Air Force – Active Duty, Reserve, Retired, or Air National Guard**

Air Force's Personnel Center

Attn: HQ/AFPC/DPDXIDL

550 C St West, Ste 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

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<sup>4</sup> 42 U.S.C. § 663(d).



Due to security concerns, the Army has closed its Worldwide 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 Worldwide Locator

BUPERS-07 Customer Service Center

5720 Integrity Drive

Millington, TN 38055-3120

(901) 874-5672

(866) 827-5672

Email: [Askmncc.fct@navy.mil](mailto: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. See <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 email 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](mailto: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 U.S. Coast Guard does not provide worldwide locator service. You may attempt to locate an active-duty Coast Guard member by sending an email or written request to the above address.

For more information, see <https://www.usa.gov/military-personnel-and-installations>. Most large military bases maintain legal assistance offices. The legal assistance attorneys’ duties include helping military spouses and dependent children obtain the service member’s military address.

They are not legally required to assist parents who have never been married to the service member. Additionally, if you know the unit or company of the service member, location is much easier; usually you can find the unit on the internet, providing a starting point for your locate inquiry.

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

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

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

You can also get help from the noncustodial parent's military branch. Each military branch maintains a locator service that will provide immediate family members and government officials with location information free of charge. More information is available through the USA.gov website, <https://www.usa.gov/military-personnel-and-installations> .

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

For contact information, see section above: Military Locate Resources.

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

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

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

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

If you have a child support case, it is important that you receive information on a timely basis. Such communication from the agency may include notice about actions being filed to establish paternity or a child support order and information about how you can challenge an enforcement action or whom to contact if you have questions about your case. Child support agencies also send out information to parents about how to request a review and adjustment. Because child support orders cannot be retroactively modified (changed), if you think the support amount needs to change, you need to be proactive and request a review.

### **III. Paternity Establishment**

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

#### **Acknowledgment of Paternity**

A parent can legally establish paternity without going to court. Every state has laws and procedures that allow a mother and father to sign a voluntary acknowledgment of paternity. The parents' signatures must be authenticated by a notary or witness(es), depending on state law. All states also have programs under which birthing hospitals give unmarried parents of a newborn child, born in that state, the opportunity to acknowledge the father's paternity of the child. States must also offer voluntary acknowledgment programs for parents up until the child's eighteenth birthday through vital records offices or other offices that the state designates. Parents do not have to apply for child support services when acknowledging paternity. An Acknowledgment of Paternity becomes a legal finding of paternity unless either parent rescinds within 60 days. For example, the man who signed the acknowledgment may deny that he is the father within 60 days. Generally, he can challenge the finding of paternity based only on fraud, duress, or material mistake of fact. Once the father and mother have signed a voluntary acknowledgment, the hospital or other entity designated by the state must forward the completed acknowledgment or a copy to the state registry of birth records or other entity designated by the state. The name of the father will be included on the record of birth of a child of unmarried parents only if the father and mother have signed a voluntary acknowledgment of paternity.

Some states allow same-sex couples to use the voluntary acknowledgment process to establish parentage for their child conceived through assisted reproductive technologies. The state may use one form for both opposite-sex and same-sex couples, or the state may elect to use different forms.

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

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

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

#### **Genetic Testing**

If a man is not certain he is the father, he can request a genetic test, and the child support agency will arrange for it. The parents do not have to live in the same state. Parents who do not have a case with a child support agency can also submit to genetic testing. These tests are simple to take and highly accurate.

## DEERS Enrollment for Health Care

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 Reserve members and their families if the members have been called to federal active duty for more than 30 days. 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 service 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. Nonmarital children of record of a female service member are entitled to DEERS enrollment and TRICARE benefit eligibility. Children born to unmarried parents, where the father is the service member, are also entitled to military healthcare and enrollment in DEERS *if* there is a legal determination of paternity. According to DoD 2020 eligibility requirements, the following documents constitute a legal determination of paternity for 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;<sup>5</sup> or
- A voluntary paternity acknowledgment.

The voluntary Acknowledgment of Paternity form must be recognized by relevant and applicable state law as establishing legal paternity. 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 state acknowledgment forms vary, 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 called 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.

If the child was born during marriage, 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 and the father is the service

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<sup>5</sup> Note that an SJA/JAG Legal Opinion may be sufficient for DEERS enrollment. However, it does not have the same legal consequences as an order establishing paternity or a signed voluntary paternity acknowledgment.

member, the 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.

As the sponsor, the member must complete DD Form 1172-2, Application for Identification Card/DEERS Enrollment. A verifying official at the site must validate the documents establishing dependency. Once that is done, the official will register the child in DEERS, 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 can locate a nearby site at <https://idco.dmdc.osd.mil/idco/>. As previously noted, complete instructions, including a pre-arrival checklist, are available online. The custodial parent will need to present the child's birth certificate and the same documents the sponsor would have presented to establish a legal determination of paternity. Note that genetic test results are not considered adequate documentation of paternity. The sponsor needs to complete and sign form DD1172-2, Application for Identification/DEERS Enrollment. 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.

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

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

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

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

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

A genetic test involves tissue samples (often from the inside of the cheek) of the alleged father,

mother, and child. Genetic test results can establish the probability of paternity to such a high extent that they often result in a legal presumption of paternity. However, in most states they do not automatically result in a legal establishment of paternity. The tests can also exclude a man who is not the biological father.

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

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

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

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

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

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

No. There is no fee to sign an acknowledgment of paternity. The state acknowledgment form may require that parents sign the form under oath before a notary. There is not a fee for the notary service if the parents go to a child support agency or military legal assistance office to have their signatures on the acknowledgment notarized. Some notaries outside the child support agency may charge a small fee for their notary service. There is no fee to send the acknowledgment of paternity to the Office of Vital Statistics. There is a small fee to get a copy of the child's updated birth certificate. In some states, when no government services are involved, there is a annual fee involved with opening and maintaining a child support case.

**What happens after paternity is established?**

A legal finding of paternity is the basis for a financial support order. You can ask a child support

agency to help you get a child support order. The child support caseworker may discuss the child's financial and health care needs with the father and what he is required to pay for child support according to the state child support guidelines. If a court later issues a child support order, it may also include terms of custody, visitation, and other parental rights. In the interim, the member can also establish a voluntary allotment.

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

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

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

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

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

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

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

Paternity establishment also provides you and the child with legal rights to Social Security benefits, life insurance benefits, and inheritance. By establishing paternity, you ensure the child has legal rights to other benefits as well, such as veteran's benefits and health care coverage. For example, in order for a child to be enrolled in DEERS and TRICARE, you must provide documentation establishing there has been a legal determination of paternity. *Many people do not realize this, but a child born to unmarried parents may not be able to claim these benefits from their father unless there is a legal determination of paternity.*

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

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

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

If you acknowledge that you are the child's father, you can establish the child's paternity through the voluntary acknowledgment process. Every state has a voluntary acknowledgment program. Both parents must sign the paternity acknowledgment form. Depending on state law, the parents' signatures must be authenticated by a notary or witness(es). Parents can sign it at different locations. See the response to the question below. Birthing hospitals have the form, as do bureaus of vital statistics, child support agencies, and other state designated offices. Only the biological father and mother should sign the form. If you are not sure that you are the biological father, you may contact the local child support agency about arranging a genetic test.

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

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

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

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

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

No. There is no fee to sign the paternity acknowledgment form. Some state acknowledgment forms require that parents sign the form under oath before a notary. There is no fee for the notary service if you and the custodial parent go to a child support agency or military legal assistance office. Some notaries outside the child support agency may charge a small fee for their notary service. There is no fee to send the paternity acknowledgment form to the Office of Vital Statistics. There is a small fee to get a copy of your child's updated birth certificate.

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

If there is no court order establishing paternity and you have not signed a paternity



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

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

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

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

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

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

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

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

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

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

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

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

*Step 1: Establish paternity.*

Establishing paternity is the first step to providing health care benefits for children born to unmarried parents. DoD recognizes the following documents as a legal determination of paternity for enrolling a child in DEERS and TRICARE:

- 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 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. You can get the form at any birthing hospital in that state or from the local child support agency. Other state designated offices, such as the Bureau of Vital Statistics, may also have the form.

*Step 2: Go to a Uniformed Services ID card issuance site.*

Once paternity is established, you as the member sponsor need to go to a nearby Uniformed Services ID card issuance site to register the dependent child into the Defense Enrollment Eligibility Reporting System (DEERS), the official system of record for TRICARE eligibility and enrollment. You will need a certified copy of the child's birth certificate, a certificate of live birth, or an FS-240, Consular Report of Birth Abroad. You will also need documentation, noted above, that shows there has been a legal determination of paternity. For complete instructions, including a pre-arrival checklist, visit <https://www.cac.mil/Next-Generation-Uniformed-Services-ID-Card/Getting-Your-ID-Card/>.

As the sponsor, you will complete DD Form 1172-2, Application for Identification Card/DEERS Enrollment. Once the verifying official validates the documents and completes the registration in DEERS, the child is automatically enrolled in TRICARE.

If the mother is the custodial parent, it is also possible for her to go to a nearby ID card issuance site. She will need to bring the documents noted above and your signed DD Form 1172-2, Application for Identification Card/DEERS Enrollment. Once the verifying official validates the documents and completes the registration in DEERS, the child is automatically enrolled in TRICARE.

DEERS automatically enrolls the child in TRICARE. It is important that the child's address in DEERS is accurate because DEERS will enroll the child in either TRICARE Prime or TRICARE Elect based on that address. DEERS will enroll the child in TRICARE Prime if the child lives within a certain mile radius of a military hospital or clinic. It will enroll the child in TRICARE Elect if the child is outside a prime service area or lives overseas. If you or the custodial parent want to change between TRICARE Prime or Select, there is a limited time period to make the change. Otherwise, you may change coverage during the TRICARE open enrollment season.

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

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

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

Yes. Your child is eligible to receive military health care so long as the following steps have occurred:

- You completed DD Form 1172-2, Application for Identification Card/DEERS Enrollment;
- A verifying official at a Uniformed Services ID card issuance site (often called a RAPIDS ID card office or facility) has determined that the child is your dependent because there is a legal determination of paternity based on the documents you presented; and
- The verifying official has registered the child in DEERS.

Enrollment of the child in DEERS automatically enrolls the child in either TRICARE Prime or TRICARE Select, depending on the child's address in DEERS. DEERS will enroll the child in TRICARE Prime if the child's address is within a certain mile radius of a

stateside military hospital or clinic. Otherwise, DEERS will automatically enroll the child in TRICARE Select; this includes children who live overseas.

## IV. Support Establishment

When a person has children, that person assumes legal, moral, and financial duties. Those duties exist, regardless of whether the parents live together or apart and regardless of whether the parents were married when the children were born. When parents separate, it is critical that they continue to both provide financial and emotional support for their children.

This chapter discusses processes available through the military, and through state proceedings, for the formal payment of child support.

### Family Support Guidelines Under Service Regulations

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

- The Army: Army Regulation 608-99, Chapter 2 (Family Support, Child Custody, and Parentage) (2020), [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/ARN30639-AR\\_608-99-000-WEB-1.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/ARN30639-AR_608-99-000-WEB-1.pdf)
- The Air Force: Air Force Instruction (AFI) 36-2906, Personal Financial Responsibility (2018), [https://static.e-publishing.af.mil/production/1/af\\_a1/publication/dafi36-2906/dafi36-2906.pdf](https://static.e-publishing.af.mil/production/1/af_a1/publication/dafi36-2906/dafi36-2906.pdf).
- The Navy: Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members) (2006), <https://www.mynavyhr.navy.mil/Portals/55/Reference/MILPERSMAN/1000/1700Morale/1754-030.pdf>, and art. 5800-010 (Paternity Complaints), <https://www.mynavyhr.navy.mil/Portals/55/Reference/MILPERSMAN/5000/5800-010.pdf>
- The Marine Corps: 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](https://www.marines.mil/Portals/1/Publications/MCO%205800.16_Volume%209.pdf?ver=2018-05-08-091321-823).
- The Coast Guard: U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2 (Discipline and Conduct), Chapter 2.E (Support of Dependents) (2020), <https://www.dcms.uscg.mil/ppc/pd/reference/>.

### ARMY

Army Regulation 608-99 requires a soldier to comply with the following:

1. The financial support provisions of a court order or the financial support provisions of a written agreement in the absence of a court order.
2. In the absence of a financial support agreement or a court order containing a financial

support provision, a soldier must provide interim financial support that is based on the With Dependents rate of the applicable BAH RC/T (Non-Locality Basic Allowance for Housing). The specific amount depends on a variety of factors, including whether the family is residing in government family house, the number of dependents, and other child support orders.

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

Situation	Level of Support
<b>Single-family units</b>	
Soldier married to another person on active duty in any service	No spousal support unless required by court order or by agreement
<b>Single-family unit where Soldier married to active duty spouse <i>but with</i> children from marriage or prior marriage</b>	
Soldier does not have custody of any children and children do not reside in government quarters	BAH-DIFF to military member having custody of child or children

Soldier does not have custody of any children and children reside in government quarters	No additional support
Soldier has custody of one or more children	No support for a child or children in the custody of the other military member
<b>Multiple family units</b>	
Family members in government housing	No additional support
Each family member not in government housing	Pro-rata share of BAH RC/T – WITH

$$\text{Pro Rate Share} = \left[ \frac{1}{\text{Total number of supported family members}} \right] \times \text{Applicable BAH RC/T – WITH rate}$$

In the equation, the “total number of supported family members” in the denominator of the fraction includes all family members (regardless of family residence) except:

- A soldier’s former spouse
- A present spouse who is on active duty unless there is a support order or written agreement
- A family member whom the soldier is not required under the regulations to provide financial support.

### **AIR FORCE**

For many years, the Air Force, unlike its sister services, simply required each Air Force member to “provide adequate financial support to family members” without establishing guidelines for minimum support due. That changed in 2018. In the absence of an applicable order or agreement, the Air Force Instruction 36-2906 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 specific amount depends on a variety of factors, including whether the family is residing in government family house, the number of dependents, and other child support orders. Similar to the Army Regulation, if there are multiple family units and each family member is not living in government

housing, the Airman must provide support in accordance with a “pro-rata share” formula.

When the term “pro-rata share” is used with regard to the With Dependents rate of the member’s Non-Locality Basic Allowance for Housing, the amount of each such share is calculated using the equation below.

$$\text{Pro Rate Share} = \left[ \frac{1}{\text{Total number of supported family members}} \right] \times \text{Applicable Non-Locality BAH with Dependent Rate}$$

The “total number of supported family members” in the denominator of the fraction includes all family members (regardless of residence) except the following:

- A member’s former spouse, regardless of whether the member is providing financial support to the former spouse
- A member’s present spouse who is on active duty in one of the military services unless financial support is required by a court order or written financial support agreement
- A family member for whom the military member is not required to provide financial support under this Instruction or for whom the military member has been released by his or her squadron commander from the requirement to provide financial support

Note that a member’s full BAH is not used in this calculation. Rather, the non-locality BAH is used. All BAH rates, including the non-locality rates, can be found online at <https://www.defensetravel.dod.mil/site/bahCalc.cfm>.

### NAVY

The Navy requirements for support are in articles 1754-030 and art. 5800-10 of the Navy Military Personnel Manual. The Navy requires a member to comply with a court order or an agreement between the parties. If there is no agreement or court order, then the following guidelines apply:

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



One minor child	1/6 of gross pay
Two minor children	1/4 of gross pay
Three minor children	1/3 of gross pay

The above chart is intended to serve as a guide until a mutual agreement is reached or a court order obtained.

Gross pay includes:

- basic pay and BAH, if entitled

It does not include:

- hazardous duty pay
- sea or foreign duty pay
- , incentive pay, or
- basic allowance for subsistence pay

### MARINE CORPS

The Marine Corps requirements for dependent support are found in the Legal Support and Administration Manual, Volume 9 of Marine Corps Order 5800.16. In the absence of a court order or an agreement, the following is the guide for the minimum pro-rata share of the applicable Basic Allowance for Housing or Overseas Housing Allowance to which the Marine is entitled:

<b>Total Number of Family Members Entitled to Support (not including the Marine)</b>	<b>Share of Monthly BAH/OHA per Requesting Family Member</b>
1	1/2
2	1/3
3	1/4
4	1/5

5	1/6
6 or more	1/7 or etc.

The number of family members entitled to support under this service regulation does not include:

- (1) a Marine’s former spouse, regardless of whether the Marine is providing financial support to the former spouse;
- (2) a Marine’s present spouse who is on active duty in one of the military services; or
- (3) a family member for whom the Marine is not required to provide financial support under Volume 9 or for whom the Marine has been released by his or her commanding officer from the regulatory requirement to provide financial support.

Pursuant to the Marine Corps Order, the total amount of support paid to all family members entitled to support cannot exceed 1/3 of the Marine’s gross military pay per month. Gross military pay is the total of all military pay and allowances before taxes and other deductions.

### COAST GUARD

In U.S. Coast Guard Commandant Instruction M1600.2, the Coast Guard has established the following support requirements in the absence of a court order:

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

Three or more minor or handicapped children	33% (1/3) of basic pay
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For this scale, BAH-DIFF is the difference between the BAH with dependents rate and the BAH without dependents rate as calculated for the member.

### **Voluntary Allotment**

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

### **Establishing a Legal Order**

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

### **State Child Support Guidelines**

All states have laws or rules establishing child support guidelines. Support guidelines are numerical formulas that the court or administrative agency uses to calculate how much a parent should contribute to a child’s financial support. The formulas are based on parental income and economic data on the cost of rearing children. Federal law requires that a court or an agency presume that the guideline amount is the appropriate amount of child support. Support amounts can deviate from the guideline amount. For that to happen, however, the court or agency must find that applying the guideline in that particular case would result in an inappropriate order that is not in the best interest of the child. State support guidelines vary. Some factor in the income of both parents. Others are based on a percentage of the income of the noncustodial parent only, with the assumption that the custodial parent is already contributing to the child’s financial well-being. Some states consider the non-custodial parent’s costs for providing work related day care, each

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

parent's contribution to the costs of providing health care coverage and whether either parent has additional children.

You may call your local child support office or visit the state agency's website to find out about your state's child support guidelines. See <https://www.acf.hhs.gov/css/contact-information/state-and-tribal-child-support-agency-contacts>

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

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

The LES provides a wealth of information that is important for establishing a child support order. The LES has 78 separate fields that include, among other things, the following information:

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

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

The LES also identifies whether a given source of income is taxable. Many state child support guidelines initially start with a person's gross income, but then allow certain deductions before calculating the support obligation based on the person's net income. Decision makers vary

regarding the treatment of a service member's nontaxable income. The service member can seek information from the child support agency about how the guidelines will treat their nontaxable income. It is important that the service member provide accurate income information to the court and/or child support agency to assist in the appropriate calculations.

### **Medical Support**

Federal law requires that every child support order include a provision for health care coverage. Medical support can take several forms.

The custodial or noncustodial parent may be ordered to:

- Provide health insurance if available through their employer;
- Pay for health insurance (health care coverage) premiums or reimbursement to the paying parent for all or a portion of the costs of health care coverage obtained by the other parent; *and/or*
- Pay additional amounts to cover a portion of ongoing medical bills or as reimbursement for uninsured medical costs.

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

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

A legal dependent of an active or a retired military member is eligible for services through the Military Health System. This is true regardless of whether the dependent resides with the member. 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 Reserve members and their families if the members have been called to federal active duty for more than 30 days. 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 service member, known as the "sponsor," and their dependents. DEERS 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.

### **Enrollment in DEERS**

The easiest way to enroll a dependent in DEERS is for the sponsor to enroll the child. The sponsor can go to a nearby Uniformed Services ID Card Issuance site. This is also called a RAPIDS ID Card office or facility. RAPIDS is the acronym for the Real-Time Automated Personnel Identification Card System. The sponsor can go to any site. It does not have to be specific to the

member's service branch. The service member can also enroll the child during pre-deployment processing programs.

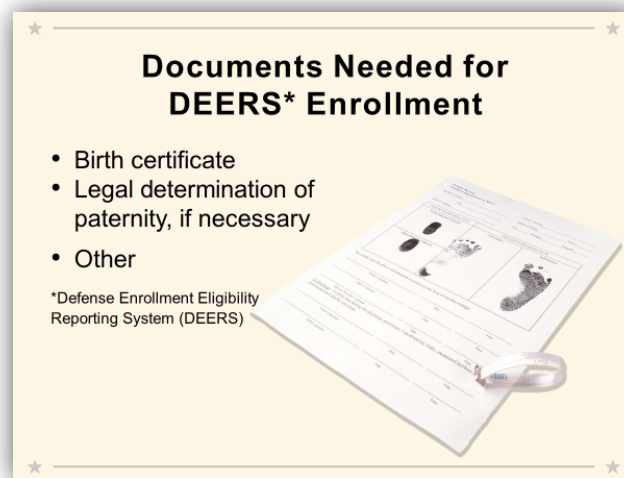
The sponsor must bring documents establishing the child's dependent status. If the child was born during marriage, the sponsor can establish dependency by bringing a certified copy of the child's birth certificate, a certificate of live birth, or an FS-240, Consular Report of Birth Abroad. If the child was not born during marriage and the father is the service member, the sponsor also needs to bring documentation establishing a legal determination of paternity. Complete instructions, including a pre-arrival checklist, are available online. The member should call in advance to confirm what documents are needed.

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 paternity acknowledgment.

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

As the sponsor, the member must complete form DD 1172-2, Application for Identification Card/DEERS Enrollment, <https://www.cac.mil/Portals/53/Documents/dd1172-2.pdf>. A verifying official at the site must validate the documents establishing dependency. Once that is done, the official will register the child in DEERS, which will automatically result in TRICARE enrollment.



If the service member does not enroll the child in DEERS, the custodial parent can enroll the child by going to a Uniformed Services ID card issuance site (RAPIDS ID Card office or facility) and presenting the appropriate documents to the official who verifies dependent status. The custodial parent will need to present the same documentation of dependency as required of a sponsor. Note that genetic test results are not considered adequate documentation of paternity. Location of the nearest facility may be found online at <https://idco.dmdc.osd.mil/idco/>. The custodial parent may also contact the Defense Manpower Data Center (DMDC) Support Office Monday through Friday at (800) 538-9552. An advance call to the ID Card issuing facility is important to confirm required documents, their procedures, and base access for someone who does not have a military ID card. There is no cost to enroll a child in DEERS.

The sponsor needs to complete and sign form DD1172-2, Application for Identification/DEERS Enrollment. 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. It is also possible for a custodial parent to enroll a child in DEERS by mail rather than in person. The parent should contact the DMDC Support Office for more information. Once the child is enrolled, the custodial parent will usually still need to take the child to a Uniformed Services ID card issuance site to obtain a military ID card for the child.

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

### **Medical Care through TRICARE**

***“TRICARE covers services that are medically necessary and considered proven. There are***

***special rules or limits on certain services, and some services are excluded.”<sup>7</sup>***

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. DEERS will automatically enroll the child into TRICARE Prime if the child’s address is within a specified mile radius of a stateside military hospital or clinic. Otherwise, DEERS will automatically enroll the child into TRICARE Select, including if the child lives overseas. If the sponsor or custodial parent wishes to change between TRICARE Prime or Select, they have a limited time period to make that change. Otherwise, they may change coverage during the TRICARE open enrollment season. Beneficiary Counseling Assistance Coordinators can answer questions about health care coverage.

For specific information about TRICARE coverage, see. <https://www.tricare.mil/>

Once enrolled in DEERS, the child may be able to obtain health care services and medications from military hospitals and clinics if space is available. Enrollment in TRICARE also allows the child to receive care from civilian health care providers.

### **Confirmation of Enrollment of Child in DEERS and TRICARE**

If you are receiving services from a IV-D child support agency, it is easy to learn whether the sponsor has already registered your child in DEERS, thereby enrolling the child in TRICARE. The federal Office of Child Support Enforcement conducts electronic data matches with the Defense Manpower Data Center (DMDC), operated by DoD, that provides child support workers with that information.

A custodial parent (not a child support worker) may also confirm whether a child is enrolled in DEERS and TRICARE by:

- Checking online with DMDC Military Connect at <https://milconnect.dmdc.osd.mil/milconnect/>.
- Calling the DMDC Support Office (DSO) telephone center help line at (800) 538-9552. If the custodial parent is divorced from the sponsor but has a prior DEERS record and can establish that she/he is the child's parent, DEERS can provide eligibility information. If the custodial parent was never married to the sponsor or was never enrolled in DEERS, the parent will first need to provide the DSO with documents proving the custodial parent is actually the parent of the child in question. Such documents may include a birth certificate naming the person as the child’s parent and custody orders. Once DSO reviews and approves the documents, and updates its tracking system, it can release specific information to the custodial parent.
- Calling the TRICARE regional or overseas contractor.

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<sup>7</sup> TRICARE.Mil Covered Services webpage, <https://www.tricare.mil/CoveredServices.aspx>.



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

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

### **Duration of Support Obligation**

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

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

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

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

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

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

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

There are several options depending on the circumstances:

You have a support order	You can contact the local child support agency or court to assist with enforcement.  You can contact the service member's commanding officer.
You have an income withholding order and are receiving child support services	You can make sure the child support agency is aware of the member's military status so the agency can send the withholding order to the Defense Finance and Accounting Service (DFAS).

<p>You have an income withholding order but are not receiving child support services</p>	<p>You can serve DFAS with the income withholding or garnishment order yourself. Instructions are on the DFAS website: <a href="https://www.dfas.mil/garnishment/">https://www.dfas.mil/garnishment/</a>.</p> <p>You can contact the service member’s commanding officer.</p>
<p>You do not have a support order</p>	<p>You can contact the service member’s commanding officer or the installation and ask about receiving support based on the support regulations of the member’s service branch. When doing this, include; your name; the names of the service member’s dependents; the service member’s name, rank, and last four digits of the member’s SSN (if known); and the amount of support in cash or in kind that the member is paying, if any. Attach all pertinent documents (e.g., your marriage certificate, birth certificates, last Leave and Earnings Statement (LES), military orders, and any medical bills you have for the child(ren)).</p> <p>You can also contact your local child support agency for help in establishing a support order.</p>

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

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

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

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

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

Military pay is comprised of basic pay; available allowances, such as Basic Allowance for Housing (BAH), and Basic Allowance for Subsistence (BAS) or Separate Rations (Sep Rats); special skill pay (for example, flight pay); and bonuses (for example, reenlistment). The member’s Leave and

Earnings Statement (LES) provides information about the member’s basic pay, allowances, and special pay. The following resources are available online:

DoD Pay Tables	<a href="https://www.dfas.mil/MilitaryMembers/payentitlements/Pay-Tables/">https://www.dfas.mil/MilitaryMembers/payentitlements/Pay-Tables/</a>
Basic Allowance for Housing (BAH)	<a href="https://www.defensetravel.dod.mil/site/bah.cfm">https://www.defensetravel.dod.mil/site/bah.cfm</a> (Contains housing tables and a zip code search feature)
Leave and Earnings Statement (LES)	<a href="https://mypay.dfas.mil">https://mypay.dfas.mil</a>

**I recently enlisted. Does the military offer health care coverage for my child?**

Yes. A legal dependent of an active military member is eligible for services through the military health system. This is true regardless of whether the dependent resides with the member.

Commencement of military medical benefits for the dependent child of a member who is born during marriage, adopted, a stepchild, or a child of record born outside of marriage to a female military member is determined by the child’s date of birth or the date(s) of the sponsor’s military service, whichever comes later. Commencement of military medical benefits for a child born outside of marriage to a male member is also determined by those dates if paternity has been legally determined by a court order or an acknowledgment of paternity.

The Defense Enrollment Eligibility Reporting System (DEERS) maintains information on a military member, known as the “sponsor,” and the sponsor’s dependents. It is used to confirm eligibility for military benefits including health care. As a sponsor, you are automatically registered in DEERS, but it is your responsibility to enroll your child. The easiest way to enroll your child in DEERS is to go to a nearby Uniformed Services ID card issuance site; this is also called a RAPIDS ID card office or facility. You need to complete DD Form 1172-2, an Application for Identification Card/DEERS Enrollment, and bring the required documents to establish your child as your dependent. For complete instructions, including a pre-arrival checklist, visit <https://www.cac.mil/Next-Generation-Uniformed-Services-ID-Card/Getting-Your-ID-Card/>. Once the verifying official validates the documents establishing that the child is your dependent, the official will complete the child’s registration in DEERS. DEERS registration automatically enrolls your child in TRICARE. TRICARE is the health care program serving Uniformed Service members, retirees, and their families.

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

Yes. A child is eligible for health care benefits through TRICARE so long as the following steps have occurred:

Step 1: Establish paternity.

Establishing paternity is the first step to providing health care benefits for children born to unmarried parents. DoD recognizes the following documents as a legal determination of paternity for enrolling a child in DEERS and TRICARE:

- 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 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. You do not have to sign at the same time. Because each state has its own acknowledgment form, you must use the acknowledgment form of the state where your child was born. You can get the form at any birthing hospital in that state, as well as the local child support agency. Other state designated offices, such as the Bureau of Vital Statistics, may also have the form.

Step 2: Go to a Uniformed Services military ID card issuance site.

Once paternity is established, the sponsor (military member) or you as the custodial parent can go to a nearby Uniformed Services ID card issuance site (also called a RAPIDS ID card office or facility). You can locate a nearby site at <https://idco.dmdc.osd.mil/idco/>.

Make sure the sponsor or you bring the required documents. You will need a certified copy of the child's birth certificate, a certificate of live birth, or an FS-240, Consular Report of Birth Abroad. You will also need the documentation listed in Step 1 showing there has been a legal determination of paternity.

The sponsor needs to complete DD Form 1172-2, an Application for Identification Card/DEERS Enrollment.

For complete instructions, including a pre-arrival checklist, visit <https://www.cac.mil/Next-Generation-Uniformed-Services-ID-Card/Getting-Your-ID-Card/>. You can also contact the Defense Manpower Data Center (DMDC) Support Office help line Monday through Friday at (800) 538-9552.

Step 3: Enroll the child in DEERS.

The Defense Enrollment Eligibility Reporting System (DEERS) is the database that maintains information on the service member, known as the "sponsor," and the sponsor's dependents. It is used to confirm eligibility for military benefits including health care. Once the verifying official validates the documents establishing that the child is the sponsor's dependent, the official will complete the child's registration in DEERS.

DEERS automatically enrolls the child in either TRICARE Prime or TRICARE Select, depending on the child's address in DEERS.

### **How does divorce impact my child's access to TRICARE?**

Divorce, annulment, or dissolution of a marriage is a TRICARE Qualifying Life Event (QLE). This QLE allows the sponsor and family members to make changes to their TRICARE Prime or TRICARE Select health plan outside of TRICARE Open Season. After a divorce, the sponsor remains eligible for TRICARE. This is the same for the sponsor's biological and adopted children. The former spouse only remains eligible for TRICARE if they meet certain criteria. To help you understand your TRICARE health care options after getting divorced, go to <https://tricare.mil/LifeEvents/Divorce>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Before your child is eligible for TRICARE, you must first enroll the child in the Defense Enrollment and Eligibility Reporting System (DEERS) as your dependent. DEERS maintains the records of each military member (the sponsor) and their registered dependents. It does not cost you anything to enroll your dependent into DEERS and once your child is registered, your child is automatically enrolled in TRICARE.

Because you are the military member and sponsor, the easiest way to enroll your child into DEERS is to go to a nearby Uniformed Services ID card issuance site (also known as a RAPIDS ID card office or facility). You can also enroll the child during pre-deployment processing programs.

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

- The child's birth certificate (usually a certified copy), a certificate of live birth, or an FS-240, Consular Report of Birth Abroad.
- If you and the custodial parent were not married when the child was born, documents showing there has been a legal determination of paternity. DoD recognizes the following documents as a legal determination of paternity for enrolling a child in DEERS and TRICARE:

- 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 voluntary paternity acknowledgment signed by both parents.

Complete instructions, including a pre-arrival checklist, are available online at <https://www.cac.mil/Next-Generation-Uniformed-Services-ID-Card/Getting-Your-ID-Card/>. It is a good idea to contact the ID card issuance site before arriving to verify the documents they require.

As the sponsor, you also need to complete DD Form 1172-2, an Application for Identification Card/DEERS Enrollment.

Once the verifying official validates the documents and completes the DEERS registration, DEERS automatically enrolls your child in either TRICARE Prime or TRICARE Select, depending on the child's address in DEERS.

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

Yes. Family members of a reserve component member ordered to federal active duty for more than 30 consecutive days are eligible for enrollment in TRICARE on the first day of the sponsor's order for active duty. The Defense Enrollment Eligibility Reporting System (DEERS) reflects a family members' eligibility for TRICARE benefits. For information about TRICARE options for activated National Guard and Reservists, go to <https://www.tricare.mil/Plans/New/NewNGRM>.

## V. Support Enforcement

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

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

The federal statute and regulation that govern income withholding for child support from members of the military are the ones governing garnishment processing for all federal employees: 42 U.S.C. § 659 and 5 C.F.R., Part 581. They apply to all military branches. Each service branch also requires military members to honor the terms of their child support orders.

Below is the policy of each branch regarding support:

- The Army – Army Regulation 608-99, Chapter 2 (Family Support, Child Custody, and Parentage) (2020)
- The Air Force – Air Force Instruction (AFI) 36-2906, Personal Financial Responsibility (2018)
- The Navy – Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members) (2006)
- The Marine Corps – U.S. Marine Corps Order P5800.16 – Vol.9, Marine Corps Legal Support and Administration Manual (LEGALADMIN), (Dependent Support and Paternity) (2018)
- The Coast Guard – U.S. Coast Guard Commandant Instruction (COMDTINST) M1600.2 (Discipline and Conduct), Chapter 2.E (Support of Dependents) (2020)

### **Military Voluntary Allotment**

Members of the military may establish a voluntary allotment of earnings and route money from



their pay to their dependents. Because it is voluntary, the service member can start this allotment even before a child support order exists in the case. A commanding officer will help the member obtain the voluntary allotment forms. While a commander can order a subordinate to obtain a voluntary allotment for their family, a commander cannot actually issue the allotment.

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

### **Income Withholding**

Congress requires all states to have laws providing that income withholding is a method for noncustodial parents to comply with child support orders. Income withholding means that support payments are deducted from the noncustodial parent's paycheck or other source of income. Some states call the process garnishment, wage withholding, or wage attachment. State law must provide that immediate income withholding is part of the initial support order, without regard to the existence of arrears. This requirement is for orders the state child support program is enforcing, as well as for private cases. The only exceptions to immediate income withholding are (1) if the court or agency finds good cause not to order immediate income withholding, or (2) if both parents agree to an alternative arrangement. If the order does not require immediate income withholding, withholding will automatically be triggered if an arrearage equal to one month's amount of support occurs.

### **Benefits of Income Withholding**

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

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

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

An immediate income withholding is for the amount that the order requires for current support. If an arrearage occurs, the income withholding can be changed to include an additional amount to

pay off the arrears. There are limits to the amount of income an employer can withhold from a person's earnings. The federal Consumer Credit Protection Act (CCPA) sets limits that range from 50 – 65% of disposable earnings depending on whether the noncustodial parent has other dependents and how long the noncustodial parent has been in arrears. Some state laws set lower limits.

### **Military Income Subject to Withholding Under State Law**

A military member is subject to state income withholding in order to enforce a child support obligation. Support can be withheld from the following types of income:

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

Veterans' disability benefits are not subject to withholding unless the member has waived a portion of retired or retainer pay in order to receive such compensation. This situation occurs when a former service member waives part of their retired pay (which is taxable) in order to receive Department of Veterans Affairs (VA) disability compensation (which is nontaxable).

When this happens, that part of the VA payment that the retiree receives in lieu of the waived retired pay is subject to garnishment. However, if the member's entitlement or disability compensation is greater than their entitlement to retired pay, and the service member waived all of their retired pay in favor of disability compensation, then none of the disability compensation is subject to garnishment or attachment.

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

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

The DFAS website for information regarding its services is <https://www.dfas.mil/>. To reach the page with information about child support income withholding, click on the hyperlink for "Garnishment Information." That takes the user to a page with information on child support and alimony, including frequently asked questions and answers.

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

DFAS processes the pay for members of the National Guard and Reserves who have been activated into federal service. If a National Guard member or Reservist already has an income withholding through their civilian employer, the child support agency can transfer the withholding to DFAS in order to prevent or reduce missed payments. However, the transfer is not automatic. It is important for the activated National Guard member or Reservist to notify their employer as soon as possible upon notification of activation and deployment. The employer should then notify the child support agency of:

- the last day of employment
- the amount of the last paycheck
- the dependents currently enrolled in health insurance through the employer
- what date that coverage will terminate

The service member should also notify the child support agency of the call to active duty in order to expedite the agency's transfer of the income withholding order to DFAS or the Coast Guard processing center. In the event there is a gap from when the state withholding stops and the military involuntary allotment begins, the service member is responsible to provide the child support payment directly to the child support agency's SDU.

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

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

If a member goes from active duty to retirement, a new child support income withholding order is not required. However, if DFAS is already implementing a child support income withholding order on the member receiving active duty pay, one of the parties should contact DFAS to inform it of the member's retirement so DFAS can transfer the income withholding order from the member's active duty pay to their retired pay. It can take 30 to 60 days for the member's retired pay account to begin paying because an account must be established. This means there may be a delay in the support payment. If there is a delay from DFAS, the service member is responsible for sending the child support payment directly to the child support agency's SDU. Note that the Coast Guard will automatically move a retiree's income withholding to his or her retired pay.

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

The federal statutory allotment is an income withholding remedy specifically directed toward the military. Based on federal law at 42 U.S.C. § 665, a IV-D agency or court can use this involuntary allotment to enforce both child and spousal support obligations owed by a member of one of the

uniformed services on active duty.

There are two prerequisites:

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

There are due process protections to the service member. The designated official in the appropriate uniformed service must receive notice; that official must in turn give notice to the affected member. Before there can be an allotment from the member's pay and allowances, the member must have an in-person consultation with a judge advocate or a legal assistance officer to discuss various factors related to the member's support obligation. However, if 30 days have passed since the member received notice, and it has not been possible to arrange such a consultation, despite continuing good faith efforts, then it is permissible to initiate the federal statutory allotment. Once DFAS receives notice to begin the allotment, it will withhold the amount necessary to comply with the support order.

According to DFAS, this remedy is rarely used. State income withholding is easier to initiate and more effective in providing support.

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

### ***Overview***

The Uniformed Services Former Spouses' Protection Act (USFSPA) is a law Congress enacted in 1982 to provide benefits to certain former spouses of military members. It can be used to collect child support from retired military personnel. The USFSPA is located at 10 U.S.C. § 1408. The USFSPA does not automatically entitle a spouse or former spouse to a portion of the member's retired pay; the final court order must award a portion of the member's military retired pay as property to the member's spouse or former spouse. The decision whether to award retirement pay is solely in the discretion of the state court, and the amount awarded will vary. There is no formula that the court must follow in dividing retired pay.

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

### ***Initiation of Enforcement under the USFSPA***

In almost all cases, it is the retired spouse of the military member who directly initiates enforcement under the USFSPA. To apply for payments under the USFSPA, the former spouse

must submit a completed DD Form 2293, Application for Former Spouse Payments from Retired Pay, accessible at <https://www.dfas.mil/RetiredMilitary/forms/Retired-Military-Annuitants/survivors/1174RetireeAOP/?sf1174=dfas.dod.afpims.mil>), and a certified copy of the applicable court order. The former spouse may mail or fax the documents to:

DFAS Garnishment Law Directorate  
Box 998002  
Cleveland, Ohio 44199-8002  
(888) DFAS-411 (1-888-332-7411)  
Fax: 877-622-5930 (toll free)

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

- Member/Employee SSN - Court Orders/Documents will not be processed if the SSN is not included
- Return phone number
- Return fax number

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

### ***Application Form***

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

### ***Court Order***

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

If the former spouse is requesting child support, and the court order does not contain the birth dates of the children, the former spouse must provide photocopies of their birth certificates. To collect child support arrears, a former spouse must submit a recent court order that lists the total arrears. The order cannot be older than two years from the date the designated agent receives it.

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

A retired pay as property award must be expressed as a fixed dollar amount or percentage of disposable retired pay.

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

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

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

### **Other Enforcement Methods**

Income withholding is the most effective child support enforcement method. However, income withholding is not always effective if the noncustodial parent is self-employed, moves or changes jobs frequently, or works for cash or commissions. In those circumstances where payment is not regularly made, it may be necessary to enforce the support order through other means. Subject to due process safeguards, states have laws that allow enforcement techniques, such as:

- State and federal income tax refund offset
- Liens on real or personal property owned by the noncustodial parent
- Freezing or attachment of bank accounts
- License suspension
- Passport denial
- Contempt, and criminal nonsupport

These enforcement remedies apply to all child support cases, including cases involving service members. Many of these remedies are automated. Increasingly, state child support programs are looking closely at their cases to evaluate the noncustodial parent's ability and willingness to pay and to determine which particular enforcement remedy is most appropriate for a particular case. You can learn more information about each remedy discussed below by reading the general Child Support Handbook that is available on the federal Office of Child Support Enforcement (OCSE) website, <https://www.acf.hhs.gov/css/outreach-material/handbook-child-support-enforcement>.

## **Federal Income Tax Refund Offset**

### ***Eligibility***

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

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

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

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

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

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

## **State Income Tax Refund Offset**

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

## **Liens on Property**

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

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

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

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

## **License Suspension**

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

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

## **Passport Denial**

Under the Passport Denial Program, once noncustodial parents are certified by a state as having arrearages exceeding \$2,500, OCSE submits their names to the State Department. The State



Department then denies the parents U.S. passports when they apply for them or use a passport service. If a parent owes past-due support to more than one state, each state is required to submit its case(s). The State Department may also revoke, restrict, or limit a passport previously issued to such an individual. Revocation occurs any time the passport agency or embassy has the passport in hand, such as:

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

Although a noncustodial parent is automatically removed from passport denial when the arrears balance is reduced to \$0, the individual is not automatically removed from the Passport Denial Program when the arrearages fall below the \$2,500 threshold. The decision to remove or exclude a noncustodial parent is based on state policies and procedures.

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

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

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

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

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

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

an appointment at a regional passport agency to obtain a passport.

### **Military and Interest Rates**

Sometimes a person's military activation has a "material effect" on the member's ability to pay the state's usual interest rate charged for unpaid child support. In these cases, the member may request that the interest rate charged on the child support arrears that accrued prior to deployment be reduced to 6% for the duration of deployment in accordance with the Servicemembers Civil Relief Act. If a child support agency is enforcing the order, the member can make the request to the agency. It may be appropriate for the member to seek help from a military legal assistance office.

### **Civil Contempt**

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

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

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

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

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

In addition to state laws, there are federal laws that make the nonpayment of child support a criminal offense. There is a misdemeanor offense, as well as a felony offense, depending on the

amount of arrearage. Both offenses are limited to cases where the noncustodial parent has failed to pay child support for a child who resides in another state.

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

## **Enforcing Medical Support Through Tricare**

### ***Who is Eligible?***

TRICARE is the military health care program for all uniformed services, including the Coast Guard. TRICARE is available to active duty, retired military, and members of the National Guard and Reserve who have been recalled to federal active duty for more than 30 days. It is also available to their dependents. It is not available to civilian employees of the military.

### ***Process for Enrollment***

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

The military member can go to a nearby Uniformed Services ID card issuance site. This is also called 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.

If the child was born during marriage, 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. But if the child was not born during marriage and the father is the service member, the military member also needs to bring documentation establishing 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 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.

Complete instructions, including a pre-arrival checklist, are available on-line.

As the sponsor, the member must complete DD Form 1172-2, Application for Identification Card/DEERS Enrollment form. 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 enrollment in either TRICARE Prime or TRICARE Select, depending on the child's address in DEERS. DEERS will enroll the child in TRICARE Prime if the child lives within a certain radius of a military hospital or clinic. It will enroll the child in TRICARE Elect if the child is outside a prime service area or lives overseas. If the sponsor or custodial parent wants to change between TRICARE Prime or Select, there is a limited time period to make the change. Otherwise, they may change coverage during the TRICARE open enrollment season.

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 find the nearest location by visiting <https://idco.dmdc.osd.mil/idco/>. The sponsor needs to complete and sign DD Form 1172-2. 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. Once the verifying official completes the DEERS registration, DEERS automatically enrolls the child in either TRICARE Prime or TRICARE Select.

### ***Options for Coverage***

Health Benefits Advisors can assist parents with the available options for health insurance coverage. In addition, TRICARE program handbooks explaining coverage are available through the TRICARE website.

### ***Obtaining Health Care***

Once registered in DEERS and enrolled in a TRICARE health plan, visit <https://www.tricare.mil/> for current information about using the particular TRICARE plan. Once the sponsor retires from service, the retiree or custodial parent should contact TRICARE without delay. There are enrollment fees that must be paid to avoid interruption of coverage.

### ***Dental Coverage***

Dental coverage from the military is not automatic. Dependents of military members and retirees do not have dental coverage unless they enroll and pay the premiums. Visit <https://www.tricare.mil/Dental/> for more information.

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

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

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

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

No. The law requires civilian employers to forward money to the State Disbursement Unit (SDU) within seven business days from the date it is deducted. However, for service members on active duty, the process is a little different. Due to the payroll requirements of the Defense Finance and Accounting Service (DFAS), the cut-off date for implementing an income withholding order against an active-duty member is the 7th of the month.

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.

The end result is that you will likely receive a delay in receiving your first payment from DFAS and, thereafter, you will receive your payments on a monthly basis, instead of on the bi-weekly schedule that applied to your former spouse's civilian pay.

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

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

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

The Defense Finance and Accounting Service (DFAS) deducts the child support payments from a service member's 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, 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. If you receive your support payments by Electronic Funds Transfer, you will receive them more quickly than those sent by mail.

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

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

**What happens to my child support payments when the noncustodial parent goes from active duty to retired status?**

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

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

**Will a U.S. court enforce a foreign support order against a U.S. service member by income withholding?**

In order to enforce a foreign support order in the United States, a U.S. tribunal must recognize it as a valid order. The law that applies is the Uniform Interstate Family Support Act (UIFSA), and the process is called registration for enforcement. For example, if you have a German court order and the service member returns to the United States, the German support order must be registered for enforcement in a state where the service member is residing or has income or assets. See the section on Intergovernmental Cooperation.

The service member will receive notice of the registration. There are limited defenses the member can raise. If the member fails to raise a defense in a timely manner, or if the court or child support agency—after a challenge—upholds the registration, the foreign order is confirmed, and the member must comply with the order's support terms. The court or agency will convert the foreign currency into U.S. dollar equivalent. The court or agency can then enforce the order by income withholding.

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

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

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

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

*Questions and Answers for Noncustodial Parents*

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

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

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

Failure to do so may result in your having two income withholding orders in effect.

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

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

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

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

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

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

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

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

Retired and Annuitant Pay, <a href="https://www.dfas.mil/RetiredMilitary/">https://www.dfas.mil/RetiredMilitary/</a>	800-321-1080
Military Pay, <a href="https://www.dfas.mil/MilitaryMembers/">https://www.dfas.mil/MilitaryMembers/</a>	888-332-7411
Civilian Pay, <a href="https://www.dfas.mil/CivilianEmployees/">https://www.dfas.mil/CivilianEmployees/</a>	800-729-3277

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



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

The Servicemembers Civil Relief Act (SCRA) limits the amount of interest that may be collected on debts of persons in active military service to 6% per year during the period of military service. This provision applies to all debts incurred prior to the commencement of active duty, including child support obligations. See 50 U.S.C. § 3937.

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

If the creditor wants relief from the limitations of this section of the SCRA, it will need to prove, to the satisfaction of the court or administrative agency, that military service does not materially affect your ability to pay interest on the child support arrears at a rate more than 6% per year. The burden of proof is on the creditor. The inquiry is not limited to a review of your income. There are times when a person will experience an increase in income because of a mobilization, but the financial situation will worsen. For example, members activated from the reserve components may find they have two households to maintain and that child care and other expenses have likewise increased.

It is important to note the 6% limit does not apply if the support amount was ordered after you entered active service. The benefit is only for debts that you had prior to your entry onto active duty.

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

Check with your civilian employer to see how your call to military duty impacts your existing insurance coverage. If it will end unless you make COBRA payments, you may prefer to enroll your children in the military health care program called TRICARE. Family members of the National Guard and Reserves are eligible for TRICARE health insurance after the service member has been activated for 30 days.

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

If your civilian employer maintains your health insurance coverage during your deployment, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## VI. Modifying Existing Support

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

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

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

If a state applies a cost-of-living adjustment or uses an automated method, the state must have procedures that permit either party to (1) challenge the cost-of-living or automated adjustment, and (2) request a review and an adjustment, if appropriate, according to the support guidelines.

Regardless of the procedure the state uses to conduct a review, one must occur, upon parental request in non-TANF<sup>8</sup> IV-D<sup>9</sup> cases, at least once every three years. Either party may request a review sooner than that based on changed circumstances. A person who has a support order that is not being enforced by the child support agency can also file legal papers requesting the court to review the order.

Orders in cases involving service members have a particular need for periodic review. Orders established while a soldier is deployed may be significantly higher due to combat pay and additional allowances based upon deployment. These need to be monitored and modified appropriately to reflect reduced pay when the soldier returns to their permanent station. Orders established while a person is in a civilian job may not accurately reflect a person's ability to pay

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<sup>8</sup> A non-TANF case is one in which the caretaker is not receiving Temporary Assistance for Needy Families (TANF).

<sup>9</sup> A IV-D case is a case in which the state/local/or tribal child support program established under Title IV-D of the Social Security Act is providing services.

when the National Guard member or Reservist is ordered to active duty; the civilian pay income may be much higher or lower than active duty pay.

If your support order does not reflect your current support needs or ability to pay, it is important to check with the local child support agency or court to see if the order is still in line with the state child support guidelines and to ask how to request a review or modification. You may want to seek legal assistance. Some states also have procedures for filing a modification request *pro se* (on your own).

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

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

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

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

Documentation (e.g., military orders, Leave and Earnings statements, civilian pay stubs, and letters from employers) is important to support your request.

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

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

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

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

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

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

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

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

It is very important that you be proactive about your support case. If you know you have been called to active duty and are going to be deployed, notify the child support agency or the court as soon as possible. If you will be earning less income when you are called for active duty, you can request to have your child support order modified. See the question and response below.

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

If you earn less income when you are called for active duty, you can request to have your child support order modified. The procedure for seeking a modification varies among the states. If you or the custodial parent have applied for IV-D services, you can request the child support agency to review the order based on changed circumstances. The agency must review the order to determine if modification is warranted. If it is, the agency can assist you with the modification. Some states have a *pro se* process that allows you to complete all the legal paperwork yourself. You may want to seek advice from a judge advocate, military legal assistance officer, or private attorney. It is important to start this process as soon as possible because there may be delays due to court calendaring or agency workloads.

When a court or an agency reviews a modification request, it considers the parties' current financial circumstances, the needs of the child, and the way those factors fit into application of the child support guidelines. Some states use a guideline model based on a percentage of the noncustodial parent's income. Most states use a guideline model that considers the combined

income of both parents. Under both models, a change in your income, as the noncustodial parent, may affect the support award. The court or agency will want to know your anticipated date of deployment, rank and years in service, current civilian income, and whether your employer will provide any compensation and benefits during your deployment. Documentation, such as military orders, Leave and Earnings statements, civilian pay stubs, and letters from employers will make it more likely that the court will be able to provide appropriate relief.

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

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

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

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

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

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

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

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

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

## VII. Intergovernmental Cooperation

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

Because an intergovernmental case can be complicated, the Office of Child Support Enforcement (OCSE) recommends you seek guidance from a legal professional or your local child support agency. The following information provides an overview of what these types of cases entail. Note: It is not a substitute for professional legal advice.

### Part One: Interstate/Tribal Cooperation

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

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

### Important Terms

Here are some of the most commonly used interstate child support terms and acronyms:

***Continuing, Exclusive Jurisdiction (CEJ)***: the special type of jurisdiction that a tribunal (see definition below) must have in order to modify a child support order in the interstate context.

***Controlling Order***: refers to the child support order that governs current support

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

***Initiating State***: the state in which a UIFSA proceeding has been filed. The initiating state will forward the child support documents to a second state called the responding state.

***Interstate Case***: a case in which two states are involved in processing the child support action usually because the parents live in different states.

***Obligee***: the person to whom child support is owed or is alleged to be owed; usually the custodial parent.

***Obligor***: the person who owes the child support is alleged to owe the support; usually referred to



as the noncustodial parent.

**Petitioner:** the party initiating an action and petitioning the court or agency for relief; also referred to as the plaintiff.

**Registration:** the process a tribunal uses to file or record a support order issued by a different state, tribe, or foreign country so that the order can be recognized, usually as the first step before enforcing or modifying it.

**Respondent:** the party responding to an action; also referred to as the defendant.

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

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

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

## Overview of UIFSA

All states have enacted the Uniform Interstate Family Support Act 2008 (UIFSA), which is model legislation developed by the Uniform Law Commission.<sup>10</sup>

## One Order World

Prior interstate laws allowed a court to issue a new support order each time one of the parties moved to a different state. This led to conflicting orders, and parents and judges were often confused about how much support should be paid. The main goal of UIFSA is to ensure there is one support order for current support that governs an obligor and his or her child(ren). UIFSA contains provisions that help accomplish that goal:

- A prohibition against the establishment of a new order when there is already a support order entitled to recognition.

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<sup>10</sup> Congress required states to enact UIFSA as a condition of receiving federal funds for their IV-D programs. Tribes are not required to enact UIFSA as a condition of receiving federal funds to operate their IV-D child support programs.

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

## **Evidentiary Provisions**

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

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

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

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

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

***John (petitioner) lives in Iowa and asks the child support agency there to send an interstate case to Illinois, requesting action against Jane (respondent) who lives in Illinois. Because Jane resides in Illinois, the tribunal in Illinois has personal jurisdiction over her and will oversee the proceedings.***

Sometimes a petitioner can file an action that is heard in the state where the petitioner lives, even if the respondent is not a resident of that state. In that situation, the forum state is the state where the petitioner lives. In order for a petitioner to file a proceeding that is heard in the petitioner’s own state, the respondent must have sufficient minimum contacts with the petitioner’s state so it is fair for a tribunal in that state to assert personal jurisdiction over the respondent. A long-arm statute lists a number of actions by a nonresident that the state considers sufficient minimum contacts

between the nonresident and the forum state in order for a tribunal in the forum state to assert personal jurisdiction over the nonresident. It is called “long-arm” jurisdiction because the tribunal is “reaching out” and extending its jurisdiction over a nonresident. UIFSA has a long-arm statute listing a number of bases that allow a tribunal to assert personal jurisdiction over a nonresident in a paternity or support establishment case. Under long-arm jurisdiction, an *interstate* case (a case involving more than one state) is converted into an *intrastate* case (a case handled within one state) because only one state’s court or agency is involved in the matter.

### **Child and Spousal Support**

UIFSA is a state law that governs establishing, enforcing, and modifying both child support and spousal support in interjurisdictional cases. However, state and tribal IV-D child support agencies do not receive federal funds for establishing spousal support. Therefore, most child support agencies do not provide services establishing alimony or spousal support. If you need to establish a spousal support order, you may need to hire a private lawyer. Child support agencies will assist in enforcing spousal support if it is part of a child support order the agency is also enforcing.

### **Paternity Establishment**

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

UIFSA provides for the establishment of paternity in two ways. One is through a one-state long-arm action. Usually, this type of action is initiated by the child’s custodial parent in the state where she lives to establish the alleged father’s paternity. If the alleged father has certain minimum contacts with the custodial parent’s state (for example, he has resided in the state and provided prenatal expenses or support for the child, or he had sexual intercourse in the state that may have resulted in conception of the child), that state has long-arm jurisdiction over the alleged father so a tribunal in that state can determine paternity. Under long-arm jurisdiction, the mother can bring a legal action to establish paternity in the state where she lives, even if the alleged father does not live there. In order to hear the case, the tribunal in the mother’s state must find that the alleged father has personal contacts with the state and has received notice of the legal action.

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

If the alleged father does not have sufficient minimum contacts with the state where the mother lives, the alternative method is for the mother to use a two-state process. Under the two-state process, she will file the paternity action in the state where the alleged father lives. To do that, she will most likely use the services of a child support agency or a private attorney. Once the alleged father is served, any hearing will be in the state where the alleged father lives.

### **Support Establishment**

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

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

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

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

If the noncustodial parent does not have sufficient minimum contacts with the state where the custodial parent lives, the alternative method is for the custodial parent to use a two-state process. Under the two-state process, the custodial parent files a support action in the state where the noncustodial parent lives. To do that, she will most likely use the services of a child support agency or a private attorney. Once the noncustodial parent is served, any hearing will be in the state where the noncustodial parent resides. In this case, the noncustodial parent's state support guidelines will apply.

## **Support Enforcement**

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

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

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

In rare cases, more than one support order for current support may exist. A tribunal may have issued a support order, not knowing there was already one existing. It may also arise when a tribunal modifies a support order and one of the parties believes the tribunal did not have legal authority to do so. In these cases, a tribunal must determine the validity of the subsequent order.

Once a tribunal makes that determination, the controlling valid order will govern the support amount the obligor must pay going forward. The initially determined controlling order will also govern the *duration* of the support obligation (i.e., how long the noncustodial parent must pay support). Even if the order is later properly modified and becomes the controlling order, the duration of support of that original controlling order governs.

### ***Enforcement Remedies***

UIFSA authorizes direct income withholding. Under direct income withholding, an employer must comply with an income withholding order that it receives from a state, regardless of whether the employer does business in the state that issued the order. The withholding order may include provisions for the payment of current support and arrears, as well as medical support in the form of a periodic cash payment or health insurance coverage. Direct income withholding allows the

enforcement action to take place without involving the child support agency or court in the employer's state. Direct withholding is beneficial because withholding begins quickly and bypasses what is often a time-consuming interstate process.

The noncustodial parent obligor has an opportunity to challenge the direct income withholding, but the parent must raise the challenge in the state where the employer is located. If the parent challenges the withholding, a tribunal in the employer's state will become involved.

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

If an order is registered for enforcement, it cannot be modified unless that state has jurisdiction to modify the order under other UIFSA provisions. If either party wants a modification, that person must follow UIFSA's procedures for modification.

### **Modification**

There are times when a party wants to change the amount of support in a support order. To make sure there is only one controlling support order in a case, UIFSA outlines when a tribunal has jurisdiction to modify an existing support order.

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

An example will help explain the concept. Assume there is a Texas divorce decree awarding the father custody and ordering the mother to pay him child support. Later, custodial parent Dad decides to remain in Texas with the child when Mom gets transferred to California. As long as Dad continues to live there, Texas has continuing, exclusive jurisdiction to modify its order. Dad can enforce the order in any state where the mother has property or assets, but no other state can modify the order.



The second circumstance is even if the state is not the residence of the individual obligee, obligor, or child, the tribunal has CEJ to modify the order if the parties consent in a record or in open court that the tribunal may continue to exercise jurisdiction to modify the order.

If a tribunal does not have CEJ under one of these two circumstances, the party seeking modification usually must register the support order in the state where the other party lives.

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

There are three exceptions to UIFSA's modification rules:

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

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

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

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

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

**Example:** A support order is registered in a state where the support duty ends at age 21. The law of the state that issued the order provides that support ends at the later of age 18 or graduation from high school. If duration is considered non-modifiable, the responding state cannot modify that duration. Once the child graduates, the court in the responding state cannot modify the order and establish a new support obligation to age 21.

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

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

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

The Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B, <https://www.govinfo.gov/app/details/USCODE-2010-title28/USCODE-2010-title28-partV-chap115-sec1738B> is a federal law. FFCCSOA applies to Indian tribes as well as to states. The result is that courts of all United States territories, states, and tribes must give full faith and credit to a child support order issued by another state or tribe that had jurisdiction over the parties and the subject matter. Full faith and credit means the tribunal must recognize the order as valid and enforce it.

### **Tribal Cases**

As sovereign nations, tribes have a unique relationship with the federal government. Federal law authorizes tribes and tribal organizations to operate full service IV-D child support programs. More than 60 tribes operate such programs. These programs are listed on OCSE's Intergovernmental Reference Guide web page by tribe, <https://ocsp.acf.hhs.gov/irg/welcome.html>, and on the State and Tribal Child Support Agency Contacts page by state, <https://www.acf.hhs.gov/css/contact-information/state-and-tribal-child-support-agency-contacts>

The Administration for Native Americans provides information about Native veterans as well as offers grants to fund projects for Native veterans. See <https://www.acf.hhs.gov/ana/fact-sheet/did-you-know-native-veterans>.

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

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

If you have a valid divorce order issued by Florida, it can be enforced in any state where your ex-spouse has income and assets. The most effective enforcement remedy is income withholding. If the Defense Finance and Accounting Service (DFAS) receives a copy of the income withholding order, it can begin withholding support from your ex-spouse's military income. The order is enforceable, even if your ex-spouse no longer lives in the state that issued the support order.

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

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

The only exception is if **both** you and your former husband request that the modification action be heard in another state, such as Virginia, by filing a consent in a record with the Texas tribunal.

**My support order was established in Texas. The children and I are now living in Louisiana. My ex-husband, who is active-duty military, is now stationed in Georgia. I'm making a lot less money at my job and need an increase in support to pay for the children's expenses. How can I get the Texas order modified?**

The Uniform Interstate Family Support Act (UIFSA) contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only valid child support order, the important question is “Where do the parties and child live?” Under UIFSA’s rules, if no party or child still resides in the state that issued the order (Texas in this example), and you and your former husband have not agreed for Texas to retain modification jurisdiction, then Texas no longer has continuing, exclusive jurisdiction to modify the order. Since you are the one seeking modification, you must register the support order in a state—other than your own state of Louisiana—that has personal jurisdiction over your ex-husband. In other words, you would register the Texas order in Georgia for modification. You may contact your local child support agency for help. You can also contact a private attorney. Because any hearing will be held in Georgia, Georgia child support guidelines will determine the amount of any modification.

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

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



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

Yes. States and tribes are required by federal law to recognize and enforce each jurisdiction's valid support orders. You can apply for services with a tribal child support program or with a state child support program. For a list of tribal and state child support agency contacts, go to <https://www.acf.hhs.gov/css/map/state-and-tribal-child-support-agency-contacts>. Either jurisdiction will assist you in enforcing the tribal support order. One particularly effective enforcement remedy is income withholding. If the Defense Finance and Accounting Service (DFAS) receives a copy of the tribal income withholding order, it can begin withholding support from your former boyfriend's military income.

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

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

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

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

The Uniform Interstate Family Support Act (UIFSA) contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only valid child support order, the important question is "Where do the parties and child live?" Under UIFSA's rules, if an individual party or a child still resides in the state that issued the order, that state has continuing, exclusive jurisdiction to modify the order. Because your ex-spouse is still living in Texas where the support order was issued, Texas is where you must file your modification action. The only exception is if **both** you and your ex-spouse request that the modification action be heard in another state, such as Virginia, by filing a consent in a record with the Texas tribunal. You may contact your local child support agency for help. You can also contact a private attorney. Note: If the hearing is in Texas, Texas child support guidelines will determine the amount of any modification.

**My support order was established in Texas. The children and my ex-spouse are now living in Louisiana. I'm stationed in Georgia. Where do I file for modification of the Texas order?**

The Uniform Interstate Family Support Act (UIFSA) contains rules for determining the appropriate place to seek modification. Assuming the Texas order is the only valid child support order, the important question is “Where do the parties and child live?” Under UIFSA’s rules, if no party or child still resides in the state that issued the order (Texas in this example), and you and your former spouse have not agreed for Texas to retain modification jurisdiction, then Texas no longer has continuing, exclusive jurisdiction to modify the order. Since you are the one seeking modification, you must register the support order in a state—other than your own state of Georgia—that has personal jurisdiction over your ex-spouse. In other words, you would register the Texas order in Louisiana for modification. You may contact your local child support agency for help. You can also contact a private attorney. Because any hearing will be in Louisiana, Louisiana child support guidelines will determine the amount of any modification.

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

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

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

## **Part Two: International Cases**

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

### **The Hague Child Support Convention**

From 2003 to 2007, the United States actively participated in negotiations to develop the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Child Support Convention). The Hague Child Support Convention requires countries that ratify it to:

- Establish, enforce, and modify child support orders.

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

The treaty entered into force for the United States in January 2017. For a list of countries with which the U.S. has a treaty relationship under the Hague Child Support Convention, visit the international page of the OCSE website, <https://www.acf.hhs.gov/css/partners/international>.

### **Bilateral Agreements**

The federal government has the authority to enter into bilateral written arrangements with foreign countries for the purpose of enforcing family support obligations. Such countries are called “foreign reciprocating countries” or FRCs.

The one condition is that the country must have established, or begun to establish, procedures for the establishment and enforcement of support for residents of the United States.<sup>11</sup> These procedures must include:

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

An FRC agrees to provide procedures to establish orders for U.S. residents and to enforce U.S. support orders as long as the request comes through a central authority. In the United States, IV-D agencies perform the role of a Central Authority in transmitting and receiving cases with an FRC. Similarly, the United States agrees that IV-D agencies will provide child support services to residents of an FRC, as long as the request comes through a Central Authority in the FRC.

An up to date list of FRCs is available through the web site of the federal Office of Child Support Enforcement (<https://www.acf.hhs.gov/css/partners/international>). As of February 2021, the United States processes cases with the following countries and Canadian provinces or territories under a bilateral child support arrangement:

- Australia

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<sup>11</sup> See 42 U.S.C. § 659A.

- Canadian Provinces/Territories
  - Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland/Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan, Yukon
- El Salvador
- Israel

### **State Reciprocal Arrangements**

UIFSA authorizes states to establish reciprocal arrangements for child support with foreign countries that are not Hague Child Support Convention countries or FRCs.

### **Substantially Similar Laws**

Even where there is no federal or state reciprocal child support arrangement, UIFSA authorizes a tribunal to determine that a country meets UIFSA's definition of "foreign country" because the foreign jurisdiction has laws or procedures that are substantially similar to UIFSA and satisfy U.S. due process.

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

An individual residing in a foreign country can also apply directly to a state child support agency for child support services. The agency must treat such a request like a request from a resident of another state. That means a service member stationed outside the United States can still apply for IV-D services from a state child support agency.

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

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

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

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

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

If the man resides in a country that is party to the Hague Child Support Convention, the child support agency can file an application on your behalf to the Central Authority in that country, asking for the establishment of a support order. The Central Authority in the Convention country will provide services at no cost to you, as long as you go through a state child support agency.

The U.S. Government has also declared several countries to be foreign reciprocating countries under federal bilateral child support arrangements. The website for the federal Office of Child Support Enforcement (OCSE) lists countries with which the U.S. has such bilateral arrangements. See <https://www.acf.hhs.gov/css/partners/international>. If the man does not live in a Convention country or a foreign reciprocating country, check with your state child support agency to determine if there is a state-level reciprocal arrangement with the country where he lives. OCSE's Intergovernmental Reference Guide (IRG) includes information about these state-level arrangements See Section C, Reciprocity of the IRG, <https://ocsp.acf.hhs.gov/irg/profileQuery.html?geoType=1>.

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

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

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

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

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

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

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

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

Yes. You are required by Army Regulation 608-99 to comply with a foreign support order if:

- The foreign court order has been recognized and enforced by a court within the United States; *or*
- The United States has agreed in a treaty or international agreement to honor valid financial support orders entered by the courts of a particular foreign nation.

Based on the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) Supplementary Agreement with Germany, Army Regulation 608-99 requires U.S. Army commanders to enforce FRG court orders on financial support with regard to soldiers assigned to and present for duty within Germany.

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

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

Army Regulation 608-99 does not require a soldier to comply with a foreign court order on financial support except in either of the following situations:

- The foreign court order has been recognized and enforced by a court within the United States; or
- The United States has agreed in a treaty or international agreement to honor valid financial

support orders entered by the courts of a particular foreign nation. (For the purpose of this provision, this regulation enforces court orders on financial support issued by German courts with regard to soldiers assigned to and present for duty within Germany.)

Therefore, you only have to comply with the foreign order if it meets one of those situations. However, the regulation does offer this strong warning, “A Soldier who fails to comply with the financial support provisions of a foreign court order, regardless of whether it is enforced by this regulation, does so at his or her own peril. This is particularly true if the soldier is within the jurisdiction of the foreign court or if the foreign court order is later recognized and enforced by a court within the United States.”<sup>12</sup>

If you are involved in a case where there is a court order from a nation whose orders the United States has not agreed to recognize, or that has not been recognized and enforced by a court within the United States, “a Soldier is in compliance with this regulation if they are providing financial support in an amount required by the foreign court order or by this [Army] regulation, whichever is less.”<sup>13</sup>

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

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

Army Regulation 608-99, paragraph 2-4, requires you to comply with a foreign support order if:

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

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

If the mother registers the German court order in the United States for enforcement, you can raise certain defenses. If the U.S. court finds that you have raised a valid defense to the order, the German order will not be enforceable against you in the United States. Even if a U.S. court

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<sup>12</sup> AR 608-99, paragraph 2-4(b).

<sup>13</sup> AR 608-99, paragraph 2-4(b).

determines that the German order is not enforceable in the United States, this does not prevent the U.S. court from establishing a U.S. support order against you if it determines you have a support obligation to this child. That order may also include retroactive support, depending upon the laws in the state conducting the hearing. Remember also that Germany will still consider the order enforceable.

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

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

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

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

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



## VIII. The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA) is a federal law that provides protections to individuals in military service. It is found at [50 U.S.C. §§ 3901 – 4043](#); not in state statutes. The law's purpose is to postpone, suspend, terminate, or reduce the amount of certain civil obligations so that members of the armed forces and certain other individuals can focus their full attention on their military or professional responsibilities without adverse consequences for themselves or their families. The SCRA enables service members to devote their time and attention to the defense needs of the Nation by providing protections related to such things as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, automobile repossessions, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance, and income tax payments. The key provisions of the SCRA that apply to cases involving family law are at 50 U.S.C. §§ 3931, 3932, 3934–3937).

This chapter will provide an overview of the SCRA as it relates to child support. Keep in mind that the rights extended under the SCRA are sometimes complicated. If you are a service member, it is important to get advice from your military legal assistance office about how the SCRA applies to your own circumstances. For example, the SCRA frequently conditions the availability of certain rights on whether your ability to meet certain obligations is "materially affected" by your military service. Whether you are "materially affected" can mean different things in different situations. A legal assistance attorney will help you understand your rights under the SCRA and can help you enforce those rights.<sup>14</sup>

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

### Protected Individuals

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

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

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<sup>14</sup> For more information on the Servicemembers Civil Relief Act, see <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act>.

- Public Health Service and National Oceanic and Atmospheric Administration Officers detailed for duty with the armed forces.

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

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

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

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

### **Court and Administrative Proceedings**

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

This provision is of obvious benefit to members of the Guard and Reserves who are in the middle of litigation but called to rapidly mobilize. It is also of benefit to members of the active component when they face suit while deployed or are stationed at great distance from the courtroom.<sup>15</sup>

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

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<sup>15</sup> This is not to say that distance from the proceeding will automatically necessitate a stay.

## Default Judgments

A member may request the court or agency to reopen a matter and set aside a default judgment in two circumstances:

- If the judgment was entered against the member during the member's period of military service<sup>16</sup> or
- If the judgment was entered within 60 days after termination of or release from such military service.<sup>17</sup>

The member must send a timely request for such relief within 90 days from release from active duty), show that the active service materially affected the member's ability to defend against the action, and show that he or she has a good defense. You should consult with a legal assistance attorney to obtain information on possible relief available to you.

## Reduced Interest

A member may reduce the higher interest rates the member pays for any financial obligation (for example, a credit card, loan, mortgage) individually or jointly entered into before active service to 6% *if* active service materially affects the member's ability to repay the financial obligation. This would apply to interest on unpaid child support if the order was issued before the member entered into active service, and active service materially affects the member's ability to pay support as ordered. In addition, the SCRA prohibits the lender from accelerating the principal amount owed. It also forgives (not defers) the excess interest payments that would have been due under the higher interest rate so that the member is not liable for the excess after they are released from active service. This reduced interest rate is effective only during the period of active military duty for most obligations; however, for a mortgage obligation, the reduced interest rate continues for one year following release from military service. Finally, this reduced rate does not apply to financial obligations (including refinancing or credit card balance increases) entered into or accrued while on active service.

## Insurance

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

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<sup>16</sup> Reserve Component personnel are entitled to most of the Act's "rights and protections" on the date they receive active duty orders, which is before actual active duty. See 50 U.S.C. § 3917.

<sup>17</sup> 50 U.S.C. § 3931.

## Start and Termination of Protections

Although the SCRA protections begin no later than when a person enters active military service, there are provisions which expand this coverage. Reserve Component personnel, for example, are entitled to most of the Act's "rights and protections" on the date they receive active-duty orders.<sup>18</sup> A service member is also protected during "any period which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause."<sup>19</sup>

The SCRA's coverage usually terminates "on the date on which the servicemember is released from military service or dies while in military service."<sup>20</sup> Other sections of the Act extend coverage beyond military service. For example, the protection calling for the stay of a civil proceeding extends for "90 days after termination of or release from military service."<sup>21</sup> As to default judgments, "[a]n application [to set aside a default judgment] . . . must be filed not later than 90 days after the date of termination of or release from military service."<sup>22</sup> Importantly, even when the member has left the service, the right to challenge the default extends for an additional 60 days.<sup>23</sup>

## Invoking the SCRA

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

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

There are times when a service member will want to participate in a hearing rather than asking for a delay. Such is the case when the service member is asking for a modification of child support or alimony due to financial difficulties imposed by deployment, or by mobilization if the person is a Guard/Reserve member. The reduction in pay that most Guard/Reserve members face frequently leads to support arrears with no ability to ask the court to retroactively modify the order since federal law provides that any missed support payment becomes a judgment. In many states, the issue of modification can be resolved without a court hearing on the basis of financial affidavits and supporting documentation provided by the parties and other witnesses. Where a member wishes to give "live" testimony, the member or the member's attorney should explore any options

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<sup>18</sup> 50 U.S.C. § 3917(a).

<sup>19</sup> 50 U.S.C. § 3911(2)(C).

<sup>20</sup> 50 U.S.C. § 3911(3).

<sup>21</sup> 50 U.S.C. § 3932.

<sup>22</sup> 50 U.S.C. § 3931(g)(2).

<sup>23</sup> 50 U.S.C. § 3931.

available for taking testimony electronically. In addition to the telephone, a service member sometimes can obtain access to video teleconferences (VTCs) at commercial or command facilities that allow real-time audiovisual interaction. Testimony via electronic means such as Skype is also a possibility. Section 316(f) of the Uniform Interstate Family Support Act (UIFSA) requires a tribunal to permit parties to “testify by telephone, through audiovisual means or by any other electronic means.”

The SCRA is a broad act, addressing many issues affecting service members (e.g., foreclosure, eviction as a renter, apartment leases, motor vehicle leases, and cell phone contracts). The U.S. Department of Justice (DOJ), Civil Rights Division, has developed general questions and answers about the SCRA that are accessible through DOJ’s website.<sup>24</sup>

If you believe that your rights under the SCRA have been violated, you should contact your Armed Forces Legal Assistance Program office to see if the SCRA applies to your particular situation. Dependents of service members can also contact or visit local military legal assistance offices where they reside. In order to have your SCRA matter reviewed by the DOJ, you must first seek the help of your military legal assistance office. If that office cannot resolve the complaint, it may choose to forward the complaint to the DOJ. The DOJ then will review the matter to determine whether DOJ action is appropriate.

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

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

#### **If my former boyfriend is in the military, does the SCRA mean any child support hearing has to wait until he is no longer active?**

No. The SCRA does not mean that your child support case is “on hold” during his military service. If the child support agency or your private attorney files a child support action, your boyfriend can request a stay of the proceeding. However, the fact that he is on active duty does not automatically mean that his current military duties materially affect his ability to appear in the proceeding. In fact, 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.

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<sup>24</sup> [https://www.justice.gov/sites/default/files/crt/legacy/2012/09/11/scra\\_qa\\_5-26-11.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2012/09/11/scra_qa_5-26-11.pdf). According to the Department of Justice, the responses to questions are intended to provide the service member with an overview of the SCRA’s protections and the kinds of issues that could arise in connection with military service. They do not constitute legal advice. See also <https://www.justice.gov/service-members/service-members-civil-relief-act-scra> (last visited Jan. 22, 2021).

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

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

No. It only applies to civil proceedings.

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

Yes, the SCRA applies to civil judicial proceedings.

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

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

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

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

- The service member is in active military service;<sup>25</sup>
- 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" their ability to appear and stating a date when the member will be available to appear, ***and***
  - A letter or other communication from the member's commanding officer stating that the member's current military duties prevent the member's appearance and that military leave is not authorized for the member at the time of the letter.

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

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

No. Department of Defense 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

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<sup>25</sup> Or is within 90 days after termination of or release from military service. See 50 U.S.C. § 3932.

“shall be granted” unless the service member is serving in or with a unit deployed in a contingency operation or “exigencies of military service” require that leave be denied.

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

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

If your ability to initiate or defend the action is impaired because your military duties prevent you from appearing in court or the administrative forum at the designated time and place or from assisting in the preparation or presentation of your case, then that would be an example of “material effect.”

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

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

If you provide the required letters or communications demonstrating material effect, the court or agency must stay the action for a period of not less than 90 days. You may apply for an additional stay based on the continuing material effect of military duty on your ability to appear. The request for an additional stay may be made at the time of the initial application or any other time where you are unavailable to defend the action. The same documents are required:

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

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

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

Prior to the entry of a default judgment in a case where the defendant member does not make an appearance, the SCRA requires the plaintiff to file an affidavit with the tribunal:

- Stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; *or*

- If the plaintiff is unable to determine whether the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

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

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

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

**If a service member is not physically present at the proceeding, can the tribunal still find that the member “made an appearance”?**

Yes. For example, if the service member has hired an attorney of record in the proceeding or if the member has filed pleadings in the case, the tribunal will find that the service member has, in fact, made an appearance. The section of the SCRA regarding default orders (50 U.S.C. § 3931) would therefore not apply. However, 50 U.S.C. § 3932 (regarding stay of proceedings when a service member has notice) could be invoked.

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

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

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

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



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

If you are a service member, were properly served, and the court entered a default order against you without your participation in the proceeding, the SCRA permits you to ask the court to reopen the default judgment. See 50 U.S.C. § 3931(g). Five conditions must exist in order for you to reopen a default judgment:

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

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

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

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

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

No, you should not ignore it. If the default judgment was entered against you during your military service (or within 60 days after termination of or release from such military service), in violation of the SCRA, it is merely voidable and not void. That means the judgment remains valid, and is enforceable, until you properly challenge it.

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

- Only certain default judgments can be challenged. The default judgment must have been

rendered against you during your period of active-duty service or within 60 days thereafter. This excludes judgments rendered before you entered military service or more than 60 days after separation from service.

- There is a time limit for challenging the default judgment. You have 90 days from the end of your active service to file an application to reopen the default judgment. If you discover the default judgment more than 90 days after termination of your military service, it is too late to invoke the SCRA.
- You, the service member, must meet three criteria in order to reopen a default judgment.
  1. You must not have made an appearance in the case;
  2. You must show that your military service materially affected your ability to defend the suit; *and*
  3. You must have a meritorious or legal defense to the action or some part of it. In the question raised, that means you must be able to show that your military service affected your ability to defend the suit (for example, you were stationed in Okinawa at the time of the proceeding) and that you have a meritorious or legal defense (for example, the calculation of arrears is incorrect).

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

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

Yes, with an important limitation. If you incurred the support obligation before entry on active duty, the highest interest rate under the SCRA that the state can charge is 6%. See 50 U.S.C. § 3937. For the SCRA limits to apply, you must provide the creditor with written notice and a copy of the military orders calling you to military service as well as any orders further extending your military service. You must provide the documentation not later than 180 days after the date of your termination or release from military service.

A court may grant a creditor relief from the limitations of this section of the SCRA if, in the opinion of the court, the ability of the member to pay interest upon the obligation or liability at a rate in excess of 6% per year is not materially affected by reason of the service member's military service. The burden of proof is on the creditor. The inquiry is not limited to a review of your income. There are times when a person will experience an increase in income because of a mobilization, but the financial situation will worsen. For example, members activated from the reserve components may find they have two households to maintain and that child care and other expenses have likewise increased.

It is important to note that the 6% limit does not apply if the noncustodial parent incurred the support obligation after entry into active service. The benefit is only for those debts that existed *prior* to the service member's entry on active duty.

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

Yes, pursuant to the SCRA (50 U.S.C. § 3934), a tribunal may on its own motion, and must upon application of the member, stay (temporarily halt) an attachment or garnishment action against a service member's property, such as a bank account, if it finds that the service member's compliance with the order is materially affected by reason of the member's military service.

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

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

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

To find more information about the SCRA and other laws that protect the rights of service members, visit the U.S. Department of Justice site at <https://www.justice.gov/servicemembers>.

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

Military OneSource provides an overview of the basic SCRA protections at <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act/>.

You may also wish to contact the military legal assistance office nearest you: <https://legalassistance.law.af.mil/> (within the continental United States) or <https://installations.militaryonesource.mil/> (worldwide).

The material in this sample letter<sup>26</sup> represents general legal principles; this is not legal advice. Each individual's situation is unique, and the law is continually changing. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

### SAMPLE LETTER INVOKING STAY OF LEGAL PROCEEDING

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

*[Name of Service member]*  
Rank Service Branch  
Address  
City, State 00000

The Honorable Judge's Name Address  
City, State 00000

Date  
RE: Request for Stay of Proceedings  
Docket/Case #: *[insert Case #]*

Dear Honorable Judge's Name:

Please accept this letter as my formal written request for a stay of proceedings, in the case above, as provided in the Servicemember Civil Relief Act (SCRA), 50 U.S.C. Section 3932. I am an active duty service member currently stationed overseas at *[Name of Installation]*.

I am unable to attend the scheduled proceeding because *[Briefly explain the situation]*. I will return to the states on *[Date]* and will be prepared to proceed shortly thereafter on *[Date]*. If you will not stay the proceedings until that date, I request that you appoint counsel to represent me after the initial 90-day stay according to the SCRA, 50 U.S.C. Section 3932.

Please find the attached letter from my unit commander.

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

Sincerely,  
*[Name of Service member]*  
*[Rank, Service Branch]*

Attachment *[Attach Commander's Letter]*

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<sup>26</sup> This sample letter is located on the Air Force Legal Assistance website:  
[https://aflegalassistance.law.af.mil/apps/aflass\\_public/bin/main.php](https://aflegalassistance.law.af.mil/apps/aflass_public/bin/main.php)

The material in this sample letter<sup>27</sup> represents general legal principles. Although the information below was current as of the date it was drafted, the law is continually changing. It is always best to consult an attorney about your legal rights and responsibilities regarding your particular case.

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

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

*[Name of Service member]*  
*[Rank, Service Branch]*  
Address  
City, State 00000

The Name of Child Support Agency  
Address  
City, State 00000

RE: Limitation of Interest on Child Support Arrears  
Child Support Case #: *[insert Case #]*

Dear Sir or Madam:

This letter is to advise you that I have been ordered to active duty service with the *[Branch of Armed Forces]*. The Service members Servicemembers Civil Relief Act, 50 U.S.C. Section 3937, sets a six percent (6.0%) per annum ceiling on interest charges (including service charges, renewal charges, and fees) during the period of a service member's military service for obligations incurred prior to the date of entry onto active duty when the active duty materially affects the ability to pay. This letter is my formal written request to reduce the interest rate to 6.0% on unpaid child support in the above-referenced child support case.

Enclosed is a copy of my orders. I am currently serving on active duty with the *[Branch of Armed Forces]*. I entered active duty on *[Date]*, which was after the time I incurred the above referenced debt. My entry into military service has substantially affected my ability to make the payments that I agreed to make while a civilian.

Under the SCRA, any interest in excess of 6.0% per year shall be forgiven. Please ensure that your records reflect this statutory ceiling and that any excess charge is withdrawn. The interest over 6% must be forgiven, not just deferred, and my monthly payments must be reduced by the reduction in the interest rate.

Please contact me at the above address with a revised payment schedule. Thank you for your understanding and support in this matter.

Sincerely,

*[Name of Service member]*  
*[Rank, Service Branch]*

Enclosure *[Enclose a copy of your orders that brought you on active duty]*

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<sup>27</sup> This sample letter is based on one appearing on the Air Force Legal Assistance website:  
[https://aflegaassistance.law.af.mil/apps/aflass\\_public/bin/main.php](https://aflegaassistance.law.af.mil/apps/aflass_public/bin/main.php) It has been adapted for a child support order.

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

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

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

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

Custodial parents cannot legally deny visitation rights because noncustodial parents have failed to pay child support. Similarly, noncustodial parents cannot legally withhold child support because custodial parents will not allow them to visit the children. On the "ground" level, however, parents often link the two issues through their behavior. Where the parental relationship is poor, it can lead parents to withhold child support or block access and visitation. In contrast, noncustodial parents who have good relationships with their children may feel a greater commitment to providing for their needs, including paying child support consistently.<sup>28</sup>

### **Role of Child Support Program in Building Healthy Family Relationships**

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

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

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

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

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<sup>28</sup> Paul Amato. "The Impact of Family Formation Change on the Cognitive, Social and Emotional Wellbeing of the Next Generation." *The Future of Children* 15:2 (2005), 75-96.

services through the courts.

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

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

## **Definition of Terms**

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

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

### ***Joint Custody***

Joint custody is a legal term that can refer to joint legal custody, joint physical custody, or both. Parents with joint legal custody each have authority to make decisions, such as seeking medical treatment, that impact their child. Parents with joint legal custody should consult with each other, where possible, before making major decisions affecting the child’s well-being.

Parents with joint physical custody have an agreement or a court order providing a specified level of care-taking time between each parent and child. Joint physical custody does not mean an exact division of the child’s time with each parent. However, it differs from an arrangement where one parent has sole physical custody and the other parent has visitation or access. In a joint physical custody arrangement, the child spends substantial residential time with each parent. The court most typically awards joint physical custody where the parents agree to the arrangement.

In joint custody cases, usually the parents agree upon, or the court determines, the child’s residence for such purposes as school.

## **Applicable Laws and Regulations**

### ***State Laws***

State law varies with regard to custody issues. Some states leave custody totally within the court’s discretion based on the best interest of the child. Some states have a presumption of joint physical custody when the parents are in agreement. A few states claim to have a presumption of joint custody in all cases, which can be challenged based on evidence.

You may have heard the myth that a military parent cannot have primary custody of a child. This is simply not true. Each state has laws regarding custody, and many states require separating or divorcing parents to develop a parenting plan that is flexible enough to meet the job demands of

each parent as well as the needs of the child. In 2012, the Commissioners on Uniform State Laws completed a Deployed Parents Custody and Visitation Act,<sup>29</sup> which addresses custody and visitation issues that arise when parents are deployed in military or other national service. As of January 2021, 14 states have enacted it.

### ***Military Regulations and Policy***

Each military branch has regulations and/or policy concerning access and custody. In the absence of a court order, the service member must comply with military policy. Where there is a court order, military policy requires compliance with the order. The contents of a court order may be the basis for a lawful order from the member's commander.

### **Custody Proceedings and the Servicemembers Civil Relief Act**

As noted earlier, the Servicemembers Civil Relief Act (SCRA) provides for an automatic stay of civil administrative and judicial matters for at least 90 days *upon a proper request from the service member*. If a member receives notice that a state proceeding related to custody or access/visitation has been initiated against them during a period of military service or within 90 days thereafter, the member has the right under the SCRA to request a stay that the action or proceeding be stayed for a period of at least 90 days. Remember: protection under the SCRA is not automatic. The member *must* produce a statement showing how their military duties materially affect their ability to appear and state a date when the member will be available to appear. The member must also produce a statement from their commanding officer stating that the member's current military duty prevents their appearance, and that military leave is not authorized for the member at the time of the statement. The court must grant the initial request for a stay upon production of the required statements.

The member also has the right to request that the court extend the stay if necessary. Granting 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, the court must appoint an attorney to represent the member in the action or proceeding.

Depending on the issues in the custody or visitation proceeding, the service member may wish to proceed with the hearing rather than delay it. For example, a member who needs an adjustment to visitation rights may elect to request electronic or telephonic testimony rather than allow a delay that may affect the situation of a the child. Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) permits an individual to testify by telephone, audiovisual means, or electronic means.

It is important for a service member to seek legal advice about invoking the protections of the SCRA as soon as possible after learning of a legal action. The member may contact a nearby Armed Forces Legal Assistance Program office. See <https://legalassistance.law.af.mil/>. The

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<sup>29</sup> See Uniform Law Commission, Deployed Parents Custody and Visitation Act, <https://www.uniformlaws.org/committees/community-home?CommunityKey=c6374f03-21fe-4862-a114-7498710d8e5d>.



member may also seek help from a private attorney.

### **Family Care Plan<sup>30</sup>**

A Family Care Plan is a “blueprint” that spells out how the military member’s children or incapacitated adults will be cared for in the member’s absence—whether the member is deployed, on temporary duty, or otherwise unavailable because of military obligations. It allows for a smooth transition of responsibilities to a spouse or other caregiver when a service member must leave for short or long periods of time. It also assures commanders that the members of the unit will be ready to accomplish their missions with little or no disruption by family issues.

### **Who Must Have a Family Care Plan?**

Department of Defense Instruction 1342.19 spells out when a Family Care Plan is required. According to that directive, the following members within all active and reserve components and the DoD Civilian Expeditionary Workforce must have a Family Care Plan:

- Single parents with custody of children under 19 years of age
- Dual military couples with custody of children under 19 years of age; they must develop a single Family Care Plan that both members sign
- Married service members who have custody or joint custody of a child whose noncustodial biological or adoptive parent is not the current spouse of the service member.
- Service members who are solely responsible for the care of children under the age of 19 or adult family members unable to care for themselves in the absence of the member. This category includes situations where a service member’s spouse is injured, chronically sick, or otherwise unable to care for family members or other dependents.
- Service members who, for any other reason, are primarily responsible for dependent family members. This category includes service members with spouses who speak little or no English or are unable to drive or otherwise gain access to basic resources, such as medical care and food.
- Service members who do not fit into any of these categories may also want to develop a Family Care Plan.

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<sup>30</sup> The information on Family Care Plans is from an article entitled “Preparing a Family Care Plan,” developed by Ceridian, which is no longer available. Other resources are “Preparing Your Family Care Plan,” <https://www.militaryonesource.mil/family-relationships/relationships/parents-guardians/preparing-your-family-care-plan> (last visited Feb. 7, 2021) and “How to Create a Family Care Plan for Caregivers,” <https://www.militaryonesource.mil/military-life-cycle/deployment/preparing-for-deployment/how-to-create-a-family-care-plan-for-caregivers> (last visited Feb. 7, 2012), which are available on the website of Military OneSource.

Each service has a corresponding directive that explains that branch's guidelines, which may supplement the DoD Instruction. A member's commander or supervisor can tell the member the resources that are available to help the member create a Family Care Plan that meets his or her service's specific requirements. These resources include installation family centers and legal assistance offices.

### **When Should a Member Make a Family Care Plan?**

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

It is important that the member update the Family Care Plan when there is a change in family circumstances that results in the member becoming responsible for the logistical, medical, or financial support of another person. This is especially true when a child support or visitation/custody order is issued. At a minimum, the member must annually provide written certification to his or her commander that the Family Care Plan is current.

### **What Must be in a Family Care Plan?**

The requirements for a Family Care Plan may vary somewhat depending on the service or the member's particular circumstances. However, all plans must contain the following basic information:

- The name and contact information of the member's caregiver and alternate caregiver. The caregivers selected must be non-military, at least 21 years of age, and capable of caring for themselves and the member's family. The member must sign a statement certifying that the caregiver has accepted responsibility for the care of the member's family members. The statement must maintain that the member has provided the caregiver with necessary information and copies of all documents required to be included in the Family Care Plan, such as power(s) of attorney. Note: The existence of a custody order will affect whom the member can designate as caregiver. See discussion below.
- Provisions for short- and long-term absences
- Financial arrangements that ensure the self-sufficiency and financial security of the family members, including documentation of allotments and other financial resources and descriptions of how they will be used. The member must also include a copy of his or her power(s) of attorney with the plan. Note: The existence of a child support order will affect this information.
- Logistical arrangements for transporting family members and/or caregivers to a new location. If the member has different caregivers for short- and long-term absences, the member's plan should address transporting family members from a short-term caregiver to a long-term caregiver in the case of deployment (or other lengthy separation) with little or no notice.

- The name of any noncustodial biological or adoptive parent not named as the caregiver, along with that parent's consent to the Family Care Plan. Note: If the parent will not consent to the third-party caregiver, the member must explain the absence of such consent in writing and acknowledge the availability of legal counsel to discuss the associated risks and the best possible course of action, including the possibility of incorporating the family care plan into a temporary order by a court of competent jurisdiction.
- The name of the person the member designates, in the event of the member's incapacity or death, to have temporary responsibility for the member's dependent family members until a natural or adoptive parent or legal guardian assumes custody either by order of a court of competent jurisdiction or operation of law. If the member has named someone in his or her will to have custody of his or her children in the event of death, the Family Care Plan should still designate someone to be responsible until permanent custody can be established legally. It may or may not be the same person as the caregiver.

### **What are Additional Issues to Address?**

The Family Care Plan may also include specific instructions on arrangements for childcare, educational requirements, health care, and family activities. It may specify the locations of important documents, such as wills, insurance papers, and birth certificates. It may also include arrangements for communication between the member and his or her children during times of short-term and long-term separation.

### **Relationship Between a Family Care Plan and a Custody Order**

Although a Family Care Plan is a very useful tool for addressing parenting issues, it does not take the place of a court order related to custody or access/visitation. Therefore, despite the presence of a Family Care Plan, either parent may seek a court order concerning access/visitation and/or custody. Sometimes the process of preparing the Family Care Plan can highlight issues that might warrant seeking a modification of any existing child support or child custody order. If there is a conflict between the Family Care Plan and the court order, the order prevails.

On the other hand, the presence of a court order does not eliminate the need for a Family Care Plan. If a person falls within the required categories of individuals under DoD Instruction 1342.19, the member must prepare a Family Care Plan. The member should ensure the Family Care Plan is consistent with the court order; the member may wish to incorporate certain provisions of the court order into the Family Care Plan.

Even if a member is not required to prepare a Family Care Plan, it may still be beneficial to do so. A Family Care Plan or a non-military Parenting Plan can address the day-to-day parenting issues that most court orders do not address. For example, co-parenting couples may find it helpful to develop a plan for handling everyday childrearing issues like extracurricular activities, religious instruction, tattoos, or piercings.

In addition to military resources, a member may wish to contact their local court for information on child access, parenting plans, and child access/custody mediation services.

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

**My ex-husband has visitation under our divorce decree. But as an enlisted soldier, he is required to live on base and is unable to exercise his overnight visitations. He doesn't have enough income to rent a hotel room during the visitations. He asked if I would agree to a change in custody. Should I agree to it? If he is named as the custodial parent, he says he can get an exemption from living on post.**

If you have a court order naming you as the primary residential parent and providing your ex-husband with access/visitation at certain time periods, it is important that you seek legal advice before agreeing to a change of those terms. There are significant legal ramifications to a change in custody. It will affect who has primary responsibility for care of the child. It will also affect who has the duty to pay child support.

**We are separated but do not have any court orders. Can we resolve custody through a Family Care Plan?**

No. Although a Family Care Plan can designate the caregiver when the member experiences a short-term or long-term absence, it does not take the place of a court order. You can both consent to the terms of the Family Care Plan, but you should not consider the Plan as “resolving” custody in the sense of an enforceable order. In other words, the Family Care Plan will not protect your rights the way a court order will. State and tribal courts have the overriding authority to determine child custody arrangements, in spite of what you have in a Family Care Plan.

**I am active-duty military. My ex-spouse and I have two children. If I have custody under a court order, can I designate my new spouse as the caregiver of our children while I am deployed?**

If you have sole physical custody, when you deploy you can't decide on your own to whom you want to transfer custody. A DoD directive requires you to try to notify the noncustodial biological or adoptive parent (in your case, your ex-spouse) as far in advance as practicable of your impending deployment. It also requires you to try to obtain the noncustodial parent's consent to any family care plan that would leave the child in the custody of a third party. If the noncustodial parent does not agree or there is going to be any conflict, you can ask the court to grant a temporary order designating another person to have custody of the child. In some states, you may need to hire a private attorney for legal assistance in filing the action. Only the court with jurisdiction over the civil family matters can make the temporary order. A Military Family Care Plan cannot legally change the terms of a court order. Depending on the language in the order, once the deployment ends, the temporary order ends, and the parties will be governed by the terms of the original order that was in place prior to the temporary order.

**I am active-duty military and the custodial parent under our divorce decree. My former spouse has agreed to my designation in my Family Care Plan of my mother as the caregiver of our child. How can I make sure that my mother receives the child support paid by my former spouse while I'm deployed?**

Depending upon the state, the State Disbursement Unit will continue to send payments to you by

check, through a debit card, or through a direct deposit to your bank account, unless it receives an order to the contrary. You may make private arrangements with your bank to allow your mother access to the debit card or bank account in order to get the support payments. If the deployment is long term, you may want to ask the court or agency that issued the order to temporarily redirect or assign payments to your mother while she has temporary custody of your child. Once you return from your deployment, you need to make sure the temporary order is terminated and that terms of the original order are reinstated.

### **How can I be involved in my child's life while I'm deployed?**

There are many ways to stay connected with your child during deployment, including sending letters, pictures, and video and audio greetings. The military has excellent online resources available. In addition to those available through each active-duty service branch, you may also wish to review those available through Military OneSource, the National Guard Family Program, and the Reserve Component Resource Center. See also <https://www.militarychild.org/audience/parents> and resources that Sesame Street offers for military families, <https://sesamestreetformilitaryfamilies.org/>.

The person caring for your child during deployment can support the child's relationship with you while you are deployed by following a consistent plan of communication. This can be detailed in a court order, outlined in the Family Care Plan, or agreed to in a separate parenting plan.

### **Do I need to do anything about my custody order when I return home from a period of deployment?**

Once you are no longer deployed, it is important to notify the child support agency and court of your new address. If there was a temporary custody order in place during deployment, that order usually terminates when the deployment or temporary duty concludes, and terms of the original order apply. In some states, it may be necessary to return to court to terminate the temporary order.

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

#### **I can't find my child and the custodial parent. What can I do?**

One of the services of the federal Office of Child Support Enforcement (OCSE) is helping to locate children in certain cases. Specified authorized persons can obtain FPLS information in the case of an unlawful taking or restraint of a child or for making or enforcing a custody or visitation order. Under federal law, the term "authorized person" means:

- Any agent or attorney of any state who has the duty or authority under the law of such state to make or enforce a child custody or visitation determination;
- Any court having jurisdiction to make or enforce a child custody or visitation determination, or any agent of such court; and
- Any agent or attorney of the United States, or of a state having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with

respect to the unlawful taking or restraint of a child.<sup>31</sup>

Under federal law, a parent seeking to locate another parent or a child in a case of parental kidnapping or for custody or visitation purposes is not an "authorized person" and may not receive FPLS information. Nor is a private attorney considered an authorized person for purposes of requesting FPLS information in such cases.

**I'm the noncustodial parent. I love my kids. I pay my child support. About half the time when I go to pick them up for my weekend, my ex-wife has made other plans for them. It's not fair that the state will enforce my child support obligation but not do anything about my right to see my kids.**

Although the child support program currently lacks authority to enforce visitation, many state or local governments have developed procedures for enforcing visitation orders. In addition, the federal government has made funding available to states for developing model programs to ensure that children will be able to have the continuing care and emotional support of both parents. Check with your local family court, clerk of court, or child support agency to see what resources are available to you and to find out about laws that address custody and access/visitation/parenting time.

**If I am the noncustodial/nonresidential parent under a court order, can I designate someone else to exercise my visitation rights while I'm deployed?**

In some states, when the noncustodial parent deploys, state law allows that parent to designate a person who will temporarily exercise the parent's visitation. The court must approve the designated person, using a "best interest of the child" standard.

**We are separated but do not have any court orders. Can we resolve custody through a Family Care Plan?**

Although a Family Care Plan can designate the caregiver when the member experiences a short-term or long-term absence, it does not take the place of a court order. You can both consent to the terms of the Family Care Plan, but you should not consider the Plan as "resolving" custody in the sense of an enforceable order. State and tribal courts have the overriding authority to determine child custody arrangements, in spite of what you have in a Family Care Plan.

**How can I be involved in my child's life while I'm deployed?**

It is hard to be away from your children. However, there are many ways to stay connected with your child during deployment, including sending letters, pictures, and video and audio greetings. The military has excellent on-line resources available. In addition to those available through each active duty service branch, you may also wish to review those available through Military OneSource, the National Guard Family Program, and the Reserve Component Resource Center. See also <https://www.militarychild.org/audience/parents> (last visited Feb. 3, 2021) and resources

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<sup>31</sup> 42 U.S.C. § 663.

that Sesame Street offers for military families, <https://sesamestreetformilitaryfamilies.org/> (last visited Feb. 3, 2021). If you are a father, you may be interested in resources offered by the National Fatherhood Initiative, <https://www.fatherhood.org/programs-and-resources> (last visited Feb. 3, 2021).

The residential parent or caregiver can support the child's relationship with you while you are deployed by following a consistent plan of communication. This can be detailed in a court order, outlined in the Family Care Plan, or agreed to in a separate parenting plan.

**Do I need to do anything about my custody order when I return home from a period of deployment?**

Once you are no longer deployed, it is important to notify the child support agency and court of your new address. If there was a temporary custody order in place during deployment, that order usually terminates when the deployment or temporary duty concludes and terms of the original order apply. In some states, it may be necessary to return to court to terminate the temporary order.

**After I return from deployment, am I allowed to make up lost visitation/parenting time?**

You may wish to work with the other parent to come up with a schedule for reconnecting with your child. In some cases, it may be appropriate to ask the court to consider ordering additional periods of visitation or residential time. The court will consider what is in the best interest of the child.

## Appendix

### *Definition of Commonly Used Terms*

*Acknowledgment of Paternity* – a legal form signed voluntarily by a man and the child’s mother that states that the man is the child’s biological father. The parents’ signatures must be authenticated by a notary or witness(es), depending on state law. An acknowledgment of paternity is usually used when the parents are not married but agree on the identity of the child’s father. An acknowledgment of paternity that is signed by both parents constitutes a legal determination of paternity.

*Administrative procedure* – the method by which an executive agency makes and enforces support orders. It is usually less formal than a judicial procedure, which is usually held in a courtroom and in which judicial officers make and enforce support orders.

*Arrears/arrearage* – child support payments that are past-due.

*Child support agency* – an agency that exists in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands; as well as in more than 60 Native American tribes. It is often called the “IV-D” (pronounced “Four-D”) agency because the federal legislation that established the child support program is in Title IV, Part D of the Social Security Act. The list of state and tribal child support agencies is available <https://www.acf.hhs.gov/css/contact-information/state-and-tribal-child-support-agency-contacts>

*Child Support Program* – the federal/state/local and tribal partnerships established under Title IV, Part D of the Social Security Act to locate parents; establish paternity; and establish, modify, and enforce child support orders.

*Consent agreement* – a voluntary agreement or order that both parties enter into and sign.

*Consumer Credit Protection Act (CCPA)* – the federal law that limits the amount that may be withheld from a person’s earnings for child support and commercial debt.

*Continuing exclusive jurisdiction (CEJ)* – the legal doctrine that limits the authority of a state or tribe to modify another state’s or tribe’s support order. The doctrine is essential to ensuring only one support order is in effect at any one time. A tribunal has CEJ if it has issued a support order, and one of the parties or a child resides there. Even if the state is not the residence of the individual obligee, obligor, or child, the tribunal has CEJ to modify the order if the parties consent in a record or in open court that the tribunal may continue to exercise jurisdiction to modify its order. If a state has CEJ, it is the only state with jurisdiction to modify the support order, unless there is a written agreement between the parties for another jurisdiction to modify the order.

*Controlling order* – the order that governs the amount of current support that an obligor must pay for a child.

*Custodial parent* – the person who has primary care, custody, and control of a child. Some states use the term “residential parent.” Some states use the term “custodial party” or “caretaker” if the child resides with a relative, legal guardian, or some other legally responsible adult. When parents are separated or



divorced, the court order usually designates which parent is the custodial parent.

*Custody order* – a legal determination that establishes who has care and control of a child, and with whom the child shall live. State and tribal laws vary with regard to custody issues (such as joint custody, sole custody, shared custody).

*Default* – the failure of a defendant to appear, or file a timely answer or response, in a civil case after the person has been served with a summons and complaint.

*Default judgment or default order* – a decision that a tribunal makes when the defendant fails to respond or appear after proper notice.

*Defendant* – the person against whom a civil or criminal proceeding is begun. The defendant in a civil proceeding is also called the “respondent.”

*Disposable pay or disposable earnings* – wages remaining after subtracting mandatory deductions, such as federal, state, and local taxes; FICA and Medicare taxes; unemployment and workers’ compensation insurance; state employee retirement system contributions; and additional deductions mandated by state law.

*Duration of support* – the period during which a parent has an obligation to provide financial support for a child. States have varying laws regarding duration of support.

*Electronic funds transfer (EFT)* – the automated transfer of money from one bank account to another or to a child support agency.

*Enforcement* – the process of obtaining payment of a child support or medical support obligation. The most effective enforcement remedy is income withholding. Other enforcement remedies include federal and state income tax refund offset, license suspension, and seizure of bank accounts.

*Establishment* – the process of determining parentage or obtaining a child support order for current support.

*Federal Case Registry (FCR)* – a national database that maintains key information on IV-D cases and orders, as well as on most non-IV-D child support orders. The FCR receives this information on a daily basis from the State Case Registry that is located in every state. The FCR matches the information with employment information contained in the National Directory of New Hires (NDNH) and reports any matches to the appropriate states to help with case processing. The FCR and the NDNH are part of the Federal Parent Locator Service (FPLS) that is operated by the federal Office of Child Support Enforcement.

*Federal Income Tax Refund Offset* – an enforcement remedy under which the Internal Revenue Service intercepts federal income tax refunds of parents who owe child support and sends the money to the federal Office of Child Support Enforcement (OCSE). OCSE in turn sends the money to the appropriate state child support agencies to be applied to the parent’s support arrears.

*Federal Office of Child Support Enforcement (OCSE)* – the federal agency responsible for oversight of the Title IV-D child support program. It writes regulations that govern state and tribal child support agencies, which are responsible for day-to-day processing of child support cases. OCSE also operates

the Federal Parent Locator Service, which includes the Federal Case Registry and the National Directory of New Hires. OCSE is part of the Administration for Children and Families, within the Department of Health and Human Services.

*Federal Parent Locator Service (FPLS)* – A group of data sharing, collection and enforcement systems and telecommunication networks operated by OCSE that supports the core mission of the child support program: location of parents, establishment of paternity, establishment of fair and equitable child support obligations, modification of support, and enforcement of support including such measures as income withholding. The FPLS includes the Federal Case Registry (FCR) and the National Directory of New Hires (NDNH). The FPLS also helps prevent improper payments in federal and state benefit programs. There are regulations that govern who is authorized to receive information from the FPLS, what are the authorized purposes for receipt of information, and what type of information may be provided.

*Federally Assisted Foster Care* – a federal/state/tribal program that provides financial support to people, families, or institutions raising children who are not living with their parents.

*Financial Institution Data Match (FIDM)* – a quarterly data match to identify financial accounts that belong to parents who owe past-due child support.

*Finding* – the formal determination by a court or an administrative agency that has a legal effect.

*Full Faith and Credit* – the legal doctrine under which a state or tribe must honor a valid order or judgment entered by another state or tribe.

*Garnishment* – an enforcement remedy under which part of a person's wages and/or other type of income is withheld for the payment of a debt. Some states refer to a garnishment as a “withholding” or an “attachment.”

*Genetic testing* – DNA analysis of inherited factors (usually by tissue or saliva test) of the mother, child, and alleged father that can help prove or disprove that a particular man fathered a particular child.

*Guidelines* – the numerical formulas that states and tribes use to set child support obligations. Support guidelines are based on the income of the parent(s) and other factors as determined by state and tribal law. Tribunals must use guidelines to determine the child support amount, unless there is a written finding that applying the guidelines would be inappropriate in a particular case.

*IV-D (pronounced “Four-D”) Child Support Program* – the federal/state/local and tribal child support programs established under Title IV-D of the Social Security Act.

*Immediate income withholding* – automatic deductions from a noncustodial parent’s income that start as soon as the order establishes a support obligation, and the employer receives notice of the order.

*Judgment* – the legally binding decision by a tribunal on the rights and claims of the parties to an action. A judgment may also be called a “decree” or an “order.”

*Jurisdiction* – the legal authority that a court or an administrative agency has over particular persons, certain types of cases, and in a defined geographical area.

*Legal father* – a man recognized by law as the male parent.

*Lien* – a legal claim upon property to prevent its sale or transfer until a debt is satisfied.

*Long-arm statute* – a law that permits a state or tribe to claim personal jurisdiction over a nonresident. There must be some meaningful connection between the nonresident and the state or tribe that is asserting jurisdiction in order for a court or an agency to reach beyond its normal jurisdictional border.

*Medicaid program* – a program that provides federally funded medical support for low-income families.

*Medical support* – Health care coverage provided to a child pursuant to a support order. It includes insurance coverage; cash medical support, including payment of health insurance premiums; and payment of health care bills (including dental and eye care). Indian Health Service and TRICARE are acceptable forms of medical support.

*National Directory of New Hires (NDNH)* – a national database containing new hire and quarterly wage information from every State Directory of New Hires and federal agency. It also contains Unemployment Insurance data. OCSE maintains the NDNH as part of the expanded Federal Parent Locator Service.

*Noncustodial parent* – the person who does not have primary care, custody, and control of a child.

*Obligation* – the duty of support that a parent or spouse owes to a child or spouse. A support order usually expresses that obligation as an amount of money that the parent or spouse must pay as financial support or medical support for the child(ren) or spouse.

*Obligee* – the person to whom a duty of support is owed; the person who receives support payments. The obligee is often also called the “custodial parent.”

*Obligor* – the person who has the obligation to provide financial support or medical support; the person who is making support payments. The obligor is often also called the “noncustodial parent.”

*Offset* – the amount of money taken from a parent's state or federal income tax refund to satisfy a child support debt.

*Order* – the legally binding decision by a tribunal on the rights and claims of the parties to an action. An order may also be called a “decree” or “judgment.”

*Parentage* – the legal mother-child relationship or father-child relationship as determined by state or tribal law.

*Paternity judgment* – the legal determination of fatherhood.

*Perfecting a lien* – the procedure a creditor follows to give other creditors notice of his or her lien against certain property. It protects the creditor's interest in the property. The method for perfecting a lien varies among the states. Often, creditors “perfect” a child support lien against real property by recording terms of the support order or the amount of arrears in the county or state registry of deeds or equivalent office.

*Personal jurisdiction* – a tribunal's legal authority over a person. A tribunal must have personal jurisdiction to establish a support order.

*Petitioner* – the person who files a civil action. The petitioner is also called the “plaintiff.”

*Plaintiff* – the person who files a civil action. The plaintiff is also called the “petitioner.”

*Presumption of paternity* – a rule of law under which evidence of a man's paternity (such as genetic test results) creates a legal inference that the man is the father of a child. A rebuttable presumption is one that can be overcome by evidence that the man could not be the child's father (such as evidence of the man's sterility). An irrebuttable or conclusive presumption is a final determination of the issue; a court will not allow any contrary evidence to be presented.

*Probability of paternity* – the statistical likelihood that the alleged father is the biological father of the child, as indicated by genetic test results.

*Pro se* – a procedure in which a party represents himself or herself in a legal matter.

*Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)* – federal legislation passed in 1996 that is also known as Welfare Reform. In addition to establishing time limits and work requirements for recipients of public assistance, it required states to enact a number of child support laws in order to receive federal funding. This legislation created the New Hire Reporting program and required the establishment of State and Federal Case Registries.

*Public assistance* – money granted from the state, tribal, or federal government to a person or family for living expenses. Eligibility is based on need and varies among programs. Applicants for certain types of public assistance (for example, Temporary Assistance for Needy Families or TANF) are automatically referred to their state or tribal child support agency for child support services. This allows the state or tribe to seek support payments from the noncustodial parent so the custodial party can become more self-sufficient, and the state or tribal government can recoup some of its public assistance expenditures.

*Respondent* – the person against whom a civil action is filed. The respondent is also called the “defendant.”

*Retroactive support* – support for a period prior to the entry date of the order. For example, in paternity cases, state law may require retroactive support to the date of the child's birth. Some states have laws requiring support retroactive to the date the legal action was filed.

*State Directory of New Hires* – a database maintained by each state that contains information employers report about new hires. Employers must report certain required information within 20 days of hiring an individual. The state sends the data to the National Directory of New Hires.

*State Disbursement Unit* – the single entity in a state that receives and distributes child support payments.

*State Parent Locator Service (SPLS)* – a service operated by state child support agencies to locate parents in order to establish paternity, and to establish and enforce child support obligations. Tribes can access the information through an agreement made with a state.

*State Workforce Agencies (SWAs)* – state agencies that provide Quarterly Wage and Unemployment Insurance Compensation data to the National Directory of New Hires.

*Statute of limitations* – the cutoff point on the length of time a person has to take a particular legal action. State and tribal laws vary on the statute of limitations for collecting child support arrears.

*Stay* – an order by a tribunal that suspends all or some of the proceedings in a case.

*Temporary Assistance for Needy Families (TANF)* – time-limited public assistance payments made to poor families, based on Title IV-A of the Social Security Act. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) replaced Aid to Families with Dependent Children (AFDC) with TANF. The TANF program provides parents with job preparation, work, and support services to help them become self-sufficient. Applicants for TANF benefits are automatically referred to their state or tribal child support agency for child support services. This allows the state or tribe to seek support payments from the noncustodial parent so the custodial party can become more self-sufficient, and the state or tribal government can recoup some of its public assistance expenditures.

*Tribal IV-D Program* – A child support program administered by a federally recognized Indian tribe or tribal organization and funded under Title IV-D of the Social Security Act.

*Tribal Organizations* – organizations run by Native American tribes.

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

*Uniform Interstate Family Support Act (UIFSA)* – a law that every state has enacted, which provides a process for establishing, enforcing, and modifying support obligations in cases where the parents live in different jurisdictions. Tribes are not required to enact UIFSA.

*Visitation* – a term for the time a noncustodial parent spends with his or her children. States may also use the term “access” or “parenting time.” Parents can agree upon parenting time in a parenting plan, or the court can establish parenting time in its order.

*Wage withholding* – a procedure by which automatic deductions are made from a person’s earnings or other income to pay a debt such as child support. Wage withholding may also be called “income withholding,” “income attachment,” “income assignment,” or “garnishment.”