

# Working with the Military on Child Support Matters

## Trainer Guide



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

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**APPENDIX**

# **Module 1**

## **Overview of the Military**

### TRAINING NOTES

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#### ***What you need to say/do***

1. Display **PowerPoint Slide 1-1: Module 1** (title slide).
2. Ask whether any of the participants have personal military experience. Ask participants to describe any dealings they have had with the military on support-related issues. Facilitate a brief discussion (5 – 10 minutes) on the positive and negative aspects of that experience. Use a flipchart to summarize their comments. Identify areas in which the workers had difficulty for which this course will either provide information to overcome the obstacle or explain the reason behind the military's action.
3. Tell participants to ask questions as they arise and to participate in the discussion if they have any input, experiences, etc.
4. Review the module's goals and objectives with participants.

#### ***What you need to know***

1. This module will take approximately one hour to complete.
2. You may need to modify the length of this module based on the level of familiarity the participants have with the military and its organization.
3. Listed below are the equipment, handouts, and PowerPoint slides for the module.

#### **Equipment/Supplies:**

- Personal computer with PowerPoint program
- LCD projector and screen
- Flipchart stand with two pads of paper and/or whiteboard
- Markers (permanent, dry-erase, and wet erase)
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

#### **PowerPoint Slides:**

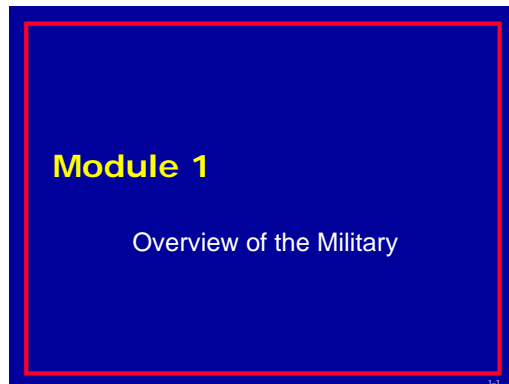
- 1-1: Overview of the Military
- 1-2: Organization of the Military
- 1-3: Where is Sgt. Smith?
- 1-4: Military Authority
- 1-5: When Member Fails to Respond
- 1-6: Practice Tips
- 1-7: Military Resources
- 1-8: Navigating the Web - An Example
- 1-9: Military Rules and Regulations
- 1-10: Summary

#### **Handouts:**

- 1-1: Military Acronyms
- 1-2: Military Rank and Pay Grade Chart
- 1-3: Military Websites
- 1-4: Review Exercise

## MODULE 1: OVERVIEW OF THE MILITARY

Time: 1 hour



### 1.1 OVERVIEW OF THE MILITARY

#### 1.1.1 Learning Goal

- Each participant will understand the basic organization of the United States Military.
- Each participant will become familiar with the rules and regulations that govern the enforcement of child support obligations within the military.

#### 1.1.2 Learning Objectives

- Given a participative lecture and a discussion of the organization of the military and its various component branches, participants will explain the basic structure of the military, describe how it fits within our system of government, and identify the different branches of the military.
- Given a participative lecture, participants will identify who makes decisions over military personnel and places, and realize the limitations under which military decision-makers operate.
- Given a discussion, participants will identify the military resources available to assist in various aspects of child support enforcement.
- Given a participative lecture, participants will explain the various rules and regulations that govern the military in all aspects of child support enforcement.



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Refer participants to **Handout 1-1** in the Appendix for a glossary of common military acronyms.
  2. Display **PowerPoint Slide 1-2: Organization of the Military**.
- 

### ***What you need to know***

1. The Department of Defense (DoD) is a large and complex organization. Participants are not expected to understand all of the agencies, activities, and units that fall under the DoD.
2. Each of the military departments is responsible for the training, recruitment, and control over its members. While this responsibility, or "ownership," may change depending on the location and duties of the member, each department and service retain responsibility over their members.

## 1.2 MILITARY ORGANIZATION AND THE SERVICE BRANCHES

Child support professionals use acronyms like IV-D, TANF, and UIFSA that are confusing to people who are not involved with child support and paternity. The military also uses acronyms which, although perfectly clear to the military member, cause blank stares by civilians. To help you understand military acronyms that are used in this Trainer Guide, please refer to **Handout 1-1** in the Appendix.



The Department of Defense (DoD) is a Cabinet-level organization with a mission to provide military forces to deter war and to protect the security of our country. The DoD is America's oldest, largest, and busiest company. Its workforce and budget exceed that of the country's largest corporations, including Wal-Mart, Exxon, Ford Motor, and General Motors.

Three military departments report to the DoD: the Department of the Army (DA), the Department of the Navy (DN), and the Department of the Air Force (AF). Each of the military services -- Army, Navy, and Air Force -- reports to its respective military department. Another service, the Marine Corps, falls under the Department of the Navy. The United States Coast Guard falls under the control of the Department of Homeland Security.

The DoD employs 1.4 million people on active duty within the various services, and 1.2 million reserve and National Guard personnel. Once reservists are called to duty, they are answerable to DoD. In contrast, members of the National Guard are state employees. They do not become part of DoD until they are

## TRAINING NOTES

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### *What you need to say/do*

1. After providing the information on the top of page 1-7, ask participants to identify the location of any military facilities within the training state.
2. Provide an example of how the military is organized by explaining **PowerPoint Slide 1-3: Where is Sgt. Smith?** Beginning with the individual military member, work up to the Company/ Battalion/ Brigade/ Division/ Corps size units, to the Unified/Combatant Command, to the military head of the service, to the civilian Secretary of the military branch, to the Secretary of DoD, and ultimately to the President.

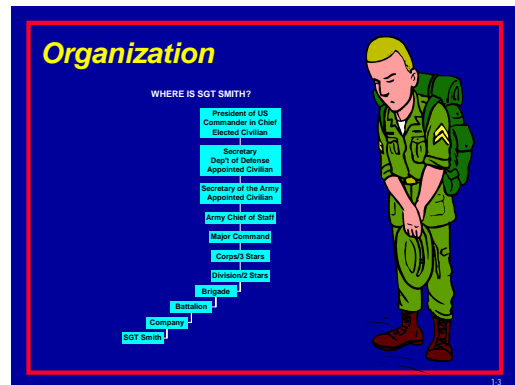
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### *What you need to know*

1. The military is located throughout the United States and the world. Military members are found on bases, ships, forts, stations, camps, and other facilities.
2. You should know the name and address of any military facilities within the state in which you are conducting the training.

Federally mobilized under Title 10, U.S. Code. Additionally, DoD employs 654,000 civilian employees. The DoD is found in over 6,000 locations throughout the world, in over 146 countries. There are over two million military retirees.

Each of the services is responsible for recruiting, training, and equipping its own forces, in addition to being responsible for the maintenance of good order and discipline of its members. Ownership of service members may "shift" when service members are on deployments, exercises, or operations, but these shifts are often temporary and usually have little effect on the child support case worker. The military is traditionally located at forts, bases, camps, and stations, which will be collectively referred to as installations. Members of the Navy and Marine Corps, and -- to a much lesser extent -- the Army, often perform duty away from their "home" base on ships afloat at sea around the world. Military installations are located in virtually every state and at locations all over the world. They range in size from small single buildings, to the Army's three million-acre White Sands Missile Range in New Mexico, and contain anywhere from a single employee, to tens of thousands of employees.



Each of the services is broken down into units, and at each level there is a commander in charge. The Army top military officer is called the Chief of Staff of the Army. The Navy senior military person is the Chief of Naval Operations. The Air Force top officer is the Chief of Staff of the Air Force. The Commandant of the Marine Corps heads the Marine Corps. The military head of each branch reports to the civilian Secretary of that branch, who is a presidential appointee. The civilian department Secretaries report to the civilian Secretary of the Department of Defense, who in turn reports to the President of the United States.

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### *What you need to say/do*

1. Display **PowerPoint Slide 1-4: Military Authority**.
  2. When explaining pay grade and military rank, refer participants to **Handout 1-2: Military Rank and Pay Grade Chart**, located in the Appendix.
  3. Provide an example of how the rank in one service is not the equivalent in another service.
- 

### *What you need to know*

1. Rank and authority are separate, but related, concepts. Rank is a designation given to personnel that represents, in part, their responsibility and authority within the military hierarchy. Rank structure among the services varies slightly, and can be a source of confusion.
2. The military pay structure, referred to as a pay grade, is consistent throughout the services.
3. A commander's authority is derived from law, regulation, and custom, or can be inherent as a function of command.

### 1.3 MILITARY AUTHORITY



The military's rank structure can be confusing to a caseworker, but an understanding of it is important for successfully dealing with military systems. The term "grade" refers to a military pay level. With each pay level, there is a corresponding rank. Generally, rank is broken down into two categories: officer and enlisted. Officers are in pay grades O-1 through O-10, with the "O" standing for officer. Enlisted personnel are pay grades E-1 through E-10, with the "E" standing for enlisted. Military officers are commissioned through a variety of sources and are appointed by the President of the United States. Enlisted members enter military service (or continue military service) through an enlistment, or contract. There are also Warrant Officers, who are officers by virtue of a warrant, and are higher ranking than enlisted members but subordinate to officers. Warrant Officers are in pay grades W-1 through W-5, with the "W" standing for warrant.

The military services have different names for different ranks, which can be a source of great confusion. For example, a Captain in the Navy is in the pay grade of O-6, while a Captain in the Army, Marine Corps, or the Air Force is in the pay grade of O-3. The point here is not memorization, but the importance of knowing the system with which you are dealing. A general rule is that the higher the rank, the more authority that person has, especially anyone who is in command.

## **TRAINING NOTES**

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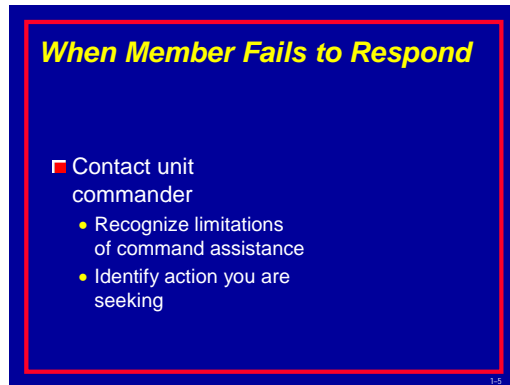
### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 1-4: Military Authority**.
2. Compare the role of a garrison commander to that of a city manager, responsible for running the day-to-day operations of a military installation.
3. Tell the participants to first try to contact a service member directly.
4. Display **PowerPoint Slide 1-5: When Member Fails to Respond**.
5. If the member fails to respond to several communication attempts, instruct the participants to contact the "first line" military commander for assistance.
6. Explain that if no response is received to an inquiry or a request for assistance, they should move up the chain of command.

### ***What you need to know***

1. Members of the military are required to exhibit character traits and qualities that promote the prompt and efficient resolution of problems. The moral character required for entry and continued service in the military is high.
2. A military commander at the lowest level is usually the person to contact for assistance or information.

While every member of the military possesses the authority to accomplish some task or another, it is the military commander who is most often associated with possessing the authority to "make things happen." Every post, camp, fort, or station has a commander. He or she is the "city manager" for the installation, with authority to control what happens on the installation. This is important to understand, especially as it relates to other training modules on jurisdiction and service of process. A commander's authority is derived from law, regulation, and custom. It is the commander who has the responsibility to ensure that the personnel under his command comply with child support requirements established by statute, regulation, and policy.



When processing a child support case that involves a service member, it is always important to try first to contact the member directly. Let us assume, however, that you have made several attempts to contact a military NCP. If the member fails to respond to your inquiry, it may be appropriate to "go up the chain of command." First-line commanders are usually the best place to start. They can address most issues that will confront the child support caseworker. A first line commander who is non-responsive may necessitate contact with the next commander higher in the chain-of-command.

It is essential in dealing with military authority to understand that limitations exist. These limitations with regard to child support are discussed in later modules.



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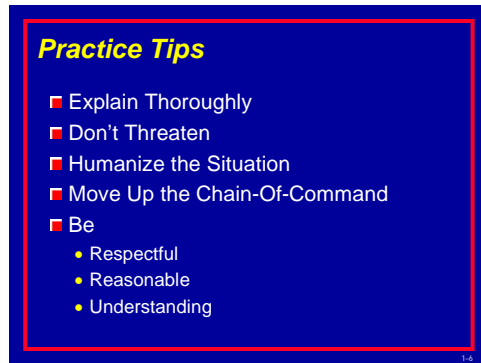
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### *What you need to say/do*

1. Ask participants to list some best practice tips they have learned based on their experiences with the military. Write them on the flipchart. Make sure the five bullets listed on pages 1-13 and 1-15 are discussed.
2. Explain that a military commander's authority is rarely so great so as to be able to accomplish everything requested of him. Explain that law, regulation, or policy may limit a commander. Often, the level of cooperation you will receive from a commander is dependent on the commander's personality.
3. Display **PowerPoint Slide 1-6: Practice Tips**.

### *What you need to know*

1. Commanders do not always have the authority to accomplish everything that a caseworker may desire. Regulation, law, or policy may limit a commander's authority.
2. Always make your first attempt at resolution with the noncustodial parent/service member. Only after attempts at personal contact and resolution have failed should a caseworker seek the assistance of a service member's commander.



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

- Explain exactly what it is that you are seeking and the authority under which you are acting. Military commanders have an obligation to provide for the health, morale, and welfare of their personnel. If the commander does not understand the "what, why, and how" of your request, he or she may be less likely to respond. Commanders will make their personnel do the right thing if it is within their authority. The better you explain, the greater the likelihood of a favorable response. Also, commanders have access to military lawyers who serve as their legal advisors. A commander who has all the pertinent facts can get an accurate answer from a legal advisor that will ensure maximum assistance.
- Don't threaten. A threat to the military will ring hollow and accomplish little. However, factual statements of actions that may occur, stated with tact and diplomacy, will serve to educate the military commander about potential consequences for one of his personnel. All military commanders are concerned about readiness, and a service member tied up in civil court proceedings can affect readiness.
- Humanize the situation. Members of the military are held to a higher standard than the civilian community. "Doing the right thing" is as important as doing what is legally required. The military understands this. Emphasize it if possible.
- Everyone in the military has a boss. Documented attempts at seeking information and/or assistance from a commander who is non-responsive will usually generate some movement from that commander's boss.
- Be respectful, reasonable, and understanding. The military is charged with the grave responsibility of defending our country against its enemies. Concerns about personnel security, operational security, and protecting the force are legitimate concerns of military members and commanders. Remember that a commander's hesitancy to release information or provide assistance may be due to overcaution or a regulatory prohibition such as the Privacy Act, but a well-explained rationale for the action that you request will often overcome this hurdle.

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### *What you need to say/do*

1. Display **PowerPoint Slide 1-7: Military Resources**.
2. Mention the resources on the slide.
3. Explain the operation of a military legal office at a military installation
4. Ask participants to describe any experience(s) with cooperative programs or presentations with their local installation legal office.

### *What you need to know*

1. There are a variety of military resources for the child support caseworker.
2. Military installations usually have a legal office that performs a variety of functions, depending on the mission of the installation and the military units that are based there.
3. Larger installations have family life centers or family advocacy programs that provide information and programs to improve the quality of life for military families.
4. Larger installations also have identification card facilities that provide identification cards and information on the Defense Enrollment Eligibility Reporting System (DEERS).
5. The most efficient way to use the Internet for military information is to narrow the search to the lowest applicable level.

## 1.4 MILITARY RESOURCES



In addition to the commander, there are other military resources that can assist a caseworker in his or her efforts. Many of the resources are service-specific, and others are available across the DoD. Possible resources include:

- Installation/command legal offices
- Family advocacy or family life centers
- Identification card facilities/Medical facilities
- Internet

### 1.4.1 Legal Offices

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

The legal assistance office is usually where a military member will go to discuss questions about paternity and child support. Although the military lawyer will usually not represent the service member in a support proceeding (since most

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 1-7: Military Resources**.
2. Discuss the family life centers and family advocacy programs that are available in some locations. Inform the participants that these organizations may be a resource for disseminating information on child support obligations for military noncustodial parents and a resource for custodial parents to understand the benefits to which a military dependent is entitled.
3. Explain that larger installations have identification card facilities, and that military dependents must be enrolled in DEERS in order to be eligible for military benefits, including medical coverage under TRICARE (formerly known as CHAMPUS). Explain that enrollment in DEERS can be done through the mail, without any need to travel to a military installation.

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### ***What you need to know***

military lawyers are not licensed to practice in the state in which their installation is located), he or she can provide the member with general information about child support laws. If the child support agency has an established relationship with the installation legal assistance office – through get-togethers or speakers programs -- it will result in improved communication and cooperation between both.

#### **1.4.2 Family Life Centers**

Larger installations will often have family life centers/family advocacy programs that are designed to improve the quality of life for military members and their families. These organizations can provide the child support enforcement agency with a valuable platform for informational programs and literature that can educate noncustodial parents about their legal and moral obligations concerning child support. Additionally, these programs may be able to provide assistance to custodial parents in understanding the wide variety of benefits to which a dependent child of a military member may be entitled.

#### **1.4.3 Identification Card Facilities**

Identification card facilities are located at all large installations. These facilities can provide valuable information on the documents required to obtain an identification card, as well as provide information on the Defense Enrollment Eligibility Reporting System (DEERS). Enrollment in DEERS is required prior to the issuance of an identification card, and is also tied to eligibility for medical care under the military health program called TRICARE (formerly known as CHAMPUS).

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### *What you need to say/do*

1. Continue to display **PowerPoint Slide 1-7: Military Resources**.
  2. Ask participants to locate **Handout 1-3: Military Websites** in the Appendix. Explain the difference between official and unofficial websites.
  3. Using **PowerPoint Slide 1-8**, demonstrate how to navigate the Air Force website to locate the Air Force Instruction on Paternity and Child Support.
- 

### *What you need to know*

#### 1.4.4

## Internet Sites

The military provides the greatest amount of information about itself on the Internet. Virtually every military address, phone number, acronym, regulation, and policy is available through the Internet. The greatest drawback, of course, is that there is so much information available it can become difficult to navigate and pinpoint the exact information that you are seeking. There are sites for the DoD and each of its component agencies, each of the military departments, each service, the reserve components, and most every installation, base, camp, station, or fort in the world.

A key to success in navigating the Internet as you search for the answers to your questions is to narrow your search to the lowest applicable level. This means you must determine if your issue is local (does Fort Bragg have a legal assistance office?) or service specific (what is the Air Force Instruction on paternity establishment?) or agency specific (to what DFAS address does one send a withholding order?). Most military Internet sites are user friendly, easily searched, and provide links to other sites.

Let's try to locate the Air Force instruction on child support and paternity.

On the Internet, go to [www.af.mil/lib/](http://www.af.mil/lib/). From there, click onto "Forms and Publications" under the "Reference" section; click on "Electronic Publications" under "Information Management Tools"; click on "HQ, United States Air Force"; click on "Series 36"



Personnel; click on "AFI 36-2906" to open the regulation.



## TRAINING NOTES

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### *What you need to say/do*

1. Display **PowerPoint Slide 1-9: Military Rules and Regulations**.
2. Explain to participants that each of the services has its own regulatory schemes, which are usually an implementation of Federal law and DoD guidance.
3. Inform the participants that understanding the rules and regulations under which the military operates will enhance the effective processing of requests for assistance or information.
4. Tell participants that specific child support regulations will be referenced in subsequent modules

### *What you need to know*

1. The military is a structured, rule-intensive organization. Federal statutes govern most of the military and its functions, which are implemented through a variety of regulations, directives, instructions, and policies.

DoD regulations are usually:

- Department of Defense Directives (DoDD)
- Department of Defense Instructions (DoDI)

2. Each of the services issues its own regulations, supplemented with very specific guidance governing operations and conduct. The regulations that govern support obligations, paternity, and other child and dependent support issues are:

ARMY: Army Regulation 608-99, Family Support, Child Custody, and Paternity

AIR FORCE: SECAF INST. 36-2906, Personal Financial Responsibility

MARINE CORPS: MC Order P5800.16A (LEGLADMIN), ch. 15 (Dependent Support and Paternity)

NAVY: Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-10 (Paternity Complaints).

## 1.5 MILITARY RULES AND REGULATIONS



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

In addition to Federal laws of general applicability, the military promulgates its own rules, regulations, and policies that govern the conduct of its members. The DoD, as the military's parent organization, issues regulations that are applicable to all of the DoD, unless specifically exempted. Each of the military services -- Army, Navy, Air Force, and Marine Corps -- also issues regulations. In addition to service regulations, military units will often issue their own regulations, as will installation or garrison commanders. These local regulations are usually found on installation or unit web sites and may supplement existing service regulations, or may cover areas not addressed in other regulations or directives. Finally, each of the services supplements its regulations with policy memoranda that address very specific areas of administration or conduct not covered in other regulations or directives.

The regulations and rules governing military personnel and procedures in the areas of paternity establishment and child support are covered in specific modules of the Guide.

## TRAINER NOTES

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### *What you need to say/do:*

1. Refer participants to **Handout 1-4: Review Exercise**, located in the Appendix. Tell them they have approximately three minutes to individually complete the exercise. Then facilitate a class discussion of the answers.
  2. To wrap up, display **PowerPoint Slide 1-10: Summary**. Review with participants the topics discussed in this module.
  3. Transition into the next module by outlining its major learning objectives.
- 

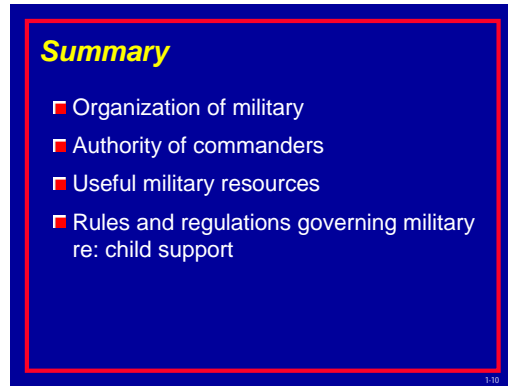
### *What you need to know:*

1. The exercise will help you to assess whether the participants understood the military overview. Allow approximately 10 minutes for completion and review of the exercise.

## 1.6 REVIEW EXERCISE

Each participant will complete **Handout 1-4: Review Exercise**. After a few minutes, the class will collectively go over the answers.

## 1.7 SUMMARY



In this module we discussed:

- the organization of the military,
- the authority of commanders,
- military resources that can assist the child support worker, and
- rules and regulations that govern the military with regard to child support.

## 1.8 PREVIEW OF NEXT MODULE

In the next module we will:

- discuss Federal locate regulations that govern IV-D cases,
- identify local and national military locate resources, and
- identify state and Federal civilian locate resources for military cases.



# **Module 2**

## **Military Locate Procedures**

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 2-1: Module 2** (title slide).
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 2.
3. Explain to participants that, just as in non-military cases, you need to locate an individual in the military before you can establish or enforce a child support obligation.
4. Review the module's goals and objectives with participants.

---

### ***What you need to know***

1. It takes approximately one hour to complete this module.
2. Participants are not expected to memorize the addresses for the WorldWide military locate resources. This module includes a handout listing those addresses.
3. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

### **Equipment/Supplies**

- Flipchart stand with two pads of paper and/or whiteboard
- Markers (permanent, dry-erase, and wet erase)
- Masking tape
- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

### **PowerPoint Slides**

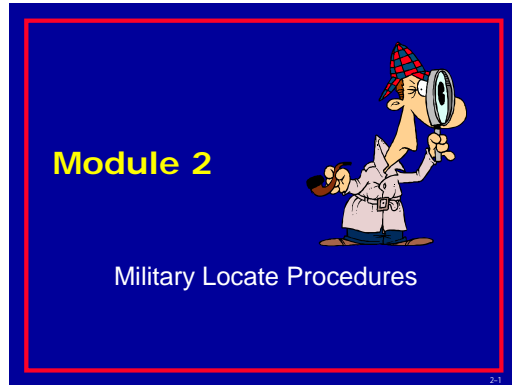
- 2-1: Module 2 (title slide)
- 2-2: Federal Locate Regulations (1)
- 2-3: Federal Locate Regulations (2)
- 2-4: Locate Resources for Military
- 2-5: Summary

### **Handouts**

- 2-1: Military Locators
- 2-2: Sample FOIA Letter to Request Home Address
- 2-3: Review Exercises

## MODULE 2: MILITARY LOCATE PROCEDURES

Time: 1 hour



### 2.1 MILITARY LOCATE PROCEDURES

#### 2.1.1 Learning Goals

- Each participant will learn the various locate resources (civilian and military) applicable to cases involving the military (active duty, retired, reservists, and civilian employees).
- Each participant will learn how to use these various locate resources.

#### 2.1.2 Learning Objectives

- Given a participative lecture, participants will correctly identify the basic requirements of the Federal IV-D locate regulations.
- Given a participative lecture and scenario-based exercises, participants will explain where to find and how to use various military locate resources.
- Given a participative lecture and scenario-based exercises, participants will explain how the state and Federal civilian locate resources assist when a military case needs locate services.



## **TRAINING NOTES**

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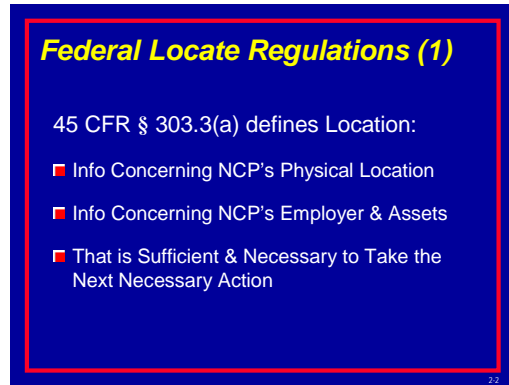
### ***What you need to say/do***

1. Display **PowerPoint Slide 2-2: Federal Locate Regulations (1)**. Briefly cover the bullets on the slide.
  2. Advise the participants that all of the Federal child support enforcement regulations are available on-line at OCSE's website: [www.acf.hhs.gov/programs/cse](http://www.acf.hhs.gov/programs/cse).
- 

### ***What you need to know***

1. OCSE issues the Federal regulations governing IV-D locate procedures. As a condition of receiving Federal child support funding, all state IV-D programs must comply with these regulatory requirements and timeframes.

## 2.2 APPLICABLE FEDERAL REGULATIONS AND TIMEFRAMES



### 2.2.1 Definition

The Federal Office of Child Support Enforcement (OCSE) maintains regulations controlling locate activity in all IV-D cases, including cases involving the military. These regulations appear at Title 45 of the Code of Federal Regulations, section 303.3. These regulations define “location” as “information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent’s employer(s), other sources of income or assets, as appropriate, which is necessary to take the next appropriate action in the case.” As you can see, “locate” involves more than determining a noncustodial parent’s residential address.

Although these regulations do not specifically address military cases, their guidance is directly applicable to cases involving the military. In fact, if the individual you are attempting to locate is in the military, the odds that you will successfully locate the individual are probably greater than in many non-military cases. This is true because you are more likely to uncover a Social Security number in a case involving the military, and the Social Security number is the key to success for most automated locate searches.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 2-3: Federal Locate Regulations (2)**.
2. Explain that the Federal regulations do not require a IV-D office to initiate locate activity simply because the noncustodial parent's address/asset location is unknown. For example, if income withholding is in place and the child support obligation is being met as ordered, then locating the noncustodial parent (NCP) may not be required under the regulations. Federal regulations only require locate activity when locating the noncustodial parent is required before you can take the next action in the case.

### ***What you need to know***

1. Examples of "appropriate state agencies" specifically appearing in the Federal locate regulations include agencies maintaining records of:
  - Public assistance
  - Wages and employment
  - Unemployment insurance
  - Income taxation
  - Driver's licenses
  - Vehicle registrations
  - Criminal recordsMost of these state agencies maintain web sites and locate information may be available on-line.

## **2.2.2**

## Scope of Locate



According to the Federal locate regulations, the IV-D office must undertake locate activity in all cases where the location of the noncustodial parent (NCP) or the location of the NCP's income/assets is "necessary" to take the next appropriate action in the case. Examples of locate resources that the regulations identify include:

- The Expanded Federal Parent Locator Service (FPLS)
- Relatives and friends of the NCP
- Current and past NCP employers and unions
- Local telephone companies
- The U.S. Postal Service
- Financial references
- Appropriate state agencies.

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display **PowerPoint Slide 2-3: Federal Locate Regulations (2)**.
2. Explain to the participants that it is a IV-D plan requirement that states develop guidelines to define “diligent efforts to serve process.” According to OCSE-AT-89-15, when states exhaust the procedures outlined in these guidelines but are unsuccessful in their attempts to serve process, then the Federal case processing timeframes for other program remedies (e.g., paternity establishment) do not apply to that case.
3. Stop displaying **PowerPoint Slide 2-3** and conduct the following activity: Ask the participants for examples of when it is unnecessary for a IV-D office to repeat unsuccessful locate efforts. You may use the flipchart to record their responses. One example occurs when initial locate efforts fail to uncover any information on an alleged father beyond his first name. In this case, the IV-D office need not repeat locate efforts because there is insufficient identifying information in the case.

### *What you need to know*

- 1 According to commentary accompanying OCSE’s final case closure regulations (OCSE-AT-99-04), case closure is appropriate when legitimate locate efforts fail to locate putative fathers or obligors due to inadequate identifying or location information.

### 2.2.3

## **Locate Timeframes**

According to the Federal locate regulations, within “no more than 75 calendar days” of a IV-D agency’s decision that locate action is needed to take the next appropriate action in a case, the agency must access all appropriate locate resources, including the FPLS. The Federal locate regulations’ timeframes apply to non-military and military cases alike.

### **2.2.4 Repeating Locate Activities**

When locate attempts fail, Federal regulations require the IV-D agency to repeat locate efforts on the case. Repeating locate efforts is required either quarterly or immediately upon the receipt of new information that may aid in the locate effort. For example, if a custodial parent contacts the IV-D office with updated address information, upon receiving that “new information,” the IV-D office must repeat locate activities immediately. However, there must be “adequate identifying and other information” in the case to justify repeating the locate efforts.

### **2.2.5 Case Closure**

Federal regulation 45 C.F.R. § 303.11 allows the state IV-D agency to close a case where the NCP’s location is “unknown and cannot be identified after diligent efforts using multiple sources, in accordance with Sec. 303.3, all of which have been unsuccessful...” The amount of time that the IV-D office must pursue locate efforts prior to closing a case depends upon the amount of information that the IV-D office has concerning the NCP. If the IV-D office has sufficient information to initiate an automated locate effort (i.e., the NCP’s name and Social Security number), the case can be closed after three years of unsuccessful locate efforts. However, if the IV-D office does not have sufficient information on the NCP to initiate an automated locate effort, the case can be closed after one year of unsuccessful locate efforts.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 2-4: Locate Resources for Military**.
2. Examples of “appropriate state agencies” specifically appearing in the Federal locate regulations include agencies maintaining records of:
  - Public assistance
  - Wages and employment
  - Unemployment insurance
  - Income taxation
  - Driver’s licenses
  - Vehicle registrations
  - Criminal records

---

### ***What you need to know***

## 2.3 IV-D LOCATE RESOURCES

It is important to remember that all of the IV-D locate resources available to the IV-D office in civilian cases are also available in cases involving the military. In fact, today's IV-D locate resources are particularly impressive due to the enhancements in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).



### 2.3.1 Local Locate and State Parent Locator Service Resources

As stated earlier in section 2.2.2 of this module, Federal regulations require the state IV-D agencies to undertake specific locate activity when the location of the noncustodial parent, or his/her assets, is unknown. Even in cases involving the military, a local IV-D office may be able to locate the individual by completing the locate activity identified in the Federal regulations. For example, if the current location of the service member is unknown, but you know that this individual has parents, family, friends, or prior employers in your area, you may be able to locate the service member by contacting these leads. If a local IV-D office is unsuccessful in its attempts to locate the service member, the locate effort should be referred to the State Parent Locator Service. According to 45 C.F.R. § 302.35, it is a state IV-D plan requirement that all states operate State Parent Locator Services (SPLS). The SPLS must maintain working relationships with all appropriate agencies in order to use effectively that state's locate resources. In many cases, an automated review of the records of other state agencies may provide information that will assist in locating the individual.



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Stress to participants that the FPLS remains the most reliable and most timely locate resource in cases involving a member of the military.
2. In addition to obtaining address information, the FPLS can provide a service member's date of birth. As revised by PRWORA, another important enhancement to the FPLS is the assistance it receives from the Social Security Administration in verifying, correcting, and supplying Social Security numbers. The FPLS statute, 42 U.S.C. § 653(j)(1)(B), provides that:
  - The Social Security Administration shall verify the accuracy of, correct, or supply to the extent possible, and report to the Secretary, the following information supplied by the Secretary pursuant to subparagraph (A):
    - (i) The name, Social Security number, and birth date of each such individual.
    - (ii) The employer identification number of each such employer.
3. According to 45 C.F.R. §§ 302.35(b) & 303.70(a), the SPLS may designate additional IV-D offices (IV-D staff) that have the authority to submit locate requests directly to the FPLS.
4. Inform participants that there are local (i.e., information limited to that particular office or installation) and national military locate resources.

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### ***What you need to know***

1. PRWORA's major enhancements to the Federal Parent Locator Service included:
  - Creation of the National Directory of New Hires
  - Creation of Federal Case Registry of Child Support Orders
  - Increased access to income, benefit (including unemployment benefits and health insurance), and asset information.

## **2.3.2**

## **Expanded Federal Parent Locator Service**

The Expanded Federal Parent Locator Service (FPLS) is arguably the most important IV-D locate tool in military cases. In addition to many locate resources not available directly to the local IV-D office or SPLS, the Expanded FPLS includes an exclusive interface with the Federal Social Security Administration's database. The FPLS/Social Security Administration interface can be particularly beneficial to cases involving the military.

As previously noted, all correspondence with military locate resources must include the full name and Social Security number of the individual you are attempting to locate. Does this mean that if you do not have the individual's Social Security number, you will not be able to locate him/her? Not necessarily.

One of the services that the Social Security Administration provides the FPLS is supplying or correcting missing or inaccurate Social Security numbers. Due to this feature, it may be necessary to query the FPLS in order to obtain a military member's Social Security number before initiating specific locate activity with the military. However, keep in mind that an individual IV-D employee cannot request such services directly from the FPLS. According to Federal regulations, only an SPLS (or any additional IV-D offices designated by the SPLS) may submit requests for information to the FPLS.

Each month, the FPLS also accesses records of the Department of Defense (DoD) for civilian employees of the DoD and military retirees. The FPLS accesses the records of the Veterans Administration (VA) on a weekly basis. The VA provides the address an individual has designated for receipt of VA benefits. Unlike the WorldWide Locator Services, the FPLS can obtain and disclose both duty station and home addresses of all military and civilian DoD employees.

### **2.4 MILITARY LOCATE RESOURCES**

In addition to the FPLS, IV-D caseworkers should know that several *military* locate resources exist on the local and national levels. It is important to keep in

### TRAINING NOTES

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#### *What you need to say/do*

1. Explain to participants that in a limited number of cases, the military's disclosure of residence or duty stations may compromise national security because it is evidence of troop movements. This is particularly true when the United States is involved in military conflict but may also be true when the nation is at peace.
2. Explain to participants that, in 2003, the Army suspended its World Wide Locator Service. Except for the Coast Guard, all other branches continue to provide this service to the IV-D community upon a written request. (The Coast Guard asks that IV-D offices submit locate requests to the Coast Guard's WorldWide Locator Service via e-mail.) In cases involving the Army, the Army's WorldWide Locator Service continues to provide address information to the military member's spouse.
3. Ask participants to suggest local military locate resources. Write them on the flipchart. Discuss how military installations, legal assistance offices, and military recruiters can provide locate information.
4. Explain to participants that knowledge of the service member's commanding officers is very important. In cases where the service member is not cooperating with your official child support duties, that person's chain of command can be called upon to enlist the service member's cooperation.
5. Remind participants that when using the individual's chain of command, they should document previous attempts undertaken to obtain the information and explain the need for the information.
6. Provide this **practice tip** to participants: To help avoid delays in locating a new military address, when corresponding with a commander always ask to be informed of the member's next duty station in the event of a reassignment.

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#### *What you need to know*

1. An "authorized client" (service member, member's spouse, and member's dependent children) may consult with a legal assistance attorney at any military base.

mind that, for the best results, you should always use the military member's full name and Social Security number in all locate actions involving the military.

Due to the nature of military service, the residence address and duty station (work address) for 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. As all branches of the military review their address disclosure procedures, it is becoming more difficult to obtain address information from the military. For example, in 2003, the U.S. Army's WorldWide Locator Service stopped providing address information to the general public (including state and local IV-D offices).

#### **2.4.1 Local Military Locate Resources**

Local military resources provide locate information that is more limited than national military resources. However, if you can narrow the location of the service member to a particular installation, the local military resource may be the quickest. The best local military locate resource is the military installation. An installation often maintains a central locator office to keep track of the individuals assigned to that installation. If you believe that the individual you are attempting to locate is assigned to a given military installation, you can contact that installation's locator office to obtain the service member's military unit address. The telephone number for an installation's locator office is available through the installation's information operator. In order to obtain the individual's military unit address, you must have that person's full name and Social Security number. The individual's military unit address is important because it allows you to contact the individual and, if the member fails to cooperate, his/her commanding officers.

The military's legal assistance attorneys are another local locate resource. Most large military bases maintain legal assistance offices. Their duties include

## TRAINING NOTES

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### *What you need to say/do*

1. Before beginning section 2.4.2, direct participants to the Appendix for **Handout 2-1: Military Locator Services**.
2. It may seem obvious, but remind participants to contact the *appropriate* WorldWide Locator Service. That is, if the individual they are attempting to locate is in the Navy, they should contact the Navy's WorldWide Locator Service.
3. Advise participants to avoid making locate requests to the WorldWide Locator Services between the months of May and October, due to the delays in updating records following reassignments combined with the fact that most reassignments occur in the summer.

### *What you need to know*

1. The military encourages its recruiters to cooperate with official IV-D locate efforts as a matter of good public relations.
2. Because the structure/format of the military address is foreign to most civilians, in all correspondence with military locate services it is important to double-check the alphanumeric address information that comprises the military address.
3. Due to the lag time in receipt of assignment information, a caseworker may find that the address on file with the WorldWide Military Locator Service is an old one, or that there is no record of the service member because he or she has been active for less than three months.

assisting spouses and dependent children in obtaining the military service member's military address. Recruiting offices may also provide locate information, but they are not the "best" starting point for child support caseworkers. Cities often have multiple recruiting offices so the caseworker would need to know which recruiting office enlisted the service member. The recruiter's information is also very time sensitive; the recruiting office will only have records regarding the member's initial duty station. If the member enlisted more than a year ago, locate information from the recruiting office will be of little value.

#### **2.4.2 National Military Locate Resources**

Each military branch maintains a WorldWide Locator Service and, except for the Army, all branches provide IV-D offices with locate information free of charge. For active duty members, the address information that the WorldWide Locator Services provide is the member's unit address, which may include an APO (Army Post Office) or FPO (Fleet Post Office) address if the member is overseas. To determine the actual geographic location of an APO or FPO address, contact the U.S. Postal Service or the postal offices at the nearest military installation.

In order to service a request, the military's WorldWide Locator Services need 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, that information should also be provided. In deciding when to contact a WorldWide Locator Service, keep in mind that military records may run up to 90 days behind reassignments and most reassignments occur in the summer.

## TRAINING NOTES

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### *What you need to say/do*

1. Direct the participants to the module Appendix for **Handout 2-2: Sample Letter to Request Home Address** (a sample copy of a *Freedom of Information Act* request used to request a service member's home address). Stress the fact that the agency director must sign FOIA requests to the military. Advise participants that all branches, *except the Army*, accept these FOIA requests. Although a IV-D office cannot obtain locate assistance from the Army's WorldWide Locator Service, a custodial parent can obtain locate assistance, provided paternity is not in issue.
2. Explain to participants that the Defense Manpower Data Center (DMDC) maintains a website ([www.dmdc.osd.mil](http://www.dmdc.osd.mil)) that allows *registered* users to verify if an individual is in the military service. To become a registered user, an individual completes a brief on-line application at the DMDC website. However, this DMDC information does not *locate* the individual in question; it simply verifies whether the individual is in the service.

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### *What you need to know*

Usually the member's military address is more useful than his or her home address. While the service member may be away from his or her home address for several months at a time, the member is rarely away from his/her military address for more than two weeks at a time. In addition, by concentrating your casework efforts on the military address, you are in a better position to call upon the assistance of the individual's chain of command. If, however, you need the service member's home address, direct your request to the installation personnel officer for the member's duty station. If necessary, a IV-D office may also use the Freedom of Information Act (FOIA), 5 U.S.C. § 522a, in its attempt to obtain the home address of a military member. All branches except the Army will accept the written FOIA request for this purpose. Direct a FOIA request for a service member's home address to the General Counsel for the appropriate branch of the military. See **Handout 2-2** in the Appendix.

If you need to locate a service member who is incarcerated in a military brig, contact the legal office or military police of the member's last duty station. To assist them with their search, provide an approximate date of the member's conviction.



## TRAINING NOTES

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### *What you need to say/do*

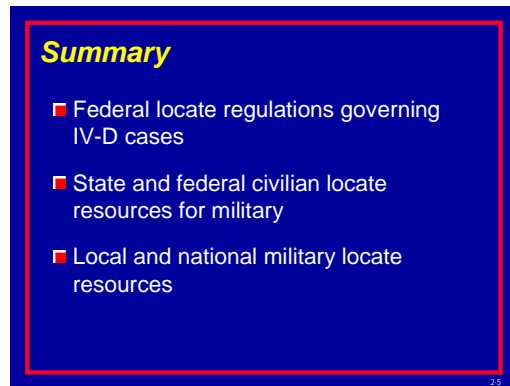
1. Direct the participants to **Handout 2-3: Review Exercises** in the appendix. Allow participants approximately 20 - 30 minutes to review and complete the exercises on their own. At the conclusion of that time, facilitate a group discussion of the exercises. Record participants' identification of issues and responses on the flip chart.
  2. After completion of the exercises, display **PowerPoint Slide 2-5: Summary**.
  3. Inform participants of the topics that Module 3 will explore.
- 

### *What you need to know*

## 2.5 EXERCISES

The trainer will facilitate a discussion of **Handout 2-3: Review Exercises**.

## 2.6 SUMMARY OF MODULE 2



In this module we:

- discussed Federal locate regulations that govern IV-D cases,
- identified state and Federal civilian locate resources for military cases, and
- identified local and national military locate resources.

## 2.7 PREVIEW OF MODULE 3

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

- personal jurisdiction and in rem jurisdiction,
- personal jurisdiction based on domicile, physical presence, and long-arm statutes,
- the difference between military installations with exclusive Federal jurisdiction and with concurrent or proprietary jurisdiction,
- service of process on U.S. installations,
- service of process on overseas installations,
- service of process on board a ship.



# **Module 3**

## **Service of Process on Military Personnel**

## **TRAINING NOTES**

**THIS MODULE IN ITS ENTIRETY MAY NOT BE APPROPRIATE FOR ALL CASE WORKERS. THE COMPLEXITY OF SOME OF THE MATERIAL (SUBSECTIONS 3.2.2.1, 3.2.2.2, AND SECTION 3.4.2) MAY BE MORE APPROPRIATE FOR SENIOR STAFF AND/OR ATTORNEYS. THE TRAINER MAY DELETE THOSE PORTIONS OF THE MODULE THAT ARE NOT RELEVANT OR APPROPRIATE TO THE TARGET AUDIENCE.**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 3-1: Service of Process on Military Personnel**.
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 3.
3. Explain the goals and objectives of this module.

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### ***What you need to know***

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

### **Equipment/Supplies:**

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

### **PowerPoint Slides**

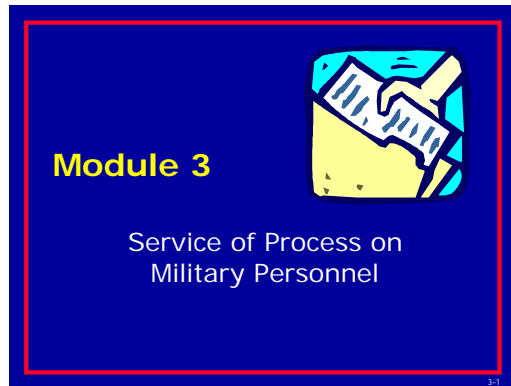
- 3-1: Service of Process on Military Personnel
- 3-2: Types of Jurisdiction
- 3-3: Personal Jurisdiction over Member
- 3-4: Obtaining Personal Jurisdiction over Military Member
- 3-5: Long Arm Jurisdiction
- 3-6: Long Arm Jurisdiction (cont'd)
- 3-7: United States Installations
- 3-8: Voluntary Acceptance of Service
- 3-9: Overseas Methods of Service
- 3-10: Service on Board a Ship
- 3-11: Exercise Scenarios
- 3-12: Summary

### **Handouts:**

- 3-1: USM-94
- 3-2: Service Contacts for Assistance
- 3-3: Excerpts from Hague Service Convention
- 3-4: Review Exercises

## MODULE 3: SERVICE OF PROCESS ON MILITARY PERSONNEL

Time: 1 hour, 15 minutes



### 3.1 SERVICE OF PROCESS ON MILITARY PERSONNEL

#### 3.1.1 Learning Goal

- Each participant will understand the methods and procedures for the service of civil process on military personnel located on United States military installations and ships in United States waters, and for military personnel located at overseas locations.

#### 3.1.2 Learning Objectives

- Given a participative lecture, participants will demonstrate an understanding of how to serve process on military personnel stationed at military locations in the United States and what limitations may be encountered.
- Given a participative lecture, participants will demonstrate an understanding of how to serve process on military members who are located at overseas installations or on ships in non-United States waters.
- Through a discussion of scenarios, participants will identify issues related to service of process on military personnel and propose solutions.

## TRAINING NOTES

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### *What you need to say/do*

1. Display **PowerPoint Slide 3-2: Types of Jurisdiction**.
2. Explain the difference between personal jurisdiction and *in rem* jurisdiction.

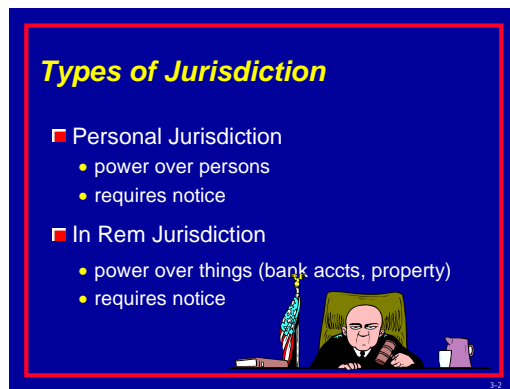
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### *What you need to know*

## 3.2 JURISDICTION OVER MILITARY PERSONNEL

### 3.2.1 Overview

The first step in establishing or enforcing a support obligation against a military member is location of the member. Assuming that location is not an issue, the next critical step is obtaining jurisdiction. Obtaining jurisdiction over military members is similar to obtaining jurisdiction over civilians. Military service, however, creates interesting issues.



First, let's discuss the basics of jurisdiction. Some legal actions, like paternity or support establishment, require personal jurisdiction over the military member. Other legal actions, like seizure of a bank account, require jurisdiction over the military member's property or asset. Common to both types of jurisdiction is the requirement that the person must receive notice of the proceeding. Notice is accomplished through service of process.

### 3.2.2 Personal Jurisdiction

Personal jurisdiction over the petitioner (e.g., child support obligee) usually is not an issue; by bringing the legal action, the person is consenting to the tribunal's jurisdiction over him or her.



## **TRAINING NOTES**

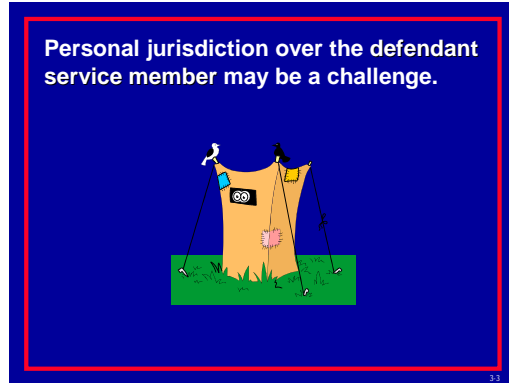
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### ***What you need to say/do***

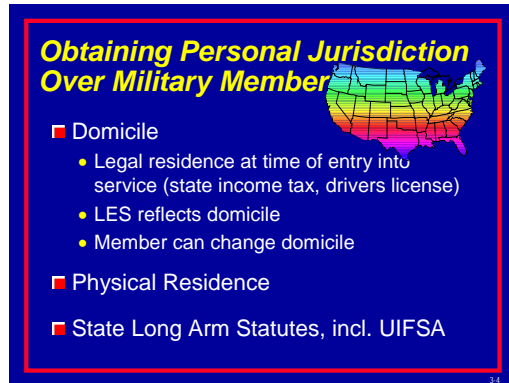
1. Display **PowerPoint Slide 3-3: Personal Jurisdiction over Member.**
2. Display **PowerPoint Slide 3-4: Obtaining Jurisdiction over Military Member.**
3. Explain how a military member's domicile and residence may or may not be the same.
4. Field 44 of the leave and earnings statement (LES) will show a service member's legal domicile, but does not give the member's physical residence or location. See **Handout 6-2** in the Appendix.

### ***What you need to know***

1. A military member retains legal residency in the state in which he or she entered military service, unless the member takes affirmative acts to change his or her legal residence/domicile. The main reason for a change in domicile is state income tax laws. The military leave and earnings statement (LES) notes the state of domicile or legal residency that the member claims in field 44.



Personal jurisdiction over the defendant may be more problematic.



Personal jurisdiction can be based on a person’s domicile, physical residence, an act within the state that gave rise to the cause of action, or “minimum contacts.”

### 3.2.2.1 *Domicile*

A person’s domicile is not always the same as his or her physical residence. This is especially true with the military. Domicile requires intent: A person is domiciled in a state if he intends to make that place his fixed home for legal purposes at least for the time. A military member generally keeps the domicile he or she had at the time he or she entered military service. Box 44 of the military member's Leave and Earnings Statement (LES) will reflect that state as the member’s domicile until the member actively changes it for state income tax purposes. See **Handout 6-2** in the Appendix. Therefore, the LES will always

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-4: Obtaining Jurisdiction over Military Member**.
2. Explain to participants that when the Uniform Interstate Family Support Act (UIFSA) requires “residence,” it is referring to physical residence, not domicile. The Official Comment to Section 205 expressly states that “residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.” However, there is UIFSA case law in some states that equates a military member’s residence with where a military person claims legal domicile.
3. Display **PowerPoint Slide 3-5: Long Arm Jurisdiction**.
4. Explain to participants that UIFSA’s long arm provisions for establishment and enforcement of support apply to military members just as they do to civilians.

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### ***What you need to know***

1. Section 201 of UIFSA, which is the long-arm provision for establishment of a support obligation against a nonresident, includes as bases of jurisdiction that:
  - the individual resided with the child in the forum state
  - the individual resided in the forum state and provided prenatal expenses or support for the child
  - the child resides in the forum state as a result of the acts or directives of the individual.
2. Section 205 of UIFSA (as amended in 2001) defines continuing, exclusive jurisdiction to modify a child support order:
  - (a) A tribunal of this State that has issued a child-support order consistent with the law of this State has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:
    - (1) at the time of the filing of a request for modification this State is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
    - (2) even if this State is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order.
  - (b) A tribunal of this State that has issued a child-support order consistent with the law of this State may not exercise continuing, exclusive jurisdiction to modify the order if:
    - (1) all of the parties who are individuals file consent in a record with the tribunal of this State that a tribunal of another State that has jurisdiction over at least one of the parties who is an individual or that is located in the State of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
    - (2) its order is not the controlling order.

reflect where a member claims domicile or legal residence for state income tax purposes. It is important to note, however, that the LES does not show the physical residence of the service member. Often a military member's domicile is one state, but his or her physical residence is another, or many others, for the member's entire military career.

### **3.2.2.2 *Physical Residence***

Jurisdiction based on physical residence is especially important in an interstate case. Every state has enacted the Uniform Interstate Family Support Act (UIFSA). In both the long arm provision of UIFSA, discussed below, as well as its definition of "continuing, exclusive jurisdiction," the Act refers to "residence." A tribunal may decide that a military member has two residences: his state of legal domicile and the state where he is physically stationed. According to the reporter to the Act, the tribunal that is able to most accurately determine the ability of the noncustodial parent to pay support (and therefore should hear the case) is in the state of the parent's current physical residence.

### **3.2.2.3 *Long Arm Jurisdiction***

State long arm jurisdiction statutes provide a means for a court or administrative tribunal to exercise personal jurisdiction over a military member who is not a resident in the state. The Uniform Interstate Family Support Act (UIFSA) contains a very expansive long-arm statute for use in the establishment and enforcement of support obligations. It can be used to obtain personal jurisdiction over a nonresident military member, just as it can over a nonresident civilian.

## TRAINING NOTES

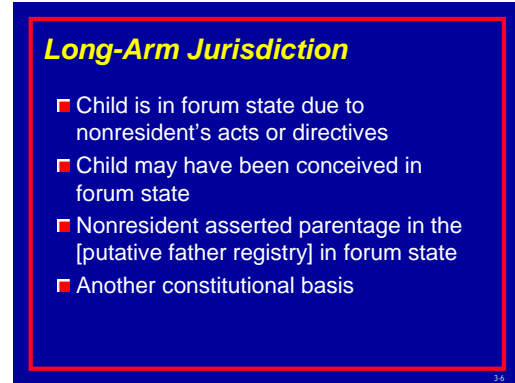
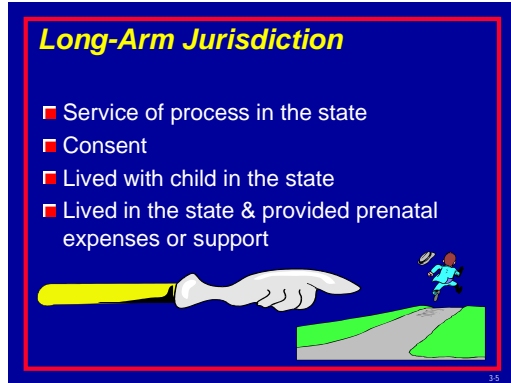
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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-5: Long Arm Jurisdiction.**
2. Define service of process for participants.
3. With regard to “personal service within the forum state,” provide participants with a **Practice Tip:** Ask the member’s commanding officer when the member has scheduled leave. A good time to attempt personal service is during the holidays.
4. Explain to participants that they can serve process on military members in much the same manner as on civilians. However, military members may often be moving targets because of reassignments.
5. Inform the participants that there is no central service of process location or organization for the entire military or for each military department.
6. Display **PowerPoint Slide 3-6: Long Arm Jurisdiction (cont’d).**

### ***What you need to know***

1. According to UIFSA’s Official Comments, the intent of the 2001 changes to Section 205 were not substantive, but rather to clarify the original intent of the Drafting Committee: “. . . [S]ubstitution of the term “is the residence” for the term “remains the residence” makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. Thus, if there is but one order, it is the controlling order in effect and enforceable throughout the United States, notwithstanding the fact that everyone has left the issuing State. If the order is not modified during this time of absence, a return to reside in the issuing State by a party or child will immediately identify the proper forum at the time of filing a proceeding for modification. Although the statute does not speak explicitly to the issue, temporary absence should be treated in a similar fashion. Temporary employment in another State may not forfeit a claim of residence in the issuing State, *State ex rel. Havlin v. Jamison*, 971 S.W.2d 938 (Mo. App. 1998). Of course, residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.”



UIFSA authorizes a tribunal to exercise jurisdiction over a nonresident if:

- the individual is personally served with [citation, summons, notice] within the forum state;
- the individual submits to the jurisdiction of the forum state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- the individual resided with the child in the forum state;
- the individual resided in the forum state and provided prenatal expenses or support for the child;
- the child resides in the forum state as a result of the acts or directives of the individual;
- the individual engaged in sexual intercourse in the forum state and the child may have been conceived by that act of intercourse;
- the individual asserted parentage in the [putative father registry] maintained in the forum state by the [appropriate agency]; or
- there is any other basis consistent with the constitutions of the forum state and the United States for the exercise of personal jurisdiction.

### 3.2.3 Service of Process

In order to obtain jurisdiction over an individual, due process under the United States Constitution also requires notice of the proceeding. “Process” is a legal document that compels an individual (or entity) to appear in court or to comply with a demand by a court. Service of process is the delivery of the document to the individual to notify him or her of a claim or charge against the individual, or to inform the individual of specific acts that he or she is required to perform. While

## **TRAINING NOTES**

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### ***What you need to say/do***

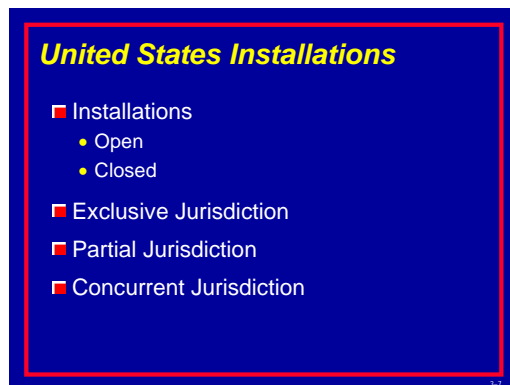
1. Identify the three methods for service of process that are applicable to both civilians and military members who reside off base.
2. Display **PowerPoint Slide 3-7: United States Installations**.
3. Explain to the participants that a military installation is very similar to a city, with all of the normal amenities associated with city life.
4. Explain the concept of an "open" versus a "closed" installation and how it affects access to the installation. After 9/11, most installations are closed or are in the process of becoming closed installations.

### ***What you need to know***

1. Military members are located all over the United States and the world. The transient nature of military service can often make service of process a challenging event. The procedure for service of process on military members is similar to the procedures for civilians, but certain aspects will be different depending on the military member's location.
2. The actual service of process on a military member who resides in the civilian community is the same as that on a civilian. Military status, in and of itself, does not insulate a military member from service of process.

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

### 3.3 UNITED STATES MILITARY INSTALLATIONS



Military installations in the United States exist in every state. Their personnel may live in barracks-type apartment dwellings, as well as in family style housing in neighborhoods. As you may have noticed if you have ever driven by or through an installation, its appearance is often very much like a city, with neighborhoods, commissaries or grocery stores, fast food franchises, gas stations, and shopping centers. Military installations may be "open" or "closed." Members of the public, without any special permit or status requirements, usually freely travel throughout an "open" installation. A "closed" installation has "checkpoints" manned by security that requires those entering the installation to have special vehicle permits or identification cards, or possess some need to enter the installation. Closed installations are becoming the norm.



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-7: United States Installations**.
2. Explain the difference between exclusive, partial, concurrent, and proprietary jurisdiction.
3. Provide an example of how process would be served in each of the different types of installations.
4. Refer participants to **Handout 3-2: Service Contacts for Assistance**.

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### ***What you need to know***

1. In an exclusive Federal jurisdiction with no State reservation for service of process, military authorities can merely inform the military member of the request to serve process and seek voluntary acceptance. On installations with concurrent or proprietary jurisdiction, or where service of process has been reserved by the State, a civilian official may serve process on the installation. Virtually no installation is exclusive Federal jurisdiction with no State reservation for process.
2. If state service of process is permitted on a military installation, the service of process is usually centralized to prevent civilian law enforcement or process servers from disrupting military activities.
3. Both the Army and Navy have published rules for service of civil process within the United States. Army regulations are at 32 C.F.R. § 516.10 (2001). They provide that on Federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent or proprietary jurisdiction, the commander or supervisor will first determine if the individual wishes to accept service voluntarily. If the member declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the installation commander.

### **3.3.1**

### **Service by Mail**

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

### **3.3.2 Personal Service**

If the remedy requires personal service -- e.g., an establishment action or a contempt action -- you may have more difficulty obtaining service. Military installations in the United States fall within one of four categories of legislative jurisdiction: exclusive, partial, concurrent, and proprietary jurisdiction. These distinctions, often rooted in decades-old documents in which the various states ceded land to the Federal government for military installations, are very important with regard to serving state process on military members located on the installations.

- *Exclusive Federal Jurisdiction with No State Reservation for Service of Process:* There are a few exclusive Federal jurisdiction installations where a state official cannot serve process on the installation. The installation's central point of contact for service of process will determine if the military member wishes to voluntarily accept service of process. The member will be advised to consult with a military or private attorney about the legal effect of voluntary acceptance. If the member decides not to accept service, the authority requesting service will be so informed, along with the explanation that exclusive Federal jurisdiction prevents service by state authorities on the military installation.
- *Partial Jurisdiction:* On partial jurisdiction installations, the state has retained the power to apply its laws in some areas while in remaining matters Federal law controls. On virtually all partial jurisdiction installations, the states have retained the power to serve process.
- *Concurrent and Proprietary Jurisdiction:* If the military installation is under concurrent or proprietary jurisdiction, the state has the right to serve process on the installation according to state laws. A sheriff or other proper civilian official may therefore enter the installation, contact the local military police, identify the person to be served, and attempt service. The installation's central point of contact for service of process will facilitate service using the procedure put in place by the installation or garrison commander.

## **TRAINING NOTES**

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### ***What you need to say/do***

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### ***What you need to know***

1. The installation's legal office can provide information regarding how process is served on a particular installation. Where state service of process is permitted, usually either the Provost Marshall or the installation's law enforcement section will assist with service.
2. Regulations governing the Navy and Marines are at 32 C.F.R. § 720.20 (2001). In order to protect against interference with mission accomplishment and to preserve good order, service cannot be made without the commander's consent. Where practical, the commanding officer of a naval installation will require that the process be served in his presence or in the presence of a designated officer. The regulations distinguish a request to serve process aboard an installation that is made by a process server from a state court in the jurisdiction where the naval station is located from a request that is made by an out-of-state process server. In the former case, regulations provide that the command ordinarily should not prevent service of process so long as delivery is made in accordance with reasonable command regulations. If service is permitted, the commander should designate an appropriate location where the process server and the member can meet privately. Where the process is to be served by someone from an out-of-state jurisdiction, the named military member is not required to accept service. Therefore, the process server and the member need not meet face-to-face. Rather, the process server should report to the designated command location while the member named is contacted and advised that he may accept or refuse service.
3. Army Regulation 27-40, Litigation, sets forth the policy of the Army on service of process.

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

If you experience problems with service of process on a military installation, your first call should be to the legal assistance office for the installation involved. Establishing and maintaining a good relationship with the installation legal office will assist you greatly in carrying out your duties. Remember, military authorities with questions concerning service of process will ask the installation legal office, or their legal advisor, about what is permissible and what is not. Military members who are not subject to compulsory process will also often seek legal help from the installation legal assistance office. If a legal assistance attorney on behalf of a military member contacts you about your state's laws regarding service of process or child support, inform him or her of the possible consequences for delays in establishing or enforcing an order, such as an award of retroactive support or the accrual of an arrearage.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 3-8: Voluntary Acceptance of Service**.
2. Explain the role of the military legal assistance office with respect to advising military members faced with child support and service of process issues.
3. Highlight the fact that while military commanders may not serve process, they can be a valuable asset in persuading a military member to voluntarily accept service. Give the participants an example of how a failure to accept service could affect readiness. For example, the accumulation of an arrearage in excess of \$5,000 precludes the issuance of a personal passport that may be needed for a mission requirement.
4. Explain that there are few restrictions to service of Federal process on a military installation.

### ***What you need to know***

1. A service member's personal passport ("blue" passport) falls under the Federal law prohibiting the issuance or renewal of a passport when the person owes more than \$5,000 in child support arrears. A "red" or official passport may not. However, many countries require a personal passport, even if the person is travelling on official government business.



Contacting a military member's commander may also assist in obtaining voluntary acceptance of service. If communicating with the commander by mail, ask the officer to provide the service member the opportunity to accept service. Enclose with the request the summons, a copy of the complaint or motion, and a return of service for the commander or other official to complete. In the letter to the commander, mention the possible negative effects if the member fails to accept service. The military commander cannot serve process for you. He or she can, however, discuss with the military member the potential consequences of his or her failure to take care of civilian proceedings concerning child support, which may include adverse effects on a military member's readiness.

Service of process for Federal courts has fewer limitations than service of process for state courts. Regardless of whether the installation is exclusive or concurrent Federal jurisdiction, civil officials are permitted to serve Federal process. The only restrictions are those reasonable restrictions that the installation or garrison commander imposes.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Explain to the participants that they can serve process on military members overseas in the same manner as on military members in the United States.
3. Provide the participants with the **Practice Tip** that if service by certified mail, return receipt requested, has been unsuccessful due to the failure of the military member to accept service, they should enclose a second set of documents in an envelope to the military postal officer of the APO or FPO where the military member is located, seeking assistance with delivery.
4. The benefit of certified mail, return receipt requested, is that the status of the letter can be tracked through the United States Postal Service website.

### ***What you need to know***

1. The date that a service member is expected to return from an overseas assignment is known as the DEROS. This date can be found in personnel documents and may be useful in determining whether attempts at overseas service are viable or whether it is better to wait until the service member returns to the United States.

### 3.4 OVERSEAS INSTALLATIONS AND LOCATIONS



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

#### 3.4.1 Service by Mail

Just as with United States installations, service of process by mail, if permitted by your State, is an easy and efficient method of service. Military postal clerks follow the same guidelines as the United States Postal Service. Although the address may be an Army Post Office (APO) or Fleet Post Office (FPO), it is still U.S. mail, and again, certified mail and “return receipt requested” services are available.

If you do not receive a return receipt for service sent to an overseas installation, prepare a second set of documents and place them in an envelope addressed to the military member, with the return receipt affixed and postage paid. Place this envelope into a larger one and address the outside envelope to the military postal officer for the APO or FPO where the military member is located. Include a memo to the postal official that details your previous efforts to obtain a return receipt and ask that proper postal procedures be followed to deliver the envelope to the military member and to send the return receipt to you.



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Identify four alternatives to service by mail on a military member located on an overseas installation or location.
3. Refer participants to **Handout 3-3: Excerpts from the Hague Convention**. Discuss the concept of a central authority under the Hague Convention and what role it plays in service of process overseas.

### ***What you need to know***

1. Service of process overseas may be accomplished through a variety of methods, each with their strengths and limitations. The laws of the host nation -- in addition to any conventions, treaties, or Status of Forces agreements -- may affect the method and manner in which process may be served.
2. Korea and most other Far Eastern countries are not signatories to the Hague Conventions.
3. The best source of information on service of process in overseas locations is the United States Department of State website at [www.state.gov](http://www.state.gov).

As long as you have the number for the certified mail you sent, you can go to the United States Postal Service website at [www.usps.com](http://www.usps.com) to track the mail's status.

### **3.4.2 Alternative Methods of Service Abroad**

If service of process by mail is not permitted, a variety of alternative methods are available depending on the specific state and foreign law involved, including:

- Service by a Foreign Authority Pursuant to a Treaty or Convention
- Personal Service by a Foreign Agent (Foreign Attorney or Process Server)
- Voluntary Acceptance of Service
- Service by a Letter of Request (Letters Rogatory) to a Foreign Authority

Each method has its strengths and limitations. For detailed information on service of process in overseas locations, see the Department of State website at [www.state.gov](http://www.state.gov).

#### ***3.4.2.1 The Hague Convention***

The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents codifies service of process by international registered mail and by a foreign agent. It is in force in 73 countries, covering virtually all of the nations where United States military members are stationed. An exception is Korea, which is not a signatory. The full text of the treaty can be found in the Martindale-Hubbell International Law Digest, Vol. III. It is a subset of the 27 volume Law Directory. The treaty text can also be found in the appendix to Federal Rule of Civil Procedure 4. The latter resource is particularly useful because it lists any special requirements of the signatory nation; for example, some countries require that the documents be translated into their language.

Advantages of the Hague Convention are its relative ease and lower expense as compared to other methods of service abroad. A limitation is the length of time it

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display PowerPoint Slide 3-9: Overseas Methods of Service.
  2. The request form under the Hague Convention merely states the name and address of the person to be served and the desired method of service.
  3. The Convention spells out three alternative methods of service:
    - service according to the local law of the foreign jurisdiction to which the request was sent;
    - service by a particular method specified in the request; or
    - service by delivery to the addressee if he or she agrees to voluntarily accept it.
  4. Have the participants look at **Handout 3-1: USM-94**, located in the Appendix. Walk the participants through the serving process under the Hague Service Convention.
  5. Refer participants to **Handout 3-2: Excerpts from the Hague Convention**.
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### ***What you need to know***

1. A child support worker should closely heed the following caveats in all cases where service is attempted through the Hague Convention:
  - read and follow the Convention to the letter;
  - carefully check the “Declarations” of the country in which he or she is seeking service (e.g., some countries object to certain forms of service);
  - always provide a translation of the documents to be served even if the recipient country does not require it;
  - be certain that he or she has selected a form of service that will satisfy state law for the type of action that is being brought in the United States;
  - include a warning and detailed summary putting the military member to be served on notice of the legal effect of the service; and
  - allow sufficient time for the recipient member to meet any deadline for response or to retain legal representation.
2. Effective June 1, 2003, Process Forwarding International (PFI) began acting as United States Central Authority on contract to the U.S. Department of Justice, managing all formal service of process inside the U.S. on judicial documents under the following treaties and conventions:
  - The Hague Service Convention (incoming documents)
  - Inter-American Convention on letters Rogatory (incoming and outgoing documents)
  - Letters Rogatory from non-convention countries.The contract includes the completion and return of process service within six weeks of receipt by PFI, Internet tools to track the service on-line, fee-based language translation, photo copying, and locate services. See [www.hagueservice.net](http://www.hagueservice.net).
3. The United States has a number of Status of Forces Agreements with governments throughout the world. Most of these agreements relate solely to defense related matters and many are classified. Some SOFAs address matters concerning service of process on military members located in a particular country.

takes; service through the Hague Convention is typically a six to nine month process. Service under the Hague Convention is accomplished through a country's "Central Authority." The central authority is the designated office or official, usually the Ministry of Justice, to which a request for service of process is sent. The names and addresses of the central authorities for all member countries are listed in the Convention. The request for service is sent using a Request for Service Form (USM-94), which can be obtained from a local office of the United States Marshal's Service. See **Handout 3-1: USM 94**.

The completed USM-94 and allied documents to be served, with accompanying translations, if applicable, should be mailed directly to the foreign central authority by "any competent authority or judicial officer." The U.S. Marshal will not transmit the form to the central authority. Rather, the court, or agency/ attorney representing the agency should execute the portion of the Form USM-94 marked "identity and address of the applicant," and the "name and address of the requesting authority." Reference to the authority for the request must be included in the request. State that the request is made pursuant to Rule 4(c)2(A), United States Federal Rules of Civil Procedure, and any other pertinent Federal or State law.

Unless requested otherwise, the central authority itself or its designee will serve process according to the laws for the service of process upon its own citizens. If personal service is required, it must be so noted on the form. Generally, no fees are incurred for service of process through the central authority. A central authority may bill costs of personal service in a remote location. On the reverse side of the Request for Service Form, there is a Certificate of Service form that the central authority will return to the requesting party once service is completed.

It is important to remember that a central authority may not always serve process on members of the United States military. Issues that may preclude service include Status of Forces Agreements (SOFA) and other bilateral agreements between a foreign nation and our military forces.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Explain the reciprocity agreements that exist between states and a number of countries with respect to enforcement of child support and service of process.

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### ***What you need to know***

1. Section 459 of the Social Security Act authorizes the Department of State and the Department of Health and Human Services to enter into agreements with foreign countries for child support enforcement. On May 19, 2000, the Department of State issued a public notice in the Federal Register [Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 65 Fed. Reg. 31,953 (May 19, 2000)] regarding progress in this area. Additional notices will continue to update this information as new agreements are completed. As of the date of initial posting, the U.S. had Federal reciprocal arrangements in force with Australia; the Canadian Provinces of Nova Scotia, Manitoba, and British Columbia; the Czech Republic; Ireland; Poland; Portugal; and the Slovak Republic. The United States is also participating in the Hague Conference on Private International Law's work to achieve a new multilateral treaty on child support enforcement.
2. Pursuant to UIFSA, states may also enter into reciprocal agreements with foreign countries. Currently, there are reciprocal agreements between a number of states and Australia, Austria, Bermuda, some Canadian provinces, the Czech Republic, England, Fiji, Finland, France, Germany, Hungary, Ireland, Jamaica, Mexico, New Zealand, Northern Ireland, Norway, Poland, Scotland, the Slovak Republic, South Africa, and Wales. See [http://travel.state.gov/child\\_support.html](http://travel.state.gov/child_support.html).

No Latin American country has ratified the Hague Convention. However, in 1975 and 1979, the Organization of American States countries (OAS) entered into a Convention in Panama called the Inter-American Convention on Letters Rogatory and Additional Protocol. Similar to the Hague Convention, it is in force with 12 Central and South American countries. The United States has ratified it, noting a reservation only to Article 2b that pertains to evidence. The process for service is similar to the Hague Convention, with slight changes made in the forms used, and the requirements for certifications by a clerk of court. No standard form exists for service under this convention.

#### **3.4.2.2 *Personal Service by a Foreign Agent***

This method of service is usually expensive. It is imperative that you verify with the State Department's Office of Citizens Consular Affairs or an attorney in the foreign country that you are complying with the country's current law.

You may be able to use UIFSA to seek assistance with personal service if the State Department has declared the country to be a foreign reciprocating country or political subdivision (see [http://travel.state.gov/child\\_support.html](http://travel.state.gov/child_support.html)), or if your state, as the initiating state, has a reciprocal support agreement with the country in question. In most states, the Attorney General's Office is the place to contact to determine with which countries the state has an agreement.

#### **Voluntary Acceptance of Service**

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

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display **PowerPoint Slide 3-9: Overseas Methods of Service**.
2. Explain the letter "rogatory" or letter of request, emphasizing that it is time-consuming and often inefficient.
3. Discuss how combat may affect the ability of a IV-D office to serve process.
4. Display **PowerPoint Slide 3-10: Service on Board a Ship**. Explain how a service member stationed on a ship can be served by mail.

---

### *What you need to know*

1. 32 C.F.R. § 720.20 (2001) states that if service of process is attempted from out-of-state by mail and refused by the member, the refusal should be noted and the documents returned to the sender. Questions should be referred to the staff judge advocate, command counsel, or the local naval legal service office.

### 3.4.2.3 *Letter of Request*

A Letter of Request (or Letter Rogatory) is a request from a court in the United States to a court in a foreign country requesting assistance in obtaining evidence (covered in module 5), or in effecting service of process. A letter of request is particularly used in countries where no other method of service is available. Preparing letters of request can be a time-consuming, complicated, and frustrating process. Unless no alternative exists, a letter of request should be a last resort.

### 3.4.3 Combat Situations

Problems that arise in attempting to serve process on military members can be compounded in situations where the military member is involved in contingency, or even combat, situations. Military members may be away from their normal military installation either in the United States or in a foreign country and involved in a variety of operations that may keep them away from their "home" bases for months, or even years on end. These temporary duty locations may not be able to be disclosed or may constantly be changing within a particular operation. Under such a circumstance, you may be better off seeking to have the military enforce its own support requirements, without a court order, as an interim measure.

### 3.4.4 Service on Board a Ship





## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-10: Service on Board a Ship**.
2. Explain procedures for obtaining personal service on a military member located on a ship.

### ***What you need to know***

1. The Federal requirements for attempting re-service are similar to the requirements for repeating unsuccessful locate activities.

For military members that are aboard a ship outside United States waters, the best method for service of process is through the mail, if your particular state's law permits such service. Even military members on a ship will have an APO (Army Post Office) or FPO (Fleet Post Office) address in the United States. If necessary, follow the procedures noted earlier to seek assistance in obtaining a return receipt. Explain to the officer-in-charge of the service member's military postal office that you never received a return receipt when you first mailed the notice, and request that proper mailing procedures be followed and that you receive a receipt upon the delivery of the enclosed letter to the service member. Naval regulations provide that if the member refuses service by mail, the refusal will be noted and the documents returned to the sender.

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

It is more difficult to personally serve the military member when he or she is "on land." In times of military alert, information about where a ship will port while at sea is information that the military is unlikely to disclose. It may be necessary to delay service of process until the ship returns to its "home" port, whether in the United States or at an overseas location.

### **3.5 DILIGENT EFFORTS TO SERVE PROCESS**

Federal regulations governing locate responsibilities of state IV-D agencies require that the states create guidelines defining "diligent efforts to serve process." Specifically, when prior efforts to serve process are unsuccessful but adequate information exists in the case to justify additional attempts to serve process, the guidelines must provide for a periodic repeat of efforts to serve process.

## **TRAINING NOTES**

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### ***What you need to say/do***

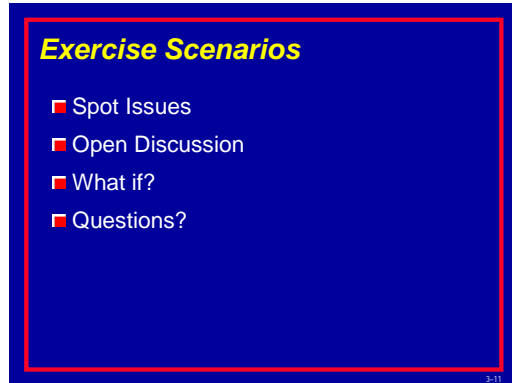
1. Display **PowerPoint Slide 3-11: Exercise Scenarios**.
2. Pass out **Handout 3-4: Review Exercises**. Have the participants count off into groups of 4. Ask them to read and discuss the exercise scenarios within their groups. Each group should identify a recorder who will note the issues related to service of process and the group's proposed answers. Inform participants that they will have 15 minutes to complete the two exercises.
3. At the end of 15 minutes, facilitate a class discussion of the questions at the end of each exercise scenario and the groups' proposed answers. Ensure that each group has a chance to respond to a question.
4. Ask participants if they have any questions related to the material presented.
5. Display **PowerPoint Slide 3-12: Summary**. Review the topics discussed in Module 3.
6. Preview topics that will be discussed in Module 4.

---

### ***What you need to know***

1. The answers to the exercise scenarios are in the Appendix.
2. Once the participants have come back together, allow up to 15 minutes to discuss their proposed answers to the scenario questions.

### 3.6 EXERCISES



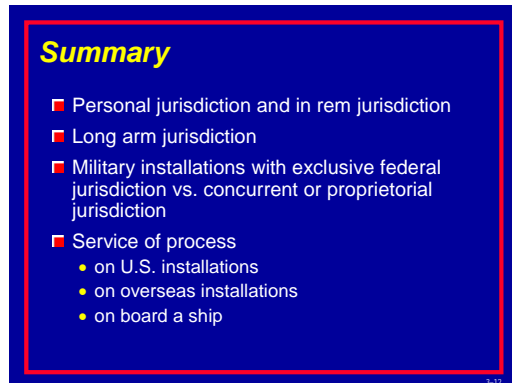
**Exercise Scenarios**

- Spot Issues
- Open Discussion
- What if?
- Questions?

3-11

**Handout 3-4** presents scenarios that involve service of process on military members in the United States and overseas locations. After dividing into groups, designate a recorder. Within your group, identify the issues related to service of process and answer the questions posed at the end of each scenario. At the end of the specified time period, everyone will reconvene to engage in a class discussion of the groups' proposed responses.

### 3.7 SUMMARY OF MODULE



**Summary**

- Personal jurisdiction and in rem jurisdiction
- Long arm jurisdiction
- Military installations with exclusive federal jurisdiction vs. concurrent or proprietary jurisdiction
- Service of process
  - on U.S. installations
  - on overseas installations
  - on board a ship

3-12

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 3-12: Summary**. Review the topics discussed in Module 3.
  2. Preview topics that will be discussed in Module 4.
- 

### ***What you need to know***

In this module, we discussed:

- personal jurisdiction and *in rem* jurisdiction
- personal jurisdiction based on domicile, physical presence, and long-arm statutes
- the difference between military installations with exclusive Federal jurisdiction and with concurrent or proprietary jurisdiction
- service of process on U.S. installations
- service of process on overseas installations
- service of process on board a ship.

### **3.8 PREVIEW OF MODULE 4**

In the next module, we will discuss the Servicemembers Civil Relief Act, including:

- its purpose
- its applicability to entry of a default judgment in a paternity or child support proceeding
- the circumstances that require appointment of counsel for the absent military member.



# **Module 4**

## **The Servicemembers Civil Relief Act**



## **TRAINING NOTES**

This module presents information that is highly relevant, although highly legalistic in its nature. Therefore, the trainer has alternatives depending upon the audience.

If the audience is predominantly caseworkers, it may be most appropriate to present the information through a review of the abbreviated overview of this module and the question and answer format found in Handout 4-1 of the Appendix. This Handout contains a generic overview of the Servicemembers Civil Relief Act (SCRA).

If the audience is predominantly attorneys and senior staff, it may be most appropriate to present the more detailed version of this module.

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### ***What you need to say/do – Abbreviated overview***

1. Display **PowerPoint Slide 4-1: The Servicemembers Civil Relief Act (SCRA) [title slide]**.
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 4.
3. Ask the participants about their familiarity with the SCRA. Explain that the SCRA is not meant to shield service members from their child support obligations.
4. Explain to the participants the learning goals and objectives of this module.
5. Tell the participants that this is a shortened version of the complete module. Participants seeking more detail can review the more expansive version.

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### ***What you need to know***

1. It takes approximately 30 minutes to complete the abbreviated overview.
2. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

### **Equipment/Supplies**

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

### **PowerPoint Slides**

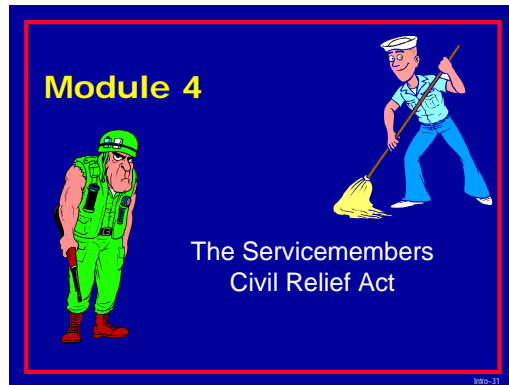
- 4-1: The Servicemembers Civil Relief Act
- 4-2: Scope of the SCRA
- 4-11: Exercises/Questions
- 4-12: Summary

### **Handouts:**

- 4-1: A Guide to the SCRA
- 4-2: Review Exercises

## MODULE 4: THE SERVICEMEMBERS CIVIL RELIEF ACT

Time: 30 minutes (abbreviated overview)



### 4.1 THE SERVICEMEMBERS CIVIL RELIEF ACT

#### 4.1.1 Learning Goal

- Each participant will understand the Servicemembers Civil Relief Act (SCRA) and its effect on the establishment and enforcement of child support orders involving military personnel.

#### 4.1.2 Learning Objectives

- Given a participative lecture and small group exercise, participants will identify when, and to whom, the SCRA applies.
- Given a lecture and discussion, participants will identify when the statutes of limitation for various child support actions are tolled under the SCRA and for how long.
- Given a lecture and discussion, participants will correctly identify how the SCRA provisions regarding the maximum rate of interest apply to child support.
- Given a lecture and discussion, participants will identify the circumstances that permit military personnel to invoke or waive the protections and provisions of the SCRA for a stay of civil proceedings, and, if invoked, identify the length of time that proceedings may be stayed.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-2: The Scope of the SCRA.**

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### ***What you need to know***

1. The law updating the *Soldiers' and Sailors' Civil Relief Act* (SSCRA) is the *Servicemembers Civil Relief Act* (SCRA), Public Law 108-189, which President George W. Bush signed into law on December 19, 2003.

## 4.2 OVERVIEW OF THE SCRA

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918, reenacted in 1940 and updated in 2003 with the enactment of the Servicemembers Civil Relief Act (SCRA). The primary purpose of the SCRA is to protect members of the military during the period of their military service. The SCRA is not intended to be an answer to all legal problems encountered by a military member.



The SCRA applies to military personnel, including reservists, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a State Governor calls them to active service authorized by the President or the Secretary for a period of more than 30 consecutive days under Title 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly. As originally enacted, the SSCRA only applied to judicial child support enforcement proceedings. Under the SCRA, these protections now also cover administrative procedures, such as the administrative enforcement remedies mandated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

## **TRAINING NOTES**

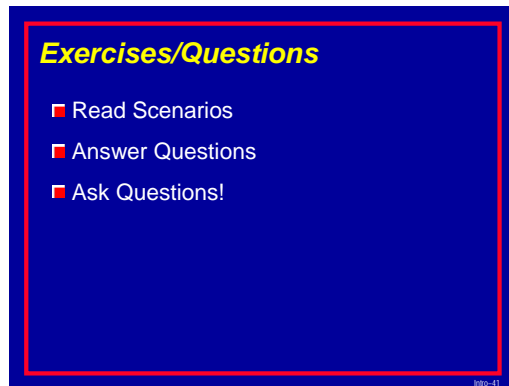
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### ***What you need to say/do***

1. Discuss **Handout 4-1** with participants.
  2. Display PowerPoint Slide 4-11: Review Exercises.
  3. Pass out the two exercise scenarios and questions to the participants. Divide the participants into groups of 4 or 5. Allow the groups 15 minutes to read the scenarios and answer the questions posed at the end of the scenarios.
  4. Facilitate a group discussion of the scenarios and participants' responses to the questions.
  5. Encourage questions about the material in the module.
- 

### ***What you need to know***

Handout 4-1: A Guide to the SCRA, located in the Appendix, summarizes the provisions of the SCRA.



### 4.3 EXERCISES

Refer to **Handout 4-2: Review Exercises** in the Appendix. Identify the issues related to the SCRA and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the two scenarios.

## **TRAINING NOTES**

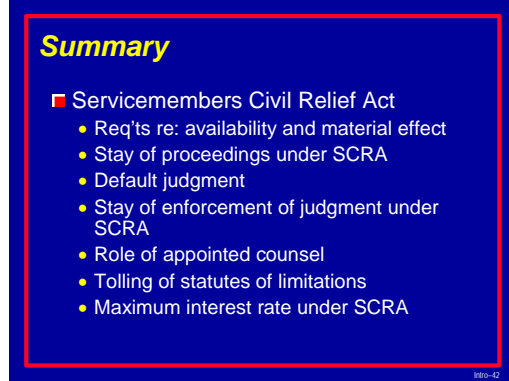
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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-12: Summary**. Review the topics discussed in Module 4.
  2. Preview topics that will be discussed in Module 5.
- 

### ***What you need to know***

#### 4.4 SUMMARY OF MODULE 4



In this module we discussed:

- when the SCRA applies,
- the length of time a civil proceeding can be stayed under the SCRA,
- the need for an affidavit regarding military service in any proceeding in which a default judgment can be entered,
- the impact of a default judgment entered without an affidavit regarding military service,
- the tolling of statutes of limitations when a party is in the military, and
- the maximum interest rate that applies when a person is in military service.

#### 4.5 PREVIEW OF MODULE 5

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

- genetic testing of military personnel in paternity cases,
- obtaining financial and medical insurance information from military personnel, and
- methods for collecting information or evidence from service members located outside of the United States or its waters.



## **TRAINING NOTES**

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### ***What you need to say/do – detailed overview***

1. Display **PowerPoint Slide 4-1: The Servicemembers Civil Relief Act (SCRA) [title slide]**.
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 4.
3. Query the participants as to their familiarity with the SSCRA/SCRA. Explain that the SCRA is not a free-ride shield for members of the military. Ask the participants if they have ever had proceedings stayed under the SSCRA/SCRA or a default judgment reopened under the SSCRA/SCRA.
4. Review the learning goals and objectives of this module.

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### ***What you need to know***

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

### **Equipment/Supplies**

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

### **PowerPoint Slides**

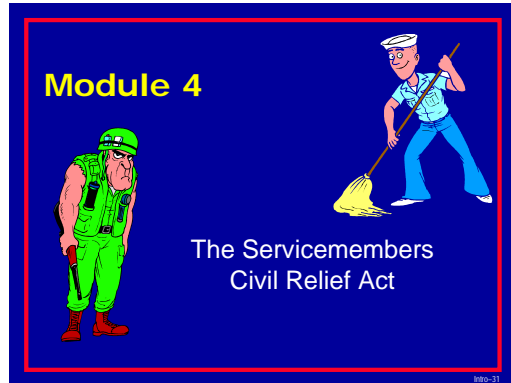
- 4-1: The Servicemembers Civil Relief Act
- 4-2: Scope of the SCRA
- 4-3: Stay of Civil Proceedings
- 4-4: Stay of Civil Proceedings (cont'd)
- 4-5: Default Judgment under SCRA
- 4-6: Reopening Default Judgment under the SCRA
- 4-7: Appointed Counsel
- 4-8: Stay or Vacation of Judgments and Attachments
- 4-9: Tolling the Statutes of Limitations
- 4-10: Interest under the SCRA
- 4-11: Exercises/Questions
- 4-12: Summary

### **Handouts:**

- 4-1: A Guide to the SCRA
- 4-2: Review Exercises

## MODULE 4: THE SERVICEMEMBERS CIVIL RELIEF ACT

Time: 1 hour (expanded overview)



### 4.1 THE SERVICEMEMBERS CIVIL RELIEF ACT

#### 4.1.1 Learning Goal

- Each participant will understand the Servicemembers Civil Relief Act (SCRA) and its effect on the establishment and enforcement of child support orders involving military personnel.

#### 4.1.2 Learning Objectives

- Given a participative lecture and exercise, participants will identify when, and to whom, the SCRA applies.
- Given a participative lecture and exercise, participants will know when military personnel may invoke or waive the SCRA's protections for a stay of civil proceedings, and, if invoked, identify how long the proceedings are stayed.
- Given a participative lecture and exercise, participants will know when the SCRA provides relief for default judgments in child support cases, when the appointment of counsel is required for military personnel in default judgments, and the role that an appointed counsel plays.
- Given a participative lecture, participants will understand the difference between a stay of proceedings and a stay of a judgment/garnishment action.
- Given a participative lecture, participants will know when the statutes of limitations for child support actions are tolled under the SCRA and for how long.
- Given a lecture and discussion, participants will correctly identify how the SCRA provisions regarding the maximum rate of interest apply to child support obligations.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Explain the history behind the SSCRA/SCRA and its original purpose. Inform the participants that the SCRA does not "exempt" military members from their moral and civil obligations with respect to court or administrative proceedings.

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### ***What you need to know***

1. The Servicemembers Civil Relief Act is a Federal statute found at 50 U.S.C. App. 501 et seq. It is not found in state codes. The SCRA allows service members to request and obtain a "stay of proceedings" when their military duties make it difficult for them to respond and appear at hearings. The decision to grant or deny a stay request is within a decision maker's discretion. The key provisions of the SCRA that apply to cases involving family law are Sections 201, 202, 204, and 207.
2. Section 202 of the SCRA discusses a military member's request for a stay of proceedings. It provides that a court or administrative tribunal must grant the stay unless military service does not materially affect the member's ability to appear at the proceeding. Section 202 spells out the duration of any stay of proceedings. Section 201 provides that if it appears that an absent service member is involved, the court or administrative tribunal must appoint an attorney on his or her behalf to invoke these SCRA rights before entry of a default judgment (e.g., a judgment entered in the person's absence). Section 201(g) sets out criteria for when a service member can move to reopen a default judgment. Finally, Section 204 discusses conditions under which a court or administrative tribunal will stay or vacate a judgment or garnishment entered against a military member.
3. **Handout 4-2: A Guide to the SCRA**, located in the Appendix, summarizes the provisions of the SCRA.

## 4.2 THE SCOPE OF THE SERVICEMEMBERS CIVIL RELIEF ACT

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was originally enacted in 1918 and reenacted in 1940. In 2003, the SSCRA was superseded by the Servicemembers Civil Relief Act (SCRA). The primary purpose of the SSCRA/SCRA is to protect members of the military during the period of their military service. The SCRA is not intended to be an answer to all legal problems encountered by a military member.

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

The purposes of this Act are:

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

In the past, a majority of the Federal and state courts have construed the SSCRA in this spirit. It is important to understand that the SCRA is not a shield that exempts military members from the judicial or administrative process. It is a provision for the suspension of certain civil proceedings during times that a military member's service affects his or her civil rights. It is noteworthy that the SCRA is also designed to afford protection to the rights of individuals who may have a cause of action against a military member.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-2: The Scope of the Servicemembers Civil Relief Act.**
2. Inform the participants that, although the SSCRA only applied to civil judicial proceedings, the SCRA's stay applies to both judicial and administrative civil proceedings.

### ***What you need to know***

1. The SCRA applies to military personnel, including reservists, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a State Governor calls them to active service that has been authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under Title 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly. The SCRA applies equally in times of war and in peace, despite the origins of the Act's predecessor (SSCRA) during the first and second World Wars.



The SCRA applies to military personnel, including reservists, who are on active duty military service. A limited exception to this general rule is that members of the National Guard are also covered by the SCRA when a State Governor calls them to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under Title 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. The SCRA does not apply to DoD civilians, contract employees, and military retirees, and most of its provisions do not apply to military dependents directly.

Although the SSCRA only applied to judicial proceedings, the SCRA applies to both judicial and administrative proceedings, including both types of child support enforcement proceedings.

## TRAINING NOTES

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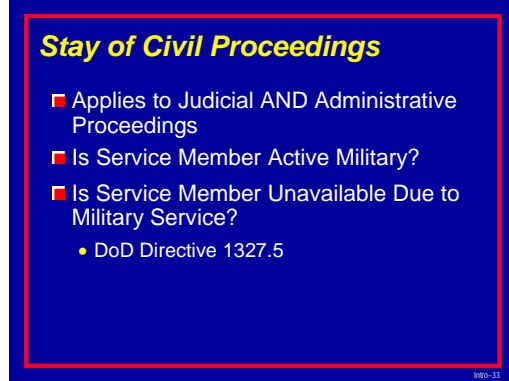
### *What you need to say/do*

1. Display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
2. Explain that the key to a military member's obtaining a stay of proceedings under the SCRA is the "material effect" that military service has on the military member in defending him or herself.

### *What you need to know*

1. Section 202(b) of the SCRA states:
  - (1) At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.
  - (2) An application for a stay under paragraph (1) shall include the following:
    - (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
    - (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.
2. A tribunal shall grant the stay if the military member requests one unless there is no material effect; a tribunal may grant the stay if it is on the tribunal's own motion.

### 4.3 STAY OF CIVIL PROCEEDINGS UNDER THE SCRA



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

In determining whether a service member is entitled to a stay under the SCRA, the court or administrative tribunal must ask several questions. First, is the service member in active military service? To be eligible for a stay under the SCRA, a service member must be in military service, as defined in the previous section, and involved in judicial or administrative proceedings as a defendant. The second question is whether military duty requirements materially affect the service member’s ability to appear at the proceeding. A court or administrative tribunal must grant the stay under section 202 of the SCRA if the service member is unavailable for the proceeding and the member’s military duty requirements materially affect the service member’s ability to appear. Any stay under section 202 applies to proceedings related to obligations that arose both before the member joined the service and during the member’s service. For example, it would apply to a contempt action for a support order issued prior to military service, as well as to a paternity proceeding that was initiated during the member’s service.



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 4-3: Stay of Civil Proceedings**.
2. Explain the procedural requirements for obtaining a stay of proceeding.
3. Explain DoD Directive 1327.5, section 6.25, and its impact on a commander's determination of unavailability when a military member requests a stay of proceedings.
4. Explain the circumstances that permit denial of a leave request, as determined by a military member's commander, who is the approving authority for military leave.

---

### ***What you need to know***

1. DoD Directive 1327.5, section 6.25 states:

When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, leave shall be granted, unless (a) member is serving in or with a unit deployed in a contingency operation or (b) exigencies of military service require a denial of such request. The leave taken shall be charged as ordinary leave.

The date of the instruction is September 24, 1985. Section 6.25 was added 10 Sept. 1997 as a result of PRWORA.

### **4.3.1. Procedural Requirements**

The SCRA requires that the service member provide a letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the service member's ability to appear and stating a date when the service member will be available to appear. The service member must also provide a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents appearance and that military leave is not authorized for the service member at the time of the letter.

### **4.3.2 DoD Directive 1327.5**

As a result of PRWORA, it is more difficult for a member to establish unavailability. PRWORA required the military services to promulgate regulations to facilitate military members taking leave to appear in court for child support and paternity actions. The Department of Defense (DoD) revised its existing regulations on leave and supplemented DoD Directive 1327.5, by adding section 6.25, which states:

When a Service member requests leave on the basis of need to attend hearings to determine paternity or to determine an obligation to provide child support, leave shall be granted, unless (a) member is serving in or with a unit deployed in a contingency operation or (b) exigencies of military service require a denial of such request. The leave taken shall be charged as ordinary leave.

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display **PowerPoint Slide 4-4: Stay of Civil Proceedings (cont'd)**.
2. Discuss the implications of a tribunal denying a service member's request for an additional stay.

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### *What you need to know*

### **4.3.3 Duration of Stay**

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

#### ***Stay of Civil Proceedings (cont'd)***

- Does Member's Absence have a Material Effect on the Proceeding?
  - Is member represented by counsel?
  - Do parties agree to facts?
  - Is action only for temporary modification of support?
- If Answer is Yes to any = may deny stay
- If Answer is No & Motion for Stay by Member = must grant stay

### **4.3.4 Denial of Additional Stay Request**

Some of the situations in which a tribunal may refuse to grant an additional discretionary stay, despite the absence of the military member, include the following:

- The military member is represented by counsel;
- No facts are contested;
- The action is for a temporary modification of child support (some states).

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

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-5: Default Judgment under SCRA**.
2. Explain that an affidavit regarding military service is required before entry of a default judgment against a defendant.
3. Inform the participants of the effects of a failure to provide the affidavit of military service.

### ***What you need to know***

1. Section 201(b) of the SCRA states, in part:
  - In any action or proceeding commenced under this section, the tribunal, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit
    - (A) stating whether the defendant is in military service and showing necessary facts to support the affidavit; or
    - (B) if the plaintiff is unable to determine whether the defendant is in military service, the plaintiff must assert that fact.
2. Module 2 discusses locate resources that are available to child support workers. These resources are useful in determining whether the NCP or alleged father is a military member.

### ***What you need to know***

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#### 4.4 DEFAULT JUDGMENTS UNDER THE SCRA

A default judgment is a judgment entered when a defendant fails to make an appearance at a proceeding, after service of process. Section 201(b) of the SCRA provides that, prior to the entry of a default

judgment in a case where the defendant does not make an appearance, the plaintiff must file an affidavit with the tribunal setting forth facts showing either that the defendant is not in military service or that the plaintiff is unable to determine whether the defendant is in military service. If the affidavit states that the defendant is not in military service, it must cite facts that support this allegation. Child support workers may contact the military Worldwide Locator Service or the expanded Federal Parent Locator Service to show that there is no record of the NCP currently being in the military. Additionally, the Defense Manpower Data Center (DMDC) maintains a website ([www.dmdc.osd.mil](http://www.dmdc.osd.mil)) that allows registered users to verify if an individual is in the military service. To become a registered user, an individual completes a brief on-line application at the DMDC website. If the status of the defendant's military service is unknown, then the affidavit should so state. The affidavit may take any form so long as it is signed and certified, or declared to be true under penalty of perjury.

If the agency files an affidavit showing that the defendant is not in the service, the tribunal can enter a default judgment. If the child support agency fails to file the required affidavit, the tribunal should not enter a default judgment. Despite this prohibition, entry of a default judgment sometimes occurs. If a default judgment is improperly entered, the judgment is voidable and can be reopened by the defendant at a later time if certain conditions are met. It is important to know that this section of the SCRA applies to all judicial and administrative civil proceedings. Unfortunately, in areas without a military population, child support agencies frequently do not include the required affidavit and voidable default judgments are routinely entered.

#### *Default Judgment Under SCRA*

- Agency files Affidavit - Not in Service
  - Court can enter a default judgment
- Agency fails to file Affidavit
  - Any default judgment is voidable
- Agency files Affidavit - Is in Service
  - Court must appoint attorney to represent member

HR00-35

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-6: Reopening Default Judgment under the SCRA** and stress the penalties for filing a false affidavit (or for failing to file an affidavit) when it is known that the defendant is in the military.
2. Explain the reopening of a default judgment by a military member under Section 201 of the SCRA. These five criteria must be met: 1) A default judgment is entered during military service or 60 days thereafter, 2) No appearance was made by the defendant, 3) Defendant makes an application to reopen, 4) The service member was materially affected by reason of his/her military service, and 5) The service member has a meritorious or legal defense to the action, or to some part of it.

### ***What you need to know***

1. Understanding the five threshold criteria for reopening a default judgment is important. The first and third criteria are straightforward. The last two require specific supporting facts. A default judgment entered during the service member's military service will not be reopened if the service member cannot show that his/her service materially affected his/her ability to defend the action or that he/she has a meritorious defense to the action. The second criterion has been the subject of much litigation. Historically, courts have differed in how they interpret "appearance" in a legal proceeding. If a person physically appears and participates in the proceeding, the person is considered to have "appeared" in the action. An appearance can also be made through an act that implies the person accepts the power of the court to try the matter before it and, therefore, submits to the court's jurisdiction. A person can make a general appearance through acts of his or her attorney (e.g., when a lawyer files a response on his or her client's behalf, that filing is considered a general appearance that binds the client). An appearance may also be made by a military legal assistance attorney by virtue of a letter written on behalf of a military member to the court. A military member who makes an appearance for part of a proceeding will be unable to reopen a default judgment under the SCRA if he or she subsequently fails to appear at any proceedings. In order to be able to reopen a default judgment, there must not have been an appearance by the military member. However, in Section 202(c) of the SCRA, an application for a stay does NOT constitute an appearance for jurisdictional purposes and does NOT constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).
2. Here are examples, under the old SSCRA, where courts claimed a service member made an appearance: an affidavit filed by a service member's counsel seeking to quash a complaint in *Blankenship v. Blankenship*, 263 Ala. 297, 82 So. 2d (1978); a service member's counsel filing a motion to dismiss in *Reynolds v. Reynolds*, 21 Cal. 2d 580, 134 P.2d 251 (243).
3. Attorneys seeking a legal discussion and case law regarding appearance by a military member or the member's appointed counsel may review material developed by the JAG schools for each Military Department. Another resource is "Chapter 9, Enforcement Related to Particular Groups," in *Enforcing Child & Spousal Support* (Clark Boardman Callaghan 1995 & Supps.).

When an affidavit indicates that the defendant is in military service, a tribunal must appoint an attorney to represent the member. If the appointed attorney is unable to locate the defendant, actions by this attorney are not binding upon the service member and do not waive any of the service member's defenses.

Regardless of whether an affidavit is filed, the default judgment is valid and binding once it is entered. A military member is entitled to reopen the default judgment, but, until such time, the judgment is enforceable and entitled to full faith and credit.

**Reopening a Default Judgment Under the SCRA**

- Court Entered Judgment During Member's Military Service or within 60 Days
- Military Member/Attorney files Application to Reopen within 90 Days of Service Termination OR During Service
- No Appearance in Proceeding

The filing of a false affidavit is a crime under section 201(c) of the SCRA. Also, the failure to file an affidavit can subject an attorney to disciplinary action if it can be shown that the attorney had knowledge of the military member's military status. Evidence of knowledge includes previous letters to the military member's commander or other correspondence that clearly shows the attorney knew the status of the military member.

Remember, a default judgment obtained in violation of the SCRA is voidable; that means it remains valid and binding until the military member takes affirmative steps to reopen the judgment. Section 201(g) of the SCRA permits a defendant to ask the tribunal to reopen its default judgment. Five conditions must exist in order for a military member to reopen a default judgment:

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



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Remind the participants that an application to reopen a default judgment does not necessarily mean that the judgment will be overturned. The judgment remains valid until decided otherwise by a tribunal.
2. Explain to participants that, unlike the old SSCRA, the SCRA (at section 202(c)) expressly provides that a request for a stay does not constitute an appearance for jurisdiction purposes, or a waiver of any defense.

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### ***What you need to know***

Traditionally, courts have differed in their interpretations of what constitutes an “appearance.” Often a military member who is served with a summons for, or receives notification of, a child support or paternity action will write a letter to the tribunal seeking the protections of the SCRA. Most tribunals do not construe a letter by the military member as an appearance for the purpose of reopening a default judgment. However, where the member has filed a response, moved the tribunal for genetic testing, and/or filed a financial affidavit with the tribunal, the tribunal will likely rule that the member has made an appearance, and will not consider his or her later failure to appear at the hearing a “default” under the SCRA. The member’s participation in a telephone hearing related to the matter may also be considered an appearance.

Tribunals will also look at actions by an attorney appointed by the tribunal under section 201(b)(2) in deciding whether the military member has made an appearance [tribunal-appointed attorneys are discussed in section 4.4.1 of this module]. Actions by an appointed counsel will not bind the member, unless they are authorized by the member. For example, tribunals may construe letters to the tribunal from a military attorney on behalf of the member as constituting an appearance. Unlike the old SSCRA, under section 109 of the SCRA, actions by a spouse or other individual pursuant to a power of attorney (POA), either general or specific, will constitute an appearance if similar action taken by an attorney would constitute an appearance. State law will determine whether the use of a general power of attorney will be accepted in a child support action. A special or specific power of attorney that addresses a particular child support matter will more likely be accepted as an appearance. It is important to remember that the right to reopen a default judgment does not mean that the judgment will ultimately be reversed. Only upon a showing of all five threshold criteria will the tribunal reopen a default judgment and consider whether to set it aside.

## TRAINING NOTES

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### *What you need to say/do*

1. Display **PowerPoint Slide 4-7: Appointed Counsel**.
2. Explain a tribunal's obligation to appoint an attorney for a military member who is absent and has not made any appearance in the proceeding.
3. Explain that no Federal financial participation (FFP) funds are available to pay for appointed counsel.
4. Inform participants of the role of the appointed attorney:
  - can request a stay of proceedings, if appropriate
  - can protect the service member's rights
  - cannot perform acts that bind the service member
  - cannot waive a service member's rights

### *What you need to know*

1. Section 201(b)(2) of the SCRA states:

In an action covered by this section, if it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, action by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

### 4.4.1 Appointed Counsel

Before a tribunal can enter a judgment in a case involving a service member who has not made an appearance, it must appoint an attorney to represent the defendant. Section 201(b)(2) states that if it appears that the defendant is in military service, the court must appoint an attorney for the defendant before entering a default judgment.

**Appointed Counsel**

- Defendant Not in Service - Must Appoint Prior to Default Judgment
- Defendant Is in Service but No Appearance - May Appoint
- Appointed Attorney:
  - Protects Service Member's Rights
  - Determines Status and Seeks Stay
- Can't Waive Rights or Bind Service Member

Info-37

The SCRA provides little guidance with respect to the actual responsibilities of the court-appointed attorney. Under the SSCRA, some courts charged the attorney with determining the status of the military member and whether military service had materially affected the ability of the military member to defend himself or herself. Under the SCRA, if the defendant is a military member, the appointed attorney is primarily responsible for obtaining a stay of the proceedings until the military member can be present. It is important to note that the acts of an appointed attorney are not binding on the military member and that the attorney cannot waive any of the member's legal rights. A military member will be bound only to the acts of an appointed attorney that the military member has authorized. If the military member authorizes the appointed attorney to perform some act before the tribunal, the tribunal may construe those actions as an appearance by the member.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-8: Stay or Vacation of Judgments and Attachments.**
2. Discuss the similarities between a stay/vacation of judgment and the stay of legal proceedings that was previously discussed. Explain the difficulty of obtaining a stay of judgment since the tribunal has already considered his or her military service in the proceeding that established the judgment.
3. Identify two circumstances in which a member may be most successful in seeking a stay of judgment:
  - a reservist who has been called to active duty
  - a reduction in income due to entry into military service.

### ***What you need to know***

1. Section 204 of the SCRA states:
  - (a) If a servicemember, in the opinion of the tribunal, is materially affected by reason of military service in complying with a judgment or order, the tribunal may on its own motion and shall on application by the servicemember
    - (1) stay the execution of any judgment or order entered against the servicemember; and
    - (2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.
  - (b) This section applies to an action or proceeding commenced in a tribunal against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

#### 4.5 STAY OR VACATION OF EXECUTION OF JUDGMENTS AND ATTACHMENTS UNDER THE SCRA

Section 204 of the SCRA authorizes a tribunal to stay the execution (the carrying out) of a judgment, attachment, or garnishment order entered against a military member. Additionally, the section authorizes a tribunal to vacate (set aside) an attachment or garnishment against a

military member's property. The stay provisions of this section are similar to those for a stay of proceedings under sections 201 and 202.

**Stay or Vacation of Judgments and Attachments**

- Material Effect
- Action Must Have Arisen:
  - Prior to;
  - During; or
  - Within 90 days after service
- Reservists and Downward Modification

For a stay or vacation under section 204: 1) military service must materially affect the ability of the military member to comply with the judgment against him; and 2) the action giving rise to the judgment must have arisen prior to, during, or within 90 days after military service.

A tribunal may grant the stay on its own motion if it finds material effect. However, the tribunal must grant the stay on the motion of the military member unless it finds that military service has no material effect on his or her compliance with the judgment. If the member's military service existed, and was considered, at the time the tribunal initially entered the judgment, it is unlikely that a stay of judgment enforcement will be granted, assuming compliance with all the requirements of the SCRA. The stay provisions of section 204 can be used by a military member to stop an enforcement action or to seek a downward modification of his or her child support obligation, where military service has caused a reduction in income. An example is a reservist who is called to active duty and experiences a reduction in income. In such a circumstance, a stay of enforcement of the original child support order may be appropriate. It is important to note, however, that section 204 does NOT permit retroactive modification of a support obligation.

## **TRAINING NOTES**

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### ***What you need to say/do***

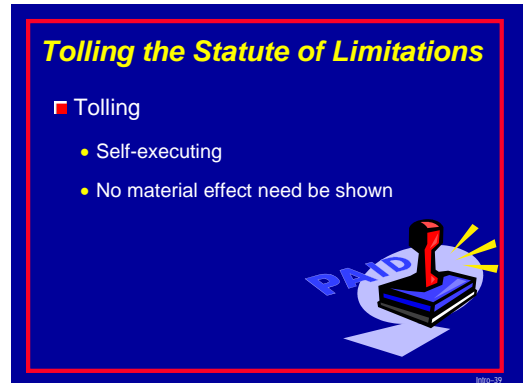
1. Display **PowerPoint Slide 4-9: Tolling the Statute of Limitations.**
2. Explain that tolling means to suspend or hold in abeyance. Explain the circumstances in which the statute of limitations may be tolled.
3. Ask participants to provide examples of child support matters where the statute of limitations could be tolled under the SCRA.

### ***What you need to know***

1. Section 206 of the SCRA states:
  - (a) The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.
  - (b) A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.
  - (c) This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

## 4.6 TOLLING THE STATUTE OF LIMITATIONS

The legally required time limit in which an action or lawsuit must be filed is called a statute of limitations. Statutes of limitations differ depending on the type of legal claim. In some instances, states have different statutes of limitations for the same legal claim. As an example, states have varying statute of limitations requirements for enforcement of child support arrears. Statutes of limitations apply to actions filed in all tribunals, including Federal court. Tolling means to suspend or hold in abeyance.



Section 206 of the SCRA provides for the tolling of statutes of limitations during the time that a person is in military service. The tolling applies regardless of whether the military member is a defendant or a plaintiff in the proceeding. The cause of action may have accrued either prior to, or during, military service. The one exception is that Section 206 does not apply to Federal internal revenue laws.

The tolling provisions of section 206 are automatic once military service is shown. They are self-executing, which means no action is required by the military member. Unlike the stay provisions, there is no requirement for a military member to show that military service materially affected his or her ability to participate in the proceedings.

The tolling of the statute of limitations is double-edged. It applies to military members automatically, whether they are the plaintiffs or defendants. Therefore, any issues concerning the statutes of limitations in a paternity or child support action will fall under the tolling provisions of section 206.



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 4-10: Interest under the SCRA.**
2. Discuss material effect. Ask participants for examples of interest that may be subject to the six percent ceiling. Remind participants that the six-percent ceiling is only for pre-service obligations and does not affect obligations, debts, etc. that the member incurred after entry into military service. Ask participants to give an example of when the six-percent ceiling would be applicable.

### ***What you need to know***


1. Section 207 of the SCRA states:
  - (a)(1) An obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.
  - (2) Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.
  - (3) The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.
  - (b)(1) In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.
  - (2) Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.
  - (c) A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest in excess of 6 percent per year is not materially affected by reason of the service member's military service.
  - (d) As used in this section, the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.
2. If the support obligation was entered prior to a recall to active duty, e.g., in the case of a reservist, the 6% ceiling on interest will apply IF the member provides written notice of military service. A tribunal may grant a creditor relief from the 6% ceiling if the tribunal finds that the member's ability to pay interest above the 6% ceiling is not materially affected by his/her military service.

## 4.7 MAXIMUM RATE OF INTEREST UNDER THE SCRA

Section 207 of the SCRA limits a service member's obligations or liabilities incurred prior to entry into military service to an interest rate that is not to exceed six percent per year. The six-percent interest cap is applicable during the time the military member is in military service. The six-percent interest ceiling is available only if:

**Interest Under the SCRA**

- 6% Interest Rate Cap
  - Only pre-service obligations
  - Material effect on ability to pay the obligation
  - Case-by-case determination
  - Not automatic



180-40

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

The interest rate ceiling is not available for debts and obligations incurred while in military service. Material effect is determined on a case-by-case basis. As a general rule, material effect is present if there is a reduction in income due to military service. This is more applicable to reservists in higher paying civilian jobs. A reservist called to active duty may suffer a drop in income that could materially affect the military member's ability to meet an obligation. The possible scenarios for determining material effect are limitless. If a military member seeks to invoke the interest rate cap, careful consideration must be given to the true effect that military service has on the member's ability to pay. Child support workers need to be aware of Section 207 because it can impact interest that has been ordered on an obligation for unpaid child support, if the obligation was incurred prior to the member's entry into military service. However, Section 207 does not require a child support agency to initiate anything. It is the military member's responsibility to contact the agency or tribunal and affirmatively invoke its provisions.

## TRAINING NOTES

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### *What you need to say/do*

1. Display **PowerPoint Slide 4-11: Review Exercises**.
2. Refer participants to **Handout 4-2: Review Exercises**. Divide the participants into groups of 4 or 5. Allow the groups 15 minutes to read the scenarios and answer the questions posed at the end of the scenarios.
3. Facilitate a group discussion of the scenarios and participants' responses to the questions.
4. Encourage questions about the material in the module.
5. Display **PowerPoint Slide 4-12: Summary**.
6. Refer participants to **Handout 4-1: A Guide to the SCRA** for a summary of the Act.

## 4.8 EXERCISES

Refer to **Handout 4-2: Review Exercises** in the Appendix. Identify the issues related to the SCRA and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the two scenarios.

### *Exercises/Questions*

- Read Scenarios
- Answer Questions
- Ask Questions!

## 4.9 SUMMARY OF MODULE 4

In this module we discussed:

- the SCRA's requirements regarding availability and material effect,
- the length of time a civil proceeding can be stayed under the SCRA,
- the need for an affidavit regarding military service in any proceeding in which a default judgment can be entered,
- the impact of a default judgment entered without an affidavit regarding military service,
- the difference between the SCRA requirements for a stay of a proceeding and of an enforcement of a judgment,
- the role of appointed counsel under the SCRA,
- the tolling of the statutes of limitations when a party is in the military, and
- the maximum interest rate that applies to pre-service debt when a person is in military service.

### *Summary*

- Servicemembers Civil Relief Act
  - Req'ts re: availability and material effect
  - Stay of proceedings under SCRA
  - Default judgment
  - Stay of enforcement of judgment under SCRA
  - Role of appointed counsel
  - Tolling of statute of limitations
  - Maximum interest rate under SCRA

**Handout 4-1: A Guide to the SCRA**, located in the appendix, contains a summary of key elements of the SCRA.

**TRAINING NOTES**

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***What you need to say/do***

1. Preview topics that will be discussed in Module 5.

#### **4.10 PREVIEW OF MODULE 5**

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

- genetic testing of military personnel in paternity cases
- obtaining financial and medical insurance information from military personnel
- methods for collecting information or evidence from service members located outside of the United States or its waters.

# **Module 5**

## **Obtaining Evidence from the Military**

## **TRAINING NOTES**

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### ***What you need to say/do***

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

### ***What you need to know***

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

### **Equipment/Supplies**

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

### **PowerPoint Slides**

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

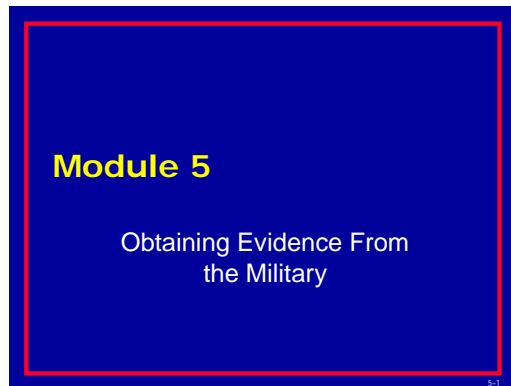
### **Handouts:**

- 5-1: Review Exercises



## MODULE 5: OBTAINING EVIDENCE FROM THE MILITARY

Time: 1 hour, 15 minutes



### 5.1 OBTAINING EVIDENCE FROM THE MILITARY

#### 5.1.1 Learning Goals

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

#### 5.1.2 Learning Objectives

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

## **TRAINING NOTES**

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### ***What you need to say/do***

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

### ***What you need to know***


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

## 5.2 PATERNITY EVIDENCE

Paternity establishment involving military personnel can be a daunting task. It is the area within the child support arena in which the military is most like any other employer. That is, the military and its commanders cannot compel military personnel to provide genetic samples or information for the purpose of establishing paternity.

***Paternity Establishment***

- Considered a Civilian Matter
- Moral and Legal Obligation of Members
- Commander Obligations on Inquiry



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

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

If your initial attempts to obtain voluntary cooperation go unanswered, do not hesitate to contact the member's commander. Policies as to what information a caseworker may divulge will vary from state to state. Ensure that you are aware of your state's privacy protections regarding IV-D client. Always consider obtaining a signed release from the custodial parent that will permit you to disclose such information as is necessary in order to obtain assistance from a service member's commander.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 5-2: Paternity Establishment.**
2. Explain a military member's general obligations with respect to conduct that may be discrediting.
3. Explain that commanders are greatly concerned about the adverse impact on readiness and operations that civil actions can have.
4. Display **PowerPoint Slide 5-3: Genetic Testing.**

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### ***What you need to know***

For example, it is usually helpful to detail your unsuccessful efforts to obtain a response from the member and to ask the commander for assistance in having the service member cooperate with the civilian authorities.

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

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

Military commanders are also obligated by regulation to take certain actions with respect to paternity issues and inquiries. For example, *Army Regulation 608-99, Family Support, Child Custody, and Paternity*, 1 November 1994, requires a commander, upon receipt of a paternity inquiry, to:

## **TRAINING NOTES**

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### ***What you need to say/do***

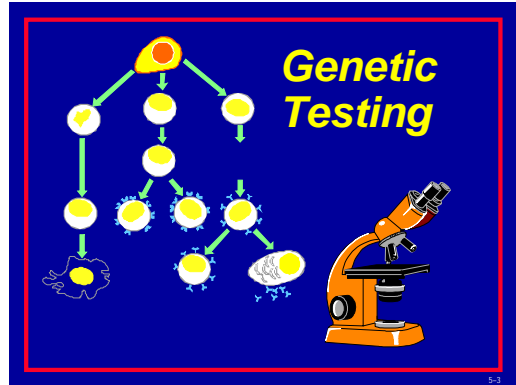
1. Continue to display **PowerPoint Slide 5-3: Genetic Testing**.
2. Discuss the following obligations of a commander with respect to a paternity inquiry:
  - Inform the member of his legal and moral obligations
  - Provide a reply to the requestor
  - Refer the member to legal counsel concerning his rights and obligations.
3. Explain that DoDD 5529.9 may assist in returning a military member back to the United States for proceedings related to child support and paternity. Inform the participants that, although the DoDD does not apply to every situation, it can bring pressure on an individual military member.

### ***What you need to know***

1. (DoDD) 5529.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, directs the actions to be taken by commanders and DoD agencies when there is a request for assistance from an agency with respect to child support and paternity. DoDD 5529.9 does not apply to every order. It mainly applies where there is an order for contempt related to child support or paternity or an order to show cause for not being held in contempt. Many of the enforcement provisions of the DoDD give discretion to decision-makers, but because those decision-makers are usually high-ranking military officers (e.g., commanders, Staff Judge Advocates, certain designees of a General Court Martial Convening Authority, and The Judge Advocate's General), that is often enough to gain voluntary compliance by a military member.
2. Pursuant to a 1995 Executive Order requiring the Federal government to act as a model employer, all military hospitals and birthing centers are required to provide the same paternity acknowledgment services as civilian hospitals.

- Inform the military member of his legal and moral obligations;
- Reply to the requestor as to whether the military member admits or denies paternity, and whether the member will provide financial support, and/or submit to genetic testing;
- Refer the member to the legal assistance office for advice on the soldier's rights with respect to the inquiry.

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



A court or administrative order that requires a military member to submit to a genetic test adds to the consequences if the member does not comply, but it does not necessarily permit any additional assistance from the military. An exception to this is Department of Defense Directive (DoDD) 5529.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders. This Directive applies to members stationed overseas, and provides a mechanism to force enforcement of an order that deals with child support, custody, or paternity. However, the proceeding must involve contempt of a court order or an order to show cause why an individual should not be held in contempt for violating an order. It does not assist the caseworker with a basic order to submit to genetic testing for the purpose of establishing paternity, unless as a result of the member's failure to comply, the IV-D agency has filed a contempt action.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Prior to beginning section 5.3, display **PowerPoint Slide 5-4: Financial & Medical Information/Evidence**.
2. The Defense Finance and Accounting Service (DFAS) is the central agency for all financial matters within the military. DFAS Cleveland can provide:
  - Historical pay information
  - Physical address of military personnel
3. Information on military pay and allowances is online at the DFAS website. Explanations of the various pay and entitlements, as well as the current DoD pay scale, are also located at the website.
4. Direct the participants to Module 1 for explanations concerning pay grade and rank.

### ***What you need to know***

1. Medical and financial information is necessary for establishment, enforcement, and modification proceedings. For information on enforcement, see Module 7.



### 5.3 FINANCIAL AND MEDICAL INFORMATION

The Defense Finance and Accounting Service keeps military pay and allowance information for individual military members, as well as DoD civilians and retirees. This is the single point of contact from which to obtain the pay and allowance information that is usually needed for child support actions. However, effective May 2003, DFAS will not respond to wage verification requests since the same information is available from the Federal Parent Locator Service (FPLS).



You can obtain pay and employment information from DFAS through a request to the FPLS, which includes the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR). DFAS can also provide historical pay information and a physical address of military personnel. Although the DFAS Cleveland is the centralized clearinghouse for child support withholdings, there are DFAS centers throughout the country servicing the payroll for the various military branches.

General military pay information is available on the DFAS website at [www.dfas.mil](http://www.dfas.mil), and is also covered in Module 6, at 6.4.2. Information on military pay and allowance amounts is available to the public. Data on current pay entitlements, housing allowances, special pay (hazardous duty, language proficiency, etc.), cost of living adjustments, drill pay for reservists, etc., are all available on the DFAS website, as well as on numerous other websites and publications. The obvious problem is determining the entitlements to a particular military member. Knowing the pay entry basic date (or the number of years of service), pay grade, duty location, military occupational specialty, and other particular aspects of a military member's service is necessary for an exact determination of military pay for a specific individual. However, these pay

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display **PowerPoint Slide 5-4: Financial & Medical Information/Evidence**.
2. Explain how to determine if an individual is enrolled in the Defense Eligibility Enrollment Reporting System.
3. Emphasize the implications of the Privacy Act, 5 U.S.C. § 552a, and national security needs on obtaining information from military sources, which often prevent the release of information.

### ***What you need to know***

1. For information on how to learn a member's Social Security number, see Module 2: Military Locate Procedures.

resources can be helpful in making estimates and getting a general idea of the pay and allowances being received.

In order to receive medical care from the military through TRICARE (formerly CHAMPUS), an individual must be enrolled in DEERS. To obtain information as to whether someone is enrolled in DEERS, you should contact:

Defense Manpower Data Center  
ATTN: CA99  
400 Gigling Road  
Seaside, California 93955-6771  
1-800-538-9552

You will need the name and Social Security number of the military member (the sponsor), and the name, Social Security number, and date of birth of the dependent. According to military representatives, in the overwhelming majority of cases in which IV-D agencies inquire about insurance coverage, the dependents are already enrolled in DEERS; the service member has simply never informed the custodial parent or the custodial parent has forgotten.

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

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

## **TRAINING NOTES**

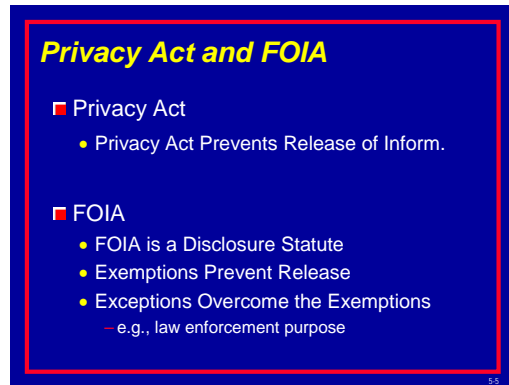
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### ***What you need to say/do***

1. Display **PowerPoint Slide 5-5: The Privacy Act and FOIA**.
2. Tell participants that the Freedom of Information Act (FOIA) is a disclosure statute, requiring the release of material unless an exemption applies. The Privacy Act prohibits the disclosure of personal information without an individual's consent. Under FOIA, an agency must disclose information unless one of the seven exemptions apply. Under the Privacy Act, an agency cannot disclose personal information unless one of the 12 exceptions apply. The Privacy Act and FOIA are meant to be consistent with one another.

### ***What you need to know***

1. Information from the military that is often needed in a child support or paternity action is generally exempt from disclosure because it is personal information that is protected by the Privacy Act. Exemption 6 under FOIA is the most often cited exemption for non-disclosure of personal information about military members. Exemption 6 permits the withholding of all information about individuals in personnel, medical, and similar files if its disclosure would constitute a clearly unwarranted invasion of personal privacy. Exemption 1 relates to information that is classified in the interest of national security. This exemption can relate to information on military members that are in classified units, where release of information about the unit members is prohibited.
2. 5 U.S.C. § 552a(b)(7) provides an exception to exemption 6 dealing with personal information. It permits disclosure for law enforcement purposes. Subsection (b)(7) provides disclosure to an instrumentality of any governmental jurisdiction within the United States for a civil or criminal law enforcement activity if law authorizes the activity. The head of the agency must make the request. The request must specify the purpose for which the record is requested and the particular record requested.



Unlike the Privacy Act, the Freedom of Information Act (FOIA) is a disclosure statute. It requires the release of information that is kept in a system of records by the government unless it falls under one of the seven exemptions from disclosure. Personal information that is usually required for child support or paternity actions falls within those exemptions and therefore generally cannot be disclosed under FOIA. There are, however, exceptions under the Privacy Act that permit the government to release information that can be useful to establish and collect child support. The most commonly used exception under the Privacy Act to gain release under FOIA by child support enforcement personnel is one that permits disclosure for law enforcement purposes. The sample FOIA letter in Module 2 provides a template for such a request.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 5-6: Evidence from Overseas Locations**.
2. Explain to the participants that obtaining evidence, which is physically located in an overseas location, is more difficult than in the United States. However, fortunately they can find most information on overseas military members through resources in the United States (i.e., DFAS).
3. Display **PowerPoint Slide 5-7: Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters**.
4. Refer participants to Module 3 on service of process for procedures dealing with a country's central authority.

### ***What you need to know***

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

## 5.4 EVIDENCE FROM OVERSEAS LOCATIONS

Obtaining evidence from the military on members located in overseas locations is a more difficult task. Module 3 on service of process provides a more thorough discussion of the methods and procedures available to accomplish various tasks associated with child support and paternity actions. Absent cooperation from the military member, service on the overseas member of a court or administrative order is required.

### **Evidence From Overseas Locations**

- Information on Members Overseas is Usually in the United States
- Physical Evidence Overseas is More Difficult

The previous sections of this module are applicable to obtaining information from members stationed overseas. Remember that income and financial information for an overseas military member is obtained through the same means as for a member stationed stateside. DFAS is the processing center for all members, regardless of location. Also, commanders' obligations under regulations are unchanged due to the location of the member.

### **5.4.1 Obtaining Evidence through the Hague Evidence Convention**

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

### **Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters**



**TRAINING NOTES**

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***What you need to say/do***

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***What you need to know***

1. For a more legal discussion of international remedies for obtaining evidence abroad, child support attorneys may want to read “International Support Remedies” by Philip Schwartz, in *Interstate Child Support Remedies* (U.S. Department of Health & Human Services, Office of Child Support Enforcement 1989).
2. U.S. courts have inherent authority to issue letters rogatory requesting foreign judicial assistance.



The purpose of The Hague Evidence Convention is to codify the taking of depositions before consuls and appointed commissioners, in an effort to reconcile different, often conflicting, discovery procedures in civil and common law countries. The Hague Evidence Convention also streamlines procedures for obtaining evidence. It directs the creation of central authorities in each country to receive and handle requests for evidence and determines when translations are necessary. The Convention only applies to civil matters so it cannot be used in a criminal nonsupport action.

The Convention provides three ways of obtaining evidence from abroad. Two focus on the voluntary taking of depositions and involve the U.S. diplomatic or consular offices in the country. The other method uses a Letter of Request sent by a U.S. court to the foreign Central Authority. In the case of military members stationed abroad, the Convention would make a request from a U.S. court to the appropriate judicial authority in the country in which the military member is stationed. The form letter of request does not involve diplomatic channels.

A letter of request is the best method for getting evidence from a noncooperative military member, where compliance is likely only if a foreign court gets involved.

To use a letter of request, follow these steps:

1. A IV-D attorney should prepare a brief motion to his or her local court requesting that the court issue a Letter of Request. Attached to the motion should be the Letter of Request containing the questions you want the military member to answer or a list of the documents you want the member to produce.
2. There is no required form for the Letter of Request, although the Convention details what information the Letter must include. It is recommended that attorneys use the model Letter of Request that is found after the text of the Convention.
3. The attorney should not attach any documents in support of the motion. All of the relevant information should be in the Letter of Request. No cover letter is required.
4. Only a judicial authority can issue a Letter of Request.

## TRAINING NOTES

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### *What you need to say/do*

1. For subsection 5.4.2, display **PowerPoint Slide 5-8: Evidence from Overseas Location (cont'd)**.
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### *What you need to know*

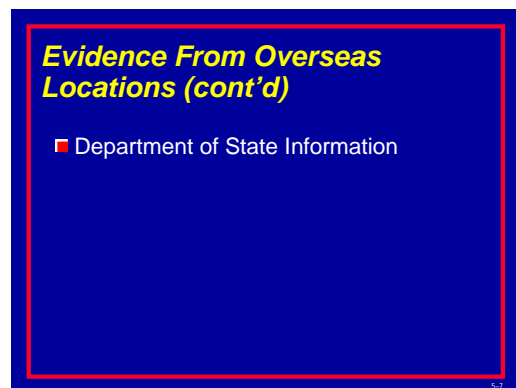
5. If the foreign country where the member is located so requires, you must have translations of the document prepared and certified.
6. The clerk of court (or you) should transmit by international airmail the original Letter of Request and one true copy to the designated central authority for the foreign country. For the addresses of Central Authorities, go to [http://travel.state.gov/hague\\_evidence.html](http://travel.state.gov/hague_evidence.html).
7. Although most signatory countries will accept a Letter of Request in either English or French, it is also a good idea to include a translation into the language of the country to which you are sending the Letter.

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

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

#### **5.4.2 Obtaining Evidence Outside the Hague Evidence Convention**

Other than the Hague Evidence Convention, the only way to force an unwilling military member stationed abroad to appear for a deposition or to produce documents is through a Letter Rogatory. A Letter Rogatory is a formal request for judicial assistance from a



## **TRAINING NOTES**

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### ***What you need to say/do***

1. Tell the participants that when issues concerning obtaining evidence from overseas locations arise, the Department of State website is an extremely valuable source of information. The website is [http://www.travel.state.gov/judicial\\_assistance.html](http://www.travel.state.gov/judicial_assistance.html).
2. For subsection 5.5 of this Module, display **PowerPoint Slide 5-9: Exercise Scenarios/Questions**.
3. Refer participants to **Handout 5-1: Review Exercises** in the Appendix. Divide the participants into groups of four or five people. Allow them about 10 minutes to read and discuss the scenarios and solutions among themselves. At the end of 10 minutes, lead an interactive discussion of the scenarios and possible answers.
4. Encourage the participants to ask questions concerning the material presented in the module.

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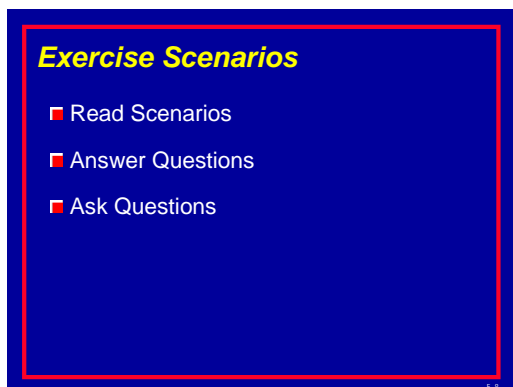
### ***What you need to know***

court in one country to a court in another country. Unlike the Letter of Request procedure under the Hague Evidence Convention, you must use diplomatic channels to transmit the Letter Rogatory to the foreign court. Also, the Letter Rogatory requests the foreign court with jurisdiction over the member to use its usual process to require production of the documents or the member's testimony; the U.S. court cannot request special procedures as under the Hague Evidence Convention. Often the foreign court will take testimony without placing the member under oath. The response returned to the U.S. court is usually a summary of the military member's answers rather than a verbatim transcript. Letters Rogatory can be time consuming and cumbersome so they should be an alternative for seeking evidence when other methods have been unsuccessful.

If you intend to use a Letter of Request or Letter Rogatory to seek evidence from a military member stationed overseas, the Department of State is the best source of information. Its website at [http://travel.state.gov/obtaining\\_evidence.html](http://travel.state.gov/obtaining_evidence.html) explains how to obtain evidence from overseas. It provides a comprehensive discussion of the procedures and points of contact at the Department of State for assistance.

## 5.5 EXERCISES

Refer to **Handout 5-1: Review Exercises** in the Appendix. Identify the issues and answer the questions posed at the end of each scenario. The trainer will facilitate a discussion of the scenarios.

A blue rectangular box with a red border containing the text 'Exercise Scenarios' in yellow, followed by three bullet points: 'Read Scenarios', 'Answer Questions', and 'Ask Questions', each preceded by a red square icon. A small '5-8' is visible in the bottom right corner of the box.

**Exercise Scenarios**

- Read Scenarios
- Answer Questions
- Ask Questions

5-8

**TRAINING NOTES**

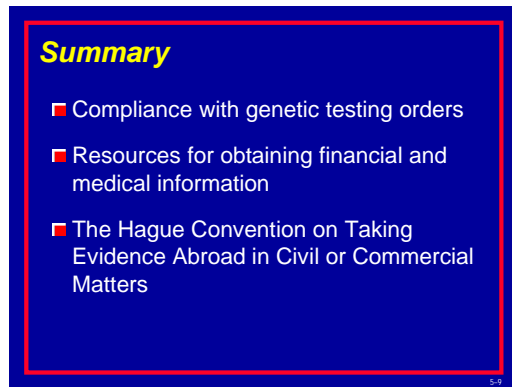
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***What you need to say/do***

1. Display **PowerPoint Slide 5-10: Summary**.
  2. Preview the topics that will be discussed in Module 6.
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***What you need to know***

## 5.6 SUMMARY OF MODULE 5



In this module we discussed:

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

## 5.7 PREVIEW OF MODULE 6

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

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





# **Module 6**

## **Military Establishment Procedures**

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 6-1: Module 6** (title slide).
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 6.
3. Explain to participants that this module involves IV-D actions to establish parentage and/or a child support order when the alleged father or NCP is an individual in the military.
4. Explain to participants that the material in this establishment module is also directly applicable to modification actions. IV-D offices should facilitate support order modifications in those cases where reservists experience a reduction in their income as a result of being called to active duty.
5. Review the module's goals and objectives with participants.

### ***What you need to know***

1. This module will take approximately 1.5 hours to complete.
2. Listed below are the equipment, handouts, and PowerPoint slides for the module.

### **Equipment/Supplies:**

- Personal computer with PowerPoint program
- LCD projector and screen
- Flipchart stand with two pads of paper and/or whiteboard
- Markers (permanent, dry-erase, and wet erase)
- Masking tape
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

### **PowerPoint Slides:**

- 6-1: Military Establishment Procedures
- 6-2: Federal Reg re: Paternity Establishment
- 6-3: Federal Regs re: Establishment of Support Obligation
- 6-4: Paternity at Issue
- 6-5: Commander's Assistance when Paternity is Admitted
- 6-6: Military Pay
- 6-7: Military Pay (cont'd)
- 6-8: Military Pay (cont'd)
- 6-9: Summary

### **Handouts:**

- 6-1: LES Exercise
- 6-2: Leave and Earning Statement
- 6-3: Review Exercises

## MODULE 6: MILITARY ESTABLISHMENT PROCEDURES

Time: 1.5 hours



### 6.1 MILITARY ESTABLISHMENT PROCEDURES

#### 6.1.1 Learning Goal

- Each participant will learn successful strategies for establishing paternity and/or a child support order in cases involving a member of the military.

#### 6.1.2 Learning Objectives

- Given a participative lecture, participants will correctly identify the basic requirements of the Federal regulations governing paternity and order establishment.
- Given a participative lecture and exercise, participants will understand and explain the military policies and rules governing the chain of command's involvement in a IV-D paternity and support order establishment case.
- Given a participative lecture and examination of relevant handout materials, participants will explain how to establish an accurate child support obligation by obtaining complete earnings information for an individual in the military.
- Given a participative lecture and examination of relevant handout materials, participants will interpret the military's *Leave and Earnings Statement*.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 6-2: Federal Reg re: Paternity Establishment**. Remind participants that the Federal regulations are available on-line at [www.acf.hhs.gov/programs/cse](http://www.acf.hhs.gov/programs/cse).
2. Refer the participants to **Module 4: The Servicemembers Civil Relief Act** for information explaining when and how a tribunal can enter a default order in an action involving a member of the military.

### ***What you need to know***

1. OCSE issues the Federal regulations governing IV-D paternity and child support order establishment procedures. All state IV-D programs must comply with their requirements and timeframes.
2. This section of the module reviews the highlights of the Federal paternity regulations in order to lay the foundation for later discussions of military paternity establishment procedures.
3. “Good Cause” (appropriate refusal by a public assistance recipient to cooperate with the IV-D agency to establish paternity and/or support) applies to military and non-military cases alike.

## 6.2 APPLICABLE FEDERAL REGULATIONS AND TIMEFRAMES

### 6.2.1 Paternity Regulations

The Federal *Establishment of Paternity* regulations appear at 45 C.F.R. § 303.5.

These regulations require the IV-D office to establish paternity in one of two ways -- by offering the alleged father the opportunity to voluntarily acknowledge paternity *or* by bringing a legal action

(before a court or administrative forum) to

establish paternity in accordance with state law. The IV-D office does not pursue paternity establishment in public assistance cases where *good cause* exists.

“Good cause” is an exception to the public assistance recipient’s obligation to cooperate with the IV-D office in its efforts to establish paternity. In a nutshell, a finding of good cause means that IV-D efforts to establish paternity, or to establish and enforce a child support obligation cannot proceed, without a risk of harm to the CP (or caretaker relative) and child.

If any party to a contested paternity case requests genetic testing, the Federal regulations require the IV-D agency to require all parties to submit to such testing. Finally, the Federal paternity establishment regulations require the IV-D agency to seek the entry of a default order in a case where the defendant has failed to respond after being served with the appropriate case paperwork (i.e., summons and petition seeking paternity establishment). Before entering a default paternity order in a case involving a military member, it is important that you comply with the Servicemembers Civil Relief Act (see Module 4).

#### **Federal Reg re: Paternity Establishment**

45 CFR § 303.5 – In all Cases where Needed:

- Offer Voluntary Acknowledgment OR
- Establish Paternity by Legal Process
- Upon Request in Contested Case, Require Genetic Testing
- Seek Default Orders when Appropriate

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 6-3: Federal Regs re: Establishment of Support Obligation..**

### ***What you need to know***

1. This section of the module highlights sections of the Federal regulations governing Establishment of Support Obligations in order to lay the foundation for later discussions of establishment procedures in cases involving the military.
2. The Federal regulations specifying the procedures related to establishing a child support order in voluntary acknowledgment cases appear at 45 C.F.R. § 302.70(a)(5).

## 6.2.2 Establishment of Support Obligations Regulations



The Federal regulations governing *Establishment of Support Obligations* require the IV-D agency to establish paternity when necessary. These Federal regulations require the use of local law and procedures in establishing a support order. That is, the IV-D agency bringing the action to establish a support order uses its local laws, procedures, and child support guidelines to establish the support order. Also, the IV-D agency uses these local laws and procedures to decide whether to bring the action before a court or an administrative forum.

Within 90 calendar days of locating the alleged father or noncustodial parent, the Federal regulations require the establishment of a support order or, at a minimum, the service of process needed to begin the order establishment process. If service of process cannot be obtained within this timeframe, the IV-D agency must document that it has made a diligent effort to serve process, in compliance with state IV-D guidelines.

Finally, in a case where the parties acknowledge paternity, the regulations require the IV-D agency to obtain a support order based upon that acknowledgment.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Refer participants to **Module 3** for questions related to the service of process.
2. At appropriate time, display **PowerPoint Slide 6-4: Paternity at Issue**.
3. Stress to participants that IV-D actions to establish paternity against a member of the military always begin with direct contact with the service-member/alleged father. The caseworker should only request assistance from the military member's chain of command when direct contact with the military member proves unsuccessful.
4. Explain to participants that if a IV-D office is asking the commanding officer to encourage the military member to initiate a voluntary allotment, the IV-D office must include the necessary information (i.e., case number and SDU address).
5. Explain to participants that the Army, Air Force, and Coast Guard only recognize support orders issued by courts. However, the Navy and Marine Corps recognize both court orders and administrative orders issued in accordance with state law. The Navy also recognizes tribal orders.

### ***What you need to know***

1. The Air Force paternity regulation cited in Section 6.3.1 is Air Force Instruction (AFI) 36-2906, paragraph 3.3.
2. As an example of military regulations limiting the ability of a commander to become involved in a civil (paternity) action, the text draws from Marine Corps policy in U.S. Marine Corps, Order P5800.16A Marine Corps Manual for Legal Administration (LEGALADMIN), cha. 15 (Dependent Support and Paternity), paragraph 3.3. All branches of the military have similar regulations.



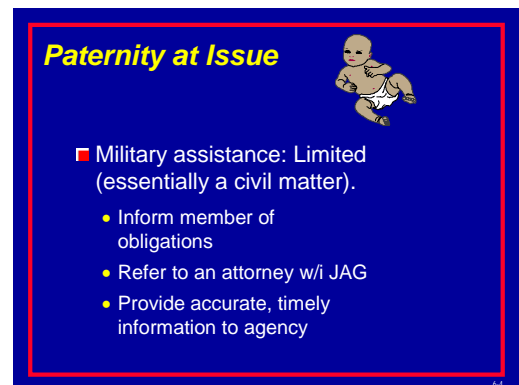
### 6.3 PATERNITY ESTABLISHMENT IN MILITARY CASES

This portion of Module 6 reviews the military regulations and procedures governing the family support arena. It also identifies the role of the military chain of command in the paternity establishment process. For the purpose of this module, assume that you have successfully served the service member *and* you are only contacting the member's chain of command when direct contact with the member has failed to advance the case.

#### 6.3.1 Military Policy and Regulations Regarding Paternity Establishment

Stated simply, paternity establishment is probably the one area of family support where the IV-D worker can expect the least amount of assistance from the military. However, this is *not* because the military views non-marital children as less deserving of support. In fact, military (Air Force) policy states that a service member must comply with the financial support provisions of a paternity order to the same extent that he/she is required to comply with similar provisions within a divorce decree. Yet, absent a court order, there is little a military commander officially can do to assist the IV-D agency.

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



**Paternity at Issue**

- Military assistance: Limited (essentially a civil matter).
  - Inform member of obligations
  - Refer to an attorney w/i JAG
  - Provide accurate, timely information to agency

- Informing a service member of the claim and of his legal *and moral* obligations,
- Referring the member to an attorney, and
- Providing complete, accurate, and timely information to the person or agency bringing the paternity action.

## **TRAINING NOTES**

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### ***What you need to say/do***

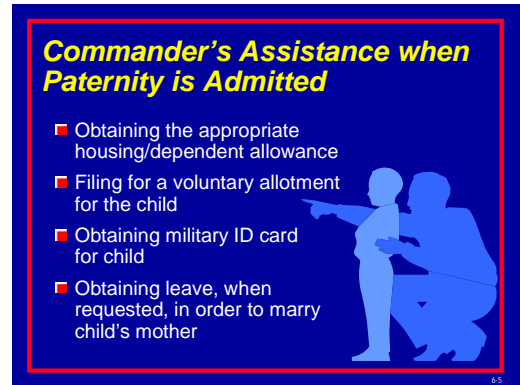
1. Display **PowerPoint Slide 6-5: Commander's Assistance when Paternity is Admitted.**
2. Explain that children born out of wedlock to a military member are entitled to military healthcare benefits under TRICARE (formerly CHAMPUS), which requires enrollment in the Defense Eligibility Enrollment Reporting System. Point out that, without a court order, administrative order, or signed voluntary acknowledgment that establishes paternity, the military member must verbally acknowledge paternity in order for a child to be eligible for enrollment.

### ***What you need to know***

1. The military policy cited in section 6.3.1 is from the Army Regulations 608-99, paragraph 2-2. All branches of the military have similar policies: The Air Force regulation is SECAF INST. 36-2906, Personal Financial Responsibility. The Marine Corps policy is: U.S. Marine Corps, Order P5800.16A Marine Corps Manual for Legal Administration (LEGALADMIN), cha. 15 (Dependent Support and Paternity). The Navy: U.S. Dept of Navy, Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-10 (Paternity Complaints). The Coast Guard: U.S. Dept of Transportation, U.S. Coast Guard Commandant Instruction (COMDTINST) M1000.6A, cha. 8M (Supporting Dependents).

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

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



Children born out of wedlock to military members are entitled to military healthcare and enrollment in the Defense Eligibility Enrollment Reporting System (DEERS) if the military member acknowledges the child. In the absence of a paternity adjudication, the military member is required to fill out a paternity acknowledgment form at the installation identification card facility. Remember that this is possible only if there is a voluntary acknowledgment. The military member may also be entitled to additional allowances for the support of the child, depending on the allowances to which the member is already entitled.

In cases where the military member verbally admits paternity but refuses to provide financial support, the role of the commander with respect to his/her subordinate is limited to referring that individual to a legal assistance attorney within the Judge Advocate General (JAG) office.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Explain to participants that it is a **best practice** to include a copy of their state's Paternity Acknowledgment form in any letter to the commander requesting his/her assistance in the military member's completion of this form.
2. Explain to participants that a member's Leave and Earnings Statement (LES) may contain information that can be helpful in establishing paternity because it includes a field (Field 51) containing codes that identify the number and type of dependents that the member claims for income tax purposes. Refer participants to **Handout 6-2: Leave and Earning Statement**.

### ***What you need to know***

1. At least one state reports that its genetic testing vendor has had success in sending paternity test kits to the alleged father's commanding officer when the alleged father is in the military. This vendor reports that, in the majority of cases, the commanding officer ensures that the test is completed as required.
2. To receive a copy of the LES, the caseworker sends the FOIA request to the Cleveland Defense Finance and Accounting Service Center (DFAS) office. The Cleveland DFAS office is the same military office that processes the income withholding orders for most branches of the military. DFAS will provide a copy of the requested LES; however, the bank routing numbers will be redacted. **Module 7** contains the address information for DFAS.

In cases where the military member denies paternity, there is little a commander can do to force a member to cooperate with a IV-D office in its efforts to establish paternity. Yet, military policy requires individual members to “manage their personal affairs in a manner that does not bring discredit upon themselves” or the U.S. military. It may be helpful for a IV-D office to call upon this policy when requesting a commander’s assistance in *encouraging* the member to cooperate with its efforts to establish paternity.

For example, when direct contact with the military member is unsuccessful, a IV-D office can request that the commander speak with the member to encourage the member to appear for genetic testing. This request should be in writing and explain the consequences of a failure to appear for the testing. It is important to remember that, even in military cases, the local tribunal has authority to force compliance with its order. Although the military commander cannot force a subordinate to appear for genetic testing, a court can use its contempt powers to enforce an order requiring the member to appear for genetic testing.

In addition to genetic test results, the military member’s Leave and Earnings Statement (LES) can provide information that may be relevant to proving paternity. The LES has 78 separate fields that include, among other things, the number and type of dependents (e.g., spouse and/or child) that the member claims for income tax purposes; see field 51 of the LES in **Handout 6-2**. If the member will not voluntarily provide a copy of his or her LES, the IV-D attorney can serve the member with a Request for Production of Documents. In addition, the LES may be obtained from the Defense Finance and Accounting Service (DFAS) office in Cleveland, Ohio.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Explain to participants that each branch of the military has regulations requiring support for a member's dependents. In the absence of a support order, these regulations (see note 2, below) apply.
2. Explain to participants that, in cases where no support order exists but paternity is not an issue, the "temporary support" available from the military varies, depending upon the service branch. The Army's support requirements, without a support order, are tied to its Basic Allowance for Housing II (BAH II) and the specific amount depends on a variety of factors, including number of dependents, other child support orders, etc. The Marine Corps establishes minimum support at the greater of a set dollar amount (\$350/month) for one child OR ½ of the monthly BAH/OHA, up to 1/3 of the member's gross pay. The Air Force simply requires "adequate support." The Navy uses a percentage of gross pay (spouse and minor child is 1/2 of gross pay; one minor child is 1/6 of gross pay). The Coast Guard sets its support for one child at 1/6 of the member's basic pay or, for a spouse and one child, at the BAH difference plus 25% of the member's basic pay. All of these amounts are usually substantially more than \$100-150/month.

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### ***What you need to know***

1. The military policy quoted in subsection 6.4.1 appears in Army Regulation 608-99, paragraph 1.5.
2. In the absence of a court order, a service member can set up a voluntary allotment, asking that money be taken from his or her paycheck and sent directly to the custodial parent. Because it is a voluntary allotment, the member can terminate it at any point.

## 6.4 SUPPORT ORDER ESTABLISHMENT IN MILITARY CASES

Similar to its position in paternity cases, the military views the establishment of a child support order as a matter for the civilian courts. Where no support order exists in the case, there is little a commanding officer can do to compel a subordinate to contribute financial support to his/her family when that subordinate denies owing such support.

### 6.4.1 Military Policy and Regulations Regarding Support Order Establishment

It is important to note at the outset that, in the absence of a support order or an agreement between the parties on the support amount owed, all branches of the military maintain regulations that require a duty of support by the service member to his or her family. Where the regulations specify a particular amount, it is generally less than the amount called for under most state child support guidelines. Accordingly, the best practice always is to establish a support order in accordance with your state laws and procedures at the earliest opportunity.

In broad statements of policy, all branches of the military prohibit a member from using his/her military duty to deny financial support to his/her family. In support order establishment situations, each branch of the military provides additional policy and regulations defining the roles of the service member and his/her commanding officer. For example, Army policy requires soldiers to provide “adequate financial support to their family members” to make certain that “their financial needs and welfare do not become official matters of concern for the Army.” But what assistance can a IV-D office expect to receive from the military chain of command should an individual member violate this policy by failing to provide adequate support for his/her family?

Besides promptly commencing support order establishment procedures, the IV-D office can turn to the military chain of command for limited assistance before

## TRAINING NOTES

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### *What you need to say/do*

1. Explain to participants that, in a married but separated/non-support order scenario, the ability of a commanding officer to punish a subordinate for failing to provide the amount of support established by the military regulations varies by branch. A commander in the Army has the authority to punish the subordinate because the Army's family support regulation is punitive. However, commanders in the other branches may not punish a subordinate for failing to comply with this regulation because the regulations for the other branches are not punitive.
2. To introduce section 6.4.2, display **PowerPoint Slide 6-6: Military Pay**.

### *What you need to know*

1. The quoted military policy appears in Air Force Instruction (AFI) 36-2906, paragraph 3.2.
2. It is important to understand the different roles played by the commanding officer and the JAG in paternity cases. Although both are in the military, their roles with respect to the member of the military involved in the IV-D case are quite different. The military member is trained to see his/her commanding officer as an authoritarian figure, or as someone to be obeyed. As a result, after meeting with his commanding officer, a member involved in a IV-D paternity case may feel the need to voluntarily acknowledge paternity. However, the JAG attorney at the base's Legal Assistance office performs the role of a private attorney and advises the member about his legal rights and responsibilities. After meeting with the JAG attorney, the member may be more likely to weigh his legal options.



a support order exists in the case. In cases where the military member is failing to cooperate with the order establishment process *and* not providing financial support for his/her dependents, it is appropriate for a IV-D office to notify the member's commander of the alleged financial nonsupport. In response to this notification, the commander must meet with the member to determine the validity of the allegation. As part of the commander's inquiry, he/she will take steps to stop the member's receipt of dependent-based pay (e.g., BAH) that is not going to meet the needs of these dependents.

After meeting with the member, the commander must respond to the IV-D office and explain whether the member admits that he/she owes a financial support obligation to his/her family and, if not, why not. If the member admits that he/she has failed to provide this financial support, the commander will provide the IV-D office with a summary of any of the member's reasons and detail the immediate steps the member will take to provide this financial support in the future. However, as noted above, the financial support that the commander can prompt the member to initiate is generally less than the amount called for under most state child support guidelines.

#### **6.4.2 Determining "Income" for a Member of the Military**

It remains important for the IV-D office to promptly initiate appropriate support order establishment procedures because the military chain of command is limited in its ability to provide assistance in initiating the payment of child support. For all states, the establishment of an appropriate support obligation relies upon



a full disclosure of the member's income. In the military, a member's basic pay is frequently neither a full nor a complete picture of that person's income.

## **TRAINING NOTES**

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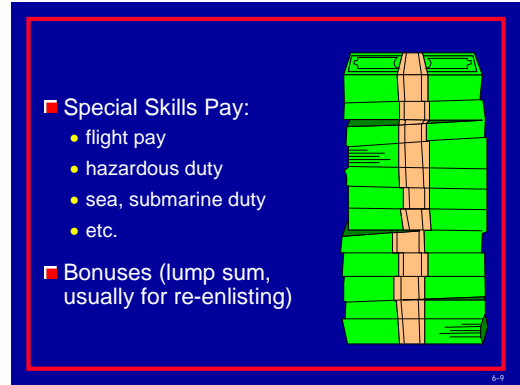
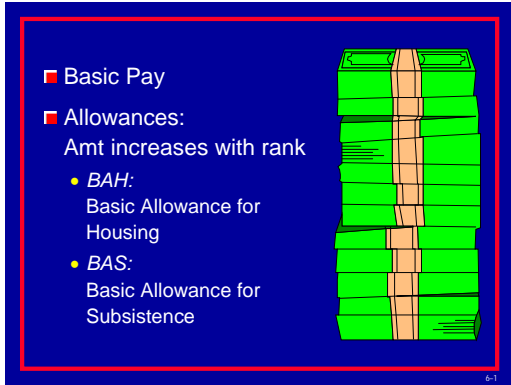
### ***What you need to say/do***

1. Display **PowerPoint Slides 6-7 and 6-8: Military Pay (cont'd)**.
2. Explain to participants that current military pay and allowance information is available on-line at [www.dfas.mil](http://www.dfas.mil).
3. Explain to participants that military allowances like BAH and BAS/Sep Rats are not taxable so they should be removed from any calculation that reduces *gross* earnings to *net* or *disposable* earnings. In other words, include the entire military allowance in the guideline calculation, as none of the allowance is lost to taxes.
4. Direct the participants to **Handout 6-2: Leave and Earnings Statement**.
5. When discussing the LES, refer the participants to **Module 4: The Servicemembers Civil Relief Act (SCRA)**. The LES provides current leave balances that are important in determining whether the member can attend a hearing.
6. Explain to participants that some special skills pay may be for a limited time.

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### ***What you need to know***

1. The LES also identifies the member's state of domicile for income tax purposes. This information can be helpful in determining jurisdiction. See **Module 3: Service of Process on Military Personnel**.
2. In two situations (serving in a combat zone and performing "qualified hazardous duty"), the earnings of the service member are tax-free. This is important to know in those cases where the support obligation is determined from an individual's *net* income.
3. The LES reflects pay increases and bonuses paid to the member of the military. (Members of the military receive pay increases every two years.) However, most bonuses are paid at the field level and are not processed by DFAS. As a result, the bonus is noted on the LES retroactively. This means that the bonus generally does not appear in the earnings for the active pay period (line #33) but can be identified using the year-to-date earnings (line #34). Due to this retroactive application, a tribunal may consider bonuses for the purpose of establishing a support obligation. However, bonuses are usually not attachable for the purpose of enforcing a support order. That is, an income withholding order will not attach the bonus because it is paid in the field and DFAS learns of the bonus only after the military member has received it.



Military pay is comprised of basic pay, available allowances (e.g., Basic Allowance for Housing (BAH), Basic Allowance for Subsistence or Separate Rations (BAS or Sep Rats)), special skill pay (e.g., flight pay), and bonuses (e.g., reenlistment). To determine the military member’s true income, the IV-D office needs a resource that details the member’s basic pay and all allowances and special pay. For all branches of the military, this information is provided on the member’s Leave and Earnings Statement (LES).

### 6.4.3 The Leave and Earnings Statement

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

- Member’s name and Social Security number [fields 1 – 2]
- All pay the member receives (Base, Special, Incentive, and Bonus) [field 19]
- All allowances and entitlements the member earns [field 10]
- Member’s leave balances [fields 25 – 32]
- Number of dependents the member claims [field 51]
- Member’s declared state of domicile [field 44]

The IV-D worker must understand how to decipher the LES information in order to determine accurately a military member’s complete income. **Handout 6-2** provides an explanation of the information within each LES field. Note that the

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Income tax returns are another important source of information regarding a service member's income. Remind participants that a portion of military pay (e.g., BAS, BAH) is not taxable. Therefore, although tax records may include income not reported on the member's military pay stubs, the pay stubs will report income that does not appear on the member's tax return. Emphasize the importance of reviewing *both* documents to ensure an accurate picture of the member's income.
2. For 6.4.4, lead participants through a group discussion of **Handout 6-1: LES Exercise**.

### ***What you need to know***

1. The office to which the caseworker should direct a FOIA request to receive a copy of the LES, the Defense Finance and Accounting Service Center (DFAS) - Cleveland, is the same military office that processes the income withholding orders for most branches of the military. **Module 7** contains the address information for DFAS.
2. Gross income (all taxable income)  
- taxes and mandatory withholdings  
= net income  
  
Net income + nontaxable income (BAS, BAH) = "true" net income of service member for states where the support guideline is based on net, rather than gross, income.

various types of income are reported for the current pay period and for year-to-date. The LES also identifies whether a given source of income is taxable. A caseworker should review at least six months of pay in order to get a complete financial picture.

If the member is not receiving BAH and BAS/Sep Rats, it is likely that the member is living on base and not paying for housing or food. In these instances, it is important to take this “in kind” income into account when you are determining the member’s true income and/or the member’s necessary monthly living expenses. Review the LES carefully to determine the true “net” or “disposable” income available to the member. For example, some allotments are voluntary (e.g., deductions for retirement accounts) and may not be appropriate reductions from gross earnings for the purpose of support guideline calculations.

If the member does not voluntarily provide the IV-D office with a copy of a current and complete LES, use a Freedom of Information Act (FOIA) request to obtain a copy. Direct this request to the Defense Finance and Accounting Service Center (DFAS) in Cleveland, Ohio.

You should also request the member’s tax returns. Many service members supplement their basic pay with investment income or second jobs. Keep in mind, however, that a portion of military pay (e.g., BAS, BAH) is not taxable. Therefore, although tax records may include income not reported on the member’s military pay stubs, the pay stubs will report income that does not appear on the member’s tax return. It is important to review both documents to ensure an accurate picture of the member’s income.

#### **6.4.4 LES Exercise**

Refer to **Handout 6-1: LES Exercise**, which is in the Appendix. The trainer will facilitate a group discussion of this exercise.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Direct participants to **Module 3** for information concerning where to file the paternity and/or order establishment action in cases involving the military.
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### ***What you need to know***

1. In a nutshell, “jurisdiction” is the legal authority of a tribunal (court or administrative agency) over a person or thing. “Venue” is the particular county or city in which a tribunal with jurisdiction may hear and determine a case.
2. Long-arm jurisdiction is based upon the out-of-state individual’s maintaining sufficient “minimum contacts” with a state to make the nonresident subject to the power of its tribunals. An example of long-arm jurisdiction occurs when a nonresident has intercourse in a state and a child may have been conceived as a result of that act of intercourse. In this example, the act of intercourse within the state is sufficient “minimum contact” on the part of the nonresident to make that person subject to the jurisdiction of that state’s tribunals.

## 6.5 WHERE TO FILE CHILD SUPPORT ORDER ESTABLISHMENT PROCEEDINGS

The decision regarding where to file the establishment action in a case involving a member of the military is governed by the same legal rules that apply to cases not involving the military. These legal rules are “jurisdiction” and “venue.” Jurisdiction is discussed in Module 3. Venue is the specific subdivision in a state where a proceeding may be filed.

In most cases, when the member of the military is living and working inside the United States, there are at least two states with personal jurisdiction over the member for the purpose of a support establishment proceeding. These two states are the member’s state of legal domicile (noted on the member’s LES at field 44) and/or the state where the military member is currently living and working. In cases where the member is living and working outside of the United States, the rules of jurisdiction and venue continue to determine where to file the establishment action. In a case where the member is assigned to overseas duty, a state will need to assert personal jurisdiction upon some factor other than physical residence. The Uniform Interstate Family Support Act (UIFSA) is the law in every state. It lists a number of acts that can provide the basis for a state to assert long-arm jurisdiction over a nonresident. If a state has long-arm jurisdiction over a military member, a tribunal can legitimately require the member -- who does not reside within that state -- to “appear” before the tribunal. Because this decision is a legal one, a IV-D program attorney should resolve any questions regarding where to file an establishment action.

The specific laws, procedures, and child support guidelines that apply in an establishment action (in both military and non-military cases alike) are those of the state that “hosts” the establishment action. This is true in both intrastate and interstate fact patterns.

## TRAINING NOTES

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### *What you need to do/say*

1. Direct participants to **Handout 6-3: Review Exercises**. Divide them into groups of four and allow them 15-20 minutes to complete the exercises. At the end of that time, facilitate a group discussion of the exercises.
2. After completion of the exercises, display **PowerPoint Slide 6-9: Summary**.
3. Respond to any remaining questions.
4. Inform participants of the topics that Module 7 will explore.

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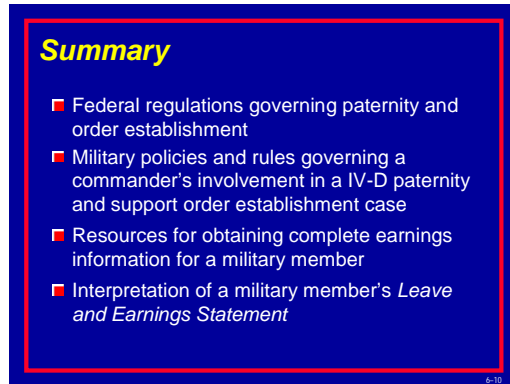
### *What you need to know*



## 6.6 EXERCISES

The trainer will facilitate a discussion of **Handout 6-3: Review Exercises**.

## 6.7 SUMMARY OF MODULE 6



In this module we discussed:

- Federal regulations governing paternity and order establishment
- military policies and rules governing a commander's involvement in a IV-D paternity and support order establishment case
- resources for obtaining complete earnings information for a military member
- interpretation of a military member's *Leave and Earnings Statement*.

## 6.8 PREVIEW OF MODULE 7

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

- Federal child support enforcement regulations
- military policies and rules governing a commander's involvement in the enforcement of financial and medical child support obligations
- laws and procedures for attaching military income (active duty, retired, and civilian DoD employees)
- releasing existing enforcement activity when the support obligation terminates.



# **Module 7**

## **Military Enforcement Procedures**

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 7-1: Module 7** (title slide).
2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to Module 7.
3. Explain to participants that this module involves IV-D actions to enforce the financial and medical child support obligations of an individual in the military.
4. Review the module's goals and objectives with participants.
5. Explain that, unless the module states otherwise, the enforcement procedures described herein apply to active duty, reserve, and retired military members, and civilian Department of Defense (DoD) employees alike.

### ***What you need to know***

1. It takes approximately 1.5 hours to complete this module.
2. Listed below are the equipment, handouts, and PowerPoint slides needed for the module.

### **Equipment/Supplies**

- Flipchart stand with paper and/or whiteboard
- Markers (permanent, dry-erase, and wet erase)
- Masking tape
- Personal computer with PowerPoint program
- LCD projector and screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

### **PowerPoint Slides**

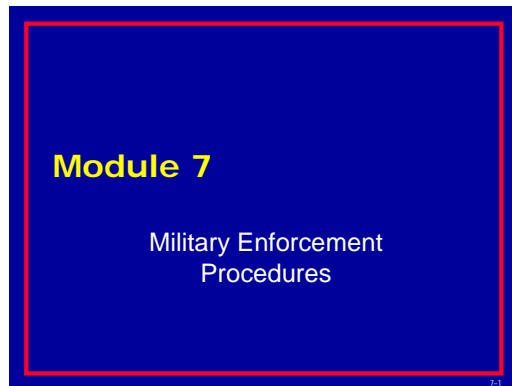
- 7-1: Module 7 (title slide)
- 7-2: Federal Enforcement Reg
- 7-3: Federal Medical Support Enforcement Reg
- 7-4: Income Subject to State Income Withholding
- 7-5: State Income Withholding for Child and Spousal Support
- 7-6: Federal Statutory Military Allotment
- 7-7: Medical Support
- 7-8: Documents Needed to Enroll in DEERS
- 7-9: DMDC Contact Flow Chart
- 7-10: Summary

### **Handouts**

- 7-1: Military Payment Processing and Medical Insurance Centers
- 7-2: Sample Letter Requesting Federal Statutory Military Allotment
- 7-3: Review Exercises

## MODULE 7: MILITARY ENFORCEMENT PROCEDURES

Time: 1.5 hours



### 7.1 MILITARY ENFORCEMENT PROCEDURES

#### 7.1.1 Learning Goal

- Each participant will learn effective strategies for enforcing the financial and medical child support obligations in cases involving a member of the military.

#### 7.1.2 Learning Objectives

- Given a participative lecture, participants will correctly identify the basic requirements of the Federal IV-D child support enforcement regulations.
- Given a participative lecture and scenario-based exercise, participants will explain the military policies and rules governing the chain of command's involvement in the enforcement of financial and medical child support obligations.
- Given a participative lecture and scenario-based exercise, participants will explain the available mechanisms, and the procedures involved with those mechanisms, to attach the income of active duty, reserve, and retired military personnel, and civilian Department of Defense (DoD) employees.
- Given a participative lecture, participants will explain the differences between enforcing the child support obligation with the state-law based Federal *Order/Notice to Withhold Income for Child Support* form and the Federal-law based Statutory Military Allotment, and when it is more appropriate to choose one over the other, or when to use both.

## TRAINING NOTES

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### ***What you need to say/do***

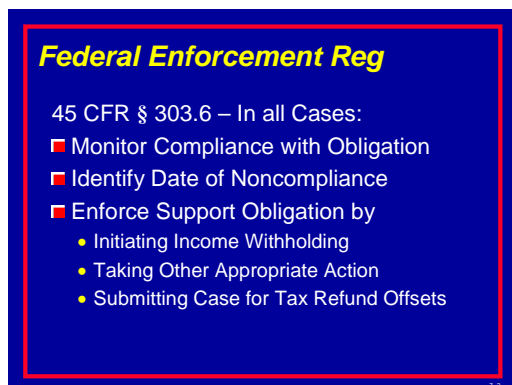
1. Display **PowerPoint Slide 7-2: Federal Enforcement Reg.** Remind participants that the Federal regulations are available on-line at [www.acf.hhs.gov/programs/cse](http://www.acf.hhs.gov/programs/cse).
2. Explain to participants that OCSE recognizes income withholding as the single most effective tool for collecting child support.
3. **Practice tip:** In your discussion of “diligent efforts to serve process guidelines,” inform the participants that the 60-day timeframe to serve process is tolled (stops running) if the state documents that its unsuccessful efforts to serve process complied with these guidelines.

### ***What you need to know***

1. OCSE issues the Federal regulations governing IV-D enforcement procedures. These regulations apply in both military and non-military IV-D cases. All state IV-D programs must comply with their requirements and timeframes in order to receive Federal funding for their child support programs.
2. This subsection reviews the highlights of the Federal enforcement regulations in order to lay the foundation for later more detailed discussions of military enforcement procedures.
3. According to statistics released by OCSE in September 2002, in FY 2001, income withholding accounted for nearly two-thirds (65%) of all child support collected. (Source: *Child Support Enforcement FY 2001 Data Preview Report*)

## 7.2 APPLICABLE FEDERAL REGULATIONS AND TIMEFRAMES

### 7.2.1 Federal IV-D Enforcement Regulation



The Federal regulation titled *Enforcement of Support Obligations* appears at 45 C.F.R. § 303.6. This regulation requires the IV-D office to monitor compliance with support orders, note the date of any noncompliance, and take appropriate action to enforce support obligations. The primary enforcement tool under the Federal regulations is income withholding. In addition to income withholding, the Federal regulations require the states to take other appropriate enforcement action within 30 days of identifying a delinquency. However, this 30-day timeframe does not apply if the particular enforcement remedy requires additional service of process. When needed, the service of process must occur within 60 days of identifying the delinquency. Follow-up enforcement action must occur within 60 days of identifying the delinquency or locating the noncustodial parent, whichever occurs later. In addition to initiating income withholding and other “appropriate enforcement action,” the state must submit delinquent cases (meeting the eligibility requirements) for state and Federal income tax refund offset. Finally, these regulations require the IV-D agency to examine the reasons behind unsuccessful enforcement efforts and to reinstate enforcement action, when appropriate, in the future.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 7-3: Federal Medical Support Enforcement Reg.**

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### ***What you need to know***

1. 42 U.S.C. § 666(a)(19) requires a state, as a condition of receiving Federal funds, to have procedures under which all child support orders enforced through Title IV-D include a provision for the health care coverage of the child.
2. This subsection reviews the Federal medical support enforcement regulations. The Module discusses specific medical support enforcement procedures at section 7.4.
3. Note: A custodial parent's receipt of Medicaid is NOT considered satisfactory health insurance under Federal regulations.

### **7.2.2**



## Enforcement of Medical Support Obligations Regulation

The Federal regulation titled *Securing and Enforcing Medical Support Obligations* is at 45 C.F.R. § 303.31. Unless the custodial parent and child(ren) have satisfactory insurance other than Medicaid, in a new or modified support order the IV-D office must petition the court or administrative authority to include health insurance that is available

### **Federal Medical Support Enforcement Regs (45 CFR 303.31)**

Unless CP has satisfactory health insurance:

- Seek health insurance that is available to NCP at a "reasonable cost" in new or modified support orders.
- Seek such medical support even if health insurance of reasonable cost isn't available at time of order.
- "Available at a Reasonable Cost" - Available through Employer or other Group
- Provide coverage notice to CP and Medicaid.
- Enforce available health ins when not provided.

to the noncustodial parent at reasonable cost. The regulation requires the agency to petition the court or administrative authority for such medical support, regardless of whether health insurance of reasonable cost is actually available at the time the order is entered or whether modification of the noncustodial parent's current coverage to include the children is immediately possible. Health insurance is considered "reasonable in cost" if it is available through the parent's employer or other group provider. Therefore, members of the military are expected to provide health insurance coverage to their dependents (unless the custodial parent and child have satisfactory health insurance) because the United States makes health insurance available to the dependents of military members.

If health insurance is not available at the time the original support order is entered but later becomes available, the IV-D agency must initiate a modification proceeding to add this obligation to the existing order. When insurance coverage is ordered and provided by the noncustodial parent, the IV-D office must give the custodial parent and Medicaid agency, if applicable, the information needed to access this insurance. Finally, if the noncustodial parent is ordered to provide health insurance and this insurance is available but not provided, then the IV-D office must take steps to enforce that coverage.

In addition, Federal regulation 45 C.F.R. § 303.32 requires states to have laws requiring the use, where appropriate, of the National Medical Support Notice

## **TRAINING NOTES**

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### ***What you need to say/do***

1. As a representative military rule dealing with voluntary allotments, inform the participants of Army Regulation 608-99, 2.1(b): When living separately from their family members, “soldiers must plan carefully for the financial support of their family members”... and “authorize voluntary allotments for family members...”
2. According to DFAS, voluntary allotments for child support are usually paid directly to the custodial parent. Unless the state process to establish and enforce a child support obligation will take an unusually long time (e.g., the member is outside the United States at sea or overseas), IV-D offices are not encouraged to use the voluntary allotment.
3. A member of the military may request an advance of his/her pay. When pay is advanced, the result is less money available for the allotment.

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### ***What you need to know***

1. These are the Federal regulations that govern the collection of child support from members of the military:
  - Army: 32 C.F.R. Part 584
  - Navy/Marine Corps: 32 C.F.R. Part 733
  - Air Force: 32 C.F.R. Part 818
  - Coast Guard: 5 C.F.R. Part 581
2. Each military branch has also developed policy regarding support. The Army: Army Regulation 608-99, 2.1(b) (Family Support, Child Custody, and Paternity). The Air Force regulation is SECAF INST. 36-2906, Personal Financial Responsibility. The Marine Corps policy is: U.S. Marine Corps, Order P5800.16A Marine Corps Manual for Legal Administration (LEGALADMIN), cha. 15 (Dependent Support and Paternity). The Navy: U.S. Dept of Navy, Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-10 (Paternity Complaints). The Coast Guard: U.S. Dept of Transportation, U.S. Coast Guard Commandant Instruction (COMDTINST) M1000.6A, cha. 8M (Supporting Dependents). You can access the policy statements through the appropriate military branch website.

(NMSN) (a Federal form) to enforce a child support order requiring the noncustodial parent to provide health care coverage for his or her children through an employment-related group health plan. An exception is that state child support agencies are not required to use the NMSN in cases where the court or administrative order stipulates to health care coverage that is not employer-based.

### **7.3 MILITARY ENFORCEMENT REMEDIES**

This portion of the module identifies the various enforcement remedies and procedures specifically available in cases where the noncustodial parent (active duty, reserves, civilian employee of DoD, or retired service member) receives wages or other income from the military. Federal regulations and the rules of each service branch require military members to honor the terms of their child support orders. These military rules give commanding officers the authority to punish members who fail to support their dependents.

These are the Federal regulations that govern the collection of child support from members of the military:

- Army: 32 C.F.R. Part 584
- Navy/Marine Corps: 32 C.F.R. Part 733
- Air Force: 32 C.F.R. Part 818
- Coast Guard: 5 C.F.R. Part 581

Each branch has also developed the following policy regarding support:

- The Army: Army Regulation 608-99, 2.1(b) (Family Support, Child Custody, and Paternity).
- The Air Force: SECAF INST. 36-2906, Personal Financial Responsibility.
- The Marine Corps: U.S. Marine Corps, Order P5800.16A Marine Corps Manual for Legal Administration (LEGALADMIN), cha. 15 (Dependent Support and Paternity).

## **TRAINING NOTES**

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### ***What you need to say/do***

1. In discussing Section 7.3.1, explain to participants that, according to DFAS, most voluntary allotments occur outside of the IV-D program. As a result, the payment is usually sent directly to the custodial parent rather than to the central State Disbursement Unit (SDU).

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### ***What you need to know***

- The Navy: U.S. Dept of Navy, Navy Military Personnel Manual (MILPERSMAN) art. 1754-030 (Support of Family Members), art. 5800-10 (Paternity Complaints).
- The Coast Guard: U.S. Coast Guard Commandant Instruction (COMDTINST) M1000.6A, cha. 8M (Supporting Dependents).

### **7.3.1 Military Voluntary Allotment**

A member of the military may establish a voluntary allotment of earnings and route money from his/her pay to his/her 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, the military member can generate this allotment even before a child support order exists in the case. A commanding officer will assist the member in obtaining the voluntary allotment forms. While a commander can order a subordinate to obtain a voluntary allotment for his/her family, a commander cannot actually issue the allotment.

There are limited instances when this remedy may be useful in processing IV-D cases involving the military. In discussions with the member (or his/her attorney) in cases where no support order exists, it is appropriate to point out that a voluntary allotment can help avoid the accumulation of unpaid child support during the order establishment process. In addition, the member should understand that this procedure provides an official record of payments that will assist the member in obtaining proper credit for payments made prior to the entry of the order, in states that authorize retroactive support. In cases with no support order, the Army's Family Support regulation [AR 608-99, para. 5-2(b)(1)] views the voluntary allotment as "the preferred method of providing financial support to family members not residing with the soldier."

While the IV-D worker should keep the voluntary allotment in mind, it is not an enforcement tool that a IV-D worker can generate. Only the military member can initiate a voluntary allotment. It is also important to understand that the member

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Advise participants that, pursuant to Federal law, the United States has consented to honor income withholdings and garnishments to enforce child and alimony obligations as if it were a private employer. Therefore, in addition to voluntary allotments, members of the Armed Forces and civilian DoD employees are subject to involuntary allotments to enforce their support obligations.
2. In IV-D cases there are two primary remedies for involuntarily withholding money from a military member for support. The first is based on a Federal statute; the second is based on a state statute.
3. Show **PowerPoint Slide 7-4: Income Subject to State Income Withholding**. List the types of income of a military member or civilian DoD employee that are subject to state garnishment or child support income withholding.

### ***What you need to know***

1. The Federal statutory military allotment and a state law requiring child support income withholding perform similar functions, but are nevertheless separate remedies. The Federal statutory remedy that is expressly applicable to members of uniformed services on active duty appears at 42 U.S.C. § 665. The requirement that, as a condition of receiving Federal funds, a state have laws providing for income withholding in all IV-D cases, unless there is a good cause exception, appears at 42 U.S.C. § 666.
2. A caseworker can call the Veterans Administration or Retired Pay Call Center to determine if a member has waived part of his or her retired or retainer pay in order to receive Veterans' Disability.

can revise or terminate a voluntary allotment just as easily as he/she can start one. Due to this fact, when a child support order exists in the case, IV-D staff should *not* rely upon the voluntary allotment as the mechanism to divert child support from the member's earnings to his/her family.

### 7.3.2 Involuntary Withholding of Military Income


There are three main vehicles for involuntarily attaching military income: a generic garnishment under state law, the Federal statutory military allotment, and a state order/notice to withhold income for child support. IV-D offices will most often use either the Federal military allotment statute or their state child support withholding law (via the Federal form *Order/Notice to Withhold Income for Child Support*) to attach military income.

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

- 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; and
- "Any other remuneration for employment."

***Income Subject to State Income Withholding***

- Military active duty pay (basic pay and certain bonuses, but not BAH and BAS/Sep Rats)
- Military reserve and retired pay
- Federal DoD civilian employee pay and retirement annuities
- "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 armed service member waives part of his or her retired pay (which is taxable) in order to receive the disability compensation (which is nontaxable). When this happens, that part of

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Direct participants to **Handout 7-1: Military Payment Processing & Medical Insurance Centers**.
2. Advise participants that DFAS maintains a website with information regarding its services at [www.dfas.mil](http://www.dfas.mil). To reach the page with information concerning child support income withholding, click on the link titled *Money Matters*, embedded within the logo at the top of the DFAS homepage.
3. Refer to **Handout 7-1** in the Appendix for the name, address, telephone, and fax number of the current DFAS help desk staffer.

### ***What you need to know***

1. The Defense Finance & Accounting Service (DFAS) processes payroll for all branches of the U.S. Department of Defense (DoD). The U.S. Coast Guard is within the U.S. Department of Homeland Security and not part of DoD; it therefore has its own payroll-processing center.
2. As of September 2003, DFAS is unable to track an individual's move from active duty to retirement. This means that DFAS does not automatically begin withholding against retirement earnings even though DFAS was previously managing a child support income withholding order on the same individual when he or she was receiving active duty pay. Therefore, to reach the member's retirement income, a child support office must send a second income withholding order to DFAS when the obligor retires from active duty and begins receiving retirement income. In 2004, DFAS does expect to implement a tracking system that will automatically move the income withholding order from active duty pay to retirement pay.



the Veterans Administration payment that is in lieu of the waived retired pay is subject to garnishment. However, if the member's entitlement or disability compensation is greater than his or her entitlement to retired pay, and the service member waived all of his or her retired pay in favor of disability compensation, then none of the disability compensation is subject to garnishment or attachment.

An involuntary income withholding, regardless of the specific form used to implement income withholding, has priority over a pre-existing voluntary allotment. When initiating involuntary withholding, you must send the appropriate form to the appropriate payroll processing center. The Defense Finance & Accounting Service (DFAS) has local offices throughout the country that process payroll for the Army, Navy, Air Force, and Marines. With respect to these branches, DFAS processes the pay for military members who are active duty, reserves, and retired. It also processes the pay for civilian DoD employees and members of the National Guard who have been activated into Federal service. However, all involuntary withholding instruments are processed by the DFAS office in Cleveland, Ohio. (Note: DFAS does *not* process payroll for civilian employees of government contractors working on a military project.) The Coast Guard processes its own payroll for active duty, reserves, and retired members.

IV-D offices are reminded to use the member's Social Security number on all correspondence with DFAS and the Coast Guard's payroll processing office. Both DFAS and the Coast Guard identify payments sent to the state IV-D offices with the member's name and Social Security number. However, if problems arise in determining how to credit a particular payment, DFAS staffs a "help desk" that is available to assist the states in identifying payments. The Coast Guard Payroll Processing's Legal Unit is also available by phone or fax to provide payment identification assistance. See **Handout 7-1** in the Appendix for the name, address, telephone, and fax number of the current DFAS help desk staffer.

## TRAINER NOTES

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### ***What you need to say/do***

1. In most cases, it is preferable for a IV-D agency to use its state income withholding statute to enforce the support obligation of a service member or civilian DoD employee.
2. Explain to participants that neither DFAS nor the Coast Guard requires that a copy of the underlying child support order accompany the Federal income withholding form.
3. Explain to participants that, due to the time involved in processing a new income withholding order, it may take up to 60 days for a military payroll processing center to generate a payment.
4. Explain to participants that DFAS automatically stops income withholding action when an active duty member retires. The IV-D office must notify DFAS of the military member's change of status by resending the income withholding order. Note: DFAS anticipates its practice of terminating income withholding upon retirement to end effective September 2003. At that time the income withholding order, if not released, will be automatically transferred to the member's retirement income.
5. Ask participants to identify advantages of state income withholding for child support. Write their responses on the flipchart or white board. When they have finished, display **PowerPoint Slide 7-5: State Income Withholding for Child and Spousal Support** as a summary of the advantages.

### ***What you need to know***

1. In accordance with 42 U.S.C. § 666, OCSE policy requires all state IV-D agencies to use the Federal form *Order/Notice to Withhold Income for Child Support* to attach earnings or other income. According to OCSE-AT-98-03, "the *Order/Notice to Withhold Income for Child Support* is a standardized form used for income withholding in intrastate and interstate cases." Note: This policy does NOT prohibit states from using the Federal statutory allotment to attach military earnings.
2. DFAS does not send the military member a copy of the income withholding order/notice. It is therefore incorrect for a IV-D agency to assume that DFAS, as the employer, is giving notice to the noncustodial parent of his/her rights and responsibilities.
3. DFAS encourages all states to join its Kids First program to send income withholding orders and receive payments through an automated process. The DFAS website has additional information concerning this initiative.

### 7.3.2.1 State Income Withholding for Child Support

In the majority of instances when a IV-D office seeks enforcement in a case involving the military, it should send the standard Federal *Order/Notice to Withhold Income for Child Support* (Federal income withholding form). Both DFAS and the Coast Guard prefer IV-D offices to use the Federal income withholding form rather than any local state income withholding forms. It is important to note that DFAS is able to receive income-withholding orders and will soon send withheld earnings electronically, using its *Kids First* program. While the Coast Guard is unable to electronically receive income-withholding orders, it can electronically route payments back to the states.

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

State income withholding for child support, using the Federal *Order/Notice to Withhold Income for Child Support* form, has many advantages:

1. It does not require an arrearage. Income withholding is immediate unless there is a good cause exception.
2. It does not require advance notice or a second hearing.
3. States use a broad definition of income that includes more than wages.

**State Income Withholding for Child and Spousal Support**

- In Most Cases, Withholding is Immediate
- No Need for Arrears or Advance Notice
- Intercepts More than Wages
- Can Use to Collect Current Support and Arrears
- Applies to Active, Reservists, Retirees, and Civilian Employees of the Military
- Requires Only Federal Notice/Order to Withhold Income for Child Support

## **TRAINER NOTES**

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### ***What you need to say/do***

1. In addition to state-law based income withholding, there is also a Federal statute, 42 U.S.C. § 665, that specifically provides for allotments from pay for child and spousal support owed by members of uniformed services on active duty. Advise participants that the Defense Finance & Accounting Service (DFAS) requests that IV-D offices discontinue using the terms “involuntary” and/or “mandatory” allotments when referring to the “statutory” IV-D allotment appearing in the Social Security Act at 42 U.S.C. § 665.
2. While showing **PowerPoint Slide 7-6: Federal Statutory Military Allotment**, go over the requirements for implementation of this Federal IV-D remedy.

### ***What you need to know***

1. The Federal Consumer Credit Protection Act (CCPA) is located at 15 U.S.C. §1673. It provides that if the noncustodial parent is supporting family members other than those to whom the garnishment or income withholding order relates, only 50% of net pay can be withheld. If no other family members are being supported, the ceiling rises to 60% of net pay. If there is an arrearage that is more than 12 weeks past due, an additional 5% can be added to either ceiling.

4. It can be used to collect both current support and arrears.
5. It applies not only to active military personnel, but also to reservists, retirees, and civilian employees of the military.
6. It does not require a certified copy of the underlying support order to accompany the Federal form.

The limitations of state income withholding are:

1. It is subject to the lower of the garnishment limits within state law or the Federal Consumer Credit Protection Act (CCPA); the CCPA limits range from 50 – 65% of disposable pay depending upon the presence of dependents and the length of time the noncustodial parent is in arrears.
2. It is not able to attach BAH and/or BAS/Sep Rats.

### 7.3.2.2 *Federal Military Allotment Statute*

The Federal statutory allotment is a separate and distinct income withholding remedy, specifically directed toward the military, which is available under the Social Security Act. A IV-D agency can use it to enforce both child and spousal support obligations owed by a member of one of the uniformed services on active duty.

**Federal Statutory Military Allotment**

- 42 U.S.C. 665
- Only applies to active duty members
- Requires 2 months amt of arrears
- Initiated with a notice by an authorized person
  - a IV-D agent or attorney
  - a court with authority to issue a support order or an agent of the court
- Collects amount necessary to comply with order

The member must be in arrears totaling at least two months' amount of support. The amount of the allotment is the amount necessary to comply with the support order.

To initiate a Federal statutory allotment, you need a notice from an authorized person requesting the particular military branch to initiate the allotment. An “authorized person” is defined as:

1. a IV-D agent or attorney, and
2. a court with authority to issue a support order or an agent of the court.

## **TRAINER NOTES**

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### ***What you need to say/do***

1. Direct participants to **Handout 7- 2: Sample Letter to Request Federal Statutory Military Allotment**.
2. Direct participants to **Handout 7-1: Military Payment Processing & Medical Insurance Centers** for the name/address/phone and fax numbers of the DFAS Help Desk and the Coast Guard's Payroll Processing Center.
3. Explain to participants that the involuntary withholding remedies are not exclusive; in some cases, it may be appropriate to use both the Federal statutory military allotment and state income withholding at the same time. Ask them to provide some examples.
4. After explaining the requirements of 42 U.S.C. § 665, ask participants to identify its advantages and disadvantages as compared to state income withholding for child support. Write their responses on the flipchart or white board.

### ***What you need to know***

1. **Practice tip:** The application of the Federal CCPA limits is the reason it is important to advise the military processing center if the arrears are 12 weeks late.
2. The most likely example of when it is appropriate to seek the Federal statutory military allotment rather than state income withholding for child support is in those cases where state income withholding does not recover the full support obligation due to the application of the lower of Federal or state wage withholding limits (e.g., Federal Consumer Credit Protection Act). The Federal statutory allotment may collect more support because it attaches BAH and BAS/Sep Rats, which a state income withholding notice/order does not, and (for those states that have enacted greater income protections than those provided under the Federal CCPA) because the lower state garnishment limits do not apply.
3. Since the remedies are not exclusive, where a military member has both wages and other sources of income, it may be appropriate to use the Federal statutory military allotment to withhold money from wages and the state income withholding to withhold money from the other income source as a way to collect current support and arrears.

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

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

The Appendix contains **Handout 7-2**, which is a sample letter to request the Federal statutory military allotment. Send this notice to the same payroll processing center that receives the Federal *Order/Notice to Withhold Income for Child Support*.

The Federal statutory allotment has advantages and disadvantages when compared to the state child support income withholding remedy. It has the following advantages:

1. It allows the attachment of both BAH and BAS/Sep Rats benefits, which are not attachable by traditional income withholding (i.e., through use of the Federal form *Order/Notice to Withhold Income for Child Support*).
2. Lower state garnishment limits, if provided by state law, do not apply. Only the CCPA limits apply.

However, the disadvantages include:

1. It can only be issued when the noncustodial parent is a member of the "uniformed" services on active duty (does not include reservists, retirees, or civilian employees of the military).
2. The noncustodial parent must be delinquent in an amount equal to, or greater than, the amount owed for two months of current support payments.
3. The allotment will not begin until the member has consulted with a judge advocate of the service or with a law specialist in the case of the Coast Guard, or until 30 days after the notice where it has not been possible, despite good faith efforts, to arrange such a consultation.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. After concluding **Section 7.3.2.2**, explain to participants that the Uniformed Services Former Spouses' Protection Act (USFSPA) is yet another remedy available to collect child support from retired military personnel. The USFSPA is located at 10 U.S.C. § 1408. Implementing Federal regulations are at 32 C.F.R. Part 63. Explain that the USFSPA is not a useful remedy in IV-D cases because it limits withholding to 50% of retired pay (even if arrears exist) and is not available to enforce the support obligation contained within a paternity order. In IV-D cases, it is better to use the Federal income withholding remedy because it attaches the same retirement income while avoiding the USFSPA's shortcomings. In almost all cases, it is the retired spouse of the military member who directly initiates enforcement under USFSPA.
2. Display **PowerPoint Slide 7-7: Medical Support**.
3. During the discussion of **Section 7.4**, explain to participants that although medical insurance remains available to retired members of the military and their dependents via TRICARE, the co-pay will vary for retired members.
4. Direct participants to **Handout 7-1: Military Payment Processing & Medical Insurance Centers**, for addresses of the offices available to assist in obtaining medical insurance for military dependents.
5. Explain to participants that entitlement to military medical care benefits is determined by either the child's date of birth or the date(s) of the sponsor's military service, NOT by the DEERS enrollment date.

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### ***What you need to know***

1. TRICARE has taken the place of CHAMPUS.
2. When referring to its services, TRICARE uses the term "shared" rather than "covered" because the cost of the health care is shared by the beneficiary after the annual deductible is met.
3. Members of the Coast Guard are covered by TRICARE.
4. **Practice tip:** Suggest to the custodial parent that he or she contact the installation before arriving with documents to request DEER enrollment in order to determine if the installation requires completion of special local forms.

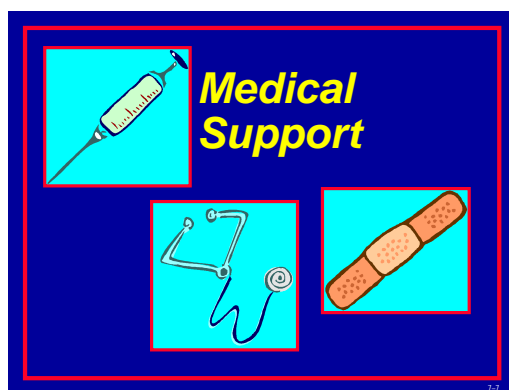


4. The allotment will include amounts for arrears only if the order so provides. If the order does not, the allotment will only be for current support.

It is important to remember that the various enforcement remedies are not exclusive. For example, in cases with arrearages, it is appropriate to use state income withholding against other known nonmilitary income even though a Federal statutory military allotment is in place against the member's wages.

#### 7.4 ENFORCEMENT OF MEDICAL SUPPORT IN MILITARY CASES

The military health care program for all uniformed services, including the Coast Guard, is named TRICARE (formerly known as CHAMPUS). TRICARE is available to active duty, retired military, and reservists who have been recalled to active duty. It is not available to civilian employees of the military. Just as in non-



military cases, IV-D caseworkers should use the National Medical Support Notice (NMSN) to enforce military members' medical support obligations.

When paternity is uncontested, medical support is available to military dependents. Before a military dependent is eligible for TRICARE, that dependent must be enrolled in the Defense Enrollment and Eligibility Reporting System (DEERS). DEERS maintains the records of each military member (the sponsor) and his/her dependents enrolled in the program.

The custodial parent can call the 1-800 number of the Defense Manpower Data Center (DMDC) to determine if the dependent is already enrolled in DEERS and

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display **PowerPoint Slide 7-8: Documents Needed to Enroll in DEERS.**
2. Explain to participants that all military bases have Health Benefits Advisors to assist custodial parents with the available options for medical insurance coverage. In addition, a handbook explaining TRICARE's coverage is available from the address provided on **Handout 7-1: Military Payroll Processing & Medical Insurance Centers.**
3. Explain to participants that the easiest way to enroll an eligible dependent into DEERS is to have the military member (sponsor) enroll the child. There is no cost associated with a dependent's enrollment into DEERS.
4. To summarize the discussion, display **PowerPoint Slide 7-9: DMDC Contact Flow Chart.**

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### ***What you need to know***

TRICARE. See **Handout 7-1**. If the dependent is not enrolled, the DMDC will list the three military installations closest to the custodial parent that are equipped to enroll the child.

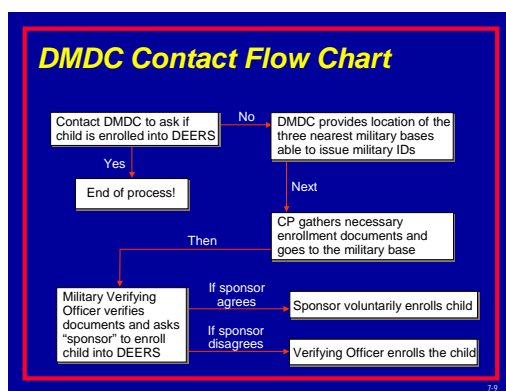
The following documents are needed to enroll a dependent into DEERS:

- if applicable, a legal determination of paternity as determined by state law (e.g., a court-ordered paternity finding, administrative paternity order, signed and filed paternity acknowledgment),
- a birth certificate,
- a court or administrative order showing the “sponsor” (the military member) has an obligation to provide support for the child,
- other local installation forms (vary by installation).



The custodial parent can enroll the child by presenting the above documents to the verifying officer at the nearest military facility that can issue military ID cards. Before DEERS enrollment is completed, there must first be an attempt to get the military member, referred to as the military “sponsor,” to sign the enrollment paperwork. If the sponsor will not sign the paperwork, the verifying officer can sign on the sponsor’s behalf, provided all of the required documents are present.

When the child is enrolled in DEERS, the child is eligible to receive medical care in two ways. First, the child may obtain medical care and medications from military hospitals and health care facilities. In addition, the child can use the “cost share” medical coverage, TRICARE, with civilian health care providers. Claims to



## TRAINING NOTES

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### *What you need to say/do*

1. Stress to participants the importance of NOT sending the National Medical Support Notice to DFAS. DFAS is unable to process the NMSN.
2. Explain to participants that dental coverage from the military differs from medical coverage because dental coverage is not automatic. Military members and their dependents must be enrolled in dental coverage.
3. During the discussion of **Section 7.5**, advise participants that it is important to *thoroughly* review a case when the support obligation terminates because not all enforcement action will be readily apparent (i.e., not one of the most recent entries in the case history). Contrast examples of current income withholding (very apparent with just a cursory case review) with property liens filed several years ago in various jurisdictions (likely to be deeply buried in the case file records).
4. Explain to participants that the purpose behind the termination of all existing enforcement activity is to ensure that the parent's property or assets are not encumbered or attached when neither a current support obligation nor a support arrearage exists.

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### *What you need to know*

1. The NMSN does not apply to medical coverage received by either active duty or retired military members because medical coverage is an automatic benefit received by these members of the military. In other words, these members of the military do not need to "sign up" for the military's medical coverage.
2. If a grandparent is retired from the military *and* the custodian of a dependent child, that grandparent can enroll the child in DEERS, making that child eligible for military medical coverage, either on a base or through TRICARE.
3. If arrears exist in a case at the time the current support obligation terminates, it is not appropriate to release existing collection activity. Collection action continues in such cases until the arrears are collected or determined to be uncollectible in accordance with state IV-D policy and procedures.
4. DFAS processes earnings for active duty and retired members once a month. The approximate cut-off date for affecting active duty pay is the 7<sup>th</sup> of the month and the cut-off date for retired pay is around the 15<sup>th</sup>. This means that if DFAS receives a termination notice on the 20<sup>th</sup>, the existing income withholding order will remain in effect for the current month's wages. In this example, the income withholding order will be terminated in the following month.

TRICARE may be submitted up to one year after the treatment. However, when service from a military hospital or health care facility is available, it is preferable since it is usually less expensive and involves less paperwork. If the IV-D office needs to find out if a child is enrolled in DEERS, it sends the National Medical Support Notice (NMSN) to the Defense Manpower Data Center (DMDC) address provided on **Handout 7-1**. DMDC will respond to the office sending the NMSN with a letter in lieu of the NMSN; the NMSN does not apply to active duty or retired members of the military because medical coverage is an automatic benefit they receive for themselves and their dependents. Once the military member and dependents are enrolled in DEERS, they have medical benefits.

To obtain medical insurance information on DoD and Coast Guard civilian employees, contact the human resources department of the local installation office for civilian DoD employees.

## **7.5 TERMINATION OF MILITARY ENFORCEMENT PROCEDURES**

Upon learning of the termination of the child support obligation in a case where no arrears are owed, it is important that a IV-D office immediately take action to terminate any active collection activity on that case. To make certain this occurs, initiate a comprehensive review of the case when you learn that a support obligation is no longer enforceable. The purpose of this case review is twofold: 1) to verify that all support obligations are satisfied, and 2) to identify *all* active collection action undertaken in the case.

For example, if the noncustodial parent has been a member of the military reserves, his/her reservist earnings may have been attached years ago. It is not sufficient to simply release the income withholding order in place against his/her current civilian employer. The income withholding order served against the military must also be released to ensure that no earnings are attached after the support obligation has ended.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Direct participants to **Handout 7-3: Review Exercises**. Allow them 10 minutes to review the questions, identify issues, and develop answers. Then facilitate a class discussion of the exercises. Allow approximately 20 to 30 minutes for this discussion.
2. After completion of the exercises, display **PowerPoint Slide 7-10: Summary**.
3. Summarize the topics this module discussed.
4. Ask participants if they have any questions concerning Module 7.

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### ***What you need to know***

There are two mechanisms to release an income withholding order served upon DFAS. If the income withholding order was electronically sent to DFAS through its *Kids 1st* program, use the *Kids 1st* automated program to release the order by selecting the “terminate income withholding order” option. States not participating in the *Kids 1st* program can send, via facsimile transmission, a copy of their local notice of termination by fax to DFAS. Regardless of how the state IV-D office sends the notice of termination to DFAS, upon receiving the termination notice, DFAS will promptly terminate the existing income withholding order.

For cases involving a Coast Guard member, send the local termination notice to the U. S. Coast Guard’s Pay and Personnel Center in Topeka, Kansas. This is the same office that receives and processes income-withholding orders against members of the Coast Guard.

The trainer will facilitate a discussion of **Handout 7-3: Review Exercises**.

## 7.6 SUMMARY OF MODULE 7

In this module we discussed the following topics:

- the Federal IV-D child support enforcement regulations,
- the military policies and rules governing the chain of command’s involvement in the enforcement of financial and medical child support obligations,
- remedies and procedures for involuntarily attaching military income (active duty, retired, and reserve military, and civilian DoD employees),
- procedures for terminating previously issued enforcement activity when the support obligation ends and no arrearages exist.

### Summary

- Federal IV-D child support enforcement regs
- Military policies/rules governing chain of command’s involvement in enforcement of financial & medical support obligations
- Remedies/procedures for involuntarily attaching income of active duty, retired, and reserve military, and civilian DoD employees
  - State income withholding
  - Federal statutory military allotment
- Procedures for terminating enforcement

