



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES



A JUDICIAL
RESOURCE
GUIDE **ON**
MILITARY
FAMILIES AND
THE COURTS



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JUDICIAL RESOURCE GUIDE CONTRIBUTORS

Honorable Karen Adam (Ret.), Consultant
Martha-Elin Blomquist, Ph.D., Senior Site Manager, NCJFCJ
Stephine Bowman, J.D., Senior Program Attorney, NCJFCJ
Honorable Gayl Branum Carr, Military Committee, NCJFCJ
Cheri Ely, M.A., Program Director, Juvenile Justice, NCJFCJ
Honorable Phyllis Martinez Gonzalez, Military Committee, NCJFCJ
Colonel Mark E. Sullivan (Ret.), P.A., Military Committee, NCJFCJ

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FOR MORE INFORMATION ABOUT THE NCJFCJ OR THIS DOCUMENT, PLEASE CONTACT

National Council of Juvenile and Family Court Judges

P.O. Box 8970

Reno, NV 89507

NCJFCJ.org

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Members of the 2018 – 2023 NCJFCJ Military Committee
Eryn Jane Branch, M.A., Program Director, Family Violence and Domestic Relations, NCJFCJ

A Judicial Resource Guide on Military Families and the Courts

Being a member of a military family is a unique experience. While sharing the same joys that family life brings to many people, families with a service member in the household face very different challenges that add stress to their lives and relationships.

Families face the possibility of multiple deployments, transferring between military facilities, economic hardships based upon pay, and a service member witnessing traumatic events and then reintegrating into civilian communities after experiencing a combat zone. These are just some of the multitudes of challenges that these families endure.



Objectives of the Guide

The purpose of *A Judicial Resource Guide on Military Families and the Courts* (Guide) is to provide judicial officers with a better understanding of the intricacies of presiding over cases involving military families. These families make many sacrifices for our country, which is why it is important to provide them with a judicial forum that understands and is receptive to their unique needs. People in civilian life are usually navigating one system, while military families are balancing ramifications in both the military and civil systems.

The first section of the Guide outlines why and how the National Council of Juvenile and Family Court Judges (NCJFCJ) began this project, the ideas that resulted from the roundtables, and the implementation of those ideas. The next section discusses some unique characteristics of the military and also the challenges service members and their families confront because of the nature of the work. The last section discusses the areas of the law related to children and families. Finally, the Guide references the National Resource Center on Military-Connected Families and the Courts, which provides judges with a variety of tools for these cases.

In each section, important judicial considerations and relevant questions are highlighted. These are not exhaustive lists but a beginning point as judges navigate these often complex cases. These segments are dynamic, and the NCJFCJ welcomes input from any professional who can supplement the information provided so that we may increase our knowledge and be in a better position to provide the services these families richly deserve.

History of the NCJFCJ's Efforts to Address Issues for Military Families in the Courts

Recognizing the unique stressors and challenges these families face when navigating judicial systems wherever they may be deployed, the NCJFCJ has for over a decade focused attention on the complex needs of military families that may be involved with juvenile and family court systems. The NCJFCJ created the Military Committee, composed of professionals with extensive experience in military systems, to better understand and evaluate the impact of systemic nuances on cases brought in the areas of delinquency, dependency, domestic abuse, and family law.

The Military Committee assists the NCJFCJ Board of Directors to identify and define issues where the NCJFCJ can collaborate and assist in creating effective strategies and protocols to address these issues and develop and implement training and educational tools for judges and court personnel.

In July 2011, the NCJFCJ Board of Directors passed the Regarding Judicial Education on Military Issues resolution. The resolution commits the NCJFCJ to collaborate with allied organizations to develop training and technical assistance to improve practice in cases involving military service members, returning veterans, and their families impacted by military service. The resolution also commits the NCJFCJ to promote the exercise of judicial leadership to convene local stakeholder and community groups to improve and enhance system responses to the needs of military service members and their families involved in civilian court proceedings.

The NCJFCJ held a national military summit in 2015 to begin the process of developing a national plan on how best to improve the judicial system's handling and processing of cases involving military families.

In 2018, the NCJFCJ received funding from the State Justice Institute for a demonstration project, titled A Coordinated Approach to Serving Military Families in Juvenile and Family Courts. Project goals are to increase effectiveness of juvenile and family courts in cases involving military-connected families, increase collaboration between civilian and military personnel to resolve case processing issues, and promote judicial

Our military families face unique circumstances and challenges that may not cross our minds if we do not regularly hear their cases. If you are not located near a military installation, cases involving military families will likely not regularly appear on your docket. However, having a basic understanding of the unique needs and circumstances of the families will aid you in addressing the matter before you in an informed way. For example, military families move much more often than civilian families. The average time between moves is two to three years. For children, this results in switching schools on a regular basis. For a spouse, this can mean changing jobs and foregoing opportunities for advancement. Deployments place additional strain on families while the service member is gone and also may involve adjustments upon return to the family home. These circumstances can impact domestic relations issues such as support, custody, and parenting time. Cases involving these issues are subject to the Service Members Civil Relief Act and may involve unique, specific requirements for dividing military pensions. A basic understanding of the unique needs and circumstances of military families will assist judges in knowing where to go for additional resources. In doing so, as judges, we will be able to best serve those families who have dedicated their lives to the service of our country.

-Judge Valeri Love, Lane County Circuit Court, Oregon

leadership to convene stakeholders to form collaborations. The project includes juvenile/family court demonstration sites in collaboration with nearby military installations, an online national resource center, a series of webinars, educational materials for judicial and court personnel such as this bulletin, and the convening of the Second National Summit on Courts and Military-Connected Families.

The NCJFCJ held the Second National Summit on Courts and Military-Connected Families in September 2019 at Fort Knox Army Base. The purpose of the Summit was to further the national discussion by those who engage with justice-involved service members, National Guard, reserve, and veteran populations on how best to assist them when they interface with juvenile and family courts. In 2021, a virtual roundtable was held to create networking opportunities and the exchange of ideas to deepen the understanding of how best to serve military families.

As a result of the initiatives that arose from these summits, the NCJFCJ has also created a special section on its website, titled National Resource Center on Military-Connected Families and the Courts, which contains an array of resources to assist judges in developing a deeper understanding of the potential impact of their decisions on military families: <https://www.ncjfcj.org/child-welfare-and-juvenile-law/military-connected-families/national-resource-center/>.

Overview of Military-Connected Families and Their Unique Needs

For purposes of this judicial guide, military-involved families have one or more parents who are on active duty or are reservists. Their juvenile and/or family court involvement may be impacted by their military culture, access to base resources, and/or laws relevant to their military status and service.

Branches of Service and Status: The armed services include six branches of service, each with unique purposes and cultures. Each is administratively led by a federal executive department and its corresponding civilian cabinet leader. These also include each state's National Guard which has its own corresponding civilian leadership (to learn more: <https://www.defense.gov/About/our-forces/>).

Chain of Command and Military Rank Structure: There is a very clear and strong chain of command in the military; chain of command is based on the rank of the individual. Orders are issued from the top of the chain of the command to the lowest ranking members of the unit. Once an order is issued, compliance is expected; hesitation or questioning an order may subject a service member to formal or informal discipline.

Judges handling domestic violence cases must be mindful of the unique circumstances that surround military families. These circumstances include the interplay between military and civilian laws, applicable social and professional dynamics, and the availability of support services for military families.

“Officer” can refer, broadly, to a commissioned officer, warrant officer, or a noncommissioned officer. Absent other contextual information, the term typically refers to commissioned officers. These officers rank higher than enlisted personnel. Commissioned officers generally enter the military with a four-year college degree or greater and are generally employed in management roles or highly specialized fields that require professional

degrees (e.g., doctors, lawyers, and chaplains).

- Warrant officers are highly trained technical experts who rank lower than the lowest ranking commissioned officer but higher than the highest-ranking enlisted member.
- Noncommissioned officers are senior enlisted personnel who earn their position of authority by promotion through the enlisted ranks.
- Junior enlisted members are personnel ranking below a noncommissioned officer.

The military refers to a person's rank by letter and number (e.g., E-4; O-3). This is a reference to their rank and paygrade. Generally speaking, E ranks refer to enlisted and noncommissioned officers; W ranks refer to warrant officers, and O ranks refer to commissioned officers. E-1 is the lowest rank O-10 is the highest ([see Military Rank and Insignia Charts https://veteran.com/military-ranks-insignia-charts/](https://veteran.com/military-ranks-insignia-charts/)). Rank has an impact on pay, access to and the nature of housing, assignments, responsibility, decision-making authority, the nature and frequency of deployments, and down time ("dwell" time) or family-time.

Judicial Considerations. Each branch of the armed forces has its own culture, though there are many aspects of military life (including life on a military base) that are consistent. This culture may impact how families appear within court, what resources and support they have, what considerations they are entitled to, etc. These considerations are detailed throughout *A Judicial Resource Guide on Military Families and the Courts*.

Judicial officers and court staff may need to request clarification if litigants use acronyms that are unfamiliar to them. Likewise, military-connected families may appear before judges and refer to resources, power structures, or authorities that are unfamiliar. We encourage judges to seek to understand the unique personal, professional, and legal realities influencing the decisions of families with one foot in the court and the other in the armed forces.

- Judges should ask and learn from litigants (and the individuals who may accompany them) about what they need, what resources they have, whether they have limits or concerns you haven't asked about, etc.
- A judge presiding in a judicial district that has one or more military installations should reach out to the local installation to become familiar with the resources available and potential contacts. There are people whose roles on the installation are to specifically facilitate the relationship between the military and civilian populations.
- Military OneSource has a host of services, including 24/7 phone line and chat service, to support military-connected families: https://www.militaryonesource.mil/all-the-ways/?gclid=CjwKCAjwoP6LBhBIEiwAvCc thMJ1ge_v8VxGofQCA4BN7jE-5ky7F3yFLmDjtIU sB8GtWqWBm4SOOBoCHaoQAvD_BwE.
- Determine in which jurisdiction the family resides. There are installations that geographically cover more than one county or even state, so it is important to confirm residence for jurisdictional purposes.
- See if the deployment is temporary and if they consider their residence to be in another state.
- Gain a basic understanding of common military traditions and customs: <https://www.militaryonesource.mil/relationships/support-community/common-military-traditions-and-customs/>.

- Military.com - By the Letter, Here's a Glossary of Common Military Acronyms - Military.com: <https://www.military.com/join-armed-forces/glossary-of-military-acronyms.html>.
- Military OneSource - Military Acronyms & Abbreviations - Military OneSource: <https://www.militaryonesource.mil/relationships/support-community/common-military-acronyms/>.
- Military Parent Technical Assistance Center - Military Acronyms and Terms - Military Parent Technical Assistance Center (branchta.org): <https://branchta.org/military-acronyms-terms/>.
- Wikipedia Military Abbreviations - Glossary of military abbreviations - Wikipedia: https://en.wikipedia.org/wiki/Glossary_of_military_abbreviations.
- Blue Star Families - Military Family Research: <https://bluestarfam.org/>.

Judges should be aware that the military base is unique. At least part of it – and maybe ALL of it – is federal property. While it may seem like a city or small town, it has little in the way of institutions that are common in counties, cities, and towns. There is no sheriff, no department of social services, no probation/parole officers, etc. The main offices that deal with legal matters are:

- A. Law enforcement: The usual term for law enforcement on the base, post, or installation is the provost marshal; and
- B. Legal issues and policy: the staff judge advocate's office.

Law enforcement is in charge of the investigation of crimes, incidents, and offenses. It is also in charge of base security. The personnel are usually referred to as military police or special police. The Army has a section called MPI or Military Police Investigation, and the Air Force Security Forces.

The staff judge advocate (SJA) is the command's lawyer. The SJA office includes sections dealing with all legal issues that have an impact on the base and the assigned personnel, dependents/family members, and tenant activities.

The military justice section deals with military justice and courts-martial; this involves service members accused of crimes under the Uniform Code of Military Justice.

The administrative law section deals with issues involving the control of the military base and subordinate commands and tenant activities; this would include issues such as prohibiting someone's access to the enclave and advising on the areas of exclusive or concurrent jurisdiction (which might have an impact on whether a juvenile matter can be handled by civilian courts in the locality or by federal district court).

The legal assistance section of the SJA office provides advice and assistance (not court appearances in most situations) for eligible clients (e.g., service members, retirees, and family members) in areas such as nonsupport, divorce, domestic abuse, custody, visitation, property division, and minor criminal infractions.

When there is domestic abuse, there is usually a special victim counsel who is appointed for the victim of domestic violence.

SUPPORT TO PREVENT AND ADDRESS INTERPERSONAL VIOLENCE AND FAMILY CRISES FOR ACTIVE-DUTY MEMBERS AND THEIR FAMILIES - FAPS

A family advocacy program (FAP) exists at every military installation where families are assigned. The U.S. Department of Defense (DoD) oversees the program (each branch of the service has a chain of command and training for civilian employees who staff FAPs), which has existed since 1981 across service branches and installations.

FAPs were created specifically to prevent and address domestic abuse and child abuse and neglect in military-connected families. In 2019, the responsibility for preventing and addressing problematic sexual behavior in children and youth in military-connected families was added to the mission of FAPs.

FAPs coordinate and deliver services through military and civilian personnel at each base. FAP offices are physically located on a base. They are responsible for having relationships and channels of communication with civilian, criminal, family, and juvenile court systems, with civilian child- and youth-welfare agencies, and with military and civilian behavioral health systems. FAP staff consist of victim advocates and clinicians who offer a range of services and programs to prevent interpersonal violence that includes skill building for healthy relationships, help in planning for safety in a crisis, and supporting expecting and new parents.

FAP directives from the DoD include specific definitions of domestic abuse and child abuse and actions that FAP staff must take regarding the notification of military law enforcement and command of reports of abuse. Incident determination committees exist at each base and are made up of multidisciplinary teams of designated individuals (including from the FAP) who are responsible for determining whether a report of child abuse, neglect, or domestic abuse meets DoD criteria for entry into the service FAP central registry as a child abuse or domestic abuse incident. Military law enforcement and base command are required to notify the FAP when they receive a report of abuse. FAP clinicians undertake a psychosocial clinical assessment of individuals involved in an incident and are responsible for developing a treatment plan. Individuals experiencing domestic abuse have the option of making a restricted report of abuse to the FAP in order to receive services and supports, but the report will not be entered in the FAP central registry or be shared with command.

TRAUMA, PTSD, TRAUMATIC BRAIN INJURY, AND THEIR EFFECTS ON FAMILIES

By the very nature of the work assignments that active-duty service members undertake at their domestic duty stations, as well as their overseas assignments, they have more prolonged and repeated exposure to trauma than most civilians. Trauma exposure affects service members directly, but it also affects family members and loved ones who notice the altered behavior, personality, and ability to self-regulate that service members develop in response to stress and trauma. While an invisible injury, trauma exposure can lead to serious, permanent, and life-altering cognitive and psychological disabilities for the affected service member and cause unintended but serious negative consequences for family members.

WORK-RELATED TRAUMA EXPOSURE, POST-DEPLOYMENT STRESS SYMPTOMS, AND PTSD

Service members may be repeatedly exposed to trauma in both combat and non-combat assignments and situations (www.CSTSonline.org). Exposure can be through witnessing an event, such as the injury or

death of a unit member, or hearing someone re-tell distressing events. It is common for individuals with high occupational exposure to stress, such as those who serve in the armed forces, to have adverse effects or distress responses to exposure to stress and trauma. Distress responses can be physical or emotional in nature. Distress responses, such as sleep problems, restlessness, hypervigilance, social withdrawal, and risky behaviors (such as cigarette smoking, alcohol use, and reckless driving) can go away after several weeks after exposure to stress, or distress responses can develop into serious behavioral health problems such as violence, psychological disorders such as post traumatic stress disorder (PTSD), complicated grief, and depression.

PTSD among U.S. service members who have been deployed to Iraq and Afghanistan since 2001 has an estimated prevalence of between 5% and 20%, depending on the level of combat exposure. Causes of PTSD include exposure to combat, worry about family by those away from their families for long periods of time, discharging a weapon, witnessing an injury or death during deployment, being attacked or fired at, handling human remains, lack of post-deployment support and subsequent life stress such as unemployment or a lack of resources, and comorbid psychological problems (source <https://americanaddictioncenters.org/trauma-stressor-related-disorders/combat-veterans>).

Symptoms of PTSD include uncontrolled and intrusive memories or recollections, such as reliving an event (flashbacks), hypervigilance (being worried that something or someone is going to hurt them), avoiding situations that remind them of the event, or experiencing increased negative thoughts and feelings (<https://americanaddictioncenters.org/trauma-stressor-related-disorders/combat-veterans>). Other symptoms and consequences include being unable to sit still; having difficulty concentrating; experiencing sleeplessness; being easily startled (for example, by loud noises such as sirens or a car backfiring); feeling sad, hopeless, or ashamed; depression; substance abuse; physical symptoms or chronic pain; difficulties obtaining or maintaining employment or other work-related issues; and relationship difficulties, such as increased fights or divorce.

A separate but related invisible injury that can occur among active-duty personnel is traumatic brain injury (TBI). The CDC defines a TBI as “a disruption in the normal function of the brain that can be caused by a bump, blow, or jolt to the head, or penetrating head injury.” TBI has been found to be caused by blasts (33%), objects hitting the head (32%), and falls (14%). TBI can occur during training for combat as well as while engaged in combat. Estimates of active service members experiencing TBI range from 11- 23%. Studies of veterans indicate that 20% of veterans report head injuries during service; 17% of veteran reports of head injuries meet the criteria for TBI.

While TBI can be mild (such as concussion), TBI can lead to dramatic changes in personality and behavior. With moderate or severe TBI, service members can show profound changes in personality or inappropriate behavior including a lack of inhibition, anger, outbursts, withdrawal, apathy, and depression. Service members with TBI have higher rates of psychiatric conditions. Military service members can experience both TBI and PTSD. In fact, compared to those without TBI, service members with TBI had higher rates of PTSD, depressive disorder, substance use disorder, and anxiety disorder. Some studies also linked TBI to a greater severity of PTSD symptoms and higher rates of suicide attempts (Journal of Health Trauma Rehabilitation, January/February 2020).

Service members coping with distress responses, TBI, and/or PTSD while on duty, at home, or overseas may exhibit lost productivity, absenteeism, and distraction. They may increase substance use (alcohol, drugs, cigarette smoking). If they have had physical injuries and medical conditions to also heal from or cope with,

they may develop pain medication misuse problems in response to chronic physical and psychological pain.

At home or with family members and loved ones, the service member with exposure to trauma, TBI, or PTSD may exhibit mood swings and erratic, inappropriate, or harmful behavior toward others. The active-duty individual's ability to parent and meet a child's physical and emotional needs may be impaired. The invisible wounds of TBI and stress-induced psychological disorders may not be as readily diagnosed or invite support as visible wounds from injuries during training or combat. Family members, especially children, may not understand the altered or erratic personality of a parent suffering from these disorders and may think they have done something wrong, that their parent no longer loves them, or that they are unlovable. Children may react with their own set of distress responses out of worry for the parent or identification with the injured parent. Distress responses of children and youth can include having trouble with attention at school; behavioral problems at school or at home that involve acting out, disobedience, or risk-taking; crying; anxiety and withdrawal; embarrassment about the parent's behavior or appearance; anger; and resentment. Young children may also experience nightmares. Partners or spouses may find the service member quick to anger, unreasonable, irritable, moody, anxious, and prone to withdraw from interactions and communication. Family conflicts may increase. Like children, the spouse or partner can have her or his own distress responses to the service member's trauma responses and behavior, including loss of sleep, worry, anxiety, and increased use of substances.

SERVICES AND TREATMENTS

Installations provide a variety of educational resources, services, and supports to active-duty service members and their families to prevent and address the adverse effects of exposure to trauma and combat. These services and supports are available throughout the time that an individual is on active duty while stateside as well as overseas, pre-deployment, during deployment, and post-deployment. FAP, the Military Family Life Counseling Program, and FOCUS (Families OverComing Under Stress) offer clinical expertise to assist with assessing the service member's mental health and trauma, diagnosing disorders, and developing treatment plans. They can also help connect the service member to medical and behavioral health specialists for higher levels of care and treatment. Family members can also receive assessment and treatment through these programs.

JUDICIAL CONSIDERATIONS

Harmful, dangerous, or precarious behaviors bring active-duty service members to the attention of civilian authorities and legal systems, and the behaviors may merit consequences, including legal consequences. While invisible, the wounds of trauma, TBI, and PTSD have palpable and real impacts on impairing an individual's ability for emotional regulation and self-control and the individual's corresponding ability to meet expectations about engaging in lawful and appropriate conduct as a partner or parent. However, it is important for civilian court system judicial officers, attorneys, victim advocates, child welfare system professionals, and law enforcement to be aware of an individual's military status and potential exposure to trauma due to that status. Exposure and responses to trauma can affect the ability of an active-duty service member or family member to participate in legal processes, engage in services, or abide by court orders. Exposure and responses to trauma may determine the needs of individuals interacting with the courts, access to services to meet those needs, and possibly the time frames for individuals to meet court-

related expectations and requirements. Given the extraordinary sacrifices that members of the armed forces and their families make in the interest of defense for the country, all possible considerations and opportunities for the successful and supportive resolutions of the legal matters that bring them before juvenile and family courts should be extended to these individuals and their families.

Just as military and civilian personnel who are responsible for providing medical, mental, and behavioral health treatment and counseling to service members and their families have training in trauma-informed and person-centered care, so too should civilian court-related personnel who interact with military-connected families. An important set of questions for any judicial officer or court system-related professional providing family law services includes questions about the current military status of an individual or family members, and, if any, whether it is active or veteran, and, if active, what the deployment status of the active service member is (pre, during, or post), and whether the service member or any family members have been or will be assessed for or are receiving services for occupational stress and/or trauma exposure.

With these considerations in mind, courts need to be very aware in cases involving domestic abuse, or violence in general, whether the behavior being exhibited has manifested as a result of an injury or whether the actions of the individual involved are a pattern of controlling behavior. Being mindful of this distinction increases safety and enhances accountability.

Issues in Family Violence Cases

RESTRICTED AND UNRESTRICTED VICTIM REPORTING OF DOMESTIC ABUSE

While DoD policy is intended to reflect a strong support for effective awareness, prevention, and accountability measures for perpetrators of abuse, it also requires that victims of abuse “be protected, treated with dignity and respect, and provided support, advocacy, and care.” DoD policy therefore recognizes that requiring all incidents of domestic abuse to be formally reported may create barriers for victims seeking medical or advocacy services. Service members can get court-martialed for domestic abuse as a separate crime in the military code.

There are many reasons why a military-connected victim may not want to initiate an investigation or have the alleged perpetrator punished. Investigations require law enforcement to contact the alleged perpetrator and notify the perpetrator of the report, which may increase the abuse in frequency or severity. Investigations and command involvement can also have consequences on the alleged perpetrator’s military career. Such consequences may affect the financial stability of

Judges handling domestic violence cases must be mindful of the unique circumstances that surround military families. These circumstances include the interplay between military and civilian laws, applicable social and professional dynamics, and the availability of support services for military families.

For instance, firearms and ammunition prohibitions from the Federal Gun Control Act apply to service members who are convicted of domestic violence or subject to restraining orders. However, military commanders may at their discretion authorize service members to carry firearms when performing their duties. Thus, it is essential that civilian courts provide military authorities with orders and information necessary to exercise that discretion and to keep military family members safe.

-Judge Hiram Puig-Lugo, Superior Court, District of Columbia

the family, including their income, housing, childcare, medical care, and health insurance (TRICARE). A victim may have concerns about the alleged perpetrator's access to firearms and the potential consequences of the perpetrator being prohibited from possessing firearms. A victim also may still love the perpetrator and hope that they are able to change or worry about the effect of such consequences on the service member's relationship with their child or children. A victim could also be a service member and feel shame or embarrassment regarding the abuse or fear retaliation from others for reporting. Victims may feel pressure from their family, friends, or religious advisors to work to maintain the family unit. Further, victims may distrust the system or doubt the system's ability to keep them or their family safe.

To address this concern, DoD policy allows for restricted (confidential) reporting of incidents to certain individuals—FAP victim advocates, FAP clinicians, and healthcare providers—without notification to military law enforcement or a service member's command.

RESTRICTED REPORTING

Restricted (confidential) reporting is defined by the DoD as “a process allowing an adult victim of domestic abuse, who is eligible to receive military medical treatment, including civilians and contractors who are eligible to receive military healthcare outside of the continental United States on a reimbursable basis, the option of reporting an incident of domestic abuse to specified individuals without initiating the investigative process or notification to the victim's or alleged offender's commander.” While a restricted report does not initiate an investigation, restricted reporting allows the victim to receive a wide variety of FAP services, including counseling, advocacy services, and medical treatment or forensic medical examination. Disclosures to a chaplain or off-base confidential advocacy services are not considered reporting and, while they are confidential, do not trigger the same full range of services offered through FAP. Restricted reporting is not available to alleged offenders.

However, there are limitations on making a restricted report. Reports of alleged child abuse, reports involving immediate risk of serious harm (including homicide or suicide ideations), and incidents falling under state mandatory reporting laws cannot be restricted and may legally require additional reporting outside of the military. In cases involving domestic abuse, restricted reporting is not permitted if children are involved, if there is mutual combat, or if there are any suicidal or homicidal threats, which can include a weapon. Advocates and healthcare providers also may be required to disclose restricted reporting information if ordered by a military or civilian court, but they must make reasonable efforts to notify the victim in advance of the intent to disclose and the basis for the disclosure. Further, if a report is made by an independent source to a mandated reporter of domestic abuse or made by a victim to persons other than those covered under the restricted reporting policy, the report may initiate notice to law enforcement and result in an investigation of the allegations.

UNRESTRICTED REPORTING

Unrestricted reporting not only initiates access to a wide variety of FAP services, an investigation by law enforcement, and notification to command, it also provides the opportunity for command to take administrative action against the alleged offender or issue a no-contact or military protective order. Additional options for the military to take against the perpetrator include administrative discharge, Article 15 non-judicial punishment, and

court-martial. Additionally, unrestricted reports may provide victims access to legal services and transitional compensation, if applicable. FAP advocates can review reporting options with victims, including the potential consequences and benefits of each and the potential actions the military may take against the perpetrator, so victims can make informed decisions on how they would like to proceed. No matter which type of reporting a victim chooses, FAP advocates can work with victims to plan for their safety and the safety of their family.

Additional restricted reporting options for adult victims of sexual assault are beyond the scope of this guide; however, basic information on these options can be found under the Resource Section below.

FIREARMS AND THE LAUTENBERG AMENDMENT

The Lautenberg Amendment makes it a felony for anyone convicted of a misdemeanor crime of domestic violence, such as an assault or attempted assault on a family member, to ship, transport, possess, or receive firearms or ammunition. The purpose of this amendment is to get and keep firearms out of the hands of those individuals with domestic violence convictions. There is no exception for military personnel engaged in official duties. The amendment also makes it a felony for anyone to sell or issue a firearm or ammunition to a person with a domestic violence conviction. This includes commanders and non-commissioned officers who furnish weapons or ammunition to service members and know or have reason to believe the service members have qualifying convictions.

Qualifying Conviction: The amendment applies only to a qualifying conviction. A qualifying conviction consists of two elements: (1) a misdemeanor domestic violence crime; and (2) a conviction. First, a misdemeanor domestic violence crime is an offense that is a misdemeanor under federal or state laws. The crime must include the use or attempted use of physical force or the threatened use of a deadly weapon. The criminal act is considered domestic violence when the offender is the current spouse, the former spouse, the parent, or the guardian of the victim. The offender can be someone who shares a common child with the victim, cohabitates or used to cohabit with the victim, or is similarly situated to a spouse, parent, or guardian of the victim.

Second, the offender must be convicted of a domestic violence crime through any of the following: a state court, federal court, special court-martial, or a general court-martial. However, a conviction does not include convictions from a summary court martial, Article 15 non-judicial punishment, deferred prosecution, diversion in a state or federal court, or convictions that are later set-aside or expunged.

Impacts of the Amendment: Once these two elements are met, a service member cannot own, possess, or be issued either military or privately owned firearms and ammunition. An exception to this rule is major weapon systems and crew-served weapons which are not covered by the amendment. Military personnel have an affirmative, continuing obligation to notify the command of qualifying convictions. A qualifying conviction can potentially bar a service member from re-enlistment, transfer a service member to duties not requiring the bearing of weapons or ammunitions, or prohibit a service member from deployments for missions requiring the possession of firearms or ammunitions (see the Lautenberg Amendment and how it affects service members: source: <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:81c526c7-721d-3e5c-bd9b-68d3a50901b3>).

JUDICIAL CONSIDERATIONS

- Seeking a civil protection order or other abuse-related relief from a civilian court may be considered an unrestricted report.
- While transitional compensation may be available for victims of abuse, it can be challenging for victims to receive this compensation and is limited in what it provides and for how long.
- The military offers both anger management and batterer treatment programs. Make sure to indicate the batterer treatment program in orders instead of anger management (which is a different treatment modality and intended to deal with anger before it becomes physical).
- Don't just take a service member's word regarding military information. A military advocate identified that a common issue in state court regarding military-involved domestic abuse cases is inaccurate or untruthful information being provided regarding military service or military response.
- If information from the FAP is needed, ask for releases that are specific to the information required.
- If financial relief is ordered, this may be difficult to enforce, especially in the area of possession of on-base or off-base housing. There is an allowance that is given to military personnel who live off base, which may potentially be affected if the service member has to leave the residence and reside on base.
- Ask if firearms, including threats to use firearms, were involved in the abusive behavior. If firearms surrender is included in the civil protection order, it is important to include information about the use or threatened use of firearms and the danger posed by the alleged perpetrator's possession of or access to firearms so the base commander will have the necessary information to enforce the surrender provision.

QUESTIONS TO ASK:

1. Have proceedings been initiated on base for the acts involved?
2. If so, what is the status of the on-base proceedings?
3. What is the housing allowance, if any?
4. What is the status of the parties as it relates to travel restrictions?
5. Where is the housing allowance deposited?
6. Are the parties covered by health insurance (TRICARE)?
7. How will the judicial order affect the standing of the parties financially, where they live, the ability to remain on/off base, and their commissary or other base privileges?

GOVERNING LAWS AND POLICIES

RESOURCES

10 U.S.C. § 932, Art. 132. Retaliation

10 U.S.C. § 136, Under Secretary of Defense for Personnel and Readiness

DoD Instruction 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel,” Enclosure 3: Restricted Reporting for Incidents of Domestic Abuse, May 26, 2017.

DD Form 2967, “Domestic Abuse Victim Reporting Option Statement,” August 2013.

Domestic Abuse Military Reporting Options, Military OneSource (June 21, 2021), <https://www.militaryonesource.mil/family-relationships/family-life/preventing-abuse-neglect/domestic-abuse-military-reporting-options/>.

RESTRICTED REPORTING OF SEXUAL ASSAULT RESOURCES

DD Form 2910, “Victim Reporting Preference Statement,” April 2020.

Restricted Reporting, U.S. Dept. of Defense Sexual Assault Prevention and Response: <https://sapr.mil/restricted-reporting>.

AN INTRODUCTION TO MILITARY PROTECTIVE ORDERS

For military-connected families experiencing intimate partner violence, a military protective order (MPO) may be one tool available to increase victim safety. Victims may qualify for an MPO, whether they are a service member or not, if the perpetrator of the abuse is a service member and a current or former spouse, current or former intimate partner, or the parties share a child in common. Commanders have the authority to issue an MPO “when necessary to: (1) safeguard an alleged victim; (2) quell a disturbance; or (3) ensure the safety of any person.” Commanders may also issue a no-contact order “prohibiting contact or communication with specified persons under circumstances that do not justify the issuance of an MPO.”

MPOs have many similarities to civil protection orders (CPO) issued by state, territory, or tribal courts, but they also have some important differences. Victims who qualify can seek both types of orders. MPOs can give victims time to pursue a CPO or can provide additional support to an existing CPO. While an MPO should not contradict the terms of a CPO, a commander may include terms that are more restrictive than the CPO in their orders.

MPOs can contain similar relief as CPOs, including ordering the service member to not contact the victim or the victim’s family; to stay away from the victim’s residence, workplace, and childcare facilities; to temporarily move out of the military residence shared by the parties (and into barracks); to attend counseling; and to surrender firearms. Like most CPO statutes, MPO forms have a catchall provision that provides the authority to order other provisions deemed necessary for the victim or their family’s safety. Under the Uniform Code of Military Justice (UCMJ), the use of pets/animals to threaten or intimidate a spouse, intimate partner, or their immediate family member is included as a domestic abuse offense. Victims can ask to have pets included in the catchall provision of the MPO. The relief provided in both MPOs and CPOs should be tailored to meet the needs of the individual victim and their unique circumstances. Whether or not commanders use DD Form 2873 (the form used by a commanding officer to notify a service member of a military protective order) to issue the MPO, they must provide copies of the signed MPO to the service member subject to the order and to the protected party.

Unlike CPOs, MPOs are issued by the subject service member’s commanding officer instead of a court and

without the due process requirements of notice and opportunity to be heard. Because of this, MPOs are not enforceable by civilian law enforcement or courts. Generally, pursuant to the Violence Against Women Act's (VAWA) Full Faith and Credit (FFC) provisions, CPOs are enforceable across the United States if the CPO was a valid order when violated, was issued by a jurisdiction of the United States with personal and subject matter jurisdiction, and the person subject to the order was given notice and an opportunity to be heard. Similarly, pursuant to the Armed Forces Domestic Security Act, a CPO that qualifies under VAWA's FFC provisions has "the same force and effect on a military installation as such order has within the jurisdiction of the court that issued the order." In addition, command has the authority to bar civilians, including DoD civilian employees, from an installation for failure to comply with a CPO.

Violations of CPOs that receive full faith and credit are enforced under the laws of the jurisdiction the order is violated in, not the issuing jurisdiction. Statutes regarding violations of CPOs vary across the country. CPOs also may be enforced through the contempt powers of the issuing court. Violations of MPOs may be prosecuted under UCMJ Article 90 (Willfully Disobeying a Superior Commissioned Officer), Article 92 (Failure to Obey Order or Regulation), or Article 134 (General article, conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces). Though a violation of an MPO off the installation may not be enforceable by civilian law enforcement, a commander may enforce their order whether the violation was committed on or off an installation.

The National Crime Information Center (NCIC) allows for MPOs to be entered into the NCIC Protection Order File. Though civilian law enforcement cannot enforce the MPO, inclusion in the system alerts them to the existence of the order and provides a point of contact to notify of any potential violations of the MPO.

While MPOs last until cancelled by command, they are valid only as long as the subject service member is under the same command that issued the order. Command must notify the appropriate civilian authorities of the issuance of an MPO against a service member and the individuals involved no later than seven days after issuance of the order, and they must notify them of any subsequent changes or termination of the order. Should the service member be transferred to another unit, command must notify the commander of the unit to which the member is transferred about the existence of the MPO.

JUDICIAL CONSIDERATIONS

- Seeking a civil protection order or other abuse-related relief from a civilian court may be considered an unrestricted report.
- While transitional compensation may be available for victims of abuse, it can be challenging for victims to receive this compensation and is limited in what it provides and for how long.
- The military offers both anger management and offender treatment programs. Make sure to indicate offender treatment program in orders instead of anger management (which is intended to deal with anger before it becomes physical).
- Don't just take a service member's word regarding military information. A FAP advocate identified a common issue in state court regarding military-involved domestic abuse cases is inaccurate or untruthful information regarding military related information.
- If information from the FAP is needed, ask for releases that are specific to the information required.
- Civilian law enforcement agencies lack the authority to serve CPOs on military installations without

permission from the installation. MOUs between civilian and military law enforcement agencies that address how service of CPOs and petitions can be effectuated and how communication between agencies regarding the issuance and violations of both CPOs and MPOs are important for effective community response to domestic abuse both on and off an installation.

- For information on the Servicemembers Civil Relief Act (SCRA) for deployed active-duty service members and its application to civil and family court proceedings, see the Issues in Domestic Relations/ Family Law Cases section below.
- According to a military-connected advocate, move away orders can take an incredibly long time to get, leaving the victim struggling financially for months and potentially returning to their abuser. Service members can use this as a way to control their victims, i.e., “if you leave with my kids, I will file abduction charges and have you arrested.” Military housing allows a spouse to live on base for only 30 days without the service member in the home, and shelters are usually full. It is very challenging when clients have no support system, family, friends, or money to live on in a state they were brought to on military orders. The advocate shared that they “would hope that judges understood this struggle a bit more and expedite these requests for move away orders, especially if the spouse and children could be in danger.”

RESOURCES

National Council of Juvenile and Family Court Judges’ Civil Protection Order Guide Project, <https://civilprotectionorders.org> (an Office on Violence against Women national technical assistance project).

Civil Protection Orders: A Guide for Improving Practice, National Council of Juvenile and Family Court Judges (2016) (including Issues in Focus: Military section beginning at page 15), <https://www.ncjfcj.org/publications/civil-protection-orders-a-guide-for-improving-practice>.

Full Faith and Credit: A Passport to Safety, A Judge’s Guide, National Council of Juvenile and Family Court Judges (2016) <https://www.ncjfcj.org/publications/full-faith-and-credit-a-passport-to-safety-a-judges-guide>.

Domestic Violence in the Military, WomensLaw.org, (Oct. 9, 2019), <https://www.womenslaw.org/laws/federal/domestic-violence-military/military-protective-orders/basic-info-about-military-1>.

Sarah Henry, Important Differences Between Civilian and Military Protection Orders, Battered Women’s Justice Project (Apr. 2013), <https://www.bwjp.org/resource-center/resource-results/important-differences-between-civilian-and-military-protection-orders.html>.

Issues in Child Abuse and Neglect Cases

CHILD ABUSE AND NEGLECT IN CONTEXT

Stress and depression can affect any parent’s ability to care for children. Military service members and their spouses experience depression and stress at higher rates than the general population. Military and civilian agencies have documented increases in substantiated maltreatment of children during the service member’s deployment.

Even if the deployment period goes well for the family while the service is member away, reunification may be difficult especially if the returning parent has a trauma and stress-related response to combat. Trauma-related

responses such as traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD) can pose significant challenges for returning service members trying to resume family life, including parenting responsibilities. They may engage in risky or harmful behavior that increases family conflict and/or leads to substance abuse. The spouse that has been sustaining the family during the deployment may experience frustration, resentment, and anxiety during the returning service member's transition back into the routines of the family.

FAMILY ADVOCACY PROGRAM AND CIVILIAN STATE CHILD WELFARE DEPARTMENT INTERFACE

The FAP at each installation plays a significant role in investigating and responding to allegations of child abuse and neglect. It also provides services to affected family members and catalogues sustained instances of abuse in the military FAP central registry. FAP coordinates with law enforcement and civilian child welfare agencies in addressing child abuse and neglect. The DoD guidance (DODI 6400.01, May 1, 2019) that articulates FAP policy and directives expressly mandates this.

COURT-FAMILY-MILITARY KEY CONSIDERATIONS

- Does the Indian Child Welfare Act (ICWA) apply? If so, has FAP worked with the local child protection agency to ensure compliance with ICWA or the state's Indian family preservation act, if it has one?
- The court should appoint an attorney for the service member.
- Inquire as to the coordination of services between the FAP and local child welfare agency. Understand the services being provided.
- Are the order releases signed?
- Allow the presence of military escorts and confirm their understanding of the confidential nature of the proceedings. Be aware that they do report generalities back to their command, such as "the hearing went well" or "the hearing did not go well."
- Courts may receive oral reports from the base command's representative, especially regarding a service member's availability to participate in services.
- Judges should receive advance notice from the command regarding deployment.
- Courts should suspend services and expectations regarding services while an active-duty member is deployed. Be aware that case-specific time requirements may be affected.
- Increase your awareness of possible injuries or PTSD suffered by the parents. One consideration is that a service member may share experiences with the other parent, so be aware of the impact of vicarious trauma.

The Interstate Compact for the Placement of Children (ICPC) can be frustrating for parents, relatives and courts alike and may be somewhat unfair to military families because rarely do they have relatives in the state where they are based. However, it is VERY important that all courts follow the ICPC guidelines because failure to do so could not only result in a penalty to the state, but more importantly, it could result in the child and the placement relative not getting the benefits and resources they need in the placement state.

-Judge Jason Shea Fleming, Christian County Family Court, Kentucky

THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The Interstate Compact on the Placement of Children (ICPC) is a statutory agreement between all 50 states, the District of Columbia, and the U.S. Virgin Islands. It is the mechanism juvenile and family court judges and human services agencies use to ensure protection and services to children who are placed across state lines for foster care or adoption. It sets forth the requirements that must be met before a child can be placed out of state, ensures prospective placements are safe and suitable before approval, and ensures that the individual or entity placing the child remains legally and financially responsible for the child following placement.

Generally, when a juvenile or family court sends or causes a child to be sent to another state, the law requires that the court follow the provisions and procedures of the ICPC. As a legally binding agreement between all states and U.S. territories, the ICPC ensures that children receive a uniform set of protections and benefits regardless of which state or territory they are moving to or from.

The ICPC covers children who the courts have found to be neglected or abused or adjudicated delinquent children who are placed in private residential treatment facilities. It also applies to the following placements:

- The placement of a child by any individual or entity into another state if the placement is for the purpose of adoption;
- The placement of a child into foster care, group homes, or residential treatment facilities and institutions;
- The placement of a child with parents and relatives when a parent or relative is not making the placement; or
- Placements of adjudicated delinquents in institutions in other states.

The local human services agency initiates an ICPC placement by submitting a written request to its ICPC office. The written submission includes, among other things, information regarding the child's social, medical, and educational history, as well as the status of any court case involving the child. The sending state ICPC office approves and transmits the paperwork to the ICPC office in the receiving state. The receiving state confirms that all is in order and then transmits the paperwork to the relevant local human services agency. The agency will then conduct a home study within specified time limits and decide whether the home should be approved as a placement for the child. A completed home study report is then sent from the local agency to the central ICPC office in that state. The central office will approve or deny the requested placement based on the recommendation of the home study. It then forwards its decision, along with a copy of the completed home study, to the requesting state.

It is common that military-connected families have ICPC issues when a removal is ordered. For example, a service member may not live in the same state as family or friends willing to take the children, or the service member may be leery about placing their children with other service members they only know through the military and would rather the children be placed in foster care. There are times when the service member would prefer their children to be placed in foster care. When these circumstances are present, a number of considerations arise.

Timeliness: According to federal law, ICPC home studies must be completed within 60 days of the request.

However, this timeline is not always met, and significant delays can occur, increasing the potential for trauma to children caused by interim or multiple placements while ICPC approval is being sought. Under the Safe and Timely Act, courts are now authorized and encouraged to obtain information and testimony from agencies and parties in other states without requiring interstate travel (42 U.S.C. § 438(a)(1)(E)). Courts also may allow parents, children, and other stakeholders to participate in hearings remotely (42 U.S.C. § 438(a)(1)(E)).

Licensing requirements: The requirements for licensing vary from state to state. Some states require all types of homes to be licensed or certified for foster care before a child can be placed in the home.

Expedited procedures: Regulation No. 7 of the ICPC allows for expedited ICPC approval or denial by the receiving state for the placement of a child with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian under certain criteria.

QUESTIONS TO ASK

- Does the ICPC apply in this situation? Verify timely compliance with all ICPC requirements.
- If the child is a member of a sibling group, and the sibling group is not placed together, what plans can be implemented that will allow the child to maintain contact with siblings?
- Can any services, such as home studies and background checks, be provided by the FAP office in the receiving state? Is there any overlap in resources between the state agency and the FAP or additional resources that could be tapped into?

GOVERNING LAWS AND POLICIES

ICPC Regulations: https://aphsa.org/OE/AAICPC/ICPC_Regulations.aspx.

RESOURCES

The Interstate Compact on the Placement of Children: A Manual and Instructional Guide for Juvenile and Family Court Judges: <https://www.ncjfcj.org/publications/the-interstate-compact-on-the-placement-of-children-a-manual-and-instructional-guide-for-juvenile-and-family-court-judges/>.

Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC): <https://aphsa.org/AAICPC/AAICPC/Resources.aspx>.

Depression & Military: Service Members & Spouses (Healthline): <https://www.healthline.com/health/depression/military-service>.

Issues in Juvenile Justice Cases - The Interstate Compact for Juveniles (ICJ) could also be implicated if the child is dually adjudicated and is being placed in another state.

Issues in Juvenile Justice Cases

AN INTRODUCTION TO JURISDICTIONS

Many dependent children of military personnel live on military installations with their families. The installation commander is responsible for maintaining safety and security on the military base, which includes crime prevention and investigation. However, the authority of the installation commander to address juvenile justice is limited based on the type of jurisdiction of the installation and the Federal Juvenile Delinquency Act.

THE TYPES OF FEDERAL JURISDICTION ON A MILITARY INSTALLATION

Exclusive Jurisdiction: The federal government has full legislative authority over the land, except the state reserves the right to serve criminal and civil processes. The federal government is solely responsible for law enforcement, including juvenile misconduct.

Concurrent Legislative Jurisdiction: The state has reserved the right to exercise full jurisdiction concurrently with the federal government. The state enforces the law concurrently with the federal government.

Partial Jurisdiction: The state has ceded some but not all legislative jurisdictions. Neither the state nor the federal government has complete jurisdiction. The state may reserve full jurisdiction over law enforcement.

Proprietary Interest: The federal government has proprietary interest only over the land. The state retains all jurisdiction over the area, including law enforcement.

State intervention, adjudication, and disposition of juvenile offenses are preferred by the federal government. No legislation preempts the jurisdiction of a state over juveniles who live on military bases, and federal law supports leaving juvenile delinquency issues to state courts, except in cases of older youth committing serious criminal conduct.

Military installations cannot provide the full suite of rehabilitative services to address juvenile delinquency through administrative action alone. While the installation commander has the administrative power to respond to misconduct, the administrative actions may not be suited to the needs of the young person.

JUDICIAL CONSIDERATIONS

On military installations with exclusive federal jurisdiction, young people can be adjudicated only in the federal court system. Judges should review the state's statutes for the cession of jurisdiction and the limits of the state's cession of jurisdiction to understand what specific powers the state reserved.

In the case of exclusive federal jurisdiction, the state court must refuse to exercise jurisdiction over a juvenile, and the attorney general or a designee must certify transfer to the federal courts for the matter to be handled in federal courts. Judges should review applicable memorandums of understanding (MOUs) relevant

to the specific military base. If there is no MOU between the military installation and the state, one should be entered into. At a minimum, the MOU should include:

- Purpose
- Intake procedures
- General background
- Court representation
- Authority
- Treatment and referrals
- Reporting and investigation
- Communication

Courts should coordinate with the installation commander to ensure any administrative action taken by the commander is aligned with the court's rehabilitation and treatment plan for the young person. Courts should be mindful that states cannot interfere with the performance of a federal function. If the case involves a child's problematic sexual behavior, ensure the child is connected to the Family Advocacy Program for prevention and treatment services.

QUESTIONS TO ASK

- What type of jurisdiction does the state have over the military base?
- What are the existing MOUs between the base and the local juvenile justice apparatus?
- What is the intake process outlined in the MOU?
- Do probation officers and other court officials have clearance to enter the base to provide support and services to the youth?
- What are the resources for the treatment and rehabilitation of juveniles on the military base?
- Has a juvenile who has problematic sexual behaviors been connected to the Family Advocacy Program on the installation?
- Are the terms and conditions being imposed realistic in the context of where the child/parents reside?

GOVERNING LAWS AND POLICIES

Chapter 403 of Title 18, U.S. Code (18 USC § 5032)

RESOURCES

Best Practices Concurrent Jurisdiction Factsheet: <https://download.militaryonesource.mil/StatePolicy/pdfs/2022/bestpractices-concurrentjurisdiction.pdf>.

Concurrent Jurisdiction a Priority for Defense Department: <https://www.militaryonesource.mil/media/news-and-releases/understanding-concurrent-jurisdiction/>.

On Base and Beyond: Negotiating the Military/State Agreement - a detailed review of the jurisdictional concerns between military and local juvenile courts. The review includes several examples of MOUs between military installations and local authorities: <https://www.ncjfcj.org/wp-content/uploads/2019/12/Negotiating-the-Juv-Justice-Agt.pdf>.

The Family Advocacy Program: <https://www.militaryonesource.mil/family-relationships/family-life/preventing-abuse-neglect/the-family-advocacy-program/>.

THE INTERSTATE COMPACT FOR JUVENILES

The Interstate Compact for Juveniles (ICJ) is the law that regulates the movement between states of juveniles under court supervision or who have been accused of an offense in another state. The ICJ is particularly relevant for dependent children of military members who frequently have to move due to station changes.

JUDICIAL CONSIDERATIONS

- If you become aware early on that the child is a member of a military household, ask what the status of any transition may be early to avoid future issues.
- When a military service member with a dependent child who is on probation or parole is leaving a state, the sending state must send a referral packet to the receiving state 45 days before the anticipated arrival of the child.
- If a military service member with a dependent child who is on probation or parole is transferring from the state, the receiving state is required to accept the case, unless a legal guardian is remaining in the sending state.
- The process to transfer supervision can take up to 45 days. If the family has to move in less time than that, the sending state should, in addition to sending the referral, issue a travel permit and maintain supervision until the case can be transferred. The referral packet should include a written description of why the ICJ procedure could not be followed. If the travel permit is submitted first, the referral packet must be submitted within 10 days of the travel permit.
- Be aware that some states may be reluctant to accept cases involving sex offenses. Be ready to look for alternative placements if travel is restricted.
- The court always has the option of shortening time on probation. These decisions are made by balancing safety issues, accountability, rehabilitation, and practicality.

QUESTIONS TO ASK

- When are parents meant to report at their new base?
- Is there a legal guardian who is remaining in the state?
- Are there other family members in the jurisdiction that may be willing to keep the child?
- Will the other jurisdiction accept the child based on the offense committed?

GOVERNING LAWS AND POLICIES

ICJ Rules: https://www.juvenilecompact.org/sites/default/files/ICJ%20Rules_Final.pdf.

RESOURCES

The ICJ Bench Book: <https://www.juvenilecompact.org/bench-book>.

The process for the transfer of supervision: https://www.juvenilecompact.org/sites/default/files/Overview%20of%20the%20Transfer%20of%20Supervision_2016.pdf.

ICJ Forms: <https://www.juvenilecompact.org/forms>.

SCHOOL ATTENDANCE AND TRUANCY

The Interstate Compact for Educational Opportunities for Military Children (Compact) was developed as an agreement among states to make the process of transitioning schools easier for military families. The Compact provides guidance on eligibility, placement, and graduation. As a part of the guidance on placement, the Compact requires cooperation regarding absences related to deployment activities.

According to the Compact, children of military parents may request additional, excused absences to spend time with their parent or legal guardian immediately before, during, and after deployment. The school can deny approval of these excused absences if there are competing requirements for attendance, such as a state requirement to be present during state testing or if the student already has missed so much school that additional absences would be detrimental to their education.

JUDICIAL CONSIDERATIONS

- Work with the youth, their parents, the school, and the military installation's school liaison to identify if youth are truant due to excusable absences related to deployment.
- The installation's school liaison should work together with the youth and family to address the root causes of truancy and develop a plan to mitigate absences going forward.
- Work with the school's liaison, student advocate, or counselor to identify any issues. These individuals are often privy to family circumstances that are affecting attendance that are unrelated to deployment.
- Make sure that proper, certified interpreters are available. There may be a parent or a child for which an interpreter is appropriate. Make sure, even if there are reassurances that the proceedings are being understood, that this service is available.

QUESTIONS TO ASK

- Were any of the unexcused absences connected to dates on which the parent or guardian was deployed?
- Are the classes the young person was placed in reflective of their skills and needs?
- What are the resources that the installation's school liaison can provide to enhance student attendance?
- Are there other languages being spoken in the home that may account for some of the truancy concerns?
- What information can the school's student advocate, teacher, or counselor provide to support the parent and the child.

GOVERNING LAWS AND POLICIES

Interstate Compact for Educational Opportunities for Military Children: <https://www.dodea.edu/Partnership/interstateCompact.cfm>.

RESOURCES

Interstate Compact Training Modules: <https://www.dodea.edu/Partnership/interstateCompact.cfm>.

Military One Resource on the Interstate Compact for Educational Opportunities for Military Children: <https://www.militaryonesource.mil/education-employment/for-children-and-youth/changing-schools/interstate-compact-for-military-children/>.

Military Teen Experience Report: <https://www.militaryfamily.org/the-military-teen-experience/>.

AN INTRODUCTION TO PROBATION, MONITORING, AND SUPERVISION

Some young people on probation, monitoring, and supervision live on military installations. Many military installations combine aspects of a small city, and there may be, depending on the installation, opportunities for some rehabilitation and treatment on the installation. For example, some installations have schools on base while others rely on the local school district.

These on-installation resources should be used in the probation, monitoring, and supervision plans developed by the state. However, military installations are not designed to provide the full breadth of services and resources for the probation, monitoring, and supervision of young people and cannot be solely depended on to serve the needs of all youth.

JUDICIAL CONSIDERATIONS

When setting the conditions of probation and parole and developing case plans, judges should be mindful of the administrative actions of the military installation's juvenile review board and commander to ensure that services are not duplicative or become overly taxing on the capacity of the young person and their family to meet the requirements.

Many bases do not have great public transportation options to the local courts. In these cases, requirements of probation, monitoring, and supervision should be on base or in areas that are easily accessible by public transit. If certain needs cannot be met on the installation, the distance young people must travel to and from school and to and from the resources they are referred to must be considered in determining the stipulations of supervision. An option may be on-base visits by the probation/parole officer, coordinated by the base administration.

Sometimes military families will be transferred while a youth is on probation or supervision. Please see the notes on the ICJ, above, for more information on what to do in those situations.

QUESTIONS TO ASK

- What are the resources for the treatment and rehabilitation of juveniles on the military base? Do these resources provide the same level of service as off base?
- What are the public transportation options?
- If there are no public transportation options, what other resources can the court leverage to connect youth to appropriate services and resources?
- Are there aspects of living on base that can be used to enhance probation's goal of rehabilitation?

GOVERNING LAWS AND POLICIES

ICJ RULES

ICJ Rules: https://www.juvenilecompact.org/sites/default/files/ICJ%20Rules_Final.pdf.

RESOURCES

The Role of the Judge in Transforming Juvenile Probation: A Toolkit for Leadership: <https://www.ncjfcj.org/publications/the-role-of-the-judge-in-transforming-juvenile-probation-a-toolkit-for-leadership/>.

Best practices in juvenile probation: <https://www.aecf.org/resources/transforming-juvenile-probation>.

Issues in Domestic Relations/Family Law Cases

INTRODUCTION

This section of the Guide includes the most common issues judicial officers encounter when working with military-connected families in domestic relations cases. Those issues include the Servicemembers Civil Relief Act and dividing military pensions and establishing and enforcing parenting plans and family support.

THE SERVICEMEMBERS CIVIL RELIEF ACT

Congress enacted the Servicemembers Civil Relief Act (SCRA) in 2003 to clarify language in the Soldiers' and Sailors' Civil Relief Act (enacted in 1942 and updated in 1991). The SCRA protects service members on active duty but also provides protections to reservists and members of the National Guard (when activated under Title 10, US Code).

The SCRA's purposes are to enable service members to devote their attention and energy to the defense of the nation and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their service. The Supreme Court has said that the statute should be read "with an eye to those who dropped their affairs to answer their country's call" (*Le Maistre v Leffers*, 333 U.S.1, 6,1948).

The SCRA applies to members of the Army, Navy, Air Force, Marine Corps, and National Guard on active duty; commissioned members of the Public Health Service and the National Oceanic and Atmospheric Administration; and some tribunals (any court or administrative agency of the United States, a state, or political subdivision thereof).

When a judgment, order, or adverse ruling is sought against a party who has not made an appearance, it is the duty of the court to determine whether that party is in the military. If military service prevents a service member from participating in a civil action or administrative proceeding, the service member may request a 90-day stay.

In domestic relations cases, judges should not order default divorces, child support orders, paternity orders, or parenting plans without ensuring compliance with SCRA. If a default judgment is entered against a service member, the judgment may be reopened if the member makes an application within 90 days after leaving active duty, shows they were treated prejudicially, and shows they had a legal defense.

QUESTIONS TO ASK

- Is the respondent a member of the military?
- What does your jurisdiction require in the pleadings as to the SCRA? Did the petitioner comply with state law?
- Has the petitioner filed an affidavit advising that one of the parties is a member of the military? Or, has the petitioner filed an affidavit stating that the petitioner cannot determine whether the respondent is in the military?
- What attorney is immediately available to represent the service member's interests? Who has the list of attorneys at the courthouse?
- Is the service member seeking a postponement?
- Was judgment entered against the service member unlawfully?

GOVERNING LAW AND POLICY

SCRA: <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter50&edition=prelim>.

RESOURCES

Sullivan, Mark E. (retired Army Reserve JAG colonel). *A Judge's Guide to the Servicemembers Civil Relief Act*: <https://www.nclamp.gov/media/425665/jdg-guide.pdf>.

ESTABLISHING AND ENFORCING PARENTING PLANS AND FAMILY SUPPORT

Military families face the same access to justice issues as civilian families when attempting to navigate domestic relations law within the civil justice system. Many cannot afford counsel and represent themselves instead. That is always a daunting task, and it becomes more so with the additional challenges of deployments, foreign divorces, frequent moves between and among states and countries, and temporary duty assignments out-of-state or out-of-country. Even when military family members are represented by counsel, those attorneys may not be familiar with military life or the rules and regulations that govern litigation involving military members.

There is no overarching federal family law that must be applied in cases involving military families. Judicial officers apply the same state and federal statutes to military families as in civilian cases.

However, the SCRA establishes certain minimum standards that all states must meet. Any temporary custody order based on deployment must be limited in length to the time of deployment, and a judge cannot

use deployment as the sole factor in making a custody determination. The SCRA defers to state laws that provide greater protection to service members than the SCRA (50 U.S.C. §3938).

Many states have enacted specific provisions for determining custody and parenting time matters involving military families. Sixteen states, named in the Appendix, have adopted the Uniform Deployed Parents Custody and Visitation Act (UDPCVA). The UDPCVA codifies protections for deployed or soon-to-be deployed service members involved in custody litigation. Those protections include expedited hearings for service members about to be deployed, long-distance participation by a deployed service member, and allowing service members to delegate visitation to another person during deployment.

When a court is asked to assume jurisdiction of a custody, parenting time, or family support case, the judicial officer must first determine the home state of the minor child(ren). If a home state cannot be established, a determination can be made based upon substantial contact, significant connections, etc., under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). Judicial officers should refer to their state and local statutes and rules as well as to the UCCJEA, which applies in all states except Massachusetts. Cases involving foreign countries are governed by the Hague Convention, if the foreign country is a signatory to the Convention.

QUESTIONS TO ASK

- Has my state adopted the UDPCVA?
- Do state family law statutes include specific provisions regarding service members?
- Is/are the service member(s) deployed, on temporary duty elsewhere, or otherwise not in the jurisdiction because of military orders?
- What are the domiciles of the litigants?
- What is the appropriate jurisdiction for the resolution of this matter?
- Is there an emergency that warrants assuming jurisdiction of an out-of-state case?
- Have the requirements of the UCCJEA been met?
- How long has the child been in the state?

GOVERNING LAWS AND POLICIES

State statutes and rules of procedure.

SCRA (50 U.S.C. 3098): <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter50&edition=prelim>.

UDPCVA: Enacted in only 15 states with another state in process. The remaining 35 states have similar legislation within their domestic relations statutes: <https://www.uniformlaws.org/committees/community-home?CommunityKey=c6374f03-21fe-4862-a114-7498710d8e5d>.

UCCJEA: <https://www.uniformlaws.org/committees/community-home?CommunityKey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d>, adopted in all states except Massachusetts, which has retained the Uniform Child Custody Jurisdiction Act (UCCJA): <http://www.lrcvaw.org/laws/mauccja.pdf>.

Hague Convention: <https://www.hcch.net/en/states/hcch-members>.

RESOURCES

Uniform Child Custody and Jurisdiction and Enforcement Act: Guide for Court Personnel and Judges, NCJFCJ UCCJEA Guide: https://www.ncjfcj.org/wp-content/uploads/2018/07/UCCJEA_Guide_Court_Personnel_Judges_Final_508.pdf.

Judge's Guide to Military Resources (Military Community and Family Policy): https://download.militaryonesource.mil/12038/MOS/ResourceGuides/Quick_Reference_Guide_for_Family_Court_Judges.pdf.

JUDGES' Q&A ON THE SCRA AND CHILD SUPPORT

Q: *My service member spouse and I are separating, and I have our two children. How am I able to obtain child support?*

A: The short answer is a service member is required to provide financial support to his or her family. The service member is further required to support any minor children and to obey any court order requiring a child support payment. This requirement continues even if the family is geographically separated.

Q: *Who determines the amount of support to be paid?*

A: The amount of support to be paid may be determined by a court or administrative order based on state law. If there is no agreement or order, then the default rules for setting and paying family support are set out in the appropriate military service regulation.

Q: *Are child support determinations more complex for service members?*

A: Military families face unique challenges because of deployments or other lengthy separations. State child support programs help by responding quickly to the changing circumstances of both parents so that support orders remain reasonable and fair.

Q: *My spouse is very upset at our separation and blames me for the dissolution of our marriage. He said he will not pay any child support because "it's all my fault." What happens if he fails to respond to the court's summons or subpoena regarding child support?*

A: Service members must follow the chain of command and must take orders from their unit commander. The unit commander may be effective in encouraging the service member to cooperate with the child support proceedings. The service member must follow mandatory rules and regulations for payment of child support.

Further, anyone who fails to obey a court summons may face contempt of court which may include jail time.

Q: *Do I need to hire a lawyer to file in court to receive child support from the service member who is the mother of my children or are there military advocacy resources I may utilize?*

A: It is a personal decision as to whether you choose to hire an attorney to help you collect child support. If

you choose to hire an attorney, you would be required to use your personal funds to pay for the services of the attorney.

If you choose not to hire an attorney or do not have sufficient resources to hire an attorney, the military will not pay for the service of any attorney. You may be able to utilize the services of the legal assistance services through family advocacy centers or a family life center.

Military legal assistance offices and lay advisors can provide assistance but do not represent service members in state court.

Further, each state has a local child support enforcement agency which is a state agency designed to help families establish and collect support for minor children. State child support agencies are also able to help parents find the other parent, determine income, and enforce child support orders.

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

When needed, government attorneys or private attorneys under contract help child support agencies process child support cases. These attorneys have a relationship with the agency. They do not represent parents. The child support agency will help file legal actions related to child support.

You may apply for services through your local child support enforcement agency.

Q: *Do the military or other armed services determine a child support obligation?*

A: No, child support is determined by applicable state law. Laws vary from state to state.

Children need both emotional and financial support from their parents.

Most state child support determinations are based on a codified guideline calculation after a child's custody has been determined based on a joint custody, sole custody, shared custody, split custody, or other parenting time arrangement.

Most states have either a percentage guideline (e.g., the noncustodial parent pays 17% of gross pay for one child, 25% for two children, 35% for three, etc.) or an income-shares guideline, which computes child support based on the combined parental incomes of the parents, the cost of work-related day care, and the premiums for the children's medical insurance.

In determining child support, most state child support guidelines start with inclusion of all sources of income, both taxable and nontaxable.

Q: *If I obtain a state child support order, will the military enforce it? If yes, how?*

A: Yes, you must send the Defense Finance and Accounting Service (DFAS) or Coast Guard an order from a court or child support enforcement agency (CSEA) that directs the government to pay monies for support (or alimony).

If the court or CSEA issued an income deduction order or income withholding order, the order should be submitted to DFAS or the Coast Guard to allow DFAS or the Coast Guard to garnish the service members' wages to pay the child support obligation.

DFAS and the Coast Guard do not charge a fee for honoring income withholding orders for child support, alimony, or related arrearages (overdue support or alimony payments).

Q: *I cannot find the service member who should be paying to help support our children. How can I find the service member?*

A: The first step in establishing a child support order is to notify the service member who is legally responsible for the support of a minor child. Thus, the service member must be legally notified of the filing of a child support petition or administrative proceedings by the state child support enforcement agency.

The local child support agency has the authority, under federal law, to use locator services if the service member's whereabouts need determination. The federal Office of Child Support Enforcement operates the Federal Parent Locator Service (FPLS).

In order to process a request, the military's locator service needs the service member's full name and social security number.

The agency also has the authority to determine the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in determining child support.

Q: *Once I find the service member, how do I notice the service member that I am seeking a child support order?*

A: Once the service member is located, the service member must be legally notified of the request for child support. Prior to the notification of the service member, there must be a determination of which court or locality has the authority ("jurisdiction") over the service member to determine a child support obligation.

The court or administrative agency must have personal jurisdiction over the service member.

This issue can be tricky for service members due to their home state or residence varying from their service location.

A court generally has jurisdiction over someone based on their home state which is determined by their legal residence at the time of the filing of the request for a determination of child support.

For service members, their legal residence is generally determined at the time of entry into service (based on state income tax filing, driver's license, etc.).

However, a service member's legal and physical residence may change.

Once jurisdiction is established and depending on state law, notice to the service member may be made by personal service, certified or registered mail, or first-class mail. Notice is valid if it satisfies the requirements of the forum state.

Q: *I just received papers! I am overseas in a foreign country serving my country. How do I defend my rights? Doesn't the Servicemembers Civil Relief Act (SCRA) protect me?*

A: Yes. But you must act. The SCRA is a federal law (not state law) that provides protections to individuals in military service. The main purpose of the SCRA is to postpone, delay, or suspend specified civil obligations of service members so that the service member may focus on their defense of the United States of America. The SCRA applies to various areas of civil law including family law related matters involving custody, visitation, and child support.

In order to take advantage of the SCRA, you must take assertive action. First, in order for the SCRA to apply, you must be a member of the:

- United States Armed Forces (Army, Navy, Air Force, Marine Corps and Coast Guard); and
- You must be on active-duty status; or
- You must be absent from duty as a result of being wounded or being granted leave; or
- Reserve, National Guard, and Air National Guard personnel who have been activated and are on federal active duty.

If you qualify, the SCRA provides for an automatic stay (postponement) of at least 90 days upon a proper request from the service member of any civil administrative or judicial child support matter.

If you are unable to appear at the administrative hearing or in court because of active military service, you should request, in writing, that the administrative agency or court, stay the proceeding for at least 90 days.

In making the request to stay the proceeding, the service member must include the following information:

- Service member is an active-duty member of the United States armed services.
- 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 the date when the service member will be available to appear.
- 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.

If the above documents are submitted, the administrative agency or court must grant a stay of the proceedings for 90 days.

If the service member submits a request for additional stays, the decision to grant or deny the request is at the sole discretion of the administrative agency or the court.

Q: What about health insurance and the armed services?

A: TRICARE is the health care program available for military members, retirees, and their families. TRICARE is available to legal dependents of all active or retired military members regardless of whether the dependent resides with the service member. TRICARE coverage requires enrollment in the Defense Enrollment Eligibility Reporting System (DEERS).

DIVIDING MILITARY PENSIONS

Judges in a military divorce case may encounter a number of assets and benefits for division. These include the military pension itself, the Survivor Benefit Plan (SBP), Thrift Savings Plan accounts, and accrued leave.

MILITARY PENSION DIVISION

The Uniformed Services Former Spouses' Protection Act (USFPA), found at 10 U.S.C. §1408, is a federal law that authorizes judges to divide military retired pay, places restrictions on what can be divided, and states how the division can be implemented.

Division of the military pension can be through a military pension division order (MPDO), a decree of legal separation, or a divorce decree that incorporates the parties' separation agreement. There are specific requirements for an acceptable order dividing military retired pay.

A court cannot treat retired pay as the property of the service member and the former spouse (FS) unless the court has jurisdiction based on the service member's residence (other than because of military assignment), his or her domicile, or the service member's consent to the court's jurisdiction, usually interpreted as the entry of a general appearance, (10 U.S.C. 1408 (c)(4)). The MPDO must state specifically the basis for jurisdiction.

Note that there are two sections of the SCRA that mention domicile. They state that a service member will neither gain nor lose a state of legal residence (or domicile) for purposes of state taxation or voting, due only to his or her being absent from (or present in) a specific state (50 U.S.C. § 4001(a)(1) – (a)(2) and § 4025(a)). A service member who is absent from state A due solely to military orders will not be deemed to have lost or gained a domicile unless and until he or she acts affirmatively to establish a new domicile.

The MPDO must also state that it is entered in compliance with the Servicemembers Civil Relief Act, Chapter 50 of Title 50, U.S. Code. The usual language is "The rights of the servicemember under the Servicemembers Civil Relief Act have been honored and observed."

The court order or court-approved and ordered settlement must state the amount owed either in dollars or in a percentage of the retired pay. The calculation cannot be left to the discretion of the military pay center. There is no federal formula for dividing retired military pay, nor is there a presumed or predetermined share of the retired pay of the service member to be awarded to the FS. However, the maximum award of military pension division (as property division) may not exceed 50% of the disposable military retired pay. The judge determines the amount or percentage using one of four types of awards:

- The fixed dollar amount specifies how much the FS is to receive each month; it cannot be combined with a COLA (cost-of-living adjustment).
- The percentage clause sets the former spouse's share as a percent of the military pension.
- The formula clause is often used when the member is still serving and the amount of total military service is not known; it usually specifies that the FS will be paid 50% of the marital fraction, with the numerator being marital pension service measured by a specific number of months (or a specified number of Reserve retirement points), and the denominator being the service member's total military service.
- The hypothetical clause sets the amount to be divided as that which the service member would have

received for retired pay if he or she had retired on a specific date, such as the date of separation. The service member's retired pay base (High-3 pay) and the years of creditable service (or Reserve retirement points, in the case of a Guard/Reserve member) must be stated.

When there are 10 years of marriage concurrent with 10 years of creditable military service, the FS may receive pension-share garnishment from the retired pay center; this is the 10/10 rule (10 U.S.C. 1408 (d)(2)). Retired pay division for members of the Army, Navy, Air Force and Marine Corps (as well as National Guard and Reserves) is handled by the Defense Finance and Accounting Service (DFAS), while pension division for members of the Coast Guard and for officers in the Public Health Service and the National Oceanic and Atmospheric Administration is handled by the Coast Guard Pay and Personnel Center. Just because the 10/10 rule is not met does not mean that the pension cannot be divided; it means only that the FS must rely on state court enforcement mechanisms to obtain a share of the pension.

Payments of the pension-share garnishment begin within 90 days of the latter of a) the submission of an acceptable order for pension division; or b) the start of retired pay for the service member (10 U.S.C. 1408 (d)(1)). The court should provide payments to the FS by the retiree during this 90-day interim period.

The court will need to review certain documents as evidence in a military pension division case.

- If the service member is on active duty, the leave and earnings statement will help inform the court on the amount of service time for the service member and his/her base pay (which is used in calculating the High-3 pay for frozen benefit rule purposes).
- When the case involves a member of the National Guard or Reserves, it is essential to review a copy of the service member's retirement points statement.
- For cases involving military retirees, the retiree account statement is useful, and the court should also review the service member's retirement orders for the effective date of retirement. In addition, every retiree receives a letter from the retired pay center when pension payments start, and this explains in detail how his or her retired pay was calculated.

The USFSPA also provides for pension-share payments to former spouses who were the victims of domestic abuse (10 U.S.C. 1408 (h)). If a service member who is retirement-eligible is denied retirement as a result of misconduct involving abuse of a spouse or dependent child, the court can order division of the non-existent retired pay. The statute contains restrictions on the former spouse, and there is a detailed explanation at the Department of Defense Financial Management Regulation (DoDFMR), Vol. 7b, Chapter 59.

One of the limitations on the division of retired pay is the Frozen Benefit Rule (10 U.S.C. 1408 (a)(4)(B)). This section of the USFSPA applies to service members who divorce after December 23, 2016, and who are not receiving retired pay on the divorce date. It says that the pension which may be divided (the "disposable retired pay") is limited to that amount (adjusted by COLAs) which would exist if the service member had retired on the date of the divorce or dissolution. The pension order must contain two data points to be accepted at the retired pay center: a) the service member's retired pay base (usually known as the High-3), which is the average of the highest three years of base pay; and b) the service member's years of creditable service (or, for guard/reserve members, the number of retirement points), calculated as of the divorce date. A typical clause for the pension orders findings of fact might read, "The following data points for the service member are stated as of the divorce date: \$5,678 as his retired pay base (High-3 pay), and 15.6 years of

creditable service.” One of the attorneys will usually calculate these two numbers to present to the court, and it is usually the lawyer for the FS, since the retired pay center will not accept the order and begin garnishment of pension-share payments without these two data points.

The receipt of tax-free disability compensation from the Department of Veterans Affairs can reduce the amount of disposable retired pay, thus shrinking the FS’s share of the pension (10 U.S.C. 1408 (a)(4)(A) (ii)). Any amount of VA disability compensation requires a waiver of the same amount of retired pay (38 U.S.C. 5304-5305). Thus, if the service member had a VA payment of \$500 per month and gross retired pay of \$4,000, the disposable retired pay would be \$3,500. The amount lost will, however, be made up by the retired pay center if the service member has a VA rating of 50% or more; this is called concurrent retirement and disability pay (CRDP) (10 U.S.C. 1414). The service member receives CRDP automatically; no application is needed.

The benefit of CRDP is lost, however, if the service member applies for and receives combat-related special compensation (CRSC) (10 U.S.C. 1413a). This involves service-connected disabilities which are related to combat, hazardous duty, the award of a Purple Heart, training for combat, or instrumentalities of war. This tax-free disability payment cannot be received while one is getting CRDP; the election of CRSC waives receipt of CRDP, which means that any amount of VA disability compensation, not just the amount payable for a VA rating of 40% or less, is a dollar-for-dollar waiver against retired pay.

The court cannot order the service member not to apply for VA disability compensation or CRSC. And the court cannot require the service member, in the absence of his/her agreement, to reimburse or indemnify the FS for any amount lost due to the VA waiver explained above (*Howell v. Howell*, 137 S. Ct. 1400 (2017)). In many states, however, the court is able to enforce a contractual requirement for indemnification, such as one set out in a separation agreement. And the *Howell* case contains no restriction on the court’s power to enforce a prior court order for reimbursement through the use of *res judicata*. The court may also take into account this potential pension-division limitation in the valuation and division of marital or community property or in the determination (or redetermination) of spousal support.

Service members can be involuntarily discharged due to mental or physical unfitness, pursuant to Chapter 61 of Title 10, U.S. Code. In such a situation, the service member will receive military disability retired pay (MDRP) if his/her military disability rating (not the VA rating) is 30% or higher or if there are at least 20 years of creditable service toward retirement. The calculation of MDRP is through Method A (percent of disability times retired pay base, with a 75% maximum) and Method B (years of service times retired pay base times 2.5%). Whichever is higher will be selected by the military, although the final choice remains with the service member who may override that decision. Any amount based on Method A is exempt from division. The USFSPA says that disposable retired pay excludes the amount of MDRP based on the percent of disability. If the service member elected Method B and that amount is higher than the Method A amount, then the differential is divisible.

QUESTIONS TO ASK

- Does the court have jurisdiction over the service member and, if so, what is the basis for jurisdiction?
- Is this a direct-pay order, with garnishment from the retired pay center? Do the parties have at least 10

years of marriage concurrent with 10 years of military service creditable toward retirement?

- When is the date of retirement (if applicable)?
- Did the retiree provide a copy of his/her retiree account statement, retirement orders, and the letter from the retired pay center as to how retired pay was calculated?
- Does the retiree have a VA disability rating and, if so, what is it?
- Does the retiree have reduced retired pay due to a VA waiver? Does the court have sufficient information about this, such as a letter from the VA stating the VA rating?
- Is the pension one based on longevity or is it military disability retired pay? If the latter, what amount – if any – may be divided as marital or community property?
- Which of the four methods of pension division should be used in this case?
- When will the payments start?
- How will the court provide for payments by the retiree during the 90-day processing period?
- How long were the parties married?
- For purposes of setting the numerator of the marital or community property fraction, how much military service did the service member have at the cutoff date under state law (e.g., the date of separation, date of divorce, or date of filing the divorce case)?
- If the service member is retired, how much total military service did he or she have?
- For frozen benefit rule purposes, how much military service did the service member have at the date of divorce, and what is the retired pay base (High-3) for the service member at that date?
- Are there back payments due to the FS? If so, how will the retiree compensate the FS?
- Has the service member/retiree provided sufficient records and information for the court to be able to understand the case and calculate the division of military retired pay?
- Which attorney will prepare the pension order?

GOVERNING LAWS AND POLICIES

State statutes and cases.

Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. 1408: <https://www.govinfo.gov/content/pkg/USCODE-2011-title10/pdf/USCODE-2011-title10-subtitleA-partII-chap71-sec1408.pdf> and the Department of Defense Financial Management Regulation (DoDFMR), Vol. 7b, Chapter 29, "Former Spouse Payments from Retired Pay."

RESOURCES

Silent Partner info letters on military pension division: <https://www.nclamp.gov/publications/silent-partners/>.

Joseph A. DeWoskin, Mark E. Sullivan and Dan Wiley, *The Military Divorce: An Overview, Court Review* (Journal of the American Judges Association), Vol. 58, Issue 2 (2022) at page 58.

THE SURVIVOR BENEFIT PLAN

If the FS outlives the service member/retiree, then the survivor benefit plan (SBP) will be an important asset for the court to consider (Chapter 73, Title 10, U.S. Code). The SBP is a survivor annuity which pays the FS 55% of the base amount (which can be a minimum of \$300 up to full retired pay) for the rest of her/his life, adjusted annually by COLAs. If this is not in place, then the flow of money to the FS stops because the pension ends upon the death of the service member/retiree. The use of SBP means a continued stream of income for the FS if she or he outlives the service member/retiree.

Current spouses are covered automatically by the SBP. A divorce decree, however, ends this coverage; there must be a court order for former-spouse SBP coverage (if that is what the court intends). The usual language is something like this: “The service member will immediately elect the former spouse for coverage under the survivor benefit plan, with full retired pay as the base amount.”

There is a remarriage penalty with the SBP. A former spouse who remarries before age 55 is ineligible for SBP payments during that remarriage. If the marriage ends at death, divorce, or annulment, however, she or he will return to eligibility.

Speaking of remarriage, it is important for the court to take into account the possible remarriage of the service member/retiree also. There can only be one adult beneficiary for SBP, so the court’s awarding of coverage to the former spouse means that the service member/retiree cannot save SBP for a future spouse.

The SBP premium is 6.5% of the selected base for active-duty cases, and the cost is deducted from the service member’s retired pay. It is a mandatory deduction before the division of disposable retired pay. Thus, if the pension is \$3,000/mo. after retirement from active duty, the SBP premium would be \$195, and the disposable retired pay would be \$2,805 (\$3,000 - \$195). Because the SBP premium comes off the top, the cost winds up being divided between the parties in the same ratio as their shares of the retired pay. The SBP cost for a guard/reserve case will vary; it is about 7-10% of the SBP base. The service member sets the base amount upon his/her retirement, using DD Form 2656, Data for Payment of Retired Personnel.

The court cannot order the retired pay center to take the cost out of the pension share of a party. However, the parties can agree for one to pay all or half, for example, of the SBP premium. And the parties can also adjust the former spouse’s share of the pension to account for allocation of the premium to one party or the other.

The implementation of SBP coverage requires steps that can be described as the 3-R Rule. These are:

R FOR REQUIREMENT: This is a court order requiring the service member/retiree to elect former-spouse SBP coverage.

R FOR REQUEST: The parties need to fill out and execute an election for former-spouse SBP, using DD Form 2656-1. If the service member/retiree fails or refuses to make a proper election, the FS can execute a deemed election using DD Form 2656-10.

R FOR REGISTER: The form for SBP election must be registered at the retired pay center. The election form needs to be transmitted within one year of the parties’ divorce. The deemed election must be registered

within one year of the order requiring the former-spouse SBP election.

The court may want to consider valuing the SBP, depending on state law. If state cases or statutes require that marital property be valued, then the court should be presented with expert testimony (or a stipulation) as to the value of the SBP to be awarded to the FS. This can be worth several hundred thousand dollars, depending on the ages of the parties and the age differential.

QUESTIONS TO ASK

- Is the marriage of sufficient duration that the court should consider ordering the survivor benefit plan?
- Should the court order former-spouse SBP coverage to be elected by the service member/retiree?
- Should the FS pay for all of the SBP premium?
- Should the court order valuation of the SBP?
- Should the court's order specify the procedures to be used in implementing SBP coverage (the 3-R Rule)?

GOVERNING LAWS AND POLICIES

- State statutes and cases
- Chapter 73, Title 10, U.S. Code
- Department of Defense Financial Management Regulation (DoDFMR), Vol. 7b, Chapters 43-46

RESOURCES

Silent Partner info-letters on SBP: <https://www.nclamp.gov/publications/silent-partners/>.

Mark E Sullivan, *The Missing Annuity Mystery: Providing Protection for the Former Spouse of Servicemembers and Retirees*, *Richmond Public Interest Law Review*, Vol 20, Issue 3 (2017) at page 263.

THE THRIFT SAVINGS PLAN

Many service members have a defined contribution plan, called the Thrift Savings Plan (TSP), as another way to plan for retirement. This deferred compensation asset may also be divided as marital or community property, or it can be valued and awarded to one party, with the other party receiving other assets from the marriage. When the TSP is divided, the order which is used is called a retirement benefits court order (RBCO). The court should be informed of any loans or distributions that have been taken, and a premarital TSP account must have an accounting for all growth from the balance on the date of marriage, which may mean several years of TSP statements.

All the details as to division of the TSP account will be found in the *Silent Partner* info-letter, "A Teaspoon of TSP," located at the website of the North Carolina State Bar's military committee: <https://www.nclamp.gov/publications/silent-partners/>.

QUESTIONS TO ASK

- Does the service member/retiree have a TSP account?

- What is the marital or community amount in the account?
- Are there any loans outstanding as of the cutoff date under state law (e.g., the date of separation, date of divorce, or date of filing the divorce case)?
- Have there been any distributions since the cutoff date?
- If the account existed on the date of marriage, how much has it grown since then?
- Does the court have evidence as to the TSP account value on the date of marriage and the cutoff date in the form of TSP statements?
- Is division of the account necessary, or can it be awarded to one party with the other one receiving an appropriate amount of other marital or community property?
- Who pays for the cost of processing the RBCO?
- Will the portion of the account be paid into a separate TSP account (the default solution), transferred to an IRA for the FS, or paid outright to the FS in a taxable distribution?
- Which attorney will prepare the RBCO?

GOVERNING LAWS AND POLICIES

State statutes and cases.

U.S. Code, Title 5, chapter 84, subchapter III, “Thrift Savings Plan.”

RESOURCES

“A Teaspoon of TSP,” located at the website of the North Carolina State Bar’s military committee: <https://www.nclamp.gov/publications/silent-partners/>.

ACCRUED LEAVE AS MARITAL/COMMUNITY PROPERTY

When state law allows for the valuation and division of vacation time and leave, a case involving property division may involve the valuation of the accrued leave of a service member who is on active duty to determine the value of this asset.

Each person in military service on active duty accrues 30 days of paid leave per year, regardless of rank. If state law allows vacation time to be considered as marital or community property (and there are only a few states with decisions barring such consideration), this leave can be valued, and it is worth what its equivalent would be at the monthly pay rate of the service member. One can calculate this easily by using the pay tables available at the Defense Finance and Accounting Service (DFAS) website, <https://www.dfas.mil>.

Thus, if Colonel John Doe’s gross pay is \$8,000 per month and he has 45 days of accrued leave at the valuation date as set out in state law (e.g., date of separation, date of filing, date of divorce), his accrued leave would be worth about \$12,000 ($45/30 \times \$8,000$), which represents gross pay before tax and other withholdings. Counsel for Mrs. Doe would advocate use of the gross pay figure, whereas opposing counsel would argue for using after-tax computations for the pay. Only base pay is involved; the valuation and allocation of accrued leave does not involve any non-pay entitlements (e.g., flight pay, basic allowance for

housing). Counsel for the service member may attempt to confuse the issue by arguing that the nonmilitary spouse cannot be awarded military leave; this argument misses the point. The issue is not who can use military leave but whether, under applicable state law, an asset such as vacation time and sick leave are marital or community property if it is acquired during the marriage.

If Colonel Doe will not voluntarily produce his monthly leave-and-earnings statement (LES), counsel may resort to formal discovery procedures if the matter is in litigation. The document is simple for the service member to obtain online.

QUESTIONS TO ASK

- Does the service member have accrued leave as of the cutoff date under state law (e.g., the date of separation, date of divorce, or date of filing the divorce case)? Does the court have a copy of the service member's leave and earnings statement (LES) for the cutoff date, showing the leave balance?
- If so, how many days of leave are accrued?
- What is the value of those days of accrued leave?
- Governing Laws and Policies: State statutes and cases
- Resources: Mark E. Sullivan, Hidden Money in Military Divorce Cases, Family Law Review (Family Law Section of the New York State Bar Assn.), Spring 2013, Vol. 45, No. 1 at page 5.

Recommendations for Next Steps

If you want to improve the court's responses to military-connected families, a good place to start is by asking if the person in court or their family is connected to the military. Check to see if it is possible to add this question as part of an intake form and ensure the response is recorded in the case file. If you enter these responses into the courts information and management system, you may be able to use this data to produce a report to learn how many military-connected individuals and families are interfacing with the court system each year. You may also be able to track and report data by case type as well.

Organize and schedule training about the unique needs of military-connected families for your bench, court administrator, attorneys, social services workers, probation team, victim advocates, and other stakeholders. Facilitate discussions to identify challenges to serving military-connected families, identify existing and necessary resources to serve military-connect families, and discover any existing connections and relationships members of the court may have to local military installations.

If your court is located near a military installation, conduct outreach to base command to introduce key players in the court system to open a dialogue about the needs of military-connected families that are in the court system. Also consider outreach to the installation's FAP to build a relationship because they will be a key player in providing services to military-connected families. Request a tour of the installation, which is often offered to the public, to learn more about housing, education, health, behavioral health, and family services offered by the military installation.

Convene a meeting by inviting representatives from key programs and offices with both the installation and the court system. Use the sign-in sheet to create a directory of key contacts in both systems to be shared

with both systems. Facilitate a discussion about building relationships, identifying, and sharing resources, recognizing, and addressing challenges for military-connected families in the court system.

Request additional training or technical assistance from the NCJFCJ to help build connections and a relationship with your local military installation. Virtual or in person training, facilitation of discussions, strategic planning, and/or development of an agreement for sharing resources or services can be provided by the NCJFCJ.

Why is it important to outreach to nearby base command to establish a relationship?

1. COMMUNICATION

First and foremost, it would be simply that establishing that relationship will go a long way when you discover that the juvenile or family law case you are dealing with involves an active duty service member. You need a contact person on the base you can reach quickly and efficiently.

You don't need to be figuring out who to call when trying to reach a solution during a hearing.

The contact will know who you are.

The contact will have some idea as to why you are calling.

The contact will be able to immediately assist you regarding the case.

The contact will be able to put you in touch with someone who can help you and the service member.

Reaching out to the service member's commander will give you additional control and enforcement of any order you render.

The commander is in a position to immediately remind the service member of the order and consequences for failure to comply with the same.

2. ESTABLISHING THE RELATIONSHIP

Look for an honorary commander or similar program that will allow you to understand their system and how they operate and engage you with people who you would be able to contact when the need arises.

Another program that may be available to you would be the boss lift program. It is primarily designed for employers of veterans or reserve duty service members, but not limited to that. I was able to do it at the veterans treatment court.

Simply find out who the JAG officer is and reach out to them. My experience is this is an area that is as difficult to tackle for them as it is for us – both in the juvenile system and a family law case.

Contact the public affairs specialist on the base and discuss ways you can develop a relationship with the people whom you will need to contact.

Be aware that you will probably need to keep the contacts updated as the military remains quite mobile with their assignments. The individual there today may change tomorrow, and you may want to try to develop programs that will remain in place even after the contact changes.

-Judge Charles A. Stephens II, Comal County Court at Law #2, Texas

NCJFCJ National Resource Center on Military-Connected Families

As part of its project, the NCJFCJ developed a National Resource Center on Military-Connected Families and the Courts (NRC). The NRC is designed to be a resource for judicial officers and others working in courts with military-connected families in cases involving family violence, protection orders, divorce, child custody, child support, child abuse and neglect, and juvenile delinquency.

The primary focus for the NRC is on active-duty military members and their families with cases in the juvenile and family court system. Key sections of the NRC include information regarding legislation, veterans' treatment courts, memoranda of understanding, allied organizations, the NCJFCJ national summits, webinars, and a list of other resources. The NRC includes direct links to the allied organizations and other resources. Many of the allied organizations listed in the NRC offer invaluable webinars, virtual and in-person training, and educational materials: <https://www.ncjfcj.org/child-welfare-and-juvenile-law/military-connected-families/national-resource-center/>.





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