

Military Parents in Family Court



Is this guide right for me?

This guide is for families with a parent who is a current or active duty military member.

It has legal information about how to work with the military on family issues, how to work with the Family Courts, how child support works, and options for how to plan care for your child. Find more guides online at: www.LIFTonline.org/guide.

What is establishing paternity?

This is the process to determine who is the legal father of the child. Paternity can be established if you voluntarily **acknowledge** (admit) that you are the father or through a court-ordered DNA test. If you are legally the child's parent, then you have rights to seek custody/visitation and the responsibility to pay child support.

Can I be forced to take a DNA test?

Your commanding officer (CO) will not force you to take a DNA test because paternity is a civil matter. Only Family Court can order you to take a DNA test. If someone claims you are the father of a child, then your CO will explain your rights and responsibility to pay support for your child. However, you cannot be forced to pay child support, and payments cannot be **garnished** (taken from your pay) without your permission or a court order. Each military branch has a regulation that addresses paternity. Talk with your Commanding Officer (CO) for information about your branch's regulation.

What is a Family Care Plan? Do I need one?

The Department of Defense (DOD) requires some service members who enlist in the Armed Forces to complete a Family Care Plan with their commanding officer (CO). This applies when the parent is sent to serve for an extended period of time, is in training, is deployed, or is on remote assignment.

The Family Care Plan appoints short-term and long-term care providers for family members who cannot care for themselves while you are away. This is a less permanent option than a court order for custody or guardianship.

Talk to your CO about a Family Care Plan if:

- You are a service member who has legal or joint custody of a minor child; or
- You and your spouse are service members and you have a child(ren) under the age of 19; or
- You are a service member responsible for another person of any age who is unable to care for themselves while you are away.

Is the Family Care Plan binding? Can I enforce it in Family Court?

A Family Care Plan is proof of your plan to care for your family in the way you think is best. A Family Court judge can take these plans into consideration when determining the best interests of your child.

However, the Family Care Plan is only one factor the judge can use. The Family Care Plan may not be enforced if it violates the rights of a parent, conflicts with an existing agreement or court order, or if the judge finds it does not provide for the best interests of the child.

What if I have a Family Court case about the same issues covered in the Family Care Plan?

A Family Care Plan is not a legal document. If you have a court case about the same issues covered, then you will have to follow the court order. A Family Care Plan cannot change an existing court order.

Can I choose a friend or family member to care for my child in the Family Care Plan?

Yes, however a Family Care Plan cannot conflict with a court order already in place. Even with a Family Care Plan in place, a parent can ask the court to modify a custody order. You can discuss court orders or agreements with your commanding officer (CO) when you make your Family Care Plan. If you have more questions about Family Care Plans, you can consult your base legal assistance office.

What is a designation of parental relationship?

A designation of parental relationship is when a parent chooses someone over the age of 18 to temporarily make some medical and school-related decisions for the child. It does not authorize the person to do anything else. The person chosen is then thought of as being in **parental relation** with the child and that person is called the **designee**.

The designation can be granted for up to one month or up to six months. The designation is not the same as having legal custody. It is limited, which means the person cannot make all of the same decisions as a person with legal custody. It also only lasts for a short period of time.

How can I designate a parental relationship?

You can download the form for Designation of Parental Relationship online at:
<http://www.nysnavigator.org/wp-content/uploads/2017/04/Designation-of-Person-in-Parental-Relationship-12-Months-OCFS-4940.docx>

Or: <http://www.nyc.gov/html/acs/education/pdf/Designation%20of%20Person%20in%20Parental%20Relation%20GOL%20T5%20A15a.pdf>

Or you can designate someone by writing a letter. There are different requirements for the letter depending on how long the designation will last. If there is no time limit set, then the designation will be in effect until it is **revoked** (canceled or withdrawn) by the parent or expires 30 days from when it was signed, whichever is earlier.

How can a designation of parental relationship be revoked?

The designation can be revoked any time the parent wants. If you want to end a designation, you can tell the **designee** (the person you designated) or you can inform them in writing. You can tell the school and health care provider or write a letter to inform them that you no longer wish to have a designee. If you make a new designation, the old letter will be revoked.

I am a parent. How will a judge decide custody of my child?

When two parents want custody, a judge must determine what is in the **best interests of the child**. The judge will look at many things when figuring this out. The decision about custody and visitation will depend on the facts and circumstances of your family's case. The judge can consider where you live, how often you are deployed, and the lengths of your deployment when deciding what is in the best interests of the child.

What is the duty to provide adequate support?

All military members have a duty to provide **adequate support** for their child, even if there is no court order or written agreement for child support. Adequate means that it is enough, or acceptable.

If you do not pay child support and the custodial parent tells your commanding officer (CO), your CO may use the military Family Support Regulations to decide the amount of child support that is considered adequate. Talk with your CO for information about your branch's regulation for adequate support. The Family Support Regulations establish a temporary amount of child support for you to pay until there is a child support court order or written agreement.

If there is a child support court order or written agreement, the amount of child support listed in the order or agreement will be the new amount of child support that you pay. The amount of child support you pay under the Family Support Regulations may not be as much as court orders you pay under the New York child support guidelines.

Do I have a responsibility to pay child support?

Your commanding officer cannot force you to pay child support. However, you may be subject to disciplinary action (including court martial) for not providing adequate support for your child. You may also face civilian penalties for not paying child support. Such penalties include but are not limited to:

- Driver's license suspension;
- Civilian passport suspension or revocation (not military passport);
- Property liens;
- Jail time up to six months;
- Income tax refund interception.

If you have a child support court order and you do not pay, then the court may garnish (take) child support from your paycheck or other income.

How is the amount of adequate support decided?

Talk with your CO to find out more about how to calculate adequate support. The amount of money that is adequate support will be different for each military branch because each branch has its own way to calculate adequate support. Some branches use a percentage of your pay that depends on how many children you have.

How is the amount of child support decided in Family Court?

In New York, the amount is based on a law called the **Child Support Standards Act**. First, the court determines the **gross income** of the two parents together. Gross income is the amount of money you earn before taxes are taken out. (The court sometimes uses different rules if the income is over \$148,000). All pay and allowances count as income for child support calculations. This includes:

- Military active duty pay (basic pay, bonuses, and Basic Allowance for Housing (BAH) and Basic Allowance for Substinence (BAS));
- Military reserve pay;
- Military retired pay; and
- Federal Department of Defense (DOD) civilian employee pay and civilian retirement pay.

Some special expenses will reduce your income level for child support, such as child support you pay for other children. Ordinary expenses are things you pay all the time, such as the electric bill, credit card bills, and rent. These bills will not reduce your income level for child support. Once the court determines your total income, it uses the formula below to decide the amount needed to support the child:

1 child	17% of your income
2 children	25% of your income
3 children	29% of your income
4 children	31% of your income
5 children or more	35% of your income

You may be ordered to pay extra child support and health care costs. You may also be ordered to include the child on your health insurance.

How long do I have to pay child support?

In New York, child support responsibility goes until the child turns 21 years old, unless the court says the child is **emancipated**. If a child is emancipated, it means that the child supports themselves and the parent no longer has a legal duty to support them.

What is income execution?

If you have an order of support, the New York child support enforcement agency can take the payments for current or past due child support directly from your paycheck. In New York this process is also called **income execution**. The agency can withhold any income you are paid, including but not limited to:

- Base pay;
- Special pay;
- Bonuses;
- Incentive pay; and
- Inactive duty training pay.

You may ask the court to **stay** the order if your military service makes it too difficult to comply with the income execution. A **stay** means that the court puts on hold its enforcement of the order.

What is an allotment?

An allotment is money that is automatically taken out of a military member's paycheck. There are many different reasons for an allotment, such as paying off a loan or paying child support. Child support can be paid with a **voluntary allotment** or with an **involuntary allotment**. Voluntary means you agree to the allotment. Involuntary means the allotment is done without your permission. See page 5 of this guide for information about involuntary allotments.

What is the Defense Finance and Accounting Service (DFAS)?

DFAS is the agency that pays all Department of Defense (DOD) military and civilian personnel.

How can I set up a voluntary allotment?

You may set up a voluntary allotment to have child support taken from your paycheck and sent to the custodial parent.

If paternity is not established, then you do not have the obligation to provide adequate support for a child. You can start, stop, or change a voluntary allotment at any time. To start, stop, or change a voluntary allotment, you must fill out a DD Form 2558. You can find DD Form 2558 and submit a request online at: <https://www.dfas.mil/retiredmilitary/manage/allotments.html>.

The court cannot stop a voluntary allotment for you, even if there is a child support court order. It is your responsibility to tell DFAS about any changes. If you stop paying child support through a voluntary allotment, and later paternity is established, then civil law applies. This means that you may have to pay past-due child support payments (arrears) if you are no longer paying through a voluntary allotment.

How can I mail documents to the Defense Finance and Accounting Service (DFAS)?

First check that you have included any required forms. You must submit a **certified copy** of the child support court order by fax or email and send it to the Department of Finance and Accounting Services (DFAS). See page 5 of this guide for information on how to get a certified order.

Mail required forms and documents to:

DFAS Garnishment Law Directorate
P.O. Box 998002
Cleveland, OH 44199-8002

Fax: 877-622-5930 (toll free)

Phone: 888-DFAS411 (888-332-7411)

For more helpful information, visit the DFAS website at: <https://www.dfas.mil/garnishment.html>

How can I get a certified copy of the child support court order?

You can contact the Clerk of Court or the Records Room of the Family Court where your case was decided to get a certified copy of the child support order. To find court information, visit the New York State courts website at: <http://www.nycourts.gov/courts/index.shtml> You may have to pay a fee for any copies and postage by certified check or money order. This means you pay in advance with the certified check or money order. You can buy a money order at any post office, or you can get a certified check or money order from your bank.

What is an involuntary allotment?

An **involuntary allotment** is used to take child support from your paycheck without your permission. This can only be done when there is a child support order. The Department of Defense can order an involuntary allotment if you do not pay child support for 2 months. Then you will pay child support through involuntary allotment until the court or New York Child Support agency sends a termination notice to DFAS.

To apply for involuntary allotment, the custodial parent mails a written notice from the court or agency to DFAS. After DFAS receives the application, DFAS sends the written notice to your CO. Your CO will tell you about the involuntary allotment application. You will have 30 days to pay the past due child support (arrears). If you do not pay the arrears within 30 days, DFAS will start to take child support payments directly from your paycheck.

What do I do if I receive "call up" orders and I pay through allotment or income execution?

To avoid delays in your child support payments, you should notify both DFAS and the New York State child support agency about any changes in your pay or employment, such as deployment. Call DFAS at 1-888-DFAS400 (1-888-332-7411). Call the New York State Child Support Helpline at 1-888-208-4485.

It is your responsibility to make sure all child support payments are made in full and on time.

When will the Defense Finance and Accounting Service (DFAS) start withholding child support from my paycheck?

The Defense Finance and Accounting Service (DFAS) will start taking your child support payment from your paycheck on the first pay period that happens 14 days after DFAS is served with your income withholding order. Then the child support payment is sent to the custodial parent or guardian within 7 days of when you receive your paycheck.

If you are a National Guard member or reservist and you return from active duty to your civilian job, it is your responsibility to tell DFAS about any changes in your income (contact information on page 4).

When will DFAS stop withholding child support from my paycheck?

If you are no longer required to pay child support (for example if your child has turned 21), then it is your responsibility to notify DFAS. If the child support agency is involved, then the agency will have to send a termination notice to DFAS.

You may need to ask for a termination order from Family Court by filing a petition to end your child support order. A **termination order** from Family Court stops child support from being taken out of your paycheck. Then you send the termination order to DFAS (contact information on page 4).

What is the Servicemembers Civil Relief Act (SCRA)?

The **Servicemembers Civil Relief Act (SCRA)** protects the legal rights of active duty military members. If you are active duty military, then the SCRA may allow you to delay civil or administrative cases against you.

Does the SCRA apply to me?

The SCRA applies to active duty military members in all branches of the Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard). This includes:

- Reservists who are on active duty,
- National Guard members who are called to federal active duty for more than 30 days,
- Commissioned corps of the National and Atmospheric Administration, and
- Commissioned corps of the Public Health Service.

Active duty means you are under a federal call or order that will require you to serve on full-time active duty for more than 30 days. This includes annual training duty, full-time training duty, and attendance at a designated service school while on active military service.

The SCRA does not apply to reservists or National Guard members who are not training nor on active duty. The SCRA also does not apply to retired military personnel or to National Guard members mobilized under state orders.

How does the SCRA protect me in Family Court?

You may be able to delay or put on hold cases against you if your active duty military responsibilities **materially affect** your ability to appear in court or help with your case. A material affect means your military service makes it too difficult for you to be involved in your case. Only a judge can decide if there is a material affect based on the facts of your case.

How can I ask the court to stop my case while I am away?

You can ask the court for a **stay of proceedings** while you are serving active duty or within 30 days after leaving active duty. A stay of proceedings means the court will delay or put on hold the case, usually for at least 90 days. A stay is meant to protect your legal rights while you are serving active duty. This does not mean you give up any arguments you want to make later in the case. The court can also grant a stay on its own if it decides it is needed to protect your legal rights.

Can I get a lawyer to help me with the SCRA in Family Court?

Yes. If the court believes you are a member of the Armed Forces but you have not appeared in the case, then the court will **appoint**, or assign, an attorney at no cost to you. To appear in the case means to show up to the courthouse for the case or when you file legal paperwork for the case.

What can an appointed lawyer do for my case?

The lawyer will try to contact you for more information about your case. The lawyer cannot **waive** (give up) any arguments or claims without your permission.

What is a default order?

If you miss a court date or do not bring proof required by the court, then a judge, referee, or support magistrate can enter a **default order**. This means the order can be based only on information the other parent gave to the court. If you want to cancel the default order, you may file a **motion to vacate** the default order.

Can I reopen my case if there is a default order?

Yes, if the order is entered against you while you are serving active duty or up to 60 days after you are released from active duty. If you want to cancel the default order, you may file a **motion to vacate** the default order.

How can I file a motion to vacate for a default order?

A motion to vacate a default order is a written request asking the court to cancel the order. This motion must also have an **affidavit**, where you describe to the court what happened and why you were not in the courtroom when the order was made. An affidavit is a sworn statement made in writing and signed. The statement must be notarized. You can contact your local Family Court for motion forms or you can visit the New York State Unified Court System's website: <https://www.nycourts.gov/forms>.

In the motion, you must give the court a good reason for not showing up to court - for example, if you were never served court papers. Also in the motion, you must explain how the order would be different if you had been in court and were able to show proof to the court about your claims. Remember that on your court date you will have to prove anything you write in your motion and affidavit.

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How can I find out if there is a default order for my case?

You can contact the Clerk of Court in the county where you live or where your child lives for custody and visitation cases. You can find information for New York State courts by county online at: <https://www.nycourts.gov/courts/index.shtml>.

You can also ask the state child support agency if a child support case has been started against you. Call the New York State Child Support Helpline at 888-208-4485 for more information.

If I am a military member and I move out of state do I still have to pay child support?

Yes, you are still responsible for child support if you move out of state. The child support court order that was entered in your home state can be enforced in any state you move to.

How do I change my child support court order if I move out of state?

The court that originally issued the child support court order is the only court that can **modify**, or change, the child support order if either:

- You still live in state;
- The custodial parent still lives in state; or
- The child still lives in state.

You will need to ask the court to modify the child support order in New York. You do this by filing a petition for downward modification.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

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