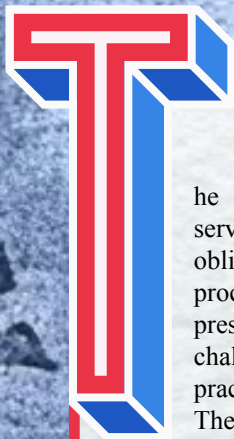




CHILD SUPPORT
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MILITARY:
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SCRA

by Maggie Trahan Simar



The intersection of military service and child support obligations (and family law proceedings in general) presents unique legal challenges for courts, practitioners, and litigants. The Servicemember Civil Relief Act (SCRA), codified at 50 U.S.C. §§ 3901 et seq. provides critical protections to servicemembers whose military duties materially affect their ability to participate in civil proceedings.¹ These protections are especially significant in child support cases, where timely participation, accurate income information, and procedural fairness are essential. This article seeks to explain the protections implicit within the act.

Purpose and Scope of the SCRA

Congress enacted the SCRA to ensure that servicemembers can devote their full attention to national defense without suffering adverse civil consequences.² The Act stays certain civil proceedings, limits default judgments, restricts interest on financial obligations, and provides procedural safeguards to those sorts of proceedings.³ Specific to the child support context, the statute does not eliminate obligations but ensures that proceedings take into consideration legitimate military purposes and the constraint implicit in allowing military professionals to “do their job.” Importantly, the Act applies to judicial and administrative proceedings, including those initiated by state child support agencies.⁴ While the SCRA can delay a child support action, it cannot defeat or permanently bar adjudication; instead, it ensures fairness and due process for absent servicemembers.

Application to Military Populations

The SCRA applies broadly to members of the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, commissioned officers of the Public Health Service, and the National Oceanic and Atmospheric Administration, including Reserve and National Guard members called to service for more than 30 days.⁵ Coverage generally begins upon receipt of active-duty orders and extends through active service and, for many, protections 90 days after service ends.⁶ This wide application ensures that both full-time and mobilized servicemembers can access protections that may impact their involvement in child support proceedings.

Stays of Proceedings

One of the most critical aspects of the SCRA in the child support context is the statutory provision for mandatory and discretionary stays. Upon proper request—including a statement of material effect and a commanding officer’s letter—the court must grant at least a 90-day stay.⁷ Additional stays may be granted upon showing continuing material effect, though courts have discretion in evaluating these requests. If a court denies a subsequent stay, it must appoint counsel to represent the servicemember.⁸ If a servicemember fails to meet the technical requirements of the stay request, the court may proceed without appointing counsel. It has been my observation that, specifically for child support enforcement cases, if a service member notifies the agency (or the court), stays will be granted, even absent the formal commanding officer letter.

Furthermore, getting an attorney to represent a military member is difficult—it is a mandate without

a funding source. Further, many lawyers do not understand the act, nor the protections it affords, so obtaining a volunteer to take this type of case often proves difficult for the court. Therefore, servicemembers providing proof of activation is often enough to grant the stay but they actually have to provide said proof to the court.

Default Judgments and Protections

The SCRA places enhanced restrictions on default judgments entered against servicemembers. Before a default judgment is entered, a court must inquire as to whether a servicemember filed the requisite military-status affidavit and, if so, they may not render a default.⁹ Courts must appoint counsel for servicemembers before entering default.¹⁰ Servicemembers may reopen defaults entered during service if materially affected and a defense exists.¹¹ This protection applies to judgments entered during service or within 60 days thereafter. Courts must balance diligence by plaintiffs with fairness to servicemembers whose duties may limit communication, participation, and availability. This is why courts are lenient on servicemembers who notify them or the child support agency of activation—so the court does not have to go and reopen a default (and often vacate said judgement) that was filed while the servicemember was activated.

Administrative Child Support Proceedings

The SCRA explicitly applies to administrative proceedings initiated by state child support enforcement agencies. This includes actions to establish paternity, set support, and enforce obligations. The Act requires agencies to provide



notice, permit appointment of counsel, and recognize requests for stays.¹² Notably, the decision to grant or deny continuances in administrative actions must be made by a judge rather than agency staff.¹³ In my experience in Family Court matters, this is the part often not complied with—the agency either “misses” the military service or they do not understand the Act, and proceed with the request for action. The requirement of court intervention ensures that servicemembers’ statutory rights receive appropriate judicial oversight, particularly in administrative systems where procedural informality is common.

Income, Withholding, and Enforcement Considerations

Child support enforcement for servicemembers must also comply with the Consumer Credit Protection Act (CCPA), which caps the percentage of disposable earnings subject to withholding. Depending on whether the servicemember supports other dependents and whether arrears exist, between 50% and 65% of disposable pay may be garnished. Military pay structures, including Basic Allowance for Housing (BAH), Basic Allowance for Subsistence (BAS), and deployment-related entitlements, can complicate income calculations.

Practitioners must carefully analyze Leave and Earnings Statements (LES) to assess accurate income and identify available leave, which may affect stay determinations under the SCRA. In Louisiana, BAH, BAS and hazard pay can be included in Gross Income; therefore, it is essential that courts take their time and comply with the Act, so that they can get the most accurate income for the servicemember.¹⁴

Material Effect and Court Evaluation

A recurring challenge in SCRA litigation is determining whether military service ‘materially affects’ participation.

The statute does not define this term, leaving courts discretion to evaluate factors such as duty schedules, deployment status, access to communication, availability for remote testimony, and leave balances. Courts may inquire into duty hours, whether remote testimony is feasible, and the commanding officer’s reasons for denying leave. Parties may submit affidavits addressing recent leave requests, communication capabilities, and scheduling accommodations. Because child support proceedings often involve urgent issues affecting children, courts may balance servicemember rights with the need for temporary orders to address immediate financial needs.

Critics of the Act (and anecdotally from handling these matters) opine that some service members use the Act to avoid child support obligations. While this may be true for some, the Federal government has passed this act knowing that child support may not flow during the pendency of activation. The states have little discretion to act, provided the court knows of the military service.

Conclusion

Child support cases involving servicemembers require careful navigation of statutory protections, military realities, and the best interests of children. The SCRA provides essential safeguards without excusing support obligations. Courts and practitioners must ensure compliance with procedural requirements while seeking practical solutions, such as remote testimony, temporary orders, and coordination with commanding officers. By understanding the nuances of the SCRA and its application to child support enforcement, legal professionals can ensure fair, lawful, and efficient outcomes for all parties.

Footnotes

1. 50 U.S.C. §§ 3901–4043.
2. 50 U.S.C. § 3902
3. *Id.*
4. 50 U.S.C. § 3911(5)
5. 50 U.S.C. § 3911(1).
6. 50 U.S.C. § 3917
7. 50 U.S.C. § 3932(b).
8. 50 U.S.C. § 3932(d).
9. 50 U.S.C. § 3931(b).
10. 50 U.S.C. § 3931(b)(2)
11. 50 U.S.C. § 3931(g)(1).
12. 50 U.S.C. § 3911
13. 50 U.S.C. § 3932(a)
14. 15 U.S.C. § 1673

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