Child Support Enforcement Issues Handout

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

HELP!! I'M JUST SEPARATING FROM MY SPOUSE AND I NEED CHILD SUPPORT. CAN A MILITARY LEGAL ASSISTANCE ATTORNEY PREPARE A SEPARATION AGREEMENT OR GO TO COURT FOR ME?

Most Army legal assistance attorneys will prepare a separation agreement for you, but very few are authorized to go to court for you. Instead, your military lawyer will help you obtain a private lawyer to represent you in court. In addition, each state has a Child Support Enforcement Agency (CSEA) which may be able to help you by establishing paternity, locating the other parent, locating that parent's employers, finding out about the assets and income of the other parent, and by establishing and enforcing child support orders. In most states, CSEAs are listed under the "Human Services Agencies" heading in the local government section of the telephone directory. If there is no separate listing, the local bar association, department of social services, welfare department, legal aid organization or county or district attorney's office should be able to give you the number. For overseas help, check with your nearest legal assistance office for a referral.

I HAVE CUSTODY OF MY CHILD AND MY EX-SPOUSE IS IN THE ARMY. IF SHE FAILS TO PAY CHILD SUPPORT, WHERE SHOULD I GO FOR HELP?

The answer depends on a number of factors:

If the commander can't help you, or if the other parent is not in the military, then you should visit the legal assistance office to find out from an attorney there about your options in pursuing child support.

If the other parent simply refuses to pay, then your last resort is to obtain a court order. If the parent is bound by a prior court order or separation agreement to pay a certain amount, you may ask the court to enforce the order (by contempt of court, garnishment, seizure of property, wage assignment, etc.) or the agreement (by breach of contract). The issues of contempt are explained below. Delinquent child support payments may also be reported on the delinquent parent's credit report. Additionally, failure to pay child support may, in some circumstances constitute a crime under federal and state law, as well as the UCMJ.

· If you have to go to court, you will almost certainly need a lawyer. You can hire a lawyer at your own expense, or you can use the services of the CSEA in your area (if you or the other parent is in the U.S.). CSEA attorneys technically represent the agency and not you. However, the agencies interests are very much the same as yours – i.e. they want to see that child support is paid. Therefore, the government attorney working for the CSEA will often times take the same courses of action that an attorney on your behalf would. There is often a fee, which can vary from state to state, for these

services. The down side to using CSEA services is that it may take more time get action on your case as compared to when you hire an attorney of your own.

· If your situation is urgent, you should contact the soldier's commander first as soon as the first payment is missed. Under Army Regulation 608-99, Army commanders must ensure that their soldiers comply with the support provisions of court orders and separation agreements. If there is no order or written agreement, then the soldier must still provide a minimum amount of support as determined by Army Regulation 608-99. Our legal assistance attorneys can help you contact a soldier's commander about nonsupport, perhaps assist in filling our pro se paper work, but they cannot start court action for you. You will have to hire a civilian attorney for that.

HOW MUCH WILL AR 608-99 REQUIRE MY EX-SPOUSE TO PAY IF I DON'T HAVE A COURT ORDER?

If no court order or written agreement exists, then the following minimum financial support requirements will control until the parties obtain an order or written agreement:

· If the soldier has one-family unit (no children from prior marriage or court order establishing paternity), and the family is not living in government quarters, the soldier will provide an amount equal to BAH II at the "with dependents' rate based on the soldier's pay grade. This applies whether or not the soldier is receiving BAH as part of his or her pay.

· If the soldier has multiple family units, each supported family member will receive a pro-rata share of BAH II. A soldier must continue to provide court ordered support as ordered although payments to remaining family members might exceed the BAH II amount.

CAN THE OTHER PARENT'S PAYCHECK BE GARNISHED FOR CHILD SUPPORT?

Yes - state laws (and the laws of some foreign countries) allow garnishment or wage assignment to provide child support out of the other parent's paycheck. You will need, however, to get a court order from a court that sets the amount of child support in order to then apply for involuntary allotment or garnishment.

WHAT ELSE CAN THE COURT OR A CHILD SUPPORT ENFORCEMENT AGENCY (CSEA) DO TO HELP ENFORCE MY CHILD SUPPORT ORDER?

There are several remedies that the court can use. The judge can find the other parent in contempt of court (which may be punished by confinement in jail or payment of a fine), order a seizure of assets (cars, bank accounts, other financial assets), assess attorney's fees, and order other remedies as applicable by law. In addition courts and CSEA's can impose a variety of administrative remedies, including drivers license suspension, passport suspension, recreational license suspension, income withholding from wage earning obligors, tax refund intercepts, revenue recapture, financial institution data match (FIDM).

I HAVE A SUPPORT ORDER ISSUED IN NEW MEXICO (OR ANY OTHER STATE), I HAVE MOVED OUT OF STATE WITH MY CHILD AND MY EX-SPOUSE HAS ALSO MOVED OUT OF STATE. DO I HAVE TO GO BACK TO NEW MEXICO TO CHANGE MY SUPPORT ORDER?

No. In 1996 the United States enacted the Uniform Interstate Family Support Act (UIFSA). This act requires each state in the United States to enforce orders for support issued by another state in the United States and also establishes which court has jurisdiction to modify an order. Unless all parties agree otherwise, a motion to modify a support order must be filed in the state that originally made the order unless all parties (both spouses and all children) have moved out of the state. However, if all

parties have moved out of the state that originally issued the support order, a motion to modify that order can be filed in the state where the person not seeking modification (the non-moving party) currently resides.

I HAVE A SUPPORT ORDER ISSUED IN A FOREIGN COUNTRY; CAN A UNITED STATES COURT ENFORCE MY ORDER?

Maybe. UIFSA, in addition to requiring each state in the United States to enforce orders for support issued by another state in the United States, also allows a foreign nation to be treated as a "state" if it has enacted a law or set up procedures for the issuance and enforcement of support orders which are substantially similar to those under UIFSA or URESA (the US law that URESA replaced). Some of the countries which qualify include Germany, United Kingdom, France, Mexico, Czech Republic, Australia, Austria, Canada, Hungary and South Africa. A complete list is available at the IV-D Agency (child support enforcement office) for each state.

CAN FOREIGN COURTS ENFORCE COURT ORDERS FOR SUPPORT ISSUED IN THE UNITED STATES?

Maybe. Some countries have passed laws similar to UIFSA and will enforce a foreign court's orders if their procedure for enforcement is followed. Generally this will require some sort of "registration" of the foreign judgment in the country you want to enforce the order. In addition, most foreign countries will only enforce a US State's order if the court issuing the order will enforce the foreign court's orders. For example, as of 2 November 2005, German courts will enforce a support order from every US State except Alabama, Mississippi and the District of Columbia (for a current list see http://www.bundeszentralregister.de/aug/staatenliste.htm.)

WHAT IF MY EX IS THREATENING TO DECLARE BANKRUPTCY?

Child support arrearages are not dischargeable upon bankruptcy – i.e. bankruptcy will not get you out of owing child support. Indeed when a party owing child support successfully files bankruptcy, it can be helpful to the party who is owed child support because there is less debt competing for available dollars. Nonetheless, if your ex does file for bankruptcy, you should seek the advice of a legal assistance attorney. While a bankruptcy court may not eliminate child support arrears, it arguably has the ability to decide who much is owed if there is a dispute about what has or has not been paid.

CAN CHILD SUPPORT BE PAID THROUGH THE COURT OR TO A CSEA?

Yes, in fact payment though the court or CSEA is the preferred method, because it makes record-keeping and enforcement much simpler. If child support is paid through such an office, the office may also help collect delinquent amounts, often at no cost to the recipient/payee.

For further information or help feel free to make an appointment with a Legal Assistance Attorney, DSN 421-4152, Civ 0711-729-4152.

REVIEWED BY: CPT Michael Watts, Chief, Client Services
DATE: 14 August 2006

References:

Federal Office of Child Support Enforcement (OCSE) - www.acf.dhhs.gov/programs/cse/

State by State Child Support Enforcement Agencies - www.acf.dhhs.gov/programs/cse/extinf.htm#exta