

## Department of the Army, DoD

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applicant in connection with an application for correction of military records under 10 U.S.C. 1552.

(i) *Miscellaneous provisions*—(1) *Special standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* (Civil Action No. 77-0904), a former Army soldier is entitled to an honorable discharge if a less than honorable discharge was issued to the soldier on or before November 27, 1979 in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the term “CATEGORY G” in block 11b of DD Form 149. Such applications should be expeditiously reviewed by a designated official, who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official will not constitute an action or decision by the ABCMR.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act (5 U.S.C. 552), records created on or after November 1, 1996 will be available by electronic means.

(ii) Under the Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is

received from the applicant or unless the Board is otherwise authorized by law.

[65 FR 17441, Apr. 3, 2000, as amended at 70 FR 67368, Nov. 7, 2005]

### PART 583—FORMER PERSONNEL [RESERVED]

### PART 584—FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY

Sec.

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APPENDIX A TO PART 584—REFERENCE

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 50 FR 52447, Dec. 24, 1985, unless otherwise noted.

#### § 584.1 General.

(a) *Purpose.* This regulation sets forth the Department of the Army (DA) policy, responsibilities, and procedures on—

(1) Support and nonsupport of family members.

(2) Child custody.

(3) Paternity claims.

(4) Adoption proceedings involving the children of soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy for processing—

(i) Nonsupport complaints.

(ii) Child custody complaints.

(iii) Paternity claims.

(iv) Requests on adoption proceedings of children of soldiers.

(2) The Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC) will—

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(i) Set procedures for processing the following:

- (A) Nonsupport complaints.
- (B) Child custody complaints.
- (C) Paternity claims.

(D) Requests regarding adoption proceedings of children of soldiers.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims received at USACFSC regarding Army soldiers.

(iii) Carry out the objectives of this regulation to protect the rights of the soldier, the family, and the interests of the Army.

(iv) Advise and assist the heads of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other commanders on matters pertaining to—

- (A) Nonsupport.
- (B) Child custody.
- (C) Paternity.

(D) Adoption proceedings of children of soldiers.

(3) Officers having general court-martial jurisdiction will give special emphasis to the support of family members in command information programs. This includes informing soldiers of Army policy and of their responsibility to provide adequate support for all family members and to comply with all court orders.

(4) First level field grade commanders will monitor all instances of soldiers' repeated failure to meet the requirements of this regulation that are brought to their attention. They will take action, when proper.

(5) Immediate commanders will—

(i) Ensure that soldiers are informed of the DA policy on support of family members and that they comply with court orders. They will also inform soldiers of the possible consequences of failing to fulfill financial obligations. This information will be included during inprocessing and outprocessing briefings, particularly during processing for mobilization and overseas movement.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims per this regulation.

(iii) Counsel soldiers when complaints and claim are received. If the soldier is suspected of criminal con-

duct, self-incrimination protections (article 31, Uniform Code of Military Justice (UCMJ) and rights advisement) must be provided. (See § 584.2(g)(4).)

(iv) Answer all correspondence received from CG, USACFSC and other DA officials. In answering this correspondence, the commander will—

(A) Furnish complete details regarding nonsupport complaints, child custody complaints, and paternity claims.

(B) Reveal whether or not the soldier authorized the release outside the Department of Defense (DOD) of information obtained from a system of records. His or her decision should be recorded on DA Form 5459-R (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints).

(v) Answer all correspondence received directly from family members, legal assistance attorneys, and others. Normally, replies will not include information obtained from a system of records without the soldier's written consent. (See § 584.1(f).) Commanders may coordinate responses with the Staff Judge Advocate (SJA). Also, the commander will ask the SJA for guidance in unusual or difficult situations.

(vi) Inform the first level field grade commander of all instances of the soldier's repeated failure to meet the requirements of this regulation or to comply with court orders. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or continuing violations of court orders.

(vii) Refer correspondence or queries received from news media organizations to the unit, installation, or command public affairs officer for response.

(viii) Take appropriate action against soldiers who fail to comply with this regulation. These actions include, but are not limited to, the actions in § 584.1(d)(5)(viii) (A) through (E). Failure to comply with the minimum support requirements (§ 584.2(d)) or the child custody provisions (§ 584.2(e)) of this regulation may be charged as violations of article 92, UCMJ. Article 132, UCMJ, prohibits the making of false claims. Article 133, UCMJ, covers conduct unbecoming an officer. Article 134, UCMJ, concerns

dishonorable failure to pay debts and conduct of a nature to bring discredit upon the Armed Forces. Also, the criminal laws of some States prohibit the abduction of children by a parent or the nonsupport of family members in violation of existing court orders. These laws may also apply against soldiers under article 134, UCMJ, and Assimilative Crimes Act, section 13, title 18, United States Code (18 U.S.C. 13).

(A) Denial of reenlistment for enlisted members (AR 601-280).

(B) Letter of reprimand for filing in a soldier's Military Personnel Records Jacket or Official Military Personnel File (AR 600-37).

(C) Administrative separation from the service (AR 635-100 or AR 635-200).

(D) Nonjudicial punishment under article 15, UCMJ.

(E) Court-martial.

(ix) Urge soldiers to provide additional financial support beyond the required minimum whether the needs of the family so require.

(x) After coordination with the SJA and appropriate command representatives, and under applicable State, Federal, and host country laws, take remedial steps to assist in the following:

(A) Elimination of continuing violations of court orders and this regulation on child custody.

(B) Return of such children to the parent or guardian entitled to custody.

(6) The unit, installation, or command public affairs officer will—

(i) Answer correspondence and queries received from news media organizations.

(ii) Coordinate with the SJA before making any response.

(e) *Policy.* (1) Soldiers of the Army are required to manage their personal affairs satisfactorily. This responsibility includes—

(i) Providing adequate and continuous support to or for family members. (See § 584.2.)

(ii) Complying with all court orders.

(2) The Army has an interest in the welfare of both soldiers and their families. This is recognized by numerous laws and programs authorizing the following:

(i) Family housing.

(ii) Living and travel allowances.

(iii) Medical care.

(iv) Child care and development.

(v) Community support services.

(3) Because of military duty, soldiers and their families often live in States in which they have not established domicile. Frequently, they reside in foreign nations. This often places soldiers beyond the judicial process of State courts.

(4) The Army recognizes the transient nature of military duty. This regulation prohibits the use of a soldier's military status or assignment to deny financial support to family members or to evade court orders on child support or custody. Commanders have a responsibility to ensure that soldiers provide for the welfare of their families. Before recommending approval of requests for, or extensions of, overseas assignments, commanders should consider whether the soldier's overseas assignment will adversely affect the legal rights of family members in pending court actions against the soldier.

(5) The policy in this regulation regarding the financial support of family members is solely intended as an interim measure until the parties—

(i) Arrive at a mutually satisfactory agreement, or

(ii) Resolve their differences in court.

(6) Soldiers are entitled to the same legal rights and privileges in State courts as civilians. This includes determining the extent and amount of their support obligations to family members. This regulation is not intended to be used as a guide by courts in determining the following:

(i) The existence of support obligations.

(ii) The amount of past, present, or future support obligations.

(f) *Release of information.* (1) Soldiers will be provided the opportunity of completing DA Form 5459-R before being questioned about complaints or claims under this regulation. Information voluntarily provided by soldiers may be used by commanders to answer inquiries. Replies normally will not include information obtained from a system of records without the soldier's written consent.

(2) Some information may be released outside DOD from a system of records even without the soldier's written consent. Under the Privacy Act (5

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U.S.C. 552a(b)(2) and AR 340-21, para 3-3), information may be released, if required, under the Freedom of Information Act. Under 5 U.S.C. 552(b)(6) and AR 340-17, chapter III, information from personnel and other similar files may be released if it does not constitute a “clearly unwarranted invasion of privacy.” The information released must be in the public interest.

(3) The type of information that may be released from a system of records without the soldier’s consent will vary from case to case. In each case, the public interest of having soldiers support their families and obey court orders must be balanced against the sensitivity of the privacy interests involved. Army policy favors permanent resolution of support and custody matters in court. The denial of information that hinders such resolution is not in the public interest.

(4) Before releasing information from a system of records without the soldier’s consent, commanders may consult the SJA. Generally, the types of information shown below may be released to the complaining family member entitled to support or those authorized by the family member to act in his or her behalf (for example, legal assistance attorneys, Member of Congress, courts, Government welfare agencies).

(i) Present unit of assignment, including port calls and future duty assignments, permanent or temporary, if known.

(ii) Scheduled separation and retirement dates from the Service.

(iii) Rank and authorized pay and allowances for that grade.

(iv) Allotments authorized or being authorized for or in behalf of the family member entitled to support.

(v) The soldier’s stated intentions, if any, regarding resolution of the complaint.

(vi) The general whereabouts of the soldier’s children, if known.

(5) The SJA should be consulted for legal advice before the residential address of a soldier or family member is released.

(6) Any information released should be pertinent to the inquiry. The soldier’s relationship, if any, to the person making the inquiry, should be considered. Consistent with the purpose of

this regulation, information that unduly invades the privacy of the soldier or his or her family should not be released.

(g) *Penalties.* Compliance with the minimum support requirements (§584.2(d)) and child custody provisions (§584.2(e)) of this regulation will be enforced by administrative and criminal remedies as appropriate.

(h) *Basic allowance for quarters.* A summary of the rules regarding entitlements to basic allowance for quarters (BAQ) is in §584.7. The minimum support requirements of this regulation are stated in amounts equal to a soldier’s BAQ at the “with dependents” rate. However, a soldier’s entitlement or lack of entitlement to such allowances has no relationship to the obligation under this regulation to support family members. Except for §584.2(f)(2)(ii)(B), the actual receipt or nonreceipt of BAQ also has no relationship to that obligation.

(i) *Entitlement of variable housing allowance.* Soldiers entitled to BAQ at the “with” or “without dependents” rate may be entitled to variable housing allowance (VHA). Terms for receiving VHA are set forth in the Joint Travel Regulations, M4550 through M4557. Soldiers may use VHA to defray housing costs for family members.

(j) *Garnishment.* A summary of the rules regarding garnishment of Federal wages is in §584.8.

(k) *Involuntary allotments.* A summary of the rules regarding involuntary allotments from pay and allowances is in §584.9.

### §584.2 Family support and child custody.

(a) *General.* (1) This chapter requires soldiers to provide financial support to family members and to obey court orders on child custody. It also provides guidance and policy to commanders to follow when resolving nonsupport and child custody issues. Consistent with specific provisions below, a soldier will—

(i) Furnish financial support to family members that meets at least the minimum support requirements of this regulation (§584.2(d)).

(ii) Provide such additional support within his or her financial ability to

meet the financial needs of family members (§ 584.2(j)).

(iii) Comply with all court-imposed obligations (§ 584.2(c)(3)).

(iv) Obey court orders and this regulation on child custody and visitation rights (§ 584.2(e)).

(2) It is the responsibility of soldiers to resolve nonsupport issues with family members by one of the methods shown in § 584.2(a)(2)(i) through (iii). In all cases, Army support policy for family members should be considered temporary until either an agreement has been reached between the parties (including those acting on behalf of minor children) or court action has been taken.

(i) Oral agreements.

(ii) Written support agreements.

(iii) Court orders.

(3) Each complaint of nonsupport will be considered individually by the soldier's immediate commander. Alleged desertion or other marital misconduct on the part of a spouse has no effect on a soldier's obligation to provide financial support as required by § 584.2(d).

(b) *Separation from family due to military service.* Military service often requires soldiers to live separately from their families during oversea service or extended temporary duty. Soldiers must plan carefully for the support of their families during these periods. Commanders will educate soldiers and their families on the advantages of joint bank accounts. Such arrangements usually minimize the hardship and financial burden on family members that may occur during periods of such separation. If proper, commanders will urge soldiers to start an allotment to or for their family to ensure continuous financial support. The amount of such a support allotment should be set up by agreement between the soldier and his or her family. In the absence of such an agreement or a court order, the provisions of § 584.2(d)(2) apply. Each soldier is expected to keep reasonable contact with family members to minimize inquiries, claims, and compliants sent to Army officials.

(c) *Support by oral agreement, written support agreement, or court order—(1) Oral agreement.* It is not the Army's policy to involve itself in disputes over the terms or enforcement of oral sup-

port agreements. Where an oral agreement exists and is being followed, the Army need not and will not interfere. When a dispute arises, the Army will require compliance only with the provisions of this regulation. Thus, if a family member complains that a soldier is not sending an agreed upon amount that is less or more than the minimum required by § 584.2(d), the commander will advise the soldier to either send the agreed upon amount or the minimum amount required by § 584.2(d). Section 584.2(d) applies when the parties cannot reach an oral agreement or the amount agreed upon is in dispute. In appropriate cases, the commander can order additional support beyond the minimum amount required by § 584.2(d). (See § 584.2(j).)

(2) *Written support agreement.* If the parties are separated and have a signed written agreement, the amount of support specified in such an agreement controls. A signed written agreement includes a separation agreement or a property settlement agreement. A written agreement on support also may be shown by letters exchanged between the parties in which the amount of support has been agreed to by the parties. If the agreement is silent on an amount of spousal and/or child support, the interim minimum financial support requirements of § 584.2(d)(2) apply. The amount specified in the written agreement will be deemed adequate until modified by—

(i) Another agreement reduced to writing and signed by both parties.

(ii) Court order.

(3) *Court order.* (i) Court orders often contain other financial obligations, such as provisions for property division, marital property awards, and payment of medical and other expenses. Commanders have a responsibility to ensure that soldiers comply with these provisions. Soldiers will comply with all court-imposed obligations. Failure to do so may result in costly and time-consuming litigation or court contempt proceedings. These actions often are to the detriment of the soldier and the unit's readiness mission. Section 584.2 (d)(1)(i), however, only applies to court orders directing the soldier to provide financial support to family members on a periodic basis.

(ii) Court orders under this regulation include those orders issued by the courts of the Federal Republic of Germany (FRG). The courts must have acquired valid jurisdiction consistent with the provisions of articles 32 through 37 of the Supplementary Agreement concerning foreign forces stationed in the FRG. This agreement supplements the North Atlantic Treaty Organization Status of Forces Agreement. A soldier will comply with all other foreign nation court and administrative orders that are recognized by treaty or international agreement.

(iii) Commanders should be aware that conditions may have changed greatly from when a court order was issued. For example, a soldier may have gained other family responsibilities. Many outstanding and uncontested support orders against soldiers cause severe hardship. Such orders can only be modified by a court. If a soldier's income appears inadequate to satisfy an outstanding order and still maintain the soldier, the commander should urge the individual to consult a legal assistance attorney. However, the soldier will comply with the terms of a court order until relieved of this obligation by modification of the order by a court.

(d) *Minimum support requirements.* (1) Soldiers will not violate the following:

(i) Financial support provisions of a court order.

(ii) Financial support provisions of a written support agreement in the absence of a court order.

(iii) Interim minimum financial support requirements of § 584.2(d)(2) in the absence of a court order or written support agreement.

(2) In the absence of a court order or written support agreement, and until such an order or agreement is obtained, the following interim *minimum* financial support requirements apply:

(i) *Single family units.* (A) Family not living in Government family quarters. The soldier will provide support in an amount equal to the soldier's BAQ at the with-dependents rate. This amount of financial support will be provided for this family unit regardless of whether or not the soldier is—

(1) Receiving BAQ.

(2) Occupying Government family quarters.

(B) Family living in Government family quarters. While the supported family is occupying Government family quarters, the soldier will provide an amount equal to the difference between BAQ at the with- and without-dependents rate. When the supported family members move out of Government family quarters, support will be provided in an amount equal to BAQ at the with-dependents rate for the soldier's rank.

(ii) *Multiple-family units.* In multiple-family unit support situations, each supported family member will receive a pro-rata share of the BAQ at the with-dependents rate. This share will be determined by dividing an amount equal to BAQ at the with-dependents rate for the soldier's rank by the total number of supported family members (excluding former spouses). The following modifications apply: First, any court ordered support will be paid as stated. Secondly, supported families living in Government family quarters will receive an amount equal to the difference between BAQ at the with- and without-dependents rate for the soldier's rank. Lastly, any remaining family members (excluding former spouses) will receive a pro-rata share of the BAQ amount. This will be provided regardless of the amount of support paid to other family members. Following are examples:

(A) *Example 1.* A soldier is divorced and has three children from that marriage. The soldier is required by a court order to pay \$300 per month for the children and \$100 per month for the former spouse. The soldier has remarried and has two more family members (spouse and child) living in private housing. The soldier now has a total of five family members that he or she must support under Army policy. (A former spouse does not qualify as a family member in pro-rata determinations.) The children by the previous marriage must receive \$300 and the former spouse must receive \$100 per the court order. The present spouse and child should receive support equal to two-fifths of BAQ at the with-dependents rate for the soldier's rank.

(B) *Example 2.* A soldier has one child by a previous marriage. There is no

court order for child support. The soldier is unable to show that the court granting the divorce had personal jurisdiction over the soldier so as to be able to order child support. The soldier has remarried and has a spouse and two children living in private housing. The soldier now has a total of four family members that he or she must support under Army policy. (These family members are the child by a previous marriage and the present spouse and two children.) Each family member should receive support equal to one-fourth of BAQ at the with-dependents rate for the soldier's rank.

(C) *Example 3.* A soldier has two children by a previous marriage. The soldier is required by court order to pay \$200 per month for these children. Also, the soldier is required to pay \$75 per month for support of a child per a court order that has declared him to be the father. He has remarried and has a spouse and three children living in Government family quarters. The soldier now has a total of seven family members that he must support under Army policy. The children by his previous marriage must receive \$200 per the court order. His other child must receive \$75 per the court order. The spouse and children of his present marriage should receive an amount equal to the difference between BAQ at the with- and without-dependents rate for the soldier's rank.

(iii) Military members married to one another. In the absence of a court order or written support agreement, an Army soldier is not required to provide support to a spouse on active duty in the Armed Forces.

(iv) Children of military member parents.

(A) *Single family units.* In the absence of a court order or written support agreement, the following interim support requirements apply:

(1) *Single family units* when the Army soldier does not have custody of any children of the marriage. The Army soldier will pay an amount equal to the difference between his or her own BAQ at the with- and without-dependents rate to the military member having custody of the child or children of the marriage. This amount of financial support will be provided regardless

of which military member, if any, is receiving BAQ or occupying Government family quarters.

(2) *Single family units* when the Army soldier has custody of the child or children of the marriage (for example, Army soldier has custody of one child and spouse has custody of two children). In this situation, the Army soldier is not required to provide a minimum amount of financial support for the children in the other military member's custody.

(B) *Multiple-family units.* The provisions of § 584.2(d)(2)(ii) apply. However, the amount in § 584.2(d)(2)(iv)(A) will not be diminished by proration because of the Army soldier's financial support obligations to other family members. For example: An Army soldier has an adopted child from a previous marriage. The soldier is required by court order to pay \$150 per month for this child. The soldier presently is married to a spouse on active duty with the Air Force. They have two children from this marriage. The Air Force member and children reside in private housing. The Army soldier has a total of three family members that he or she must support. The Army soldier will pay \$150 a month to the adopted child per the court order. The children from the present marriage will receive an amount equal to the difference between his or her BAQ at the with- and without-dependents rates for the Army soldier's rank.

(3) A commander has no authority to excuse a soldier from complying with the interim *minimum* support requirements of § 584.2(d)(2) when they are applicable.

(4) In the absence of a contrary provision in a written support agreement or court order, monthly financial support to family members will be sent before the last calendar day of the month for which the support is due. If the family members are not residing together, the soldier will ensure each family member receives his or her pro-rata share. (For example, spouse lives along and the children live with their grandparents.)

(e) *Child custody.* (1) A soldier relative, who is aware that another person is a lawful custodian of an unmarried child under the age of 14 years, will not—

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(i) Abduct, taken, entice, or carry away the child from the lawful custodian.

(ii) Withhold, detain, or conceal the child away from the lawful custodian.

(2) A “lawful custodian” is a person authorized, either along or together with another person or persons, to have custody and exercise control over a child less than 14 years of age by order of a court. The fact that joint custody has been awarded to both parents by a court does not preclude a violation of this paragraph by the soldier parent. However, in the absence of a court order to the contrary, the mother of a child born out of wedlock who is not then, nor has ever been, married to the father of the child is deemed the “lawful custodian” of that child for the purpose of this regulation.

(3) A soldier relative is a soldier who is the parent, grandparent, brother, sister, uncle, aunt, or one who has at some time been the lawful custodian of the child.

(4) It is a defense to a violation of this paragraph that the soldier—

(i) At the time of the offense had custody of the child to the exclusion of others pursuant to a valid order of a court having jurisdiction over the child; or

(ii) Voluntarily returned the child to the lawful custodian within 96 hours after return was demanded by the lawful custodian.

(f) *Relief from the minimum support requirement.* (1) Court orders with financial support provisions.

(i) Court ordered financial support will be by the terms of the court order. Relief from a court order can only be obtained under the law. Nothing in this regulation affects or lessens a soldier’s legal obligation to comply strictly with the terms of a court order.

(ii) A soldier who disobeys a court order may be held in contempt of the court that issued the order. Also, a soldier may be punished for violating this regulation. It is, however, a defense to any violation of § 584.2(d)(1)(i) that—

(A) The court issuing the order was without jurisdiction to do so, and

(B) The soldier at all times has been complying with any of the following:

(I) The financial support provisions of another court order.

(2) The financial support provisions of a written support agreement.

(3) The interim minimum financial support requirements of § 584.2(d)(2).

(4) Court orders without financial support provisions.

(iii) A soldier will provide financial support to family members unless expressly relieved of this obligation by—

(A) Court order.

(B) Written support agreement.

(iv) A soldier will provide financial support under § 584.2(f)(2) to family members, which meets at least the minimum support requirements of this regulation. The financial support will be provided even when a court order contains no provision as to support except as follows:

(A) A soldier has no obligation to provide financial support to a former spouse except by order of court.

(B) A soldier has no obligation to provide financial support to minor children of the marriage if he or she can show the following:

(I) The court issuing the final order of divorce had personal jurisdiction over the soldier to order child support.

(2) The soldier is not receiving BAQ at the “with dependents” rate based solely on the support of the minor children in question.

(3) *Written support agreements.* If a financial support obligation is evidenced by a written agreement between the parties, the soldier can only be relieved of this obligation by another written agreement or by court order.

(4) *Greater spousal income.* In the absence of a written support agreement or court order, a soldier has no obligation to support a civilian spouse who is receiving an annual income equal to or greater than the annual gross pay of the soldier. The income of the spouse does not affect the soldier’s obligation to provide financial support to the children of that marriage in the physical custody of the spouse on a pro-rata basis. Example: A soldier is living in Government family quarters with one of their children. The soldier’s spouse deserted the soldier and lives in private housing with their other child. The soldier’s spouse earns \$5,000 more in annual income from a civilian job than the soldier earns in annual gross pay.



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There is no court order or written support agreement. The soldier has a total of three family members. However, under Army support policy, the soldier does not have to provide a pro-rata share of financial support to the spouse because the spouse's income exceeds that of the soldier. (Note that under § 584.2(a)(3) marital misconduct is not a relevant consideration.) The soldier must support the child in Government family quarters. In addition, the soldier must provide an amount equal to one-third of BAQ (pro-rata share) at the "with dependents" rate to the spouse on behalf of the child living with the spouse.

(2) [Reserved]

(g) *Commander's inquiries.* (1) If a soldier denies he or she has a financial obligation to support a spouse or children for any reason, the soldier's commander will—

(i) Inquire into the matter.

(ii) Consult with the SJA prior to determining whether or not there is a support obligation. If there is no support obligation, BAQ at the "with dependents" rate should be stopped.

(2) If a soldier claims he or she has made support payments as required by this regulation, the soldier's commander will—

(i) Request the soldier to provide proof of payment in one of the following forms:

(A) Canceled personal checks.

(B) Leave and earnings statements showing allotments.

(C) Postal or money order receipts accompanied by a sworn statement from the soldier that the order was sent to the family member. If possible, evidence that the postal or money order was cashed by the complaining party should be provided.

(D) Other acceptable evidence of payment.

(ii) Consult with the SJA, if necessary, to determine whether the soldier has provided enough proof of payment.

(3) If a soldier is suspected of violating a child custody or visitation rights in a court order, the soldier's commander will—

(i) Inquire into the matter.

(ii) Consult with the SJA prior to taking action.

(4) In any case in which the soldier is suspected of violating this regulation (§ 584.2(d) or (e)), or of having committed other offenses, the commander, prior to questioning the soldier, will advise him or her of—

(i) The suspected offense.

(ii) The right to remain silent under article 31, UCMJ.

(iii) The right to counsel under the Fifth Amendment.

(h) *Form of support payment.* (1) Unless otherwise provided in the court order or by agreement, a financial support payment will be made in one of the following ways:

(i) In cash.

(ii) By check or money order.

(iii) By allotment.

(2) A soldier will receive credit for payments made to others on behalf of, and with the agreement of, the supported family members. Examples of support provided in kind include—

(i) Rent.

(ii) Utility services.

(iii) Interest and principal due on loans, mortgages, or charge accounts.

(iv) Insurance payments.

(i) *Arrearages*—(1) *General.* A soldier who falls into arrears without legal justification or excuse is in violation of § 584.2(d).

(2) Court orders and written support agreements.

(i) Amounts in arrears based on a past failure to comply with a court order or written support agreement will be paid at once in a lump sum amount. If an immediate lump sum payment is impractical, soldiers are expected to work out arrangements with the court or the affected family members to pay arrearages on a scheduled basis. If arrangements can not be worked out, commanders will intervene and order payment of arrearages on a scheduled basis based on the soldier's ability to pay.

(ii) When arrearages arise from non-compliance with court orders and written support agreements, this may result in—

(A) Garnishment of the soldier's pay account (§ 584.8).

(B) Initiation of an involuntary allotment against the soldier's pay account (§ 584.9).

(C) Contempt of court proceedings.

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(D) Recoupment of BAQ received by the soldier.

(iii) Administrative or punitive action may be taken on a violation of this regulation for any month in which the soldier failed to provide the required financial support even if the amount in arrears eventually is paid.

(3) Interim minimum financial support requirements. A soldier should be encouraged to pay the amount in arrears based on past noncompliance with the interim minimum financial support requirements (§ 584.2(d) (1)(iii) and (2)). However, a soldier cannot be ordered to pay such an amount. Nevertheless, administrative or punitive action may be taken on a violation of this regulation for any month in which the soldier failed to provide the required financial support even if the amount in arrears eventually is paid. Also, failure to provide required financial support in the past may be considered, together with other factors, in a commander's determination of the amount of additional support that may be ordered. (See § 584.2(j).)

(j) Additional support where there is no support agreement or court order.

(1) Ordinarily, a soldier should not be required to provide financial support beyond that required by § 584.2(d)(1)(iii). However, a soldier should provide additional support within his or her ability to meet the basic financial needs of family members when the interim support requirements of this regulation are shown to be inadequate.

(2) If there is a demonstrated need for immediate and temporary additional support because of unexpected and unforeseen circumstances and the parties are unable to agree on such additional support, a commander may order temporary additional support.

(3) Commanders will consider the following factors in determining the amount of additional support, if any, that a soldier should provide when a request for additional support is received:

(i) The pay, allowances, separate income, and other financial resources of both the soldier and the family member for whom additional support is requested.

(ii) The earning capacity of the family member on whose behalf support is requested.

(iii) The financial savings of the soldier and family member.

(iv) The separate and joint debts of the soldier and family member, by whom those debts were incurred, and the reasons behind them.

(v) The soldier's duty to provide financial support to other family members, including former spouses.

(vi) The financial needs of the soldier and the family member and whether these needs are temporary or permanent in nature.

(vii) The standard of living of the soldier and family member and whether such standard of living is reasonable under the circumstances.

(viii) With regard to spousal support, the duration of the marriage and the circumstances under which the parties separated.

(ix) The extent of the soldier's or family member's compliance with existing court orders and written support agreements. This includes those provisions dealing with child custody, visitation rights, property division, and marital property awards.

(x) The amount in arrears owed by the soldier based on past noncompliance with the minimum support requirements. (See § 584.2 (d) and (i).)

(xi) Any other fact which, in the judgment of the commander, has a logical bearing upon the amount of additional support the soldier reasonably should be expected to provide.

(k) *Procedure for making complaints.*  
(1) Complaints about nonsupport of family members and noncompliance with court orders on financial support and child custody should be sent through command channels. The complainant should be referred to the immediate commander of the soldier concerned.

(2) The Inspector General (IG) may assist in properly routing the complaint. The IG also may assist if the responsible commander has failed to respond in a satisfactory manner or as required by this regulation. (See AR 20-1, para 4-9.)

(3) The USACFSC (DACF-IS-PA) has set up an office to assist in these cases.

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USACFSC will provide policy interpretations and guidance on unresolved or complex cases, as needed. USACFSC normally will go through command channels to the immediate commander of the soldier concerned requesting that action be taken under this regulation.

(4) Family members who present complaints against a military member of another Service (Air Force, Marine Corps, Navy, or Coast Guard) should be referred to the appropriate Service.

(1) *Commander's actions.* (1) Upon receipt of a complaint of nonsupport or noncompliance with court orders, including provisions on child custody or visitation rights, the commander will review the complaint. He or she will do the following if the information is incomplete:

(i) Acknowledge receipt of the complaint.

(ii) Explain that the information or documentation sent is not enough to give proper help.

(iii) If appropriate, send the complainant DA Form 5460-R (Request for Help in Receiving Support and/or Identification Cards for Family Members).

(iv) Advise that help will be given with the complaint upon return of the completed form and other requested information and documents.

(v) If appropriate, advise that DA Form 5460-R alone is not enough documentation for issuance of a dependent identification card (ID card) (AR 640-3). Documentation (that is, court orders, birth certificates, marriage certificates, etc.) must be provided to support eligibility for benefits.

(vi) Answer any policy or procedural questions that have been asked.

(2) Upon receipt of DA Form 5460-R or a complaint that has enough information to properly respond, the commander will—

(i) Review soldier's legal financial obligations in light of the complaint and the facts presented by all parties concerned.

(ii) If necessary, ask the SJA if the complaint is valid, if the soldier must provide financial support or give up custody of children, and any other related questions.

(iii) Notify the soldier of the complaint of nonsupport or of a violation of a child custody court order.

(iv) Require the soldier to complete and sign DA Form 5459-R. Information obtained from a system of records ordinarily will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(v) If the soldier is suspected of violating this regulation or of having committed other offenses, the commander, prior to questioning the soldier, will also advise him or her of—

(A) The suspected offense.

(B) The right to remain silent under article 31, UCMJ.

(C) The right to counsel under the Fifth Amendment.

(vi) Explain the following to the soldier:

(A) The Army's policies regarding support of family members and compliance with court orders.

(B) That refusal to give required support per this regulation may result in administrative or punitive action.

(C) That a soldier is not entitled to BAQ at the "with dependents" rate when no part of the allowance is given to family members. Therefore, collection action may be initiated by the Army.

(vii) Explain what garnishment is (§ 584.8) and how it might affect the soldier's pay, allowances, and allotments. For example, explain that the amount garnished monthly might significantly exceed monthly support obligations previously agreed upon.

(viii) Tell the soldier of any court order for attachment or garnishment that has been received. Immediately send the court documents to the Commander, U.S. Army Finance and Accounting Center (USAFAC), ATTN: FINCL-G, Indianapolis, IN 46249-0260 for action. (See § 584.8(b).) Also, inform the soldier that if the document is in proper legal form, a portion of the soldier's pay and allowances will be garnished.

(ix) Explain involuntary allotments (§ 584.9) if appropriate.

(x) Coordinate with the soldier's servicing finance and accounting office (FAO) for problems of pay, allowances, and allotments.

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(xi) Urge soldiers to provide continuous support to family members by allotment. The allotment should be for the mutually agreed amount, court order, or as computed under this regulation. An account may be set up in a financial institution by the recipient to receive the allotment. This action may preclude delays in receipt and other related problems in the future.

(xii) Help the soldier start an allotment to make the required support payments. Also, advise the soldier to let the commander know if there is a change or stoppage to the support allotment.

(xiii) Give the soldier a chance to consult with a legal assistance attorney if he or she desires. However, the commander should ensure that this is not used as a delaying tactic. Where appropriate, a support payment plan should be initiated without delay.

(xiv) Urge soldiers thinking about divorce to seek legal advice from a legal assistance attorney. Also, advise the soldier to ensure an amount of support is included in the court order for their children. This action may help to prevent future disputes.

(xv) Ensure that the soldier is not receiving BAQ at the "with dependents" rate when not entitled to it. (See § 584.7.)

(xvi) Ask the soldier about his or her intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the complaint and stating his or her intentions.

(xvii) Send complaints received to the soldier's new duty station if he or she has been reassigned. Advise the complainant of the soldier's reporting date and the unit address to which correspondence should be sent. If proper, give the complainant a copy of DA Form 5460-R.

(3) Advise the complainant courteously and promptly—

(i) Of the Army policy in suitable areas of concern.

(ii) Of the soldier's intentions, if the soldier allows release of the information.

(iii) That personal problems outside the requirements of this regulation must be resolved in court if the parties cannot agree.

(4) If proper to the situation, remind complainant of other helping agencies on post, such as the chaplain and Army Community Service. These agencies can give timely, interim help to meet immediate needs pending a more permanent resolution of the problem.

(5) Retain the statements allowing or forbidding release of information to the complainant and the soldier's intentions with the case file for future reference. Documents/records will be filed per AR 600-37 and the Army Functional Files System (AR 340-2 and AR 340-18).

(6) Monitor actions closely to ensure promises of support or other actions by soldiers to complainants are being met.

(7) Consider administrative or punitive action if proper.

(8) Inform the first level field grade commander of the soldier's repeated failure to meet the requirements of this regulation. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or violations of child custody court orders.

### § 584.3 Paternity claims.

(a) *General.* (1) This chapter sets policy and procedures to process paternity claims against male Army soldiers. These procedures apply to claims made in the continental United States and in foreign countries. They apply to claims made by the claimant or on behalf of the claimant by attorneys, court officials, and others.

(2) Soldiers will be informed of paternity claims against them. Commanders will ensure that soldiers are advised of their legal rights and will advise soldiers of their moral and legal obligations in the matter. Soldiers admitting paternity will be urged to provide the necessary financial support to the child. Also, they will take any other action proper under the circumstances.

(b) Procedures for questioning soldiers about paternity claims upon receipt of a claim of paternity against a soldier, the commander will take the following actions:

(1) If there is evidence that an offense (for example, rape, indecent acts with a minor) may have been committed—

(i) Inform law enforcement officials.

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(ii) Inform the soldier of the suspected offense. Before questioning, advise the soldier of his right to remain silent under article, 31, UCMJ, and his right to counsel under the Fifth Amendment.

(iii) Coordinate further action under this regulation with the SJA and law enforcement officials if appropriate.

(2) If there is no evidence that an offense was committed—

(i) Allow the soldier a chance to talk with a legal assistance attorney about his legal rights and obligations.

(ii) Require the soldier to complete and sign DA Form 5459-R. Information obtained from a system of records normally will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(iii) Inform the soldier of Army policy on the support of family members contained in this regulation.

(iv) Advise the soldier that a court order against him on the paternity claim, followed by a refusal to support a child born out of wedlock, could result in—

(A) Administrative or punitive action for violating this regulation.

(B) Garnishment of the soldier's pay account (§ 584.8).

(C) Initiation of an involuntary allotment against the soldier's pay account (§ 584.9).

(D) Contempt of court proceedings.

(v) Ask the soldier about his intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the claim and stating his intentions.

(c) *Procedures for processing paternity claims.* (1) When one of the conditions in § 584.3(c)(1)(i) applies, a claimant will be advised of the statement in § 584.3(c)(1)(ii).

(i) A soldier—

(A) Refuses to answer questions about the paternity claim.

(B) Denies paternity.

(C) Admits paternity, but refuses to provide financial support.

(ii) No action can be taken on the claim of paternity in the absence of a court order. The court order must identify the soldier in question as the father of the child. Also, the court order must direct that the soldier provide financial support to the child.

(2) The commander will reply directly to the claimant or the attorney or court official she has authorized to act in her behalf. Information obtained from a system of records ordinarily will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(3) If the soldier admits paternity and agrees to provide financial support, then the commander will—

(i) Ask the claimant to provide a copy of the birth certificate.

(ii) Help the soldier in filing for an allotment or providing other financial aid.

(iii) Advise the claimant of the amount, effective date, and means of payment.

(iv) Help the soldier apply for BAQ at the "with dependents" rate, if applicable. (A birth certificate may be required.)

(v) Ensure an ID card is issued for the child after the relationship is documented, if proper. (A birth certificate may be required.) (See AR 640-3, para 3-3, for dependency criteria for ID cards.)

(vi) Allow the soldier to take ordinary leave in order to marry the claimant, if leave is requested for this purpose. However, the leave may be delayed if it will interfere with military requirements. Travel in connection with leave (including travel to and from overseas commands) is the responsibility of the soldier. Travel will be at no expense to the Government. If the marriage is to take place overseas, the soldier must comply with AR 600-240 and AR 608-61 in applying for authorization to marry (DA Form 2029-R) (Application for Authorization to Marry Outside of the United States).

(d) *Court orders.* If a court order of paternity and support has been issued, the commander will—

(1) Advise the soldier of the policy regarding support of family members.

(2) Advise the soldier that refusal to support his child born out of wedlock could result in—

(i) Garnishment of the soldier's pay account (§ 584.8).

(ii) Initiation of an involuntary allotment against the soldier's pay account (§ 584.9).

(iii) Contempt of court proceedings.

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(iv) Administrative or punitive action for violating this regulation.

(3) Refer the soldier to a legal assistance attorney for advice on his legal rights and obligations.

(4) Help the soldier file an attotment or give other financial aid.

(5) Advise the claimant of the amount, effective date, and means of payment.

(6) Help the soldier apply for BAQ at the "with dependents" rate, if applicable.

(7) Ensure an ID card is issued for the child.

(8) Consider administrative or punitive action if the soldier fails to obey the court order. (See § 584.1(d)(5)(viii).)

(9) Inform the first level field grade commander of the soldier's repeated failure to meet the requirements of this regulation. Also, point out actions taken or contemplated to correct instances of nonsupport of family members.

#### § 584.4 Adoption proceedings.

(a) *General.* This chapter does not apply to those situations where a soldier is trying to adopt a child. It applies to those situations where another person is trying to adopt a legitimate or illegitimate child of a soldier. A child born in or out of wedlock normally may not be put up for adoption without the consent of the parents. Therefore, communications from a judge or court asking that a soldier appear at an adoption hearing must be answered.

(b) *Commander's actions.* The commander will—

(1) Inform the soldier or the inquiry.

(2) Urge the soldier to see a legal assistance attorney.

(3) Advise the court or judge, as appropriate, that—

(i) A request by the soldier for leave to attend an adoption hearing on (date) has been granted.

(ii) A request by the soldier for leave to attend an adoption hearing on (date), if made, would be approved.

(iii) Due to military requirements, the soldier cannot be granted leave to attend any court hearing until (date).

(iv) The soldier has stated that he or she is not the natural parent of the child.

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(v) Since the soldier is not present because (give specific reasons), (for example, temporary duty or leave), a complete response cannot be made until (date).

(vi) The soldier is no longer in this command. The commander will provide the soldier's new military address to the court or judge. The commander then will send a copy of the inquiry to the soldier's new commander and advise the court or judge of this action.

(4) Furnish the soldier with a copy of the communication and the reply.

#### § 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.

(a) *General.* (1) A child born out of wedlock in a foreign country of an American citizen father and an alien mother does not automatically gain U.S. citizenship. The child must first be legally acknowledged by the father. Marriage to the mother may be required in order for the child to acquire U.S. citizenship. The father also must establish that he had at least 10 years of physical presence in the United States prior to the child's birth. Five of those years must have been spent in the United States after the father's 14th birthday. United States military service counts as physical presence in the United States. (See 8 U.S.C. 1101(c)(1), 1401(g), and 1409(c).) Whether the child gains the citizenship of its mother depends entirely upon the laws of the nation in which she is a citizen.

(2) A child born out of wedlock in a foreign country to an American citizen mother and an alien father or U.S. Citizen father gains U.S. citizenship at birth if the mother had been physically present in the United States for a continuous period of 1 year prior to the child's birth. (See 8 U.S.C. 1409(c).) The child will gain the citizenship of the father only if the laws of the nation of which the father is a citizen so provide.

(b) *Procedures for claiming U.S. citizenship rights.* (1) A father desiring rights of U.S. citizenship for a foreign-born child must legally acknowledge the child as his own and prepare a case file. Each case is decided on its own merits. The Department of State, if the child is in a foreign nation, or the Immigration and Naturalization Service (INS), if the

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child is in the United States, will make the decision. Documents that may be important in supporting a citizenship determination are listed below:

(i) Proof of father's citizenship. This may consist of any of the following:

(A) A certified copy of his birth certificate (with a raised seal of the registrar of births).

(B) A report of birth abroad (FS Form 240 (Report of Birth Abroad of a Citizen of the United States)).

(C) A certificate of citizenship.

(D) A certificate of naturalization.

(E) A valid U.S. Passport.

(F) A certified copy of an approved U.S. passport application.

(G) Any secondary evidence acceptable by the State Department or INS.

(ii) Affidavit of paternity.

(iii) Proof of presence in the foreign country at time of conception. (This information can be extracted from the passport, DA Form 2-1 (Personnel Qualification Record—Part II), etc.).

(iv) Child's birth certificate.

(v) Proof of the father's physical presence in the United States for 10 years (5 after age 14).

(vi) Blood type tests of the mother, the father, and the child. (At the request of the examining officer.)

(vii) Two sworn affidavits (at the request of the examining officer) from individuals who personally knew the mother, father, and child at the time of birth and can identify the child.

(viii) A copy of a certified English translation of all needed legal documents that are in a foreign language.

(ix) An executed passport application with three signed pictures of the child.

(2) The soldier may consult a legal assistance attorney for help in preparing the case file. The case file should be taken to the nearest American Embassy, Consulate General, or Consulate in the country where he and his child live. If the father is not present in the country where the child lives, he will do one of the following—

(i) Take the necessary documents to the nearest American Embassy, Consulate General, or Consulate.

(ii) Mail the documents to the Department of State, ATTN: Office of Citizens Consular Service, WASH DC 20520. That office, in conjunction with

the American Consul abroad, will decide if the child is a U.S. citizen.

(3) If both father and child are within the United States, a decision of citizenship status can be obtained from the INS. The soldier should file Form N-600 (Application for Certificate of Citizenship) at the nearest INS office. This form can be obtained from the INS. The appendix of AR 608-3 lists the location of INS offices.

(4) Any soldier who claims to be a U.S. citizen has the burden of proving that claim to the Department of State or INS, as applicable.

### **§ 584.6 Procedures governing non-active duty or discharged personnel.**

(a) *Procedures governing nonactive duty personnel.* (1) Nonsupport complaints and paternity claims against former soldiers or other not on active duty will be sent to the Commander, U.S. Army Reserve Components Personnel and Administration Center (RCPAC), ATTN: DARC-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(2) After RCPAC verifies the status, the following officials will act as prescribed below:

(i) Chief, National Guard Bureau, WASH DC 20310-2500, for members of the Army National Guard.

(ii) The area commander concerned for Ready Reservists assigned to troop program units under his or her control. (See AR 140-1, para 1-6.)

(iii) Commander, RCPAC for nonunit members assigned to Control Groups of the Ready Reserve, Standby Reserve, and Retired Reserve.

(3) The officials cited above will ensure that correspondence claiming nonsupport or paternity is delivered to the person concerned, using military channels. When the correspondence cannot be delivered through military channels, it will be sent to the last known mailing address of the person by certified mail (PS Form 3811 (Return Receipt, Registered, Insured and Certified Mail)). It should be marked "Return Receipt Requested—Deliver to Addressee Only." This form is available at U.S. post offices.

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(4) After delivery of correspondence, the responsible official will advise the complainant or claimant—

(i) Of the date and method of delivery.

(ii) That the military department does not control the personal affairs of nonactive duty personnel. These personnel usually are in a civilian status and are not subject to military discipline. Therefore, the matter has been left to the person's discretion.

(iii) Of the person's mailing address only if the conditions in § 584.6(c) are met.

(b) *Procedures governing discharged personnel.* Nonsupport complaints or paternity claims against persons who have been discharged from the Service will be sent to RCPAC. These persons do not hold any military status whatsoever. Commander, RCPAC will return the correspondence and all accompanying documentation and advise the complainant or claimant—

(1) That the person is no longer a member of the Army or the Reserve Components.

(2) Of the date of discharge.

(3) That the Army no longer has control or authority over the discharged member. Therefore, the Army can take no further action in the matter.

(4) Of the person's mailing address only if the conditions in § 584.6(c) are met.

(c) *Conditions for disclosing mailing address.* Nonactive duty and discharged personnel's mailing addresses will not be disclosed except for one of the following reasons:

(1) The person consents in writing to the release of his or her address.

(2) The complainant or claimant sends a court order directing the release of the address.

(3) Any other reason that does not constitute a violation of the Privacy Act of 1974.

(d) *Retired personnel.* (1) Court orders for garnishment or attachment of pay of retired persons will be sent to USAFAC.

(2) The complainant or claimant will be advised that correspondence may be sent to the retired member as follows:

(i) Place correspondence in a stamped envelope with retired member's name typed or printed on the envelope.

(ii) Place stamped envelope in a second envelope and send to the Commander, RCPAC, ATTN: DARC-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(3) Commander, RCPAC will send the correspondence to the retired member but cannot release the address under the provisions of the Privacy Act of 1974.

### § 584.7 Basic allowance for quarters.

(a) *Eligibility.* (1) Soldiers entitled to basic pay, who have family members, are entitled to BAQ at the rates prescribed for soldiers "with dependents" under certain conditions. The Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) governs entitlements. (See DODPM, part 3, chap 2.)

(2) Soldiers may receive BAQ at the "with dependents" rate as long as they pay at least the difference between BAQ at the with- and without-dependents rate each month in support of their families. (See DODPM, part 3.) This is so even if a divorce decree or court order is silent on support or releases the soldier from the responsibility of supporting the family. (See § 584.2(f)(2).) Normally, a soldier is not entitled to BAQ on behalf of a former spouse or stepchildren after the divorce. BAQ at the "with dependents" rate is not authorized when the soldier or the supported family is residing in Government family quarters. Also, if two soldier member-parents are supporting the same child, only one soldier member is entitled to BAQ at the "with dependents" rate.

(b) *False claims.* BAQ at the "with dependents" rate is not payable to soldier who are not supporting their families. Cases involving alleged failure or refusal of soldiers to pay at least the difference between BAQ at the with- and without-dependents rate for the support of family members will be referred to the proper FAO after investigation. Nonsupport of family members for whom BAQ is claimed may result in—

(1) Collection of BAQ received but not given to the family members.

(2) Stoppage of BAQ at the "with dependents" rate.

(3) Punitive or administrative action against a soldier for—



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(i) Violating the minimum support requirements of this regulation.

(ii) Submitting a fraudulent claim for BAQ based on false information.

(c) *Forfeiture of BAQ*. Forfeiture of the “with dependents” portion of BAQ does not relieve the soldier of the obligation to support family members as set up in this regulation.

(d) BAQ entitlements versus Army minimum support requirements. Terms for entitlements to BAQ are set forth in DODPM, part 3, chapter 2. Except as provided in this regulation, BAQ entitlements have no relationship to Army minimum support requirements.

### § 584.8 Garnishment.

(a) *General*. (1) Pub. L. 93-647 (42 U.S.C. 659) permits garnishment, attachment, or assignment of Federal wages and retirement payments to enforce court-ordered child support and alimony obligations that are in arrears. It includes foreign court orders when—

(i) Required by treaty or international agreement. (A soldier is subject to garnishment for child support issued by the FRG only while physically stationed in Germany.)

(ii) Recognized by a court of competent jurisdiction. Applicable State laws govern legal procedures to be used by complainants. Jurisdictional or procedural challenges to garnishment actions remain the responsibility of individual members.

(2) In the absence of State law more favorable to the soldier, 15 U.S.C. 1673 limits the amount of pay that can be garnished as follows:

(i) Fifty percent of disposable pay when a soldier is supporting a spouse or dependent child who is not the subject of the support order. (See § 584.8(a)(3) for an explanation of disposable pay.)

(ii) Sixty percent of disposable pay when a soldier is not supporting such spouse or dependent child.

(iii) An additional 5 percent in each of the above cases if payments are more than 12 weeks overdue.

(3) The items of pay listed in § 584.8(a)(3)(i) are subject to garnishment except for amounts deducted for the items listed in § 584.8(a)(3)(ii).

(i) Items of pay and bonus subject to garnishment.

(A) Basic pay.

(B) Special pay (including enlistment and reenlistment bonuses).

(C) Incentive pay.

(D) Inactive duty training pay.

(E) Academy officials pay (except personal money allowances).

(F) Accrued leave payments (basic pay portion only).

(G) Retired and retainer pay.

(H) Lump-sum Reserve bonus.

(I) Separation payments (readjustment pay and severance pay).

(ii) Deductions not subject to garnishment.

(A) Federal income tax withholding.

(B) State income tax withholding.

(C) Servicemen's Group Life Insurance.

(D) Social Security taxes (Federal Insurance Contributions Act).

(E) United States Soldier's and Airmen's Home.

(F) Survivor Benefit Plan.

(G) Retired Servicemen's Family Protection Plan.

(H) Indebtedness to the United States and delinquent Federal taxes.

(I) Fines and forfeitures ordered by a court-martial or commander.

(b) *USAFAC procedures*. The USAFAC will process most garnishment orders. Unless the order is contrary to Federal law or the laws of the jurisdiction from which it was issued, the soldier's pay will be garnished per the court order. Garnishment orders will be sent by certified or registered mail to the Commander, USAFAC, ATTN: FINCL-G, Indianapolis, IN 46249-0160. However, all legal process issued by German courts will be processed under DODPM, section 70710, when the soldier is stationed in the FRG. The documents must expressly state they pertain to child support or alimony. Also, the name and social security number (SSN) of the soldier must be included. The submission of a divorce decree or support order alone is not enough, as a garnishment order is required.

### § 584.9 Involuntary allotments.

(a) *General*. Pub. L. 97-248 (42 U.S.C. 665) permits involuntary allotments from pay and allowances of soldiers on

active duty as child, or child and spousal, support payments when—

(1) The soldier has failed to make payments under a court order for 2 months or in a total amount equal to or in excess of the support obligations for 2 months.

(2) Failure to make such payments is established by notice from an authorized person to the Commander, USAFAC, ATTN: FINCL-G, Indianapolis, IN 46249-0160. An authorized person is—

(i) Any agent or attorney of any State having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651-664), who has the duty or authority under the plan to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under a State plan, any official of a political subdivision).

(ii) A court or agent of the court that has authority to issue an order against the soldier for the support and maintenance of a child.

(3) Such notice must give the soldier's full name and SSN. Also, it must list the name and address of the person to whom the allotment is payable. The amount of the allotment will be the amount needed to comply with the support order. The allotment may include arrearages as well as amounts for current support if provided for in the support order. A copy of this must be included with the notice. If proper, a statement must be included that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations. These limitations are prescribed in 15 U.S.C. 1673. Also, a copy of the underlying support order must be included with the notice. An allotment under this provision will be adjusted or discontinued only upon notice from an authorized person.

(b) *Procedures.* No action will be taken to set up an allotment until the soldier has the chance to consult a legal assistance attorney. The purpose of the meeting is to discuss the legal and other factors involved with respect to the soldier's support obligation and failure to make payments. If the soldier has not consulted with legal counsel, the allotment will start the first

end-of-month payday after 30 days have elapsed since notice was given to the affected soldier.

#### APPENDIX A TO PART 584—REFERENCE

##### *Section I—Required Publications*

- AR 340-17  
Release of Information and Records from Army Files. (Cited in §584.1(f)(2).)
- AR 340-21  
The Army Privacy Program. (Cited in §584.1(f)(2).)
- AR 600-37  
Unfavorable Information. (Cited in §§584.1(d)(5)(viii)(B) and 584.2(1)(5).)
- AR 640-3  
Identification Cards, Tags, and Badges. (Cited in §§584.2(1)(1)(v) and 584.3(c)(3)(v).)
- Misc Pub 13-1  
DOD Military Pay and Allowances Entitlements Manual. (Cited In §§584.7a, 584.7(d) and 584.8(b).)
- Uniform Code of Military Justice  
(Cited In §§584.1(d)(5), 584.2(g)(4)(ii), 584.2(1)(2)(v)(B), and 584.3(b)(1)(ii).)

##### *Section II—Related Publications*

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

- AR 11-2  
Internal Control Systems
- AR 20-1  
Inspector General Activities and Procedures
- AR 140-1  
Mission, Organization, and Training
- AR 340-2  
Maintenance and Disposition of Records for TOE Units and Certain Other Units of the Army.
- AR 340-18  
The Army Functional Files System
- AR 600-240  
Marriage in Oversea Commands
- AR 601-280  
Army Reenlistment Program
- AR 608-3  
Naturalization and Citizenship of Military Personnel and Dependents
- AR 608-61  
Application for Authorization to Marry Outside of the United States
- AR 635-100  
Officer Personnel (Separations)
- AR 635-200  
Enlisted Personnel (Separations)
- Misc Pub 8-1  
Joint Travel Regulations, Volume 1: Members of the Uniformed Services

##### *Section III—Prescribed Forms*

- DA Form 5459-R

## Department of the Army, DoD

## Pt. 584, App. A

Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints. (Cited in §§ 584.1(d)(5)(iv)(B), 584.1(f)(1), 584.2(1)(2)(iv), and 584.3(b)(2)(ii).)

DA Form 5460-R

Request for Help in Receiving Support and/or Identification Cards for Family Members. (Cited in § 584.2(1).)

### *Section IV—Referenced Forms*

DA Form 2-1

Personnel Qualification Record-Part II

DA Form 2029-R

Application for Authorization to Marry Outside of the United States

FS Form 240

Report of Birth Abroad of a Citizen of the United States

Form N-600

Application for Certificate of Citizenship

PS Form 3811

Return Receipt, Registered, Insured, and Certified Mail

### GLOSSARY

#### *Section I—Abbreviations*

ARNGUS

Army National Guard of the United States

BAQ

Basic allowance for quarters

DA

Department of the Army

DOD

Department of Defense

DODPM

Department of Defense Military Pay and Allowances Entitlements Manual

FAO

Finance and accounting office

FRG

Federal Republic of Germany

HQDA

Headquarters, Department of the Army

ID cards

Identification cards

IG

Inspector general

INS

Immigration and Naturalization Service

RCPAC

U.S. Army Reserve Components Personnel and Administration Center

SJA

Staff Judge Advocate

SSN

Social Security Number

UCMJ

Uniform Code of Military Justice

USACFSC

U.S. Army Community and Family Support Center

USAFAC

U.S. Army Finance and Accounting Center

USAR

U.S. Army Reserve

VHA

Variable Housing Allowance

### *Section II—Terms*

#### *Arrearage*

The total amount of money a soldier owes a family member for prior months in which the soldier failed to comply with the minimum support requirements of this regulation.

#### *Basic Allowance for Quarters*

An amount of money prescribed and limited by law that a soldier receives to pay for quarters not provided by the Government.

#### *Child Custody Complaint*

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges that the soldier is violating a court order granting custody of minor children to someone other than the soldier. It also includes a complaint by a mother of a child born out of wedlock against a soldier father who has abducted or detained the child.

#### *Court Order*

As used in this regulation, court order includes all judicial and administrative orders and decrees, permanent and temporary, granting child custody, directing financial support, and executing paternity findings. It also includes any foreign nation court or administrative order recognized by treaty or international agreement. Court orders are presumed valid in the absence of evidence to the contrary.

#### *Family Member*

For the purpose of this regulation only, a family member includes—

a. A soldier's present spouse. (A former spouse is not a family member. However, except as otherwise indicated, the term "family member" includes any former spouse for whom the soldier is required by any court order to provide financial support.)

b. A soldier's minor children from present and former marriages, including children legally adopted by the soldier. (A family member does not include the child of a soldier who has been legally adopted by another person.)

c. Minor children born out of wedlock to—

(1) A woman soldier.

(2) A male soldier if evidenced by a decree of paternity identifying the soldier as the father and ordering the soldier to provide support.

d. Any other person (for example, parent, stepchild, etc.) for whom the soldier has an obligation to provide financial support under the law of the domicile of either the soldier or the supported person.

*Financial Support Provision*

The provision in a court order or separation agreement directing the soldier to provide financial support to a family member on a periodic basis.

*Government Family Quarters*

Any sleeping accommodations or family-type housing owned or leased by the U.S. Government.

*Gross Pay*

For support purposes, gross pay includes basic pay and allowances to include special, incentive, and other pay when received on a monthly basis. Gross pay does not include funds not received on a monthly basis (that is, enlistment and reenlistment bonuses and accrued leave payments). Gross pay does not include wages from off-duty employment.

*Legal Assistance Attorney*

Army lawyers designated to advise and assist soldiers and their families on family law matters. Such matters include marriage, divorce, adoption, paternity, child custody problems, and support obligations. In the context of this regulation, a legal assistance attorney also includes a lawyer retained by a soldier at his or her own expense.

*Minor Children*

Unmarried children under 18 years of age who are not on active duty with the Armed Forces.

*Nonsupport Complaint*

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges one of the following:

- a. Soldier is providing no financial support.
- b. Soldier is providing insufficient financial support.
- c. Soldier is failing to comply with—
  - (1) An oral agreement,
  - (2) A written support agreement, or
  - (3) A court order that sets up a financial support requirement.

*Soldier*

As used in this regulation, the term soldier includes commissioned officers, warrant officers, and enlisted personnel.

*Staff Judge Advocate*

The chief legal officer and his or her staff who advise commanders on laws and regulations affecting the command. Includes command judge advocates and post judge advocates, but not legal assistance attorneys or attorneys assigned to the Trial Defense Service.

*System of Records*

Any record under DA control from which information is retrieved by the name of the individual or by his or her SSN.

*Variable Housing Allowance*

An amount of money prescribed by law that a soldier receives to defray high housing costs in the continental United States.

*Written Support Agreement*

Any written agreement between husband and wife in which the amount of periodic financial support to be provided by the soldier spouse has been agreed to by the parties. A written support agreement may be contained in a separation agreement or property settlement agreement. Also, the support agreement may be shown by letters exchanged between the parties in which the amount of support has been agreed to by the parties.

## PART 589—COMPLIANCE WITH COURT ORDERS BY PERSONNEL AND COMMAND SPONSORED FAMILY MEMBERS

## Sec.

- 589.1 Definitions.
- 589.2 Policy.
- 589.3 Applicability.
- 589.4 General.

AUTHORITY: Public Law 100.456 and 10 U.S.C., 814.

SOURCE: 55 FR 47042, Nov. 8, 1990, unless otherwise noted.

**§ 589.1 Definitions.**

(a) *Court*. Any judicial body in the United States with jurisdiction to impose criminal sanctions of a DoD member, employee, or family member.

(b) *DoD Employee*. A civilian employed by a DoD Component, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

(c) *DoD Member*. An individual who is a member of the Armed Forces on active duty and is under the jurisdiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

**§ 589.2 Policy.**

(a) This part (chapter) implements procedural guidance in Department of Defense Directive 552 5.9, "Compliance