



7<sup>th</sup> JMTC Legal Assistance Information

## Garnishment and Involuntary Allotment

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.

- 1. Q. I am owed child support by a soldier under a court order. How do I collect if the soldier refuses to pay?**
  - A. Garnishment and Involuntary Allotment.
- 2. Q. What is Garnishment?**
  - A. Garnishment means going to court to get direct payment of support from a person's employer, deducted from his paycheck each month (just like taxes and Social Security). All pay after taxes is garnishable. That includes basic pay, hazardous duty pay, severance pay, sick pay, cash awards, pensions, retirement, etc. However, allowances, such as BAH (Basic Allowance for Housing, BAS (Basic Allowance for Subsistence) and Family Separation Allowances cannot be garnished. Garnishment may be used to enforce a soldier's obligation to pay child support (and/or alimony, too if state law allows it).
- 3. Q. Can I use Garnishment Proceedings in All States?**
  - A. Yes. All states allow garnishment of pay or property to enforce a soldier's obligation to pay child support. Overseas may be another matter. For example, if you have a German court order and the soldier returns to the U.S., the soldier's pay is usually still in reach of the German courts, with only a little bit more effort. (There are a few states) A German court order must be obtained and forwarded to the U.S. court nearest where the soldier is living. The U.S. courts will decide whether there is sufficient evidence upon which to hold the soldier liable for payment of support. Some states allow the German prosecutor to file the action on its own, while other states require the mother's written consent. If the court accepts the German courts decision, it will honor the German court's support order and will require the garnishment of the soldier's wages.
- 4. Q. How do I start a garnishment proceeding for child support against a soldier?**
  - A. You must first have a court order requiring the soldier to pay child support. Secondly, you will

probably need to hire a civilian attorney (or visit the child support enforcement agency, or CSEA) to obtain a garnishment order from the local court. Once the garnishment order is obtained from the local court, it must be served on the Defense Finance and Accounting Service (DFAS). The order should name DFAS as the garnishee and should contain enough identifying information to enable the garnishment order to be processed. The following identifying information about the individual owing child support (the other parent) is requested: full name, date of birth, Social Security number, military component (Army, Air Force, etc.), official duty station or worksite, and status of the other parent (active-duty military, civilian, Civil Service, etc.).

**5. Q. How much of the pay may the court garnish?**

- A. The are state and-federal limitations on the amount of pay that can be garnished. Unless a lower maximum garnishment limitation is provided by state law, the maximum amount subject to garnishment will not exceed 50 percent of the disposable pay if the soldier is remarried and supporting a spouse and or dependent child; or 60 percent if the soldier is single. An additional 5 per cent will apply to each maximum limit if the order states that the soldier is behind 12 weeks or more in support payments.

**6. Q. Can the soldier do anything to stop the garnishment?**

- A. The only way a soldier can stop the garnishment is to go to the court that issued it and ask the court to remove or reduce it. You must be notified if he or she tries to do this so that you can object.

**7. Q. Can the army withhold money from a soldier's paycheck without garnishment?**

- A. Yes. The process is called Involuntary Allotment. Involuntary Allotment can be initiated if the soldier is at least two months behind in court-ordered child support and/or alimony payments, but only if the payments were payable through a state official, such as a clerk of court or CSEA.

**8. Q. How can I request an involuntary allotment?**

- A. To start an allotment, DFAS must receive a certified copy of the court order and written notice from an authorized person, agency, or court that the soldier is a least two months behind in the support payments. DFAS must provide notice to the soldier and the soldier's commander. The soldier may consult with a lawyer about the legal and other factors involved with respect to the soldier's support obligation and the failure to make payments under the obligation. The allotment will take effect 30 days after notice is given to the affected soldier, regardless of whether the soldier has consulted with a lawyer. If the order so provides, the amount may include arrearages as well as the amounts for current support.

**9. Q. What is the maximum amount of the involuntary allotment?**

- A. The Consumer Credit Protection Act (15 U.S.C. § 1673) limits the amount that can be deducted as child support/alimony from earnings. The limit ranges from 50 percent (50%) of disposable earnings to sixty-five percent (65%). The full ordered amount of child support/alimony will be deducted as long as that amount does not exceed the maximum percentage allowable. The following is an explanation of when the different maximum percentages apply:

- 50% of disposable earnings is the maximum percentage allowable if the obligor provides proof that he/she is providing more than half the support of dependents other than those for whom the support is to be deducted, and if the payor has not accrued an arrearage.
- 55% of disposable earnings is the maximum percentage allowable if the obligor provides proof that he/she is providing more than half the support of dependents other than for those whom the support is to be deducted, and if the payor has accrued an arrearage.
- 60% of disposable earnings is the maximum percentage allowable if the obligor has not provided proof that he/she is providing more than half the support of dependents other than those for whom the support is to be deducted, and if the payor has not accrued an arrearage.
- 65% of disposable earnings is the maximum percentage allowable if the obligor has not provided proof that he/she is providing more than half the support of dependents other than those for whom the support is to be deducted, and if the payor has accrued an arrearage. 15 U.S.C. § 1673(b)(2)(A) and (B)

**REMEMBER: THE PERCENTAGE AMOUNTS WILL ONLY BE DEDUCTED IF THE PAYOR DOES NOT HAVE SUFFICIENT DISPOSABLE EARNINGS TO ALLOW FOR THE FULL ORDERED AMOUNT TO BE DEDUCTED.**

**10. Q. Must I include the obligor's social security number with the Garnishment application?**

- A. Without the social security number of the obligor, we will not be able to process the child support income withholding order or alimony garnishment.

**11. Q. If I have any other questions what should I do?**

- A. See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Be sure to bring along with you to the interview a copy of any documents or court papers that might be helpful to your attorney. You may also check out the following website regarding garnishments: <http://www.dfas.mil/militarypay/garnishment/supp-qa.html>