

# **Module 5**

## **Obtaining Evidence from the Military**

### TRAINING NOTES

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#### ***What you need to say/do***

1. Display **PowerPoint Slide 5-1: Module 5** (title slide).
  2. Ask participants if there are any lingering questions from earlier modules. When there are no further questions, proceed to **Module 5**.
  3. Ask participants if they have tried to obtain evidence, including financial information, from the military in a paternity or child support case.
  4. Remind participants to ask questions as they arise and to share any relevant experiences or issues they have encountered.
  5. Explain the learning goal and objectives of the module.
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#### ***What you need to know***

This module will take approximately one hour and 15 minutes to complete.

#### **Equipment/Supplies:**

- Computing device with PowerPoint program
- DLP/LCD/LED projector
- Wall-mounted or portable screen
- Trainer Guide
- Participant Guides (including Appendix with Handouts)

#### **PowerPoint Slides:**

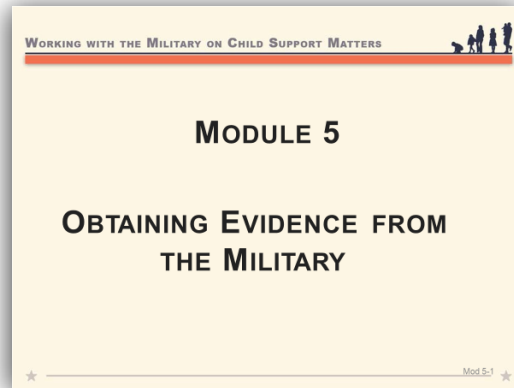
- 5-1: **Module 5** (title slide)
- 5-2: Paternity Establishment
- 5-3: Genetic Testing.
- 5-4: Financial Information/Evidence
- 5-5: Medical Information/Evidence
- 5-6: The Privacy Act and FOIA
- 5-7: Evidence from Overseas Locations
- 5-8: The Hague Child Support Convention
- 5-9: Federal Reciprocal Arrangements
- 5-10: The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters
- 5-11: Letters Rogatory
- 5-12: Exercise Scenarios
- 5-13: Summary

#### **Handouts:**

- 5-1: Review Exercises

## MODULE 5: OBTAINING EVIDENCE FROM THE MILITARY

Time: 1 hour, 15 minutes



### 5.1 OBTAINING EVIDENCE FROM THE MILITARY

#### 5.1.1 Learning Goal

- Each participant will understand the rules and procedures for obtaining evidence and information relevant to paternity and child support proceedings involving military personnel.

#### 5.1.2 Learning Objectives

- Given an interactive lecture and case study, participants will identify procedures for genetic testing in paternity cases involving military members, and the limitations on obtaining such evidence.
- Given an interactive lecture and case study, participants will explain the procedures for obtaining financial records and information from the expanded Federal Parent Locator Service (FPLS) and the Defense Finance and Accounting Service (DFAS) to establish and enforce a child support obligation.
- Given an interactive lecture and case study, participants will explain the procedures for obtaining medical enrollment information from the expanded FPLS and the Defense Enrollment and Eligibility Reporting System (DEERS) to enforce a medical support obligation.
- Given an interactive lecture and case study, participants will identify the procedures available for collecting information or evidence from service members located outside the United States or its waters. This includes a basic understanding of The Hague Child Support Convention, federal reciprocal arrangements, and The Hague Evidence Convention.

## TRAINING NOTES

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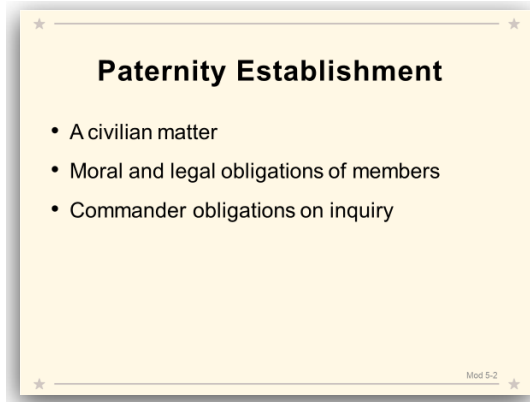
### *What you need to say/do*

1. Display *PowerPoint Slide 5-2: Paternity Establishment*.
  2. Tell participants that voluntary cooperation by the military member is important because a commanding officer cannot order a member to submit to genetic testing to establish paternity.
  3. Emphasize to participants that regulations require commanders to answer paternity inquiries and inform military members of their legal and moral obligations. Remind participants of the role of military legal assistance attorneys.
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### *What you need to know*

## **5.2 PATERNITY EVIDENCE**

In the child support arena, the area where the military is most like any other employer is paternity establishment. That is, the military and its commanders cannot compel military personnel to provide genetic samples or information for the purpose of establishing paternity.



All military services have the same bottom line concerning paternity establishment. It's essentially a civilian matter to be determined in a civil forum. The services provide the same general guidance with respect to inquiries about a member's alleged paternity. Counsel the member on his legal and moral obligations and advise him to seek legal counsel on the matter.

Of course, the voluntary cooperation of the military member will expedite the establishment of paternity. First, try to contact the military member. Inform him of the paternity allegation and of the process for voluntarily acknowledging paternity. If the member denies paternity, advise him of the availability of genetic testing.

If your initial attempts to obtain voluntary cooperation go unanswered, do not hesitate to contact the member's commander. Policies about what information a caseworker may divulge will vary from state to state. Ensure that you are aware of your state's privacy protections regarding information about the custodial parent. Always consider getting a signed release from the custodial parent that will permit you to disclose the information that's necessary to get assistance from a service member's commander. For example, it is usually helpful to detail your unsuccessful efforts to obtain a response from the member and to ask the commander for assistance in having the service member cooperate with the civilian authorities.

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display ***PowerPoint Slide 5-2: Paternity Establishment.***
2. Explain a military member's general obligations regarding conduct that may be discrediting.
3. Explain that commanders are greatly concerned about the adverse impact on readiness and operations that civil actions can have.
4. Discuss the following obligations of a commander regarding a paternity inquiry:
  - Inform the member of his legal and moral obligations.
  - Refer the member to legal counsel concerning his rights and obligations.
  - Urge the soldier to provide financial support to his child if he admits paternity.
  - Provide a reply to the inquiry.

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### *What you need to know*

The Department of Army Form 5459, *Authorization to Release Information from Army Records on Nonsupport/Child Custody/Parentage Inquiries*, was updated November 2020.

Although the military sees the establishment of paternity as a civilian matter most properly dealt with through civilian channels, a commander has an interest, and often a regulatory obligation, to discuss an allegation of paternity with the member involved. All military members are obligated to be responsible for, and to take care of, personal matters in a manner that does not bring discredit or disrepute upon the military. Civil legal proceedings can potentially affect and interfere with the performance of a member's assigned duties. Explain the possible actions that the agency can take if the member does not voluntarily cooperate with a request or an order for genetic testing. Emphasize that you are not asking the commander to force or coerce the member into acknowledging paternity, but merely seeking the member's voluntary cooperation to submit to genetic testing. Provide a respectful, factual statement of the process and potential negative consequences if the member does not respond.

For Army personnel, you can request the commander to ask the member if he will complete Department of the Army Form 5459 dated November 2020, *Authorization to Release Information from Army Records on Nonsupport/Child Custody/Parentage Inquiries*. Once signed by the soldier, this form permits access to Army records that will allow you to obtain necessary information pertaining to a paternity action.

Military commanders are also obligated by regulation to take certain actions with respect to paternity issues and inquiries. For example, Section 3-5 of Army Regulation 608-99, Family Support, Child Custody, and Parentage, 13 November 2020, requires a commander, upon receipt of a parentage inquiry, to:

- Inform the soldier of their legal and moral obligations, if any;
- Refer the soldier to an attorney for legal assistance if they have questions about their legal rights. The regulation provides that a referral to legal assistance is appropriate regardless of whether the soldier admits parentage;

## TRAINING NOTES

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### *What you need to say/do*

Display *PowerPoint Slide 5-3: Genetic Testing*.

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### *What you need to know*

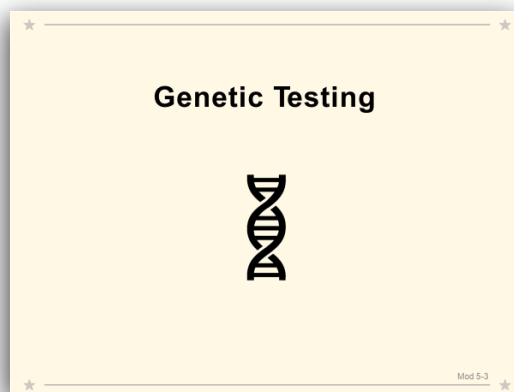
Pursuant to a 1995 Executive Order requiring the federal government to act as a model employer, all military hospitals and birthing centers must provide the same paternity acknowledgment services as civilian hospitals.



- Urge the soldier to provide financial support to the child if, after legal consultation, the soldier admits parentage; and
- Reply to the parentage inquiry with information about whether the soldier admits or denies parentage, and whether the member will provide financial support.

Depending on whether the soldier admits or denies parentage, the regulation provides further direction to the commander.

If attempts to obtain the voluntary cooperation of the member fail, the options available for obtaining evidence become more limited. A military commander cannot ordinarily order a military member to submit to genetic testing to establish paternity.



A court or an administrative order that requires a military member to submit to a genetic test adds to the consequences if the member does not comply, but it does not necessarily permit any additional assistance from the military.

## **TRAINING NOTES**

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### ***What you need to say/do***

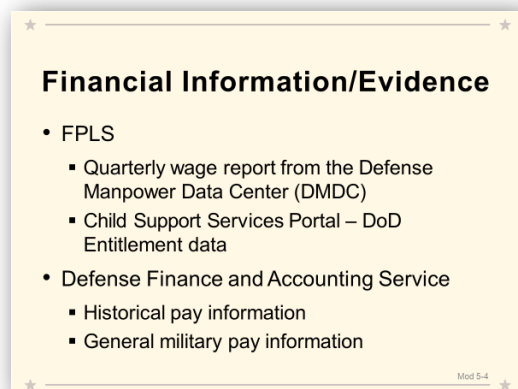
1. Prior to beginning section 5.3, display ***PowerPoint Slide 5-4: Financial Information/Evidence***.
2. Emphasize that child support agencies should not seek verification of current wage information from the Defense Finance Accounting Service (DFAS), but rather through a request to the FPLS.
3. Discuss the type of wage information that's provided to the FPLS by the Defense Manpower Data Center (DMDC).

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### ***What you need to know***

Financial information is necessary for establishment, enforcement, and modification proceedings. For information on enforcement, see ***Module 7***.

## **5.3 FINANCIAL INFORMATION/EVIDENCE**



You can obtain a military member's pay and employment information through a request to the Federal Parent Locator Service (FPLS), which includes the National Directory of New Hires (NDNH) and the Federal Case Registry (FCR).

All newly hired (recruited) military personnel are reported within 20 days to the NDNH. In addition, DoD's Defense Manpower Data Center (DMDC) sends quarterly wage data to the NDNH. This includes wage information on the following: Active Duty, Reserve, and National Guard members; Military Retirees (quarterly wages only); and Coast Guardsmen (Active, Reserve, and Retired) (part of the Department of Homeland Security). Automatic matching occurs whenever new or updated information is added to the FCR or NDNH, and matches are sent to the relevant state child support agencies.

### **5.3.1 Information Included in the Quarterly Wage Report**

The quarterly wage (QW) report provided to the NDNH by DMDC includes all income received by a military service person. It does not break down income into specific types of pay.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display ***PowerPoint Slide 5-4: Financial Information/Evidence.***
2. Explain how caseworkers can use the Child Support Portal to get DoD entitlement data.
3. The Defense Finance and Accounting Service (DFAS) is the central agency for all financial matters within the Army, Air Force, Navy, and Marine Corps. The Coast Guard maintains its own financial information. DFAS and the Coast Guard can provide historical pay information for their members.

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### ***What you need to know***

1. In addition to required interfaces with FPLS, FCR, and NDNH, state agencies may elect to interface their systems with the OCSS Child Support Portal, which provides additional functionality. The Portal provides access to several federal programs. One of the most helpful interfaces for working military cases is the Portal's interface with DoD Entitlements, which provides information such as base salary, allotments, and bonuses. Using the application reduces the need to submit a FOIA request, a subpoena, or a Request for Production of Documents if a member refuses to provide a copy of a current and complete LES.
2. Not all caseworkers have access to DoD Entitlement information. State child support agencies must decide to connect to the Portal as well as which applications they want to access.

Quarterly Wage reports on retired military (persons who were formerly on Active or Reserve/National Guard Duty) and retired Coast Guard members are also provided to the FPLS. These records are coded "P" (for pension).

The Department of Veterans Affairs also provides relevant income information. It reports to the FPLS the type of benefit that a veteran is receiving, indicating whether it is 1) compensation and retirement, or 2) education.

### **5.3.2 FPLS External Requests for Income Information**

In 2010, the Office of Child Support Services (OCSS) implemented the Child Support Portal. The Portal is a secured internet gateway that provides access to FPLS data and other services for state child support programs. One of the applications available to states is the DoD Entitlement Data application. While some states can use the gross wage amounts provided by the NDNH, other states require a breakdown of a military member's pay to meet their support guidelines. This application provides a monthly breakdown of base pay, bonuses, and other financial allowances and entitlements for members of the military.

The information is similar to that provided on a Leave and Earnings Statement (LES). For a sample report, see OCSS's DoD Entitlement Application Navigation Guide. The person must be an active military service member or a Reservist; this match does not provide information on retired service members. DoD military retiree income is available through the Portal Locate application. A caseworker cannot use the DoD Entitlement Data application to request income information on alleged fathers; DoD will only provide information on those persons who have a legal responsibility to the child – those members for whom parental responsibility has been established.

### **5.3.3 Requests for Historical Payroll Data of Military Personnel**

The Department of Defense and the Coast Guard will not respond to requests for verification of wages of active and Reserve/National Guard military personnel because, as noted above, this information is already provided to the FPLS

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence**.
2. Active service members and Reserve/Guard members can get their LES for the past 12 months from myPay on the DFAS website.
3. For an agency to receive historical pay information from DFAS, the agency must send DFAS either a FOIA request or a subpoena signed by a judge. The Coast Guard will only respond to a written FOIA request.
4. Information about submission of a FOIA request is on the DFAS website at <https://www.dfas.mil/foia/submitfoiarequest/> (last visited Jan. 23, 2021). Review the main criteria for a request.
5. Point out that neither DFAS nor the Coast Guard will accept computer-generated requests for historical wage information.

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### *What you need to know*

Information about FOIA is provided in Section 5.5 of this module.

through quarterly wage reporting to the NDNH. However, there is an exception for historical payroll data.

The Defense Finance and Accounting Service (DFAS) keeps military pay and allowance information for individual military members within the Air Force, Army, Marines, and the Navy, as well as for DoD civilians and retirees. The Coast Guard maintains its own pay and allowance information. Active service members and Reserve/Guard members can obtain their LES for the past 12 months from myPay on the DFAS website. Child support agencies may also ask DFAS and the Coast Guard for information regarding a military person's pay history (records more than one year old) by sending a written Freedom of Information Act (FOIA) request. You may mail or fax the FOIA request on your agency's letterhead stationery. DFAS will also respond to a request for a noncustodial parent's LES if a subpoena is submitted to DFAS. The subpoena must be signed by a state or federal judge before it will be accepted for processing.

The request for historical payroll data must comply with the following requirements:

- Include the name and SSN of the military member.
- Provide a detailed description of the documents you are seeking. Include a specific timeframe.
- State either the agency's willingness to pay all FOIA search and copy fees or the maximum the agency is willing to pay. If the request does not specify a maximum amount, DFAS will assume the requester will pay up to \$250. If the estimated fees exceed \$250, DFAS will contact the agency prior to performing a search. It is appropriate for the child support agency to request a fee waiver because it is a government agency providing a statutorily required service of establishing and enforcing child support.
- Include the agency's complete postal mailing address, phone number, and an email address for communication.
- A signature is not required, but the caseworker's name or the name of a higher authority must appear on the request. DFAS and the Coast Guard will not accept computer-generated requests for pay histories. All computer-generated requests will be destroyed.

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display **PowerPoint Slide 5-4: Financial Information/Evidence**.
  2. Review the appropriate place to send requests for historical pay information.
  3. To avoid delays, the Coast Guard encourages the electronic submission of FOIA requests by using the Public Access Link or emailing the appropriate office. See <https://www.dhs.gov/foia-contact-information> (last visited Jan. 24, 2021).
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### *What you need to know*



Send the requests to the pay site listed below, depending on the branch of service.

***Army & Air Force (Active/Reserve/Guard)***

DFAS Corporate Communications  
FOIA/PA Adherence Division  
8899 East 56th Street  
Indianapolis, IN 46249-0150  
Fax: (317) 275-0391 (faxed requests accepted)  
Email: [dfas.foia@mail.mil](mailto:dfas.foia@mail.mil)  
Online: <https://www.foia.gov>

***Navy & Marine Corps (Active/Reserve/Guard)***

DFAS  
FOIA/PA Adherence Division  
1240 East 9th Street, Room 1429  
Cleveland, OH 44199-8006  
Fax: (317) 275-0391 (faxed requests accepted)

According to the DFAS website, it will provide a response within 20 business days from the date it receives the FOIA request. Delays such as legal review/clarification or document retrieval from external records' centers may extend this time.

Like DFAS, the Coast Guard has a FOIA website. It encourages the electronic submission of FOIA requests using the Public Access Link or emailing the appropriate office. For historical pay records, the appropriate office is:

***Coast Guard***

Commandant (CG-611)  
ATTN FOIA Officer  
US Coast Guard Stop 7710  
2703 Martin Luther King Jr. Ave., SE  
Washington, DC 20593-7710  
Phone: (202) 475-3522  
Fax: (202) 372-8413  
Email: [efoia@uscg.mil](mailto:efoia@uscg.mil).

## **TRAINING NOTES**

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### ***What you need to say/do***

1. General information on military pay and allowances is online at the DFAS website. Explanations of the various pay and entitlements, as well as the current DoD pay scale, are also located at the website.
2. Direct the participants to **Module 1** for explanations concerning pay grade and rank.
3. Display **PowerPoint Slide 5-5: Medical Information/Evidence**.
4. Explain the relationship between the Defense Eligibility Enrollment Reporting System (DEERS) and TRICARE.
5. Describe the electronic FCR/DEERS data match.

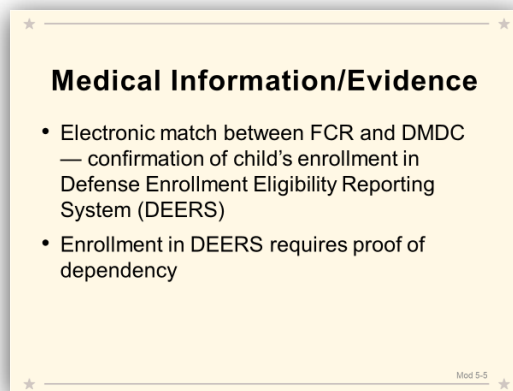
### ***What you need to know***

This medical data match only includes active duty military and retirees.

### **5.3.4 General Military Pay Information**

General military pay information is available on the DFAS website at <https://www.dfas.mil/> and is also covered in **Module 6**. Information on military pay and allowance amounts is available to the public. Data on current pay entitlements, housing allowances, special pay (such as hazardous duty and language proficiency), cost of living adjustments, drill pay for Reservists, and other amounts are available on the DFAS website, as well as numerous other websites and publications. The obvious problem is determining the entitlements to a particular military member. Knowing the pay entry basic date (or the number of years of service), pay grade, duty location, military occupational specialty, and other particular aspects of a military member's service is necessary for an exact determination of military pay for a specific individual. However, these pay resources can be helpful in making estimates and getting a general idea of the pay and allowances being received.

## **5.4 MEDICAL INFORMATION/EVIDENCE**



The Defense Enrollment and Eligibility Reporting System (DEERS) is the database used to confirm eligibility for various military benefits including health care. It maintains information on the military service person, known as the “sponsor,” and the sponsor’s dependents. In order to receive medical care from the military through TRICARE, an individual must be enrolled in DEERS.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Continue to display ***PowerPoint Slide 5-5: Medical Information/Evidence.***
  2. Explain how a custodial parent can determine if a child is enrolled in DEERS.
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### ***What you need to know***

For more information about enrolling a child in DEERS and enforcing medical support, see ***Module 6: Military Establishment Procedures*** and ***Module 7: Military Enforcement Procedures.***

The FCR/DEERS medical match began in December 2005. The DMDC matches the FCR participants against its records and reports back the results. The FCR transmits the match information to the states every quarter. The electronic match identifies children already enrolled in DEERS and eligible for TRICARE medical benefits, children eligible to be enrolled in TRICARE because of a parent's service in the military, or children previously removed from TRICARE. The match only includes active duty or retired military members, not Reservists.

Because of this quarterly FCR/DEERS match, a child support worker should not send the National Medical Support Notice to the DMDC.

A custodial parent (not a child support worker) may confirm a child's TRICARE coverage in DEERS by visiting <https://milconnect.dmdc.osd.mil/milconnect/> or calling the TRICARE regional or overseas contractor. The parent can also call the DMDC/DEERS Support Office (DSO) at (800) 538-9552.

### TRAINING NOTES

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#### *What you need to say/do*

1. In discussing other ways to get financial and medical information, point out that there are federal laws that may prevent the release of information.
2. Display **PowerPoint Slide 5-6: The Privacy Act and FOIA**.
3. Tell participants that FOIA is a disclosure statute, requiring the release of material unless an exemption applies. The Privacy Act, 5 USC 552a, prohibits disclosure of personal information without an individual's consent. Under FOIA, a federal agency **must disclose** information unless one of the seven exemptions applies. Under the Privacy Act, an agency **cannot disclose** personal information unless one of the 12 exceptions applies. The Privacy Act and FOIA are meant to be consistent with one another.

#### *What you need to know*

Information often needed from the military in a child support or parentage action is generally exempt from disclosure because it's personal information protected by the Privacy Act. Exemption 6 under FOIA is most often cited for non-disclosure of personal information about military members. Exemption 6 permits withholding all information about individuals in personnel, medical, and similar files if disclosure would constitute a clearly unwarranted invasion of personal privacy. Exemption 1 relates to information that is classified in the interest of national security. This exemption can relate to information on military members who are in classified units, where release of information about unit members is prohibited.

## 5.5 OTHER AVENUES FOR OBTAINING FINANCIAL/MEDICAL INFORMATION

Other military sources may also provide pay and medical information. For example, voluntary cooperation from the military member is always an option. The military member's commander may also be a source of information if the member has authorized the release beyond the usual DoD information obtained from a system of records.

The military may release information that's kept in a system of records about one of its members under limited circumstances. The Privacy Act precludes the release of most personal information about a military member to third parties. In addition, matters of personnel and operational security may preclude the release of not only information about a specific individual, but also other information, such as addresses, locations, and schedules of military units and their members.

Unlike the Privacy Act, the Freedom of Information Act (FOIA) is a disclosure statute. It requires the release of information that is kept in a system of records by the government unless it falls under one of the seven exemptions from disclosure. Personal information that is usually required for child support or paternity actions falls within those exemptions and therefore generally cannot be disclosed under FOIA. There are, however, exceptions under the Privacy Act that permit the government to release information that can be useful to establish and collect child support. When child support personnel want to get information released under FOIA, the most commonly used exception they cite is the one that permits disclosure for law enforcement purposes. The sample FOIA letter in **Module 2** provides a template for such a request. Another relevant exception under the Privacy Act permits disclosure of personal information if the disclosure is pursuant to a court order.

### The Privacy Act and FOIA

- The Privacy Act: prevents release of information
- Freedom of Information Act (FOIA)
  - FOIA is a disclosure statute
  - Exemptions prevent release
  - Exceptions overcome the exemptions
    - Example: law enforcement purposes

Mod 5-6

## **TRAINING NOTES**

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### ***What you need to say/do***

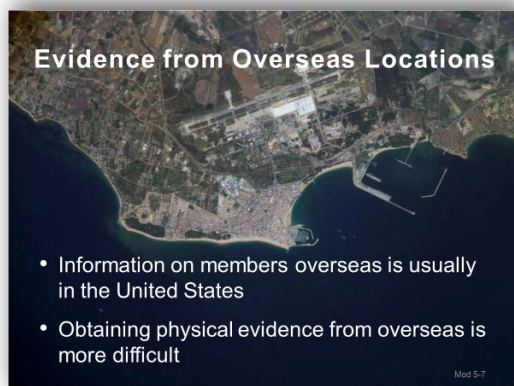
1. Display ***PowerPoint Slide 5-7: Evidence from Overseas Locations.***
2. Explain that it's more difficult to obtain evidence that's physically located overseas than in the United States. Fortunately, they can find most information on overseas military members through resources in the United States like DFAS.
3. This section discusses how to obtain evidence under the Hague Child Support Convention, Hague Evidence Convention, federal child support reciprocal arrangements, and letters rogatory. Keep in mind that a Status of Forces Agreement (SOFA) between the United States and host country may impact the ability of a foreign official to help obtain evidence from a service member under one of those treaties and reciprocal arrangements.

### ***What you need to know***

1. 5 USC 552a(b)(7) provides an exception to exemption 6 dealing with personal information. It permits disclosure for law enforcement purposes. Subsection (b)(7) provides disclosure to an instrumentality of any governmental jurisdiction within the United States for a civil or criminal law enforcement activity if law authorizes the activity. The head of the requesting agency must make the written request to the agency that maintains the record. The request must specify the particular record requested and the law enforcement purpose for the request.
2. 5 USC 552(b)(11) also permits disclosure pursuant to a court order.
3. As noted in ***Module 3***, a SOFA is an agreement between a host country and a foreign nation that's stationing forces in that country. The SOFA attempts to clarify how the foreign military is allowed to operate in the host country and addresses several matters, including legal issues like civil and criminal jurisdiction over the military bases. Some SOFAs address service of process on military members located in the country. How detailed the SOFA is depends in large part on how long the foreign military is expected to be in the host country. Each SOFA is negotiated separately, although the United States has a multilateral SOFA with NATO members. The United States currently has more than 90 SOFAs.



## **5.6 EVIDENCE FROM OVERSEAS LOCATIONS**



Obtaining evidence from the military on members located in overseas locations is a more difficult task. The previous sections of this module are applicable to obtaining information from members stationed overseas. Remember you can get income and financial information for an overseas military member through the same means as for a member stationed stateside. DFAS is the processing center for all members of the Army, Air Force, Navy, and Marines, regardless of location. Also, commanders' regulatory obligations are the same no matter where the member is located.

As with service of process, there are also treaties and federal reciprocal arrangements with foreign countries that may be useful in obtaining other types of evidence in cases involving military members in overseas locations. However, keep in mind that a Status of Forces Agreement (SOFA) between the United States and host country may impact the ability of a foreign official to help obtain evidence from a service member under one of the following treaties and reciprocal arrangements.

## **TRAINING NOTES**

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### ***What you need to say/do***

1. Display ***PowerPoint Slide 5-8: The Hague Child Support Convention.***
  2. Provide background about the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Child Support Convention).
  3. Explain the role of a central authority under the Hague Child Support Convention in relation to evidence in a child support action.
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### ***What you need to know***

1. The U.S. central authority for the Hague Child Support Convention is the Secretary of HHS who has delegated the responsibilities of the central authority to OCSS. HHS has formally designated state IV-D agencies as public bodies to provide the majority of specific central authority functions under Article 6, which are case processing functions.
2. As of February 1, 2021, the treaty is in force between the United States and 38 countries. For more information, see [www.acf.hhs.gov/css/partners/international](http://www.acf.hhs.gov/css/partners/international).

### 5.6.1 The Hague Child Support Convention

Negotiations on the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Child Support Convention) began in 2003 and were completed in 2007. The United States was the first country to sign the treaty, on November 23, 2007, indicating its commitment to work toward ratification in the United States. On September 7, 2016, the United States deposited its instrument of ratification with the Kingdom of the Netherlands, depository for the Hague Child Support Convention. The Convention went into effect in the United States on January 1, 2017.



The mandatory scope of the Convention includes the establishment, enforcement, and modification of child support obligations. Each Convention country must designate a central authority that is responsible for transmitting and receiving applications under the treaty. In relation to such applications, Article 6 of the Convention requires the central authority to provide certain functions, including:

- Help in locating the debtor or the creditor;
- Help in obtaining relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;
- Facilitation in the obtaining of documentary or other evidence; and
- Assistance in establishing parentage where necessary for the recovery of maintenance (this may include assistance with genetic testing).

If the military member has foreign bank accounts, or other assets in a Convention country that are not located on the U.S. military installation, you can request assistance from that country's central authority in obtaining information about the assets if needed to establish or enforce a child support order. The central authority can also help obtain documentary evidence, such as a birth certificate.

## **TRAINING NOTES**

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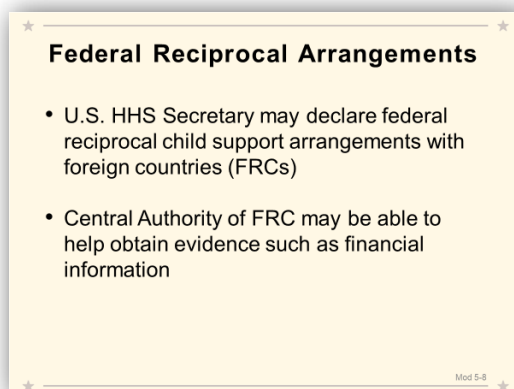
### ***What you need to say/do***

1. Display ***PowerPoint Slide 5-9: Federal Reciprocal Arrangements.***
2. Discuss how caseworkers can request help from foreign reciprocating countries in obtaining evidence needed to establish, enforce, or modify a child support order.

### ***What you need to know***

1. 42 USC 659a(b) (2018) authorizes the Secretary of Health and Human Services, in consultation with the Department of State, to declare a foreign jurisdiction to be reciprocal if that country has procedures to establish paternity and to establish and enforce support obligations. The country must also have a central authority to accept and send cases, and must agree to provide its services without cost to the U.S. obligee. The Department of State issues a public notice in the Federal Register regarding progress with federal reciprocal child support agreements. The last notice was in 2014. There has been no negotiation of federal bilateral arrangements since the U.S. ratification of the Hague Child Support Convention.
2. The FRCs are Australia, Canada, El Salvador, Israel, and Switzerland. For information about assistance an FRC can provide, see <https://www.acf.hhs.gov/css/partners/international..>

## **5.6.2 Federal Reciprocal Arrangements**



In 1996, federal legislation authorized the Department of State and the Department of Health and Human Services to establish and administer reciprocal child support agreements with other countries. The countries with which the United States has entered into bilateral arrangements are called “foreign reciprocating countries” (FRCs). As of February 1, 2021, the United States has federal reciprocal child support arrangements with all but one of the Canadian provinces and territories and with four countries that are not also Hague Child Support Convention countries: Australia, El Salvador, Israel, and Switzerland. Each FRC must designate a central authority to facilitate the processing of child support cases involving its residents and United States residents. If you need help obtaining financial information or documentary evidence, you may be able to seek assistance from the central authority in that country. OCSS has developed numerous Caseworker’s Guides for specific FRCs that provide more information.

## TRAINING NOTES

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### ***What you need to say/do***

1. Display ***PowerPoint Slide 5-10: The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters.***
2. The United States is a signatory to the Hague Evidence Convention, as are most countries where U.S. service members are stationed.
3. Case law is clear that, in the United States, the Hague Evidence Convention is not the exclusive means to facilitate production of documents or other evidence in an international case. See *Societe Nationale Industrielle Aerospatiale v. U.S.D.Ct. for S.D. of Iowa*, 482 U.S. 522 (1987). However, other countries in which a service member is stationed may require the exclusive use of the Hague Evidence Convention.

### ***What you need to know***

1. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention) is another method for obtaining evidence from military members overseas. The procedures are similar to obtaining service of process overseas, including letters of request directed to a country's Central Authority.
2. Keep in mind that many of the signatory countries to the Hague Evidence Convention have added certain reservations (called "Declarations") to their compliance with the Convention.
3. The Hague Evidence Convention, along with each signatory country's Declarations, is available on the Hague Conference website at <https://www.hcch.net/en/instruments/conventions/specialised-sections/evidence>. Much of the material on the Hague Evidence Convention may not be relevant to caseworkers in their day-to-day activities. Senior staff and attorneys are a more likely audience for in-depth discussions of the Hague Evidence Convention. Evaluate the needs of the participants and tailor your discussion accordingly.

### **5.6.3 Obtaining Evidence through the Hague Evidence Convention**

Another treaty that may apply in cases involving military members in overseas locations is the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Hague Evidence Convention). As of August 2023, 66 countries are contracting parties to this convention, including the United States and most countries in which military members are stationed.



The purpose of The Hague Evidence Convention is to facilitate the production of evidence for use in foreign courts in an effort to reconcile different, often conflicting, discovery procedures in civil and common law countries. The Hague Evidence Convention requires the designation of central authorities in each country to receive and handle requests for evidence. The central authorities for the Hague Evidence Convention differ from the central authorities under the Hague Child Support Convention or federal reciprocal child support arrangements.

Case law is clear that in the United States, the Hague Evidence Convention is not the exclusive means to facilitate production of documents or other evidence in an international case. However, the law in other countries may require the exclusive use of the Hague Evidence Convention in such cases. This process can be cumbersome and lengthy. If an issue regarding application of the Hague Evidence Convention arises, you should contact the requesting central authority to discuss the issue and determine the best action.

The Hague Evidence Convention applies to civil child support proceedings but cannot be used in a criminal nonsupport action. The Convention provides procedures for deposing voluntary witnesses and for obtaining non-testimonial evidence. In addition, Letters of Request under the Convention may be used to

## TRAINING NOTES

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### *What you need to say/do*

1. Continue to display ***PowerPoint Slide 5-10: The Hague Convention on Taking Evidence Abroad in Civil or Commercial Matters.***
2. Note that free services under the Hague Child Support Convention or a federal reciprocal child support arrangement may make it unnecessary to rely upon the more cumbersome process under the Hague Evidence Convention.

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### *What you need to know*



obtain evidence from a noncooperative military member stationed in a Hague Evidence country where compliance is likely only if a foreign court gets involved. A IV-D attorney should evaluate the appropriateness of a Letter of Request, including the impact of any SOFA on the foreign court's involvement. To use a Letter of Request, the attorney should consider the following checklist:

1. The attorney should prepare a brief motion to their local court requesting that the court issue a Letter of Request. Attached to the motion should be the Letter of Request containing the questions the agency wants the military member to answer or a list of the documents the agency wants the member to produce.
2. There is no required form for the Letter of Request, although the Convention details what information the Letter must include. It is recommended that attorneys use the model Letter of Request found after the text of the Convention.
3. The Practical Handbook on the Operation of the Evidence Convention, accessible on the website of the Hague Conference on Private International Law, provides information about preparing a Letter of Request.
4. The attorney should not attach any documents in support of the motion. All relevant information should be in the Letter of Request. No cover letter is required.
5. Only a judicial authority can issue a Letter of Request.
6. If the foreign country where the member is located so requires, there must be certified translations of the documents.
7. The original Letter of Request and one true copy should be transmitted by international airmail to the designated central authority for the foreign country. Contact information for the central authorities designated under the Convention are at [http://www.hcch.net/index\\_en.php?act=conventions.authorities&cid=82](http://www.hcch.net/index_en.php?act=conventions.authorities&cid=82).
8. Although most signatory countries will accept a Letter of Request in either English or French, it's also a good idea to include a translation into the language of the country where you are sending the Letter of Request.

Upon receipt, the country's central authority is required to "expeditiously" send the Letter of Request to the appropriate local court having jurisdiction. The Letter of

## TRAINER NOTES

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### *What you need to say/do:*

1. Before discussing Letters Rogatory, display **PowerPoint Slide 5-11: Letters Rogatory**.
  2. Tell participants that when issues arise concerning obtaining evidence from overseas locations, the Department of State website is an extremely valuable source of information at <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/intl-child-support.html> (last visited Jan. 24, 2021).
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### *What you need to know:*

U.S. courts have inherent authority to issue Letters Rogatory requesting foreign judicial assistance.

Request can ask that answers be given under oath or sworn and that a transcript be taken. However, the foreign court does not have to comply with such requests if the procedure is “incompatible” with the country’s own laws or is “impossible” to perform.

Written answers to the questions or the requested documents will be sent back to the U.S. court that issued the Letter of Request. The foreign country cannot charge any fees, except for special procedures, experts, and interpreters. If you do not get a response after a few months, you should contact the Central Authority for a status report.

Note that free services under a federal reciprocal child support arrangement may include that country’s assistance with requests for evidence, making it unnecessary to rely on the Hague Evidence Convention.

#### **5.6.4 Obtaining Evidence Outside Treaties and Foreign Reciprocal Arrangements**

In countries that are not parties to the Hague Child Support Convention, Hague Evidence Convention, or federal bilateral arrangements with the United States, the only way to force an unwilling military member stationed abroad to appear for a deposition or to produce documents is through the courts of that country. While this may be accomplished in some countries by obtaining local counsel to petition the court directly, in other instances letters rogatory are required. Letters Rogatory are formal requests for judicial assistance from a court in one country to a court in another country transmitted via diplomatic channels. The foreign court may take testimony without placing the member under oath. The response returned to the U.S. court may be a summary of the military member’s answers rather than a verbatim transcript:



## TRAINER NOTES

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### *What you need to say/do:*

1. For subsection 5.7 of this Module, display **PowerPoint Slide 5-12: Exercise Scenarios**.
  2. Refer participants to **Handout 5-1: Review Exercises** in the Appendix. Divide participants into groups of four or five. Allow about 10 minutes to read and discuss the scenarios and solutions among themselves. At the end of 10 minutes, lead an interactive discussion of the scenarios and possible answers.
  3. Encourage participants to ask questions concerning the material presented in the module.
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### *What you need to know:*

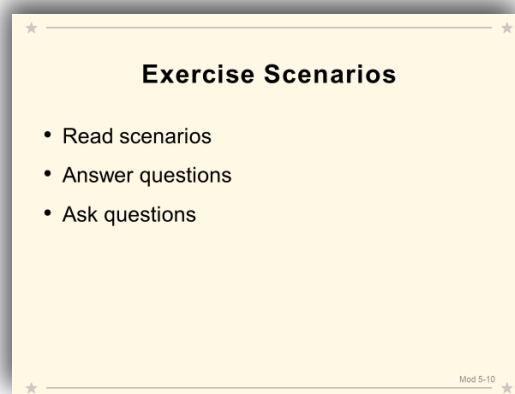
Letters rogatory can be time consuming and cumbersome so they should be an alternative for seeking evidence only when other methods have been unsuccessful. Another drawback is that the Department of State cannot waive its fee for the transmission of letters rogatory in support cases.

If you intend to use a letter rogatory to seek evidence from a military member stationed overseas, the Department of State is the best source of information. You can go to <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/intl-child-support.html> for information about obtaining evidence from abroad. You can find information about preparing letters rogatory at <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-asst/obtaining-evidence/Preparation-Letters-Rogatory.html>.

## **5.7 EXERCISES**

Refer to ***Handout 5-1: Review***

***Exercises*** in the Appendix. Identify the issues and answer the questions at the end of each scenario. The instructor will facilitate a discussion of the scenarios.



## TRAINER NOTES

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### *What you need to say/do:*

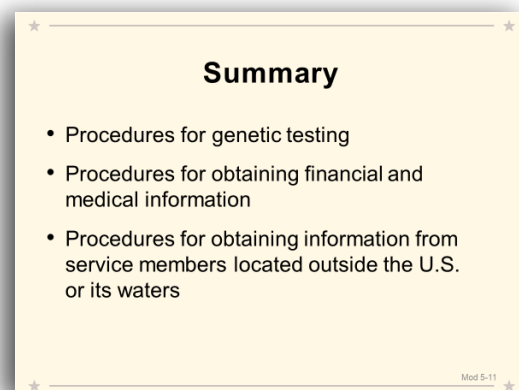
1. Display *PowerPoint Slide 5-13: Summary*.
  2. Preview the topics that will be discussed in *Module 6*.
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### *What you need to know:*

## 5.8 SUMMARY OF MODULE 5

In this module, we discussed:

- Procedures for genetic testing in paternity cases.
- Procedures for obtaining financial records and information from the FPLS and DFAS.
- Procedures for obtaining medical enrollment information from the FPLS and DEERS in order to enforce a medical support obligation.
- Procedures for obtaining information or evidence from service members located outside the United States or its waters, including the Hague Child Support Convention, federal reciprocal child support arrangements, and the Hague Evidence Convention.



## 5.9 PREVIEW OF MODULE 6

In the next module, we will discuss the following topics:

- Federal regulations governing paternity and order establishment.
- Military policies and rules governing the chain of command's involvement in a IV-D paternity and support order establishment case.
- Establishment of an appropriate child support obligation based on the complete earnings information for an individual in the military.
- Interpretation of a military *Leave and Earnings Statement*.

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