

**Child Custody: SCRA can assist deployed servicemembers caught up in child custody cases, but be careful of misusing the law.**

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4.3 – Right to Continuance and Protection Against Default Judgment

5.2 – Military Service and Child Matters

The scenario: A Navy Reserve lieutenant heads out for a six-month deployment to Iraq. She told her ex-husband, who has custody of their daughter, about her mobilization. After she ships out, he files a motion for an increase in child support with a hearing date set for just four weeks hence. “How am I supposed to show up?” the lieutenant wonders. “He will have a field day, and I’ll be defenseless. I’m already paying \$900 a month for our daughter, but he will probably be asking for a huge increase and private school tuition. And I don’t even have a lawyer back home to help me.”

This Citizen Warrior needs a good dose of the Servicemembers Civil Relief Act (SCRA). Her situation is exactly why Congress passed the act: to help servicemembers defend their cases when they can’t appear in court because of military duties.

SCRA became law in December 2003 as successor to the Soldiers’ and Sailors’ Civil Relief Act. Among its potent protections is the “stay of proceedings” section, which sets rules for the court about suspending all or part of a civil case when one of the parties’ military duties hinders his or her ability to respond in court.

SCRA is particularly helpful in family law matters. It can be used to request a stay when a person being sued for divorce has a legal defense that needs to be proved to the court. It’s also available to defendants in alimony cases. Whether the defense is inability to pay or fault on the part of the spouse, that person needs to have his or her day in court.

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<sup>1</sup>I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

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It is not necessary to have a lawyer when you request a stay under SCRA. The act states that the court, on its own motion, may stay the proceedings. It also says that the court “shall, upon application by the servicemember,” stay the action for at least 90 days when certain conditions are met. This wording does not mean a lawyer must file a motion, although that is permissible. Rather, it is intended to be broad enough to allow the request to come from the servicemember or a legal assistance attorney at the nearby Judge Advocate General’s (JAG) office. It can be done through letter, e-mail, postcard, or even telephone call. If done through written motion, the servicemember would need to sign it, as it’s unlikely that the legal assistance attorney would be licensed to practice law in that jurisdiction. The communication can be sent to the judge, the clerk of court, or even to opposing counsel with a request that, as an officer of the court, he or she bring the request to the court’s attention.

The stay request must consist of two things. The first is a letter or other communication that states the manner in which current military duties materially affect the member’s ability to

appear and gives a date when he or she will be available. The second is a letter or other communication from the servicemember’s commanding officer stating that the member’s current military duty prevents appearance and military leave is not authorized for the servicemember. These two communications may be consolidated into one if it is from the member’s commander.

An additional stay may be granted, so that the servicemember’s protections don’t run out after the initial stay of at least 90 days. An application for an additional stay may be made at the time of the original request or later. If the additional stay is denied, then the judge must appoint an attorney to represent the servicemember in the action. SCRA extends protections to Reservists and to National Guard members called to active duty for at least 30 days pursuant to a contingency mission specified by the president or the secretary of defense.

It’s equally important to know when not to use the SCRA. It isn’t a good idea to use it to obtain a stay of proceedings when the postponement will merely delay the inevitable. If you’re paying \$700 in child support and you’re eventually going to be nailed for \$900 a month child support, then why not bite the bullet now and get it over with? Otherwise, you’ll have to return to court when your deployment ends to face the judge. And you’ll likely be told that you’re now required to pay \$900 a month, plus \$100 additional each month to work off that retroactive amount that built up while you were only paying \$700 a month.

There are several other ways postponement under the SCRA can hurt a servicemember. In some states arrearages accrue interest until they are paid in full. That can get expensive over time. And if there is an attorney on the other side, you can bet he or she will be asking for an award of attorney fees against you for prolonging the litigation. There’s nothing in SCRA to prevent either from happening.

The act says that before the court may take a default judgment against you, it must appoint an attorney to represent you. There’s no actual prohibition on default judgments. If a default

judgment is entered against you, the best you can do is file a motion to vacate the judgment. That requires you to prove you had a meritorious or legal defense at the time of the default judgment: for example, if you could prove that you are not the child's parent, or that you yourself have custody, or that the child is dead or over the age of majority.

**In summary, remember these points:**

- Don't let child support issues go to court. Litigation should be your last resort. More than 90 percent of cases in family law are settled, not tried. Many state court judges are not familiar with military pay and allowances or SCRA.
- Don't use the motion for a stay of proceedings under SCRA if it won't help you, as with delaying the inevitable, or it will hurt you, as with retroactive payments, interest, and attorney fees.
- Remember the motto, "Avoid that snag, see a JAG." Visit your local judge advocate and see if he or she can help you work out a settlement that will be fair for all concerned.

**Update: December 2015**

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.<sup>3</sup> The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written. For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.<sup>4</sup>

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<sup>3</sup>*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra> (last visited Mar. 10, 2022).

<sup>4</sup>Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).