

TAKE-1
COLLECTING SUPPORT-GARNISHMENT
AND INVOLUNTARY ALLOTMENT
XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



COLLECTING SUPPORT: GARNISHMENT AND INVOLUNTARY ALLOTMENT

1. Q. I AM OWED ALIMONY AND CHILD SUPPORT BY A SOLDIER AND I HAVE A COURT ORDER OF SUPPORT. CAN I GET THIS WITHHELD FROM HIS PAY?

A. Yes. There are ways to do this: garnishment and involuntary allotment.

2. Q. WHAT IS GARNISHMENT?

A. Garnishment is a statutory proceeding whereby a person's property or money (usually a bank account or paycheck) is taken and applied to the payment of the former's debt. The normal situation involves the soldier's paycheck at the Defense Finance and Accounting Service (DFAS).

3. Q. WHAT TYPES OF PAY CAN BE GARNISHED?

A. All pay after taxes is garnishable. Such pay includes basic pay, hazardous duty pay, severance pay, sick pay, cash awards, pensions, retirement, etc. However, allowances such as BAQ, BAS and Family Separation Allowances cannot be garnished.

4. Q. WHAT IS GARNISHMENT USED TO ENFORCE?

A. Garnishment is used to enforce a soldier's obligation to pay child support and/or alimony.

5. Q. CAN I USE GARNISHMENT PROCEEDINGS IN NORTH CAROLINA TO COLLECT UNPAID ALIMONY AND/OR CHILD SUPPORT?

A. Yes. In North Carolina, garnishment can be used to enforce an individual's obligation to pay child support or alimony. North Carolina also allows assignment of wages for these enforcement purposes.

6. Q. HOW DO I START A GARNISHMENT PROCEEDING FOR CHILD SUPPORT?

A. Let's use North Carolina as an example. To start a garnishment proceeding, you must first have a court order requiring the soldier to pay support. Secondly, you must go to court to obtain a garnishment order from the local court. Once the garnishment order is obtained from the local court it must be served on DFAS.

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7. Q. WILL I NEED MORE INFORMATION TO ENSURE PROCESSING BY THE GOVERNMENTAL AGENCY?

A. Yes. Sufficient identifying information must accompany the legal papers. The following identifying information about the individual owing child support (obligor) is requested if known: Full name, date of birth, Social Security number, component of the governmental entity for which the soldier works and the official duty station or worksite, and status of the obligor.

8. Q. HOW MUCH OF AN INDIVIDUAL'S PAY MAY THE COURT GARNISH?

A. There 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 is 55% under federal law. However, since North Carolina has a lower maximum garnishment limitation, it will apply in garnishment proceedings conducted against soldiers and federal employees. The maximum amount that can be garnished in North Carolina is 40% of a soldier's pay.

9. Q. IF MY PAY IS GARNISHED, HOW CAN I STOP THE GARNISHMENT?

A. The only way a soldier can stop the garnishment is to go to the court that issued it and file a motion to stop it or reduce it. Under North Carolina law, you will have to demonstrate a change of circumstances since the last court order that required the garnishment before the court can stop or reduce the garnishment.

10. Q. CAN THE ARMY WITHHOLD MONEY FROM A SOLDIER'S PAY CHECK WITHOUT GARNISHMENT?

A. Yes. This process is called Involuntary Allotment.

11. Q. WHEN CAN INVOLUNTARY ALLOTMENT BE USED?

A. Involuntary Allotment is a procedure that can be started when the soldier is behind in an amount equal to at least two months in court-ordered payments (alimony or child support). These payments must have been made payable through a state official, and normally they are payable through the Clerk of Superior Court.

12. Q. HOW CAN I START AN INVOLUNTARY ALLOTMENT?

A. To start an allotment, DFAS must receive notice from an authorized person, agent or court that the soldier is two months behind in the support payments, along with a certified copy of the court order. Notice can be given by a child support enforcement agency, department of social services or the court, and it must be in the form of a court order, letter, statement, certificate or other document issued by the agency, department or court.

13. Q. WHAT HAPPENS WHEN THE NOTICE AND COURT ORDER ARE FILED WITH DFAS?

A. DFAS must provide notice to the soldier and the soldier's commander. The commander sends the soldier to a judge advocate for consultation to discuss 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 takes effect 30 days after the notice is given.

14. Q. WHAT IS THE MAXIMUM AMOUNT OF THE ALLOTMENT?

A. The amount of the allotment shall be the amount necessary to comply with the order. If the order so provides, the amount may include averages as well as the amounts for current support. However, it shall not exceed 60% of the soldier's salary unless the soldier is more than 3 months behind, which in that case it can be 65%.

15. Q. CAN THE ALLOTMENT BE ADJUSTED OR DISCONTINUED?

A. Yes. An allotment can be adjusted or discontinued only upon notice from the authorized state official and not by the soldier.

16. Q. IF I HAVE OTHER QUESTIONS ABOUT INVOLUNTARY CHILD SUPPORT/ALIMONY, WHAT SHOULD I DO?

A. Please consult a legal assistance or private attorney of your choice as soon as possible. Your lawyer can answer the many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.