	Agency Name	Office of Family Support (OFS)			
	Chapter No./Name	09 – Support Enforcement Services (SES)			
	Part No./Name	M. Military			
	Section No./Name	M-600 * Servicemembers Civil Relief Act			
	Document No./Name	M-610 Provisions			
	Dates	Issue	May 1, 2006	Effective	May 1, 2006

[Servicemembers Civil Relief Act \(50 U.S.C. App. §§ 501-596\)](#)

Effective December 19, 2003, [Servicemembers Civil Relief Act, \(SCRA\)](#), ([Public Law 108-189](#)) replaced the [Soldiers' and Sailors' Civil Relief Act](#) by substantially modifying the former act. It provides every servicemember, especially deployed reservists called to active duty, with greater protections.

Servicemember means a member of the uniformed services (the armed forces) such as the Army, Navy, Air Force, Marine Corps, and Coast Guard; the commissioned corps of the National Oceanic and Atmospheric Administration; and the commissioned corps of the Public Health Service.

The benefits of the act must be invoked, and are not automatic (except, arguably in the right to re-open a default judgment).

M-610 PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS

A. This section applies to any civil action or proceeding in which the defendant does not make an appearance.

B. Affidavit Requirement

1. Plaintiff is to file an affidavit

The court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit stating:


- whether or not the defendant is in the military service and showing necessary facts to support the affidavit: or
- the plaintiff is unable to determine whether or not the defendant is in the military service.

2. Appointment of attorney to represent defendant in the military service

The court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in the military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court.

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If the defendant is later found to be in the military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal or setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State.

The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant.

4. Satisfaction of requirement for affidavit

The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

C. Penalty for Making or Using False Affidavit

A person who makes or uses an affidavit as permitted under Affidavit Requirement (or a statement, declaration, verification, or certificate as authorized under satisfaction of requirement for affidavit) knowing it to be false, shall be fined as provided in Title 18, United States Code, or imprisoned for not more than one year or both.

D Stay of Proceedings


The court shall grant a stay of proceedings for a minimum period of 90 days under this section upon application of counsel, or on the court's own motion, if the court determines that:

- There may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
- After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

E. Inapplicability when Stay of Proceedings When Servicemember has Notice Procedures Apply

A stay of proceedings under (D) shall not be controlled by procedures or requirements under Stay of Proceedings When Servicemember has Notice.

F. Protection of Stay of Proceedings When Servicemember has Notice

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If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under Stay of Proceedings When Servicemember has Notice.

G. Vacation or Setting Aside of Default Judgments

1. Authority for court to vacate or set aside judgment

If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for purpose of allowing the servicemember to defend the action if it appears that:

- a. the servicemember was materially affected by reason of that military service in making a defense to the action; and
- b. the servicemember has a meritorious or legal defense to the action or some part of it.

2. Time for filing application

An application under the section must be filed not later than 90 days after the date of the termination of or release from military service.

H. Protection of Bona Fide Purchaser

If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act [sections 501 to 596 of this Appendix], that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.


M-611 STAY OF PROCEEDINGS WHEN SERVICEMEMBER HAS NOTICE

This section applies to any civil action or proceeding in which the plaintiff or defendant at the time of filing an application:

- is in the military service or is within 90 days after termination of or release from the military service; and
- has received notice of the action or proceeding.

A. Stay of Proceedings

1. Authority for stay

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At any stage before final judgment in a civil action or proceeding in which a servicemember described above is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions of stay are met.

2. Conditions of stay

An application for a stay under authority for stay shall include the following:

- a. A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
- b. A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

B. Application not a waiver of defenses

An application for stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

C. Additional Stay


1. Application

A servicemember who is granted a stay of a civil action or stay of proceedings under Section A may apply for an additional stay based on continuing material affect of the military duty on the servicemember's ability to appear.

Such an application may be made by the servicemember at the time of the initial application under Section A. or when it appears that the servicemember is unavailable to prosecute or defend this action. The same information required under A. 2. shall be included in an application under C.

2. Appointment of counsel when additional stay refused.

If the court refuses to grant an additional stay of proceedings under paragraph 1., the court shall appoint counsel to represent the servicemember in the action or proceeding.

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M-612 FINES AND PENALTIES UNDER CONTRACTS

A. Prohibition of Penalties

When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

B. Reduction or Waiver of Fines and Penalties

If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if:

1. the servicemember was in the military service at the time the fine or penalty was incurred; and;
2. the ability of the servicemember to perform the obligation was materially affected by such military service.

M-613 DURATION AND TERM OF STAYS

A stay of action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as are considered reasonable by the court.**