

**THE COURTS AND
MILITARY FAMILIES:
URGENT ACTION
NEEDED**

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**DEMOGRAPHICS OF
INTEREST**

The Military Health System has among the most reliable data available to describe the breakdown of the 9-plus million individuals who are members of families impacted by military service – about 60% of whom are family members. In the four years since the

following table was generated, many more have joined this community – with the largest increase being in the category of "dependents" (which term has been replaced by "family member") -- thousands of whom are under 5 years of age. As of May 2010, 43% of the Active-Duty and Reserve Service Members had children, with about 142,000 Active-Duty/Guard/Reserve parents who were single custodians of minor children. An additional 40,000 Active-Duty families had dual-military parents. An estimated 220,000 children have a parent who is currently deployed; 75,000 have parents who have been deployed multiple times (Blue Star Families, 2010).

Beneficiary Type	Number
Active Duty	1,395,902
<i>Dependents of Active Duty</i>	<i>1,946,658</i>
<i>Dependent Survivors</i>	<i>540,496</i>
Guard/Reserve (medically eligible)	233,666
<i>Dependents of medically-eligible Guard/Reserve</i>	<i>358,051</i>
Inactive medically-eligible Guard/Reserve	47,463
<i>Dependents of medically eligible inactive Guard/Reserve</i>	<i>72,862</i>
Retirees	2,023,523
<i>Dependents of retirees</i>	<i>2,410,668</i>
<i>TOTAL Dependents</i>	<i>5,328,735</i>
TOTAL Service Members & Retirees	3,700,554

Source: Defense Enrollment Eligibility Reporting System (DEERS) Data, 7 March 2007

While these demographics have enormous implications for the Veterans Administration, TRICARE, schools, and child-care systems that serve this population, they also have a less obvious, but no less significant, impact on our Courts systems. Two areas in which that impact is being acutely felt are in Family Courts and Drug Courts:

- Family Courts primarily focus on child abuse and neglect (aka: dependency cases), delinquency (aka: juvenile cases), and divorce and separation litigation involving children (aka: custody cases).
- Drug Courts work with defendants whose problems with alcohol and/or other drugs have brought them into contact with the justice system.

Domestic violence issues overlap with both Courts on a daily basis and is an important consideration in eligibility for both settings since safety of family members and individual clients is of paramount concern.

FAMILY COURTS CHALLENGES

Sixteen to twenty percent (depending on Service branch) of married Service Members report plans to separate or divorce, a number that's been roughly steady since 2006 (Hosek, Kavanagh & Miller, 2006; Mental Health Advisory Team [MHAT], 2009). Though this number is less than the US national average, the child custody proceedings involved in such cases present disproportionate challenges to Family Courts ill-equipped to navigate the complexities of a military lifestyle. Due to frequent "permanent change of station" orders (PCS), high operational tempo and multiple deployments, and low housing capacity at installations, custodial spouses (usually the biological mother) often reside away from the Service Member with the result that jurisdictional issues emerge for courts.

Compared to working with the civilian population, Family Court judges and personnel report many barriers to services for parents, children and family-centered interventions which can impede positive case outcomes when such services are needed. Stigma regarding care, poor access, and concerns about family problems affecting military careers and positive discharge status – especially in cases involving drug/alcohol problems,

child abuse or neglect or domestic violence, are often magnified in families impacted by military service. Information on the effects of the long wars in Iraq and Afghanistan on rates of child maltreatment (abuse and neglect) in families impacted by military service are not currently in the literature, though studies from the early 2000s showed that maltreatment increased during combat deployments (while the Service Member was away) and that substance abuse increased the odds of child maltreatment, with substance abuse rates nearly tripling in child maltreatment incidents that also involved co-occurring spouse abuse (Gibbs et al., 2007; Gibbs et al., 2008). Although few studies are yet in the literature, researchers at the Michael E. DeBakey Veterans Affairs Medical Center found that male Operation Enduring Freedom (OEF)/Operation Iraqi Freedom (OIF) veterans with PTSD were approximately 1.9 to 3.1 times more likely to perpetrate aggression toward their female partners and 1.6 to 6 times more likely to report experiencing female perpetrated aggression than veterans from previous wars, leading the authors to suggest that partner aggression among Iraq and Afghanistan veterans with PTSD may be an important treatment consideration and target for prevention whenever it is identified (Teten et al., 2010).

CHILD CUSTODY ISSUES FOR FAMILIES IMPACTED BY MILITARY SERVICE

The challenges of providing adequate therapeutic services to military families in

which child maltreatment or spouse abuse is occurring are increasing as larger numbers of Service Members are redeploying (returning) and attempting to reintegrate into their communities. Likewise, Family Courts' role in military family child custody cases is also increasing as spouses who could not pursue divorces due to cost or distance are now filing and also engaging legal battles over child custody.

Despite the fact that there have been no cases in which a Service Member has permanently lost custody of their child(ren) solely because of their military service (deployments included), the issue has recently had a very high media profile with Oprah Winfrey and others engaging public interest. In the last couple years federal legislation has been introduced five times that would preempt state authority to place custody dispositions of deployed military parents under federal law oversight, with the most recent being the introduction of H.R. 4469 (2010). Currently, the necessary resources to manage such cases, including child protective service and court systems, social workers, guardian ad-litem, court-appointed special advocates, etc., are all located at the State level.

Until recently there has been unanimous professional opposition to any federal intrusion into child custody issues involving military members. This position was supported by extensive research in the Department of Defense (DOD) Report on Child Custody Litigation (2010) to the Senate Armed Services Committee and the House Armed Services Committee, as well

as the National Council of Juvenile and Family Court Judges' (NCJFCJ) resolution opposing federal legislation on military child custody (National Council of Juvenile and Family Court Judges [NCJFCJ], 2010). The American Bar Association Standing Committee on Legal Assistance for Military Personnel (ABA LAMP) and the National Center for Juvenile Justice (NCJJ) were also on record opposing such legislation. NCJJ simultaneously noted that 33 states have statutes that address the issue of special child custody and/or visitation problems when a military parent is called to active duty and prohibit all discrimination based on this fact. Ten other states proposed such legislation in 2010, but have not yet enacted it.

On February 15th, 2011 Secretary of Defense Robert Gates altered his previous opposition and stated his willingness to change DOD's position to "consider whether appropriate legislation can be crafted that provides Service members with a federal uniform standard of protection in cases where it is established that military service is the sole factor involved in a child custody decision involving a Service member." (A Uniform Standard of Protection is a federal law which applies to all US jurisdictions.) He also acknowledged that "this view is not widely shared within the legal community". Because no known case would fall within this criteria to date, the discussion may seem academic, however NCJFCJ's Resolution specifically opposed H.R.4469 or similar proposals that would "infringe on the sovereign authority of states to enact state laws and to make

custody determinations in the best interests of the child in child custody cases...” , “increase the likelihood of federal court oversight in child custody cases involving military service members/parents”, and “impose evidentiary burdens or dictate case outcomes in child custody cases involving military service members/parents...”.

DRUG COURTS: FAMILY AND VETERAN TREATMENT COURT SUCCESSES

As alluded to above, substance abuse, child abuse, and domestic violence have shown consistent associations in the literature with their management often being divided between Family Courts and Drug Courts within the US Justice system. The “Drug Court” movement evolved 20 years ago as a solution-based approach to the influx of drug abusing offenders before the Courts. Partly because of their initially controversial approach of using sanctions and incentives to promote compliance with drug treatment and recovery, Drug Courts have been exhaustively evaluated and been proven to be the world’s most successful, evidence-based, and cost-effective tool to deal with chemical dependency in the criminal justice system.

Because of its success in the criminal setting and the fact that the majority of dependency cases involve parental substance abuse as a primary factor, the Drug Court model was adapted to the Family Court setting -- known as both “Family Dependency Treatment Court”

(FDTC), or “Family Drug Court”. This drug court model takes place in a Dependency, Juvenile, or Family court docket where Judges, attorneys, child protection services, and treatment personnel unite with the goal of providing safe, nurturing, and permanent homes for children while simultaneously providing parents the necessary support and services to become drug and alcohol abstinent. FDTCs assist parents in regaining control of their lives and promote long-term stabilized recovery to enhance the possibility of family reunification within mandatory legal timeframes (Wheeler & Siegerist, 2003).

As Drug Courts around the country saw rising numbers of veterans in their programs, the Veterans Treatment Court model (VTC) was developed in 2008 with support from the US Substance Abuse and Mental Health Services Administration (SAMHSA) to offer specialized services to address the unique needs of veterans. Building upon the infrastructure that exists within Drug Courts, VTCs combine rigorous treatment and accountability for veterans facing incarceration. Within the last year, the number of VTCs has grown to 41 VTCs in twenty states as of August 2010, with at least ten states seeking to implement Veterans Treatment Courts in 2011 (National Association of Drug Court Professionals [NADCP], 2010).

Recognizing that many veterans are struggling with addiction, mental illness, physical ailments, and/or other co-occurring disorders, VTCs are hybrid Drug and Mental Health Courts that use veterans as mentors to help defendants engage in treatment and counseling, as

well as partner with local Veterans Affairs offices to ensure that participants receive proper benefits. They promote sobriety, recovery and stability through a coordinated response that involves cooperation and collaboration with the traditional partners found in Drug and Mental Health Courts, plus VA networks, including the volunteer VA mentors. Although in the early stages of implementation, preliminary outcomes from initial VTCs are promising.

WANTED: APPROPRIATE COURTS FOR FAMILIES AFFECTED BY MILITARY SERVICE

Although active duty and National Guard/Reservists are not typically eligible for VTCs, a few near large military installations have permitted active-duty participation with support from the Command as the determining factor. DOD is aware that alcohol and drug problems usually pre-date separation from the Services, with increasing concerns about safe management of medication to address chronic pain in this newest population of veterans. DOD data indicates that one in six (17%) veterans who served in OEF/OIF suffer from a substance abuse problem. Twenty percent have symptoms of a mental disorder or cognitive impairment, sometimes associated with post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI). An estimated 60% of the 140,000 veterans in prison have a substance abuse problem and of the 130,000 homeless veterans, 70% suffer

from a substance abuse and/or mental illness condition (NADCP, 2011).

These sobering statistics, coupled with cases mounting daily in their courtrooms, has led NCJFCJ leading Judges to establish an Ad-hoc Committee on Military Families. This Committee is charged with acting on the Council's commitment to "improving practice across all case types that come before the juvenile and family courts" while "acknowledging the unique nature of military service to the country and special demands that military deployment places upon service members and their families". (NCJFCJ, 2010). It is also leading them to consider whether a new hybrid of FDTCs and VTCs may be warranted to address the special needs of families impacted by military service – both those that are seen in civil courts while still in the military, and those that are before the bench as veterans of these unique OEF/OIF wars.

WHITE HOUSE CONCERNS

The recent White House report "Strengthening Our Military Families: Meeting America's Commitment" has helped to focus attention of elected leaders, communities, and opinion-leaders alike on key issues that are central to the well-being of our Service Members and their families. In its highly targeted report, the first of the White House's four points is to "Enhance the well-being and psychological health of the military family, followed by 1.1 By increasing behavioral health care services through prevention-based alternatives and integrating

community-based services; 1.5 By ensuring availability of critical substance abuse prevention, treatment, and recovery services for Veterans and military families; and 1.6 By making our court systems more responsive to the unique needs of Veterans and families.” (White House Report, 2011).

Although these critical issues have been brought to the forefront by our Commander in Chief, they now must be developed through research and further inquiry into best practices. Communities, treatment providers, and Courts around the US are increasingly aware that families impacted by military service – and de facto next generation of military members - are facing special problems. But information about how to best help these families is not being disseminated rapidly enough, or is not yet available. Is a new hybrid version of the FDTTC and VTC warranted, or would resources be better used to improve the capacity of all Family Courts, FDTTCs, Drug Courts, and VTCs to appropriately manage the special needs of families impacted by military service – active duty, veteran, Guard, and Reserve alike?

RECOMMENDATIONS

Scaling up to reach families impacted by military service may not require a huge influx of funds, but the foregoing information suggests that it will need more attention to the critical issues faced by our Courts. To move toward solutions, the following steps should be taken:

1. Partner with Family Courts in needs assessment, model development and

applied research efforts to understand the scope of the challenges and current practices, starting with Courts that have significant military presence in their communities already.

2. Develop and disseminate a Bench Book or Guidelines on issues to be considered when working with families affected by military service based on what Judges and Court personnel need to know *now*.

3. Support continuing education, roundtable presentations, and other forums for multi-disciplinary interactions and cross-training dialogue among both civilian and military Court personnel and family services professionals to promote improved practices.

Partnering with the Courts, where many of our military and veteran families are teetering on the edge, is a pivotal point at which key inputs may yield great returns in the future.

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