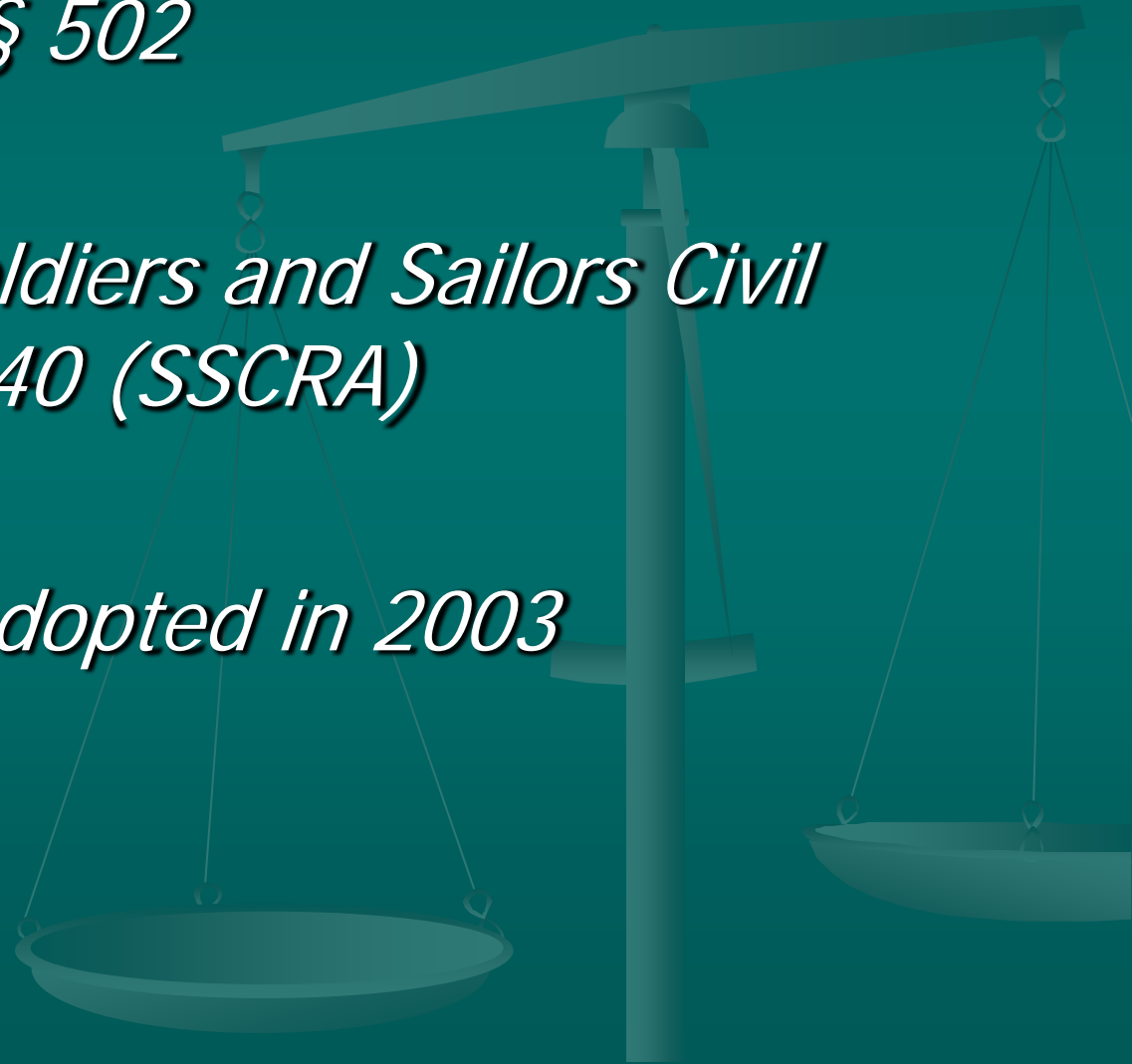


# Servicemembers Civil Relief Act (SCRA)

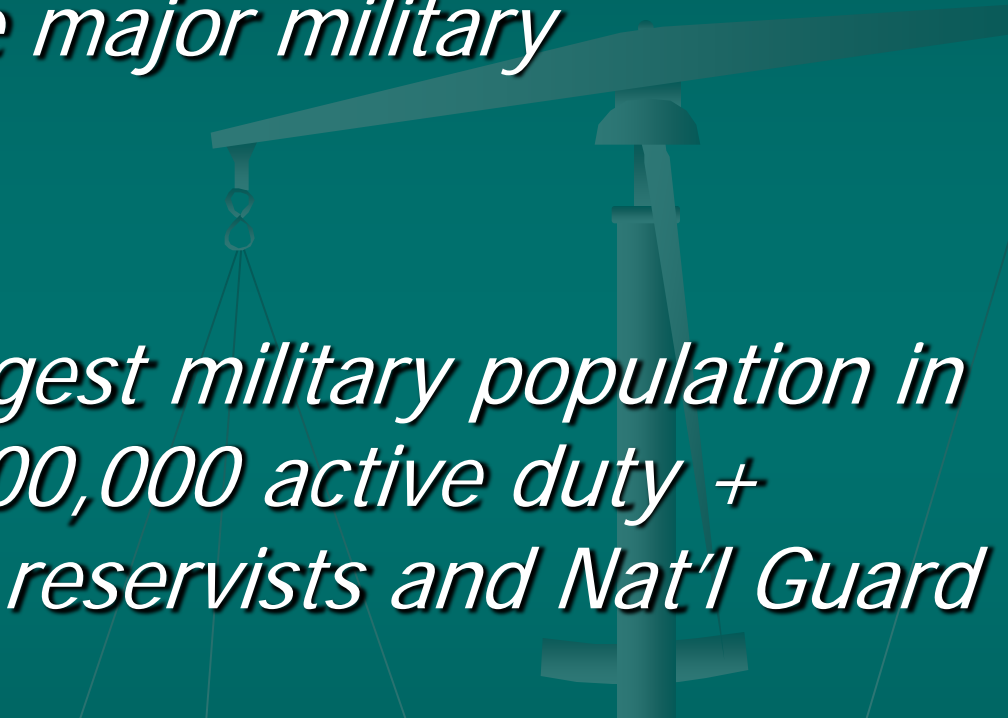


# SCRA History

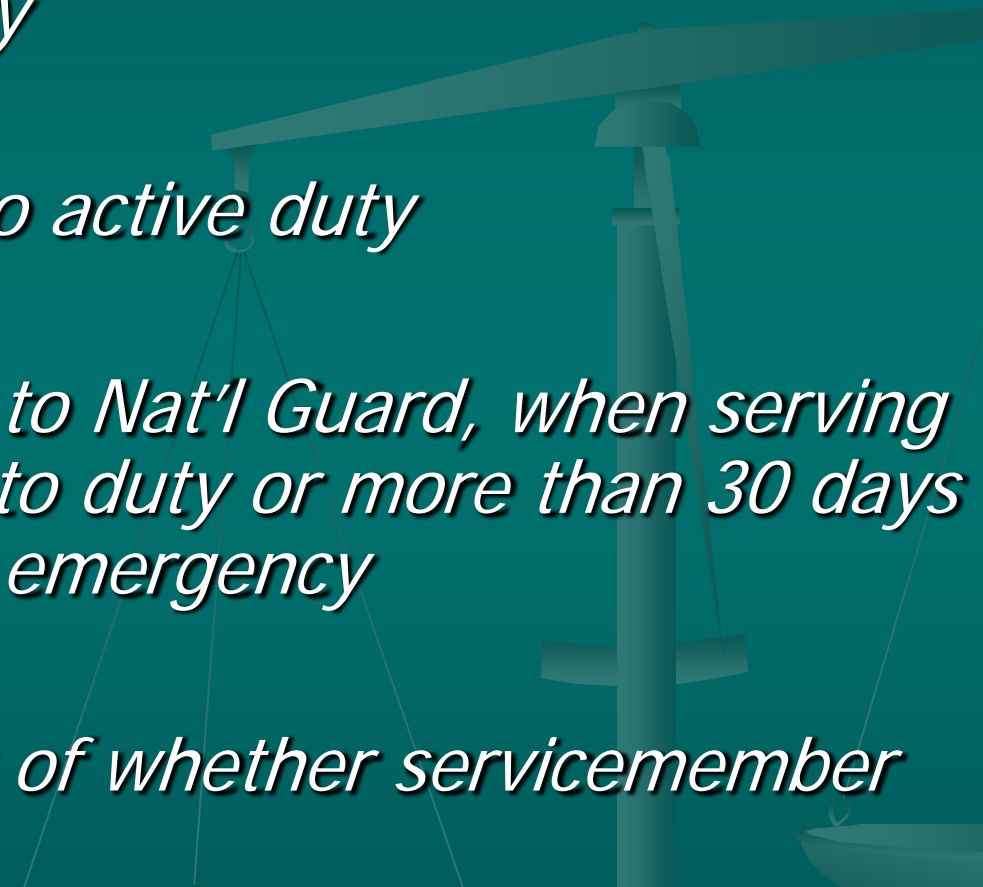
- *50 USCS Appx § 502*
- *Formally the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA)*
- *Modern SCRA adopted in 2003*



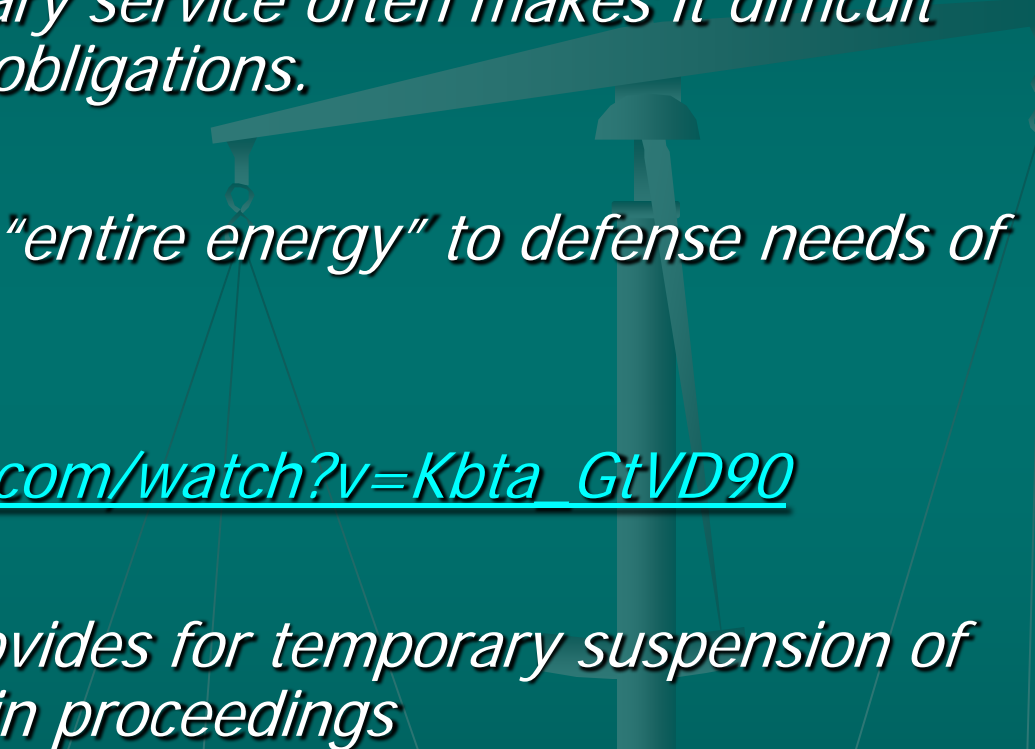
# SCRA Relevance

- *NC home to five major military installations*
  - *NC has third largest military population in country (over 300,000 active duty + 21,000 or more reservists and Nat'l Guard members).*
- 

# SCRA Application (50 USC App. § 516)

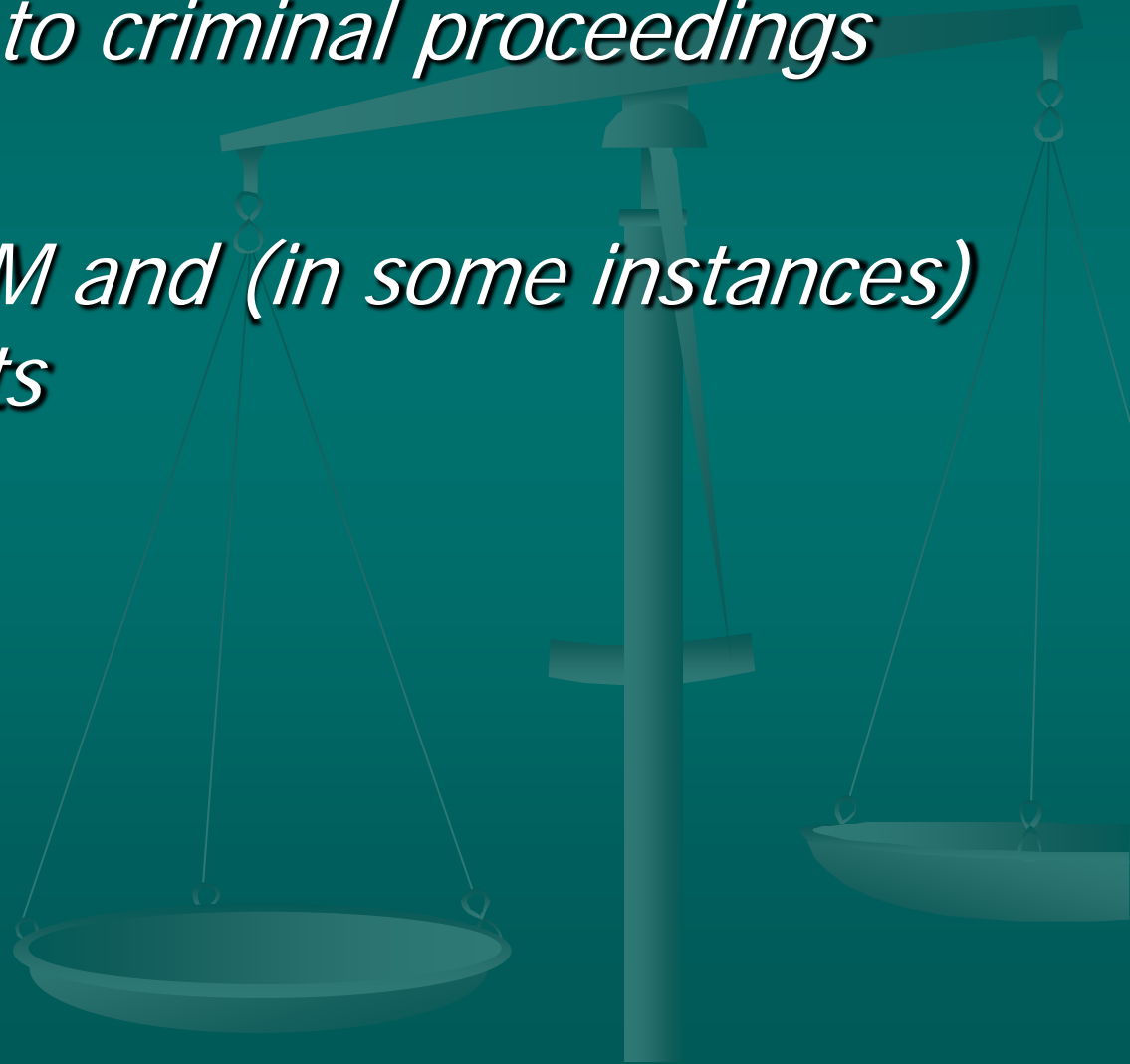
- *Active duty military*
  - *Reservists called to active duty*
  - *SCRA also applies to Nat'l Guard, when serving under federal call to duty or more than 30 days based on national emergency*
  - *Applies regardless of whether servicemember (SM) is deployed*
- 

# SCRA Purpose (50 USC App. § 502)

- *Recognizes that military service often makes it difficult for SM to meet legal obligations.*
  - *Enable SM to devote "entire energy" to defense needs of the Nation*
  - [http://www.youtube.com/watch?v=Kbta\\_GtVD90](http://www.youtube.com/watch?v=Kbta_GtVD90)
  - *Principal Benefit: provides for temporary suspension of civil judicial and admin proceedings*
- 

# SCRA Application

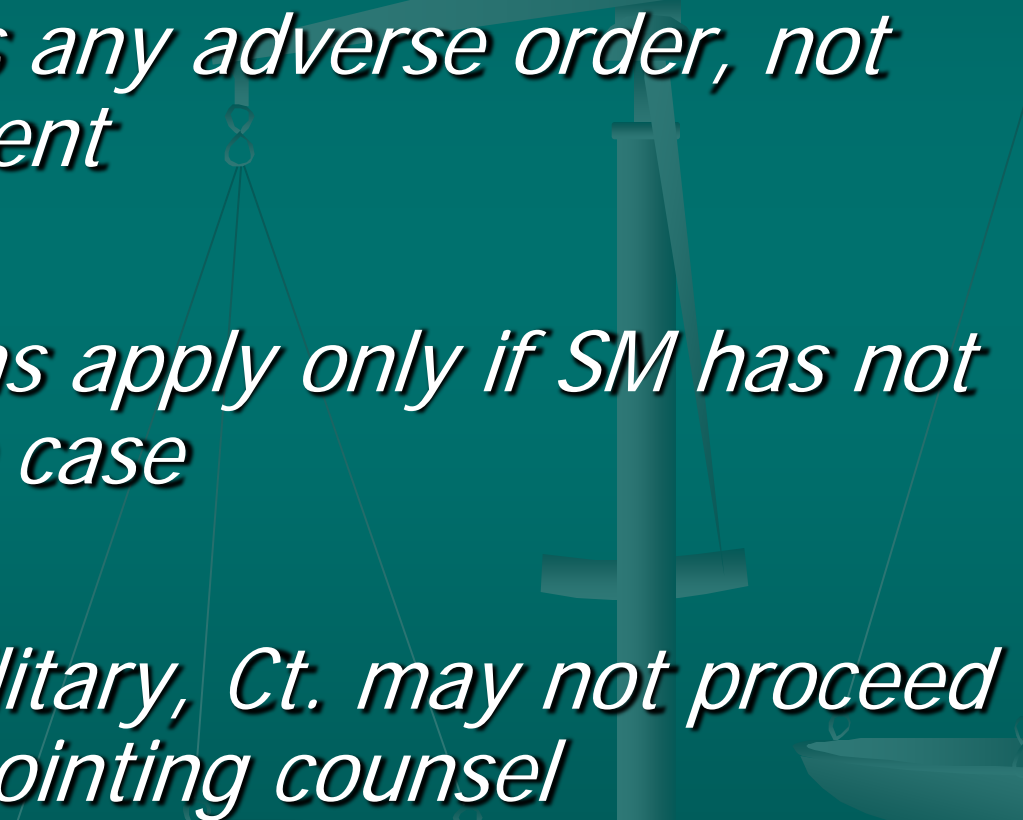
- *Does not apply to criminal proceedings*
- *Protects both SM and (in some instances) their dependents*



# SCRA and Default Judgments (50 USC App. § 521)

- *Where D has not appeared, Court must first determine whether D is in military before acting on a request for default J.*
- *Plaintiff must file affidavit stating Defendant is or is not in military service and facts supporting that conclusion*

# SCRA and Default Judgments

- *Default J means any adverse order, not just final judgment*
  - *SCRA protections apply only if SM has not appeared in the case*
  - *If D is in the military, Ct. may not proceed further w/o appointing counsel*
- 

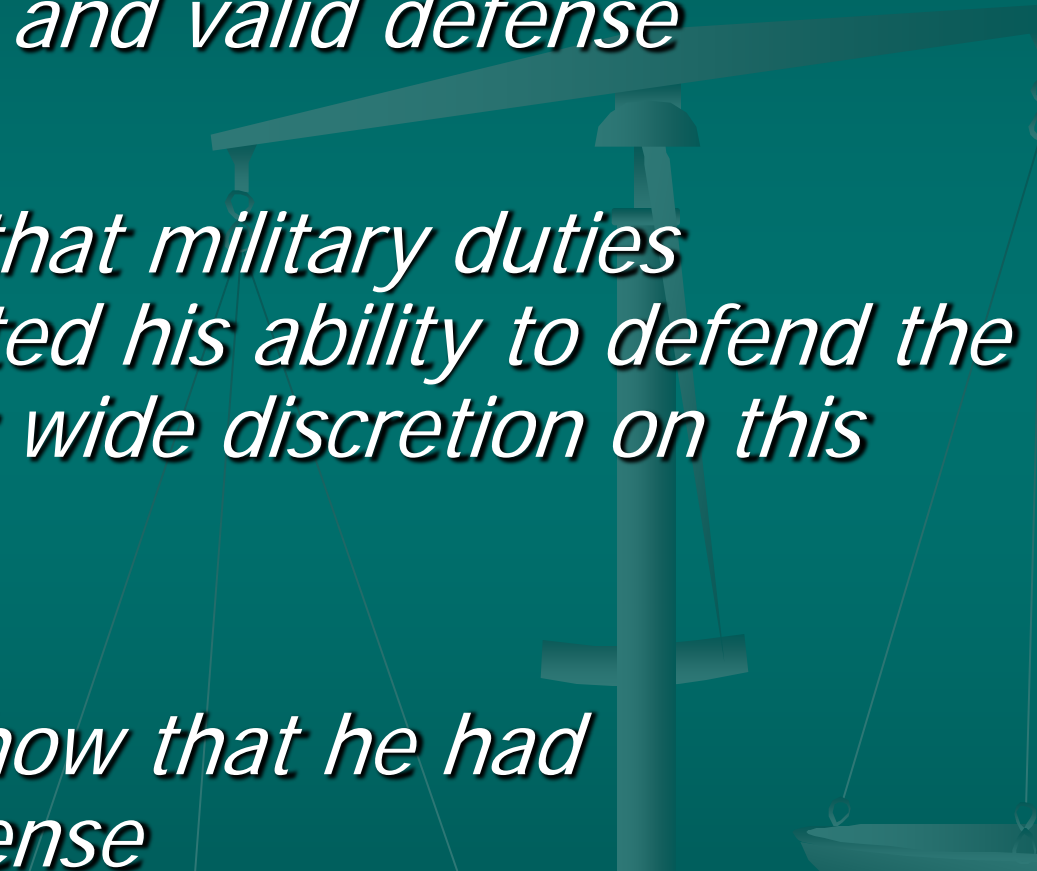


# SCRA and Default Judgments

- *If default judgment taken in violation of the statute, SM may apply to re-open at any time during service or within 90 days of leaving active duty*



# SCRA and Default Judgments

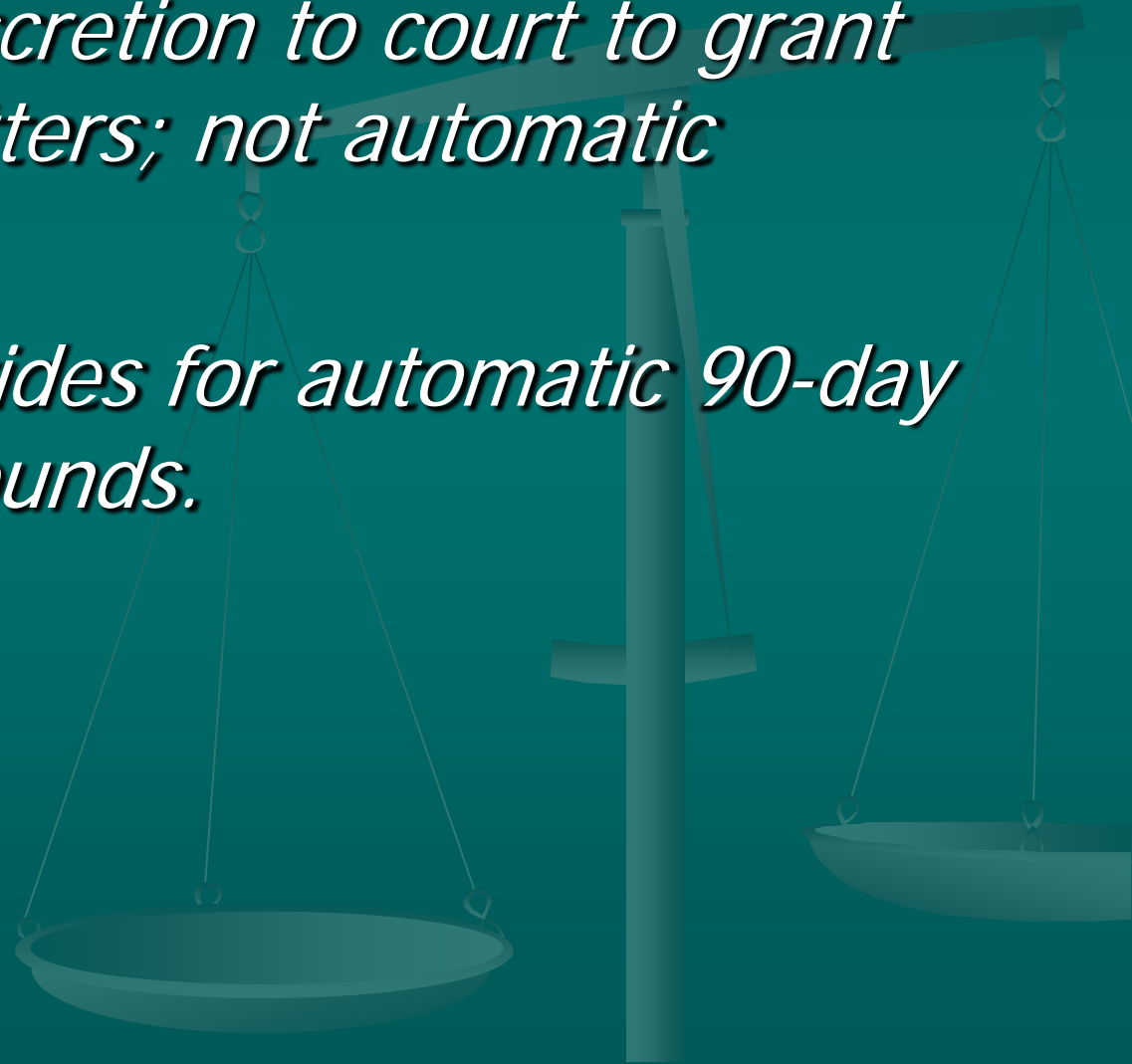
- *Test: prejudice and valid defense*
  - *SM must show that military duties materially affected his ability to defend the case (judge has wide discretion on this issue)*
  - *SM must also show that he had meritorious defense*
- 

# SCRA and Default Judgments

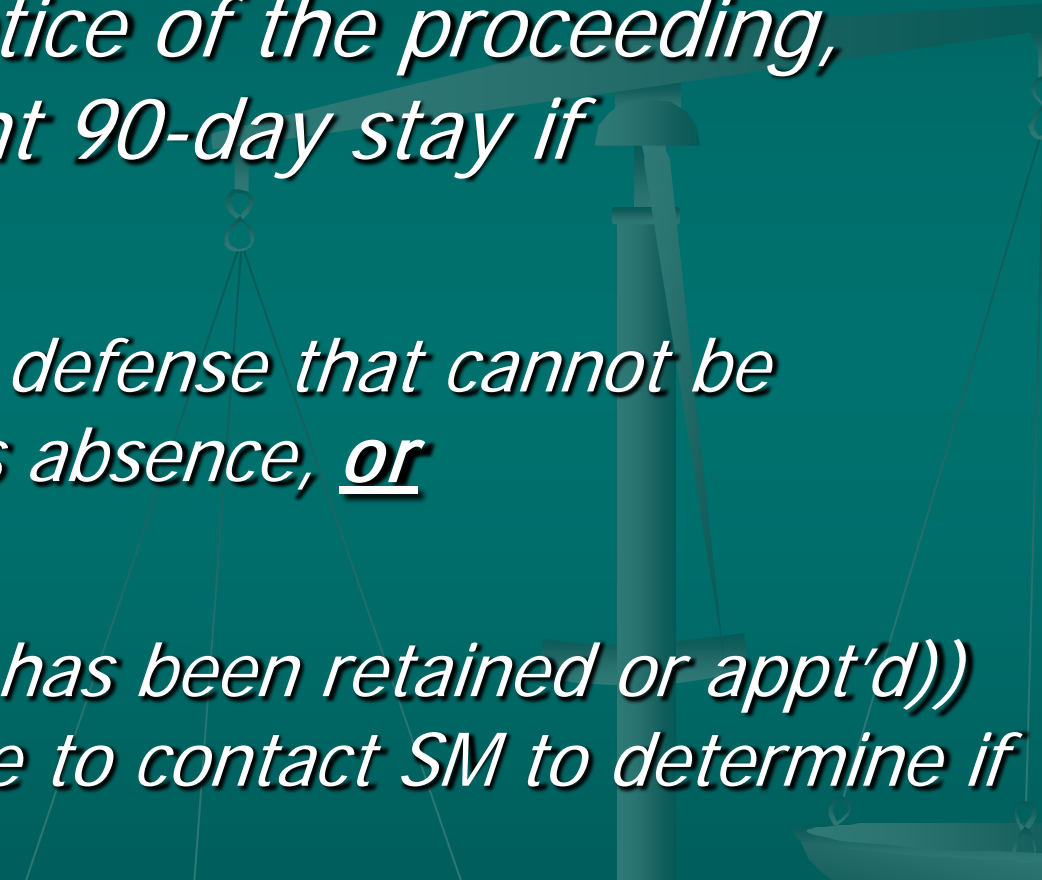
- *Defense Manpower Data Center (Attn: Military Verification) 1600 Wilson Blvd Suite 400 Arlington, Va 22209-2593 (703) 696-6762/5900*
- [www.dmdc.osd.mil.scra](http://www.dmdc.osd.mil.scra)
- *Need name and SSN for online search.*

# SCRA and Stays (50 USC App. § 522)

- *SSCRA gave discretion to court to grant stay in civil matters; not automatic*
- *SCRA now provides for automatic 90-day stay on two grounds.*



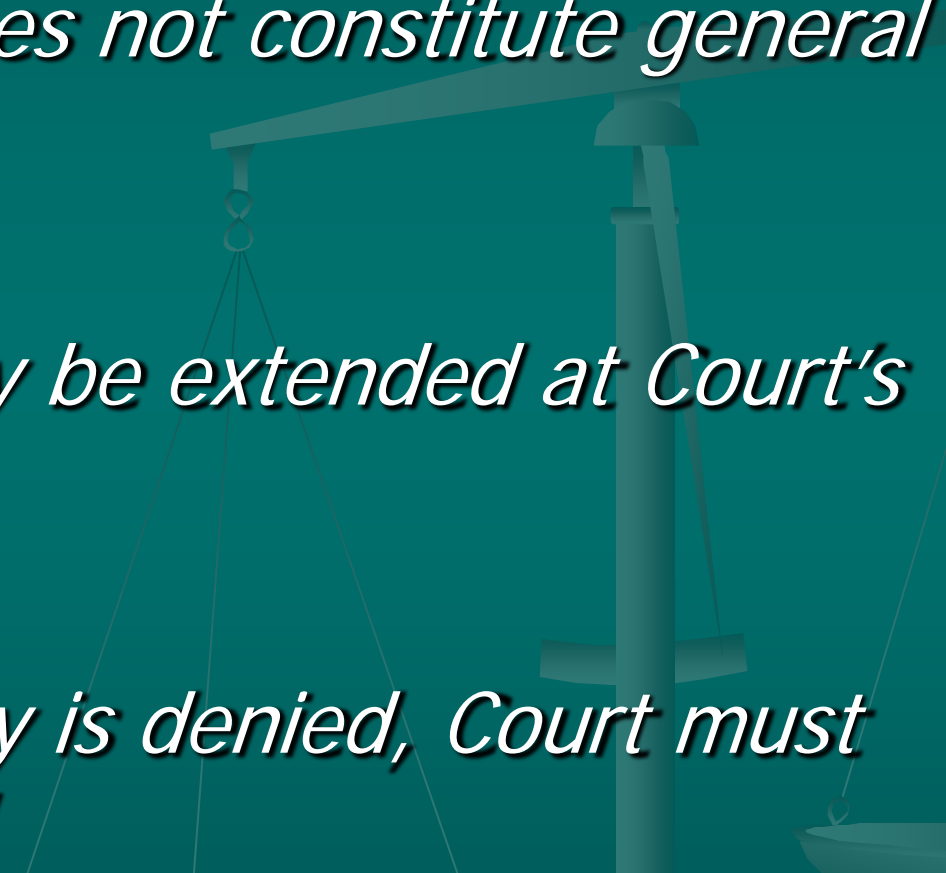
# SCRA and Stays

- *If SM has no notice of the proceeding, Court must grant 90-day stay if*
    - *SM may have a defense that cannot be presented in his absence, or*
    - *Counsel (if one has been retained or appt'd)) has been unable to contact SM to determine if defense exists*
- 

# SCRA and Stays

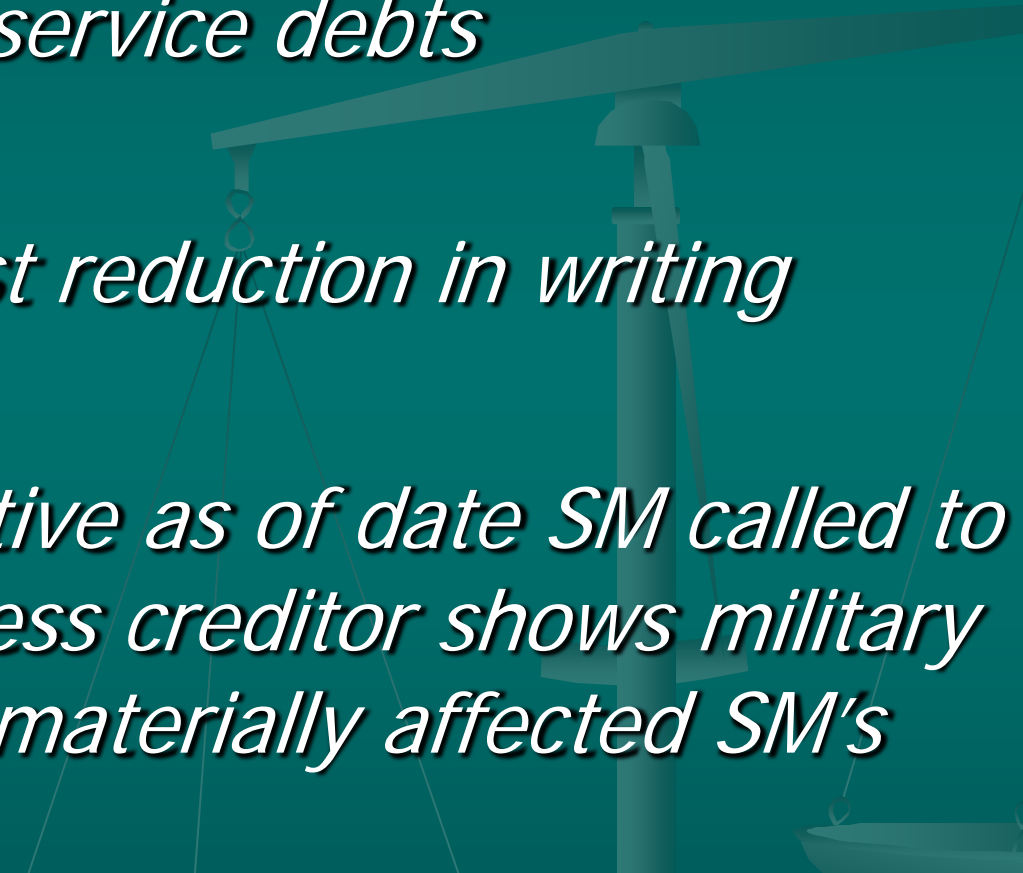
- *If SM has notice, Court must still grant 90-day stay if:*
  - *SM submits statement explaining how military duty materially affects ability to appear and defend and stating date when he can appear, and*
  - *Submits statement from CO corroborating SM circumstances and that leave is not authorized*

# SCRA and Stays

- *Stay request does not constitute general appearance*
  - *90-day stay may be extended at Court's discretion*
  - *If additional stay is denied, Court must appoint counsel*
- 

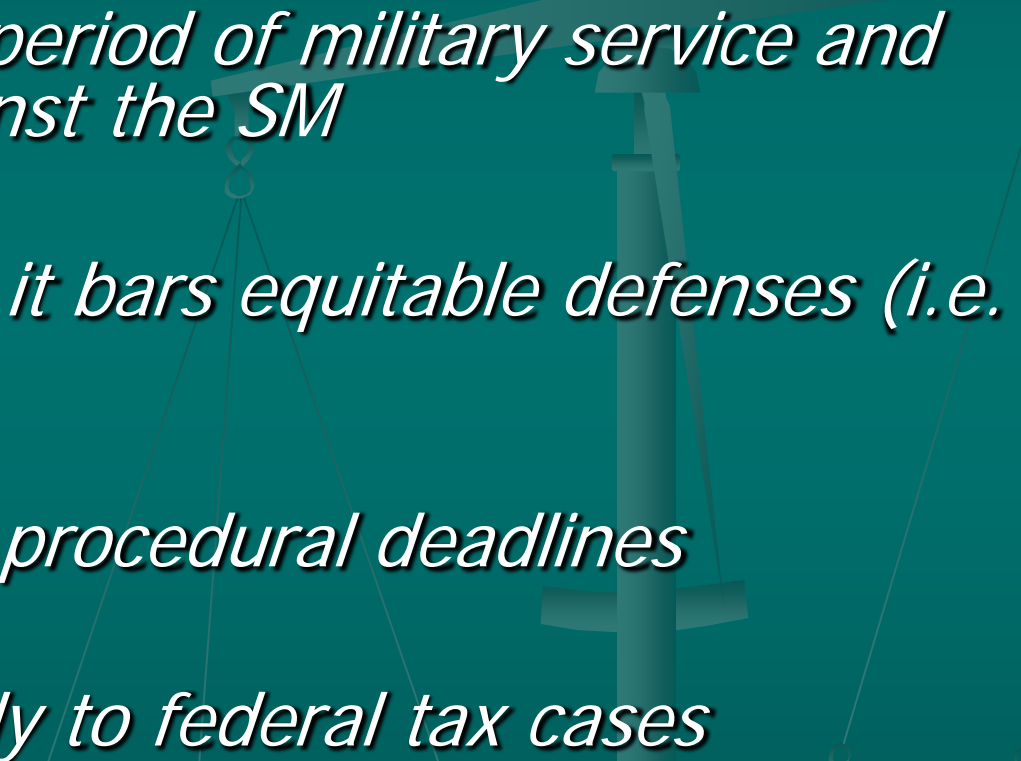


# SCRA and Interest on Debts

- *6% cap on pre-service debts*
  - *SM must request reduction in writing*
  - *Reduction effective as of date SM called to active duty, unless creditor shows military service has not materially affected SM's ability to pay.*
- 



# SCRA and Statutes of Limitation (50 USC App. 526)

- *Tolled during the period of military service and cases by and against the SM*
  - *Not clear whether it bars equitable defenses (i.e. laches)*
  - *Does not apply to procedural deadlines*
  - *Also does not apply to federal tax cases*
- 

# Resources

- Judges Guide to SCRA  
<http://www.abanet.org/family/military/scrajudgeguidecklist.pdf>
- TJAGSA SM Guide to SCRA  
[https://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/8f7edfd448e0ec6c8525694b0064ba51/3f3df08556f42b808525713f004ee09f/\\$FILE/JA%20260%20\(March%202006\).pdf](https://www.jagcnet.army.mil/JAGCNETINTERNET/HOMEPAGES/AC/TJAGSAWEB.NSF/8f7edfd448e0ec6c8525694b0064ba51/3f3df08556f42b808525713f004ee09f/$FILE/JA%20260%20(March%202006).pdf)