

## **The Military Draft: U.S. and Minnesota Law**

This information brief explains federal contingency law pertaining to the military draft, as well as the Minnesota law that results in the ongoing automatic registration of eligible young males for the draft.

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### **Does the U.S. have a military draft?**

Not currently. Although there were earlier wartime military drafts in the United States, the first peacetime draft was authorized by Congress in 1940. The draft was suspended in 1973 when the United States converted to an all-volunteer military. Then, through a Presidential Proclamation, draft registration was terminated in 1975 before being renewed in 1980.<sup>1</sup> Today, the Selective Service System, including draft registration and local draft boards, remains as a contingency should a military draft ever be needed. But the nation has no active military draft at this time.

### **Could the draft ever be reinstated?**

Yes, the draft could be reinstated at any time. However, it would take an act of Congress to do so.<sup>2</sup>

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<sup>1</sup> See Selective Training and Service Act of 1940 (54 Stat. 885); also, President, Proclamation, "Selective Service Registration, Proclamation 4360" 40 *Federal Register* 14576 (1975) and President, Proclamation, "Registration under the Military Selective Service Act, Proclamation 4771" 45 *Federal Register* 45247 (1980): 82.

<sup>2</sup> On a number of occasions since Sept. 11, 2001, legislation has been introduced in Congress to reinstate the draft. However, none of those bills has received widespread backing.

## **If the draft is ever reinstated, will registrants be automatically inducted?**

Upon being drafted, no one would be automatically inducted into the military. In a crisis requiring a draft, men would be called in sequence determined by random lottery number and year of birth. Then, they would be examined for mental, physical, and moral fitness by the military before being deferred or exempted from military service or inducted into the Armed Forces.

## **Who must register for the draft?**

Almost all male U.S. citizens and male aliens living in the United States who are 18 through 25 are required to register with the Selective Service. Congress has the authority to redefine the eligible group as it deems appropriate. Currently excluded are men already serving in active military duty, certain institutionalized persons, and certain noncitizens.

## **Must military members register?**

Men serving in active military duty or attending military academies are not required to register for the draft. However, if a young man leaves the military before turning 26, he must register, even if he is a combat veteran. Members of the National Guard or other military reserves not on full-time active duty also must register.

## **Must dual-nationals register?**

Yes, dual nationals of the United States and another country are required to register, regardless of where they live, because they are U.S. nationals.

## **Which noncitizens must register?**

The general rule is that any male noncitizen who takes up residency in the United States before his 26th birthday must register with the Selective Service. Exceptions include men who are in the United States on student or visitor visas, and men who are part of a diplomatic or trade mission and their families. Almost all other male noncitizens are required to register, including illegal aliens, legal permanent residents, and refugees.

## **Must disabled men register?**

Disabled men who are not institutionalized must register with the Selective Service if they can reasonably leave their homes and move about independently. A friend or relative may help a disabled man fill out the registration form if he can't do it himself. Men with disabilities that would disqualify them from military service still must register with the Selective Service.

## **Must hospitalized or incarcerated men register?**

No. Young men in hospitals, mental institutions, or prisons do not have to register while they are committed. However, they must register within 30 days after being released if they have not yet reached their 26th birthday.

## **Must conscientious objectors register?**

Yes, men who conscientiously object to military service must nevertheless register with the Selective Service. If a draft begins and they are called, they would have the opportunity to file a claim for exemption from military service based upon their religious or moral objection to war.

## **How and when does the Selective Service classify registrants?**

The Selective Service does not presently have authority to classify registrants, so even men with obvious handicaps or moral reservations to military service must now register, and if needed, classifications would be determined later.<sup>3</sup>

## **Are there legal penalties for failing to register?**

Yes, the intentional and knowing failure to register for the draft is a felony crime under federal law. However, prosecutions are rare, given the relatively high standard of proof.

## **Are there other federal consequences for failure to register?**

Yes. In the Department of Defense Authorization Act of 1982, Congress included an amendment (§ 1113)<sup>4</sup> to the Military Selective Service Act<sup>5</sup> that conditioned the receipt of federal financial aid upon compliance with the draft registration laws. This was known as the 1982 Solomon Amendment.<sup>6</sup> Under this law, students who are required to register but who have

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<sup>3</sup> During a draft, registrants with low lottery numbers will be ordered to report for a physical, mental, and moral evaluation at a Military Entrance Processing Station to determine whether they are fit for military service. Once a registrant is notified of the results of the evaluation, he will be given ten days to file a claim for exemption, postponement, or deferment. Members of each county's local draft board will then begin reviewing and deciding the outcome of each individual registrant's case. They may personally interview the registrant and persons who know him to gain a better understanding of his situation. A man may appeal a local board's decision to a Selective Service District Appeal Board. See Military Selective Service Act, [50 U.S.C. § 453](#) (1976 and Supp. V 1981).

<sup>4</sup> The amendment, § 1113, is codified as [50 U.S.C. appendix § 462\(f\)](#).

<sup>5</sup> [50 U.S.C. § 453](#) (1976 and Supp. V 1981).

<sup>6</sup> The 1982 Solomon Amendment should not be confused with the 1996 Solomon Amendment, which provides for the denial of federal funding to institutions of higher learning if they prohibit or prevent ROTC or military recruitment on campus. This law is codified as [10 U.S.C. § 983](#).

not done so are ineligible to receive Title IV federal student financial aid, such as guaranteed student loans and Pell Grants.

And under the 1985 Thurmond Amendment to the Defense Authorization Act,<sup>7</sup> eligible males who have failed to register for the draft are permanently prohibited from serving in federal jobs. Enforcement of these sanctions does not require proof that the failure to register was intentional.

### **Do any states penalize failure to register for the draft?**

Yes, many states have laws that mirror, reinforce, or strengthen the federal laws, mostly by prohibiting unregistered males from receiving state educational aid and state government employment. Some states withhold other state benefits, as well.

### **Does Minnesota law penalize failure to register?**

No, Minnesota Statutes do not provide any additional criminal or civil penalties for failing to register for the draft. Nevertheless, the federal requirements and penalties continue to apply to Minnesotans.

### **Does Minnesota facilitate draft registration?**

Yes, like virtually all other states, the State of Minnesota facilitates draft registration by routinely sharing data with the federal Selective Service System on all male applicants aged 18 through 25 who apply for a Minnesota driver's license, driving permit, or state identification card.<sup>8</sup> The Selective Service uses such information to automatically register those applicants for the draft.

*For more information about the military, visit the veterans and military affairs area of our web site, [www.house.mn/hrd/issinfo/vetmil.htm](http://www.house.mn/hrd/issinfo/vetmil.htm).*

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<sup>7</sup> Defense Authorization Act of 1985, 5 U.S.C. § 3328.

<sup>8</sup> Minn. Stat. § 171.06, subd. 6.