

PAVAN V. PARIKH, *Hamilton County Clerk of Courts*



Veterans and Military Law

Contemporary Issues in Accessing Justice



Military 101



2021 DEMOGRAPHICS PROFILE

ACTIVE DUTY MEMBERS

More than 1.3 million Active Duty members serve in the Army, Navy, Marine Corps, Air Force, and Space Force.

Service Branch



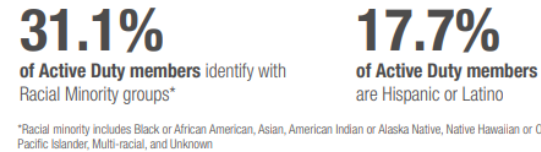
Gender



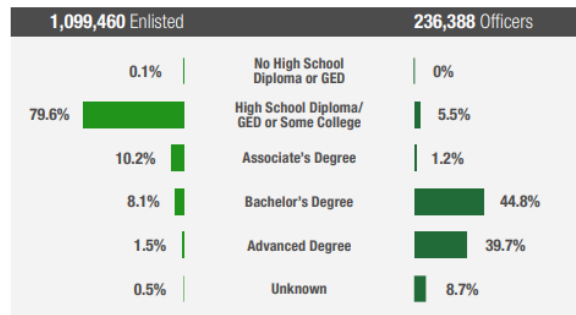
Enlisted and Officer



Race and Ethnicity



Education



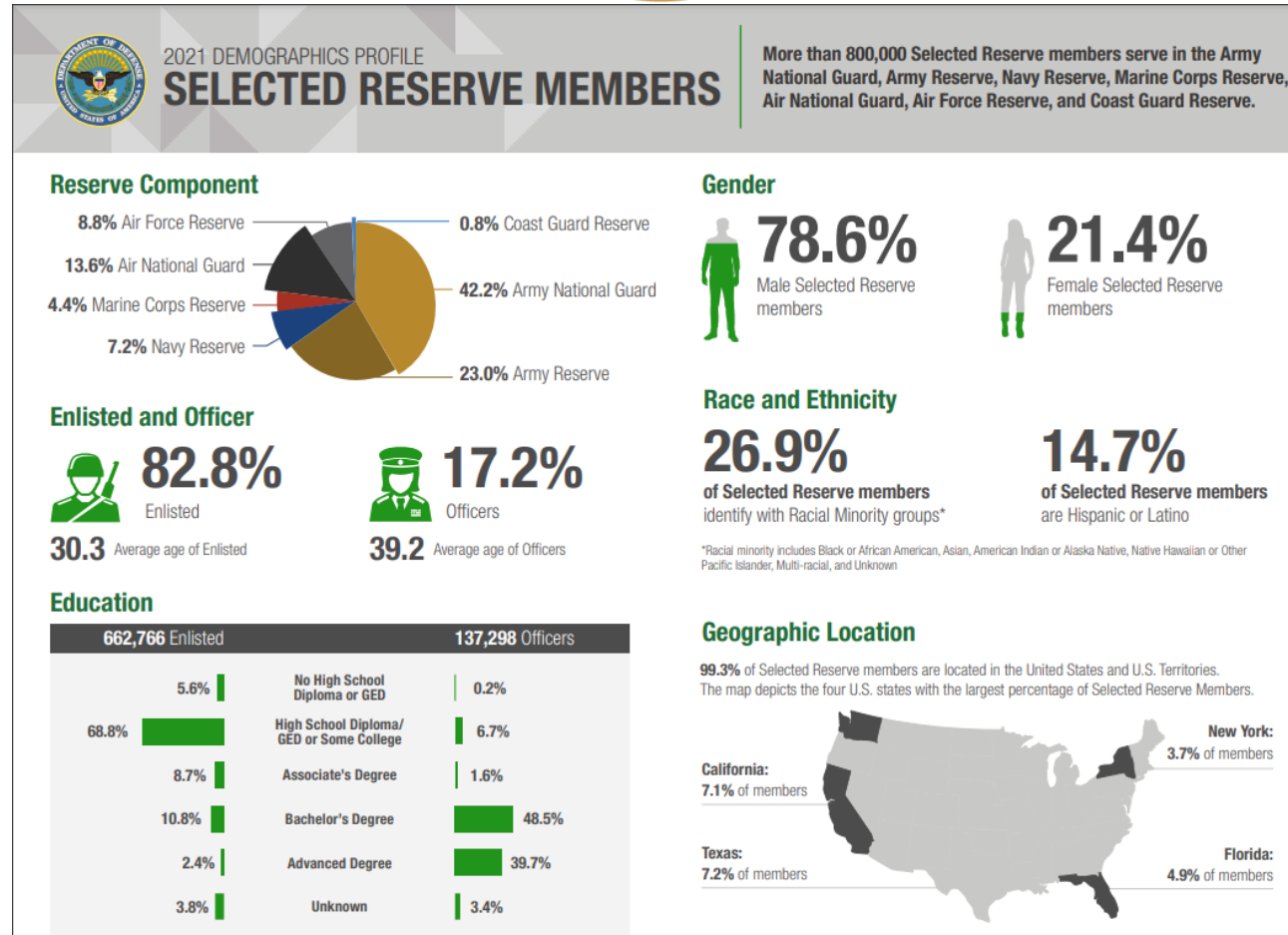
Geographic Location

87.5% of Active Duty members are located in the United States and U.S. Territories. The map depicts the four U.S. states with the largest percentage of Active Duty members.





Military 101





Military 101 – Legal Framework

- Patchwork of laws and regulations
 - Active Duty vs. Reserve Component
 - National Guard: T10 vs. T32 Authority
 - State Active Duty benefits or lack thereof
 - Veteran status – State vs. Federal
- Veterans Administration
 - Medical benefits
 - Financial benefits





Characterization of Discharge

- The Department of Defense (DoD) authorizes six characterizations of service for military service members to receive on discharge:
 - (1) Honorable;
 - (2) Under Honorable Conditions (General);
 - (3) Under Other than Honorable Conditions (OTH);
 - Board required for separation
 - (4) Bad Conduct;
 - (5) Dishonorable, and
 - (6) Uncharacterized



Characterization of Discharge

- Punitive – only by CM
 - Bad Conduct
 - Dishonorable
- Discharge upgrades – DADT, Victims of MSA, Marijuana?
 - Service review boards
 - Air Force: Air Force Board of Correction of Military Records
 - Army: Army Review Board Agency (ARBA)
 - Coast Guard: Board for Correction of Military Records of the Coast Guard
 - Navy and Marine Corps: The Board for Correction of Naval Records
 - If Your Appeal Is Denied
 - Discharge Appeal Review Board (DARB)



Separation, Military Justice, & Civilian Courts

- Administrative Separations vs. UCMJ Action
- UCMJ includes conduct usually not criminal in civilian world
 - Legislated by Congress
 - Sex Crimes – SVC, NDAA 2023 – removal from chain of command
- Court-martial convictions non-expungeable
- Administrative separation/court martial can occur for offenses tried in civilian courts
 - Concurrent jurisdiction over territory; Fed law vs. state law – double jeopardy issues



Lautenberg Amendment

- The Lautenberg Amendment to the Gun Control Act of 1968, effective 30 September 1996
- No military exception
- Felony for anyone convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition.
- Felony for anyone to sell or issue a firearm or ammunition to a person with a domestic violence conviction.
- A qualifying conviction consists of two elements; (1) a misdemeanor domestic violence crime, and (2) a conviction.



Servicemembers Civil Relief Act (SCRA)

- Application:
 - Active duty members of the Army, Marine Corps, Navy, Air Force, and Coast Guard;
 - Members of the Reserve component when serving on active duty;
 - Members of the National Guard component mobilized under federal orders for more than 30 consecutive days; or
 - Active duty commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration.



Servicemembers Civil Relief Act (SCRA)

- Protections
 - **The Six Percent Rule**
 - **Delay of Court and Administrative Proceedings**
 - **Termination of Leases**
 - Automobile Leases
 - Telephone Service Contracts
 - **Eviction for Nonpayment of Rent**
 - **Default Judgment Protection**
 - Life Insurance Protection
 - Enforcement of Storage Liens
 - Health Insurance Reinstatement
 - **Protection from Foreclosures**
 - Seizure of Property



Uniformed Services Employment and Reemployment Rights Act (USERRA)

- The “uniformed services” consist of the following:
 - Army, Navy, Marine Corps, Air Force, Space Force and Coast Guard
 - Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve and Coast Guard Reserve
 - Army National Guard and Air National Guard
 - Commissioned Corps of the Public Health Service
 - Any other category of persons designated by the President in time of war or emergency



Uniformed Services Employment and Reemployment Rights Act (USERRA)

- Reemployment Rights: If you leave a job to perform service and:
 - You provide advance written or verbal notice of your service;
 - You have five or less years of service in uniform while with that particular employer;
 - You return to work or apply for reemployment in a timely manner after conclusion of service; and
 - You have not been separated from service with a disqualifying discharge.
 - If eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.
- Right to be Free From Discrimination and Retaliation
- Enforcement
 - Administrative – DOL
 - Litigation – DOJ, Office of Special Counsel, some states have established a cause of action



Panel Discussion

- David Kelly – Staff Attorney, Legal Aid Society of Greater Cincinnati
- Kristine Maher – Attorney, Bricker Graydon
- Samantha Wicktora – Owner & Partner, Wicktora & Miller
- Gary Yuratovac – Director, Hamilton County Felony Veterans' Treatment Court