

## DEFINING THE TERM "CHILD" FOR PURPOSES OF TITLE 38, UNITED STATES CODE

APRIL 23, 1970.—Ordered to be printed

Mr. TALMADGE, from the Committee on Finance,  
submitted the following

### REPORT

[To accompany H.R. 10106]

The Committee on Finance, to which was referred the bill (H.R. 10106) to revise the definition of a "child" for purposes of veterans' benefits provided by title 38, United States Code, to recognize an adopted child as a dependent from the date of issuance of an interlocutory decree, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

#### GENERAL STATEMENT

*House bill.*—As passed by the House, the bill would revise the definition of "child" for veterans' benefit purposes to recognize an adopted child as a dependent from the date of issuance of an interlocutory decree rather than from the time the decree becomes final.

*Committee amendment.*—The committee approved the text of the House bill without modification, but added to the bill an amendment which would:

1. Increase by 10 percent monthly dependency and indemnity compensation payments to children where there is no widow entitled to receive dependency and indemnity compensation, and to certain children age 18 and over; and

2. Extend dependency and indemnity compensation to certain widows whose husbands were insured under National Service Life Insurance on a premium-free basis.

#### DEFINITION OF CHILD

The current definition of a child in title 38, United States Code, in essence provides that an adopted child is only legally adopted when the decree of adoption has become final. The purpose of this bill is to amend the law to provide that the child shall be considered legally

adopted at the time of the issuance of the interlocutory decree and shall continue to be so considered unless such decree is rescinded. This would permit, in cases where warranted, the payment of compensation, pension, or education benefits prior to the issuance of the final decree of adoption.

This legislation was submitted officially by the Veterans' Administration which states that the cost "would not be significant."

#### INCREASE IN DEPENDENCY AND INDEMNITY COMPENSATION PAYMENTS FOR CHILDREN

*Benefits when no widow is entitled.*—The original 1956 legislation establishing the dependency and indemnity compensation program provided specified amounts of DIC payments to children when no widow was entitled. These amounts were set at \$70 for one child, \$100 for two children, \$130 for three children, and \$25 for each additional child. In 1967, the amounts were set at their present levels of \$80 for one child, \$115 for two children, \$149 for three children, and \$29 for each additional child. About 44,000 children receive these benefits today.

The committee amendment provides a 10-percent increase in these benefits, as shown in table 1.

*Benefits to certain children 18 and over.*—The original 1956 legislation also specified DIC amounts payable in certain cases. A child over age 18 who became permanently incapable of self-support before reaching age 18 was entitled to \$25 additional DIC if there was no widow entitled, and \$70 additional DIC if there was a widow receiving DIC. A child between 18 and 21 (now 23) who was a student was entitled to an additional \$35 in monthly DIC if there was a widow entitled.

These amounts were set in 1967 at \$29, \$80, and \$41, respectively, the levels under present law. More than 6,000 children 18 and over receive benefits under this section of the law. The committee amendment provides a 10-percent increase in these benefits, as shown in table 1.

TABLE 1.—DEPENDENCY AND INDEMNITY COMPENSATION BENEFITS TO CHILDREN WHERE NO WIDOW IS ENTITLED AND IN CERTAIN SPECIFIED CASES

	Present law	Proposed
1 child.....	\$80	\$88
2 children.....	115	127
3 children.....	149	164
Each additional child.....	29	32
Disabled child above age 18:		
where no widow is entitled to DIC.....	29	32
where widow is entitled to DIC.....	80	88
Student, age 18 to 23, where widow is entitled.....	41	45

#### EXTENDING DEPENDENCY AND INDEMNITY COMPENSATION TO CERTAIN SURVIVORS OF VETERANS WHO WERE INSURED UNDER GOVERNMENT LIFE INSURANCE ON A PREMIUM-FREE BASIS

Before the dependency and indemnity compensation was established in 1956, two major types of benefits were offered the survivors of deceased servicemen: monthly death compensation payments, and a \$10,000 gratuitous indemnity. The death compensation payments

were small monthly payments, with the same amount payable to all widows whose husbands were killed in wartime service. The \$10,000 gratuitous indemnity had been authorized at the beginning of the Korean war as a free equivalent to the \$10,000 National Service Life Insurance that had been offered to servicemen during World War II. Those servicemen who still had National Service Life Insurance (or pre-World War II U.S. Government life insurance) at the beginning of the Korean war were given the choice of either dropping their National Service Life Insurance in order to receive the \$10,000 gratuitous indemnity, or continuing the National Service Life Insurance with the premiums waived—in effect, receiving \$10,000 in gratuitous life insurance. The same choice applied to holders of U.S. Government life insurance.

When the Congress in 1956 revised the survivor benefit program, the \$10,000 indemnity was eliminated, and in its stead the new program of dependency and indemnity compensation was established, with much more generous monthly payments to widows than had been provided under death compensation.

While the \$10,000 gratuitous indemnity was eliminated from the law, however, the Veterans' Administration ruled that they had a contractual obligation to continue National Service Life Insurance on a premium-free basis to those servicemen who had secured the waiver prior to the new law. In the light of this ruling, the Congress decided to deny monthly dependency and indemnity compensation payments to survivors receiving payments under National Service Life Insurance that had been continued in force on a premium-free basis. These survivors were and still are permitted to receive only the lower monthly death compensation payments, which have not been increased in 15 years. In view of this provision, a great effort was made to encourage as many servicemen as possible to resume payment of premiums for their National Service Life Insurance rather than having it continued free, so that their widows would be eligible for the much more adequate monthly dependency and indemnity compensation payments. It is a tribute to that effort that although many servicemen still hold National Service Life Insurance, almost all of them pay premiums to insure that their survivors will be eligible for dependency and indemnity compensation. About 165,000 widows are receiving dependency and indemnity compensation today; however, because of the prohibition in the law just described, some 2,800 widows are barred from receiving dependency and indemnity compensation.

The committee amendment would end this situation which forever denies dependency and indemnity compensation to a widow who received a \$10,000 gratuitous insurance benefit upon her husband's death. Under section 4 of the bill as reported, the Veterans' Administration would compute the total amount of dependency and indemnity compensation which would have been payable to the deceased's survivors had they been eligible to receive it. When the total amount of insurance benefits and death compensation actually paid the survivors equals or is less than the DIC they would have received had they been eligible, the survivors would be eligible to apply for dependency and indemnity compensation. The Veterans' Administration estimates that about 700 widows would now be eligible to receive dependency and indemnity compensation under this proposal.

This provision would be fair to these widows who have been limited to receiving death compensation, and it would be fair to the many servicemen who have wisely chosen to pay for their National Service Life Insurance so that their wives are adequately protected. Both groups would be treated equitably.

VETERANS' ADMINISTRATION REPORT ON H.R. 10106

The Veterans' Administration Report on H.R. 10106 follows:

VETERANS' ADMINISTRATION,  
OFFICE OF GENERAL COUNSEL,  
*Washington, D.C., October 20, 1969.*

The Hon. RUSSELL B. LONG,  
*Chairman, Committee on Finance,*  
*U.S. Senate,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reference to your request for a report by the Veterans' Administration on H.R. 10106, 91st Congress.

The bill proposes to revise the definition of "child" for purposes of veterans' benefits provided by title 38, United States Code, so as to recognize an adopted child as a dependent from the date of issuance of an interlocutory decree of adoption.

The bill is identical with the draft bill submitted by the then administrator's letter of April 10, 1969, to the Hon. Spiro T. Agnew, President of the Senate, which was referred to your committee on April 14, 1969. The views expressed in that letter, a copy of which is enclosed, and the recommendation for enactment are applicable to H.R. 10106.

Sincerely,

JOHN J. CORCORAN,  
*General Counsel.*

VETERANS' ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS,  
*Washington, D.C., April 10, 1969.*

The Hon SPIRO T. AGNEW,  
*President of the Senate,*  
*Washington, D.C.*

DEAR MR. PRESIDENT: There is transmitted herewith a draft of a bill "To revise the definition of a 'child' for purposes of veterans' benefits provided by title 38, United States Code, to recognize an adopted child as a dependent from the date of issuance of an interlocutory decree" with the request that it be introduced in order that it may be considered for enactment.

Subsection 101(4) of title 38, United States Code, defines the term "child" for purposes generally of the veterans' benefit programs provided by that title as including a "legally adopted child." The determination of what constitutes a legal adoption depends on the governing statutes of the several States. Generally, a legal adoption is one in which a final decree of adoption has been granted or in which a prescri-

bed period has expired following the issuance of the original decree. Until then, the interlocutory decree may be rescinded and the child will revert to his prior status.

The term "child" is defined in subsection 101(4) for all purposes under title 38, except for insurance purposes under chapter 19 and for disposition of personal property of a decedent left upon the premises of a Veterans' Administration facility (section 5202(b)). Consequently, the proposed definition would extend to such benefit programs as disability and death compensation and pension, dependency and indemnity compensation, vocational rehabilitation, and the various programs of educational assistance.

By the time an adoptive parent has undertaken adoption proceedings and the appropriate adoption authority has issued an interlocutory decree of adoption, the adoptive parent has demonstrated his intention to assume parental duties and obligations with respect to the child and to make the relationship permanent, and the child has become a fully integrated member of the household and is regarded by the adoptive parent as his child. Moreover, the adoptive parent is responsible for the maintenance, care, and education of the child.

We believe that the concern for the child which the adoptive parent has thus expressed and the parent-child relationship which exists following the issuance of the interlocutory decree is at least as strong as that existing where an individual has accepted a stepchild into his household. Current law recognizes such children. It follows that the provisions of existing law which limit the recognition of an adoptive child to those with respect to whom a final decree of adoption has been issued discriminate against both the adoptive parent and the adopted child.

The draft bill, if enacted, would permit the recognition as a "child" of one for whom an interlocutory decree of adoption has been granted and, if a claim was then pending, would permit the payment of benefits from the date of that decree, unless and until it is rescinded and provided that the child remains in the custody of the adopting parent or parents during the interlocutory period.

The definition of a "child" in 38 USC 101(4) was amended by Public Law 86-195, August 14, 1958, to include as an adopted child of a veteran one who was a member of the household when the veteran died and who was "legally adopted" by the veteran's spouse within two years after the death or the date of enactment of the amendment. Our proposed legislation, if enacted, would apply to such children as well as those adopted by veterans.

While we do not have adequate data available upon which to accurately estimate the additional cost of this proposal if enacted, we believe that such cost would not be significant.

The Veterans' Administration recommends the favorable consideration by the Congress of the enclosed draft bill.

Advice has been received from the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the presentation of the draft legislation to the Congress.

Sincerely,

W. J. DRIVER,  
*Administrator.*

## CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

## TITLE 38, UNITED STATES CODE

## § 101. Definitions

For the purposes of this title—

\* \* \* \* \*

(4) The term "child" means (except for purposes of chapter 19 of this title and section 5202(b) of this title) a person who is unmarried and—

(A) who is under the age of eighteen years;

(B) who, before attaining of age of eighteen years, became permanently incapable of self-support; or

(C) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution;

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator to be the father of such child. A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran's death living in the veteran's household and was legally adopted by the veteran's surviving spouse within two years after the veteran's death or the date of enactment of this sentence; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward his support from some individual other than the veteran or his spouse, or from any public or private welfare organization which furnishes services or assistance for children. *A person with respect to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally adopted child, unless and until that decree is rescinded: Provided, That the child remains in the custody of the adopting parent or parents during the interlocutory period.*

## CHAPTER 13—DEPENDENCY AND INDEMNITY COMPENSATION FOR SERVICE-CONNECTED DEATHS

## SUBCHAPTER I—GENERAL

401. Definitions.

402. Computation of basic pay.

403. Coverage of members of Reserve Officers' Training Corps.

404. Special provisions relating to widows.

## SUBCHAPTER II—DEPENDENCY AND INDEMNITY COMPENSATION

410. Deaths entitling survivors to dependency and indemnity compensation.  
 411. Dependency and indemnity compensation to a widow.  
 412. Benefits in certain cases of in-service or service-connected deaths.  
 413. Dependency and indemnity compensation to children.  
 414. Supplemental dependency and indemnity compensation to children.  
 415. Dependency and indemnity compensation to parents.  
 416. Dependency and indemnity compensation in cases of prior deaths.  
 417. Restriction on payments under this chapter.

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### § 413. Dependency and indemnity compensation to children

Whenever there is no widow of a deceased veteran entitled to dependency and indemnity compensation, dependency and indemnity compensation shall be paid in equal shares to the children of the deceased veteran at the following monthly rates:

- (1) One child, **[\$80]** \$88.
- (2) Two children, **[\$115]** \$127.
- (3) Three children, **[\$149]** \$164.
- (4) More than three children, **[\$149]** \$164, plus **[\$29]** \$32 for each child in excess of three.

### § 414. Supplemental dependency and indemnity compensation to children

(a) In the case of a child entitled to dependency and indemnity compensation who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, the dependency and indemnity compensation paid monthly to him shall be increased by **[\$29]** \$32.

(b) If dependency and indemnity compensation is payable monthly to a woman as a "widow" and there is a child (of her deceased husband) who has attained the age of eighteen and who, while under such age, became permanently incapable of self-support, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the widow, in the amount of **[\$80]** \$88.

(c) If dependency and indemnity compensation is payable monthly to a woman as a "widow" and there is a child (of her deceased husband) who has attained the age of eighteen and who, while under the age of twenty-three, is pursuing a course of instruction at an educational institution approved under section 104 of this title, dependency and indemnity compensation shall be paid monthly to each such child, concurrently with the payment of dependency and indemnity compensation to the widow, in the amount of **[\$41]** \$45.

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### § 417. Restriction on payments under this chapter

(a) No dependency and indemnity compensation shall be paid to the widow, children, or parents of any veteran dying after April 30, 1957, having in effect at the time of death a policy of United States Government life insurance or National Service Life Insurance under waiver of premiums under section 724 of this title, unless (1) waiver of premiums on such policy was granted pursuant to the first proviso

of section 622(a) of the National Service Life Insurance Act of 1940, and the death occurs before the veteran's return to military jurisdiction or within one hundred and twenty days **【thereafter.】** *thereafter*, or (2) *the total amount paid to the widow, children, or parents of such veteran under any such policy is equal to or exceeds the face value of the policy and such amount paid when added to any amounts paid as death compensation is equal to or less than the total amount which would have been payable in dependency and indemnity compensation following the death of such veteran if such widow, children, or parents had been eligible for such compensation upon the death of such veteran. Any person receiving death compensation at the time he becomes eligible for dependency and indemnity compensation pursuant to clause (2) of the preceding sentence shall continue to receive such death compensation unless he makes application to the Administrator to be paid dependency and indemnity compensation. An election by such person to receive dependency and indemnity compensation shall be final. Where dependency and indemnity compensation is not payable by reason of the **【preceding】** first sentence, death compensation may be paid under section 321 or 341 of this title, as applicable.*

(b) No person eligible for dependency and indemnity compensation by reason of any death occurring after December 31, 1956, shall be eligible by reason of such death for any payments under (1) provisions of law administered by the Veterans' Administration providing for the payment of death compensation or death pension, or (2) the Federal Employees' Compensation Act.

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