

Office of Child Support **POLICY SHEET**

SUBJECT

Statute of Limitations Policy

PS# 23-02

INTRODUCTION

Statutory law—written law, enacted by the Legislature—imposes deadlines for taking certain actions, which, if missed, might prevent a party from taking these actions in the future. Such a deadline is called a “statute of limitations.” There are statutes of limitations that apply to OCS’s collection of child support. OCS must attend to this area of the law to ensure our collection of support is not hindered by our failing to comply with it, and to allow us to inform our customers about it when appropriate.

This Policy explains how statutes of limitations apply to OCS’s work and how OCS should identify and address issues having to do with them. Overall, OCS aims to take a conservative approach to this issue, which ensures the accuracy and enforceability of judgments. In addition, certain aspects of the law in this area remain undecided, as a result of which this Policy remains subject to change based upon possible changes in the law.

This Policy has three parts. Part I summarizes the statutes and caselaw regarding the different, but related, statutes of limitations for collecting child support both judicially and administratively. Parts II and III explain how to identify and address statute-of-limitations issues. Part II deals with judicial enforcement of child support orders. Part III deals with administrative collection of support.

PART I: Statute of Limitations and Child Support

Different statutes of limitations govern OCS’s judicial and administrative actions to collect support. A judicial action is one taken in court, such as a motion for enforcement. An administrative action is one taken out of court, such as a judgment lien or the use of trustee process. The statute of limitations for judicial action applies differently if the case involves only Vermont law than if the Uniform Interstate Family Support Act, or UIFSA, applies. The statute of limitations for taking judicial action also may be relevant for administrative actions OCS may pursue.

A. Judicial Statute of Limitations

1. Vermont Law, 15 V.S.A. § 606

If Vermont issued the first child support order in a case, and the obligor continues to reside in Vermont, then Vermont’s statute of limitations for judicial actions to obtain a judgment for child support arrears applies. This statute is 15 V.S.A. § 606. Section 606 provides that, “An action to enforce a judgment . . . [for principal child support arrears] may be brought no later than six years after the youngest child covered by the support order attains the age of majority.” 15 V.S.A. § 606(c). “Principal” child support arrears are arrears that don’t include surcharge. After obtaining such a judgment, a motion to enforce a court judgment for child support arrears “may be brought at any time.” 15 V.S.A. § 606(a).

This means that the statute of limitations, or deadline, for getting a court judgment for principal child support arrears *not previously reduced to a court judgment* must be commenced—that is, filed in court—before the youngest child turns twenty-four years old. *See Hixson v. Plump*, 167 Vt. 202, 208 (1997). Any arrears judgment obtained within the statute of limitations can be enforced at any time thereafter. Once the deadline for obtaining a judgment is met, in other words, there is no deadline for future court actions to enforce that judgment, including, say, by means of a motion for license suspension or motion for contempt. Likewise, a court action to collect surcharge that has accrued on an arrears judgment obtained within the statute of limitations also can be filed at any time.

Because Vermont does not have “per-child orders”—that is, child support obligations calculated on a proportional basis per child—the statute of limitations expires when the youngest of multiple children in a case turns twenty-four. The clock starts running when the youngest child covered by an order turns eighteen. The statute of limitations, then, may start running even before the current child support obligation for the youngest child terminates under Vermont law. 15 V.S.A. § 658(c).

2. Statute of Limitations as a Defense to Court Action

Any principal child support arrears not reduced to a court judgment within the statute of limitations may be judicially unenforceable. Namely, the statute of limitations is an “affirmative defense,” which means a defense a child support obligor can raise in response to a request to obtain a judgment for, or enforce, child support arrears. *See Vermont Rule of Civil Procedure 8(c)*. For example, if OCS filed a motion for enforcement, an obligor could object to the court’s issuing a judgment for arrears not reduced to a judgment before the statute of limitations expired.

A court may also raise the issue of whether the statute of limitations prevents the court from granting an arrears judgment, even if the obligor does not. *See Daimler Chrysler Servs. North America, LLC, v. Ouimette*, 2003 VT 47, ¶¶ 5-6. Whether, or under what circumstances, OCS should inform the parties that the statute of

limitations may prevent enforcement of a child support order is a complex question discussed more below.

Depending upon the circumstances, a statute-of-limitations objection can result in the dismissal of a court action or in the court's denial of a request for an arrears judgment in part or in full. For example, if OCS filed a motion to enforce a child support order that had never been enforced prior to the only child's turning twenty-four years-old, the court could dismiss the action as being barred by statute of limitations under 15 V.S.A. § 606. Or, if the Court granted a judgment for child support arrears when a child was fifteen years-old, additional arrears accrued thereafter, but the order was not enforced again before the child turned twenty-four years-old, the statute of limitations could prevent the court from granting a judgment for that portion of the arrears that accrued since the last judgment.

3. Statute of Limitations under UIFSA

Different States have different statute of limitations for obtaining a court judgment for child support arrears. Many States have a "longer" statute of limitations than Vermont, meaning, the laws of those States provide more time than Vermont law does for getting an updated arrears judgment. Information about other States' statutes of limitations can be found on the website for the Federal Office of Child Support Enforcement's Intergovernmental Reference Guide: <https://www.acf.hhs.gov/css/map/irg>.

In some cases, OCS needs to assess under UIFSA whether Vermont's statute of limitations, or that of another State, should be applied. Namely, if Vermont did not issue the first child support order—that is, Vermont is not the "issuing State" under UIFSA—but the obligor currently resides in Vermont, or Vermont did issue the first child support order, but the obligor no longer resides in Vermont, UIFSA's statute of limitations provision would apply. This provision is 15B V.S.A. § 1604(b). Section 1604(b) provides, "In a proceeding for arrears under a registered support order, the statute of limitation of this State or of the issuing state or foreign country, whichever is longer, applies." A "proceeding for arrears" usually means an enforcement proceeding, but it can mean any court action that would result in an arrears judgment.

Section 1604(b) works in two ways. First, if OCS is seeking an arrears judgment in Vermont because the obligor resides here, but the first child support order did not issue in Vermont, the court would apply either § 606's statute of limitations or that of the State in which the first child support order issued, whichever is longer. Second, if OCS is seeking an arrears judgment in another State because the obligor resides there, and Vermont did issue the first child support order, the statute of limitations for seeking a judgment would be either that under § 606 or that of the "forum State"—that is, the State in which we're filing our court action—whichever is longer.

For example, imagine that OCS is planning to file to enforce a child support order in Vermont because the obligor resides here, but the order was issued in California,

which has no statute of limitations for the enforcement of child support arrears, which means there is no date after which child support arrears may become unenforceable under California law. Vermont or California law would apply. If the statute of limitations under § 606 had expired, OCS could ask the court to apply California law in seeking an updated arrears judgment as part of the enforcement action.

Or, imagine that OCS is planning to file to enforce a child support order issued in Vermont and the obligor resides in New Hampshire, where we're planning to file the action. New Hampshire's statute of limitations is twenty years after a child support debt becomes a judgment, as defined by New Hampshire law. Vermont or New Hampshire law would apply. If the statute of limitations under § 606 had expired, but that under New Hampshire law had not, OCS could seek an updated arrears judgment as part of the enforcement action in reliance upon New Hampshire's statute of limitations.

4. Tolling

Vermont statutory law and Supreme Court caselaw may support an argument in a specific case that the statute of limitations under § 606 was "tolled," meaning paused or restarted, due to the obligor's acknowledgment of the child support arrearage. *See Traudt v. Traudt*, 2022 VT 58;¹ 12 V.S.A. § 591. Such an argument would be useful in a case in which the statute of limitations expired without OCS's obtaining an updated judgment, but OCS is considering pursuing collection of the arrearage. The law requires such an acknowledgment of a debt to be in writing and signed by the obligor. Whether a tolling argument is viable, or should be made, are complex questions which would need to be decided by a regional attorney.

B. Statute of Limitations and Administrative Enforcement

1. Statute of Limitations under 15 V.S.A. § 791 and § 799

OCS's Intercept Unit handles administrative actions to collect child support arrears. Such actions, among others, include placing a "judgment lien" on real estate (also known as a "property lien") under 15 V.S.A. § 791 or the use of trustee process to attach personal or real property under 15 V.S.A. § 799. The arrearage based upon which administrative action may be taken can be determined by OCS administratively, pursuant to 15 V.S.A. § 606(b), or by a court. OCS determines and keeps the record of arrearages administratively using the ACCESS system and based upon the preparation of case accounting affidavits. Both determinations constitute "judgments" for child support arrears.

For example, 15 V.S.A. § 791 provides for OCS's placing a judgment lien on real property based upon a sufficient "judgment issued by the court for support arrearages." 15 V.S.A. § 791(a)(1). Section 791(a)(2) provides that, "[I]f payments are being made through the Registry, a sworn affidavit of the Office of Child

¹ Whether a tolled statute of limitation is restarted by the acknowledgment or paused is undecided in the caselaw. *See Traudt*, 2022 VT 58, Para. 18 n.4.

Support, establishing an arrearage in excess of one-quarter of the annualized amount of support attached to the underlying court order shall constitute an arrearage lien, if properly recorded under this section.” Furthermore, 15 V.S.A. § 799 allows OCS to initiate a trustee process “[u]pon noncompliance with a child support order” to a sufficient degree, noncompliance that can be determined administratively or judicially. 15 V.S.A. § 799(b).

Vermont statutes and caselaw create an eight-year statute of limitations within which monetary judgments in civil cases, including family court cases, generally must be renewed in order for these judgments to remain collectable by means of administrative action. *See* 12 V.S.A. § 506; 12 V.S.A. § 2681(a); Vermont Rule for Civil Procedure 69; *Blake v. Petrie*, 2020 VT 92; *Flex-A-Seal, Inc. v. Safford*, 2015 VT 40; *Colson v. Town of Randolph*, 2011 VT 129. However, no Vermont Supreme Court decision has addressed whether this eight-year statute of limitations applies to judgments for child support arrears, including to property liens placed under § 791 and a trustee process under § 799. To the contrary, the statutes authorizing such actions do not require OCS to obtain a court judgment for arrears before seeking to collect arrears administratively.² Rather, OCS can proceed with these actions using administrative arrears calculations—case accounting affidavits—whereas, generally, a party taking administrative action to collect on a civil judgment must rely upon a court judgment. *See* 15 V.S.A. § 791(a)(2); 15 V.S.A. § 799(b).

In addition, it can be hard to predict whether OCS would have sufficient time to obtain a renewed court judgment for support arrears before the opportunity to take administrative action to collect on the arrearage passes. Whether OCS would have sufficient time to obtain a new court judgment may depend on the type of administrative action OCS is considering.

Mindful of these legal issues and practical concerns, OCS will determine on a case-by-case basis whether it will pursue a renewed court judgment before taking administrative action. Intercept Unit Workers will consult with their supervisor and legal staff per established practices to make this determination and as part of seeking approval for the contemplated action.

OCS’s general policy will be to not seek a renewed court judgment before taking administrative action if it reasonably appears that the opportunity to take such action will be lost by waiting to seek a renewed court judgment. If OCS does not seek a renewed court judgment, the administrative action will proceed in reliance upon updated case accounting affidavits, in accordance with §§ 791(a)(2) and 799(b).

However, there may be some cases in which OCS may decide that a renewed court judgment should be obtained before taking administrative action, even if doing so

² The question of whether the eight-year statute of limitations applies to judgments for child support arrears is one courts may yet decide and OCS will continue to review its policy in this area accordingly. Like in a case involving judicial enforcement of child support, an obligor could raise a statute-of-limitations defense against an administrative action. In a given case, if a court were to apply this statute of limitations, a judgment for child support arrears that has not been renewed in court for over eight years may not be collectable via administrative action.

results in the inability to take the action. In addition to whether it would be reasonably possible to do so prior to the date by which the administrative action must be commenced, factors to consider in deciding whether to seek a renewed judgment include, but may not be limited to, the date of the last court judgment, if any; the amount of arrears to be collected administratively; whether there is, or soon will be, a pending court action as part of which the judgment will be renewed or updated; and whether there is reason to think the amount of arrears calculated administratively would change if determined judicially.

Separately, a property lien expires if not renewed within eight years. 15 V.S.A. § 791(f). Accordingly, Intercept Unit staff shall ensure that property liens are renewed every eight years, after review of the case to ensure placement of the lien is still appropriate.

2. Renewal of Court Judgments

A judgment, whether administrative or judicial, is renewed by the court's issuing a new arrears judgment pursuant to a motion filed under 15 V.S.A. § 606. The motion resulting in an updated arrears judgment must be filed pursuant to § 606, as is a motion for enforcement. *See Blake v. Petrie*, 2020 VT 92. The *Petrie* decision suggests that an updated arrears judgment must be issued pursuant to § 606 for it to constitute a renewed judgment for purposes of the statute of limitations. This would mean, for example, that an arrears judgment issued as part of an action to modify child support under 15 V.S.A. § 660 may not renew the judgment for purposes of the statute of limitations addressed in Part I.B.1.³

3. Tolling

As discussed in Part I.A.4 with respect to the statute of limitations for judicial action, OCS may be able to make an argument in a specific case that the statute of limitations for taking administrative action was tolled due to an obligor's acknowledgment of the child support arrearage. Such an argument would be useful if OCS was considering taking administrative action to collect arrears after the statute of limitations had expired. As above, whether such an argument is viable, or should be made, would be a decision for OCS legal staff.

PART II: Identifying and Addressing Judicial SOL Issues

A. Standard Procedure

OCS has a standardized process, which applies in each OCS region, for identifying and assessing judicial statute-of-limitations issues. The purpose of this process is to ensure systematically that court judgments for child support arrears are updated within the statute of limitations under § 606, which ensures, in turn, that arrears remain judicially enforceable. The process involves four general steps: 1) notice of the need to review the case relating to the statute of limitations; 2) initial review of material information; 3)

³ In possible contrast, an arrears judgment obtained as part of a modification action *would* suffice to update the judgment for purposes of future judicial enforcement, pursuant to 15 V.S.A. §§ 606(a), (c), addressed in Part I.A.1.

further assessment of the case; and, if applicable, 4) filing a court action to update the arrears judgment.

1. Notice: The caseworker gets a preprogrammed DAIL message when the youngest child covered by the child support order turns 19 years-old. This DAIL alerts the caseworker of the need to review the case relating to the statute of limitations.
2. Initial Review: Upon receiving the DAIL notification, the caseworker conducts an initial review of the case in order to gather information used to assess the possible issues. The caseworker then sends a DAIL to the regional attorney that includes answers to the following questions:
 - a. Which State issued the first child support order?
 - b. When was the most recent child support order issued?
 - c. Did the most recent child support order include an arrears judgment? If not, when was the most recent order that addressed arrears issued?
 - d. Is our system showing that arrears are owed, and are they NPA arrears, PA arrears, or both?
 - e. Is there any portion of any arrearage that was not included in the arrears judgment in the most recent child support order?
 - f. When did the youngest child covered by the child support order turn 18 years-old?
 - g. Are there currently any family-violence issues (active RFA orders or pending or resolved criminal cases) that would make it unsafe to pursue an updated judgment if needed?
3. Assessment: The regional attorney then assesses the case further in collaboration with regional staff to determine whether a court filing is necessary to address, or avoid, statute-of-limitations issue, and if so, what type of filing should be pursued. For instance, a motion for enforcement might be filed to get an updated arrears judgment within the statute of limitations. Or, the current obligation may be ripe for modification, as part of which an updated arrears judgment would be obtained.
4. Filing: If applicable, regional staff will prepare a court filing.

B. Informing Parties of a Statute of Limitations Issue

It may be necessary or appropriate for an OCS representative to inform the parties about a statute-of-limitations issue as part of our addressing this issue. In some cases, OCS may have a duty to inform the parties that the statute of limitations could be raised as a defense against the court's issuing an updated arrears judgment, even if our doing so would render the arrears, at least partially, uncollectable.

This duty may be part of OCS's obligation to treat fairly parties who are not represented by an attorney under the Vermont Rules of Professional Conduct, which apply to all OCS attorneys and court representatives, as well as OCS's general role as a neutral

third-party acting in children's best interests. *See* Vermont Rule of Professional Conduct 4.3; 33 V.S.A. §§ 41010-4102. Whether OCS is obligated to inform parties about a statute-of-limitations issue, and how to do so properly without giving parties legal advice, can be complex. Regional staff should always consult with the regional attorney about this issue before discussing it with a party.

PART III: Identifying and Addressing Administrative Statute of Limitations Issues

A. Standard Procedure

OCS's Intercept Unit will employ a standardized process, applicable to all cases in which administrative collection of support is considered, for identifying and addressing statute-of-limitations issues. This process has two steps: 1) assessment of whether a court judgment, or property lien, needs to be renewed before administrative collection can be pursued; and 2) referral to regional staff to seek renewal of a judgment or renewal of a property lien by Intercept-Unit staff.

1. Assessment: An Intercept Unit worker will consider the statute of limitations as part of reviewing a case for potential administrative action to collect support, such as a property lien or trustee process. The worker will determine whether, in accordance with Part I.B.1 of this Policy, a court judgment for child support arrears or lien should be, or needs to be, renewed prior to initiating an administrative-collection process. As noted above, the Intercept Unit Worker shall consult with legal staff as necessary to determine whether a judgment or lien needs to be renewed.
2. Referral or Renewal: Upon determining that an arrears judgment should be renewed, the Intercept Unit Worker will refer the case to regional staff to seek renewal of the judgment. The referral should be made via a DAIL message sent to the regional caseworker. Regional staff shall then review the case and seek a renewed judgment as provided for in this Policy. Regional staff shall consult with the Intercept Unit, and *vice versa*, on an ongoing basis, as need be.

If an arrears judgment need not be renewed, but a property lien has not been renewed for eight years, the Intercept Unit will renew the lien pursuant to 15 V.S.A. § 791.

If a renewed judgment is pursued, the Intercept Unit will wait until the judgment is renewed before initiating the contemplated administrative action. If both an arrears judgment and a lien need to be renewed, the Intercept Unit will wait until the judgment is renewed and then place a new lien, rather than renewing the existing lien.

In the event that a renewed judgement is not, or cannot be, obtained, the Intercept Unit Worker shall consult with the Unit Supervisor and legal staff to determine whether the contemplated administrative action can be pursued without obtaining the renewed judgment.

Glossary

Statute of Limitations: A deadline set by a statute before which a party must take certain action, which, if missed, may prevent the party from taking such action in the future. For example, pursuant to 15 V.S.A. § 606(c), a party must file a court action to update the court judgment for principal child support arrears within six years of the youngest child’s turning eighteen years-old.

Judicial Action: Action taken in court to collect child support, such as a motion for enforcement filed under 15 V.S.A. § 606. OCS’s regional staff initiates such judicial actions.

Administration Action: Action taken outside of court to collect child support, lien placed under 15 V.S.A. § 791 or trustee process pursuant to 15 V.S.A. § 799. OCS’s Intercept Unit is chiefly responsible for such administrative actions.

Principal Child Support Arrears: Child support arrears that don’t include surcharge. 15 V.S.A. § 606 defines the statute of limitations for obtaining an updated judgment for principal child support arrears, which mean a judgment for principal arrears that have not been previously reduced to a judgment.

Affirmative Defense: A defense that a party can raise to the court’s taking certain action. The statute of limitations is an affirmative defense which can be raised to the court’s issuing a judgment for child support arrears. The court can also raise the issue of the statute of limitations on its own.

Tolling: The restarting or pausing, potentially temporarily, of the running of a statute of limitations.

Issuing State: The State which issued the first child support order in a case. Under UIFSA, the statute of limitations of the issuing State, or the forum State, whichever is longer, applies to a court action seeking an arrears judgment.

Forum State: The State in which a court action is filed. Under UIFSA, the statute of limitations of the issuing State, or the forum State, whichever is longer, applies to a court action seeking an arrears judgment.

Arrears Judgment: A determination of the amount of child support arrears owed, made administratively by OCS pursuant to 15 V.S.A. § 606(b) or as part of a court action.

Date	Action	Description
05/01/2023	Created	Policy created to address and clarify how statute of limitations apply to OCS’s work and their collection of child support
00/00/0000	Revised	