

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 12: Enforcement</b>	<b>Effective Date: 07/28/2021</b>
	<b>Section 8: Statute of Limitations</b>	<b>Version: 1.2 Date: 07/28/2021</b>

**BACKGROUND**

Federal law mandates that States have in effect laws requiring administrative and judicial procedures for the enforcement of child support obligations.<sup>1</sup> Statute of limitations refers to the timeframe set by legislation where affected parties need to take action to enforce rights.

**POLICY**

There are two (2) statute of limitation time periods that may govern the collection of child support obligations. First, an action to enforce a child support obligation must be commenced not later than ten (10) years after a child’s 18th birthday or the emancipation of a child, whichever occurs first.<sup>2</sup> Alternatively, every judgment and decree of any Court of record in Indiana, or any other State, shall be considered satisfied after the expiration of 20 years.<sup>3</sup>

**REFERENCES**

- [IC 31-16-16-2](#): Delinquent Payment as Judgment Against Obligor
- [IC 31-16-6-6](#): Termination of Child support; Emancipation; Petition for Educational Needs
- [IC 31-18.5-6-4](#): Choice of Law
- [IC 34-11-2-10](#): Enforcement of Child Support Obligations
- [IC 34-11-2-12](#): Satisfaction of Judgment After Expiration of 20 Years
- [Ind. Trial Rule 8\(C\)](#): Affirmative Defenses
- [Ind. Rules of Professional Conduct 4.1](#): Truthfulness in Statements to Others
- [Ind. Rules of Professional Conduct 4.3](#): Dealing with Unrepresented Persons
- [Skolak v. Skolak, 895 N.E.2d 1241 \(Ind. Ct. App. 2008\)](#)
- [Willis v. Westerfield, 839 N.E.2d 1179 \(Ind. 2006\)](#)
- [Estate of Wilson v. Steward, 937 N.E.2d 826 \(Ind. Ct. App. 2010\)](#)
- [28 U.S.C. § 1738B](#): Full Faith and Credit For Child Support Orders
- [42 U.S.C. § 666](#): Requirement of Statutorily Prescribed Procedures to Improve Effectiveness of Child Support Enforcement
- [ABA Ethics Op. 94-387](#): Disclosure to Opposing and Court that Statute of Limitations has Run

**PROCEDURE**

<sup>1</sup> 42 U.S.C. § 666(a)(2)

<sup>2</sup> IC 34-11-2-10

<sup>3</sup> IC 34-11-2-12

## 1. Statute of Limitations as an Affirmative Defense

In order to prevent enforcement of a child support arrears obligation based on a defense of either the child support enforcement statute of limitations or the judgment statute of limitations, it must be raised affirmatively, and also proven by the party, otherwise its use as a defense against enforcement is waived.<sup>4</sup>

Because the use of a time barred claim defense against the enforcement of a child support arrears obligation is an affirmative defense by the obligor, the Title IV-D Prosecutor's Office may initiate or continue the enforcement of a child support arrears balance even if the statute of limitations has run. The Title IV-D Prosecutor's Office is strongly encouraged to establish an internal office policy to determine its guidelines in pursuing the enforcement of a time-barred arrears balance by examining the statutes with applicable case law.

## 2. Child Support Obligation Enforcement Statute of Limitations – Commencing Actions

An action to enforce a child support obligation must be *commenced* not later than ten (10) years after:

- a. The 18th birthday of the child; or,
- b. The emancipation of the child, whichever occurs first.<sup>5</sup>

If applying this child support obligation enforcement statute of limitations, and unless emancipated prior to the age of 18, an action to enforce a child support obligation must be started before the child's 28th birthday. If the child is incapacitated the child support obligation continues during the incapacity or until further order of the Court.<sup>6</sup>

## 3. Judgment Statute of Limitations

Every judgment and decree of any Court in Indiana, or any other State, shall be considered satisfied after 20 years.<sup>7</sup> However, Indiana case law holds that this 20 year judgment satisfaction statute is merely a rule of evidence that creates a rebuttable presumption.<sup>8</sup> In effect, a judgment is presumed to be satisfied in full after 20 years, but this presumption can be overcome by a Court finding of non-payment.<sup>9</sup>

## 4. Statute of Limitations Choice of Law in Enforcement of Intergovernmental Cases

Pursuant to the Uniform Interstate Family Support Act (UIFSA), as well as the Full Faith and Credit for Child Support Orders Act, in an action to enforce arrears, a Court shall apply the statute of limitation of the forum State, or of the State of the Court that issued the order, whichever statute provides the longer period of limitation.<sup>10</sup> The Title IV-D Prosecutor's Office determines the statute of limitation laws of the issuing State and applies the longer statute of limitation for enforcement when compared to Indiana

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<sup>4</sup> Ind. Trial Rule 8(C); Willis v. Westerfield, 839 N.E.2d 1179, 1185 (Ind. 2006)

<sup>5</sup> IC 34-11-2-10

<sup>6</sup> IC 31-16-6-6(a)(2)

<sup>7</sup> IC 34-11-2-12

<sup>8</sup> Estate of Wilson v. Steward, 937 N.E.2d 826, 829 (Ind. Ct. App. 2010)

<sup>9</sup> *Id.*

<sup>10</sup> IC 31-18.5-6-4(c); 28 U.S.C. § 1738B(h)(3);

timeframes. In States that do not have a statute of limitation governing the enforcement of arrears, there is no expiration for the enforcement of that arrears obligation, and thus considered the longer statute of limitation when compared to Indiana timeframes.

## FORMS AND TOOLS

### [1. Duty to Support After 19 in ISETS Desktop Guide](#)

## FREQUENTLY ASKED QUESTIONS

1. Q. Are there ethical considerations in bringing a claim barred by the statute of limitations?
  - A. It may not be considered unethical for the Title IV-D Prosecutor's Office to pursue the enforcement of an arrears balance knowing the claim is time-barred.<sup>11</sup> The Title IV-D Prosecutor's Office does not have a duty to inform the obligor that the statute of limitations has run and may choose to enforce a time-barred claim for the collection of an arrears balance. However, the Title IV-D Prosecutor's Office may not misrepresent the law to the obligor.<sup>12</sup> The Title IV-D Prosecutor's Office is strongly encouraged to establish an internal office policy to determine its guidelines in pursuing the enforcement of a time-barred arrears balance by examining the statutes with applicable case law.
2. Q. What are the differences between unadjudicated arrears versus adjudicated arrears in the enforcement of an arrears balance?
  - A. As a matter of law, a child support payment that is required under a current support order, and is also delinquent, is treated as a judgment against the obligor for that delinquent amount.<sup>13</sup> Though an unadjudicated past due child support obligation is to be *treated* as a judgment, the Indiana Court of Appeals has held that an action to enforce unadjudicated child support arrears must still be initiated within the ten (10) year timeframe required for child support obligations.<sup>14</sup>

Unadjudicated arrears are not considered a judgment for the purposes of the judgment statute of limitations and are therefore limited to the shorter timeframe for enforcement under the child support obligation enforcement statute of limitations.<sup>15</sup>

The Title IV-D Prosecutor's Office is strongly encouraged to petition the Court for an adjudication of an arrears balance prior to the expiration of this ten (10) year timeframe of the child support enforcement statute of limitations. A court ordered adjudication of arrears *is* a judgment for the purposes of the judgment statute of limitations and the timeframe for enforcement of that amount may be extended to 20 years after the date of adjudication. Furthermore, a judicial finding of non-payment overcomes the presumption that a judgment has been satisfied in full after 20 years, and enforcement efforts may be pursued beyond this 20 year judgment statute of limitations timeframe.

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<sup>11</sup> ABA Ethics Op. 94-387

<sup>12</sup> Ind. Rules of Professional Conduct 4.1; Ind. Rules of Professional Conduct 4.3

<sup>13</sup> IC 31-16-16-2

<sup>14</sup> *Skolak v. Skolak*, 895 N.E.2d 1241 (Ind. Ct. App. 2008)

<sup>15</sup> *Skolak v. Skolak*, 895 N.E.2d 1241, 1244 (Ind. Ct. App. 2008)

<b>RELATED INFORMATION</b>
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N/A

<b>REVISION HISTORY</b>
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<b>Version</b>	<b>Date</b>	<b>Description of Revision</b>
Version 1	05/03/2019	Final Approved Version
Version 1.1	07/01/2019	Revised to add reference to changes to emancipation; child may still receive current support if enrolled in school past age 19.
Version 1.2	07/28/2021	Updated hyperlinks. Reviewed for accuracy.