

What Do I Do If Social Security Stops My Benefits Because I Am A “Fleeing Felon”?

Am I a fleeing felon?

The Social Security Administration (SSA) lists three types of fleeing felons:

- felony charges with an outstanding warrant;
- felony conviction with an outstanding warrant. If you fall into either of these first two categories, there is a national class action lawsuit which has resulted in a settlement which you should review to see if you meet the criteria. See information on the [Martinez Settlement](#). Or
- a violation of probation or parole, regardless of whether the underlying crime was a felony. If you fall into this category, you were not affected by the settlement. Read the information below to learn your rights.

Let's look at each of these.

(1.) and (2) Felony Warrants. A fleeing felon is someone who has an outstanding arrest warrant for a felony - which can be either a crime the law calls a felony, or a crime that is punishable by at least a year in prison. You may be a fleeing felon if you have been either charged or convicted with the felony. Here, we describe this type of felony as “a warrant.”

(3) Violation of Probation or Parole. A fleeing felon is also defined as a person in violation of a condition of federal or state probation or parole. The probation violation can be for either a misdemeanor or a

felony. Here, we describe this as “a violation.”

How does being a fleeing felon affect my public benefits?

If you are a fleeing felon, you are not eligible for many federal and state public benefits. Your benefits for the following **federal programs** may be suspended:

- Social Security retirement;
- Social Security Disability;
- Supplemental Security Income;
- Veterans benefits;
- Food assistance; and
- TANF.

Your benefits for the following **state programs** may be terminated:

- SFA; and
- Basic Food Assistance.

If your DSHS or VA benefits have been suspended due to a notice stating that you are a fleeing/fugitive felon, please refer to the publications that discuss those public benefits. **This publication talks only about Social Security benefits.**

Does being a fleeing felon affect benefits for my spouse and children?

No. **Social Security** does not punish dependents (spouses or children) of the fleeing felon by suspending the dependent’s benefits too.

What if I am a child and I am a fleeing felon?

The fleeing felon rule applies to juvenile offenders too. For **Social Security**, if you are a child who receives dependent benefits, you may lose those benefits. In Washington, a juvenile convicted of a crime is called an adjudicated offender and is not called a felon. The SSA may suspend your benefits anyway. You will have to argue that you are not a fleeing felon, but rather an adjudicated offender your appeal hearing. The Washington law on this is at [RCW 13.04.240](#). You should state this law at your hearing.

I know that I have an outstanding warrant. Should I apply for benefits anyway?

No. This could cause you more problems down the line. The best thing would be to try to resolve the outstanding warrant before you apply for benefits. When you apply for federal or state public benefits, you will be asked whether you have any outstanding warrants or violations. If you know that you do, you must answer honestly. If you give your answer under oath and you do not tell the truth, then you may later be found guilty of fraud. This could result in jail time and a requirement to pay back any benefits you got as a result of not telling the truth. Also, if you apply for benefits and have an outstanding warrant or violation, the federal or state agency may notify the appropriate law enforcement agency of your whereabouts in order to help them to arrest you.

How far back may my benefits be suspended?

The SSA answers this question by determining when your status as a fleeing felon made you ineligible for your social security benefits. The SSA looks back, finds the date that you became ineligible, and then notifies you that your benefits will be suspended or terminated effective that date. The SSA will also, either at the same time or sometime in the future, ask you to pay back any benefits you received after you became ineligible. This is called an overpayment.

Social Security eligibility differs for each benefit program. So, how your status as a fleeing felon affects your eligibility depends upon the type of benefit you get. –

- For Title II benefits (retirement, disability, dependent benefits), Social Security looks at three possible suspension dates and chooses the latest date. The three dates it looks at are: (1) the date the warrant was issued, or (2) the date that Social Security first started paying you benefits, or (3) January 2, 2005. To figure out when you became ineligible: (a) Write down the date your warrant was issued here: _____, (b) Write down the date that Social Security first started paying you benefits here: _____ (c) The third date, we have written in for you: January 2, 2005. Now, compare those dates. Circle the one that is closest to today's date, the latest date. The one you circled is the date that Social Security determined you were ineligible.
- For Title XVI benefits (Supplemental Security Income), the SSA still looks

at three possible dates and chooses the earlier of these dates. The three dates are: (1) the date that a warrant or order was issued by court or appropriate law enforcement agency, (2) the first month the beneficiary avoided the warrant or violated the probation or parole, or (3) August 1996. To figure out when you became ineligible: (a) Write down the date that the warrant or order was issued here: _____.

(b) Write down the date that you first avoided the warrant or violated the probation or parole here: _____.

(c) The third date, we have written in for you: August 1996. Do not worry if you wrote in a date in (a) only or (b) only, that is okay. Now, compare those dates. Circle the one that is the farthest one away from today's date, the earliest date. The one you circled is the date that Social Security determined that you were ineligible.

I am told that my benefits will be suspended because I am a fleeing felon. What can I do?

How you respond to such a notice depends upon the benefits affected. There are three things to take care of, in the order you must take care of them:

First, you need to act quickly to prevent your benefits from being suspended.

Second, you will have to address the underlying warrant or violation.

And third, if you are not successful at addressing the warrant or violation, you will have to work with an overpayment.

The SSA will likely send you an Advance Notice of Suspension. Read this carefully. It should outline what your rights are and when you have to exercise them in order to preserve them.

FIRST, Make a Timely Protest to the Suspension. Depending upon how the SSA learned about the warrant or violation, you may be given a certain number of days' advance notice of the intended suspension. This advanced notice is called the "due process period." If the SSA learned about the warrant or violation by a computer match (fugitive felony alerts or paper notes from law enforcement pursuant to formal notification agreement), you will be given 35 days' advance notice of the suspension. If the SSA learned about the warrant or violation from another source (newspaper articles, reports from neighbors or relatives, or law enforcement contacts), then you will be given 15 days' advance notice of the suspension. If you or someone acting for you reports the warrant or violation, you will be suspended immediately. In this situation, you will also get an overpayment notice at the same time that you get your suspension notice.

If you protest the suspension during this due process period, then the SSA will defer the suspension until it figures out whether your protest qualifies you for a good cause exception. We talk about the good cause exceptions below. This means that you will continue to get your check, although if the SSA later determines that you should have been suspended, it will seek an overpayment for the benefits paid to you during the deferral. If you do not protest during this due process period, then the SSA will suspend your benefits. You may still protest the suspension of benefits, but the

SSA will not reinstate your benefits unless your protest is successful.

SECOND, Address the Underlying Warrant or Violation. Take a close look at the notice of suspension that you got. It should tell you why the SSA is suspending your benefits. It should also tell you about the warrant or violation. The notice should say where the warrant or violation was issued, the date it was issued, and why it was issued. If it does not, ask the SSA for this information. The SSA received a warrant number from a federal or state agency before sending out the notice to you. You will need this information. You will have to contact the agency that issued the warrant or violation in order to address your fleeing felon status.

After you learn where the felony warrant or the parole or probation violation occurred, you must contact the agency that issued it to get a copy of it.

Once you have a copy of the warrant or violation, you must contact the prosecutor's office that issued the warrant or violation to address the underlying issue. Some public defender agencies will help people with these cases. You may be able to get the warrant or violation dismissed. Several reasons to ask for dismissal include:

- identity theft – they got the wrong person;
- the circumstances of your move from that jurisdiction – were you fleeing from an abusive situation, or were you low-income and could not afford to stay there while the criminal issue was resolved;
- you have since rehabilitated yourself and shown yourself to be a law abiding citizen; or

- administrative error – did the probation officer say that you failed to register your move when in fact you did?

There are more reasons than these. If the prosecutor will not dismiss the warrant or violation, then you will have to work with the prosecutor – preferably through your criminal law attorney – to resolve the matter.

Do I have to respond by a certain time?

Yes. The timelines to prevent the suspension of your benefits are in the section above. For Social Security benefits, you have the right to protest the notice of suspension for 12 months, or one year. After that year is up, your only choice is to address the underlying warrant or violation, unless you meet the criteria for the mandatory good cause exception. Remember: you must respond to the advance notice of suspension within the time frames listed above.

How do I protest the Notice of Suspension?

The Notice suspending benefits should list a contact office for you to make your protest. You must meet the deadlines listed above. You can do so by phone or by mail. You must also put your protest into writing. Keep a copy of your protest. You can deliver the original to the contact office, in which case ask the person taking your letter from you to date stamp your copy of the letter, or send the letter via certified mail, return receipt requested. The post office will return the green return receipt to you after your letter is delivered. Keep this return receipt with your copy of your protest

letter. This is your proof that you did protest the suspension of your benefits on time.

What happens after I protest the suspension of my benefits?

The SSA has created a process for dealing with the suspension of your benefits. After you protest the suspension of your benefits, you have 90 days to prove that your benefits should not have been suspended. The 90 days may be extended in limited situations. During the 90 days you must show the SSA one or more of the following:

- Evidence that you satisfied your warrant or violation.
- Evidence of “good cause.”
- State that you can show “good cause,” and state that you need additional time to get the evidence of good cause. The SSA will give you up to an extra 90 days to get this evidence.
- State that you do not have a warrant or violation and that the SSA identified the wrong person.
- State that you have satisfied the warrant or violation and provide proof of the same.
- Protest the fact that you meet the suspension criteria as a fugitive felon.

I am not currently getting benefits, but I used to. Now the SSA is telling me I was not eligible then because I was a fleeing felon. What can I do?

You may get a notice of an overpayment from the SSA because it says it paid you benefits during a period when you were a fleeing felon. The SSA is calling this notice a closed period of suspension and overpayment notice. You must protest this notice within 60 days of receiving it, and you may protest it for the same reasons given above. If you need more time to gather evidence of good cause, the SSA may grant an extra 60 days.

What is “Good Cause”?

Under certain circumstances, the SSA will not suspend your benefits and will not seek an overpayment for the benefits. The certain circumstances are called “good cause” exceptions. There are mandatory good cause exceptions, where the SSA is forbidden from suspending your benefits, and there are discretionary good cause exceptions where the SSA can decide whether to suspend your benefits.

Mandatory good cause exceptions:

Remember, there is no time limit for claiming a mandatory good cause exception. This can be raised any time. There are two mandatory good cause exceptions.

First, if the court that issued or has authority over the warrant or violation has done one of the following, then the SSA must grant you the good cause exception:

- “Found the individual not guilty of the criminal offense or probation/parole violation; or

- “Dismissed the charges relating to the criminal offense or probation/parole violation on the unsatisfied warrant, or
- “Vacated the warrant for arrest of the individual for the criminal offense or probation/parole violation; or
- “Issued any similar exonerating order (such as a judicial order excusing the individual from alleged fault or guilt) or taken similar exonerating action (such as criminal offense on which the warrant is either no longer considered a crime punishable by death or confinement of more than one year or no longer enforced; such as a felony).”

Second, the SSA must grant you a good cause exemption if you are not the person named in the warrant or the violation because of mistaken identity due to identity fraud.

If you cannot show mandatory good cause, the SSA will give you the chance to show good cause for what they call “mitigating circumstances” or **discretionary good cause**. The time limits for requesting the SSA to look at mitigating circumstances are:

- 12 months from the Advance Notice,
- 12 months after you get your first award, or
- 12 months from the date of the fleeing felon notification.

There are two ways to show mitigating circumstances. Each way has several parts. You must be able to show each part to prove mitigating circumstances. The SSA calls these Option A and Option B.

To show **Option A**, you must show each of the following:

- “The criminal offense or probation/parole violation on which the beneficiary was charged or convicted was non-violent and not drug related. For a probation/parole violation, the original offense was also non-violent and not drug related, **and**
- “The beneficiary was not convicted of any subsequent felony crimes since the warrant was issued, **and**
- “The law enforcement agency that issued the warrant reports that it will not extradite the fugitive or is unwilling to act on the warrant.”

Option B has a different set of criteria. You must prove each of these:

- “The criminal offense or probation/parole violation on which the beneficiary was charged or convicted was non-violent and not drug related. For a probation/parole violation the original offense was also not drug related, **and**
- “The beneficiary was not convicted of any subsequent felony crimes since the date the warrant was issued; **and**
- “The warrant is/was the only existing warrant and was issued 10 or more years prior to the date the Fugitive Felon Match processed the current warrant information; **and**
- “The beneficiary lacks the mental capacity to resolve a warrant as evidence by one of the disability diagnostic codes listed in GN 02613.910; or is incapable of

managing payments; or is legally incompetent; or The SSA has appointed a representative payee to handle his payments; or is residing in a long-term care facility, such as a nursing home or mental treatment/care facility.”

How do I establish “Good Cause”?

After you request a good cause exception from the SSA, you have 90 days to provide evidence or information to the SSA. If you do not do so at the end of 90 days, the SSA will not find good cause. If you request a good cause exception within the due process period, the SSA will not suspend your benefits. If the due process period has already passed when you request the good cause exception, the SSA will not reinstate the benefits until good cause is shown.

The SSA prefers that documents you offer to show good cause be on the letterhead of the court, law enforcement agency or probation/parole agency that issued the warrant or court document, with the person signing the document having knowledge of the facts in the letter. This can be a court docket, a copy of the arrest warrant, or other official document. If you cannot provide this preferred documentation, you may come up with alternative documentation. But any alternative documentation must be just as credible as the preferred documentation. That is, it can be a fax from the agency that issued the warrant or the violation and it must have the name of the person making the report and that person’s job position for the agency or court issuing the warrant or violation and the date. The SSA can also verify the facts through a call to or from the agency or court or your doctor or nursing home administrator. Where your good

cause exception requires that no further other felony convictions have occurred, you will have to give the SSA a statement that you have had no further convictions.

The SSA will carefully review the information that you submit. If the SSA finds good cause, then it will not suspend your benefits or seek to recover any payments made to you under the fugitive felon statute. If the SSA determines that the evidence you supply is fraudulent, altered, or cannot satisfactorily establish good cause, then the SSA will report the case to its investigators.

The SSA says I did not show good cause, or I just fulfilled the requirements of the warrant/violation and now the agency wants money back from me. What’s up?

If you satisfy the warrant/violation criteria or if the SSA says you did not show good cause, then the SSA will try to recover for an overpayment.

I lost the good cause exception. Do I have any other options to challenge the suspension?

Sometimes a Notice to Suspend benefits will come with a notice of overpayment. The SSA believes that any benefits paid to you while the felony was outstanding must be paid back it. If a notice of an overpayment accompanies the Notice to Suspend your benefits, follow the steps for both notices.

1. **Request Waiver.** Waiver assures you continuing benefits during your appeal. You must request it within ten days of the date of the notice.

An additional five days is allowed for mailing. You should request waiver if your protest is denied and if you get an overpayment notice, even if both notices do not come at the same time. Call the SSA's toll free number between 7 a.m. and 7 p.m. (1-800-772-1213 or 1-800-325-0778 TTY). The publications called "[How to Fight Your SSI or SS Disability Denial](#)"

and "[How to Fight an SSI or SSD Overpayment](#)" have more on waiver at www.washingtonlawhelp.org.

The waiver rules talked about in those publications apply to retirement benefits as well as to SSI and disability benefits.

2. **Request Reconsideration.** You must request Reconsideration within 60 days of the adverse notice.

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