Social Security Benefits and the “Fleeing Felon” Law

Am I a fleeing felon?

Social Security (SSA) will consider you a fleeing felon and ineligible for their benefits if you have an outstanding arrest warrant specifically for fleeing prosecution or confinement on a felony charge.

Under federal law, you cannot get Social Security benefits if you are one of these:

- fleeing to avoid prosecution for a felony
- violating the terms of probation or parole

Have the rules changed?

Yes. Social Security once said the mere existence of an outstanding felony arrest warrant, no matter when/why issued, made you a “fleeing felon”. SSA considered any probation or parole warrant evidence that you were “actively” violating probation/parole, even if no court had found that you had violated probation/parole. When SSA found out someone had an outstanding warrant, they simply denied or cut off their benefits.

Federal court cases have now limited when SSA may deny or cut off benefits due to warrants. In April 2009, SSA settled a class action lawsuit where the plaintiffs alleged SSA was interpreting the “fleeing felon” provision too broadly. See Martinez v. Astrue, Case No. 08-CV-4735 CW (N.D. Cal. 2009). As part of the settlement, SSA agreed that the “fleeing felon” provision only applies to felony warrants specifically issued for flight.

In another class action lawsuit, Clark v. Astrue, 603 F.3d 140 (2d Cir. 2010), the Second Circuit Court of Appeals ruled that a probation or parole warrant on its own is not enough to prove someone is “actively” violating their probation or parole. On April 13, 2012, the Clark Court ordered SSA to reinstate benefits and reopen claims for everyone whose benefits SSA had suspended solely because of an outstanding warrant for alleged violation of probation or parole on or before April 13, 2012. SSA should have granted this relief to everyone affected by April 2014.

How does an outstanding warrant affect my eligibility for SSA benefits now?

SSA will consider you a “fleeing felon” only if you have an outstanding arrest warrant specifically for fleeing prosecution or confinement on a felony charge. These are limited to felony warrants for these National Crime Information Center felony offense codes:

- 4901 (Escape)
- 4902 (Flight to Avoid Prosecution or Confinement)
- 4999 (Flight-Escape)

Warrants for any other felonies are not enough for SSA to call you a “fleeing felon.”
Under the pre-Martinez settlement policy, most suspensions/denials were for codes other than the three above. A complete list of felony offense codes is at POMS GN 02613.900:

SSA may no longer use only a warrant to prove you are actively violating your probation/parole. If SSA finds out you have an outstanding probation/parole warrant, they probably have to investigate whether you are actively violating your probation/parole. How deeply SSA must investigate is unclear.

Does being a fleeing felon affect my other public benefits?

Probably. You are not eligible for many federal and state public benefits. Your benefits from these federal programs may end:

- Social Security retirement
- Social Security Disability (SSD)
- Supplemental Security Income (SSI)
- Veterans benefits
- Food assistance
- TANF

Your benefits from these state programs may end:

- SFA
- Basic Food Assistance

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

Yes. Social Security suspends the dependent's benefits too.

What if I am a child and a fleeing felon?

The fleeing felon rule applies to juvenile offenders. A child getting Social Security dependent benefits may lose those benefits. In Washington, we call a juvenile convicted of a crime an adjudicated offender, not a felon. SSA may cut off your benefits anyway. At your appeal hearing, you must argue that you are an adjudicated offender, not a fleeing felon. The state law on this is at RCW 13.04.240. You should state this law at your hearing.

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

Yes. You should try to resolve the outstanding warrant before applying. It takes a long time to apply and be approved for Social Security. There is often time to take
care of the warrant before your approval comes through.

When you apply for federal or state public benefits, they will ask if you have any outstanding warrants or violations. If you know you do, answer honestly. If you give an answer under oath that is not the truth, you may later face fraud charges. This could mean jail time and paying back any benefits you got.

If you apply for benefits and have an outstanding warrant or violation, the agency you are applying with may tell law enforcement where you are to help them arrest you. You will probably get arrested.

**How far back can SSA suspend my benefits?**

They will suspend benefits as of the first month you had an outstanding arrest warrant specifically issued for fleeing prosecution or confinement on a felony charge. SSA looks back, finds the date you became ineligible, and then notifies you they will end or suspend your benefits as of that date.

At some point, SSA will ask you to pay back any benefits you got after you became ineligible. SSA calls this an overpayment.

**SSA told me they are suspending my benefits because I am a fleeing felon. What can I do?**

It depends on the benefits affected. You must do these things, in order:

1. You must act quickly.
2. You must address the underlying warrant.

3. If you do not successfully address the warrant, you will have to work with an overpayment.

SSA will probably send you an *Advance Notice of Suspension*. Read it carefully. It should say:

- what your rights are
- when you must exercise your rights

**FIRST, Make a Timely Protest of the Suspension.** You might get advance notice of the intended suspension. This advance notice is the “due process period.”

*If SSA learned about the warrant by a computer match* (fugitive felony alerts or paper notes from law enforcement pursuant to formal notification agreement), you will get 35 days’ advance notice of the suspension. *If SSA learned about the warrant from another source* (the newspaper, reports from neighbors or relatives, or law enforcement contacts), you will get fifteen days’ advance notice of the suspension.

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- *If you or someone acting for you reports the warrant*, SSA will suspend your benefits right away. You will get an overpayment notice at the same time as your suspension notice.
If you protest the suspension during this due process period, SSA will put off the suspension until it figures out if you qualify for a good cause exception. (Read about the good cause exceptions below.) You will keep getting your check. If SSA later determines it should have suspended your benefits, it will seek an overpayment for the benefits you got during this time.

If you do not protest during this due process period, SSA will suspend your benefits. You may still protest the suspension of benefits. SSA will only give back your benefits if you win your protest.

**SECOND, Address the Warrant.** Look closely at your notice of suspension. It should say:

- why SSA is suspending your benefits
- where, when (date), and why the warrant was issued

If it does not, ask SSA for this info.

SSA got a warrant number from a federal or state agency before sending you its notice. You need the warrant number. You must contact the agency that issued the warrant or violation to address your fleeing felon status.

After you learn which agency issued the felony warrant, contact them for a copy. Once you get it, you must contact the prosecutor’s office that issued the warrant or violation to address the underlying issue.

- Some public defender agencies will help with these cases.

You may be able to get the warrant/violation dismissed. Here are some grounds:

- Identity theft – they got the wrong person

- The circumstances of your move from that jurisdiction - examples: you were fleeing from an abusive situation, or you were 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 law-abiding

- Administrative error: the probation officer said you did not register your move, but you did

There are other grounds not listed here. If the prosecutor will not dismiss the warrant/violation, you must 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.

You have the right to protest the notice of suspension for twelve months. After that, all you can do is address the underlying warrant, unless you meet the criteria for the mandatory good cause exception. You will probably have to reapply for benefits and wait for a new decision from SSA.

- You must respond to the advance notice of suspension within the periods 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 protest by phone or mail. You must put your protest in writing and keep a copy.

If you deliver the original to the contact office, ask the person taking it from you to date-stamp your copy. You can also send the letter via certified mail, return receipt requested. The post office will return the green return receipt to you after delivering your letter. Keep the return receipt with your copy of your protest letter for proof you protested the suspension of your benefits on time.

I protested the suspension of my benefits. Now what?

You have 90 days to prove that SSA should not have suspended your benefits. In a few situations, SSA may give you more than 90 days.

During the 90 days, you must do at least one of these:

- Show SSA evidence that you satisfied your warrant.
- Show SSA evidence of “good cause.”
- State that you can show “good cause,” but need more time to get evidence. SSA will give you up to 90 more days to get evidence.
- State that you do not have a warrant and SSA identified the wrong person.
- Provide proof you have satisfied the warrant.
- Protest the fact that you meet the suspension definition as a fugitive felon.

I used to get benefits. I do not now. Now SSA says I was not eligible then because I was a fleeing felon. What can I do?

You may get a notice of an overpayment from SSA saying it paid you benefits during a period when you were a fleeing felon. SSA calls this notice a closed period of suspension and overpayment notice. You must protest this notice within 60 days of getting it. You may protest it for the same reasons above. If you need more time to find evidence of good cause, SSA may give you an extra 60 days.

What is “good cause”?

In some cases, SSA will not suspend your benefits or seek an overpayment for the benefits. These cases get “good cause” exceptions. There are two types of good cause exceptions:

1. Mandatory good cause exceptions: SSA cannot suspend your benefits. There is no time limit for claiming this type of exception. You can do so any time. There are two mandatory good cause exceptions.

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

- Found you 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

- Vacated the warrant for your arrest for the criminal offense or probation/parole violation OR
- Issued any similar exonerating order (such as a judicial order excusing you from alleged fault or guilt) or taken similar exonerating action (such as a 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, SSA must grant you a mandatory good cause exemption if you are not the person named in the warrant/violation because of mistaken identity due to identity fraud.

2. Discretionary good cause exceptions: SSA can decide (does not have to) whether to suspend your benefits. If you cannot show mandatory good cause, SSA gives you a chance to show good cause for “mitigating circumstances” or discretionary good cause. The time limits for requesting SSA to look at mitigating circumstances are:

   - twelve months from the Advance Notice OR
   - twelve months after you get your first award OR
   - twelve months from the date of the fleeing felon notification

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

**Option A** - you must show all of these:

- The criminal offense or probation/parole violation you were charged with or convicted of was non-violent and not drug related. For a probation/parole violation, the original offense was also non-violent and not drug related.
- You have not been convicted of any other felony crimes since the warrant was issued.
- The law enforcement agency that issued the warrant reports it will not extradite you or will not act on the warrant.

**Option B** - you must prove all of these:

- The criminal offense or probation/parole violation with which you were charged or convicted was non-violent and not drug-related. For a probation/parole violation the original offense was also not drug related.
- You were not convicted of any other felony crimes since the date the warrant was issued.
- The warrant is/was the only existing warrant and was issued ten or more years before the date the Fugitive Felon Match processed the current warrant info.
- You lack the mental capacity to resolve a warrant because of one of the disability diagnostic codes listed in GN 02613.910; OR you are incapable of managing payments; OR you are legally incompetent; OR SSA has
appointed a representative payee to handle your payments; OR you live in a long-term care facility, such as a nursing home or mental treatment/care facility.

**How do I prove “good cause”?**

After you request a good cause exception from SSA, you have 90 days to give SSA evidence or info. If you do not do so at the end of 90 days, SSA will not find good cause.

If you request a good cause exception within the due process period, SSA will not suspend your benefits. If the due process period has already passed when you request the good cause exception, SSA will only reinstate the benefits if you show good cause.

SSA prefers your proof of good cause to be on the letterhead of the court, law enforcement agency or probation/parole agency that issued the warrant or court document. The person signing the document must have knowledge of the facts in the letter. It can be a court docket, copy of the arrest warrant, or other official document. If you cannot provide this preferred documentation, you may come up with other proof that is as credible as the preferred documentation.

**Examples:** You can use a fax from the agency that issued the warrant or the violation. It must have the name of the person making the report, that person’s job position for the agency/court issuing the warrant/violation, and the date. SSA can also verify the facts through a call to/from the agency/court or your doctor or nursing home administrator.

**Where the good cause exception requires that you have not had any other, more recent felony convictions, you must give SSA a statement saying that.**

SSA will carefully review the info you give it. If it finds good cause, it will not suspend your benefits or seek to recover any payments made to you under the fugitive felon law.

**If SSA determines the evidence you supply is fraudulent, altered, or cannot satisfactorily establish good cause, they will report the case to their investigators.**
SSA says I did not show good cause, OR I just fulfilled the requirements of the warrant/violation and now SSA wants money back from me. What’s up?

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

I lost the good cause exception. How else can I challenge the suspension?

A Notice to Suspend benefits may come with a notice of overpayment. SSA believes you must pay back any benefits you got while the felony was outstanding. If there is a notice of an overpayment with the Notice to Suspend, follow the steps for both notices.

1. **Request Waiver.** If you do this, you will keep getting benefits during your appeal. You must request waiver within ten days of the date of the notice. You get an extra five days for mailing. You should request waiver if SSA denies your protest and you get an overpayment notice, even if you do not get both notices at the same time. Call SSA’s toll free number between 7 a.m. and 7 p.m. (1-800-772-1213 or 1-800-325-0778 TTY). “How to Fight Your SSI or SSD Disability Denial” and “How to Fight an SSI or SSD Overpayment” have more at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). The waiver rules those publications discuss apply to SSI, disability, and retirement benefits.

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

What if I need legal help?

- **Apply online with CLEAR*Online** - [http://nwjustice.org/get-legal-help](http://nwjustice.org/get-legal-help)
- **Call CLEAR at 1-888-201-1014**

CLEAR is Washington’s toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays from 9:15 a.m. until 12:15 p.m.
- **King County:** Call 211 for info and referral to an appropriate legal services provider Monday through Friday from 8:00 am – 6:00 pm. You may also call (206) 461-3200, or the toll-free number, 1-877-211-WASH (9274). You can also get info on legal service providers in King County through 211’s website at [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).
- **Persons 60 and Over:** Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

Callers who are deaf and hard of hearing can call 1-800-833-6384 or 711 to get a free relay operator. They will then connect you with 211 or CLEAR.