

# Social Security Benefits and the “Fleeing Felon” Law

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- ❖ Read this only if you have a felony arrest warrant or felony conviction from the state of Washington.
  - ❖ You can find all the fact sheets we link to here at [WashingtonLawHelp.org](http://WashingtonLawHelp.org).
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## Can I get benefits if I am fleeing from the law or found to have violated a condition for parole or probation?

No, you are not eligible to get SSI.

You are a fleeing felon if:

- There is a felony arrest warrant for you that includes the NCIC codes for escape (4901), flight to avoid (4902) or flight-escape (4999)
- You have been found in violation of the terms of your parole or probation.

## What are the “fleeing felon” rules?

Social Security (SSA) considers you a fleeing felon and ineligible to get SSI if you have an outstanding arrest warrant for fleeing prosecution or jail time on a felony charge.

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

- you are fleeing to avoid prosecution or being jailed for a felony, or
- you are violating (breaking) your terms of probation or parole for a felony or a misdemeanor under state or federal law

## How does SSA find out you have an outstanding warrant?

SSA has agreements with many other government agencies including the FBI, national criminal database, courts, police forces and prison systems. This lets them do computer cross-checking of everyone who applies for and gets SSI.

## But my warrant is from many years ago.

It does not matter if a warrant is old.

## Can I get benefits if I am fleeing from the law or breaking a condition for other benefits?

You are not eligible to get many benefits. Your benefits from these **federal programs** may end:

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

Your benefits from these **state programs** may end:

- State Family Assistance (SFA)
- Pregnant Women Assistance (PWA),
- Aged, blind or disabled (ABD) cash, or
- Basic Food Benefits.

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❖ If you get a notice saying your DSHS or VA benefits have ended because you are a fleeing or fugitive felon, read [What if DSHS Stops My Benefits](#)

[because I am A “Fleeing Felon?”](#) or [What if The VA Stops My Benefits because I am a “Fugitive Felon?”](#)

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

**Yes.** Social Security stops the dependent’s benefits too.

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❖ **Dependents** means spouses or children.

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## What if I am under 18 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 end 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 take care of the outstanding warrant before applying. It takes a long time to apply and be approved for Social Security. You probably have time to take care of the warrant before your Social Security approval comes through.

When you apply for any public benefits, they will ask if you have any outstanding warrants or violations. If you know you do, **tell the truth**. 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.

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❖ 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.

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## How far back can SSA stop my benefits?

They will stop benefits as of the first month you had an outstanding arrest warrant 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 stop 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 stopping my benefits because I am a fleeing felon. What can I do?

Act fast! You must do these things, in order:

1. You must address the underlying warrant.
2. 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 (appeal) of the suspension.** You might get advance notice of the intended suspension. This advance notice is the “due process period.”

**If SSA found out about the warrant by a computer match, you will get 35 days’ advance notice of the suspension. If SSA found out about the warrant from another source** (such as the newspaper, neighbors or relatives, or law enforcement contacts), you will get **fifteen days’** advance notice.

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❖ **If you or someone acting for you reports the warrant, SSA will suspend (stop) your benefits right away. You will get an overpayment notice and suspension notice at the same time.**

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If you protest (fight or appeal) the suspension during your due process period, SSA will put off the suspension. It will work on figuring 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 ask you to reimburse it for the benefits you got during this time (an overpayment).

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

**Second, deal with the warrant.** Read 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 information.

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 take care of your fleeing felon status.

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

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❖ Some public defender agencies will help with these cases.

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You may be able to get the warrant or violation dismissed. Here are some reasons:

- Identity theft – they got the wrong person
- The circumstances of your move from that jurisdiction. **Examples:** you were fleeing from abuse, or you could not afford to stay there while the criminal issue was resolved
- You have since rehabilitated yourself and shown yourself to be law-abiding
- The probation officer said you did not register your move, but you did

There are other reasons not listed here. If the prosecutor will not dismiss the warrant or violation, you must work with the prosecutor – preferably through your criminal attorney – to take care of the matter.

## **Do I have a deadline for responding?**

**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 take care of the underlying warrant, unless you qualify for the mandatory good cause exception. You will probably have to reapply for benefits and wait for a new decision from SSA.

## **How do I protest the Notice of Suspension?**

It 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 to date-stamp your copy. You can also send the letter using certified mail, return receipt requested. The post office will return the green receipt to you after delivering your letter. Keep that 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 stopped 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 proof that you satisfied (completed) your warrant.
- Show SSA proof of “good cause.”
- Tell SSA you can show “good cause,” but need more time to get proof. SSA will give you up to 90 more days for this.

- Tell SSA that you do not have a warrant and SSA identified the wrong person.
- 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 (appeal) this notice within 60 days of getting it. You may protest it for the same reasons as above. If you need more time to get evidence of good cause, SSA may give you an extra 60 days.

### **What is “good cause?”**

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

**1. Mandatory good cause exceptions:** SSA cannot stop your benefits if you fit one of these exceptions. You can claim this type of exception any time. There is no time limit. There are two mandatory good cause exceptions.

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

- Found you not guilty of the criminal offense or probation or parole violation
- Dismissed the charges relating to the offense or violation on the unsatisfied warrant
- Vacated (canceled) the warrant for your arrest for the offense or probation or parole violation
- Issued any similar exonerating order (such as a court order excusing you 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)

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

**2. Discretionary good cause exceptions:** SSA can (does not have to) decide 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 asking 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 you were charged with or convicted of was non-violent and not drug related. For a probation or parole violation, the original offense was also non-violent and not drug related.
- You have not been convicted of any other felonies 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 or parole violation with which you were charged or convicted was non-violent and not drug-related. For a probation or 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 or was the only existing warrant and was issued ten or more years before the date the Fugitive Felon Match processed the current warrant information.



- You cannot take care of a warrant due to a disability diagnostic code listed in [GN 02613.910](#); **or** you are cannot manage your own payments; **or** you are legally incompetent; **or** SSA has appointed a representative payee over your payments; **or** you live in a long-term care facility, such as a nursing home or mental treatment or care facility.

## How do I prove “good cause”?

After you ask for a good cause exception from SSA, you have 90 days to give SSA evidence or information. If you do not, SSA will not find good cause.

If you ask for a good cause exception within the due process period, SSA will not stop your benefits. If the due process period has already passed when you ask for the good cause exception, SSA will only reinstate (restart) your 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 or 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.

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- ❖ **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 or court issuing the warrant or violation, and the date. SSA can also verify the facts through a call to or from the agency or 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.
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SSA will review what 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.

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

If you satisfy the warrant or 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?**

It depends. 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. **Ask SSA to waive (forgive or excuse) any overpayment you owe them.** If you do this, you will keep getting benefits during your appeal. You must ask for waiver within ten days of the date of the notice. You get an extra five days for mailing. You should ask for 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 at 1-800-772-1213 or 1-800-325-0778 TTY between 7 a.m. and 7 p.m.

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- ❖ Read [How to Fight Your SSI or SS Disability Denial](#) and [How to Fight an SSI or SSD Overpayment](#). The waiver rules they discuss apply to SSI, disability, and retirement benefits.
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2. **Request Reconsideration.** (This is a type of appeal.) You must do this within 60 days of the adverse notice.

## Get Legal Help

- Apply online with **CLEAR\*Online** - <http://nwjustice.org/get-legal-help>  
or
- 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 9:15 a.m. until 12:15 p.m.
- **King County:** Call 211 for information and referral to a legal services provider weekdays 8:00 am – 6:00 pm. You can also call (206) 461-3200 or toll-free 1-877-211-WASH (9274). You can also get information on King County legal service providers through 211's website at [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).
- **Persons 60 and 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.

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