

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 lists three types of fleeing felons: (1) felony charges with an outstanding warrant; (2) felony conviction with an outstanding warrant, or (3) a violation of probation or parole, regardless of whether the underlying crime was a felony. 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;
- General Assistance (GA); 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 pamphlet talks only about Social Security benefits.**

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

No. **Social Security** does not punish dependants (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 dependant 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 Social Security Administration may suspend your benefits anyway, and 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 found at [RCW 13.04.240](#), and you should state this law number at your hearing.

Does it matter if I didn't know or completely forgot about the warrants that make me a fleeing felon?

For **Social Security** in most States, it does not matter whether you forgot about a warrant or a probation violation. The Social Security Administration in Washington State will cut off or deny benefits even if you did not know about the warrant or violation or even if you did not move to avoid the warrant or the violation. However, in the Second Circuit (which covers Connecticut, New York, and Vermont), as well as Oregon, Northern California, Michigan and Maine federal courts have said to be "fleeing," you must have intended to avoid prosecution or jail. Those courts ruled that unless a court or authorized tribunal finds a felon knowingly fled to avoid prosecution, a person is not a "fleeing felon." The person must have known about the warrant or violation, and the person must have moved in order to avoid the warrant or violation. The mere presence of a warrant or violation alone is not enough. Fowlkes v Adamec, 432 F.3d 90 (2nd Cir. 2005), Blakely v. Comm'n, 330 F.Supp. 2d, 910 (W.D. Mich. 2004); Garnes v. Barnhart, 352 F.Supp.2d 1059 (N.D. Cal 2004); Hull v. Barnhart, 336 F. Supp. 2d 1113 (D. Oregon 2003); Thomas v. Barnhart, 2004 WL 1529280 (D.Me. June 24, 2004); Clark v. Barnhart, 06-Civ-15521 (SHS/RLE)(S.D.N.Y. complaint filed Dec. 28, 2006).

You can make the argument at your own appeal hearing that you should not be disqualified from Social Security or SSI benefits because you did not act with intent to avoid prosecution or jail. One Social Security Administration Administrative Law Judge in Washington State decided at a hearing that intention must be shown before a person may be found to be a fleeing felon and denied SSI. However, because that decision was not appealed in federal court, the Social Security Administration staff won't follow it and you will likely have to take your own case to a hearing to reverse the staff decision.

If 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 course would be to attempt 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 don't tell the truth, then you may later be found guilty of fraud. This could result in jail time as well as in 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 Social Security Administration answers this question by determining when your status as a fleeing felon made you ineligible for your social security benefits. The Social Security Administration 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 Social Security Administration will also, either at the same time or some time 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 receive – retirement, disability, or supplemental security income.

a. 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. Here's how 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 and 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.

b. For Title XVI benefits (Supplemental Security Income), the Social Security Administration 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. Here's how 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. Don't worry if you wrote in a date in (a) only or (b) only, that's okay. Now, compare those dates and 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.

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

How you respond to such a notice depends upon the benefits affected. There are three things to take care of. 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. This section talks about protesting the notice of suspension.

The Social Security Administration will likely send you an Advance Notice of Suspension. Read this carefully as 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 Social Security Administration 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 Social Security Administration 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 Social Security Administration 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 Social Security Administration will defer the suspension until it determines 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 Social Security Administration 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 Social Security Administration will suspend your benefits. You may still protest the suspension of benefits, but the Social Security Administration 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 received. It should tell you why the Social Security is suspending your benefits, and it should 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 include this information, ask Social Security for this information. The Social Security Administration received a warrant number from a federal or state agency before sending out the notice to you. You will need this information because 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 for requesting 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 were given 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 option is to address the underlying warrant or violation, unless you meet the criteria for the mandatory good cause exception. Remember too that 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. It is important that you meet the deadlines listed above, and you can do so by phone or by mail. It is just as important to put your protest into writing. Keep a copy of your protest, and either deliver the original to the contact office, in which case you should 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 Social Security Administration 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 Social Security Administration 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 Social Security Administration will give you up to an additional 90 days to get this evidence.
- State that you do not have a warrant or violation and that the Social Security Administration 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.

What if I am not currently getting benefits, but I used to and now the Social Security Administration is telling me I was not eligible then because I was a fleeing felon?

You may get a notice of an overpayment from the Social Security Administration because it says it paid you benefits during a period when you were a fleeing felon. The Social Security Administration 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 additional time to gather evidence of good cause, the Social Security Administration may grant an additional 60 days.

What is “Good Cause”?

Under certain circumstances, the Social Security Administration will not suspend you 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 Social Security Administration is forbidden from suspending your benefits, and there are discretionary good cause exceptions where the Social Security Administration can decide whether to suspend your benefits.

Let’s look at the **mandatory good cause** exceptions first. It is important to remember that 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 Social Security Administration 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 (i.e. a judicial order excusing the individual from alleged fault or guilt) or taken similar exonerating action (e.g. 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; i.e. felony).

Second, the Social Security Administration must grant you a good cause exemption is 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 Social Security Administration 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 Social Security Administration to look at mitigating circumstances is:

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

There are two ways to show mitigating circumstances, and each option contains several parts. Each part must be shown to prove mitigating circumstances. The Social Security Administration calls these Option A and Option B. In order 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, each of which must be proved:

- “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 Social Security Administration 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 Social Security Administration, you have 90 days to provide evidence or information to the Social Security Administration. If you don’t prove good cause at the end of 90 days, the Social Security Administration will not find good cause. If you request a good cause exception within the due process period, the Social Security Administration will not suspend your benefits. If the due process period has already passed when you request the good cause exception, the Social Security Administration will not reinstate the benefits until good cause is shown.

The Social Security Administration 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 this preferred documentation cannot be provided, alternative documentation may be. 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 contain 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 Social Security Administration 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 Social Security Administration a statement that you have had no further convictions.

The Social Security Administration will carefully review the information that you submit. If the Social Security Administration 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 Social Security Administration determines that the evidence you supply is fraudulent, altered, or cannot satisfactorily establish good cause, then the Social Security Administration will report the case to its investigators.

The Social Security Administration says I didn't 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 Social Security Administration says you didn't show good cause, then the Social Security Administration will try to recover for an overpayment.

If I lose the good cause exception, do I have any other options to challenge the suspension?

Sometimes a Notice to Suspend benefits will be accompanied by a notice of overpayment. The Social Security Administration 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, be sure to follow the steps for both notices.

1. **Request Waiver.** Waiver assures you continuing benefits during your appeal, and it must be requested within ten days of the date of the notice, and an additional five days is permitted for mailing. You should request waiver if your protest is denied and if you get an overpayment notice, even if both notices don't come at the same time. Call the Social Security Administration's toll free number between 7 a.m. and 7 p.m. (1-800-772-1213 or 1-800-325-0778 TTY). See the publications titled, "[How to Fight Your SSI or SS Disability Denial](#)" and "[How to Fight an SSI or SSD Overpayment](#)" for the specifics on waiver at www.washingtonlawhelp.org. The waiver rules talked about there apply to retirement benefits as well as to SSI and disability benefits.
2. **Request Reconsideration.** Reconsideration must be requested within 60 days of the adverse notice.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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