

# CRS Report for Congress

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## Social Security Administration: Suspension of Benefits for Fugitive Felons

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### Summary

Fugitive felons are not eligible to receive benefits from the Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or Old-Age and Survivors Insurance (OASI) programs administered by the Social Security Administration (SSA). For the purposes of these programs, *fugitive felons* are currently considered to be any persons with outstanding warrants for felony offenses. These prohibitions first went into effect in 1996 for the SSI program and in 2005 for the SSDI and OASI programs. This report includes an overview of the current laws, regulations, and internal SSA guidance related to fugitive felons; an explanation of the limited exception provided in cases of mitigating circumstances; and a brief legislative history of the provisions. This report will be updated to reflect any policy changes.

### Fugitive Felons Ineligible for Benefits

Sections 202(x)<sup>1</sup> and 1611(e)(4)(A)<sup>2</sup> of the Social Security Act specify that persons who are fleeing to avoid prosecution for a felony crime or to avoid custody or confinement after conviction for a felony crime (*fugitive felons*) are not eligible to receive benefits administered by the Social Security Administration (SSA). This prohibition includes Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act as well as Social Security Disability Insurance (SSDI)<sup>3</sup> and Old-Age and Survivors Insurance (OASI, more commonly known as retirement and widows Social

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<sup>1</sup> 42 U.S.C. § 402(x). This provision applies to Social Security Disability Insurance (SSDI) and Old-Age and Survivor's Insurance (OASI) benefits under Title II of the Social Security Act.

<sup>2</sup> 42 U.S.C. § 1382(e)(4)(A). This provision applies to Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act.

<sup>3</sup> For more information on the SSI and SSDI programs, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by April Grady and Julie Whittaker.

Security benefits)<sup>4</sup> benefits under Title II of the Social Security Act. Benefits already paid to fugitive felons are considered overpayments by the SSA and must be paid back to the government. Benefits can be restored if a person who was considered a fugitive felon is exonerated of all charges.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, provided for the prohibition of SSI benefit payments to fugitive felons and went into effect in August 1996.<sup>5</sup> The Social Security Protection Act of 2004, P.L. 108-203, extended the prohibition of benefit payments to fugitive felons to the SSDI and OASI programs. These prohibitions went into effect January 1, 2005.<sup>6</sup>

The SSA estimates that since the prohibition on SSI payments to fugitive felons went into effect in August 1996, the agency has suspended the benefits of nearly 78,000 fugitive felons, including nearly 24,000 in FY2003.<sup>7</sup> These suspensions are estimated to have saved the SSI program more than \$83 million in payments not made to fugitive felons and in overpayments to fugitive felons recovered by the SSA.<sup>8</sup>

## **Definitions of *Fugitive Felon***

### **Statutory Definition**

The statutory definition of *fugitive felon* used for the purposes of denying SSI, SSDI, and OASI benefits can be found in Titles II and XVI of the Social Security Act. Section 1611(e)(4)(A) of the Social Security Act provides the definition of *fugitive felon* for the SSI program while Section 202(x)(1)(A) provides the same definition for the SSDI and OASI programs. The definition states that no person may receive benefits during any month in which he or she is

fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a

<sup>4</sup> For more information on the OASI program, see CRS Report 94-27, *Social Security: Brief Facts and Statistics*, by Gary Sidor, and CRS Report RS22294, *Social Security Survivors Benefits*, by Kathleen Romig and Scott Szymendera.

<sup>5</sup> For more information on the fugitive felon provisions of P.L. 104-193, see CRS Report RS20325, *Efforts to Prevent Prisoners and Fugitives from Receiving Benefits from the Social Security Administration*, by Rachel W. Kelly.

<sup>6</sup> For more information on P.L. 108-203, see CRS Report RL32089, *The Social Security Protection Act of 2004 (H.R. 743)*, by Dawn Nuschler.

<sup>7</sup> Testimony of Joanne B. Barnhart, Commissioner of Social Security, *The Supplemental Security Income Program, Hearing Before the Subcommittee on Human Resources of the Committee on Ways and Means, U.S. House of Representatives, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Apr. 29, 2004, Serial No. 108-44* (Washington: GPO, 2004). Available at the SSA website [[http://www.ssa.gov/legislation/testimony\\_042904.html](http://www.ssa.gov/legislation/testimony_042904.html)].

<sup>8</sup> Social Security Administration, Office of the Inspector General, *Assessment of the Supplemental Security Income Fugitive Felon Project, September 2003, A-01-03-23070* (Baltimore, MD: SSA, 2003). Available at the SSA website, [<http://www.ssa.gov/oig/ADOBEPDF/A-01-03-23070.pdf>].

crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding one year regardless of the actual sentence imposed.<sup>9</sup>

## Regulatory Definition for SSI

Implementing regulations provide more detailed information on how an individual becomes a fugitive felon for the purposes of denying SSI benefits.<sup>10</sup> This more detailed definition gives fugitive status to a person at the time that a warrant is issued for his or her arrest. Specifically, the regulation states that a person becomes ineligible for SSI benefits because of his or her fugitive status on the first day of the earlier of

(i) The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual-

(A) Is fleeing, or has fled, to avoid prosecution as described in paragraph (a)(1) of this Section;

(B) Is fleeing, or has fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this Section;

(C) Is violating, or has violated, a condition of his or her probation or parole as described in paragraph (a)(3) of this Section; or

(ii) The first month during which an individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.<sup>11</sup>

## SSA's Internal Guidance

The SSA gives internal guidance to its employees via its Program Operations Manual System (POMS).<sup>12</sup> POMS is not a regulation and does not have the force of law.<sup>13</sup> However, it is used to guide the actions of SSA employees. POMS contains the most restrictive of the definitions of *fugitive felon* used by SSA and, unlike the definition

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<sup>9</sup> 42 U.S.C. §§ 1382(e)(4)(A) and 402(x)(1)(A).

<sup>10</sup> No implementing regulation exists for the denial of SSDI or OASI benefits for fugitive felons. However, a regulation was proposed by the SSA on Dec. 5, 2005. In this same announcement, the SSA also proposed changing the regulations governing the denial of benefits for the SSI program. For more information, see Nonpayment of Benefits to Fugitive Felons and Probation or Parole Violators, 70 *Federal Register* 72411, Dec. 5, 2005.

<sup>11</sup> 20 C.F.R. § 416.1339(b)(1).

<sup>12</sup> The entire Program Operations Manual Systems (POMS) can be found on the SSA website at [<http://policy.ssa.gov/poms.nsf/partlist!OpenView>].

<sup>13</sup> The Supreme Court affirmed that POMS does not have the force of law in *Schweiker v. Hansen* 450 U.S. 785 (1981).

found in the statute or regulation, POMS specifically states that a person is considered a fugitive solely on the basis of an outstanding warrant, without any consideration of whether or not the person is actually fleeing or attempting to avoid being captured. For the purposes of suspending SSI benefits, POMS states that “the warrant does not have to state that the individual is fleeing for the suspension to apply.”<sup>14</sup> For the purposes of suspending SSDI or OASI benefits, POMS states that “the person does not have to be actively hiding or evading the law in any way for these provisions to apply. The existence of the unsatisfied warrant is the only criterion necessary.”<sup>15</sup>

## Mitigating Circumstances

The Social Security Protection Act of 2004, P.L. 108-203, gives the SSA commissioner a limited ability to pay benefits to fugitive felons if, in her opinion, mitigating circumstances should be considered. However, mitigating circumstances can be used only to pay benefits to a fugitive felon if the felony offense that is the basis for the warrant is both nonviolent and not related to a violation of the drug laws.<sup>16</sup> Cases involving violent crimes or felonies resulting from the use, sale, or manufacture of illegal drugs are not eligible for the mitigating circumstances exception; under no circumstances can a fugitive felon with an active outstanding warrant for these charges receive SSI, SSDI, or OASI benefits.

## Legislative History

### **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, contained a provision prohibiting the payment of SSI benefits to fugitive felons. In its report on this bill, the House Committee on the Budget stated that the SSI program was “intended for the aged, blind, and disabled” and that “fleeing convicts or probation or parole violators should not be supported through federal benefits.”<sup>17</sup>

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<sup>14</sup> POMS SI 00530.010.

<sup>15</sup> POMS GN 02613.001.

<sup>16</sup> An estimated 50.5% of state prison inmates and 10.5% of federal prison inmates were sentenced for violent offenses. An estimated 21.4% of state prison inmates and 54.9% of federal prison inmates were sentenced for drug offenses. For more information, see U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2004* (Washington: GPO, 2005).

<sup>17</sup> U.S. Congress, House Committee on the Budget, *Welfare and Medicaid Reform Act of 1996*, report to accompany H.R. 3734, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 104-651, (Washington: GPO, 1996), p. 1384. The Senate did not issue a committee report.

## The Social Security Protection Act of 2004, P.L. 108-203

Although the payment of SSI benefits to fugitive felons was prohibited in 1996, this prohibition initially did not apply to SSDI or OASI benefits. The prohibition was extended to these programs effective January 1, 2005, with the passage of the Social Security Protection Act of 2004, P.L. 108-203. In its report on this bill, the House Committee on Ways and Means explained that prohibiting fugitive felons from receiving SSDI and OASI benefits was intended to help “stop fraud, waste, and abuse” in these programs. In addition, the Committee expressed concern that SSDI and OASI benefits were being used to aid fugitive felons in their flights from prosecution or punishment.<sup>18</sup>

In its report on the bill, the Senate Committee on Finance explained that the fugitive felon provision should only apply if a law enforcement agency is actively pursuing the person. The Committee stated that this instruction, which is not explicitly mentioned in the law as enacted, was intended to prevent the SSA from becoming the “law enforcement agency of last resort” for people who may have committed crimes but whom local or state law enforcement is no longer interested in pursuing. The Committee cited that it was aware of numerous cases in which law enforcement agencies chose not to pursue individuals identified as having open warrants through the enforcement of the existing SSI fugitive felon rules.<sup>19</sup>

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<sup>18</sup> U.S. Congress, House Committee on Ways and Means, *Social Security Protection Act of 2003*, report to accompany H.R. 743, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 108-46 (Washington: GPO, 2003), pp. 23, 35.

<sup>19</sup> U.S. Congress, Senate Committee on Finance, *Social Security Protection Act of 2003*, report to accompany H.R. 743, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 108-176 (Washington: GPO, 2004), p. 16.