



The “Fugitive Felon” Rules

In 1996, as part of welfare reform legislation, Congress enacted the so-called “fugitive felon” prohibition on receipt of benefits in three federal benefit programs: Supplemental Security Income (SSI), Food Stamps and Temporary Assistance to Needy Families (TANF). (Pub. L. No. 104-193, §§ 202 & 821). Although the wording of the prohibition is identical for all three programs, it is primarily SSI recipients who have suffered the effects of this provision with many thousands losing benefits in the last few years as a result of the Social Security Administration casting a far wider net than is authorized by the statute and regulations 42 U.S.C. § 1382(e)(4) & (5); 20 C.F.R. § 416.1339(b)(i). *Garnes v. Barnhart*, 352 F.Supp.2d 1059 (N.D. Cal. 2004). Although SSA provides no breakdown, it appears that the majority of those affected were receiving benefits on the basis of mental illness.

The results can be tragic. In Des Moines, Iowa, a man diagnosed with paranoid schizophrenia was denied SSI because of an outstanding warrant stemming from a shoplifting incident in California. Unable to travel to California to clear up the warrant because of his physical and financial condition, he became homeless. Shortly thereafter, his bloodied body was found in an abandoned garage.

While the consequences for the Iowa man may have been extreme, in some respects his case is typical. In three out of four cases nationwide, the warrant was not issued in the state where the SSI recipient now resides and in almost all cases the underlying charge is relatively minor. In another case a Texas woman with a developmental disability and paranoid schizophrenia lost her benefits for a year because of a 4th degree larceny charge in New York as to which she had no recollection. Investigation revealed that the charge was for stealing an item valued at \$7.00.

Why do most of the cases involve minor charges? The answer is that benefits are suspended under this provision only after the Social Security Administration (SSA) first determines that law enforcement authorities are not interested in pursuing the individual. SSA first does a computer match with various criminal warrant databases. Once they

find a match, they notify the appropriate law enforcement agency of the address where the individual can be found. SSA then waits 60 days for law enforcement to either effect an arrest or begin extradition proceedings. Only after those 60 days are up does SSA send a notice to the individual suspending benefits. Thus the suspension of benefits is simply a gratuitous punishment which serves no legitimate law enforcement purpose.

Challenges to SSA's interpretation of the law have been successful - SSA has lost every reported decision so far. In particular, courts have ruled that in order to fall under the portion of the statute which makes a person ineligible if the person is "fleeing to avoid prosecution" for a felony, there must be a finding of intent to flee. Courts have also ruled that SSA must follow its own regulation which requires that there be a court order or warrant with a finding that the individual was "fleeing to avoid prosecution." *Garnes, supra; Hull v. Barnhart*, 336 F. Supp.2d 1113 (D. Oregon 2004).

More recently, the Social Security Protection Act of 2004 (Pub. L. No. 108-203 §203) extended this eligibility condition to all Social Security benefits (42 U.S.C. 402(x)(1)) and established limited good cause exceptions for SSI and Title II. Although these provisions have yet to be implemented to any significant degree, some predictions are that the number of people affected could be in the hundreds of thousands.

For further information, contact

Gerald McIntyre
National Senior Citizens Law Center
gmcintyre@nslc.org
213/639-0930