

Have You Seen a Fleeing Felon? Social Security Administration Targets SSI Recipients with Outstanding Warrants

By Gerald McIntyre

As part of its 1996 welfare legislation, Congress restricted benefits for so-called fugitive felons in four programs: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), food stamps, and housing assistance.¹ In the cases of SSI, TANF, and food stamps the statute makes a fugitive felon ineligible for benefits. In the case of housing assistance, the statute makes “fugitive felon” status grounds for termination of tenancy.² A companion provision of each of these statutory provisions authorizes the administering agency to release information regarding the location of the recipient of benefits to the appropriate law enforcement agency so as to facilitate arrest.

While the massive changes wrought by the 1996 welfare legislation have preoccupied much of the national legal aid community in the years since, relatively little attention was paid initially to the “fugi-

tive felon” provisions, which many perceived as relatively minor in consequence. Indeed, this perception was accurate at the beginning. In the first full year after enactment, only twenty-three SSI recipients nationwide were affected.³

During the last two years, since the Social Security Administration began a computer-matching program in cooperation with law enforcement agencies in several states, the number of people affected by these provisions has increased dramatically in the SSI program. By mid-2002 approximately 110,000 beneficiaries of TANF, SSI, and food stamps had been determined to be fugitive felons subject to loss of benefits.⁴ According to the Social Security Administration approximately 78,000 of these were SSI recipients who lost benefits worth \$252 million.⁵ The agency’s Office of Inspector General reports that this resulted in 7,951 arrests.⁶

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¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, §§ 202 (Supplemental Security Income (SSI)), 821 (Temporary Assistance for Needy Families and the Food Stamp Program), and 903 (housing assistance).

² Wording of the provisions differs from one program to another, but the differences are not meaningful. Apparently Congress intended to reach the same group of people with respect to each of these programs.

³ GAO (U.S. General Accounting Office), GAO-02-716, WELFARE REFORM: IMPLEMENTATION OF FUGITIVE FELON PROVISIONS SHOULD BE STRENGTHENED 15 tbl. 3 (2002).

⁴ *Id.* at 3.

⁵ Soc. Sec. Admin., Office of Inspector General, Fact Sheet, Fugitive Felon Program (June 2002), available at www.ssa.gov/oig/executive_operations/factsheet3.htm.

⁶ *Id.*

As 2002 drew to a close, advocates for SSI recipients and homeless people across the country reported being inundated with people losing desperately needed SSI benefits because of a determination that they were fugitive felons.

Why does the “fugitive felon” bar disproportionately affect SSI recipients? Is it because, as people grow older or become disabled or both, they become more prone to crime? The Office of Inspector General’s reports would seem to support that unlikely view. They trumpet success in removing dangerous fugitives from the street and give an example of an SSI recipient wanted for assault with a deadly weapon on a police officer.⁷ Advocates, however, report that an unusually high proportion of individuals with severe mental impairments appear to be affected; these individuals are often unaware that there is a warrant outstanding against them. Most of the cases involve relatively minor charges from a state other than the individual’s current state of residence.⁸ The individual seeking to resolve the matter usually finds it extremely difficult to return to the jurisdiction where the charges were filed. Doing so becomes virtually impossible once the SSI benefits are suspended and the individual has no means to pay for rudimentary food, clothing, and shelter, let alone transportation to and lodging costs in another state.

In this article I focus on the statutory provisions that affect fleeing felons and the provisions’ implementation in the SSI program since that is where the impact has been greatest. I discuss who is most affected and offer suggestions on how advocates can obtain relief for their clients, most of whom are neither fugitives nor felons.

I. Who Is Affected?

By and large, only individuals whom law enforcement is not interested in pursuing because the alleged offense is too minor in nature or too remote in time, or both, lose SSI benefits because of the “fugitive felon” penalty. For example, in one office of the Los Angeles County Public Defender during the summer of 2002, an informal survey of some of the people seeking to have warrants vacated because of loss of SSI benefits showed that forty of sixty-one warrants were more than ten years old, that the public defender determined that a majority of the defendants had been diagnosed with a serious mental illness or cognitive impairment, and that the public defender got most of the warrants vacated.⁹

How can the “fugitive felon” provision operate in this manner? A review of the Social Security Administration’s procedure for handling such cases yields the answer.¹⁰ The first step is for agency headquarters to obtain warrant information, pursuant to a computer-matching agreement, from the National Crime Information Center of the Federal Bureau of Investigation (FBI), from U.S. marshals, or from state or local law enforcement. Any information that relates to an SSI recipient is forwarded to the Social Security Administration’s Office of Inspector General, which then forwards the relevant information to the FBI. The FBI, in turn, sends the information to the appropriate state or local law enforcement agency. The Social Security Administration takes no further action for sixty days to allow law enforcement authorities sufficient time to make an arrest or take other appropriate action. Only after this period, and if the law enforcement agency

⁷ Testimony of James G. Huse Jr. Before the Subcommittee on Human Resources of the House Comm. on Ways and Means (July 25, 2002).

⁸ SOCIAL SEC. ADMIN., OFFICE OF INSPECTOR GEN., AUDIT REPORT A-01-98-61013, IDENTIFICATION OF FUGITIVES RECEIVING SUPPLEMENTAL SECURITY INCOME PAYMENTS 10 (2000). Inquiries that the National Senior Citizens Law Center has received on “fugitive felon” issues also overwhelmingly involve warrants from another state, often one far removed from the state where the SSI recipient resides.

⁹ One warrant was 38 years old, and one individual was 91 years old. In one case, the person whose SSI benefits were being terminated was not the person for whom the warrant was issued, and in another the warrant was issued in error.

¹⁰ A useful chart outlining the procedure is in the GAO report, *supra* note 3.

fails to take action to detain the individual, does the Office of Inspector General notify the Social Security Administration's Field Office, which prepares a notice of suspension to stop the benefits.¹¹ This occurs in the cases of approximately 90 percent of SSI recipients who are identified as fugitive felons; the other 10 percent are arrested.¹²

Ironically the law has much less impact on the benefits of those who are arrested, presumably because they have committed more serious offenses. Once arrested they are no longer "fleeing to avoid prosecution" and thus are entitled to immediate reinstatement of benefits upon release. The "fugitive felon" penalty has no impact on the benefits of those who are incarcerated as a result of the arrest since SSI has never been available to persons residing in institutions. Thus, while the provision of information to law enforcement agencies might be seen as a useful law enforcement tool, the suspension of benefits serves no law enforcement purpose and serves only as a punitive measure targeted at the most vulnerable members of society.¹³

II. Implementation of the Statute

The "fleeing felon" statute provides:

No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if during such month the person is —

(A) fleeing to avoid prosecu-

tion, 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 crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(B) violating a condition of probation or parole imposed under Federal or State law.¹⁴

Part B is the simpler and, in some respects, the more draconian part of the statute. Only violation of a condition of probation or parole, nothing more, is required for a beneficiary to be penalized under this section. The violation could be a simple failure to pay a fine, to keep an appointment, or to arrange for transfer of supervision when moving to another jurisdiction. Most important, unlike Part A, the underlying offense need not be a felony. The most trivial offense will do. The only saving grace is that, very often, these offenses are not included in the computerized databases on which the Social Security Administration relies.

Part A is a bit more complex in requiring that the individual be "fleeing to avoid prosecution, or custody or confinement after conviction under the laws of the place from which the person flees." It also requires that the underlying offense be a felony or an attempt to commit a felony, as defined by the law of the place.¹⁵

¹¹ However, the Social Security Administration's internal Program Operations Manual System (POMS), which instructs Field Office staff, requires that the process be put on hold for a shorter period not to exceed thirty days to permit law enforcement agencies to carry out an arrest. POMS, SI 00501.050E.1.

¹² Of a total of 77,933 SSI recipients with outstanding warrants, 7,951 were arrested. Soc. Sec. Admin., Office of Inspector General, Fact Sheet, Fugitive Felon Program (June 2002). According to a report in the *Los Angeles Times*, in California, 90 percent of the 10 percent who were arrested were charged with nonviolent crimes or probation or parole violation, thus leaving only 1 percent of the fugitive felons with involvement in potentially more serious offenses. Steve Berry, *Criticism of U.S. Felon Program Grows*, L.A. TIMES, Sept. 6, 2002, at B-1.

¹³ Berry, *supra* note 12, at B-1; KATHRYN J. LEWIS, POSITIVE RES. CTR., INCOME INJUSTICE: THE IMPACT OF WELFARE REFORM'S FLEEING FELON REGULATIONS ON SSI RECIPIENTS (2002).

¹⁴ 42 U.S.C. § 1382(e)(4) (2002).

¹⁵ All references to felonies should be read to include high misdemeanors in New Jersey.

In 2000 the Social Security Administration promulgated final regulations that would seem to make it very difficult to suspend benefits under the statute.¹⁶ After reiterating the statutory language, the regulation states that a suspension on the basis that an individual is a fugitive felon is effective on the first of “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 ... 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”¹⁷

However, the agency’s practice over the last year differs markedly from the policy contained in the regulations. A finding that an individual is fleeing is hardly ever made before issuance of an arrest warrant when an individual fails to appear on a criminal charge. The Appeals Council recently summarized the agency’s practice as follows:

With the silence of the law and regulation regarding a definition of “fleeing,” and no way to differentiate “fleeing” from other reasons an individual may not appear at a court hearing, Social Security Administration guidelines provide that, regardless of what charge is indicated on the warrant, the Office of the Inspector General will verify with the appropriate law enforcement agency that the individual’s felony warrant remains active and the

individual is still being sought. If so, the claimant is assumed to be a fugitive felon.¹⁸

This widespread practice is impossible to reconcile with the statute or the Social Security Administration’s own regulation. It is also at odds with the U.S. Department of Agriculture’s policy in administering the virtually identical provision in the Food Stamp Program. The

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Agriculture Department’s Food and Nutrition Service issued instructions to its regional directors that, “in order for an individual to be fleeing, that individual must be acting with the intent to avoid prosecution” and that “an individual must have knowledge that a warrant has been issued for his arrest in order to be considered ‘fleeing’.”¹⁹

Federal criminal law has long contained a section entitled “Fugitives from Justice”; the section provides that “[n]o statute of limitations shall extend to any person fleeing from justice.”²⁰ As in the case of the similar SSI “fugitive felon” provision, it does not define “flight.” Most courts interpret this statute to mean that, in order to toll the statute of limitations, the prosecution has the “burden of proving that the accused concealed himself with the intent to avoid arrest or prose-

¹⁶ 65 Fed. Reg. 40492 (June 30, 2000).

¹⁷ 20 C.F.R. § 416.1339(b)(1)(I) (emphasis added). Needless to say, a court hardly ever makes such a finding before issuing an arrest warrant when an individual fails to appear on a criminal charge. The regulation contains one exception to this provision; it provides for an earlier effective date where the warrant or order referred to indicates an earlier month in which the individual first fled. 20 C.F.R. § 416.1339(b)(1)(ii). The statement of policy contained in the POMS echoes the regulation. POMS SI 00501.050A.2.

¹⁸ *Garnes v. Barnhart*, Case C 02 4428 VRW (N.D. Cal. filed Sept. 12, 2002).

¹⁹ Transmittal from Arthur T. Foley, Director, Program Development Division (Nov. 9, 2001).

²⁰ 18 U.S.C. § 3290 (2002).

cution.”²¹ Thus the Social Security Administration’s interpretation of its “fugitive felon” provision is contrary to the long-standing interpretation given by most appellate courts to the most similar provision of federal law.

The Social Security Administration’s wide net resulted in the suspension of the benefits of two clients of one small legal services office in Georgia because they allegedly fled to nursing homes to avoid prosecution. Others determined to be fugitive felons have simply returned home after arrest in another jurisdiction because they are too poor to travel back and forth to appear in court.

Making matters worse has been a nationwide pattern of denying basic procedural due process rights in connection with “fugitive felon” suspensions. A large percentage of notices are virtually meaningless; they simply recite the statute verbatim without stating whether the individual is alleged to be in violation of probation or fleeing to avoid prosecution, or where and when the alleged offense occurred. The notices do not specifically advise recipients of their right to give evidence to rebut the inference of flight, and

when recipients attempt to offer such evidence, they are often told that the district office is unable to consider it because the Office of Inspector General has already made a determination.

Numerous reports also describe cases of individuals being told that they have no right to appeal or, more commonly, no right to aid paid pending a reconsidered determination. In other instances, individuals request a formal or informal conference to review the determination and instead only receive a “case review” without the opportunity to speak with anyone about the determination.²²

III. Suggestions for Effective Advocacy

The first step in effective advocacy is to ensure that affected individuals get in the front door of a legal aid office since they are in danger of being screened out on the assumption that they are seeking representation on a criminal matter when their problem, in reality, is an SSI problem that does not involve criminal representation.²³ Screeners should be alerted to this group so that programs whose work involves public benefits or homelessness as a pri-

²¹ *United States v. Wazney*, 529 F.2d 1287, 1289 (9th Cir. 1976) (accused not responsible for delay caused by open move to a new residence where accused is readily accessible to careful law enforcement officers). *See also* *Brouse v. United States*, 68 F.2d 294, 295 (1st Cir. 1933) (“essential characteristic of fleeing from justice is leaving one’s residence, or usual place of abode or resort, or concealing one’s self, with the intent to avoid punishment”); *Jhirad v. Ferrandina*, 486 F.2d 442, 445 (2d Cir. 1973) (statute not tolled when “person without such purpose of escaping punishment merely moves openly to another place of residence”); *Donnell v. United States*, 229 F.2d 560 (5th Cir. 1956); *United States v. Greever*, 134 F.3d 777, 780 (6th Cir. 1998) (“Government must prove that the defendant concealed himself with the intent to avoid prosecution,” but intent can be inferred from defendant’s knowledge that he was wanted and subsequent failure to submit to arrest); *United States v. Marshall*, 856 F.2d 896, 900–901 (7th Cir. 1988) (government must show defendant left state “with intent to avoid arrest or prosecution”; intent shown where defendant disappeared without a trace, registered his home phone under an alias, left his wife, did not tell his family members where he was located, and arranged for Veterans Health Administration disability checks to be sent to address of family members and met his sister at a fast food restaurant to receive the checks); *United States v. Fonseca-Machado*, 53 F.3d 1242 (mere absence does not establish flight); *but see* *King v. United States*, 144 F.2d 729 (8th Cir. 1944) (mere absence is sufficient); *Green v. United States*, 188 F.2d 48 (D.C. Cir. 1951) (same); *see also* *United States v. Singleton*, 702 F.2d 1159 (D.C. Cir. 1983) (intent required where defendant does not leave jurisdiction).

²² *See, e.g.*, para. 11 of the complaint in *Garnes*, *supra* note 18.

²³ Some advocates in programs funded by the Legal Services Corporation (LSC) have expressed concern about the possibility of running afoul of LSC regulations prohibiting the use of LSC funds in a criminal proceeding. 45 C.F.R. § 1613. However, the concern is unwarranted. Advocating the Social Security Administration to continue or restore benefits is not criminal representation. Nor does an attorney who contacts a court or a public defender or a prosecutor to gather information or try to get a warrant vacated violate LSC regulations.

ority area do not turn away people who are at a very high risk of homelessness.

The advocate should start the interview with the expectation that dual-track representation—before both the Social Security Administration and the court or agency that issued the warrant and has the authority to vacate it—will be required. The initial interview is very important in light of the need for prompt action to assure continuation of benefits.²⁴ It is also often quite challenging in light of notices of adverse action that seldom state the basis for the action and clients who frequently have impairments that make them less than perfect historians of even recent events, let alone those that may have taken place a decade or more ago. Advocates report that staff in the social security office that prepared the notice are usually unable to give the reason for the action. The district office sends out the notice simply because it is told to do so by the Office of Inspector General.

Unless denial of a new claim rather than suspension of existing benefits is involved, there will probably be two notices: one to suspend benefits and the other a notice of overpayment. The notices should advise the client of the basis for the action (e.g., probation violation or flight to avoid prosecution), the nature of the charges, and the date and jurisdiction. However, in the likely event that this information is not included in the notices, an advocate should go on record early with a demand for a notice that includes this information. The information is usually available at the district office in the report that the district office received from the Office of Inspector General. Getting the warrant number or case number so that information can be obtained directly from the issuing court or law enforcement agency is also important. It may take time to get the information from the other jurisdiction since the

records may be archived and not readily available.

A. Probation or Parole Violation

If the basis for a “fugitive felon” determination turns out to be a probation or parole violation, grounds for an appeal may be limited. However, consider a few other possibilities before jumping to that conclusion. If the client denies ever having been charged with the offense in question, remember that the Social Security Administration has been known to suspend the benefits of someone else with the same name. Even if the client resided in the issuing jurisdiction at the time, identity theft might have occurred. The individual might have taken all the steps necessary to transfer supervision when moving from one state to another, but the transferring jurisdiction neglected to close the case. The likelihood of any of these scenarios is remote in a particular case. However, if any of them is possible, by all means appeal the notice of suspension.

Overpayments. Even if the individual has been appropriately identified and is in violation of probation or parole, there may be a good basis for obtaining a waiver of the overpayment.²⁵ This is so especially if the individual is unaware that the warrant exists, if the violation consists of failure to pay a fine, or if the person has substantially complied with the terms of probation or parole.

There may also be a basis, in some cases, for appealing a portion of the overpayment itself. Social security regulations provide that the agency may reopen a prior determination or revised determination for good cause “within two years of the date of the notice of the initial determination.”²⁶ In most of these cases the agency will be able to establish “good cause” with relative ease.²⁷ However, after two years, a determination may be reopened only “if it was obtained by fraud

²⁴ An individual is entitled to continuation of benefits if the determination is appealed within ten days of the notice, with an additional five days allowed for mailing. 20 C.F.R. § 416.1336(b) (2002).

²⁵ 20 C.F.R. § 416.550 (2002).

²⁶ *Id.* § 416.1488(b).

²⁷ *Id.* § 416.1489.

or similar fault.”²⁸ Any determination of “fraud or similar fault” must “take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language).”²⁹ Thus any case in which a decision on eligibility or benefit level is more than two years old should not be reopened without determining fraud or similar fault, even though more recent decisions may be reopened without a “fraud or similar fault” determination.

Note that the statute does not have *ex post facto* effect, and thus it does not authorize recovery of overpayments for periods prior to enactment on August 22, 1996.³⁰

B. Flight to Avoid Prosecution

As in the case of probation or parole violations, first confirm that the client is the individual charged with the crime.³¹ Next ascertain that the charge is a felony or an attempt to commit a felony.³²

In the initial client interview, be sure to find out (1) whether the client was aware of the charges, (2) whether the client was aware that the warrant or arrest order was issued, (3) whether the client received notice of the court date that was missed, (4) why the client missed the court date, and (5) whether the client understood the significance of missing the court date. Also, if the alleged offense took place in another jurisdiction, as it probably did, find out whether the client lived in that jurisdiction at the time. Returning home after the charges were filed hardly constitutes flight since flight consists of running *away* from something, not running to

something. Most SSI recipients do not have a realistic option of defending charges brought in a jurisdiction other than the one where they reside. The other state may provide a free lawyer, but it will not, as a rule, provide free food and lodging while a case is pending, nor does it provide free transportation from one’s home state to and from court hearings.³³

If the person did leave the charging jurisdiction shortly after charges were brought, ask why. Is there any evidence that the move was in the planning stages prior to the filing of charges? Did the person lose a job around that time? Thoroughly explore all alternative reasons why the person left the jurisdiction. Running away from an abusive spouse or from economic deprivation may be examples of flight, but they are not flight to avoid prosecution. Similarly explore the attractions of the place to which the person moved. Was there a job offer? Did another family member move there? Did the person return there to care for an ailing parent? All of these factors might serve to rebut a presumption of flight to avoid prosecution.

At the hearing level, some administrative law judges have been persuaded by evidence that rebuts an inference of intent to flee. Some advocates have successfully argued that there was no intent to flee where the charges were filed after the client left the jurisdiction, where the individual was unaware of the charges when leaving the jurisdiction, or where the individual was unaware of a warrant’s existence.

Procedure. Request reconsideration of both the suspension and overpayment

²⁸ *Id.* § 416.1488(c).

²⁹ *Id.*

³⁰ The Social Security Administration takes the position that it is authorized to recover benefits paid in August 1996 but agrees that benefits are not authorized to be suspended for any month prior to August 1996. One might argue that suspending benefits for August 1996 is giving the law *ex post facto* effect if the individual was entitled to payment as of August 1, 1996, and the statute was enacted on August 22, 1996.

³¹ The remarks in this section, for the most part, apply equally to allegations of flight to avoid confinement after conviction. However, I am not aware of a single instance of termination of benefits for flight to avoid confinement, whereas I have heard of countless instances of termination of benefits for alleged flight to avoid prosecution.

³² What only is necessary is that the crime attempted be a felony, not that the attempt itself be a felony. See 65 Fed. Reg. 40492, 40494 (June 30, 2000).

³³ Incarceration is an obvious exception to this general rule, but this is not a benefit generally sought by defendants.

notices by means of a formal conference, which offers the opportunity to subpoena documents and adverse witnesses.³⁴ Do not wait beyond the fifteen-day (ten days and five for mailing) period for appealing with aid paid pending a decision. If the client comes in after the fifteen-day period has expired or, worse, after the sixty-five-day (sixty days and five for mailing) period for appeal has expired, consider the possibility of good cause for a late appeal, as outlined in 20 C.F.R. § 416.1411.

C. Vacating the Warrant

Simultaneously with responding to the suspension and overpayment notices, the advocate must immediately seek to vacate the warrant that prompted the Social Security Administration's action. Ideally the advocate should have the warrant declared invalid *ab initio* in order to eliminate entirely any prospect of an overpayment claim. Doing so depends on state law; in most instances it is difficult. However, the experience of most advocates suggests that in most jurisdictions getting the warrant vacated is possible prospectively by contacting the local public defender's office once all the circumstances, including the impact on SSI benefits, are explained.

If, as will probably be the case, the warrant is from another jurisdiction, advocates have often found it helpful to contact the legal services program in that jurisdiction for suggestions on whom to contact in the public defender's office to get the warrant vacated. Once the client's circumstances are explained, this can often be done by referral to the public defender without the need for a personal appearance.

Success in vacating the warrant does not usually obviate the need for representation before the Social Security Ad-

ministration. This is because the agency will probably agree that the client is once again entitled to current benefits, but the agency will still maintain that the client was not eligible during the period that the warrant was outstanding, and thus the client is still liable for an overpayment.

IV. Outlook

If current trends continue, advocates can expect to see an increasing number of individuals caught up in the "fugitive felon" morass both in SSI and in other programs. A recent report from the General Accounting Office (GAO) urged better use of information technology to "improve the fugitive felon program's operational efficiency and outcomes."³⁵ Furthermore, the computer-matching program is likely to be extended to more states. Another GAO report is highly critical of the less aggressive posture of the agencies administering food stamps, TANF, and housing assistance and is likely to increase the pressure on those agencies to produce benefit terminations commensurate with those in the SSI program.³⁶

A. Veterans' Benefits

The 107th Congress extended the "fugitive felon" penalty to most veterans' benefits.³⁷ The provisions governing this program are similar to those for SSI, food stamps, and TANF with two significant exceptions. First, the disqualification for benefits applies not only to the veteran but also to the veteran's dependents.³⁸ However, the disqualification from benefits for violating probation or parole is not as harsh as in SSI, food stamps, and TANF in that it applies only when the probation or parole was imposed for committing a felony.³⁹ The U.S. Department of Veterans Affairs has not yet promulgated regulations to implement this provision. However, we can expect that it will be eager

³⁴ 20 C.F.R. §§ 416.1413c, 416.1413b (2002).

³⁵ GAO, GAO-02-346, SOCIAL SECURITY ADMINISTRATION: FUGITIVE FELON PROGRAM COULD BENEFIT FROM BETTER USE OF TECHNOLOGY 4 (2002).

³⁶ GAO, *supra* note 3.

³⁷ Pub. L. No. 107-103 § 505(a)(1), 115 Stat. 995 (2001).

³⁸ 38 U.S.C. § 5313B(a) (2002).

³⁹ *Id.* § 5313B(b)(1)(B).

to exercise this authority since that department's Office of Inspector General actively sought its passage.

B. Social Security Title II

Perhaps most ominously, both houses of the 107th Congress unanimously approved legislation extending the "fugitive felon" program to the nation's largest public benefit program, Social Security Title II.⁴⁰ Legislation to this effect is all but certain to be reintroduced in the 108th Congress. Such legislation is estimated to affect three times as many people as are potentially affected by the "fugitive felon" penalty in SSI.

ADVOCATES OF PUBLIC BENEFIT RECIPIENTS should be prepared for an increase in the number of people losing benefits because

of "fugitive felon" provisions in the SSI program and in other benefit programs as well. Advocates need to be ready simultaneously to (1) prevent a suspension of benefits, (2) defend an alleged overpayment, and (3) vacate the underlying warrant. In order to do this effectively, they must be able to develop the facts in great detail, often under challenging circumstances, and at the same time should stand prepared, where appropriate, to challenge the way in which the law is being interpreted. Most important, however, advocates should educate the public on the cruel nature of legislative provisions and administrative practices that target the most vulnerable and do nothing to improve the safety of the average citizen.

⁴⁰ H.R. 4070, 107th Cong. § 201 (2002).