

SSI and “Fleeing Felons”

by Clarence J. Sundram*

In 1996, as part of the Personal Responsibility and Work Opportunity Reconciliation Act (PL104-193), Congress restricted benefits for so-called fugitive felons in four programs, including the Supplemental Security Income (SSI) program. The rationale for this legislation is not hard to understand. After all, who would want to defend paying money out of the public treasury to people fleeing to avoid prosecution or confinement for their crimes? Before this law, these fugitive felons could still receive Social Security benefits, and the Congressional Budget Office estimated that they would be paid over \$500 million over the next 10 years directly out of the Social Security trust funds. But, like many seemingly terrific ideas, this one illustrates the adage that “For every complex problem, there is a solution that is simple, neat, and wrong.” (H.L. Mencken (1880-1956).)

The statute provides that:

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

(A) 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 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. (42 USC 1382(c) (4) [2002].)

Although this law was passed in 1996, the regulations to implement it were not

put in place until 2000, when advocates for SSI recipients, homeless people, and those with mental illness began noticing growing numbers of their clients were losing their SSI benefits because of a determination that they were fugitive felons. By the year 2002, the General Accounting Office was reporting that of the approximately 110,000 beneficiaries of these programs determined to be fugitive felons subject to the loss of benefits, 45,000 were recipients of SSI payments. (Welfare Reform: Implementation Of Fugitive Felons Provisions Should Be Strengthened, <http://www.gao.gov/new.items/d02716.pdf> (Sept. 2002).)

Darker Side of the Law's Implementation

Estimating the savings to the federal treasury was not easy, given the different programs involved and varying methods of administration on the state level.

But despite the good intentions of not subsidizing criminals fleeing from justice, advocates see the darker side to this law and its implementation. They 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. The individual seeking to resolve this 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 and clothing, as well as shelter, transportation to, and lodging costs in, another state. (Gerald McIntyre, “Have You Seen A Fleeing Felon? Social Security Administration Targets SSI Recipients With Outstanding Warrants,” Clearinghouse Review 474 (Jan.-Feb. 2003).)

While Congress and government agencies emphasized that the law dealt with felonies, which are serious crimes including murder, robbery, rape, and assault, the law is not limited to these crimes. Probation and parole violations are covered even though the underlying crime may be a misdemeanor, and the violation may

be nothing more than a failure to pay a fine, to keep an appointment, to notify probation or parole of a change of address, and the like. While government agencies are likely to emphasize the effectiveness of the law in removing dangerous fugitives from the street, citing examples such as the SSI recipient wanted for assault with a deadly weapon on a police officer, advocates confront more mundane cases, such as the following:

- A flophouse resident, diagnosed with schizophrenia faced losing SSI benefits because of a warrant issued 18 years ago, when he was 16-years-old and living with his parents. He had been sentenced to probation for auto theft. When his father, who was in the military, was transferred, the family was assured that the probation would also be transferred but apparently it was not.
- Another person in New York City lost his apartment after losing his benefits on the basis of a 10-year-old Oregon warrant, was homeless for two years, and attempted suicide before being committed to a psychiatric hospital.

The Division Chief of the Los Angeles Public Defender's Office reports that they are getting calls every week from SSI recipients with warrants that are 10 to 12-years-old, whose SSI benefits only now have been terminated. The worst case which they have seen: a 91-year old-SSI recipient, whose outstanding warrant was 30 years old. The typical case: an SSI recipient, who is 40 to 50-years-old, who has a bench warrant over 8-years-old. (Leslie Kline-Capelle, “Busted! Fugitive Felons and the Long Arm of the Social Security Administration,” <http://www.thebody.com/apla/dec02/felons.html>.)

Paradox in Enforcement

There seems to be a real paradox in the enforcement of this law. 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. Ironically the law has much less impact on the benefits of those who are arrested,

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*Clarence J. Sundram is a nationally recognized expert on conditions in institutions and community programs for persons with mental disabilities. For 20 years, he served as chairman of the New York State Commission on Quality of Care for the Mentally Disabled, an independent state oversight agency charged with investigating child abuse, patient abuse, and financial fraud in programs serving persons with mental disabilities. He has published numerous articles in legal and other professional journals, and is a frequent speaker at national conferences. Mr. Sundram can be reached at (518) 527-1918; fax (240) 352-1434; cjsundram@alumni.ksg.harvard.edu.

presumably because they have committed more serious offenses. Once arrested they are no longer “fleeing to avoid prosecution” and are thus entitled to immediate reinstatement of benefits upon release. The fugitive felon penalty has no impact on the benefits of those who:

were 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. (McIntyre, 475-76.)

The statistical data appears to support this conclusion. By mid-June of 2002, the Social Security Administration reported that of a total of 77,933 SSI recipients with outstanding warrants, 7,951 or about 10%, were arrested. Of this 10%, 90% were charged with nonviolent crimes or probation or parole violation. (Id.)

Onus on the Recipient. The SSI recipient affected by this law faces some stark choices. While law enforcement agencies may have no interest in resurrecting an old or minor charge, or expending their

resources to transport a person from out of state to face the music, the cutoff of benefits will stand nevertheless. The onus is upon the recipient to clear the record and re-establish entitlement to the benefits. This may not be an easy task, especially if the recipient no longer lives in the state where the legal matter is pending. By definition, SSI beneficiaries have limited incomes. They are unlikely to have the resources to retain an attorney to investigate their case and resolve the outstanding legal problems. Their legal problems also straddle the civil law — their entitlement to SSI benefits — and the criminal law, which is the origin of their current problems. They will need to access the assistance of a legal aid attorney for the former, and the public defender for the latter. Kline-Capelle states:

Unfortunately, some recipients may have to serve time in jail or in prison, in order to resolve (‘fix’) the outstanding warrant or parole/probation violation against them. Some recipients may have to travel to another state — the state which issued the warrant or the violation notice — in order to obtain legal advice from a Public Defender on the best way to ‘fix’ the warrant or violation. (Kline-Capelle, *supra*.)

Residual Problems. Assuming the

recipient is successful in resolving current problems with the outstanding warrant, there may still be substantial residual problems to deal with. This is because the law deems the person ineligible to receive benefits for any month during which he or she was considered a fleeing felon. By the time the Social Security Administration catches up with the “fleeing felon,” several years may have passed during which the person continued to receive SSI benefits, although ineligible. Despite resolution of the outstanding warrant, SSA may determine the person to have been overpaid benefits during the time he or she was ineligible, and thus subject to recoupment of these overpayments out of future benefits to which the person may be entitled.

All of this complexity leads to a simple, but difficult to implement, recommendation: find a good lawyer, no mean feat in an era where entitlements have been reduced and funding for legal services programs has been systematically curtailed.

If all this is not bad news enough, there are movements afoot to expand this program to Veterans Administration benefits and Social Security Disability Insurance payments as well. Just because the simple solution to a complex problem is wrong is no reason not to expand and replicate it. ■



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