

CHAPTER 10: CRIMINAL CONVICTIONS AND RELATED ISSUES

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APPENDIX

Impact of Criminal Record on Public Benefits in Pennsylvania 10-A1

§ 10.1 Introduction

A criminal conviction may impact eligibility for both state and federal public benefits. Criminal convictions can stop a person from getting a job, being admitted to school, or renting an apartment. An outstanding warrant for failure to appear or fleeing prosecution, probation/parole violation, or unpaid fines, court costs, or restitution may render a person ineligible for Medical Assistance, Social Security disability benefits, SNAP, TANF, or subsidized housing.

A person with a criminal record who faces imminent arrest – especially if the person has an open case, outstanding bench warrant or “wanted” card – should speak to a criminal defense attorney before making any decisions to appear before any law enforcement authority or court to have the warrant lifted.

Pennsylvania “Clean Slate” Law: This newly enacted law will enable persons to clear their criminal record by automatically sealing some records. Minor offenses such as non-violent misdemeanors, summary offenses and dropped cases will automatically be sealed, if there has been no new conviction in the past 10 years. This automatic sealing process will start in or around July 2020. Additionally, some offenses can also be sealed by filing a petition in court. Clearing a past criminal record may not necessarily help with obtaining and maintaining public benefits, clients may benefit from this program for employment and housing purposes. More information on the Clean State law can be found here: <https://mycleanslatepa.com>

§ 10.2 Cash Program Eligibility

The effect of a criminal conviction on eligibility for federal and state **cash programs** depends on the specific benefit, as described below:

- Individuals are not eligible for **SSI** for any month spent in a correctional institution, including incarceration *before* conviction. They are also not eligible for SSI for any month during which there is an outstanding warrant against them for violation of probation, or if a warrant has been issued against them for fleeing with the specific intent to avoid prosecution or confinement.
- Individuals are not eligible for **SSDI** during any period of incarceration for more than 30 days *following* conviction. They also are not eligible for SSDI for any month during which there is an outstanding warrant against them for more than 30 continuous days for violation of probation/parole, or if a warrant has been issued against them for fleeing with the specific intent to avoid prosecution or confinement.
- Individuals receiving **TANF** are not eligible for cash assistance, if they:
 - have an outstanding warrant,
 - violated probation or parole,
 - have not complied with any approved payment plan for unpaid fines, court costs or restitution, or
 - are currently incarcerated

§ 10.3 Incarceration

Incarceration may result in the suspension of SSI and SSDI benefits. SSI benefits are suspended because the incarcerated individual has food and shelter provided and therefore has their needs met. Conviction of a crime is irrelevant to SSI eligibility. SSDI, on the other hand, is suspended only upon conviction of a crime resulting in confinement for a period of more than 30 days.

SSI Suspension of Benefits due to Incarceration: SSI benefits are suspended for any month that a recipient is confined in a correctional institution. For the benefits to be suspended, the confinement must be throughout the entire calendar month. For example, if an individual is confined for more than 30 days over a period of two months, but not confined for the entirety of either month, benefits are not suspended.

Benefits are also suspended during periods of authorized absence from the correctional

institution, where the provision of food and shelter remains the responsibility of the correctional authorities. This includes boot camp programs, daily work release, and periods of inpatient care in facilities such as hospitals and nursing homes. Recipients are also ineligible during any unauthorized absences from the correctional institution. This includes failing to report to a correctional institution for confinement as ordered by a court.

Individuals participating in alternatives to confinement, such as home confinement, where the correctional authorities are not providing food and shelter, are not considered to be in confinement and do not lose benefits for any month while in such programs. SSI benefits are prorated for the month of release after a period of ineligibility due to incarceration.

Clients who are incarcerated before their benefits are authorized cannot receive retroactive benefits for any period of time that they were not incarcerated until they are released from prison. Clients will not lose their eligibility for those retroactive benefits but are not eligible to receive them until they are released from prison.

If an individual's SSI was suspended for more than 12 months due to incarceration (or a combination of outstanding warrant and incarceration), they will need to re-apply for SSI benefits. If the suspension of benefits due to incarceration (or a combination of outstanding warrant and incarceration) is less than 12 months, they should go to their local Social Security office with official proof of release and request that their benefits be reinstated. SSI will be paid only when release has been verified.

SSDI Suspension of Benefits Due to Incarceration: SSDI recipients may not receive benefits while confined in a correctional institution for more than 30 continuous days as a result of a *criminal conviction*. A sentence can be for any amount of time. Once the individual has been in confinement for more than 30 continuous days, SSDI payments will be suspended. The suspension of benefits is retroactive to the initial date of confinement for the individual's conviction. Time spent in confinement (pre-trial detention) before conviction does not count, even if that time is later counted towards completion of the sentence. For an individual continuously confined pre- and post-conviction, the date of conviction is the effective date of suspension.

Confinement resulting in suspension of SSDI benefits includes time spent: temporarily outside the facility because of hospitalization, work, school, escapes; failure to report to begin sentence; transfer from the correctional institution; and in a halfway house or a work release program. Confinement ends upon completion of sentence, pardon, or parole. SSDI recipients are not required to re-apply for benefits because their benefits were in suspended status. Upon release they should go to their local social security office with official proof of release and request that their benefits be reinstated.

Family members who received benefits under the imprisoned person's account are still eligible for benefits.

§ 10.4 Violation of Probation/Parole and Bench Warrants in Felony Cases

Clients in violation of their conditions of probation or parole are ineligible for all public benefits programs, until they resolve the alleged violation. For example, a person who is required to report to a probation officer and fails to do so is in “technical violation” of probation. The probation officer will issue “wanted cards,” which are similar to a bench warrant.

While a person can be jailed for having a technical violation of probation, often the matter can be resolved if an attorney talks with the probation officer directly. The client’s defense attorney should handle this matter.

Most low-income clients will be eligible for representation by a local Public Defender:

- Bucks County Public Defender: **(215) 348-6473**
- Chester County Public Defender: **(610) 344-6940**
- Delaware County Public Defender: **(610) 891-4100**
- Cases in state court in Philadelphia:
Defender Association of Philadelphia: **(215) 568-3190**

Cases in federal court in Philadelphia and the surrounding Pennsylvania counties:
Federal Community Defender Office for the Eastern District of Pennsylvania (Two units) –

- Federal Community Defender’s Unit – **(215) 928-1100**
- Capital Habeas Unit – **(215) 928-0520**

In other counties, contact the county court system to obtain a referral to the local public defender’s office.

NOTE:

Case managers should not call the District Attorney’s office or the probation officer without speaking to the client’s attorney first.

If a bench warrant has been issued for the client, in a case involving a felony charge, the client cannot receive TANF, SNAP benefits, SSI or SSDI benefits until the bench warrant is lifted. In addition, a person with a bench warrant for a misdemeanor charge cannot get TANF benefits.

To resolve an outstanding bench warrant, the client must either: 1) surrender to the court or police; or 2) be arrested; or 3) have the warrant dismissed, discharged, or otherwise discontinued by a judge. Clients should be advised to seek legal representation

before they make any decision to resolve their warrant issues.

Definition for “Fleeing” Felons (*Martinez v. Astrue* settlement): Pursuant to the settlement entered in the case of *Martinez v. Astrue*, (Case No 08-CV-4735, N.D. Ca, 2009) the Social Security Administration cannot suspend or deny benefits unless the warrant against the individual was issued because they were “fleeing” to avoid prosecution, or custody or confinement after conviction for a felony.

Accordingly, SSA has defined “fleeing” to refer to individuals who have an outstanding felony warrant for only three offenses: (i) escape; (ii) flight to avoid prosecution confinement; and (iii) flight–escape. As the law stands currently, to deny or stop benefits because of an outstanding felony warrant, a person must be determined to be “fleeing” with the specific intent to avoid prosecution or confinement. An outstanding warrant alone will not be sufficient to justify a denial of benefits.

NOTE:

The *Martinez* settlement does not affect persons whose benefits have been discontinued because of a warrant based on a violation of the terms of probation or parole.

§ 10.5 Unpaid Fines, Court Costs, and Restitution

If a person failed to pay fines, restitution, or court costs in violation of their conditions of probation or parole, their public benefits eligibility may be affected until they become compliant. See chart in appendix at page **10-A1** for how these benefits are affected.

Pennsylvania law requires only that the person have a current payment plan, not that the entire amount has been paid. Clients must ensure that they have a payment plan and the payments are current. If a payment plan needs to be arranged for a client not already in regular contact with a probation officer, contact the client’s criminal defense attorney before calling the probation officer. Your client may be at risk of being arrested and detained as a result of your notification of their whereabouts to the probation officer.

It is acceptable to contact a probation officer if a payment plan needs to be arranged and the client is already in regular contact with the probation officer. Probation officers in Philadelphia are familiar with this issue and are capable of resolving this problem for clients.

§ 10.6 Cash Assistance (TANF) Eligibility and Criminal Record:

Individuals will be found ineligible for TANF cash assistance if they are:

- Sentenced for a felony or misdemeanor offense and the penalty established by the court is not satisfied. This includes paying all fines, costs, and

restitution or complying with an approved payment plan for payment of fines, costs, or restitution.

- Incarceration
- Violating the terms of probation or parole
- Failure to appear at a criminal court proceeding when issued a summons or a bench warrant which includes summary offenses
- Fleeing to avoid prosecution, custody, or confinement after a felony conviction
- Convicted of fraudulently misrepresenting residence in two or more states, resulting in ineligibility for 10 years from date of conviction.
- Convicted of welfare fraud which carries the following periods of ineligibility are:
 - 6 months for the first conviction.
 - 12 months for the second conviction.
 - Permanently for the third conviction.

Persons on **house arrest** are not eligible for TANF, with two exceptions:

- When the house arrest is part of their probation or parole, and they are compliant with requirements of their probation or parole.
- When on house arrest or on electronic monitoring while awaiting trial or sentencing. An otherwise eligible client may receive cash assistance because they have not been convicted or sentenced.

§ 10.7 Medical Assistance Eligibility and Criminal Record

Medical Assistance coverage is not available for clients who are incarcerated in a correctional institution (including jails and prisons) because the governmental authority exercising administrative control over the facility is responsible for the inmate needs, including health care coverage. However, there are some exceptions to this rule. Inmates in a correctional institution can continue to get *state-funded* Medical Assistance in the following situations, if they are otherwise eligible:

- If they reside in a community residential facility operated by a state, county, or municipal prison authority;

- if they are confined in a correctional institution and serve the term through incarceration for only a portion of the week, such as weekends;
- a juvenile placed temporarily in a juvenile detention center pending incarceration

Advocates should also note that an outstanding warrant, fleeing prosecution, violating probation or parole, unpaid fines, court costs or restitution do not affect the client's eligibility for *federally-funded Medical Assistance* (i.e., Medical Assistance under the Healthy Horizons category or MAWD). If your client's SSI has been discontinued because of an outstanding warrant, and Medical Assistance discontinued as a result, the client should be moved to the Healthy Horizons program for continuing Medical Assistance coverage.

Clients receiving state funded Medical Assistance coverage may be found ineligible for the following reasons:

- Failure to appear in a criminal court proceeding, as a defendant, in response to a summons or bench warrant issued
- If convicted of Medicaid fraud, individual will be ineligible for up to one year

Clients should call the AIDS Law Project of Pennsylvania for representation with their MA termination due to criminal record.

§ 10.8 SNAP Eligibility and Criminal Record

Individuals are ineligible for SNAP benefits if they are:

- Incarcerated
- In violation of the terms of their probation or parole
- Fleeing to avoid prosecution, custody, or confinement after a felony conviction
- Convicted of fraudulently misrepresenting identity or residence to receive multiple SNAP benefits, resulting in ineligibility for 10 years after conviction or state agency finding.

Intentional violations of the SNAP rules result in a period of ineligibility.

- 1 year for the first violation

- 2 years for the second violation
- Permanently ineligible for the third violation

§ 10.9 Pre-Release Authorization for Benefits

Both SSA and DHS have limited programs that permit a person in jail or prison to apply and be approved for benefits to begin upon release. It is very important for people with HIV to leave incarceration with some resources in hand.

SSA permits incarcerated disabled persons—who are likely to be approved for benefits and potentially released within 30 days after notification of SSI eligibility—to apply for SSI. Clients in prison may start the application process several months before release, but should have an anticipated release date. However, SSI will be paid, only after the SSA verifies the client’s release.

On the other hand, SSDI recipients must be released and provide the Social Security office with “official release” documentation from prison to begin receiving benefits the following month. Once released, in order to re-start their benefits, an individual can go to their local SSA field office and show their official proof of release. Following release from a correctional facility, clients become eligible for MA, even though they may still be under a court’s jurisdiction on probation or parole, or under house arrest.

§ 10.10 Other Public Benefits and Criminal Record

Incarcerated individuals are not eligible for the following benefits:

- Social Security Retirement benefits
- Low Income Subsidy for Medicare Premiums (although they maintain eligibility for Medicare)
- Special Pharmaceutical Benefits Program (SPBP) benefits

Individuals can maintain Medicare eligibility and pay Part B premiums while incarcerated, even if Social Security retirement or disability benefits are suspended. However, any health care services received while incarcerated may not be covered since the state (or other government component which operates the prison) is responsible for the inmate’s medical needs.