

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

SUPPORTING OLDER ADULTS
AFTER INCARCERATION SERIES

Connecting Formerly Incarcerated Individuals to SSI and Social Security Benefits

As the overall population ages, the prison and jail population is aging too. Older adults reentering our communities are disproportionately older adults of color, especially Black men. The unique and significant disadvantages caused by structural racism in the criminal justice system and throughout their lives follow individuals well beyond the prison and jail walls. As a result, older adults leaving prison and jail are at risk of being unable to access health care, housing, and a range of health and economic security benefits that could help them transition smoothly and live securely in the community.

With support from AARP Public Policy Institute, Justice in Aging is releasing a series of issue briefs to ensure advocates and service providers are aware of the unique challenges older adults reentering the community after incarceration face and to provide the tools they need to connect their older adult clients to the safety net benefits they need.

This second issue brief in the series discusses the policies around and the differences between Supplemental Security Income (SSI), Social Security Disability Insurance, and Social Security.

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Trinh Phan, Director, State Income Security



INTRODUCTION

Supplemental Security Income (SSI) and Social Security are foundational benefits that help ensure the economic well-being of older adults and individuals with disabilities. For formerly incarcerated older adults, being able to access these benefits quickly helps them to secure housing and pay for other basic needs. This issue brief describes SSI and Social Security policies on applying for and reinstating benefits, as these policies apply to formerly incarcerated individuals.

Can an individual apply for benefits before release?

Individuals who were not receiving SSI or Social Security benefits prior to their incarceration must submit an application for age-based benefits or disability benefits. Age-based benefits include SSI for individuals age 65 or older, as well as Social Security retirement and survivors' benefits. Disability benefits include disability-based SSI and Social Security disability (SSDI). Congress enacted legislation in 1986 requiring the Social Security Administration (SSA) to allow individuals to apply for benefits prior to their release from a prison or jail.¹ The prerelease procedure allows individuals to submit an application up to several months before their anticipated release, and allows SSA to determine the individual's potential eligibility and payment amount based on their anticipated circumstances.²

While applications can be submitted prior to release, individuals who need to apply for disability benefits face a process that can take many months or even years to complete because of Social Security's complex definition of disability, during which they may struggle with housing instability and other challenges.

What are the differences between SSI and SSDI for previously eligible individuals re-connecting to benefits?

Individuals who were receiving benefits prior to incarceration can make use of rules that quickly re-connect them to benefits without needing to apply again. The impact of these re-connection rules differ between SSI disability and SSDI, with a quick re-connection to SSI disability being available to only some people.

To understand the reinstatement policies, it is helpful to first understand the distinction between suspension and termination. "Suspension" means that the individual's underlying eligibility continues, but that they are barred from actually receiving the monthly benefit. Circumstances that can cause benefit suspension include incarceration. Once the specific issue that caused suspension is resolved, the person's benefits can be reinstated immediately. "Termination" means the individual's underlying eligibility ends. In order to receive benefits again after a termination, the person will need to file a new application and establish their eligibility again.

The basic rule is that an individual who received Social Security, including SSDI, prior to incarceration can reinstate their benefit after their release. An individual who received SSI prior to incarceration can also reinstate their SSI benefit after their release, but only within 12 months of when their SSI benefit was suspended.

1 [Anti-Drug Abuse Act of 1986, section 11006.](#)

2 [SI 00520.900, SI 00520.910, EM-22026 REV 2 Procedure for processing T2 prerelease claims](#)

Social Security	SSI
Benefits are suspended if convicted and confined for more than 30 days based on the conviction. GN 02607.160	Benefits are suspended if an individual is a resident of a penal institution throughout a month. GN 02607.050
Considerations for judicial process and what qualifies as confinement. GN 02607.200	Considerations for what qualifies as a “penal institution.” SI 00520.009
Benefits can be reinstated at any time, and thus there is no “termination” of eligibility. GN 02607.840	Benefits can be reinstated within 12 months of the suspension. SI 02301.205 Benefits are “terminated” after being incarcerated for more than 12 months.

The chart above describes the basic rule; however there are nuances to the rules and to the definitions used in the rules. For example, for Social Security, in addition to individuals who are convicted and confined for more than 30 days based on the conviction, there are other court-ordered confinement situations that result in suspension: [not guilty by reason of insanity or similar factors](#), [incompetent to stand trial](#), or [a sexually dangerous person or sexual predator \(or a similar finding\) in a prison or other similar place](#).

Also, what is considered confinement depends on whether the person remains under the control and custody of the correctional institution, and whether public funds are being used to support the person’s basic living needs. Thus, an individual can receive Social Security benefits if on ankle bracelet monitoring, but cannot receive benefits if in a halfway house that is under the authority of the state department of corrections until the person completes their court-ordered sentence and is officially released or until the department of corrections places the person on parole. Particularly as jurisdictions develop incarceration models that may not fit neatly into the existing definitions, questions may arise about the application of the suspension rules.

Advocates may work with individuals who are in similar situations but who experience the re-connection process differently because of the difference in the SSI and Social Security policies. Individuals who previously received SSDI are typically able to re-connect to benefits with few problems, while individuals who received SSI disability must be careful of the 12-month suspension limit and may need to file a new disability application.

While the rules for obtaining and reinstating benefits can be complicated, advocates can help formerly incarcerated individuals to access to their benefits more quickly if they understand how these rules work.

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults leaving prison apply for SSI or SSDI. Contact Justice in Aging at info@justiceinaging.org.