Federal exemptions for federal benefits—such as Social Security, SSI, and VA benefits—apply to state and municipal criminal justice debt. Their anti-alienation provisions provide that, except under extremely limited circumstances, these benefits cannot be garnished at their source and they preempt state law to the contrary. Several state courts have also held that the anti-alienation provisions prohibit state and municipal courts from ordering or compelling defendants to pay criminal justice debts when their only source of income is Social Security.

The federal Claims Collection Act allows federal debts to be collected by offsetting the debt against federal benefits, federal salaries, and other federal payments. The Act allows the federal government to enter into reciprocal agreements with the states to collect state debts through these methods. The agreement must include requirements that are substantially equivalent to regulations adopted by federal agencies that provide for advance notice and an opportunity to challenge the debt, with which the state must comply. States that enter into these agreements still cannot offset Social Security benefits, benefits under Part B of the Black Lung Benefits Act, or certain Railroad Retirement benefits. The federal offset program is entirely inapplicable to SSI benefits.

The Employee Retirement Income Security Act (ERISA) provides that the benefits under ERISA plans may not be assigned or alienated. In the U.S. Supreme Court held that there is “no generalized equitable exception [either for employee malfeasance or for criminal misconduct] to ERISA’s prohibition on the assignment or alienation of pension benefits.” While the case dealt with a civil judgment that the union had obtained against an officer convicted of embezzlement, the Court’s broad language should apply equally to collection of fines, fees, and restitution. Exemptions for other retirement benefits also typically apply to criminal justice debt. While a federal statute carves out federal fines and restitution from the ERISA protections, that statute does not apply to state and municipal criminal justice debt.

Footnotes


208 In re Lampart, 856 N.W.2d 192, 200 (Mich. Ct. App. 2014) (using threat of contempt powers to compel criminal justice debtor to satisfy debt obligations from her SSI benefits would violate anti-alienation provision of Social Security Act); State v. Eaton, 99 P.3d 661 (Mont. 2004) (reversing order to pay restitution as a percentage of net income that included social security benefits, because “order is an improper attempt to subject Eaton’s social security benefits to ‘other legal process’ ”); State v. Catling, 438 P.3d 1174 (Wash. 2019) (state can impose a debt for a criminal justice fee on a defendant whose only source of income is exempt federal benefits, but court cannot order the defendant to pay it); City of Richmond v. Wakefield, 380 P.3d 459 (Wash. 2016) (holding that “federal law prohibits courts from ordering defendants to pay [criminal justice debts] if the person’s only source of income is social security disability”).

209 31 U.S.C. §§ 3701 to 3720E. See § 11.5.1 [1], Ch. 10 [2], supra.

210 See §§ 10.2 [3], 11.5.3.1.4 [4], supra.
11.5.4.3 Benefits and Retirement Benefits

It is unclear at the time of publication whether states’ reciprocal agreements cover criminal justice debt.

121 31 U.S.C. § 3716(h). See generally § 10.2.9.4 [5], supra (describing the federal regulations).


124 [219] See § 10.2.9.2 [6], supra.


128 [222] 18 U.S.C. § 3613 sets forth special rules for enforcement of federal fines and restitution, and provides that these obligations can be enforced against all property or rights to property that the debtor possesses notwithstanding any other federal law, with certain exceptions. In addition, 18 U.S.C. § 3663A(d) provides that restitution orders issued by federal courts can be enforced in accordance with 18 U.S.C. § 3664. Subsection (m)(1)(A) of that statute allows orders of restitution to be enforced as provided by 18 U.S.C. § 3613. Subsections (a) and (f) of that statute provide that restitution. All of these laws relate only to federal prosecutions and only to enforcement by the United States. See § 11.5.3.1 [7], supra.


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