

CHAPTER 35—ESCAPE AND RESCUE

- Sec. 751. Prisoners in custody of institution or officer.
- 752. Instigating or assisting escape.
- 753. Rescue to prevent execution.
- [754. Repealed.]
- 755. Officer permitting escape.
- 756. Internee of belligerent nation.
- 757. Prisoners of war or enemy aliens.
- 758. High speed flight from immigration check-point.

AMENDMENTS

1996—Pub. L. 104-208, div. C, title I, §108(b)(2), Sept. 30, 1996, 110 Stat. 3009-558, added item 758.
 1994—Pub. L. 103-322, title XXXIII, §330004(5), Sept. 13, 1994, 108 Stat. 2141, struck out item 754 “Rescue of body of executed offender”.

§ 751. Prisoners in custody of institution or officer

(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than five years, or both; or if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or magistrate judge, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person’s eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined under this title or imprisoned not more than one year, or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title.

(June 25, 1948, ch. 645, 62 Stat. 734; Pub. L. 88-251, §1, Dec. 30, 1963, 77 Stat. 834; Pub. L. 89-176, §3, Sept. 10, 1965, 79 Stat. 675; Pub. L. 90-578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 100-690, title VII, §7055, Nov. 18, 1988, 102 Stat. 4402; Pub. L. 101-650, title III, §321, Dec. 1, 1990,

104 Stat. 5117; Pub. L. 103-322, title XXXIII, §330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753h, 909 (May 14, 1930, ch. 274, §9, 46 Stat. 327; May 27, 1930, ch. 339, §9, 46 Stat. 390; Aug. 3, 1935, ch. 432, 49 Stat. 513).

Sections 753h and 909 of title 18, U.S.C., 1940 ed., were consolidated. Section 753h is later and more comprehensive. The substance of its provisions was adopted.

References to offenses as felonies or misdemeanors were omitted in view of definitive section 1 of this title. (See also reviser’s notes under section 550 of this title.)

Mandatory provision as to separate sentences and order of service was omitted in order to permit court to exercise discretion as to whether sentences should be concurrent or consecutive and to obviate administration problems in enforcement of section.

Words “or employee” were inserted to remove ambiguity as to scope of section.

Reference to “custody or confinement is for extradition” was inserted to avoid possible ambiguity.

Changes were made in phraseology and arrangement.

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$5,000” after “any offense, be” and for “fined not more than \$1,000” after “conviction, be” in subsec. (a) and substituted “fined under this title” for “fined not more than \$1,000” in subsec. (b).

1988—Subsec. (a). Pub. L. 100-690 inserted “, or for exclusion or expulsion proceedings under the immigration laws,” after “extradition”.

1965—Pub. L. 89-176 inserted “or facility” after “institution”.

1963—Pub. L. 88-251 designated existing provisions as subsec. (a) and added subsec. (b).

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in subsecs. (a) and (b) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, “magistrate” substituted for “commissioner” pursuant to Pub. L. 90-578. See chapter 43 (§631 et seq.) of Title 28.

§ 752. Instigating or assisting escape

(a) Whoever rescues or attempts to rescue or instigates, aids or assists the escape, or attempt to escape, of any person arrested upon a warrant or other process issued under any law of the United States, or committed to the custody of the Attorney General or to any institution or facility by his direction, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined under this title or imprisoned not more than five years, or both; or, if the custody or confinement is for extradition, or for exclusion or expulsion proceedings under the immigration laws, or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined under this title or imprisoned not more than one year, or both.

(b) Whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempted escape of any person in the custody of the Attorney General or his authorized representative, or of any person arrested upon a warrant or other process issued under any law of the United States or from any institution or facility in which he is confined by direction of the

Attorney General, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; May 28, 1956, ch. 331, 70 Stat. 216; Pub. L. 88-251, § 2, Dec. 30, 1963, 77 Stat. 834; Pub. L. 89-176, § 3, Sept. 10, 1965, 79 Stat. 675; Pub. L. 100-690, title VII, § 7055, Nov. 18, 1988, 102 Stat. 4402; Pub. L. 103-322, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 107-273, div. B, title IV, § 4002(d)(1)(D), Nov. 2, 2002, 116 Stat. 1809.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 246, 247, 252, 661, 662c, 753i, 910 (R.S. § 5277; Mar. 4, 1909, ch. 321, §§ 141, 143, 35 Stat. 1114; May 14, 1930, ch. 274, § 10, 46 Stat. 327; May 27, 1930, ch. 339, § 10, 46 Stat. 390; Mar. 22, 1934, ch. 73, § 2, 48 Stat. 455; May 18, 1934, ch. 303, § 1, 48 Stat. 782).

Section consolidated escape and rescue provisions of sections 246, 247, 252, 661, 662c, 753i, and 910 of title 18, U.S.C., 1940 ed. Remaining provisions of those sections are in sections 1071, 1072, 1502, 1792, 3183, and 3195 of this title.

No two sections provided the same punishment. Every section except said section 252 made the offense a misdemeanor by providing for fines varying from \$500 to \$1,000 and terms of imprisonment varying from 6 months to 1 year. Said section 252, representing the latest expression by Congress, provided for 10 years' imprisonment.

The punishment provision was adopted from section 751 of this title, which makes it unlawful for a prisoner to escape from his place of confinement. Thus the same punishment would apply to the person aiding in an escape as to the person escaping.

The language of this section reconciles the conflict by adopting a penalty which is a compromise between the varying provisions.

Reference to "extradition" was inserted to avoid ambiguity and to harmonize section with section 751 of this title.

References to "force" were omitted as well as those to "officer" or "custody." See definition of "Rescue," Black's Law Dictionary, citing 4 Bl. Comm. 131.

Changes were made in phraseology.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273 substituted "or conviction of any offense, be fined under this title" for "or conviction of any offense, be fined not more than \$5,000".

1994—Subsecs. (a), (b). Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$1,000".

1988—Subsec. (a). Pub. L. 100-690 inserted "or for exclusion or expulsion proceedings under the immigration laws," after "extradition".

1965—Pub. L. 89-176 inserted "or facility" after "institution".

1963—Pub. L. 88-251 designated existing provisions as subsec. (a) and added subsec. (b).

1956—Act May 28, 1956, inserted "or attempt to escape," after "escape".

§ 753. Rescue to prevent execution

Whoever, by force, sets at liberty or rescues any person found guilty in any court of the United States of any capital crime, while going

to execution or during execution, shall be fined under this title or imprisoned not more than twenty-five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; Pub. L. 103-322, title XXXIII, § 330016(1)(O), Sept. 13, 1994, 108 Stat. 2148.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 248 (Mar. 4, 1909, ch. 321, § 142, 35 Stat. 1114).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$25,000".

[§ 754. Repealed. Pub. L. 103-322, title XXXIII, § 330004(5), Sept. 13, 1994, 108 Stat. 2141]

Section, acts June 25, 1948, ch. 645, 62 Stat. 735; Sept. 13, 1994, Pub. L. 103-322, title XXXIII, § 330016(1)(B), 108 Stat. 2146, related to rescue of bodies of executed offenders.

§ 755. Officer permitting escape

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or magistrate judge, voluntarily suffers such prisoner to escape, shall be fined under this title or imprisoned not more than 5 years, or both; or if he negligently suffers such person to escape, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735; Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103-322, title XXXIII, § 330016(1)(G), (I), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-132, title VII, § 705(a)(2), Apr. 24, 1996, 110 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 244, 662e, 665 (Feb. 6, 1905, ch. 454, § 2, 33 Stat. 698; Mar. 4, 1909, ch. 321, §§ 138, 139, 35 Stat. 1113; Mar. 22, 1934, ch. 73, § 4, 48 Stat. 456).

Sections 244, 662e and 665 of title 18, U.S.C., 1940 ed., were consolidated. The two latter sections merely extended application of the former. This section has been greatly condensed by changes in phraseology which do not affect the substance.

Enumeration of "marshal, deputy marshal, ministerial officer, or other person," was omitted as surplusage.

Provision making section applicable to cases of prisoners in custody pending extradition or removal proceedings as well as prisoners convicted of offenses against the United States was likewise omitted as unnecessary.

Changes in phraseology were made.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment in view of the act of June 21, 1947, ch. 111, 61 Stat. 134, which, by amending section 244 of Title 18, U.S.C., became an additional source of this section. The amendment constitutes the last clause of this section. See Senate Report No. 1620, amendment No. 8, 80th Cong.

AMENDMENTS

1996—Pub. L. 104-132 substituted "5 years" for "two years".