

fined under this title or imprisoned not more than two years, or both.

(June 25, 1948, ch. 645, 62 Stat. 802; Pub. L. 103-322, title XXXIII, §330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§121, 128 (Mar. 4, 1909, ch. 321, §§65, 71, 35 Stat. 1100, 1101).

Section consolidates that portion of section 121 of title 18, U.S.C., 1940 ed., relating to rescue of seized property, with section 128 of title 18, U.S.C., 1940 ed.

The remaining provisions of section 121 of present title 18, U.S.C., 1940 ed., relating to assaulting, resisting, or interfering with customs officers, revenue officers, or other persons, and to the destruction or removal of property to prevent seizure, constitute sections 2231 and 2232 of this title, the former provisions being consolidated with certain provisions of other sections.

Said section 121 of present title 18, U.S.C., 1940 ed., provided for punishment by fine of not more than \$2,000 or imprisonment of not more than 1 year, or both, of persons rescuing, attempting to rescue, or causing to be rescued, "any property" which has been seized by "any person" authorized to make searches and seizures.

Said section 128 of present title 18, U.S.C., 1940 ed., provided for punishment by fine of not more than \$300 and imprisonment for not more than 1 year of persons dispossessing, rescuing, or attempting to dispossess or rescue, or aiding or assisting in dispossessing or rescuing, "any property taken or detained by any officer or other person under the authority of any revenue law of the United States."

This revised section adopts the maximum fine provisions of section 121 of title 18, U.S.C., 1940 ed., and extends the maximum term of imprisonment to 2 years. This was deemed advisable so that uniformity of punishment would be established and the provisions would be sufficiently broad to impose punishment commensurate with the gravity of the offense. (See section 3601(c)(2) of title 26, U.S.C., 1940 ed., Internal Revenue Code.)

Reference to persons causing, procuring, aiding or assisting was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Changes were made in phraseology.

#### AMENDMENTS

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$2,000".

### § 2234. Authority exceeded in executing warrant

Whoever, in executing a search warrant, willfully exceeds his authority or exercises it with unnecessary severity, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104-294, title VI, §601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107-273, div. B, title III, §3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §631 (June 15, 1917, ch. 30, title XI, §21, 40 Stat. 230).

Minor changes were made in phraseology.

#### AMENDMENTS

2002—Pub. L. 107-273 inserted ", or both" after "year".

1996—Pub. L. 104-294 substituted "fined under this title" for "fined not more than \$1,000".

### § 2235. Search warrant procured maliciously

Whoever maliciously and without probable cause procures a search warrant to be issued and

executed, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104-294, title VI, §601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107-273, div. B, title III, §3002(a)(3), Nov. 2, 2002, 116 Stat. 1805.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §630 (June 15, 1917, ch. 30, title XI, §20, 40 Stat. 230).

Minor changes were made in phraseology.

#### AMENDMENTS

2002—Pub. L. 107-273 inserted ", or both" after "year".

1996—Pub. L. 104-294 substituted "fined under this title" for "fined not more than \$1,000".

### § 2236. Searches without warrant

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined under this title for a first offense; and, for a subsequent offense, shall be fined under this title or imprisoned not more than one year, or both.

This section shall not apply to any person—

(a) serving a warrant of arrest; or

(b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or

(c) making a search at the request or invitation or with the consent of the occupant of the premises.

(June 25, 1948, ch. 645, 62 Stat. 803; Pub. L. 104-294, title VI, §601(a)(8), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107-273, div. B, title IV, §4002(d)(1)(C)(iii), Nov. 2, 2002, 116 Stat. 1809.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §53a (Aug. 27, 1935, ch. 740, §201, 49 Stat. 877).

Words "or any department or agency thereof" were inserted to avoid ambiguity as to scope of section. (See definitive section 6 of this title.)

The exception in the case of an invitation or the consent of the occupant, was inserted to make the section complete and remove any doubt as to the application of this section to searches which have uniformly been upheld.

Reference to misdemeanor was omitted in view of definitive section 1 of this title. (See reviser's note under section 212 of this title.)

Words "upon conviction thereof shall be" were omitted as surplusage, since punishment cannot be imposed until conviction is secured.

Minor changes were made in phraseology.

#### AMENDMENTS

2002—Pub. L. 107-273 inserted "under this title" after "warrant, shall be fined" and struck out "not more than \$1,000" after "for a first offense".

1996—Pub. L. 104-294 substituted "fined under this title" for "fined not more than \$1,000".