

shall be fined under this title or imprisoned not more than 6 months, or both.

(b) It is a defense to a prosecution under this section that the insignia or uniform is other than a counterfeit insignia or uniform and is not used to mislead or deceive, or is used or is intended to be used exclusively—

- (1) as a memento, or in a collection or exhibit;
- (2) for decorative purposes;
- (3) for a dramatic presentation, such as a theatrical, film, or television production; or
- (4) for any other recreational purpose.

(c) As used in this section—

(1) the term “genuine police badge” means an official badge issued by public authority to identify an individual as a law enforcement officer having police powers;

(2) the term “counterfeit police badge” means an item that so resembles a police badge that it would deceive an ordinary individual into believing it was a genuine police badge; and²

(3) the term “official insignia or uniform” means an article of distinctive clothing or insignia, including a badge, emblem or identification card, that is an indicium of the authority of a public employee;

(4) the term “public employee” means any officer or employee of the Federal Government or of a State or local government; and

(5) the term “uniform” means distinctive clothing or other items of dress, whether real or counterfeit, worn during the performance of official duties and which identifies the wearer as a public agency employee.

(d) It is a defense to a prosecution under this section that the official insignia or uniform is not used or intended to be used to mislead or deceive, or is a counterfeit insignia or uniform and is used or is intended to be used exclusively—

- (1) for a dramatic presentation, such as a theatrical, film, or television production; or
- (2) for legitimate law enforcement purposes.

(Added Pub. L. 106-547, §3(a), Dec. 19, 2000, 114 Stat. 2739; amended Pub. L. 109-162, title XI, §1191(a), Jan. 5, 2006, 119 Stat. 3128.)

Editorial Notes

AMENDMENTS

2006—Pub. L. 109-162, §1191(a)(6), substituted “Public employee insignia and uniform” for “Police badges” in section catchline.

Subsec. (a)(1). Pub. L. 109-162, §1191(a)(1), substituted “official insignia or uniform” for “police badge”.

Subsec. (a)(2). Pub. L. 109-162, §1191(a)(1), (2), substituted “official insignia or uniform to” for “police badge to” and “official insignia or uniform;” for “badge of the police;”.

Subsec. (a)(3). Pub. L. 109-162, §1191(a)(1), substituted “official insignia or uniform” for “police badge”.

Subsec. (a)(4). Pub. L. 109-162, §1191(a)(1), (2), substituted “official insignia or uniform under” for “police badge under” and “official insignia or uniform.” for “badge of the police.”.

Subsec. (b). Pub. L. 109-162, §1191(a)(3)(C), which directed the insertion of “is not used to mislead or deceive, or” before “is used or intended” was executed by making the insertion before “is used or is intended”, to reflect the probable intent of Congress.

² So in original. The word “and” probably should not appear.

Pub. L. 109-162, §1191(a)(3)(A), (B), substituted “the insignia or uniform” for “the badge” and inserted “is other than a counterfeit insignia or uniform and” before “is used or is intended to be used”.

Pub. L. 109-162, §1191(a)(1), which directed substitution of “official insignia or uniform” for “police badge” could not be executed because the term “police badge” did not appear.

Subsec. (c)(3) to (5). Pub. L. 109-162, §1191(a)(4), added pars. (3) to (5).

Subsec. (d). Pub. L. 109-162, §1191(a)(5), added subsec. (d).

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 checkpoint. |

Editorial Notes

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.

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" in subssecs. (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.