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Federal Assistance In The Enforcement Of State Criminal Law

STATUTORY COMMENT

FEDERAL ASSISTANCE IN THE ENFORCEMENT OF STATE CRIMINAL LAW

One of several criminal statutes enacted by Congress in the spring of 1934 in an attempt to halt the increase of interstate criminal activities[1] at that time was the Fugitive Felon Act.[2] Prosecutions under the Act are infrequent, for its primary purposes are (1) to provide federal law enforcement officers with authority to apprehend fugitives from the justice of state courts and (2) to eliminate the necessity for the lengthy and complicated process of extradition.[3]

The Fugitive Felon Act makes any movement in interstate commerce with the intent to avoid prosecution for the commission of certain felonies a criminal offense;[4] it fulfills its purpose when proper-

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[1]See 32 Mich. L. Rev. 378 n.1 (1934).

[2]48 Stat. 782 (1934), 18 U.S.C. § 1073 (1958).

[3]Under the Uniform Extradition Act the executive authority of the demanding state must make a demand in writing upon the executive authority of the asylum state accompanied by the indictment found against the person demanded. The indictment must be authenticated by the executive authority of the demanding state. Upon completion of the above requirements the Governor of the asylum state may then call upon the Attorney General of that state to make an investigation of the demand and to report the results of such investigation to him. If the Governor of the asylum state then deems it advisable to surrender the fugitive to the demanding state, he shall sign a warrant for the arrest of such fugitive. At that time, the fugitive is apprehended by the appropriate authorities of the asylum state, taken before a justice, and told of the crime of which he is charged and of the demand made for him by the demanding state. Uniform Criminal Extradition Act § 2-16. For a further discussion of this Act see 1 Alexander, The Law of Arrest § 234 (1949); 6 Kan. L. Rev. 475 (1958). Even though nearly all of the states have passed the above Act, 1 Alexander, The Law of Arrest § 234 (1949), it seems that the expeditious means of returning a fugitive felon available under the Fugitive Felon Act are indispensable in the enforcement of criminal law.

[4]The Fugitive Felon Act provides that "whoever moves or travels in interstate or foreign commerce with the intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for murder, kidnapping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, arson punishable as a felony, or extortion accompanied by threats of violence, or attempt to commit any of the forgoing offenses as they are defined either at common law or by the laws of the place from which the fugitive flees . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement." 48 Stat. 782 (1934), 18 U.S.C. § 1073 (1958).

The second section of this Act which concerns flight to avoid giving testimony in criminal proceedings will not be discussed in this comment.

ly construed by the courts. This fulfillment was partially thwarted in *United States v. Rappaport*,[5] when a federal District Court construed the term "prosecution" to mean a *pending* prosecution, saying that "the statute was intended to operate only in cases where an indictment had been found or prosecution had been instituted and not in cases where prosecution might be instituted in the future."[6] This court also reasoned that in view of the fact that the statute is penal in nature, it must be strictly construed and that a strict construction of the term "prosecution" signifies proceedings instituted by some formal process.[7] It seems that this construction partially defeats the original purpose of the statute due to the length of time necessary to institute some type of formal proceeding.

However, the danger of defeating the purpose of the statute by such a construction seems small in light of the more recent decision in *United States v. Lupino*[8] in 1958, wherein a different United States District Court held that "to avoid prosecution" means "to avoid being prosecuted" and not "to avoid a pending prosecution."[9] This interpretation was also the one given the statute by the Court of Appeals for the Second Circuit in *United States v. Bando*.[10] In construing the statute and its purpose the court said, "It was intended to enable federal agencies to go into action against criminals who 'flee from the scene of the crime beyond the jurisdiction of the State wherein the crime is commited and eventually escape punishment entirely.' The construction ... which appellants offer [to avoid a pending prosecution], would serve in great measure to frustrate the federal law enforcement agencies by preventing them from going into action promptly, and it would set a premium on a quick get-away across State lines by the criminal who had committed one of the crimes of violence listed in [the statute]."[11]

It is a well-settled principle of law that a warrant of arrest issued in one state cannot be executed outside the issuing state.[12] This basic rule may be changed by the Uniform Close Pursuit Act[13] or by agree-

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[5]156 F. Supp. 159 (N.D. Ill. 1957).

[6]Id. at 160.

[7]Ibid.

[8]171 F. Supp. 648 (D. Minn. 1958), 268 F.2d 799 (8th Cir.), cert. denied, 361 U.S. 834 (1959).

[9]Id. at 649.

[10]244 F.2d 833 (2d Cir. 1957).

[11]Id. at 843.

[12]Annot., 61 A.L.R. 377 (1929).

[13]The Uniform Close Pursuit Act provides that any peace officer of another state who enters this state in close pursuit of a person shall have the same authority as a peace officer of this state has to arrest and hold such person in custody. The

ments or compacts between the states.[14] State law enforcement officers may apprehend a fugitive felon in another state in the circumstances enumerated above, or by virtue of a private person's right to arrest a felon without a warrant.[15] However, it is submitted that the Fugitive Felon Act provides a more effective means of bringing a fugitive to justice. In effecting an apprehension under the Uniform Close Pursuit Act, the arresting officer must be in close pursuit of the felon when he crosses the state boundary.[16] This makes such a statute ineffective in the event of any delay in the pursuit of the suspected perpetrator of a crime. Even under agreements between states allowing the arrest of a felon within that state by an officer of a foreign state, knowledge by such foreign state of the whereabouts of the felon is a necessary prerequisite to the apprehension. Few states, if any, are financially capable of sustaining the vast amount of facilities and personnel that would be necessary to enable them to search an area as large as the United States for every felon who may flee the state in order to avoid prosecution.

The Fugitive Felon Act was passed in order to remedy the above situations. At the time of the passage of the Act the purpose and need for such legislation was set out by the United States Attorney General in his comment to the House Committee on the Judiciary:

> "One of the most difficult problems which local law-enforcement agencies have to deal with today is the ease with which criminals are able to flee from the State to avoid prosecution.... The [Fugitive Felon Act] is considered the most satisfactory solution to this problem, which the States have never been able to solve effectively. This [Act]... will not prevent the States from obtaining extradition of roving criminals, but the complicated process of extradition has proved to be very inefficient. The ability of Federal Officers to follow a criminal from one State to any other State or States, as provided in the [Act]..., should furnish the desired relief from this class of law evaders...."[17]

Although it may be argued that Congress, by passing an act permitting federal enforcement of state criminal law, is doing some-

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foreign peace officer must then take such person before a magistrate within this state who shall determine whether or not the arrest was made in accordance with this Act, but not the guilt or innocence of the party arrested. The provisions of this Act are stated in N.Y. Code Crim. Proc. § 860.

[14] 1 Alexander, The Law of Arrest § 65 (1949). See, e.g., Ferguson v. Ross, 126 N.Y. 459, 27 N.E. 954 (1891).

[15] Annot., 133 A.L.R. 608 (1941).

[16] See note 13 supra.

[17] H.R. Rep. No. 1458, 73rd Cong., 2d Sess. (1934); S.Rep. No. 2253, 73rd Cong., 2d Sess. (1934).

thing indirectly that it may not do directly, the constitutionality of the statute has been upheld as a valid exercise of congressional power to regulate interstate commerce.[18] In *Simmons v. Zerbst*[19] the court said, "The passage of a person from one state to another is interstate commerce within the meaning of the Constitution and the enactment... of a statute making it a federal offense to do so for the purpose of escaping prosecution for a crime is within the power of Congress."[20] It seems that this statute is closely related to the White Slave Traffic Act,[21] which prohibits the use of interstate commerce for the purpose of prostitution, in that both statutes regulate the movement of persons in interstate commerce. Some courts draw the above analogy in determining the validity of the Fugitive Felon Act and dispose of any constitutional question by relying on the weight of the authority upholding the White Slave Traffic Act as a constitutional exercise of the commerce power.[22]

The Fugitive Felon Act, by providing for fine and imprisonment for its violation,[23] appears to be a typical criminal statute; however, it is used by the federal authorities primarily for apprehension.[24] This fact is clearly brought out by the following table showing apprehensions by the Federal Bureau of Investigation under the statute and subsequent convictions for its violation:[25]

Fiscal Years	*Apprehensions*	*Convictions*
1955	653	7
1956	902	11
1957	947	6
1958	1,021	2
1959	1,149	4

[18]Hemans v. United States, 163 F.2d 228 (6th Cir. 1947); United States v. Brandenburg, 144 F.2d 656 (3rd Cir. 1944); Simmons v. Zerbst, 18 F. Supp. 929 (N.D. Ga. 1937); United States v. Miller, 17 F. Supp. 65, 67 (W.D. Ky. 1936); Annot., 154 A.L.R. 1168 (1945); 29 Ill. L. Rev. 355 (1934); 32 Mich. L. Rev. 378 (1934).

[19] 18 F. Supp. 929 (N.D. Ga. 1937).

[20]Id. at 930.

[21]White Slave Traffic Act (Mann Act) § 2, 36 Stat. 825 (1910), 18 U.S.C. § 2421 (1952).

[22]Hemans v. United States, 163 F.2d 228, 239 (6th Cir. 1947); United States v. Miller, 17 F. Supp. 65 (W.D. Ky. 1936). See H.R. Rep. No. 1458, 73rd Cong., 2d Sess. (1934).

[23]See note 4 supra.

[24]See letter from J. Edgar Hoover, Director of the Federal Bureau of Investigation, to the writer, Aug. 24, 1959, on file in The Washington & Lee Law Review Office; see State ex rel. Middlemas v. District Court, 125 Mont. 310, 233 P.2d 1038 (1951); State v. Crough, 152 A.2d 644 (R.I. 1959).

[25]See letter from J. Edgar Hoover, Director of the Federal Bureau of Investigation to the writer, Aug. 24, 1959, on file in The Washington & Lee Law Review Office.

The usual procedure, as stated by J. Edgar Hoover, "is for the local U.S. Attorney to dismiss Federal process when the fugitive has been placed in custody and appropriate local authorities notified."[26] Although Federal prosecution is available for violation of this statute, it is seldom sought. A unique application of the statute was effected in *United States v. Bando*[27] when it was used as a means of prosecuting the defendant for conspiracy to violate its provisions. While this is not the purpose intended by the framers of the Act, it exemplifies the various ways in which the statute can be used to aid in state criminal law enforcement.

Notwithstanding its unique application, the statute has been virtually ignored by legal writers;[28] and in light of the few prosecutions for its violation, there are very few cases construing its terms. One case has held that mere absence from the state where the original crime was alleged to have been committed was insufficient to constitute a violation of the Act,[29] thereby making flight to avoid prosecution a specific intent crime. However, a fugitive apprehended by the FBI under the authority given them by the Act has little opportunity to attack the validity of the arrest. In view of the fact that the federal authorities usually turn over the fugitive upon his apprehension to the state law enforcement officers,[30] the purpose of the statute has been served by the apprehension; and once the fugitive is in the hands of the local authorities, he has no grounds for complaint even if the federal warrant under which he was apprehended is completely void.[31]

The procedure followed by the FBI, according to its Director, is that "prior to entrance by the FBI in these cases there must be an outstanding local process against the accused for an offense within

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[26]Ibid.

[27]244 F.2d 833 (2d Cir. 1957).

[28]Extensive research reveals only two Law Review comments written on the Fugitive Felon Act itself or on any case directly involving the Act. 29 Ill. L. Rev. 355 (1934); 32 Mich L. Rev. 378 (1934). Both of the above articles, written in the year of the passage of the Act, are concerned with the constitutionality of the Act, but not with its application.

[29]Barrow v. Owen, 89 F.2d 476 (5th Cir. 1937).

[30]See note 4 supra. See United States ex rel. Mills v. Reing, 191 F.2d 297, 300 (3rd Cir. 1951); Kellett v. United States, 162 F. Supp. 791 (W.D. Mo. 1958); State ex rel. Middlemas v. District Court, 125 Mont. 310, 233 P.2d 1038 (1951); In the Matter of Langley, 325 P.2d 1094 (Okla. 1958).

[31]See Annot., 165 A.L.R. 947 (1946) and cases cited therein. In the above annotation it is said that the right to try a person accused of a crime is in no way impaired by the manner in which he was brought into the jurisdiction, "whether by kidnapping, illegal arrest, abduction, or irregular extradition proceedings." 165 A.L.R. 948.

the required categories, and local prosecuting authorities must agree to extradite the accused upon his apprehension out of the state. Following these requirements the local U.S. Attorney must authorize the filing of Federal process for the interstate flight."[32] Due to the requirement of an agreement by the local authorities to extradite before the FBI will take action, it seems strange that there would be any prosecutions by the federal government for violations of the statute. However, it is thought that when state authorities are unable to extradite the fugitive, the government will prosecute; but as indicated by the above table, these instances are rare.

The exercise of congressional power in this field has enabled state and local authorities to take advantage of the vast facilities and capabilities of the Federal Bureau of Investigation in apprehending fugitives from justice. It seems that this statute provides the only expeditious and direct means available to the states for utilizing the Federal agencies in the enforcement of *state* criminal law.[33]

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[32]See note 24 supra.

[33]The federal government provides a training course for local and state law enforcement officers which is conducted by the FBI at frequent intervals in Washington, D. C. Also, the large number of facilities and technicians employed by the FBI are available to state and local law enforcement agencies through the use of the FBI's crime laboratory. The fingerprint file of the FBI is also available to state and local agencies upon request. While the above means of assistance are of great value to state criminal law enforcement, in the absence of the Fugitive Felon Act there is no authority by virtue of which the FBI may itself seek out and apprehend fugitives from state justice and thereby assist the states in the overall enforcement of criminal law.