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SENATE

{ REPORT
No. 694

CRIMES ABOARD AIRCRAFT IN AIR COMMERCE

August 9 (legislative day, August 8), 1961.—Ordered to be printed

Mr. MONRONEY, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 2268]

The Committee on Commerce, to whom was referred the bill (S. 2268) to amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

This bill would amend the Federal Aviation Act of 1958, as amended, to accomplish the following purposes:

1. Make crimes defined in sections 113, 114, 1111, 1112, 1113, 1363, or 2111 of title 18, United States Code, applicable if committed while aboard an aircraft in air commerce. Included would be assaults, maiming, murder, manslaughter, malicious mischief, and robbery.

2. Make it a crime to attempt to obtain or obtain control of an aircraft by unlawful force or violence or threats of violence, or to assault, intimidate or threaten a flight crew member in such a way as to interfere with the performance of his duties.

3. Make piracy as defined in section 1651 of title 18, United States Code, a crime if committed while on board an aircraft in flight in air commerce.

4. Provide that anyone who knowingly imparts or conveys false information relative to the violations set forth in items 2 and 3 shall be subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

5. Make it a crime for anyone with the exception of law enforcement officers and certain others, to carry a concealed dan-

gerous weapon aboard an aircraft operated by an air carrier in air transportation.

6. Provide that violations of crimes set forth in items 1 through 5 shall be investigated by the Federal Bureau of Investigation,

7. Empower the Federal Aviation Agency to authorize air carriers under conditions prescribed by appropriate regulations to refuse to transport passengers or property inimical to air safety.

WITNESSES

The Subcommittee on Aviation conducted hearings on this measure August 4. Testimony was received from the following: Najeeb Halaby, Administrator, Federal Aviation Agency; Leonard Gilman, Border Patrol, Immigration and Naturalization Service; Herbert J. Miller, Jr., Assistant Attorney General, Criminal Division, Department of Justice; John H. Wanner, General Counsel, Civil Aeronautics Board; Harry S. O'Brien, executive vice president, Flight Engineers, International Association, AFL-CIO, accompanied by P. A. Knudsen, flight engineer, Eastern Air Lines; Stuart Tipton, president, Air Transport Association; Capt. John Carroll, first vice president, Air Line Pilots Association, accompanied by Tom Basnight, safety representative; William K. Lawton, executive director, National Business Aircraft Association; and Francis A. O'Connell, legislative representative, Transport Workers Union, AFL-CIO.

All of these witnesses strongly supported the objectives of this measure.

NEED FOR THE LEGISLATION

Recent incidents have focused, and forcefully so, attention on the need for additional laws covering crimes committed aboard commercial and private aircraft. There are Federal laws as well as State laws which are now applicable in many instances. However, few are designed to specifically meet the unique problems involving unlawful acts committed aboard aircraft while in flight. Those which may apply are frequently inadequate to fully cover the magnitude of the crime and, often, do not impose a penalty commensurate with the seriousness of the offense.

In this age of jet aircraft a moment of time can mean many miles have been traversed. Present aircraft pass swiftly from county to county and from State to State. As a result serious legal questions can arise as to the situs of the aircraft at the time the crime was committed. The question as to the law of which jurisdiction should apply to a given offense can be the subject of endless debate, and excessive delay in the prosecution becomes inevitable. The difficulties encountered by the overflowed State in collecting evidence sufficient to support an indictment are obvious. The necessary delays in instituting extradition proceedings further compound the problem of effective administration of justice.

In commenting on the various problems which seriously impair effective apprehension and prosecution, the Honorable Najeeb Halaby, Administrator of the Federal Aviation Agency, in testimony before the Subcommittee on Aviation, stated:

These difficulties arise from the simple fact that the State above which the crime may have been committed is often not the State in which the aircraft lands. The second State has no jurisdiction over the crime and cannot even arrest the criminal when the crime was completed in the first State. If the first State is disposed to act, it has first to collect the evidence that a crime has in fact been committed within its State jurisdiction. All the evidence of this went with the aircraft to the State of the landing. The witnesses would have dispersed soon after landing. Assuming that an indictment may be returned in the first State, the question of extradition from the overflowed State to the landing State remains. Not all crimes are extraditable, time and expense are involved and litigation is frequently necessary.

This is a much-simplified outline of the difficulties. To contrast, if the offense were also a crime under Federal law, the aircraft would be met on landing by Federal officers. The offender could be taken into custody immediately and criminal prosecution instituted. This, we want to make clear, would not replace any State jurisdiction but would supplement it. The crime under Federal law would be a different crime from the crime under State law.

In citing a recent example which persuasively demonstrates deficiencies in present law, he stated:

* * * the incident involving a drunken assault with a knife is a good illustration.

It occurred on a nonstop flight from Chicago to Los Angeles. Our best information is that the acts which would have constituted the assault took place during the time that the aircraft was over the State of Nevada. During the flight the passenger was once tied to his seat, released, and later had to be tied up again. In the interval of freedom he pulled out a knife with a 7-inch blade, threatening to kill the captain and assaulting the stewardess.

The interested Federal and State officials immediately undertook, as the saying goes, to set the machinery of the law in motion. It is perhaps an oversimplification to say that they discovered the machinery to be missing. The best that could be done under the circumstances, though final disposition of the matter is still under consideration, was done by the California authorities. The passenger was charged simply with being intoxicated in a public place. He pleaded guilty and was sentenced to 90 days in jail—after threatening a large, completely filled, jet aircraft flying over the United States. This was possible only because he was still intoxicated when the airplane landed in Los Angeles.

Your committee wishes to make emphatically clear its recognition that police powers are traditionally and properly reserved to the States and has no intention to transgress upon this very sound principle. However, the problems encountered in effective enforcement of the laws, prosecution and apprehension when applied to offenses committed aboard aircraft are unique and not as easily susceptible of solu-

tion as they are on the ground. The committee wishes to emphasize that the language of this bill covers offenses committed while an aircraft is in flight. In flight means from that point on the takeoff runway at the end of the takeoff roll to that point on the landing runway where the aircraft touches down, and does not apply to acts committed above an aircraft while it is on the ground. Local law is fully adequate to cover the latter situations.

Your committee is unanimous in its support of this legislation and urges its prompt passage.

EXPLANATION OF THE PROVISIONS OF THE BILL

Certain acts of violence which, if committed within the special maritime and territorial jurisdiction of the United States, would be crimes as defined by sections 113, 114, 1111, 1112, 1113, 1363, or 2111 of title 18, United States Code, would also constitute crimes if committed on board an aircraft in flight in air commerce. Included would be varying degrees of assaults, maiming, first- and second-degree murder, manslaughter, attempt to commit murder or manslaughter, malicious destruction of property, and robbery.

Any person who obtains or attempts to obtain control of an aircraft by unlawful force or threat of force would be subject to a fine of not more than \$10,000 or imprisoned for not more than 20 years, or both. If such act was committed with the use of a dangerous weapon, imprisonment would be for life but not less than 20 years.

One who assaults, intimidates or threatens to interfere with a flight crew member in such a way as to interfere with his duties to safely operate the aircraft would be subject to a fine of up to \$10,000 or imprisonment of not more than 20 years, or both. If a deadly or dangerous weapon was used in the commission of such offense, the penalty would be imprisonment for life or not less than 20 years. This section of the bill provides severe penalties for violations of its provisions and your committee believes rightly so. An act of violence directed against a flight crew member endangers not only such crew member but seriously jeopardizes the safety of every other person aboard the aircraft, as well as persons on the ground. Similar acts directed against passengers and members of the crew not directly involved in the safe operation of the aircraft are adequately covered under section 113 of title 18 of the United States Code, and incorporated by reference in this bill. The penalties imposed by section 113 are fully commensurate with the magnitude of the offenses.

An act which would constitute the crime of piracy if committed aboard a vessel on the high seas would also constitute a crime if committed aboard an aircraft in flight in air commerce. The offense would be subject to imprisonment for life.

To knowingly impart or convey false information concerning an attempt or alleged attempt to unlawfully obtain control of an aircraft, to interfere with a flight crew member, or to commit piracy would be subject to a fine up to \$1,000 or imprisonment up to one year, or both.

With the exception of law enforcement officers and others who may be authorized under appropriate regulations issued by the Federal Aviation Agency, any person who while aboard an aircraft being operated by an air carrier in air transportation, carries on or about his person a concealed deadly or dangerous weapon or attempts to

board such an aircraft with such a weapon would be subject to a fine of up to \$5,000 and imprisonment up to five years, or both.

All violations set forth in the above paragraphs shall be investigated by the Federal Bureau of Investigation.

The Administrator of the Federal Aviation Agency is empowered to authorize, under appropriate regulations, any air carrier to refuse to transport persons or property when such transportation might prove inimical to safety in flight. Your committee will expect the Administrator to promulgate such regulations with jealous regard for the rights of every citizen and to take every precaution to insure against abuse.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

THE FEDERAL AVIATION ACT OF 1958

* * * * *

TITLE IX—PENALTIES

SEC. 901. * * *

SEC. 902. * * *

CRIMES ABOARD AIRCRAFT IN FLIGHT

(i)(1) *Whoever, while on board an aircraft in flight in air commerce, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, would be in violation of sections 113, 114, 1111, 1112, 1113, 1363, or 2111 of title 18, United States Code, shall be punished as provided therein.*

(2) *Whoever, while on board an aircraft in flight in air commerce (A) attempts to obtain or obtains control of the aircraft by unlawful force or violence or the threat of force or violence; or (B) assaults, intimidates, or threatens so as to interfere with any flight crew member of such aircraft while engaged in the performance of his duties or lessen the ability of such flight crew member to perform his duties, shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both. Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be imprisoned for life, or for not less than twenty years.*

(3) *Whoever, while on board an aircraft in flight in air commerce, commits an act which if committed aboard a vessel on the high seas would constitute piracy as defined by section 1651 of title 18, United States Code, shall be imprisoned as provided therein.*

(4) *Whoever willfully imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would constitute a violation of paragraphs (2) and (3) of this subsection shall be fined not more than \$1,000 or imprisoned not more than one year, or both.*

(5) *Violation of this subsection shall be investigated by the Federal Bureau of Investigation.*

CARRYING WEAPONS ABOARD AIRCRAFT

(j) *Except for law enforcement officers of any municipal or State government, or the Federal Government, who are authorized or required to carry arms, and except for such other persons as may be so authorized under regulations issued by the Administrator, whoever, while a passenger aboard an aircraft being operated by an air carrier in air transportation, carries on or about his person a concealed deadly or dangerous weapon or attempts to board such an aircraft carrying such a weapon shall be fined not more than \$5,000 or imprisoned not more than five years, or both. Violations of this subsection shall be investigated by the Federal Bureau of Investigation.*

TITLE XI—MISCELLANEOUS

SEC. 1101. * * *
 SEC. 1102. * * *
 SEC. 1103. * * *
 SEC. 1104. * * *
 SEC. 1105. * * *
 SEC. 1106. * * *
 SEC. 1107. * * *
 SEC. 1108. * * *
 SEC. 1109. * * *
 SEC. 1110. * * *

SEC. 1111. Any air carrier is authorized under regulations prescribed by the Administrator to refuse transportation to a passenger or to refuse to transport property when, in the opinion of the air carrier, such transportation would or might be inimical to safety of flight.

AGENCY COMMENTS

The following reports were received from the agencies:

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 3, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request of July 19, 1961, for the views of this Department with respect to S. 2268, a bill to amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce, and to your request of August 2, 1961, for the views with respect to an amendment to S. 2268 intended to be proposed by Senator Engle.

The bill and the proposed amendment thereto are designed to assist in resolving the difficulties that have been experienced in attempting to apply State laws to crimes committed on board aircraft in flight in air commerce.

This Department is in accord with the objectives of legislation for this purpose. However, we would defer to the Department of Justice as to the proper scope of the legislation, as well as the problems of investigation and enforcement that would be involved.

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

DEPARTMENT OF STATE,
Washington, August 7, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate.

DEAR MR. CHAIRMAN: In response to your letter of July 19, 1961, the Department of State has reviewed S. 2268, to amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce. The Department of State has no objection to the purpose of the proposed bill, but wishes to call attention to one difficulty which might be created by the bill as presently worded and to certain existing provisions of law which appear to already cover at least part of the objectives of the proposed bill.

In view of the broad definition of "aircraft" and "air commerce" contained in the Federal Aviation Act of 1958, the proposed bill might be interpreted to have the effect of making the designated sections of the United States Criminal Code applicable not only to aircraft registered in the United States but also to aircraft registered in foreign

countries, even when the crimes in question were committed on such foreign aircraft in the airspace of a foreign country or over the high seas. So interpreted, the proposed bill might well be considered by the foreign countries of registry to be an improper exercise of jurisdiction by the United States and give rise to foreign relations difficulties. If the bill is intended to apply only to aircraft of U.S. registry, at least insofar as the application of the statute outside the territorial limits of the United States is concerned, the word "aircraft" should be deleted and the words "civil aircraft of the United States" be substituted in its place.

However, if the above change, which the Department of State considers necessary if the proposed bill is intended to apply outside the territorial limits of the United States, is made, it would appear that the bill in large part duplicates the provisions of existing law, at least as concern its application to crimes over the high seas or outside the United States, since section 7(5) of title 18 of the United States Code already defines "the special maritime and territorial jurisdiction" of the United States as including "any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State," and the designated sections of the proposed bill are already applicable to crimes within that "special maritime and territorial jurisdiction."

If the purpose of the bill is to make such acts crimes solely when committed in the territorial airspace of the United States, it would appear desirable to add the phrase "within the territorial airspace of the United States" after the word "act". In such case, there would appear no particular objection for using the present word "aircraft" for in effect it would make the proposed bill applicable to crimes committed aboard foreign-registered aircraft only while in the territorial airspace of the United States.

In sum, the Department believes that the alternatives are either that the proposed bill should be applicable only to U.S.-registered aircraft if it is to be applicable outside the territorial jurisdiction of the United States or if it is to apply to all aircraft irrespective of registry, then it should be applicable only while such aircraft are within the territorial limits of the United States.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

BROOKS HAYS,
Assistant Secretary.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 26, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter of July 19, 1961, acknowledged on July 20, requesting the comments of the General Accounting Office concerning S. 2268, 87th Congress, 1st session, entitled "A bill to amend the Federal Aviation Act of 1958 to provide for the application of Federal criminal law to certain events occurring on board aircraft in air commerce."

We have no special information or knowledge as to the need for or desirability of the proposed legislation and, therefore, we make no recommendation with respect to its enactment.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

APPENDIX

SECTIONS OF TITLE 18, UNITED STATES CODE, WHICH ARE INCORPORATED BY REFERENCE IN S. 2268

§ 113. Assaults within maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

(a) Assault with intent to commit murder or rape, by imprisonment for not more than twenty years.

(b) Assault with intent to commit any felony, except murder or rape, by fine of not more than \$3,000 or imprisonment for not more than ten years, or both.

(c) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by fine of not more than \$1,000 or imprisonment for not more than five years, or both.

(d) Assault by striking, beating, or wounding, by fine of not more than \$500 or imprisonment for not more than six months, or both.

(e) Simple assault, by fine of no more than \$300 or imprisonment for not more than three months, or both.

§ 114. Maiming within maritime and territorial jurisdiction.

Whoever, within the special maritime and territorial jurisdiction of the United States, and with intent to maim or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or

Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance—

Shall be fined not more than \$1,000 or imprisoned not more than seven years, or both. (As amended May 24, 1949, ch. 139, § 3, 63 Stat. 90.)

§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed is murder in the first degree.

Any other murder is murder in the second degree.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment", in which event he shall be sentenced to imprisonment for life; Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life. (June 25, 1948, ch. 645, 62 Stat. 756.)

§ 1112. Manslaughter

(a) Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

Voluntary—Upon a sudden quarrel or heat of passion.

Involuntary—In the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.

(b) Within the special maritime and territorial jurisdiction of the United States,

Whoever is guilty of voluntary manslaughter, shall be imprisoned not more than ten years;

Whoever is guilty of involuntary manslaughter, shall be fined not more than \$1,000 or imprisoned not more than three years, or both. (June 25, 1948 ch. 645, 62 Stat. 756.)

§ 1113. Attempt to commit murder or manslaughter

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States, attempts to commit murder or manslaughter, shall be fined not more than \$1,000 or imprisoned not more than three years, or both. (June 25, 1948, ch. 645, 62 Stat. 756.)

§ 1363. Buildings or property within special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures or attempts to destroy or injure any building, structure or vessel, any machinery or building materials and supplies, military or naval stores, munitions of war or any structural aids or appliances for navigation or shipping, shall be fined not more than \$1,000 or imprisoned not more than five years, or both, and if the building be a dwelling, or the life of any person be placed in jeopardy, shall be fined not more than \$5,000 or imprisoned not more than twenty years, or both. (June 25, 1948, ch. 645, 62 Stat. 764.)

§ 1651. Piracy under law of nations

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life. (June 25, 1948, ch. 645, 62 Stat. 774.)

§ 2111. Special maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes from the person or presence of another anything of value, shall be imprisoned not more than fifteen years. (June 25, 1948, ch. 645, 62 Stat. 796.)