



The Federal Powers to Fight Back Against Unruly Airline Passengers

By Graham Keithley

Unruly aircraft passengers have existed throughout commercial aviation history,¹ despite law makers', enforcers', and others' attempts to prevent unruly behavior aboard aircraft.² The remarkable increase of incidents during the COVID-19 pandemic, however, is a unique phenomenon (although most passengers remain compliant and follow crew member instructions). As of November 23, 2021, the Federal Aviation Administration (FAA) had received more than 5,000 reports of unruly passenger behavior for the year, resulting in a fivefold increase of investigations by the FAA.³ Similarly, the Transportation Security Administration (TSA) received more than 4,000 reports of mask-related noncompliance incidents from February 2021 to September 2021.⁴

Concurrent with this phenomenon are growing efforts to punish and deter unruly behavior and noncompliance with the use of FAA's and TSA's safety and security authority, which draws support from the federal government, state and local authorities, airlines and their employees, crew member labor unions, and airports. Although Congress long ago conferred significant power upon the federal government to address unruly passengers, the increase in incidents is a test for the federal agencies that enforce such rules, as well as for other stakeholders that must participate in such enforcement.

This article examines the federal rules against unruly passenger behavior in the aircraft cabin and aspects of the unique enforcement environment. It is apparent that the existing breadth of federal statutes and regulations is sufficient to address the ongoing phenomenon. The committed efforts and resources of federal agencies, as well as coordination with other stakeholders, can—and will—effectively deploy these legal authorities to prevent unruly behavior on board aircraft.

Sources of Federal Authority to Prohibit Unruly Passenger Behavior

The federal government's suite of powers to police passengers' disruptive behaviors derives from legislation, regulation, and other directives from various federal entities.

Following a spate of aircraft hijackings, Congress took action in 1961 to broadly criminalize certain onboard behaviors⁵ to “fill[] the gap” in federal and state laws.⁶ In so doing, Congress addressed a wide range of criminal behavior on board aircraft, including piracy, carrying weapons on board, and other serious crimes (e.g., murder, manslaughter, malicious destruction of property, and robbery).⁷ The bulk of unruly passenger behavior today does not implicate such crimes, but it still poses a serious threat to flight safety and security. The most relevant portion of the law addresses behavior that affects the performance of the crew:⁸

Whoever, while aboard an aircraft in flight in air commerce, assaults, intimidates, or threatens any flight crew member or flight attendant . . . of such aircraft, so as to interfere with the performance by such member or attendant of his duties or lessen the ability of such member or attendant to perform his duties . . .⁹

Notably, Congress did not define key elements of this crime—e.g., interference with the performance of flight crew or intimidation—effectively deferring to the other federal government branches and the public (i.e., prosecutors, courts, and juries) to determine which passenger behaviors rise to the level of criminal liability. Convicted violators of this statute are subject to significant penalties of up to 20 years' imprisonment or fines or both.¹⁰

As the form of passengers' unruly behavior has evolved, cases have commensurately clarified the scope of criminal passenger behavior.¹¹ For example, in *United States v. Hicks*, passengers repeatedly used profane language in an allegedly menacing manner to assert their right to play a boom box on board the aircraft.¹² The Fifth Circuit upheld the lower court's use of the dictionary definition of “intimidate” in jury instructions—“conduct [that] would place an ordinary, reasonable person in fear.”¹³

Courts have also repeatedly held that the statute is a general intent crime, that is that the statute “does not require a specific intent to interfere with the performance of the crew.”¹⁴ On the other hand, some courts have considered the statute to be narrower than

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the potential civil prohibitions on unruly behavior discussed below.¹⁵

Ultimately, the law has proven an important tool for prohibiting and punishing a substantial range of unruly behavior that intimidates (or involves assault of) crew and interferes with the performance of crew duties. In fact, the FAA has long believed that the most effective deterrent to unruly behavior is criminal prosecution.¹⁶

Despite this belief, civil and regulatory authority has long existed for federal agencies to address a broader range of unruly passenger behavior, effectively buttressing the criminal prohibitions. In fact, before Congress acted in 1961, the FAA made it a regulatory violation for any person to assault, threaten, intimidate, or simply interfere with a crew member in the performance of his or her duties on board an aircraft being operated in air transportation, and that regulation endures today to address, civilly, the unruly behavior, that is being reported as occurring on aircraft.¹⁷ The FAA grounds its prohibition in its authority to promote safety and, to a certain extent, security of flight.¹⁸

FAA civil enforcement actions have clarified the scope of behavior that violates FAA's regulations. For example, in *In re Evgeniy v. Ignatov*, in which the unruly passenger touched a flight attendant to get to the back of the aircraft, the FAA held that assault is broader in the civil enforcement context and includes battery.¹⁹ Other cases have held that a simple refusal to follow flight attendant instructions (e.g., instructions to fasten a seat belt or to turn off personal electronic devices) constitutes crew interference if such refusal results in intervention by pilots or other crew members.²⁰ Courts have stated that “[d]isruptive behavior need not be violent to interfere with crew-member duties.”²¹ On the other hand, “momentary and inconsequential interference” is not a violation of FAA's regulation.²²

In 2000, Congress made passengers civilly liable if they “physically assault[] or threaten[] to physically assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or take[] any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft.”²³ Furthermore, lawmakers believed that substantially increased penalties for civil liability were warranted after unruly passenger incidents more than tripled between 1994 and 1997.²⁴ As a result, Congress increased penalties to \$25,000, and in 2018, increased that amount to \$35,000 and broadened the statute to include sexual assault.²⁵

Along with the FAA's regulatory authority over passenger behavior, the TSA is empowered to enforce security-related regulations and requirements for onboard behavior.²⁶ For example, TSA regulations prohibit the carriage of weapons, explosives, and

incendiaries by passengers on board aircraft.²⁷ Additionally, the TSA has issued security directives, which are enforceable through civil penalties, requiring masks on board aircraft; such directives are enforceable against both passengers and airlines.²⁸ Importantly, during the COVID-19 pandemic and pursuant to its statutory authority, the TSA has brought civil actions against individuals who violated the federal mask mandate while on board aircraft.²⁹

In sum, the federal government has extensive powers at its disposal to punish and deter unruly passenger behavior, criminally and civilly. The nature of unruly behavior will continue to evolve with respect to, for example, the refusal to follow instructions regarding personal electronic devices or to wear a mask during the COVID-19 pandemic, but adequate federal authority exists to address the wide and growing range of unruly behavior that can put flight safety and security at risk.

Exercise of Federal Authority to Address Unruly Passengers

Although the kinds of federal authority that exist are adequate, exercising such authority requires substantial effort, resources, and coordination from numerous stakeholders, particularly in the unique situation of crimes on board aircraft. For example, unless a federal law enforcement agent is on board during the incident,³⁰ airlines must coordinate with local and/or federal law enforcement officials to meet the aircraft upon landing and assist with handling the unruly passenger and the investigation.³¹ However, local law enforcement may not have the authority to detain or interest in detaining the violators of federal laws such that a full investigation may be conducted immediately after the flight. Thus it is critical that stakeholders, particularly the federal agencies that ultimately enforce the laws discussed herein, expend the necessary effort and resources to employ the full extent of the law to address unruly passengers to ensure safety and security in the aircraft.

Coordination within the federal government is also essential and part of agencies' existing internal processes. For example, the FAA's Compliance and Enforcement Program instructs that FAA enforcement counsel promptly coordinate an FAA enforcement action with the Department of Justice (DOJ) when an FAA enforcement investigation report contains allegations supporting both criminal and civil enforcement actions.³²

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COVID-19 pandemic, the FAA and DOJ stated that

[a]s part of an ongoing partnership, the [FAA] and [FBI] are working closely together to ensure unruly airline passengers face criminal prosecution when warranted. The agencies have established an information-sharing protocol for the FAA to refer unruly passenger cases to the FBI for criminal review. . . . This increased coordination is part of a broader effort to prevent dangerous unruly passenger incidents.³³

This increased coordination followed the FAA's order for a special emphasis enforcement program that required legal enforcement of laws prohibiting unruly behavior through FAA civil penalties, in lieu of compliance and administrative actions.³⁴

Conclusion

In sum, punishment for, and deterrence of, illegal unruly behavior by passengers is not only available under the law but is feasible if federal agencies commit to enforce the law. As the aircraft cabin environment changes and unruly behavior evolves, federal agencies are well-equipped with the authority to address such behavior, but they should also be prepared to dedicate the resources and coordination needed to use their authority in an effective manner to punish and deter such behavior.

Endnotes

1. See, e.g., Henry E. Mattox, CHRONOLOGY OF WORLD TERRORISM, 1901–2001, at 38 (2004) (explaining that on May 16, 1928, “Clarence Frechette hired an airplane and, once aloft, attacked the pilot, attempting to hijack and crash the aircraft to commit suicide”).

2. See, e.g., *Problems of Passenger Interference with Flight Crews and a Review of H.R. 3064, the Carry-On Baggage Reduction Act of 1997, Hearing Before the Subcomm. on Aviation of the H. Comm. on Transp. & Infrastructure* (June 11, 1998); *Disruption in the Skies: The Surge in Air Rage and Its Effects on Workers, Airlines, and Airports, Hearing Before the H. Comm. on Transp. & Infrastructure* (Sept. 23, 2021), <https://transportation.house.gov/committee-activity/hearings/disruption-in-the-skies-the-surge-in-air-rage-and-its-effects-on-workers-airlines-and-airports>.

3. See *Unruly Passengers*, FAA.gov (last modified Nov. 24, 2021), https://www.faa.gov/data_research/passengers_cargo/unruly_passengers (noting an approximate average of 182 investigations from 1995 to 2020 and 973 investigations in 2021).

4. See Letter from Bennie G. Thompson, Chairman, U.S. House of Reps. Comm. on Homeland Sec., to David Pekoske, Adm'r, Transp. Sec. Admin. (Oct. 25, 2021).

5. See Pub. L. No. 87-197, 75 Stat. 466 (1961) (amending the Federal Aviation Act of 1958). Prior to the 1961 law, Congress criminalized interference with aircraft operations

through acts affecting lights and signals used for navigation. See Air Commerce Act of 1926, Pub. L. No. 69-251, 44 Stat. 568, 575, § 11(c) (codified at 49 U.S.C. § 181(e)).

6. See U.S. GOV'T PRINTING OFF., SUMMARY OF THE THREE-YEAR KENNEDY RECORD AND DIGEST OF MAJOR ACCOMPLISHMENTS OF THE EIGHTY-SEVENTH CONGRESS AND THE EIGHTY-EIGHTH CONGRESS, FIRST SESSION 94 (Dec. 13, 1963) (explaining the purpose of the law).

7. *Id.*

8. Initially the bill only covered flight crew in the cockpit, but Congress amended the bill to make it applicable to flight attendants as well. See *United States v. Tabacca*, 924 F.2d 906, 910–11 (9th Cir. 1991).

9. See Pub. L. No. 87-197, 75 Stat. 466 (currently codified at 49 U.S.C. § 46504).

10. See 49 U.S.C. § 46504.

11. See, e.g., *Tabacca*, 924 F.2d 906 (upholding a conviction for intimidation by cursing at the flight attendant and grabbing, jerking, and twisting the flight attendant's arm); *United States v. Naghani*, 361 F.3d 1255 (9th Cir. 2004) (upholding the conviction of a passenger under 49 U.S.C. § 46504 for the passengers' “actions together as an escalating course of events,” including threats against “Americans” and aggressive, confrontational, uncooperative behavior—but acknowledging that simply smoking in the aircraft lavatory or threatening to file a lawsuit would unlikely be intimidation under the law); *United States v. Jenny*, 7 F.3d 953 (10th Cir. 1993) (explaining that the defendant was convicted for intimidating a flight crew member by, among other actions, cursing at the flight attendant, groping the flight attendant, and positioning himself in the galley close to the cockpit door); *Eid v. Alaska Airlines, Inc.*, 621 F.3d 858 (9th Cir. 2010) (explaining in dicta that the passengers' movement in the cabin did not rise to a violation of 49 U.S.C. § 46504); *United States v. Lynch*, 881 F.3d 812 (10th Cir. 2018) (upholding the assault or intimidation conviction of a passenger for repeatedly touching a flight attendant, hugging and kissing her without permission, screaming profanities in her face, threatening economic harm to the airline through a lawsuit and negative social media, and refusing to calm down— as “actions which could inhibit the performance of an attendant's duties”).

12. 980 F.2d 963 (5th Cir. 1992).

13. *Id.* at 972–73.

14. See, e.g., *United States v. Meeker*, 527 F.2d 12 (9th Cir. 1975); *United States v. Grossman*, 131 F.3d 1449 (11th Cir. 1997) (confirming *Meeker's* holding that the statute's general intent continued with the recodification at 49 U.S.C. § 46504).

15. *Wallaesa v. Fed. Aviation Admin.*, 824 F.3d 1071, 1082 (D.C. Cir. 2016) (“Section 46504 pertains only to interference by way of assault or intimidation, a much narrower slice of conduct than the Interference Rule's comprehensive prohibition on interference with crewmember duties.”).

16. *Problems of Passenger Interference with Flight Crews and a Review of H.R. 064, the Carry-on Baggage Reduction Act of 1997, Hearing Before the Subcomm. on Aviation of the H. Comm. on Transp. & Infrastructure* 85 (June 11, 1998)

(statement of Guy S. Gardner, Assoc. Adm'r for Reg. & Certification, Fed. Aviation Admin.).

17. See Special Civil Air Regulation; Precautions to Prevent Hijacking of Air Carrier Aircraft and Interference with Crewmembers in Performance of Duties, SR 448, 26 Fed. Reg. 7009 (Aug. 4, 1961). The current regulations are contained in 49 C.F.R. §§ 91.11, 121.580, and 135.120.

18. *Id.*; see also 49 U.S.C. 1421 (1958) (empowering the administrator to “promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time: . . . (6) Such reasonable rules and regulations or minimum standards, governing other practices, methods, and procedure, as the Administrator may find necessary to provide adequately for national security and safety in air commerce”); *Wallaesa*, 824 F.3d at 1079–82 (upholding the regulatory authority pursuant to the FAA’s statutory safety authority).

19. See, e.g., *In re Evgeniy v. Ignatov*, FAA Order No. 96-6 (Feb. 13, 1996).

20. See, e.g., *In re David G. Stout*, FAA Order No. 98-12 (June 16, 1998) (involving a passenger who refused to follow crew instructions to fasten a seat belt); *In re Hillard Abroms*, FAA Order No. 2008-2 (Jan. 28, 2008) (involving a passenger who refused to follow crew instructions to turn off an electronic device, which interfered with the crew’s securing the cabin and diverted other crew from their duties). But see *In re Sharon Dorfman*, FAA Order No. 99-16 (Dec. 22, 1999) (Docket No. CP98SW005) (upholding the decision that a passenger who allegedly refused to fasten a seat belt and remain seated when the “Fasten Seat Belt” signs were lighted was not guilty of interference).

21. See *Wallaesa*, 824 F.3d at 1080.

22. *In re Sharon Dorfman*, FAA Order No. 99-16, at 15 (upholding the decision that a passenger who allegedly

refused to fasten a seat belt and remain seated when the “Fasten Seat Belt” signs were lighted was not guilty of interference).

23. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, § 511, 114 Stat. 61, 142 (2000) (emphasis added).

24. See CONG. REC. S6068–69 (May 26, 1999) (statement of Sen. Harry Reid) (introducing S. 1139).

25. See FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 339 (2018).

26. See 49 U.S.C. § 44903 (requiring the TSA to prescribe regulations to protect passengers against acts of criminal violence or aircraft piracy).

27. See 49 C.F.R. § 1540.111.

28. See, e.g., TSA, Security Directive, SD 1582/84-21-01 (Jan. 31, 2021).

29. See *Penalty for Refusal to Wear a Face Mask*, TSA.gov, <https://www.tsa.gov/coronavirus/penalty-mask> (last visited Nov. 26, 2021).

30. See, e.g., *Wallaesa v. Fed. Aviation Admin.*, 824 F.3d 1071, 1075 (D.C. Cir. 2016) (explaining that the crew summoned an onboard FBI agent to assist with the unruly passenger and that the FBI agent restrained the passenger on board the aircraft).

31. See, e.g., *In re Howard Gotbetter*, FAA Order 2000-17, at 4 (Aug. 11, 2000) (explaining that the flight crew summoned Port Authority police, who took the alleged violators into custody).

32. See FAA Order No. 2150.3C, at 4-39 to 4-41 (Sept. 18, 2018).

33. See Statement from DOJ and FAA (Nov. 4, 2021).

34. See FAA, FAA Compliance & Enf’t Program, FAA Order No. 2150.3C chg. 4 (Jan. 13, 2021).