APPENDIX

INDEX

A-1

Decision of the United States Court of Appeals for the Seventh Circuit, *United States v. Stands Alone*, August 23, 2021 1a

A-2

Judgment of the United States Court of Appeals for the Seventh Circuit, *United States v. Stands Alone*, August 23, 2021 11a

A-3

Decision of the United States District Court for the Western District of Wisconsin, *United States v. Stands Alone*, April 30, 2020 12a

A-4

Judgment of the United States District Court for the Western District of Wisconsin, *United States v. Stands Alone*, June 1, 2020 28a

A-5

18 U.S.C. § 111 (2018) 33a

A-6

18 U.S.C. § 1114 (2018) 35a

A-1

In the

United States Court of Appeals

For the Seventh Circuit

No. 20-2018

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TODD STANDS ALONE,

Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 18-cr-00128-jdp — **James D. Peterson**, *Chief Judge*.

ARGUED MAY 18, 2021 — DECIDED AUGUST 23, 2021

Before EASTERBROOK, BRENNAN, and SCUDDER, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Todd Stands Alone, while imprisoned at a federal correctional facility in Wisconsin, injured a correctional officer. After a bench trial, the district court convicted him for inflicting bodily injury to a federal officer, in violation of 18 U.S.C. § 111. Stands Alone now appeals his conviction and challenges the district court's interpretation of

§ 111. For the reasons explained below, we affirm his conviction.

I

On March 1, 2018, Todd Stands Alone was imprisoned at a federal correctional facility in Oxford, Wisconsin. That evening Correctional Officer Shay Decker inspected Stands Alone's cell, where she confiscated a broken pen, a playing card, and a razor blade. Three other officers later entered Stands Alone's cell and removed two bags containing clothing, paperwork, and books.

Stands Alone was displeased. He paced back and forth inside the unit, threw his clothes at the door, and shouted at the officers. To deescalate the situation, Decker ordered Stands Alone to move toward the front of the unit. Instead, he returned to his cell and continued to shout. Decker followed Stands Alone to the cell and warned that she would use pepper spray if he continued to resist. Then, in quick succession, Stands Alone grabbed a fire extinguisher off the wall and lifted it up to his chest; Decker deployed her pepper spray; and Stands Alone discharged the fire extinguisher. Fire suppressant—along with pepper spray chemicals—blew towards Decker, who experienced visual impairment and "suffered physical pain from the chemical burns from pepper spray."

In September 2018, a grand jury indicted Stands Alone for violating 18 U.S.C. § 111(a)(1) and (b). Section 111(a) penalizes whoever "forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114," which includes federal correctional officers. Subsection (b) enhances the penalty for those who "inflict[] bodily injury" on the victim in the commission of any act in subsection

(a). The government's indictment against Stands Alone specified that he "knowingly and forcibly resisted, intimidated, and interfered with" Decker "while she was engaged in her official duties, and in doing so, inflicted bodily injury to [her]."

Stands Alone waived his right to a jury trial. One day before the bench trial began, Stands Alone filed a "theory of defense" brief, challenging the indictment as "defective." Relying on the Tenth Circuit's decision in *United States v. Wolfname*, 835 F.3d 1214, 1218 (10th Cir. 2016), Stands Alone contended that assault is an essential element of every § 111 offense. He emphasized that the indictment did not allege "assault" and instead "merely provide[d] that he resisted, intimidated and interfered with" Decker. "Much hinge[d] on that omission," Stands Alone continued, because it meant "the grand jury did not find that an assault happened." Later that day, Stands Alone followed up with a "supplementary theory of the defense" brief. In it, Stands Alone attempted to clarify that "the defense [was] not claiming that the indictment does not state an offense, such that it has to be dismissed." He advanced a narrow position: assault is an essential element of a § 111 violation when charged as a misdemeanor or felony, and because the indictment did not charge him for assault, he could be convicted only of an infraction under 18 U.S.C. § 3559(a)(9).

At and after trial, Stands Alone relied on the argument he raised in his two theory of defense briefs and highlighted in his post-trial reply brief: "the government is limited to what the grand jury charged" in the indictment. The grand jury did not charge him with "assault," Stands Alone asserted, so he could be punished with an infraction and not imprisonment.

The district court rejected Stands Alone's claim on the merits. It first noted that Stands Alone's charge implicated § 111(b) because the incident here involved bodily injury to Decker. The government could secure a § 111(b) conviction, the district court reasoned, by demonstrating that Stands Alone forcibly committed at least one of the six acts in § 111(a)(1) against a federal officer and inflicted bodily injury in doing so. The district court said Stands Alone's interpretation—that assault is an element of any conviction under § 111—"defies common sense." Pointing to the six distinct verbs listed in § 111(a)(1), the district court concluded that Stands Alone's interpretation "runs contrary to the textual language, rendering five of the six verbs in subsection (a)(1) superfluous."

Stands Alone's appeal asks us to resolve a single question: Did the district court err in concluding that assault was not an essential element of his § 111 conviction?

II

A

We start with the government's contention that Stands Alone's appeal should be dismissed because he waived or forfeited his challenge to his conviction.

In his theory of defense briefs—submitted one day before the trial commenced—Stands Alone argued that assault is an essential element of any § 111 offense. An objection to "a defect in the indictment" must be "raised by pretrial motion." FED. R. CRIM. P. 12(b)(3). Otherwise, the motion will be deemed "untimely," although the "court may consider the defense, objection, or request if the party shows good cause." *Id.* 12(c)(3). The problem with the timing of Stands Alone's

argument was not that he intentionally or inadvertently failed to timely assert a right. Rather, he was silent when Federal Rule of Criminal Procedure 12 required that he file such a motion.

However Stands Alone characterizes his claim, it remains a challenge to the indictment itself, so his request was untimely. Stands Alone's initial theory of defense brief challenged the indictment as defective, which "not only *could* have been presented by pretrial motion but also *had* to be so presented" under Rule 12(b)(3)(B). *United States v. Wheeler*, 857 F.3d 742, 744 (7th Cir. 2017). But the district court may exercise discretion to relieve parties of forfeiture. *See* FED. R. CRIM. P. 12(c)(3) (good cause exception); *United States v. Kirkland*, 567 F.3d 316, 322 (7th Cir. 2009) ("If a defendant makes a motion or raises an argument in an untimely manner, it is within the discretion of the district court to refuse to address it."). Here, the district court implicitly found good cause and rejected Stands Alone's interpretation of § 111. And on appeal, the government has not argued that this implied finding was an abuse of discretion, nor do we find it so.

Because the district court reached the question on the merits and both parties have fully briefed the statutory interpretation issue, we decline to accept the government's invitation to dismiss Stands Alone's appeal.

B

Now to the merits. We review issues of statutory interpretation de novo. *United States v. Hudson*, 967 F.3d 605, 609 (7th Cir. 2020).

Section 111 protects federal officers and federal functions. *See United States v. Feola*, 420 U.S. 671, 679 (1975). The statute, in relevant part, states:

> **(a) In General.**—Whoever—(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties …
>
> shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.
>
> **(b) Enhanced Penalty.**—Whoever, in the commission of any acts described in subsection (a) … inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 111. Those designated under 18 U.S.C. § 1114 include federal correctional officers.

A defendant violates § 111(a)(1) by forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a federal officer—here, Decker. Subsection (a), through its hanging paragraph, prescribes a graded penalty structure. For acts constituting "only simple assault," the defendant commits a misdemeanor offense and can receive a maximum penalty of one-year imprisonment. But if "such acts involve physical contact with the victim of that assault or the intent to commit another felony," the defendant commits a felony

offense and can receive a penalty of up to eight years' imprisonment. Section 111(b) enhances the penalty—up to 20 years' imprisonment—if the defendant "inflicts bodily injury" in committing "any acts" enumerated in subsection (a). In other words, a defendant violates § 111(b) by causing bodily injury to a federal officer while committing one or more of the following acts: assault, resist, oppose, impede, intimidate, and interfere.

Stands Alone argues that assault must be an essential element of all offenses under § 111. Even a felony offense under § 111(b), he contends, demands a showing of assault. In support, Stands Alone relies again on *Wolfname*, 835 F.3d at 1218, in which the Tenth Circuit held that assault is "an essential element of *every* § 111(a)(1) offense." But there, the Tenth Circuit was "bound by" its own precedent, which "divided § 111(a) into two offenses: a misdemeanor and a felony." *Id.* at 1218, 1220 (citing *United States v. Hathaway*, 318 F.3d 1001, 1008–09 (10th Cir. 2003)). Reasoning that a § 111(a)(1) conviction for any of the enumerated six acts "must fall into one of these two categories" based on the language of the hanging paragraph, the Tenth Circuit determined that "a conviction for any of these acts necessarily involves—at a minimum—simple assault." *Id.* at 1218. From this, Stands Alone urges this court to interpret the statute to include assault as an essential element of every offense under § 111, even offenses under subsection (b).

We disagree with this reading. Start with § 111(a)(1). That provision lists six verbs separated by the disjunctive "or" and adjective "forcibly" modifying each of those acts. A proper reading of the text militates against defining resist, oppose, impede, intimidate, and interfere merely as synonyms of

"assault." That is because requiring assault as an essential element of *every* § 111 offense would render the remaining five verbs superfluous. But that cannot be. Our view is supported across other circuits. *See, e.g.*, *United States v. Briley*, 770 F.3d 267, 274 (4th Cir. 2014) ("We must … ascribe meaning to the five remaining verbs."); *United States v. Williams*, 602 F.3d 313, 318 (5th Cir. 2010) (adopting the rule that "a misdemeanor conviction under § 111(a)(1) does not require underlying assaultive conduct"); *United States v. Gagnon*, 553 F.3d 1021, 1027 (6th Cir. 2009) (interpreting the predecessor version of § 111 that "simple assault" is "a term of art that includes the forcible performance of any of the six proscribed actions in § 111(a)"). *Cf. United States v. McIntosh*, 753 F.3d 388, 393 (2d Cir. 2014) (per curiam) ("In drafting Section 111, Congress therefore created the single crime of harming or threatening a federal official, and specified six ways by which the crime could be committed." (internal quotation marks omitted)).

Courts must presume that "each word Congress uses is there for a reason," *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017), and "[i]f possible, every word and every provision is to be given effect," ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012) (discussing the surplusage canon). *Cf. Matter of Sinclair*, 870 F.2d 1340, 1344 (7th Cir. 1989) ("To treat the text as conclusive evidence of law is to treat it *as* law—which under the constitutional structure it is."). The most natural way to read § 111 is this: subsection (a)(1) contains six distinct verbs, and subsection (b) enhances the penalty when a defendant inflicts bodily injury while committing one or more of those six acts. So assault is not an essential element of every § 111 offense.

This court's precedent does not point in a different direction. Stands Alone asserts that a "deeper look" at *United States v. Vallery*, 437 F.3d 626 (7th Cir. 2006), supports his reading of § 111. In *Vallery*, this court considered whether § 111's misdemeanor provision applied just to the verb "assaults" or whether it extended to the remaining five verbs. *Id.* at 633. The defendant argued that because the indictment did not include the use of physical force, he could be convicted only of a simple assault (a misdemeanor offense) with a maximum sentence of one year. *Id.* at 629. Reasoning that "the simple assault provision applies to the entirety of § 111(a)" and noting that the indictment "did not allege physical contact or any aggravating facts," this court concluded that the defendant could be convicted only of a misdemeanor. *Id.* at 632–33.

This discussion in *Vallery*, however, has limited applicability here. That case addressed a slightly different question: "whether [defendant's] indictment, which did not allege physical contact, charged him under § 111 with a felony or a misdemeanor." *Id.* at 629. *Vallery* neither involved the question whether assault is an essential element of every § 111 offense nor implicated an interpretation of subsection (b), as here. Instead, that case focused on the scope of the misdemeanor simple assault provision of subsection (a). So *Vallery* does not answer the question in this case.

The Fourth Circuit's decision in *Briley* is instructive. There, a defendant argued that assault is a required element of both a misdemeanor offense and a felony offense under § 111(a). 770 F.3d at 273. In addition to recognizing that the defendant's reading "renders a slew of verbs § 111(a) largely surplusage," the Fourth Circuit emphasized that such interpretation "produces an absurd result." *Id.* at 273–74. Construing assault as a

required element of § 111(a) offenses, that court emphasized, would mean that a "person could use force to resist federal officials, to oppose them, to impede them, to intimidate them, and to interfere with them" but still "escape the reach of § 111" so long as his conduct does not constitute an assault. *Id.* at 274.

We agree with this point. True, the absurdity doctrine has not been universally favored. *Compare City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 449 n.4 (2002) (Scalia, J., dissenting) ("A possibility so startling (and unlikely to occur) is well enough precluded by the rule that a statute should not be interpreted to produce absurd results."), *with* John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2394–2408, 2461–63 (2003) (critiquing the absurdity doctrine). And this circuit has confined the doctrine to linguistic, as opposed to substantive, absurdity. *See, e.g.*, *Soppet v. Enhanced Recovery Co.*, 679 F.3d 637, 642 (7th Cir. 2012) (explaining that the absurdity doctrine "does not mean" that a court can make "substantive changes designed to make the law 'better'"); *United States v. Logan*, 453 F.3d 804, 806 (7th Cir. 2006) (noting that the absurdity doctrine "is limited to solving problems in exposition, as opposed to the harshness that a well-written but poorly conceived statute may produce"), *aff'd*, 552 U.S. 23 (2007). Still, it provides a useful illustration here. Stands Alone's proposed interpretation that assault is an essential element of any § 111 offense would lead to what *Briley* described as an absurd outcome—a path we decline to tread.

III

For these reasons, we AFFIRM Stands Alone's conviction.

A-2

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

August 23, 2021

Before
FRANK H. EASTERBROOK, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*
MICHAEL Y. SCUDDER, *Circuit Judge*

No. 20-2018	UNITED STATES OF AMERICA, Plaintiff - Appellee v. TODD STANDS ALONE, Defendant - Appellant
Originating Case Information:	
District Court No: 3:18-cr-00128-jdp-1 Western District of Wisconsin District Judge James D. Peterson	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

form name: **c7_FinalJudgment** (form ID: **132**)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD STANDS ALONE,

Defendant.

ORDER

18-cr-128-jdp

The defendant, Todd Stands Alone, is charged in a one-count indictment with violating 18 U.S.C. § 111(a)(1) and (b). The charge arises from an incident at the Federal Correctional Institution at Oxford in which Stands Alone, in a fit of rage, resisted a correctional officer's orders to stand down. As the officer prepared to use pepper spray against him, Stands Alone pulled a fire extinguisher off the wall, held it up toward the officer, and ultimately discharged it. Stands Alone contends that he grabbed the fire extinguisher defensively and the discharge was accidental, but the officer was injured by the blow-back of fire retardant mixed with pepper spray.

Stands Alone waived his right to a jury trial, so the matter was tried to the court on June 20, 2019. The day before trial, defense counsel filed, ex parte, a "theory of defense." Dkt. 50, Dkt. 52. The theory of defense is based on an interpretation of § 111 endorsed in *United States v. Wolfname*, 835 F.3d 1214 (10th Cir. 2016), that "assault" is an element of a violation of § 111(a)(1) when it is charged as a misdemeanor or felony. Under that interpretation, counsel argues, the indictment charges Stands Alone only with an infraction, not a misdemeanor or a felony, so Stands Alone cannot be punished by imprisonment even if convicted.

Thus two main issues are before the court. The first, a matter of statutory interpretation, is whether an assault is an element of a violation of § 111(b). The second is a factual matter in which I must decide if the government proved beyond a reasonable doubt that Stands Alone committed the offense charged in the indictment. I conclude that assault is not an element of a conviction under § 111(b) and that Stands Alone is guilty.

Also before the court is Stands Alone's renewed motion for release, Dkt. 87, which I will deny. I will order that the Probation Office expedite the preparation of the report of the presentence investigation so that Stands Alone may be sentenced promptly.

DECISION ON THE BENCH TRIAL

A. Preliminary matter

Before turning to the main issues, I address the government's argument that Stands Alone has forfeited or waived his legal argument based on the interpretation of § 111. The government contends that Stands Alone's theory of defense is alleging a defect in the indictment, which is a motion authorized under Rule 12(b)(3)(B) of the Federal Rules of Criminal Procedure. But Rule 12(b)(3) motions "must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits."

I share the government's concern with defense counsel's tactics. The defense raised a purely legal argument that was plainly available before trial and could have been resolved before the trial on the merits. There's no question that the government was sand-bagged by the last minute, ex-parte disclosure of the theory of defense. And the eve-of-trial disclosure makes the

court's job harder because the theory of defense clouded the material factual issues that I had to decide.

Stands Alone contends that the theory of defense is not a motion alleging a defect in the indictment under Rule 12(b)(3)(B). If the theory of defense were a motion under Rule 12(b)(3)(B), it would have to be one under Rule 12(b)(3)(B)(v) for failure to state an offense. Stands Alone says that he does not contend that the indictment fails to state an offense. He contends that it fails to state a misdemeanor or felony. He concedes that the indictment states an offense, but says that the offense is merely an infraction under the sentencing classification in 18 U.S.C. § 3559. This was set out in the Supplementary Theory of the Defense Brief, Dkt. 52, filed a few hours after the original theory of defense. The government did not directly respond to it.

Stands Alone cites no case that suggests that a violation of § 111 might be a mere infraction. His main authority, *United States v. Wolfname*, 835 F.3d 1214 (10th Cir. 2016), says that assault is an element of any conviction under § 111(a)(1), and it says nothing about infractions. It strikes me that this theory is invoked to avoid the requirement in Rule 12 that legal defenses like the one raised here must be brought and resolved before trial.

The government also has a plausible waiver argument. The government alleged a violation of § 111(b), a 20-year felony, and it set out the elements it intended to prove. Dkt. 45, at 3. At the final hearing, Stands Alone, by counsel, confirmed that he had no objection to the government's articulation of the elements.

But because I conclude that Stands Alone's legal defense fails on the merits, I do not have to decide the untimeliness or waiver questions.

B. Statutory interpretation

I turn to the matter of statutory interpretation. The statute at issue, stated in full, reads:

> § 111 Assaulting, resisting, or impeding certain officers or employees
>
> (a) In general.--Whoever--
>
> (1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or
>
> (2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,
>
> shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.
>
> (b) Enhanced penalty.--Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 111.

Statutory interpretation begins with the text of the statute, and it ends there if the meaning is plain. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). The terms of the statute should get their "ordinary and popular sense," unless they are specially defined. *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013). Statutory construction is a "holistic endeavor," that should account for the statute's full text as well as its structure and subject matter. *Trustees of*

Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. Leaseway Transp. Corp., 76 F.3d 824, 828 (7th Cir. 1996).

Aspects of this statute may present some subtleties, but the parts that matter to this case are unambiguous. Subparagraphs (a)(1) and (a)(2) state the prohibited acts and the targets of those acts. Subparagraph (a)(2) relates to former officers; it's not at issue here. For subparagraph (a)(1), a correctional officer at FCI Oxford qualifies as a person designated in section 1114. The prohibited acts subparagraph (1) are identified with six verbs: "assaults, resists, opposes, impedes, intimidates, or interferes." The acts are modified by the introductory adverb "forcibly," which applies to each of the acts. The disjunctive "or" means that any one of these acts, if done forcibly to a specified officer, violates the statute.

The remainder of the statute sets out the penalties that apply based on the consequences of the prohibited acts. The unenumerated part of subsection (a) specifies the penalties that would apply under three conditions. The first condition occurs when the acts in violation constitute simple assault. The potential penalties are then a fine or imprisonment of not more than a year. The second condition occurs when the act in violation involves physical contact with the "victim of that assault," referring to the assault mentioned under the first condition. The third condition is when the violating act involves the intent to commit another felony, with no victim specified. The penalties under either the second or third condition are a fine and imprisonment of not more than eight years. In this case, these three conditions and the related penalties do not concern us, because subsection (b) applies.

Subsection (b) applies an enhanced penalty whenever the defendant, in the commission of the acts defined in subsection (a), either uses a deadly or dangerous weapon or inflicts bodily

injury. Under either of those conditions, the penalties are a fine or imprisonment of not more than 20 years. Nothing in subsection (b) expressly requires that any "assault" be committed.

So on a plain reading of the statutory text, the government could secure a conviction under § 111(b) if it charges and proves these elements:

1. The defendant forcibly committed one or more of the following six acts: assaults, resists, opposes, impedes, intimidates, or interferes with;

2. The act was committed against a person identified in § 1114 (such as a federal correctional officer) engaged in her official duties at the time; and

3. The defendant inflicts bodily injury.

Stands Alone resists this interpretation, relying on *United States v. Wolfname*, 835 F.3d 1214 (10th Cir. 2016). That case holds that "assault is necessarily an element of any § 111(a)(1) conviction." The *Wolfname* court reasoned that this conclusion was implicit in an earlier case, *United States v. Hathaway*, 318 F.3d 1001 (10th Cir. 2003), which it did not have the authority to overrule. The court also found support for its conclusion in the 2008 amendment to § 111, adding the phrase "where such acts involve physical contact with the victim of that assault" to subsection (a). In the court's view, the 2008 amendment "codified" the *Hathaway* decision. The analysis in *Hathaway*, and in *Wolfname*, was based on the interpretation of the unenumerated part of subsection (a).

But *Wolfname* is not binding here, and the circuits are split on the issue, as the *Wolfname* court recognized. *See United States v. Briley,* 770 F.3d 267, 269 (4th Cir. 2014)*; United States v. Williams*, 602 F.3d 313 (5th Cir. 2010); *United States v. Gagnon*, 553 F.3d 1021 (6th Cir. 2009). The circuits are divided even in their view of the legislative history: the *Williams* court

concluded that the 2008 amendment supported its interpretation that assault was *not* a required element of an offense under § 111.

The Court of Appeals for the Seventh Circuit has not directly decided the issue. Stands Alone says that *United States v. Vallery*, 437 F.3d 626, 633 (7th Cir. 2006), supports his theory of defense. *Vallery* does state, as a settled point of introduction, that § 111 sets out three separate offenses: a misdemeanor simple assault, a felony for "all other cases" of assault, and a felony for assault involving a deadly or danger weapon or resulting in bodily injury. *Id*. at 630. This parsing follows the pattern in *Jones v. United States*, 526 U.S. 227 (1999), which held that the federal carjacking statute set out separate offenses based on the consequences of the defendant's actions, and not a single crime with different sentencing enhancements to be determined by the judge. The issue was whether Vallery's indictment had charged a felony or merely a misdemeanor. The court held that because the indictment did not allege the use of physical force, the indictment charged only simple assault, and thus Vallery could be convicted only of a misdemeanor. But *Vallery* does not directly address the question Stands Alone raises, which is whether at least simple assault is an element of *any* conviction under § 111, particularly one under § 111(b).

To put the issue in the context of this case, the question is whether Stands Alone can be convicted of a felony on the basis of the allegation that he inflicted bodily harm. Following the approach in *Jones* and *Vallery*, § 111 sets out three separate offenses (and not one offense with three sentencing enhancers to be determined by the court). The elements of the 20-year felony under § 111(b) are plainly set out in the statutory text as I have paraphrased them above. The subtleties of the varieties of assault at issue in the unenumerated portion of

subsection (a) are immaterial to the crime set out in subsection (b). *Wolfname*, Stands Alone's main authority, does not address the required elements of a conviction under § 111(b) at all.

Stands Alone's interpretation runs contrary to the textual language, rendering five of the six verbs in subsection (a)(1) superfluous. His interpretation also undermines the purpose of the statute, which is to protect the physical safety of federal officers and the performance of their duties, *United States v. Feola*, 420 U.S. 671, 679 (1975). And it defies common sense. Under Stands Alone's interpretation, a defendant could forcibly resist a federal officer performing her duties, inflict great bodily harm, and yet face no more than an infraction, so long as the defendant did not attempt or threaten physical harm to the officer.

Stands Alone's interpretation is also hard to square with *United States v. Woody*, 55 F.3d 1257 (7th Cir. 1995), and *United States v. Jackson*, 310 F.3d 554 (7th Cir. 2002). *Woody* held that a conviction under § 111(b) does not require any intent to injure, and that the only mental state required under § 111 is that the defendant intended to resist, impede, or obstruct a person who was a federal officer or employee. *Jackson* confirmed that these holdings from *Woody* were still good law, even though after *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the infliction of bodily harm was not a sentencing factor for the court, as *Woody* had held.

So, to answer the statutory interpretation at the core of Stands Alone's theory of defense: assault is not an implicit element of a conviction under § 111(b).

C. Findings of fact

I start with an evidentiary ruling that I deferred at trial. Stands Alone objected to some of the testimony of Erin Penrose, the environmental and safety compliance manager at FCI Oxford, on the ground that it was expert testimony that had not been disclosed before trial. I overrule the objection. Penrose was not disclosed as an expert, and at points she verged into

expert testimony. But the failure to disclose was harmless. Defense counsel's questions went further into expert territory than the government's. The only fact that emerged from her arguably expert testimony was that the fire retardant in the extinguisher was sodium bicarbonate, a non-toxic compound more commonly known as baking soda.

Based on the evidence submitted and received at the trial, I find the following facts, beginning with those that were mostly undisputed.

Todd Stands Alone was an inmate at the Federal Correctional Institution at Oxford, Wisconsin. On March 1, 2018, Stands Alone was housed in the Marquette Unit, with approximately 100 other inmates.

About 8:45 p.m. that day, senior correctional officer Adam Jordon was conducting an "outer search," which required him inspect the exteriors and look into the windows of FCI Oxford buildings. At the Marquette Unit, Jordon looked into a cell to see Stands Alone tattooing another inmate with a contraband tattoo gun. (At trial, Stands Alone denied that he was in the cell at the time, but I do not credit that testimony for reasons explained below.) Jordan ordered the inmates to remain in place, but they both left, taking the contraband with them. Jordan radioed the officer in charge of Marquette Unit, Shay Decker, to go to Stands Alone's cell, B1, to recover some material.

Decker went to cell B1. Stands Alone was not there. Stands Alone's cellmate was. As instructed by Jordan, who was still at the cell window, Decker removed from the cell a broken pen, a playing card, and the blade from a disposable razor. Decker ordered the cellmate to the day room and closed the cell.

Jordan and two other officers entered Stands Alone's cell and searched it. Jordan and the other officers removed two bags of material from the cell and returned to the compound office after the search.

Stands Alone was agitated and angry after the search. He walked back and forth from his cell to the door of the unit. He was throwing his clothes at the door, shouting something like "you forgot some stuff." In response to Stands Alone's behavior, Decker alerted compound staff to return to the unit. She announced to the inmates that the unit would be locked down. She ordered Stands Alone to move toward the front of the unit, but he returned to his cell. Decker followed him, and ordered him to stand down. Stands Alone continued to shout loudly and angrily that he did not care if he went to the SHU (Special Housing Unit; the segregation unit).

Decker told Stands Alone that she would use pepper spray if he did not stand down. Stands Alone grabbed a fire extinguisher from a hook on the wall, and lifted it to chest height. Decker pulled the pepper spray canister from the pouch at her hip and shouted "OC, OC," as she sprayed at Stands Alone's face. At about the same time, Stands Alone discharged the fire extinguisher. The fire suppressant mixed with the pepper spray, blowing some of it back toward Decker.

Decker activated the body alarm on her radio, and staff rushed to her assistance. Jordan returned to Marquette Unit. The fog of fire suppressant was so thick he could hardly see. He helped Decker get out of the unit.

Jordan went to Stands Alone's cell and ordered him to the floor. Stands Alone was combative and confrontational and refused to get on the floor. Jordan pepper sprayed him, and

Stands Alone continued to refuse to get on the floor. Ultimately Stands Alone was physically restrained and the unit was evacuated.

Decker was covered in fire retardant from her feet to her chest. She could not see, she had trouble breathing, and her skin was burning. A few hours later, she was taken to a local hospital for care. The burning sensations lasted for a couple of days.

The facts stated so far are mostly undisputed. The contested facts involve Stands Alone's intent in grabbing the fire extinguisher and whether he discharged the fire extinguisher intentionally. I find that Stands Alone's testimony about these critical disputed facts is not credible for several reasons.

First, Stands Alone's testimony was contradicted at points by other witnesses who I find credible. Stands Alone told the FBI investigator that he was "completely compliant" with Jordan, which despite Stands Alone's attempts to explain it, was not true. Dkt. 56, at 168. Stands Alone testified that he was not in his cell when Jordan looked in and saw inmates tatooing. Dkt. 56, at 149. That testimony is contradicted by Jordan. More tellingly, it is contradicted by Stands Alone's own witness, Clarence Molina, who testified that he was in the cell with Stands Alone. Dkt. 56, at 176.

Second, Stands Alone's testimony that he grabbed the fire extinguisher as a shield against the pepper spray is fundamentally implausible. The fire extinguisher was heavy (17 pounds when fully charged), awkward, and an ineffective shield against pepper spray. If Stands Alone's intent was to block the spray, it would have been much easier to use his hands, or to simply turn away from Decker.

Third, Stands Alone's claim that he inadvertently discharged the fire extinguisher when he dropped it is undermined by several facts. The safety pin had to be pulled to allow the

handle to be squeezed, and it was zip tied in place. Stands Alone testified that, on his first attempt to grab the fire extinguisher, he accidentally grabbed the tags on attached to the handle. I find it implausible that the pin would have been removed by pulling the tags. As demonstrated at trial, it took some effort to break the zip tie, and the pin had to be slightly turned to be removed. Stands Alone says the discharge was "not very long" and that he threw the extinguisher at the wall as soon as he noticed that it was discharging. Dkt. 56, at 159. I sustained defense counsel's objection to the statement that the fire extinguisher was completely discharged, but the evidence is clear that the discharge was extensive and not just a short burst. The discharge so densely filled the area that Jordan could not see through it, and it covered Decker more or less from her feet to her chest.

The bottom line is that I do not believe Stands Alone's testimony that he grabbed the fire extinguisher to protect himself from the pepper spray or that the discharge of the fire extinguisher was accidental.

I find that Stands Alone grabbed the fire extinguisher to resist Decker's efforts to control him. He held the fire extinguisher at chest height to intimidate Decker, as he yelled "Don't fucking spray me. Don't fucking spray me." Dkt. 56, at 155 (Stands Alone's testimony). He intentionally discharged the fire extinguisher in response to being pepper sprayed. The facts in this paragraph were proven beyond a reasonable doubt.

A significant amount of time at trial was devoted to the question of whether Stands Alone intended to spray Decker with the fire extinguisher. The evidence was sufficient to support a reasonable jury finding that he did. But, as the trier of fact, I find that that was not proven beyond a reasonable doubt. That fact, however, is ultimately immaterial to Stands Alone's guilt.

D. The indictment and the verdict

The indictment charged Stands Alone as follows:

> COUNT 1
>
> On or about March 1, 2018, in the Western District of Wisconsin, the defendant,
>
> TODD STANDS ALONE,
>
> knowingly and forcibly resisted, intimidated, and interfered with S.D., an employee of the U.S. Department of Justice, Federal Bureau of Prisons, while she was engaged in her official duties, and in doing so, inflicted bodily injury to S.D.
>
> (In violation of Title 18, United States Code, Section 111(a)(1) and (b)).

Dkt. 1.

Based on the statutory interpretation set out above, I conclude that the indictment charges the 20-year felony under 18 U.S.C. § 111(b). To sustain a conviction, the government must prove the following elements beyond a reasonable doubt;

1. Stands Alone forcibly committed at least one of the following acts: resisted, intimidated, or interfered with correctional officer Shay Decker;

2. Shay Decker was an employee of the United States engaged in her official duties at the time of the act; and

3. Stands Alone inflicted bodily injury.

I find that the government has sustained its burden on each of the elements.

Officer Decker, as federal correctional officer, was an employee of the United States. She was engaged in her official duties because she was working her shift at FCI Oxford. More specifically, at the time of the incident, she was attempting to maintain order in the Marquette Unit and attempting to end Stands Alone's disruption of the unit. The government need not

prove that Stands Alone knew that Decker was a federal employee, *Woody*, 55 F.3d at 1266, although he surely did.

Stands Alone resisted Decker by refusing to comply with her orders and by yelling at her not to spray him while he held up the fire extinguisher. He interfered with her efforts to control the unit by discharging the fire extinguisher. He intimidated her by yelling at her, by raising the fire extinguisher in front of her, and by discharging the fire extinguisher. Stands Alone intended to resist, interfere, and intimidate Decker, which is the only mental state required under § 111.

Each of these acts was done forcibly, because Stands Alone used the fire extinguisher to accomplish them. An act is "forceable" under § 111 if "the defendant made 'such a threat or display of physical aggression toward the officers as to inspire fear of pain, bodily harm, or death.'" *United States v. Graham*, 431 F.3d 585, 589 (7th Cir. 2005) (citations omitted). Stands Alone's aggressive display of the fire extinguisher, and the discharge of the fire extinguisher, inspired in Decker a fear of bodily harm or death.

Bodily injury is not specifically defined for § 111. But the concept is ubiquitous in federal criminal law and it's been given a broad definition. *United States v. DiSantis*, 565 F.3d 354, 362 (7th Cir. 2009). For purposes of this case, I'll use the government's proposed definition, to which Stands Alone did not object: "any injury which is painful and obvious, even if the victim does not seek medical attention . . . including a cut, abrasion, bruise, burn, or disfigurement, physical pain, illness, impairment of a function of a bodily member, organ, or mental faculty, or any other injury to the body no matter how temporary." Dkt. 45, at 3–4. Decker suffered bodily injury from the discharge of the fire extinguisher because her eyesight was impaired and she suffered physical pain from the chemical burns from pepper spray.

"Inflict" gets its ordinary meaning. *Jackson*, 310 F.3d at 557. It means something more restrictive than "cause," but it does not require any intent to injure. Even if Stands Alone did not intend to injure Decker, he surely inflicted bodily harm by discharging the fire extinguisher.

Accordingly, I find Stands Alone guilty of the charge in Count 1 of the indictment.

MOTION FOR RELEASE

Stands Alone has filed another motion for release on bond, Dkt. 87, which the government opposes, Dkt. 90. I will deny the motion, for the same reasons that I denied his previous motion. See Dkt. 74. Stands Alone has an extensive record of offenses, and a poor record on previous release, despite restrictive conditions designed to curb and monitor his alcohol use. The court concludes that his release would pose a risk to public safety that no conditions can reasonably alleviate.

ORDER

IT IS ORDERED that:

1. Defendant is guilty and is convicted of the charge contained in Court 1 of the indictment.
2. Defendant Todd Stands Alone's motion for release on bond, Dkt. 87, is denied.

3. The Probation Office shall expedite the preparation of the report of the Presentence investigation and consult with counsel to schedule sentencing.

Entered April 30, 2020.

BY THE COURT:

/s/

_____

JAMES D. PETERSON
District Judge

United States District Court

Western District of Wisconsin

UNITED STATES OF AMERICA

V.

Todd Stands Alone

JUDGMENT IN A CRIMINAL CASE
(for offenses committed on or after November 1, 1987)

Case Number: 0758 3:18CR00128-001

Defendant's Attorney: Joseph Bugni

The defendant, Todd Stands Alone, was found guilty on Count 1 of the indictment.

The defendant has been advised of his right to appeal.

ACCORDINGLY, the court has adjudicated the defendant guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 111(a)(1) & (b)	Assault of Federal Bureau of Prisons' Employee, Class C felony	March 1, 2018	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Defendant's Date of Birth: [redacted] 1979

Defendant's USM No.: 07406-059

Defendant's Residence Address: [redacted]
Mobridge, SD [redacted]

Defendant's Mailing Address: c/o Dane County Jail
115 West Doty Street
Madison, WI 53703

May 29, 2020
Date of Imposition of Judgment

/s/ James D. Peterson

James D. Peterson
District Judge

June 1, 2020
Date Signed:

IMPRISONMENT

As to the one-count indictment, it is adjudged that the defendant is committed to the custody of the Bureau of Prisons for a term of time served.

The defendant has a pending supervised release violation hearing in the U.S. District Court for the District of South Dakota, in Case No. 15CR10007-3. The presiding judge in the District of South Dakota will determine the appropriate disposition in the supervised release violation proceeding.

The U.S. Probation Office is to notify local law enforcement agencies, and the state attorney general, of defendant's release to the community.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

The defendant has no ties to the Western District of Wisconsin. No term of supervised release is imposed. The defendant will be required to serve a one-year term of supervised release as imposed in U.S. District Court for the District of South Dakota Case No. 15CR10007-3, which will address his post-release reintegration needs. I particularly endorse the special condition concerning mental health treatment which this defendant greatly needs.

CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total financial penalties in accordance with the schedule of payments set forth below.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
Total	$100.00	$0.00	$0.00

It is adjudged that the defendant is to pay a $100 criminal assessment penalty to the Clerk of Court for the Western District of Wisconsin immediately following sentencing.

The defendant does not have the means to pay a fine under § 5E1.2(c) without impairing his ability to support himself upon release from custody, so I will impose no fine.

RESTITUTION

According to the government, the victim has been informed of her right to restitution, but she has not requested restitution. Therefore, no restitution is ordered.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order:

(1) assessment;
(2) restitution;
(3) fine principal;
(4) cost of prosecution;
(5) interest;
(6) penalties.

The total fine and other monetary penalties shall be due in full immediately unless otherwise stated elsewhere.

Unless the court has expressly ordered otherwise in the special instructions above, if the judgment imposes a period of imprisonment, payment of monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

In the event of a civil settlement between victim and defendant, defendant must provide evidence of such payments or settlement to the Court, U.S. Probation office, and U.S. Attorney's office so that defendant's account can be credited.

A-5

fully and maliciously sets fire to or burns any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, or attempts or conspires to do such an act, shall be imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both.

If the building be a dwelling or if the life of any person be placed in jeopardy, he shall be fined under this title or imprisoned for any term of years or for life, or both.

(June 25, 1948, ch. 645, 62 Stat. 688; Pub. L. 103–322, title XXXIII, § 330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104–132, title VII, § 708(b), Apr. 24, 1996, 110 Stat. 1296; Pub. L. 107–56, title VIII, §§ 810(a), 811(a), Oct. 26, 2001, 115 Stat. 380, 381.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 464, 465 (Mar. 4, 1909, ch. 321, §§ 285, 286, 35 Stat. 1144).

Sections were consolidated and rewritten both as to form and substance and that part of each section relating to destruction of property by means other than burning constitutes section 1363 of this title.

The words ''within the maritime and territorial jurisdiction of the United States'' were added to preserve existing limitations of territorial applicability. (See section 7 of this title and note thereunder.)

The phrase ''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'' was substituted for ''any dwelling house, or any store, barn, stable, or other building, parcel of a dwelling house'', in section 464 of title 18, U.S.C., 1940 ed., and ''any arsenal, armory, magazine, rope walk, ship house, warehouse, blockhouse, or barrack, or any storehouse, barn or stable, not parcel of a dwelling house, or any other building not mentioned in the section last preceding, or any vessel, built, building, or undergoing repair, or any lighthouse, or beacon, or any machinery, timber, cables, rigging, or other materials or appliances for building, repairing or fitting out vessels, or any pile of wood, boards, or other lumber, or any military, naval or victualing stores, arms, or other munitions of war'', in section 465 of title 18, U.S.C., 1940 ed. The substituted phrase is a concise and comprehensive description of the things enumerated in both sections.

The punishment provisions are new and are graduated with some regard to the gravity of the offense. It was felt that a possible punishment of 20 years for burning a wood pile or injuring or destroying an outbuilding was disproportionate and not in harmony with recent legislation.

AMENDMENTS

2001—Pub. L. 107–56, in first par., struck out '', or attempts to set fire to or burn'' after ''maliciously sets fire to or burns'' and inserted ''or attempts or conspires to do such an act,'' before ''shall be imprisoned'' and, in second par., substituted ''for any term of years or for life'' for ''not more than twenty years''.

1996—Pub. L. 104–132, in first par., substituted ''imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both'' for ''fined under this title or imprisoned not more than five years, or both''.

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $1,000'' in first par. and for ''fined not more than $5,000'' in second par.

CHAPTER 7—ASSAULT

Sec.
111. Assaulting, resisting, or impeding certain officers or employees.
112. Protection of foreign officials, official guests, and internationally protected persons.
113. Assaults within maritime and territorial jurisdiction.
114. Maiming within maritime and territorial jurisdiction.
115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member.
116. Female genital mutilation.
117. Domestic assault by an habitual offender.[1]
118. Interference with certain protective functions.
119. Protection of individuals performing certain official duties.

AMENDMENTS

2008—Pub. L. 110–177, title II, § 202(b), Jan. 7, 2008, 121 Stat. 2537, added item 119.

2007—Pub. L. 109–472, § 4(b), Jan. 11, 2007, 120 Stat. 3555, added item 118.

1996—Pub. L. 104–208, div. C, title VI, § 645(b)(2), Sept. 30, 1996, 110 Stat. 3009–709, added item 116.

1984—Pub. L. 98–473, title II, § 1008(b), Oct. 12, 1984, 98 Stat. 2140, added item 115.

1976—Pub. L. 94–467, § 6, Oct. 8, 1976, 90 Stat. 2000, substituted ''official guests, and internationally protected persons'' for ''and official guests'' in item 112.

1972—Pub. L. 92–539, title III, § 302, Oct. 24, 1972, 86 Stat. 1073, substituted ''Protection of foreign officials and official guests'' for ''Assaulting certain foreign diplomatic and other official personnel'' in item 112.

1964—Pub. L. 88–493, § 2, Aug. 27, 1964, 78 Stat. 610, substituted ''certain foreign diplomatic and other official personnel'' for ''public minister'' in item 112.

§ 111. Assaulting, resisting, or impeding certain officers or employees

(a) IN GENERAL.—Whoever—

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

(b) ENHANCED PENALTY.—Whoever, in the commission of any acts described in subsection (a), uses a deadly or dangerous weapon (including a weapon intended to cause death or danger but that fails to do so by reason of a defective component) or inflicts bodily injury, shall be fined under this title or imprisoned not more than 20 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 688; Pub. L. 100–690, title VI, § 6487(a), Nov. 18, 1988, 102 Stat.

[1] Editorially supplied. Section 117 added by Pub. L. 109–162 without corresponding amendment of chapter analysis.

4386; Pub. L. 103–322, title XXXII, § 320101(a), Sept. 13, 1994, 108 Stat. 2108; Pub. L. 104–132, title VII, § 727(c), Apr. 24, 1996, 110 Stat. 1302; Pub. L. 107–273, div. C, title I, § 11008(b), Nov. 2, 2002, 116 Stat. 1818; Pub. L. 110–177, title II, § 208(b), Jan. 7, 2008, 121 Stat. 2538.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 118, 254 (Mar. 4, 1909, ch. 321, § 62, 35 Stat. 1100; May 18, 1934, ch. 299, § 2, 48 Stat. 781).

This section consolidates sections 118 and 254 with changes in phraseology and substance necessary to effect the consolidation.

Also the words ''Bureau of Animal Industry of the Department of Agriculture'' appearing in section 118 of title 18, U.S.C., 1940 ed., were inserted in enumeration of Federal officers and employees in section 1114 of this title.

The punishment provision of section 254 of title 18, U.S.C., 1940 ed., was adopted as the latest expression of Congressional intent. This consolidation eliminates a serious incongruity in punishment and application.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–177 substituted ''where such acts involve physical contact with the victim of that assault or the intent to commit another felony'' for ''in all other cases'' in concluding provisions.

2002—Subsec. (a). Pub. L. 107–273, § 11008(b)(1), substituted ''8'' for ''three'' in concluding provisions.

Subsec. (b). Pub. L. 107–273, § 11008(b)(2), substituted ''20'' for ''ten''.

1996—Subsec. (b). Pub. L. 104–132 inserted ''(including a weapon intended to cause death or danger but that fails to do so by reason of a defective component)'' after ''deadly or dangerous weapon''.

1994—Subsec. (a). Pub. L. 103–322, § 320101(a)(1), inserted '', where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and in all other cases,'' after ''shall'' in concluding provisions.

Subsec. (b). Pub. L. 103–322, § 320101(a)(2), inserted ''or inflicts bodily injury'' after ''weapon''.

1988—Pub. L. 100–690 amended text generally. Prior to amendment, text read as follows:

''Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

''Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–273, div. C, title I, § 11008(a), Nov. 2, 2002, 116 Stat. 1818, provided that: ''This section [amending this section, sections 115 and 876 of this title, and provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Federal Judiciary Protection Act of 2002'.''

§ 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined under this title or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon, or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever willfully—

(1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;

(2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or

(3) within the United States and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for diplomatic, consular, or residential purposes by—

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest;

congregates with two or more other persons with intent to violate any other provision of this section;

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

(c) For the purpose of this section ''foreign government'', ''foreign official'', ''internationally protected person'', ''international organization'', ''national of the United States'', and ''official guest'' shall have the same meanings as those provided in section 1116(b) of this title.

(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection (a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding.

(June 25, 1948, ch. 645, 62 Stat. 688; Pub. L. 88–493, § 1, Aug. 27, 1964, 78 Stat. 610; Pub. L. 92–539, title III, § 301, Oct. 24, 1972, 86 Stat. 1072; Pub. L. 94–467, § 5, Oct. 8, 1976, 90 Stat. 1999; Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24, 1978, 92 Stat. 1705; Pub. L. 100–690, title VI, § 6478, Nov. 18, 1988, 102 Stat. 4381; Pub. L. 103–272, § 5(e)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–322, title XXXII,

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective respectively 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of this title.

§ 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 fined under this title or imprisoned not more than 15 years, or both;

Whoever is guilty of involuntary manslaughter, shall be fined under this title or imprisoned not more than 8 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 756; Pub. L. 103–322, title XXXII, § 320102, title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2109, 2147; Pub. L. 104–294, title VI, § 604(b)(13), Oct. 11, 1996, 110 Stat. 3507; Pub. L. 110–177, title II, § 207, Jan. 7, 2008, 121 Stat. 2538.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 453, 454 (Mar. 4, 1909, ch. 321, §§ 274, 275, 35 Stat. 1143).

Section consolidates punishment provisions of sections 453 and 454 of title 18, U.S.C., 1940 ed.

The special maritime and territorial jurisdiction provision was added in view of definitive section 7 this title.

Minor changes were made in phraseology.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–177 substituted ''15 years'' for ''ten years'' in second par. and ''8 years'' for ''six years'' in last par.

1996—Subsec. (b). Pub. L. 104–294 repealed Pub. L. 103–322, § 320102(2). See 1994 Amendment note below.

1994—Subsec. (b). Pub. L. 103–322, § 330016(1)(H), substituted ''fined under this title'' for ''fined not more than $1,000'' in last par.

Pub. L. 103–322, § 320102(3), substituted ''six years'' for ''three years'' in last par.

Pub. L. 103–322, § 320102(2), which provided for amendment identical to Pub. L. 103–322, § 330016(1)(H), above, was repealed by Pub. L. 104–294, § 604(b)(13).

Pub. L. 103–322, § 320102(1)(B), which directed the amendment of subsec. (b) by inserting '', or both'' after ''years'', was executed by inserting the material after ''years'' in second par., which was the first place the word appeared in text, to reflect the probable intent of Congress.

Pub. L. 103–322, § 320102(1)(A), inserted ''fined under this title or'' after ''shall be'' in second par.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104–294, set out as a note under section 13 of this title.

§ 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, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than seven years or fined under this title, or both.

(June 25, 1948, ch. 645, 62 Stat. 756; Pub. L. 100–690, title VII, § 7058(c), Nov. 18, 1988, 102 Stat. 4403; Pub. L. 101–647, title XXXV, § 3534, Nov. 29, 1990, 104 Stat. 4925; Pub. L. 104–132, title VII, § 705(a)(5), Apr. 24, 1996, 110 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 456 (Mar. 4, 1909, ch. 321, § 277, 35 Stat. 1143).

Words ''within the special maritime and territorial jurisdiction of the United States'' were added in view of definitive section 7 of this title, and section was rearranged to more clearly express intent of existing law.

Mandatory punishment provision was rephrased in the alternative.

AMENDMENTS

1996—Pub. L. 104–132 substituted ''seven years'' for ''three years''.

1990—Pub. L. 101–647 struck out final period at end.

1988—Pub. L. 100–690 substituted ''shall, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than three years or fined under this title, or both.'' for ''shall be fined not more than $1,000 or imprisoned not more than three years, or both''.

§ 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished—

(1) in the case of murder, as provided under section 1111;

(2) in the case of manslaughter, as provided under section 1112; or

(3) in the case of attempted murder or manslaughter, as provided in section 1113.

(June 25, 1948, ch. 645, 62 Stat. 756; May 24, 1949, ch. 139, § 24, 63 Stat. 93; Oct. 31, 1951, ch. 655, § 28, 65 Stat. 721; June 27, 1952, ch. 477, title IV, § 402(c), 66 Stat. 276; Pub. L. 85–568, title III, § 304(d), July 29, 1958, 72 Stat. 434; Pub. L. 87–518, § 10, July 2, 1962, 76 Stat. 132; Pub. L. 88–493, § 3, Aug. 27, 1964, 78 Stat. 610; Pub. L. 89–74, § 8(b), July 15, 1965, 79 Stat. 234; Pub. L. 90–449, § 2, Aug. 2, 1968, 82 Stat. 611; Pub. L. 91–375, § 6(j)(9), Aug. 12, 1970, 84 Stat. 777; Pub. L. 91–513, title II, § 701(i)(1), Oct. 27, 1970, 84 Stat. 1282; Pub. L. 91–596, § 17(h)(1), Dec. 29, 1970, 84 Stat. 1607; Pub. L. 93–481, § 5, Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–284, § 18, May 11, 1976, 90 Stat. 514; Pub. L. 94–582, § 16, Oct. 21, 1976, 90 Stat. 2883; Pub. L. 95–87, title VII, § 704, Aug. 3, 1977, 91 Stat. 520; Pub. L. 95–616, § 3(j)(2), Nov. 8, 1978, 92 Stat. 3112; Pub. L. 95–630, title III, § 307, Nov. 10, 1978, 92

Stat. 3677; Pub. L. 96–296, §26(c), July 1, 1980, 94 Stat. 819; Pub. L. 96–466, title VII, §704, Oct. 17, 1980, 94 Stat. 2216; Pub. L. 97–143, §1(b), Dec. 29, 1981, 95 Stat. 1724; Pub. L. 97–259, title I, §128, Sept. 13, 1982, 96 Stat. 1099; Pub. L. 97–365, §6, Oct. 25, 1982, 96 Stat. 1752; Pub. L. 97–452, §2(b), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–63, title I, July 30, 1983, 97 Stat. 313; Pub. L. 98–473, title II, §1012, Oct. 12, 1984, 98 Stat. 2142; Pub. L. 98–557, §17(c), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 100–690, title VII, §7026, Nov. 18, 1988, 102 Stat. 4397; Pub. L. 101–73, title IX, §962(a)(6), Aug. 9, 1989, 103 Stat. 502; Pub. L. 101–647, title XII, §1205(h), title XVI, §1606, title XXXV, §3535, Nov. 29, 1990, 104 Stat. 4831, 4843, 4925; Pub. L. 102–54, §13(f)(2), June 13, 1991, 105 Stat. 275; Pub. L. 102–365, §6, Sept. 3, 1992, 106 Stat. 975; Pub. L. 103–322, title VI, §60007, title XXXIII, §§330009(c), 330011(g), Sept. 13, 1994, 108 Stat. 1971, 2143, 2145; Pub. L. 104–132, title VII, §727(a), Apr. 24, 1996, 110 Stat. 1302; Pub. L. 104–294, title VI, §601(f)(2), Oct. 11, 1996, 110 Stat. 3499; Pub. L. 107–273, div. B, title IV, §4002(c)(1), Nov. 2, 2002, 116 Stat. 1808.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 18, U.S.C., 1940 ed., §253 (May 18, 1934, ch. 299, §1, 48 Stat. 780; Feb. 8, 1936, ch. 40, 49 Stat. 1105; June 26, 1936, ch. 830, title I, §3, 49 Stat. 1940; Reorg. Plan No. II, §4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; June 13, 1940, ch. 359, 54 Stat. 391).

The section was extended to include United States judges, attorneys and their assistants, and officers of Federal, penal and correctional institutions in view of the obvious desirability of such protective legislation.

Employees of the Bureau of Animal Industry have been included in this section to complete the revision of section 118 of title 18, U.S.C., 1940 ed., which was consolidated with the assault provisions of section 254 of said title 18 and is now section 111 of this title. There seemed no sound reason for including such officers in the protection against assaults but excluding them from the homicide sections.

For like reasons the section was broadened to include officers or employees of the Secret Service or of the Bureau of Narcotics.

Changes in phraseology were made.

1949 ACT

This section [section 24] amends section 1114 of title 18, U.S.C., to conform more closely with the original statute from which it was derived.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–273 repealed amendment by Pub. L. 104–294. See 1996 Amendment note below.

1996—Pub. L. 104–132 reenacted section catchline without change and amended text generally, restructuring provisions by inserting par. designations and substituting reference to section 1113 of this title and general reference to killing or attempting to kill any officer or employee of any agency in any branch of United States Government for more specific references to killing or attempting to kill certain enumerated officers and employees of United States.

Subsec. (b). Pub. L. 104–294, which directed substitution in text of ''1112,'' for ''1112.'' and could not be executed, was repealed by Pub. L. 107–273. See above.

1994—Pub. L. 103–322, §330011(g), repealed Pub. L. 101–647, §1606. See 1990 Amendment notes below.

Pub. L. 103–322, §330009(c), substituted ''or any other officer or employee of the United States or any agency thereof'' for ''or any other officer, agency, or employee of the United States''.

Pub. L. 103–322, §60007, substituted ''punished, in the case of murder, as provided under section 1111, or, in the case of manslaughter, as provided under section 1112.'' for ''punished as provided under sections 1111 and 1112 of this title,''.

1992—Pub. L. 102–365 inserted ''any officer or employee of the Federal Railroad Administration assigned to perform investigative, inspection, or law enforcement functions,'' after ''any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions,''.

1991—Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Pub. L. 101–647, §3535(3), which directed amendment of section by striking out ''the Federal Savings and Loan Insurance Corporation,'' could not be executed because that language had been struck out by Pub. L. 101–73. See 1989 Amendment note below.

Pub. L. 101–647, §1606(3), which amended this section identically to amendment by Pub. L. 101–647, §3535(3), was repealed by Pub. L. 103–322, §330011(g). See above.

Pub. L. 101–647, §3535(1), (2), substituted ''Secret Service'' for ''secret service'' and ''any officer or employee of the Department of Education, the Department of Health and Human Services,'' for ''any officer or employee of the Department of Health, Education, and Welfare,''.

Pub. L. 101–647, §1606(1), (2), which amended this section identically to amendment by Pub. L. 101–647, §3535(1), (2), was repealed by Pub. L. 103–322, §330011(g). See above.

Pub. L. 101–647, §1205(h), inserted ''or any other commonwealth, territory, or possession'' after ''the Virgin Islands''.

1989—Pub. L. 101–73 struck out ''the Federal Savings and Loan Insurance Corporation,'' after ''Federal Deposit Insurance Corporation,'' and substituted ''the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation'' for ''the Federal Home Loan Bank Board''.

1988—Pub. L. 100–690 struck out second comma after ''terms of this section''.

1984—Pub. L. 98–557 substituted reference to Coast Guard member, and Coast Guard employee assigned to perform investigative, inspection or law enforcement functions, for reference to any officer or enlisted man of the Coast Guard.

Pub. L. 98–473 inserted ''or attempts to kill'' after ''Whoever kills'', substituted ''or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section,'' for ''while engaged in the performance of his official duties or on account of the performance of his official duties'', inserted '', or any other officer, agency, or employee of the United States designated for coverage under this section in regulations issued by the Attorney General'', and inserted '', except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years''.

1983—Pub. L. 98–63 inserted ''any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions,'' after ''National Park Service,''.

1983—Pub. L. 97–452 substituted ''sections 3711 and 3716–3718 of title 31'' for ''the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.)''.

1982—Pub. L. 97–365 struck out ''or'' before ''any attorney, liquidator, examiner, claim agent'' and inserted '', or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.) or other statutory authority'' before ''shall be punished''.

Pub. L. 97–259 inserted ''or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions,'' after ''or law enforcement functions,''.

1981—Pub. L. 97–143 inserted ''any officer or member of the United States Capitol Police,'' after ''Drug Enforcement Administration,''.

1980—Pub. L. 96–466 inserted ''or any officer or employee of the Veterans' Administration assigned to perform investigative or law enforcement functions,'' after ''of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions,''.

Pub. L. 96–296 inserted ''Interstate Commerce Commission,'' after ''Consumer Product Safety Commission,''.

1978—Pub. L. 95–630 inserted ''or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties'' before ''shall be punished''.

Pub. L. 95–616 inserted ''the Department of Commerce,''.

1977—Pub. L. 95–87 inserted ''or of the Department of the Interior'' after ''or of the Department of Labor''.

1976—Pub. L. 94–582 struck out ''any employee of the Bureau of Animal Industry of the Department of Agriculture,'' after ''the field service of the Bureau of Land Management,'' and inserted ''or of the Department of Agriculture'' after ''or of the Department of Labor''.

Pub. L. 94–284 inserted '', the Consumer Product Safety Commission,'' after ''Department of Health, Education, and Welfare''.

1974—Pub. L. 93–481 substituted ''Drug Enforcement Administration'' for ''Bureau of Narcotics and Dangerous Drugs''.

1970—Pub. L. 91–596 substituted ''or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions'', for ''designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act''.

Pub. L. 91–513 substituted ''Bureau of Narcotics and Dangerous Drugs'' for ''Bureau of Narcotics''.

Pub. L. 91–375 substituted ''officer or employee of the Postal Service'', for ''postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department'' after ''Department of Justice,''.

1968—Pub. L. 90–449 substituted ''any postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department'' for ''any postoffice inspector''.

1965—Pub. L. 89–74 included any officer or employee of the Department of Health, Education, and Welfare designated by the Secretary of Health, Education, and Welfare to conduct investigations or inspections under the Federal Food, Drug, and Cosmetic Act.

1964—Pub. L. 88–493 inserted ''or any security officer of the Department of State or the Foreign Service''.

1962—Pub. L. 87–518 included employees of the Department of Agriculture performing any function connected with any Federal or State program, or program of Puerto Rico, Guam, the Virgin Islands, or the District of Columbia, for control, eradication, or prevention of animal diseases.

1958—Pub. L. 85–568 included officers and employees of the National Aeronautics and Space Administration.

1952—Act June 27, 1952, substituted ''any immigration officers'' for ''any immigrant inspector or any immigration patrol inspector''.

1951—Act Oct. 31, 1951, substituted ''the field service of the Bureau of Land Management'' for ''the field service of the Division of Grazing of the Department of the Interior''.

1949—Act May 24, 1949, inserted ''any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–322, title XXXIII, § 330011(g), Sept. 13, 1994, 108 Stat. 2145, provided that the amendment made by that section is effective as of Nov. 29, 1990.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–466, title VIII, § 802(g)(3), Oct. 17, 1980, 94 Stat. 2218, provided in part that the amendment made by section 704 of Pub. L. 96–466 is effective Oct. 17, 1980.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–582 effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94–582, as amended, set out as a note under section 74 of Title 7, Agriculture.

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–74 effective July 15, 1965, see section 11 of Pub. L. 89–74.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a note under section 321 of Title 21, Food and Drugs.

LIFE IMPRISONMENT OR LESSER TERM FOR KILLING PERSON IN PERFORMANCE OF INVESTIGATIVE, INSPECTION, OR LAW ENFORCEMENT FUNCTIONS

Pub. L. 91–596, § 17(h)(2), Dec. 29, 1970, 84 Stat. 1607, provided that: ''Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111 shall be punished by imprisonment for any term of years or for life.''

IMMUNITY FROM CRIMINAL PROSECUTION

Pub. L. 88–493, § 5, Aug. 27, 1964, 78 Stat. 610, which provided that nothing in Pub. L. 88–493, which amended this section and section 112 of this title, and enacted former section 170e-1 of Title 5, Government Organization and Employees, shall create immunity from criminal prosecution under the laws of any State, territory,

possession, Puerto Rico, or the District of Columbia, is set out as a note under section 112 of this title.

§ 1115. Misconduct or neglect of ship officers

Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

(June 25, 1948, ch. 645, 62 Stat. 757; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 461 (Mar. 4, 1909, ch. 321, § 282, 35 Stat. 1144).

Section restores the intent of the original enactments, R.S. § 5344, and act Mar. 3, 1905, ch. 1454, § 5, 33 Stat. 1025, and makes this section one of general application. In the Criminal Code of 1909, by placing it in chapter 11, limited to places within the special maritime and territorial jurisdiction of the United States, such original intent was inadvertently lost as indicated by the entire absence of report or comment on such limitation.

AMENDMENTS

1994—Pub. L. 103–322 substituted ''fined under this title'' for ''fined not more than $10,000'' in two places.

§ 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title.

(b) For the purposes of this section:

(1) ''Family'' includes (a) a spouse, parent, brother or sister, child, or person to whom the foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) ''Foreign government'' means the government of a foreign country, irrespective of recognition by the United States.

(3) ''Foreign official'' means—

(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) ''Internationally protected person'' means—

(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

(B) any other representative, officer, employee, or agent of the United States Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

(5) ''International organization'' means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(6) ''Official guest'' means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(7) ''National of the United States'' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(c) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501(2) of title 49.

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(Added Pub. L. 92–539, title I, § 101, Oct. 24, 1972, 86 Stat. 1071; amended Pub. L. 94–467, § 2, Oct. 8, 1976, 90 Stat. 1997; Pub. L. 95–163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95–504, § 2(b), Oct. 24,