

THEFT OR RECEIPT OF STOLEN MAIL

MARCH 31, 1952.—Referred to the House Calendar and ordered to be printed

Mr. CRUMPACKER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2198]

The Committee on the Judiciary, to whom was referred the bill (S. 2198), to amend section 1708 of title 18, United States Code, relating to the theft or receipt of stolen mail matter generally, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 4, strike out the words "striking out" and insert in lieu thereof the word "changing".

Page 1, line 4, after the word "semicolon" add the words "to a period".

Page 1, line 5, after the word "and" insert the words "by striking out".

PURPOSE

The purpose of this bill, which relates to the penalty for the theft and receipt of mail matter, is to make all such thefts felonies, regardless of the monetary value of the thing stolen. Under the Federal Criminal Code, any crime which carries a penalty of more than 1 year imprisonment, or a fine of more than \$1,000 is considered a felony, while any crime carrying a fine or imprisonment smaller than this is considered a misdemeanor.

STATEMENT

The present bill amends the penalty provisions of the fourth paragraph of section 1708, title 18, United States Code, by striking therefrom the italicized words:

Shall be fined not more than \$2,000 or imprisoned not more than five years, or both; *but if the value or face value of any such article or thing does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.*

The effect of the present law is to make the crime of stealing mail a misdemeanor (fine of not to exceed \$1,000 and imprisonment of not to exceed 1 year) if the value of the mail stolen does not exceed \$100, and to make it a felony (fine up to \$2,000 and imprisonment up to 5 years) if the value of the stolen mail exceeds \$100. The effect of striking the italicized language will be to make the crime a felony (with a uniform permissible penalty of up to \$2,000 fine and up to 5 years' imprisonment) regardless of the value of the mail stolen.

The language proposed to be stricken out was new matter added during the course of the revision and codification of title 18 of the United States Code in 1948. The historical and revision notes at the end of section 1708 of the code annotated for citations, reveal that this language was added for the sake of uniformity. Certain other sections of title 18, in such crimes as theft and embezzlement, divide the penalty into felonies and misdemeanors, depending upon the "value" of the thing stolen, and the thought was that the same distinction should be made in the case of stolen mail. The committee now thinks that this was an incorrect view. While there may be valid reason for dividing the penalty in other types of crimes, the thing being protected here is more the sanctity and integrity of the United States mails than it is the property value of individual pieces of mail, and this sanctity and integrity is of such importance that all violations warrant the heavier penalty.

It can hardly be said that letters, in the vast number of cases, have any monetary or intrinsic value. The almost incalculable importance of the ideas, messages, and expressions contained in business correspondence, and of the sentiment, joy, or grief contained in personal or family letters cannot be measured in terms of dollars. Therefore, the real gravamen of the offense is the very consequential misunderstanding, disappointment, delay, and grief which interference with the mail may entail, rather than the loss of intrinsic property value in the article of mail itself.

The sections specifically referred to in the code revisers' notes concerning the 1948 revision of section 1708, relate to the unlawful taking or receiving of any property being made under contract for the United States (sec. 641), and to the embezzling, by court officers, of money coming into their hands by virtue of their employment (sec. 645). It would appear that under those sections the value of the property taken or embezzled would, in most cases, be known to the criminal in advance. It may be assumed that when mail is stolen, its intrinsic value is generally not known to the thief in advance. Hence, while in the former case the criminal might be said to have had an intent to commit a felony or only a misdemeanor, depending upon the value of the thing stolen or embezzled, in the latter case, under present law, the gravity of the offense depends largely upon chance.

A mail thief finds himself classified either as a felon or as a petty criminal, not because of the degree of his criminal intent, but purely through accident since the thief, it may be presumed, in most cases hopes to find a great sum of money in the mail he steals, but frequently discovers upon opening it, that he has obtained little of value. The Post Office Department, which requested this legislation, contends, and the committee agrees, that a thief's criminal act is just as grave and the interference with the conduct of the postal service just as serious, regardless of whether the mail matter stolen is of little or great value.

Historically, the sanctity and integrity of the mail has been a matter long regarded as of the utmost importance. The confidence which has been reposed in the United States mail has been the result of the effective cloak of protection with which it has always been surrounded. Tampering with mail matter is not only an interference with the operations of the Postal Department but is also an invasion of the right of privacy of individual letter writers. The efficiency and safety of this public service should not be impaired. It is the aim of this legislation to add protection to it by restoring a penalty severe enough to be a strong deterrent to those who would tamper with the mails.

The responsible enforcement officials testified at the subcommittee hearing that enactment of the 1948 revision has created serious enforcement difficulties. There have been conflicting decisions and interpretations by various Federal courts. While a majority of the courts have held that thefts involving amounts of less than \$100 are misdemeanors, there is no uniformity of decision in cases where the charge contains several counts, the valued amount in each count being less than \$100, but collectively aggregating more than \$100. In addition, at least one court has held that misdemeanor sentences cannot run consecutively. Thus, penalties for the same offenses vary widely in different districts.

It might be well to point out that the penal provisions of section 1708 are permissive in character and should there, in a particular case, be mitigating circumstances, it is within the power of the sentencing court to make allowances therefor by the imposition of a light sentence.

AMENDMENTS

The amendments made by the Committee on the Judiciary are of a technical nature only, their effect being to properly end paragraph 4 of section 1708, as amended, with a period.

Attached hereto is a letter from the Attorney General's office and a communication addressed to the Speaker from the Postmaster General recommending this legislation.

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D. C., October 12, 1951.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice relative to the bill (H. R. 5424) to amend section 1708 of title 18, United States Code, relating to the theft or receipt of stolen mail matter generally.

The bill would amend section 1708 of title 18, United States Code, by eliminating the words "but if the value or face value of any such article or thing does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both." The effect of the amendment would be to make the seriousness of the act prohibited by the section no longer dependent upon the value of the article involved.

As the section now stands, a mail thief becomes a felon or a petty thief not because of deliberate intent but purely through accident. Such a result would appear to be incongruous. Furthermore, a diversity of judicial decisions in the application of the section—at least one court having regarded mail thefts involving items aggregating more than \$1,000, but each of which was valued at less than \$100, as misdemeanors—indicates the desirability of amending the statute as proposed.

Accordingly, the Department of Justice has no objection to the enactment of the measure.

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Yours sincerely,

WM. AMORY UNDERHILL,
Acting Deputy Attorney General.

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., September 13, 1951:

Hon. SAM RAYBURN,

Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is submitted herewith, for consideration of the Congress, a draft proposal of legislation to amend section 1708 of title 18, United States Code, relating to the theft or receipt of stolen mail matter generally.

Section 1708 of title 18, United States Code, generally defines the theft or receipt of stolen mail matter, and provides that whoever violates the provisions of the section, "Shall be fined not more than \$2,000 or imprisoned not more than five years, or both; but if the value or face value of any such article or thing does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned more than one year, or both."

Under the present law, there has been a diversity of decisions in the courts. Some courts have held that all thefts falling within the provisions of 18 United States Code 1708 are regarded as felonies, but a majority of the courts have held that thefts involving amounts of less than \$100 are misdemeanors and covered by the lighter punishment prescribed for violation of that section. In at least one case the defendants stole amounts aggregating more than \$1,000, but, because each item stolen by them had a value of less than \$100, they were convicted only of misdemeanors.

In a recent case, *Armstrong v. United States* (No. 12739, C. C. A. 9, Mar. 23, 1951), the facts were stated as follows:

The defendants entered a plea of guilty to four counts of an indictment, drawn under section 1708 of title 18, United States Code.

Each count charged that the defendants "did steal, take, and abstract from and out of an authorized depository for mail matter, to wit (a certain) house letter box * * * (a certain) letter."

The trial court sentenced the defendants to serve 5 years on the first count and 3 years on the remaining counts, the 3-year terms to run concurrently and to commence at the expiration of the 5-year term.

The pertinent portions of section 1708 read as follows:

"Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein;

* * * * *

"Shall be fined not more than \$2,000 or imprisoned not more than five years, or both; but if the value or face value of any such article or thing does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

The defendants appealed, contending that the indictment did not allege, nor did it otherwise appear, that any of the letters alleged to have been taken from the letter boxes was of a value of more than \$100, hence, the maximum penalty which could have been lawfully imposed under each count was not more than a fine of \$1,000 or imprisonment for not more than 1 year or both.

The Government contended that the application of the lesser punishment provided by section 1708 was limited to theft from the mail as distinguished from theft of the mail, and that the phrase "article or thing" as used in the statute had no application to mail, letters, and the like, named in said statute.

The case was remanded to the district court with directions to resentence the appellants. The opinion of the court contains, among others, the following comments:

"Prior to the 1948 revision of the Criminal Code, the maximum penalty for violation of any provisions of the then controlling section 317 was 5 years. In

commenting on the proviso added to section 1708 in 1945, the reviser said: 'The smaller penalty for an offense involving \$100 or less was added. (See secs. 641 and 645 of this title.)' This notation, which accompanied the proposed revision submitted to Congress for approval, does not suggest that the penalty was to be reduced only for certain types of offenses. The general language of the notation, together with the reference to a comparably ambiguous provision of section 641, indicates application of the proviso to all prohibitory sections of the statute. The distinction sought to be drawn by the Government is not supported by the statutory language. It would have been a simple matter for the reviser, or Congress, to have made clear, had such been the intent, that stealing 'an article or thing' from an item of mail, leaving the item of mail otherwise intact, is to be regarded as a less serious offense than stealing the item of mail itself. A highly technical distinction of this sort, which could easily have been spelled out, cannot be imposed on the general words 'any such article or thing' in the concluding proviso of section 1708. Those words must be deemed to include any article or thing previously mentioned in section 1708, whether it is described specifically as a 'letter' or generally as 'an article or thing.' "

In effect, the decision of the court construes 18 U. S. C. 1708 as dividing the crime of theft of mail into felonies and misdemeanors, with the value of the matter stolen as the determining factor.

When a thief steals a letter or a parcel he invariably does not know, and cannot determine in advance of theft, the value of its contents. Furthermore, in a great many cases of mail theft it would be impossible for the Government to allege or prove the value of a particular letter or other item stolen.

It seems illogical and incongruous, therefore, to make the value of the mail the criterion of the seriousness of mail theft. On this basis, a mail thief becomes a felon or a petty thief in the eyes of the law, not because of deliberate intent but purely through accident.

The most serious act is considered to be the interference with the Government's possession of mail matter. The offense to the Government is the same and the conduct of the postal service is interfered with as much when the mail matter is of little or apparently no value as when the value is large.

In view of the varying decisions in the several district courts, and in the light of the interpretation placed upon the statute in question by the United States Court of Appeals for the Ninth Circuit in the *Armstrong* case, I feel that it is necessary to clarify section 1708, title 18, United States Code, so as to leave no doubt but that the violation of it shall be punishable as a felony.

Historically, the sanctity and integrity of the mails has been a matter which the Congress and this Department have regarded as being of the utmost importance. The confidence reported by the people in the postal establishment has been engendered as a result of the effectiveness of the cloak of protection with which it has been surrounded. The continuation of section 1708 in its present language will only serve to pierce this protection, undermine the faith of the people in the safety of this means of communication, and seriously impair its efficacy as an instrument of public service.

It is believed that the enactment of the legislation herewith submitted will accomplish the purpose desired and be a strong deterrent to those who would violate the integrity of the mail by making the punishment for so doing severe enough to fit the gravity of the offense.

In view of the foregoing, I strongly recommend the early enactment of this measure.

The Bureau of the Budget has advised that there is no objection to the presentation of this report to your committee.

Sincerely yours,

J. M. DONALDSON, *Postmaster General*.

CHANGES IN EXISTING LAW

In compliance with clause 2a of rule XIII of the House of Representatives, changes in existing law made by the bill as introduced are shown as follows (existing law in which no change is proposed is printed in roman, new matter is printed in italic, and existing law proposed to be omitted is enclosed in black brackets):

§ 1708. Theft or receipt of stolen mail matter generally

Whoever steals, takes or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined not more than \$2,000 or imprisoned not more than five years, or both []; but if the value or face value of any such article or thing does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both [].

