

Civil Enforcement of Unruly and Disruptive Passengers – the FAA’s Enforcement Approach

**Brett Weingold, Attorney, Aviation Litigation and
Michael Ohannesian, Manager and Safety Inspector
United States Federal Aviation Administration**

21 February 2023



Overview

- Brief History of Prohibitions on Interference with Crewmembers
- Civil Enforcement Authorities
- Data Trends
- FAA's Special Emphasis Enforcement Program
- Sanction Determinations
- Potential Criminal Enforcement



History

- On July 28, 1961, the Federal Aviation Agency adopted Special Civil Air Regulation No. 448, which provided in pertinent part that:
 - No person shall assault, threaten, intimidate, or interfere with a crewmember in the performance of his duties aboard an aircraft being operated in air transportation; nor shall any person attempt to or cause the flight crew of such aircraft to divert its flight from its intended course or destination.
- In a final rule published January 7, 1999, the FAA added specific regulations related to interference with crewmembers on major air carrier flights, cargo flights, and charter flights.
- On April 5, 2000, Public Law 106-118, the Wendell H. Ford Aviation Investment and Reform Act, added 49 U.S.C. § 46318 increasing the penalties that could be sought against unruly passengers on aircraft.



History

FAA Reauthorization Act of 2018 amended 49 U.S.C. § 46318:

An individual who physically or sexually assaults or threatens to physically or sexually assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than \$35,000.



Civil Enforcement Authorities

- Under its civil penalty assessment authority enacted in December 1987, the FAA could assess a civil penalty up to \$1,000 against an individual after notice and an opportunity for a hearing on the record under 5 U.S.C. § 554.
- The statutory maximum amounts of civil penalties the FAA may impose have steadily increased through adjustments under the Federal civil penalty inflation adjustment laws.
- In 2003, the Vision 100--Century of Aviation Reauthorization Act, raised the statutory maximum amount of penalty against an individual for certain violations of the Federal Aviation Regulations to \$10,000.



Civil Enforcement Authorities

- In 2020, when unruly passenger incidents aboard commercial aircraft began to increase, the FAA could impose up to \$13,910 against an individual for a violation of 14 CFR §§ 91.11, 121.580, 125.328, or 135.120 and up to \$36,516 against an individual for conduct proscribed under 49 USC § 46318.
- Those maximum amounts of civil penalty are now \$16,108 for a regulatory violation and \$42,287 for conduct prohibited under 49 USC § 46318, occurring on or after January 6, 2023.



Civil Enforcement Process

Investigation

- **Role of Inspector**
- **Thorough Investigation**
- **Actions**
 - Compliance, Administrative, Legal
- **Enforcement Investigative Report (EIR)**
 - Orderly statement of the facts related to regulations believed violated.
 - Written by the Investigating Inspector.
 - Recommendation of sanction. (consistent with FAA Policy)
 - Hearing



Civil Enforcement Process

- **Notice of Proposed Civil Penalty**
- **Informal Conference**
- **Final Notice of Proposed Civil Penalty**
- **Request for Hearing or Order Assessing Penalty**
- **Hearing – full litigation leading to evidentiary hearing before Admin. Law Judge**
- **Availability of Appeal**



Sanction Determinations

- FAA Order 2150.3C, chapter 9 sets forth the legal enforcement sanction guidance policy for the FAA's enforcement program.
- FAA counsel follow the process chapter 9 to determine an appropriate amount of civil penalty to propose for an apparent violation of 14 C.F.R. §§ 91.11, 121.580. 125.328, or conduct prohibited under 49 U.S.C. § 46318.



Sanction Determination

- **Steps for Determining Sanction—**
 - Severity level of the violation
 - Culpability of the violator
 - Sanction range
 - Aggravating or mitigating factors
- **Mitigation based on substantiated inability to pay**



Data Trends

- From 1995-2020, FAA investigations of unruly passenger incidents ranged from a low of 91 investigations in 2017 to a high of 310 investigations in 2004.
- Since 1995, FAA unruly passenger investigations have not exceeded an average of 200 per year, except a modest increase during the 1997-2005 timeframe where FAA opened an average of 256 investigations per year.
- In 2021, the FAA initiated 1,112 investigations for unruly passenger incidents, almost all of which occurred that year. Of those investigations, 344 were initiated into legal actions seeking civil penalties totaling \$5,320,450. The FAA closed 367 legal actions (including legal actions from previous years) in 2021.



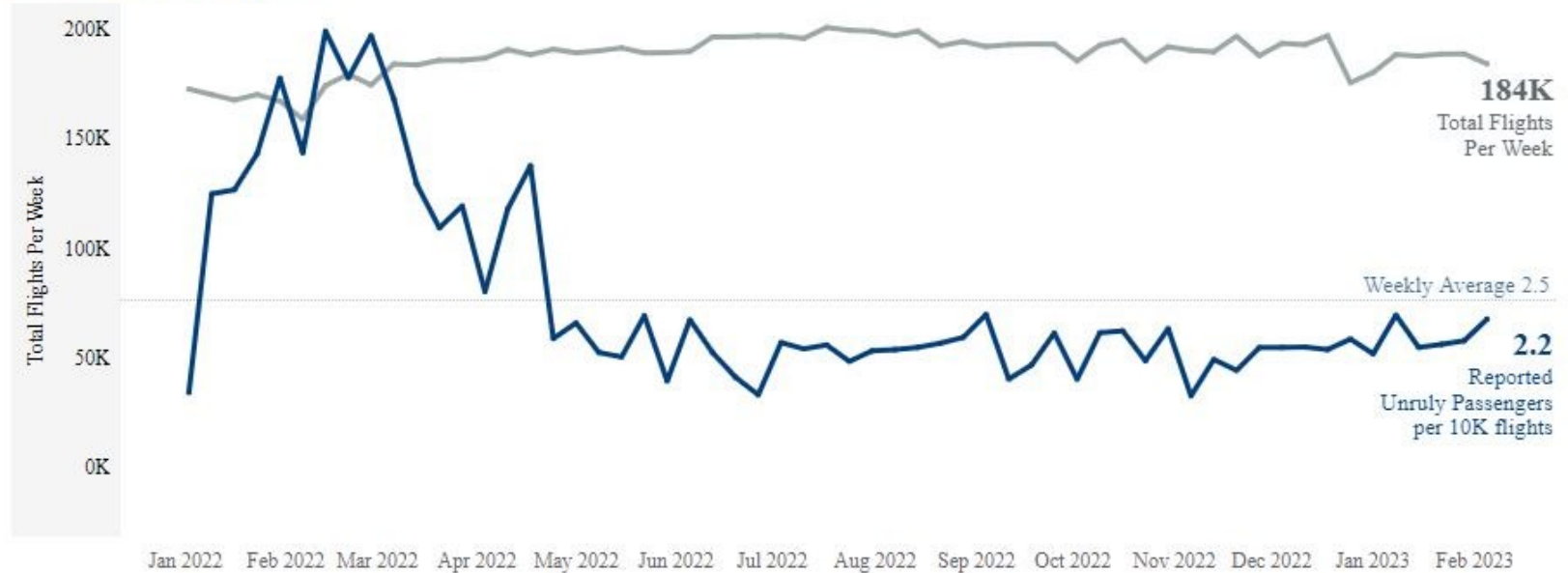
Data Trends

- In 2022, the total number of cases declined sharply but remained much higher than pre-2021 level.
- In 2022 the FAA initiated 839 investigations for unruly passenger incidents, almost all of which occurred that year. Of those investigations, 585 were initiated into legal actions seeking civil penalties totaling \$8,705,743. The FAA closed 98 legal actions (including legal actions from previous years) in 2022.



Data Trends

Unruly Passenger Trends



Source: FAA Security and Hazardous Materials Safety, February 5, 2023



Special Emphasis Enforcement Program

- On January 13, 2021, the FAA Administrator signed a change to FAA Order 2150.3C, Compliance and Enforcement Program implementing a special emphasis enforcement program (SEEP) for unruly and disruptive passengers.
- “Zero tolerance” for unruly and dangerous behavior
- Civil penalty action will be initiated against passengers who assault, threaten, intimidate, or interfere with a crewmember in the performance of a crewmember’s duties in violation of FAA regulations or who engage in conduct prescribed under 49 U.S.C. § 46318 regardless of culpability.
- Neither compliance actions nor administrative actions will be taken for such conduct.



Special Emphasis Enforcement Program

- SEEP originally was set to expire on March 30, 2021, but was extended “at least until” the TSA directives requiring face masks expired or any extension of those directives expired, and has remained in place.
- As of January 2023, FAA has initiated over 900 civil penalty actions under the SEEP seeking millions of dollars in fines against unruly passengers who violated FAA regulations or engaged in conduct prohibited under 49 U.S.C. § 46318.



Special Emphasis Enforcement Program

- SEEP includes advertising used to communicate with passengers about Zero Tolerance policy.

- Airport signage
- Social media memes



Criminal Enforcement

➤ **49 U.S.C. § 46504 provides:**

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant, or lessens the ability of the member or attendant to perform those duties or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.

- From October 2021 through September 2022, FAA submitted 149 criminal referrals involving unruly passengers to the FBI for possible criminal investigation. FAA has submitted 80 such referrals since October 2022.



Criminal Enforcement

- **Local law enforcement**
 - Individuals who engage in criminal behavior while on board an aircraft may be subject to arrest and prosecution by state or local law enforcement, depending on state laws.
- **FAA plays no role in criminal enforcement**
 - FAA will take enforcement action regardless of existence (or lack thereof) of criminal enforcement against a passenger.



Non-FAA Action

- **TSA No-Fly List**

The No Fly List is a small subset of the U.S. government Terrorist Screening Database (also known as the terrorist watchlist) that contains the identity information of known or suspected terrorists. Individuals on the No Fly List are prevented from boarding an aircraft when flying within, to, from and over the United States. Unruly passengers are NOT added to the No-Fly List.

- **Air carrier refusal to serve passengers**

Air carriers may refuse service on a passenger-by-passenger basis based on past incidents.

- **Protection from Abusive Passengers Act**

Proposed in previous Congress (not introduced in this session of Congress). Would have directed FAA to refer any individual who was fined under 49 U.S.C. 46318 to TSA for inclusion on a list of abusive passengers, which would have prevented them from boarding an aircraft. Did not advance in Congress.



Questions?

