

AMENDING SECTION 36 OF THE CRIMINAL CODE

NOVEMBER 1 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. VAN NUYS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1202]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1202), to amend section 36 of the Criminal Code, having considered the same, report the bill favorably to the Senate with the recommendation that the bill do pass.

The purpose of the bill is to clarify the penalty prescribed for violations of section 36 of the Criminal Code, having to do with the offense of stealing, embezzling, or unlawfully selling or disposing of arms, ammunition, or property of the United States, furnished or to be used for the military or naval service. The penalty is prescribed as that contained "in the preceding section." Amendments have been made to the preceding section (sec. 35), and different penalties apply to separate offenses set out in section 35; hence uncertainty has arisen as to the proper punishment for a violation of section 36.

Under the bill now being reported the penalty for violating section 36 of the Criminal Code would be a fine of not more than \$10,000 or imprisonment for not more than 10 years, or both, if the value of the property exceeds the sum of \$50. If the value of the property is less than \$50 the fine would be not more than \$1,000 or imprisonment in jail for not more than 1 year, or both.

Following is a letter from the Attorney General addressed to the chairman of this committee, recommending the proposed legislation:

DEPARTMENT OF JUSTICE,
Washington, D. C., September 10, 1942.

HON. FREDERICK VAN NUYS,
Chairman, Committee on the Judiciary,
United States Senate.

MY DEAR SENATOR: I desire to call your attention to a provision in section 36 of the Criminal Code (U. S. Code, title 18, sec. 87) which appears to give rise to doubt and uncertainty, as to the punishment prescribed for violations of that section, and which, in my opinion, should be made more definite and specific.

Section 36 of the Criminal Code makes it a criminal offense to steal, embezzle, or unlawfully to sell or dispose of any arms, ammunition, or any property of the United States, furnished or to be used for the military or naval service. Such

an offense is punishable "as prescribed in the preceding section." The "preceding section" is section 35 of the Criminal Code (35 Stat. 1095, as amended, U. S. Code, title 18, secs. 80 and 82-86). That section as it was originally enacted covered two classes of offenses, each carrying a different penalty. The first class related to the presentation of false claims against the Government, or the concealment of money or property belonging to the United States with intent to defraud the United States, and similar offenses. These offenses were punishable by imprisonment for a term of not more than 5 years or a fine of not more than \$5,000, or both. The second class related to the purchase of or receipt as security for a debt of any equipment furnished to a member of the military or naval forces. Such an offense was punishable by imprisonment for a term of not more than 2 years and a fine of not more than \$500.

It appears obvious, therefore, that there is an uncertainty as to what punishment may be imposed for a violation of section 36 of the Criminal Code. Because of this indefiniteness, the Circuit Court of Appeals for the Fifth Circuit in 1920 held that this section was inoperative as a criminal statute (*Holmes v. United States*, 267 Fed. 529). The situation has been further complicated by the subsequent enactment of several amendments to section 35 of the Criminal Code which increased the maximum penalties that may be imposed for violation of section 35. For example, the punishment for offenses of the first class was increased to imprisonment for a term of not more than 10 years and a fine of not more than \$10,000, or both, by the act of October 23, 1918 (40 Stat. 1015). The act of April 4, 1938 (52 Stat. 197) further amended section 35 of the Criminal Code so as to make it a criminal offense to steal, injure, or commit depredations against any property of the United States. Such an offense was made punishable by imprisonment for a term of not more than 10 years and a fine of not more than \$10,000, or both, if the value of the property involved exceeds the sum of \$50. If the value of the property does not exceed that sum, the offense is punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000, or both. That act also divided section 35 into three subsections, designated as subsections (A), (B), and (C). The offense last referred to is now found in section 35 (C).

In view of the fact that this country is now at war, and since the quantities of military and naval property are increasing tremendously, it appears to be particularly desirable at this time to remove the uncertainty regarding the punishment to be imposed for the theft, misappropriation, or unlawful disposition of military and naval property.

Accordingly, I recommend that section 36 of the Criminal Code be amended so as to provide that the punishment prescribed for a violation of that section shall be the same as that provided for the theft of or depredation against Government property. This result may be accomplished by striking out the words "the preceding section" at the end of section 36 and substituting the following in lieu thereof, "section 35 (C) of the Criminal Code (U. S. Code, title 18, sec. 82)."

A draft of a proposed bill to effectuate this purpose is enclosed herewith.

I have been informed by the Director of the Bureau of the Budget that the proposed legislation is in accord with the program of the President.

Sincerely yours,

FRANCIS BIDDLE, *Attorney General.*

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