

Calendar No. 733

106TH CONGRESS
2D SESSION

S. 783

To limit access to body armor by violent felons and to facilitate the donation of Federal surplus body armor to State and local law enforcement agencies.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 1999

Mrs. FEINSTEIN (for herself, Mr. SESSIONS, Mr. REID, Mrs. BOXER, Mr. KERRY, Mr. BYRAN, Mr. DURBIN, Mr. CLELAND, Mr. BIDEN, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 27, 2000

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To limit access to body armor by violent felons and to facilitate the donation of Federal surplus body armor to State and local law enforcement agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “James Guefff Body
5 Armor Act of 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) nationally, police officers and ordinary citi-
4 zens are facing increased danger as criminals use
5 more deadly weaponry, body armor, and other so-
6 phisticated assault gear;

7 (2) crime at the local level is exacerbated by the
8 interstate movement of body armor and other as-
9 sault gear;

10 (3) there is a traffic in body armor moving in
11 or otherwise affecting interstate commerce, and ex-
12 isting Federal controls over such traffic do not ade-
13 quately enable the States to control this traffic with-
14 in their own borders through the exercise of their
15 police power;

16 (4) recent incidents, such as the murder of San
17 Francisco Police Officer James Guelff by an assail-
18 ant wearing 2 layers of body armor and a 1997
19 bank shoot out in north Hollywood, California, be-
20 tween police and 2 heavily armed suspects outfitted
21 in body armor, demonstrate the serious threat to
22 community safety posed by criminals who wear body
23 armor during the commission of a violent crime;

24 (5) of the approximately 1,200 officers killed in
25 the line of duty since 1980, more than 30 percent
26 could have been saved by body armor, and the risk

1 of dying from gunfire is 14 times higher for an offi-
2 cer without a bulletproof vest;

3 (6) the Department of Justice has estimated
4 that 25 percent of State and local police are not
5 issued body armor;

6 (7) the Federal Government is well-equipped to
7 grant local police departments access to body armor
8 that is no longer needed by Federal agencies; and

9 (8) Congress has the power, under the inter-
10 state commerce clause and other provisions of the
11 Constitution of the United States, to enact legisla-
12 tion to regulate interstate commerce that affects the
13 integrity and safety of our communities.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) **BODY ARMOR.**—The term “body armor”
17 means any product sold or offered for sale, in inter-
18 state or foreign commerce, as personal protective
19 body covering intended to protect against gunfire,
20 regardless of whether the product is to be worn
21 alone or is sold as a complement to another product
22 or garment.

23 (2) **LAW ENFORCEMENT AGENCY.**—The term
24 “law enforcement agency” means an agency of the
25 United States, a State, or a political subdivision of

1 a State, authorized by law or by a government agen-
 2 ey to engage in or supervise the prevention, detec-
 3 tion, investigation, or prosecution of any violation of
 4 eriminal law.

5 (3) LAW ENFORCEMENT OFFICER.—The term
 6 “law enforcement officer” means any officer, agent,
 7 or employee of the United States, a State, or a polit-
 8 ical subdivision of a State, authorized by law or by
 9 a government agency to engage in or supervise the
 10 prevention, detection, investigation, or prosecution of
 11 any violation of eriminal law.

12 **SEC. 4. AMENDMENT OF SENTENCING GUIDELINES WITH**
 13 **RESPECT TO BODY ARMOR.**

14 (a) SENTENCING ENHANCEMENT.—The United
 15 States Sentencing Commission shall amend the Federal
 16 sentencing guidelines to provide an appropriate sentencing
 17 enhancement, increasing the offense level not less than 2
 18 levels, for any offense in which the defendant used body
 19 armor.

20 (b) APPLICABILITY.—No amendment made to the
 21 Federal Sentencing Guidelines pursuant to this section
 22 shall apply if the Federal offense in which the body armor
 23 is used constitutes a violation of, attempted violation of,
 24 or conspiracy to violate the civil rights of any person by

1 a law enforcement officer acting under color of the author-
 2 ity of such law enforcement officer.

3 **SEC. 5. PROHIBITION OF PURCHASE, USE, OR POSSESSION**
 4 **OF BODY ARMOR BY VIOLENT FELONS.**

5 (a) DEFINITION OF BODY ARMOR.—Section 921 of
 6 title 18, United States Code, is amended by adding at the
 7 end the following:

8 “(35) The term ‘body armor’ means any prod-
 9 uct sold or offered for sale, in interstate or foreign
 10 commerce, as personal protective body covering in-
 11 tended to protect against gunfire, regardless of
 12 whether the product is to be worn alone or is sold
 13 as a complement to another product or garment.”.

14 (b) PROHIBITION.—

15 (1) IN GENERAL.—Chapter 44 of title 18,
 16 United States Code, is amended by adding at the
 17 end the following:

18 **“§ 931. Prohibition on purchase, ownership, or pos-**
 19 **session of body armor by violent felons**

20 “(a) IN GENERAL.—Except as provided in subsection
 21 (b), it shall be unlawful for a person to purchase, own,
 22 or possess body armor, if that person has been convicted
 23 of a felony that is—

24 “(1) a crime of violence (as defined in section
 25 16); or

1 ~~“(2) an offense under State law that would con-~~
2 ~~stitute a crime of violence if it occurred within the~~
3 ~~special maritime and territorial jurisdiction of the~~
4 ~~United States.~~

5 ~~“(b) EXCEPTION.—~~

6 ~~“(1) APPLICATION.—A person who is subject to~~
7 ~~the prohibition of subsection (a) whose employment,~~
8 ~~livelihood, or safety is dependent on the ability to~~
9 ~~possess and use body armor, may file a petition with~~
10 ~~the Secretary for an exception to the prohibition of~~
11 ~~subsection (a).~~

12 ~~“(2) ACTION BY SECRETARY.—Upon receipt of~~
13 ~~a petition under paragraph (1), the Secretary may~~
14 ~~reduce or eliminate the prohibition of subsection (a),~~
15 ~~impose conditions on reduction or elimination of the~~
16 ~~prohibition, or otherwise grant relief from the prohi-~~
17 ~~bition, as the Secretary determines to be appro-~~
18 ~~priate, based on a determination that the~~
19 ~~petitioner—~~

20 ~~“(A) is likely to use body armor in a safe~~
21 ~~and lawful manner; and~~

22 ~~“(B) has a reasonable need for such pro-~~
23 ~~tection under the circumstances.~~

1 ~~“(3) FACTORS FOR CONSIDERATION.—~~In mak-
 2 ing a determination under paragraph (2) with re-
 3 spect to a petitioner, the Secretary shall consider—

4 ~~“(A) any continued employment of the pe-~~
 5 titioner;

6 ~~“(B) the interests of justice;~~

7 ~~“(C) any relevant evidence; and~~

8 ~~“(D) the totality of the circumstances.~~

9 ~~“(4) CERTIFIED COPY OF PERMISSION.—~~The
 10 Secretary shall require, as a condition of granting
 11 any exception to a petitioner under this subsection,
 12 that the petitioner agree to maintain on his or her
 13 person a certified copy of the Secretary’s permission
 14 to possess and use body armor, including any condi-
 15 tions or limitations.

16 ~~“(5) RULE OF CONSTRUCTION.—~~Nothing in
 17 this subsection may be construed to—

18 ~~“(A) require the Secretary to grant relief~~
 19 to any particular petitioner; or

20 ~~“(B) imply that any relief granted by the~~
 21 Secretary under this subsection relieves any
 22 other person from any liability that may other-
 23 wise be imposed.

24 ~~“(c) IMMUNITY FROM LIABILITY.—~~

1 “(1) IN GENERAL.—An officer or employee of a
 2 law enforcement agency who enforces the prohibition
 3 specified in subsection (a) against a person who has
 4 been granted relief pursuant to subsection (b), shall
 5 be immune from any liability for false arrest arising
 6 from the enforcement of this section unless the per-
 7 son has in his or her possession a certified copy of
 8 the permission granting the person relief from the
 9 prohibition, as required by subsection (b)(4).
 10 “(2) RULE OF CONSTRUCTION.—The immunity

11 from liability described in paragraph (1) shall not
 12 relieve any person or entity from any other liability
 13 that may otherwise be imposed.”.

14 (2) CLERICAL AMENDMENT.—The analysis for
 15 chapter 44 of title 18, United States Code, is
 16 amended by adding at the end the following:

“931. Prohibition on purchase, ownership, or possession of body armor by vio-
 lent felons.”.

17 (c) PENALTIES.—Section 924(a) of title 18, United
 18 States Code, is amended by adding at the end the fol-
 19 lowing:

20 “(7) Whoever knowingly violates section 931 shall be
 21 fined under this title, imprisoned not more than 3 years,
 22 or both.”.

1 **SEC. 6. DONATION OF FEDERAL SURPLUS BODY ARMOR TO**
 2 **STATE AND LOCAL LAW ENFORCEMENT**
 3 **AGENCIES.**

4 (a) **DEFINITIONS.**—In this section, the terms “Fed-
 5 eral agency” and “surplus property” have the meanings
 6 given such terms under section 3 of the Federal Property
 7 and Administrative Services Act of 1949 (40 U.S.C. 472).

8 (b) **DONATION OF BODY ARMOR.**—Notwithstanding
 9 section 203 of the Federal Property and Administrative
 10 Services Act of 1949 (40 U.S.C. 484), the head of a Fed-
 11 eral agency may donate body armor directly to any State
 12 or local law enforcement agency, if such body armor is—

13 (1) in serviceable condition; and

14 (2) surplus property.

15 (c) **NOTICE TO ADMINISTRATOR.**—The head of a
 16 Federal agency who donates body armor under this section
 17 shall submit to the Administrator of General Services a
 18 written notice identifying the amount of body armor do-
 19 nated and each State or local law enforcement agency that
 20 received the body armor.

21 (d) **DONATION BY CERTAIN OFFICERS.**—

22 (1) **DEPARTMENT OF JUSTICE.**—In the admin-
 23 istration of this section with respect to the Depart-
 24 ment of Justice, in addition to any other officer of
 25 the Department of Justice designated by the Attor-

ney General, the following officers may act as the head of a Federal agency:

(A) The Administrator of the Drug Enforcement Administration.

(B) The Director of the Federal Bureau of Investigation.

(C) The Commissioner of the Immigration and Naturalization Service.

(D) The Director of the United States Marshals Service.

(2) DEPARTMENT OF THE TREASURY.—In the administration of this section with respect to the Department of the Treasury, in addition to any other officer of the Department of the Treasury designated by the Secretary of the Treasury, the following officers may act as the head of a Federal agency:

(A) The Director of the Bureau of Alcohol, Tobacco, and Firearms.

(B) The Commissioner of Customs.

(C) The Director of the United States Secret Service.

SECTION 1. SHORT TITLE.

This Act may be cited as the “James Guelff Body Armor Act of 2000”.

1 **SEC. 2. FINDINGS.**

2 *Congress finds that—*

3 *(1) nationally, police officers and ordinary citi-*
4 *zens are facing increased danger as criminals use*
5 *more deadly weaponry, body armor, and other sophis-*
6 *ticated assault gear;*

7 *(2) crime at the local level is exacerbated by the*
8 *interstate movement of body armor and other assault*
9 *gear;*

10 *(3) there is a traffic in body armor moving in*
11 *or otherwise affecting interstate commerce, and exist-*
12 *ing Federal controls over such traffic do not ade-*
13 *quately enable the States to control this traffic within*
14 *their own borders through the exercise of their police*
15 *power;*

16 *(4) recent incidents, such as the murder of San*
17 *Francisco Police Officer James Guelff by an assailant*
18 *wearing 2 layers of body armor and a 1997 bank*
19 *shoot out in north Hollywood, California, between po-*
20 *lice and 2 heavily armed suspects outfitted in body*
21 *armor, demonstrate the serious threat to community*
22 *safety posed by criminals who wear body armor dur-*
23 *ing the commission of a violent crime;*

24 *(5) of the approximately 1,200 officers killed in*
25 *the line of duty since 1980, more than 30 percent*
26 *could have been saved by body armor, and the risk of*

1 *dying from gunfire is 14 times higher for an officer*
2 *without a bulletproof vest;*

3 *(6) the Department of Justice has estimated that*
4 *25 percent of State and local police are not issued*
5 *body armor;*

6 *(7) the Federal Government is well-equipped to*
7 *grant local police departments access to body armor*
8 *that is no longer needed by Federal agencies; and*

9 *(8) Congress has the power, under the interstate*
10 *commerce clause and other provisions of the Constitu-*
11 *tion of the United States, to enact legislation to regu-*
12 *late interstate commerce that affects the integrity and*
13 *safety of our communities.*

14 **SEC. 3. DEFINITIONS.**

15 *In this Act:*

16 *(1) BODY ARMOR.—The term “body armor”*
17 *means any product sold or offered for sale, in inter-*
18 *state or foreign commerce, as personal protective body*
19 *covering intended to protect against gunfire, regard-*
20 *less of whether the product is to be worn alone or is*
21 *sold as a complement to another product or garment.*

22 *(2) LAW ENFORCEMENT AGENCY.—The term*
23 *“law enforcement agency” means an agency of the*
24 *United States, a State, or a political subdivision of*
25 *a State, authorized by law or by a government agency*

1 to engage in or supervise the prevention, detection, in-
 2 vestigation, or prosecution of any violation of crimi-
 3 nal law.

4 (3) *LAW ENFORCEMENT OFFICER.*—The term
 5 “law enforcement officer” means any officer, agent, or
 6 employee of the United States, a State, or a political
 7 subdivision of a State, authorized by law or by a gov-
 8 ernment agency to engage in or supervise the preven-
 9 tion, detection, investigation, or prosecution of any
 10 violation of criminal law.

11 **SEC. 4. AMENDMENT OF SENTENCING GUIDELINES WITH**
 12 **RESPECT TO BODY ARMOR.**

13 (a) *SENTENCING ENHANCEMENT.*—The United States
 14 Sentencing Commission shall amend the Federal sentencing
 15 guidelines to provide an appropriate sentencing enhance-
 16 ment, increasing the offense level not less than 2 levels, for
 17 any offense in which the defendant used body armor.

18 (b) *APPLICABILITY.*—No amendment made to the Fed-
 19 eral Sentencing Guidelines pursuant to this section shall
 20 apply if the Federal offense in which the body armor is
 21 used constitutes a violation of, attempted violation of, or
 22 conspiracy to violate the civil rights of any person by a
 23 law enforcement officer acting under color of the authority
 24 of such law enforcement officer.

1 **SEC. 5. PROHIBITION OF PURCHASE, USE, OR POSSESSION**
 2 **OF BODY ARMOR BY VIOLENT FELONS.**

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 19 (b), it shall be unlawful for a person to purchase, own, or
 20 possess body armor, if that person has been convicted of a
 21 felony that is—

22 “(1) a crime of violence (as defined in section
 23 16); or

24 “(2) an offense under State law that would con-
 25 stitute a crime of violence under paragraph (1) if it

1 *occurred within the special maritime and territorial*
 2 *jurisdiction of the United States.*

3 “(b) *AFFIRMATIVE DEFENSE.*—

4 “(1) *IN GENERAL.*—*It shall be an affirmative de-*
 5 *fense under this section that—*

6 “(A) *the defendant obtained prior written*
 7 *certification from his or her employer that the*
 8 *defendant’s purchase, use, or possession of body*
 9 *armor was necessary for the safe performance of*
 10 *lawful business activity; and*

11 “(B) *the use and possession by the defend-*
 12 *ant were limited to the course of such perform-*
 13 *ance.*

14 “(2) *EMPLOYER.*—*In this subsection, the term*
 15 *‘employer’ means any other individual employed by*
 16 *the defendant’s business that supervises defendant’s*
 17 *activity. If that defendant has no supervisor, prior*
 18 *written certification is acceptable from any other em-*
 19 *ployee of the business.”.*

20 “(2) *CLERICAL AMENDMENT.*—*The analysis for*
 21 *chapter 44 of title 18, United States Code, is amended*
 22 *by adding at the end the following:*

 “931. *Prohibition on purchase, ownership, or possession of body armor by violent felons.”.*

23 “(c) *PENALTIES.*—*Section 924(a) of title 18, United*
 24 *States Code, is amended by adding at the end the following:*

1 “(7) Whoever knowingly violates section 931 shall be
 2 fined under this title, imprisoned not more than 3 years,
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 6 **CIES.**

7 (a) *DEFINITIONS.*—In this section, the terms “Federal
 8 agency” and “surplus property” have the meanings given
 9 such terms under section 3 of the Federal Property and Ad-
 10 ministrative Services Act of 1949 (40 U.S.C. 472).

11 (b) *DONATION OF BODY ARMOR.*—Notwithstanding
 12 section 203 of the Federal Property and Administrative
 13 Services Act of 1949 (40 U.S.C. 484), the head of a Federal
 14 agency may donate body armor directly to any State or
 15 local law enforcement agency, if such body armor is—

16 (1) in serviceable condition; and

17 (2) surplus property.

18 (c) *NOTICE TO ADMINISTRATOR.*—The head of a Fed-
 19 eral agency who donates body armor under this section shall
 20 submit to the Administrator of General Services a written
 21 notice identifying the amount of body armor donated and
 22 each State or local law enforcement agency that received
 23 the body armor.

24 (d) *DONATION BY CERTAIN OFFICERS.*—

1 (1) *DEPARTMENT OF JUSTICE.*—*In the adminis-*
2 *tration of this section with respect to the Department*
3 *of Justice, in addition to any other officer of the De-*
4 *partment of Justice designated by the Attorney Gen-*
5 *eral, the following officers may act as the head of a*
6 *Federal agency:*

7 (A) *The Administrator of the Drug Enforce-*
8 *ment Administration.*

9 (B) *The Director of the Federal Bureau of*
10 *Investigation.*

11 (C) *The Commissioner of the Immigration*
12 *and Naturalization Service.*

13 (D) *The Director of the United States Mar-*
14 *shals Service.*

15 (2) *DEPARTMENT OF THE TREASURY.*—*In the*
16 *administration of this section with respect to the De-*
17 *partment of the Treasury, in addition to any other of-*
18 *ficer of the Department of the Treasury designated by*
19 *the Secretary of the Treasury, the following officers*
20 *may act as the head of a Federal agency:*

21 (A) *The Director of the Bureau of Alcohol,*
22 *Tobacco, and Firearms.*

23 (B) *The Commissioner of Customs.*

24 (C) *The Director of the United States Secret*
25 *Service.*

1 (e) *NO LIABILITY.*—*Notwithstanding any other provi-*
2 *sion of law, the United States shall not be liable for any*
3 *harm occurring in connection with the use or misuse of any*
4 *body armor donated under this section.*

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