

106TH CONGRESS  
1ST 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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 13, 1999

Mrs. FEINSTEIN (for herself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 Guelff Body  
5       Armor Act of 1999”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) nationally, police officers and ordinary citi-  
9       zens are facing increased danger as criminals use

1 more deadly weaponry, body armor, and other so-  
2 phisticated assault gear;

3 (2) crime at the local level is exacerbated by the  
4 interstate movement of body armor and other as-  
5 sault gear;

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

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

20 (5) of the approximately 1,200 officers killed in  
21 the line of duty since 1980, more than 30 percent  
22 could have been saved by body armor, and the risk  
23 of dying from gunfire is 14 times higher for an offi-  
24 cer without a bulletproof vest;

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

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

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

12 **SEC. 3. DEFINITIONS.**

13          In this Act:

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

21           (2) **LAW ENFORCEMENT AGENCY.**—The term  
22           “law enforcement agency” means an agency of the  
23           United States, a State, or a political subdivision of  
24           a State, authorized by law or by a government agen-  
25           cy to engage in or supervise the prevention, detec-

1       tion, investigation, or prosecution of any violation of  
2       criminal law.

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

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

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

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

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

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

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

12 (b) PROHIBITION.—

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

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

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

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

3 “(b) EXCEPTION.—

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

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

18 “(A) is likely to use body armor in a safe  
19 and lawful manner; and

20 “(B) has a reasonable need for such pro-  
21 tection under the circumstances.

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

1           “(A) any continued employment of the pe-  
2           titioner;

3           “(B) the interests of justice;

4           “(C) any relevant evidence; and

5           “(D) the totality of the circumstances.

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

13          “(5) RULE OF CONSTRUCTION.—Nothing in  
14          this subsection may be construed to—

15                 “(A) require the Secretary to grant relief  
16                 to any particular petitioner; or

17                 “(B) imply that any relief granted by the  
18                 Secretary under this subsection relieves any  
19                 other person from any liability that may other-  
20                 wise be imposed.

21          “(c) IMMUNITY FROM LIABILITY.—

22                 “(1) IN GENERAL.—An officer or employee of a  
23                 law enforcement agency who enforces the prohibition  
24                 specified in subsection (a) against a person who has  
25                 been granted relief pursuant to subsection (b), shall

1 be immune from any liability for false arrest arising  
 2 from the enforcement of this section unless the per-  
 3 son has in his or her possession a certified copy of  
 4 the permission granting the person relief from the  
 5 prohibition, as required by subsection (b)(4).

6 “(2) RULE OF CONSTRUCTION.—The immunity  
 7 from liability described in paragraph (1) shall not  
 8 relieve any person or entity from any other liability  
 9 that may otherwise be imposed.”.

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

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

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

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

19 **SEC. 6. DONATION OF FEDERAL SURPLUS BODY ARMOR TO**  
 20 **STATE AND LOCAL LAW ENFORCEMENT**  
 21 **AGENCIES.**

22 (a) DEFINITIONS.—In this section, the terms “Fed-  
 23 eral agency” and “surplus property” have the meanings

1 given such terms under section 3 of the Federal Property  
2 and Administrative Services Act of 1949 (40 U.S.C. 472).

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

8 (1) in serviceable condition; and

9 (2) surplus property.

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

16 (d) DONATION BY CERTAIN OFFICERS.—

17 (1) DEPARTMENT OF JUSTICE.—In the admin-  
18 istration of this section with respect to the Depart-  
19 ment of Justice, in addition to any other officer of  
20 the Department of Justice designated by the Attor-  
21 ney General, the following officers may act as the  
22 head of a Federal agency:

23 (A) The Administrator of the Drug En-  
24 forcement Administration.

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

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

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

7 (2) DEPARTMENT OF THE TREASURY.—In the  
8 administration of this section with respect to the De-  
9 partment of the Treasury, in addition to any other  
10 officer of the Department of the Treasury des-  
11 ignated by the Secretary of the Treasury, the fol-  
12 lowing officers may act as the head of a Federal  
13 agency:

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

16 (B) The Commissioner of Customs.

17 (C) The Director of the United States Se-  
18 cret Service.

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