

107TH CONGRESS  
1ST SESSION

# S. 166

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IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2001

Referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## AN ACT

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 and  
5 Chris McCurley Body Armor Act of 2001”.

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 sult 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, a 1997 bank  
19 shoot out in north Hollywood, California, between  
20 police and 2 heavily armed suspects outfitted in body  
21 armor, and the 1997 murder of Captain Chris  
22 McCurley of the Etowah County, Alabama Drug  
23 Task Force by a drug dealer shielded by protective  
24 body armor, demonstrate the serious threat to com-  
25 munity safety posed by criminals who wear body  
26 armor during the commission of a violent crime;

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

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

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

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

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

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

1           (2) LAW ENFORCEMENT AGENCY.—The term  
2           “law enforcement agency” means an agency of the  
3           United States, a State, or a political subdivision of  
4           a State, authorized by law or by a government agen-  
5           cy to engage in or supervise the prevention, detec-  
6           tion, investigation, or prosecution of any violation of  
7           criminal law.

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

15 **SEC. 4. AMENDMENT OF SENTENCING GUIDELINES WITH**  
16 **RESPECT TO BODY ARMOR.**

17          (a) IN GENERAL.—Pursuant to its authority under  
18          section 994(p) of title 28, United States Code, the United  
19          States Sentencing Commission shall review and amend the  
20          Federal sentencing guidelines and the policy statements  
21          of the Commission, as appropriate, to provide an appro-  
22          priate sentencing enhancement for any crime of violence  
23          (as defined in section 16 of title 18, United States Code)  
24          or drug trafficking crime (as defined in section 924(c) of  
25          title 18, United States Code) (including a crime of violence

1 or drug trafficking crime that provides for an enhanced  
2 punishment if committed by the use of a deadly or dan-  
3 gerous weapon or device) in which the defendant used  
4 body armor.

5 (b) SENSE OF CONGRESS.—It is the sense of Con-  
6 gress that any sentencing enhancement under this section  
7 should be at least 2 levels.

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

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

13 “(35) The term ‘body armor’ means any product  
14 sold or offered for sale, in interstate or foreign com-  
15 merce, as personal protective body covering intended  
16 to protect against gunfire, regardless of whether the  
17 product is to be worn alone or is sold as a com-  
18 plement to another product or garment.”.

19 (b) PROHIBITION.—

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

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

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

7 “(1) a crime of violence (as defined in section  
8 16); or

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

13 “(b) AFFIRMATIVE DEFENSE.—

14 “(1) IN GENERAL.—It shall be an affirmative  
15 defense under this section that—

16 “(A) the defendant obtained prior written  
17 certification from his or her employer that the  
18 defendant’s purchase, use, or possession of body  
19 armor was necessary for the safe performance  
20 of lawful business activity; and

21 “(B) the use and possession by the defend-  
22 ant were limited to the course of such perform-  
23 ance.

24 “(2) EMPLOYER.—In this subsection, the term  
25 ‘employer’ means any other individual employed by  
26 the defendant’s business that supervises defendant’s

1 activity. If that defendant has no supervisor, prior  
 2 written certification is acceptable from any other  
 3 employee of the business.”.

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

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

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

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

13 **SEC. 6. DONATION OF FEDERAL SURPLUS BODY ARMOR TO**  
 14 **STATE AND LOCAL LAW ENFORCEMENT**  
 15 **AGENCIES.**

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

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

- 1 (1) is in serviceable condition;
- 2 (2) is surplus property; and
- 3 (3) meets or exceeds the requirements of Na-  
4 tional Institute of Justice Standard 0101.03 (as in  
5 effect on the date of enactment of this Act).

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

12 (d) DONATION BY CERTAIN OFFICERS.—

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

19 (A) The Administrator of the Drug En-  
20 forcement Administration.

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

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

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

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

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

12                   (B) The Commissioner of Customs.

13                   (C) The Director of the United States Se-  
14                   cret Service.

15                   (e) NO LIABILITY.—Notwithstanding any other pro-  
16                   vision of law, the United States shall not be liable for any  
17                   harm occurring in connection with the use or misuse of  
18                   any body armor donated under this section.

Passed the Senate May 14, 2001.

Attest:

GARY SISCO,  
*Secretary.*