

JAMES GUELFF AND CHRIS MCCURLEY BODY ARMOR ACT
OF 2001

—————
AUGUST 2, 2001.—Ordered to be printed
—————

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1007]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1007) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	4
Background and Need for the Legislation	4
Hearings	5
Committee Consideration	5
Vote of the Committee	5
Committee Oversight Findings	5
Performance Goals and Objectives	5
New Budget Authority and Tax Expenditures	6
Congressional Budget Office Cost Estimate	6
Constitutional Authority Statement	7
Section-by-Section Analysis and Discussion	7
Changes in Existing Law Made by the Bill, as Reported	9
Markup Transcript	10

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “James Guelff and Chris McCurley Body Armor Act of 2001”.

SEC. 2. FINDINGS.

Congress finds that—

- (1) nationally, police officers and ordinary citizens are facing increased danger as criminals use more deadly weaponry, body armor, and other sophisticated assault gear;
- (2) crime at the local level is exacerbated by the interstate movement of body armor and other assault gear;
- (3) there is a traffic in body armor moving in or otherwise affecting interstate commerce, and existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power;
- (4) recent incidents, such as the murder of San Francisco Police Officer James Guelff by an assailant wearing 2 layers of body armor, a 1997 bank shoot out in north Hollywood, California, between police and 2 heavily armed suspects outfitted in body armor, and the 1997 murder of Captain Chris McCurley of the Etowah County, Alabama Drug Task Force by a drug dealer shielded by protective body armor, demonstrate the serious threat to community safety posed by criminals who wear body armor during the commission of a violent crime;
- (5) of the approximately 1,200 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest;
- (6) the Department of Justice has estimated that 25 percent of State and local police are not issued body armor;
- (7) the Federal Government is well-equipped to grant local police departments access to body armor that is no longer needed by Federal agencies; and
- (8) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to enact legislation to regulate interstate commerce that affects the integrity and safety of our communities.

SEC. 3. DEFINITIONS.

In this Act:

- (1) **BODY ARMOR.**—The term “body armor” means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.
- (2) **LAW ENFORCEMENT AGENCY.**—The term “law enforcement agency” means an agency of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.
- (3) **LAW ENFORCEMENT OFFICER.**—The term “law enforcement officer” means any officer, agent, or employee of the United States, a State, or a political subdivision of a State, authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

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

(a) **IN GENERAL.**—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title 18, United States Code) or drug trafficking crime (as defined in section 924(c) of title 18, United States Code) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that any sentencing enhancement under this section should be at least 2 levels.

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

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

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

(b) **PROHIBITION.**—

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

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

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

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

“(2) an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.

“(b) AFFIRMATIVE DEFENSE.—

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

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

“(B) the use and possession by the defendant were limited to the course of such performance.

“(2) EMPLOYER.—In this subsection, the term ‘employer’ means any other individual employed by the defendant’s business that supervises defendant’s activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.”

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

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

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

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

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

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

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

(1) is in serviceable condition;

(2) is surplus property; and

(3) meets or exceeds the requirements of National Institute of Justice Standard 0101.03 (as in effect on the date of enactment of this Act).

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

(d) DONATION BY CERTAIN OFFICERS.—

(1) DEPARTMENT OF JUSTICE.—In the administration of this section with respect to the Department of Justice, in addition to any other officer of the Department of Justice designated by the Attorney 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.

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

PURPOSE AND SUMMARY

H.R. 1007, the "James Guelff and Chris McCurley Body Armor Act of 2001," amends title 18, United States Code, by establishing a prohibition on the purchase, ownership, or possession of body armor by violent felons. Any person that is convicted of violating this prohibition is subject to a fine or imprisonment of not more than 3 years, or both. H.R. 1007 also directs the United States Sentencing Commission to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking in which the defendant used body armor. It is the sense of Congress that any sentencing enhancement should be at least two levels.

In addition, H.R. 1007 authorizes the head of a Federal agency to donate body armor that is surplus property and in serviceable condition directly to any State or local law enforcement agency. The United States shall not be liable for any harm occurring in connection with the use or misuse of any body armor donated by the Federal agencies.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1007 is named for Officer James Guelff and Captain Chris McCurley who were both killed by gunmen wearing body armor. On November 13, 1994, James Guelff, a highly decorated 10 year veteran of the San Francisco Police Department, responded to a "shots fired" call. Officer Guelff, the first to respond to the scene, returned fire but the bullets could not penetrate the gunman's kevlar vest and bullet-proof helmet. Because of the body armor, this one gunman was able to fire in excess of 200 rounds of ammunition and hold off 120 police officers for over half an hour. Several officers actually ran out of ammunition in their attempt to stop the heavily protected gunman. Officer Guelff was shot several times and died the following morning.

Captain Chris McCurley of the Etowah County, Alabama Drug Task Force was murdered in much the same way as Officer Guelff. Captain McCurley was shot and killed by a drug dealer wearing protective body armor when he and another officer were trying to execute a search warrant on October 10, 1997.

Unfortunately, this scenario is not unique. There have been several other similar shootings across the country including the North Hollywood shootout in 1997 where eleven officers were wounded despite both perpetrators being hit a total of 33 times by police gunfire. Those two gunmen held off 350 police officers for over an hour before the shooting ended. In July of 2000, another shooting took place in Crandon, Wisconsin where Sgt. Todd Stamper lost his life to a gunman protected by a kevlar vest and helmet. Also, in August 1997, there was a shooting in Colebrook, New Hampshire where a gunman wearing a bulletproof vest and armed with an AR-15 assault rifle, shot and killed troopers Scott Phillips and Leslie Lord before killing two other civilians. These are just a few examples of many incidents where gunmen were able to prolong shootouts, fire more rounds of ammunition, and cause more devastation because they were shielded by body armor.

The Department of Justice has estimated that 25 percent of State and local police are not issued body armor. Furthermore, of the approximately 1,200 officers killed in the line of duty since

1980, more than 30 percent could have been saved by body armor. Also, it has been estimated that the risk of dying from gunfire is 14 times higher for an officer without the benefit of wearing a bulletproof vest. The FBI, DEA, ATF, INS, and U.S. Marshals are just a few of the Federal agencies that have surplus body armor and would be able to donate it to local jurisdictions to provide greater protection to our Country's law enforcement officers.

Body armor was created for one fundamental reason—to protect the individuals who risk their lives protecting the citizens of this country. Unfortunately, bulletproof body armor is finding its way into the hands of violent criminals, placing countless lives at risk. This equipment should be used to protect police officers as they perform their daily duties, not to protect violent criminals committing violent acts.

HEARINGS

No hearings were held on H.R. 1007 during the 107th Congress.

COMMITTEE CONSIDERATION

On July 19, 2001, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R. 1007 with amendment, by a voice vote, a quorum being present. On July 24, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 1007 with amendment, by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment in the nature of a substitute was offered by Mr. Smith. The amendment would change the short title of the bill to the "James Guelff and Chris McCurley Body Armor Act of 2001." The amendment also amends the findings of Congress to include reference to the 1997 murder of Chris McCurley. This would conform H.R. 1007 to the Senate version of the bill, S. 166, which passed the Senate on May 14, 2001, by unanimous consent. The amendment in the nature of a substitute was agreed to by voice vote.

2. Final Passage. The motion to report favorably the bill, H.R. 1007, as amended by the amendment in the nature of a substitute, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 1007 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1007, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1007, the James Guelff and Chris McCurley Body Armor Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for Federal costs), who can be reached at 226-2860, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226-2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 1007—James Guelff and Chris McCurley Body Armor Act of 2001.

CBO estimates that implementing H.R. 1007 would not result in any significant cost to the Federal Government. Because enactment of H.R. 1007 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

H.R. 1007 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments. The legislation would impose a private-sector mandate as defined by UMRA. CBO estimates that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates (\$113 million in 2001, adjusted annually for inflation).

H.R. 1007 would make it a Federal crime for most violent felons to purchase or possess body armor. The bill would direct the U.S. Sentencing Commission to consider increasing the recommended prison sentence for certain offenses involving the use of body armor. In addition, H.R. 1007 would permit Federal agencies to do-

nate surplus body armor to State or local law enforcement agencies.

Because H.R. 1007 would establish a new Federal crime, the government would be able to pursue cases that it otherwise would not be able to prosecute. Based on information from the U.S. Sentencing Commission, CBO estimates that the bill's provisions would probably affect fewer than 10 cases each year. Because H.R. 1007 would apply to such a small number of offenders, any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1007 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional receipts and direct spending would be negligible because of the small number of cases involved.

Under current law, Federal agencies transfer body armor that is surplus to the needs of the Federal Government to the General Services Administration, which then donates the property to State and local agencies. Permitting Federal law enforcement agencies to donate surplus body armor directly to State and local agencies would not affect the Federal budget.

H.R. 1007 would impose a private-sector mandate as defined by UMRA on persons who have been convicted of certain violent felony offenses. The legislation would require such persons to obtain prior written certification from their employer indicating that their purchase, use, and possession of body armor are necessary for the safe performance of lawful business activity. The cost to obtain a written certification would be minimal. CBO estimates, therefore, that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates (\$113 million in 2001, adjusted annually for inflation).

On May 15, 2001, CBO transmitted a cost estimate for S. 166, the James Guelff and Chris McCurley Body Armor Act of 2001, as passed by the Senate on May 14, 2001. The two pieces of legislation are identical, as are the cost estimates.

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs), who can be reached at 226-2860, and Paige Piper/Bach (for the private-sector impact), who can be reached at 226-2940. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. The section states that the act may be cited as the "James Guelff and Chris McCurley Body Armor Act of 2001."

Section 2. Findings. Congress finds that (1) nationally, police officers and ordinary citizens are facing increased danger as criminals use more deadly weaponry, body armor, and other sophisticated assault gear; (2) crime at the local level is exacerbated by the interstate movement of body armor and other assault gear; (3) there is a traffic in body armor moving in or otherwise affecting interstate commerce, and existing Federal controls over such traffic do not adequately enable the States to control this traffic within their own borders through the exercise of their police power; (4) recent incidents, such as the murder of San Francisco Police Officer James Guelff by an assailant wearing two layers of body armor, a 1997 bank shoot out in north Hollywood, California, between police and two heavily armed suspects outfitted in body armor, and the 1997 murder of Captain Chris McCurley of the Etowah County, Alabama Drug Task Force by a drug dealer shielded by protective body armor, demonstrate the serious threat to community safety posed by criminals who wear body armor during the commission of a violent crime; (5) of the approximately 1,200 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor, and the risk of dying from gunfire is 14 times higher for an officer without a bulletproof vest; (6) the Department of Justice has estimated that 25 percent of State and local police are not issued body armor; (7) the Federal Government is well-equipped to grant local police departments access to body armor that is no longer needed by Federal agencies; and (8) Congress has the power, under the interstate commerce clause and other provisions of the Constitution of the United States, to enact legislation to regulate interstate commerce that affects the integrity and safety of our communities.

Section 3. Definitions. Section 3 of the bill defines the terms “body armor,” “law enforcement agency” and “law enforcement officer” as used in the bill.

Section 4. Amendment to the Sentencing Guidelines. Section 4 of the bill directs the United States Sentencing Commission to review and amend the Federal sentencing guidelines to provide an appropriate sentencing enhancement for any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor. This section also expresses the sense of Congress that any sentencing enhancement should be at least two levels.

Section 5. Prohibition of Purchase, Use, or Possession of Body Armor by Violent Felons. This section amends chapter 44 of title 18, United States Code, to prohibit the purchase, ownership, or possession of body armor by violent felons. Specifically, this section would add a new Section 931 which would make it unlawful for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is a crime of violence or an offense under State law that would constitute a crime of violence if it occurred within the special maritime and territorial jurisdiction of the United States. Anyone who knowingly violates this section shall be fined, imprisoned not more than 3 years, or both.

An affirmative defense to a violation of this section is provided if a defendant has obtained prior written certification from his or

her employer that the defendant's purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity and the use and possession by the defendant were limited to the course of such performance. The term "employer" is defined as any other individual employed by the defendant's business that supervises defendant's activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.

Section 6. Donation of Federal Surplus Body Armor to State and Local Law Enforcement Agencies. This section allows the head of a Federal agency to donate body armor directly to any State or local law enforcement agency, if such body armor is in serviceable condition, is surplus property, and meets or exceeds the requirements of the National Institute of Justice Standards. The head of a Federal agency who donates body armor under this section shall submit to the Administrator of General Services a written notice identifying the amount of body armor donated and each State or local law enforcement agency that received the body armor. For the purposes of this section, the Administrator of the DEA, the Director of the FBI, the Commissioner of the INS, the Director of the U.S. Marshals Service, the Director of the ATF, the Commissioner of Customs, and the Director of the Secret Service may act as the head of a Federal agency.

This section also provides that the United States shall not be liable for any harm occurring in connection with the use or misuse of any body armor donated under this section.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 44—FIREARMS

- Sec.
921. Definitions.
* * * * *
931. *Prohibition on purchase, ownership, or possession of body armor by violent felons.*

§ 921. Definitions

- (a) As used in this chapter—
(1) * * *

* * * * *

(35) *The term “body armor” means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.*

* * * * *

§ 924. Penalties

(a)(1) * * *

* * * * *

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

* * * * *

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

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

- (1) *a crime of violence (as defined in section 16); or*
- (2) *an offense under State law that would constitute a crime of violence under paragraph (1) if it occurred within the special maritime and territorial jurisdiction of the United States.*

(b) *AFFIRMATIVE DEFENSE.—*

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

- (A) *the defendant obtained prior written certification from his or her employer that the defendant’s purchase, use, or possession of body armor was necessary for the safe performance of lawful business activity; and*
- (B) *the use and possession by the defendant were limited to the course of such performance.*

(2) *EMPLOYER.—In this subsection, the term “employer” means any other individual employed by the defendant’s business that supervises defendant’s activity. If that defendant has no supervisor, prior written certification is acceptable from any other employee of the business.*

* * * * *

MARKUP TRANSCRIPT
BUSINESS MEETING
TUESDAY, JULY 24, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

The next item on the agenda is H.R. 1007, the “James Guelff Body Armor Act of 2001.”
[The bill, H.R. 1007, follows:]

107TH CONGRESS
1ST SESSION

H. R. 1007

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 HOUSE OF REPRESENTATIVES

MARCH 13, 2001

Mr. STUPAK (for himself, Mr. HUTCHINSON, Mr. SCOTT, Mrs. MALONEY of New York, Mrs. ROUKEMA, Mrs. MCCARTHY of New York, Mrs. CHRISTENSEN, Mr. ETHERIDGE, Mr. FRANK, Mr. KELLER, Mr. GREENWOOD, Mrs. CAPP, Mr. PASCRELL, Mr. GILMAN, Mr. LARSON of Connecticut, Mr. MCGOVERN, Mr. FILNER, Mr. WALSH, Ms. RIVERS, Mr. McHUGH, Ms. MCKINNEY, Ms. KAPTUR, Mr. LIPINSKI, Mr. OXLEY, Ms. MCCARTHY of Missouri, Mr. CLEMENT, Mr. MCINTYRE, Mr. SOUDER, Mr. RAMSTAD, Mr. GORDON, Mr. SMITH of New Jersey, Mr. SHERMAN, Mr. KUCINICH, Mr. FOSSELLA, Mr. BERMAN, Ms. HOOLEY of Oregon, Mrs. MORELLA, Ms. JACKSON-LEE of Texas, Ms. SANCHEZ, Mr. REYES, Mr. HOLDEN, Mr. RODRIGUEZ, Ms. MILLENDER-MCDONALD, Mr. ABERCROMBIE, Mrs. THURMAN, and Mr. VISCLOSKY) introduced the following bill; which was 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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “James Guelff Body
3 Armor Act of 2001”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

10 (2) crime at the local level is exacerbated by the
11 interstate movement of body armor and other as-
12 sault gear;

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

19 (4) recent incidents, such as the murder of San
20 Francisco Police Officer James Guelff by an assail-
21 ant wearing 2 layers of body armor and a 1997
22 bank shoot out in north Hollywood, California, be-
23 tween police and 2 heavily armed suspects outfitted
24 in body armor, demonstrate the serious threat to
25 community 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(e) 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 prod-
14 uct sold or offered for sale, in interstate or foreign
15 commerce, as personal protective body covering in-
16 tended to protect against gunfire, regardless of
17 whether the product is to be worn alone or is sold
18 as a complement 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 (e) 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.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Smith, for purposes of a motion.

Mr. SMITH OF TEXAS. Mr. Chairman, the Subcommittee on Crime reports favorably the bill H.R. 1007, with a single amendment in the nature of a substitute, and moves its favorable recommendation to the full House and asks unanimous consent to have my statement made a part of the record.

Chairman SENSENBRENNER. Without objection.
[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE LAMAR SMITH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS

Body armor was created for one fundamental reason—to protect the individuals who risk their lives protecting the citizens of this country. Unfortunately, bullet-proof body armor is finding its way into the hands of violent criminals, placing countless lives at risk.

H.R. 1007 was named for San Francisco Police Officer James Guelff who was gunned down in 1994 by an assailant shielded by two layers of body armor, a cache of assault weapons and more than 2,000 rounds of ammunition. James Guelff, a highly decorated ten year veteran, was the first to respond to the scene and returned fire, but the bullets could not penetrate the gunman's kevlar vest and bullet-proof helmet. Because of the body armor, this one gunman was able to hold off 120 police officers for over half an hour.

Unfortunately, this scenario is not unique. There have been several other similar shootings across the country including the North Hollywood, California shootout in 1997 where eleven officers were wounded despite both perpetrators being hit a total of 33 times by police gunfire. Those two gunmen held off 350 police officers for over an hour before the shooting ended.

Another problem facing our officers today is the availability of body armor for their own protection. The Department of Justice has estimated that 25 percent of State and local police are not issued body armor. Furthermore, of the approximately 1,200 officers killed in the line of duty since 1980, more than 30 percent could have been saved by body armor.

H.R. 1007 addresses these problems by prohibiting the purchase, ownership, or possession of body armor by convicted violent felons. The bill also directs the United States Sentencing Commission to review and amend the Federal sentencing guidelines to provide an appropriate enhancement for any crime of violence or drug trafficking in which the defendant used body armor. Furthermore, the bill seeks to provide additional protection to America's law enforcement officers by allowing the head of a Federal agency to donate body armor that is surplus property.

Body armor should be used to protect police officers as they perform their daily duties, not to protect violent criminals committing violent acts. I support the bill and urge my colleagues to support it as well.

Chairman SENSENBRENNER. Without objection, the statements of all Members will be included in the record.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

The Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read and considered as the original text for purposes of an amendment.

[The amendment follows:]

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1007
OFFERED BY _____**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “James Guelff and
3 Chris McCurley Body Armor Act of 2001”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

10 (2) crime at the local level is exacerbated by the
11 interstate movement of body armor and other as-
12 sult gear;

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

1 (4) recent incidents, such as the murder of San
2 Francisco Police Officer James Guelff by an assail-
3 ant wearing 2 layers of body armor, a 1997 bank
4 shoot out in north Hollywood, California, between
5 police and 2 heavily armed suspects outfitted in body
6 armor, and the 1997 murder of Captain Chris
7 McCurley of the Etowah County, Alabama Drug
8 Task Force by a drug dealer shielded by protective
9 body armor, demonstrate the serious threat to com-
10 munity safety posed by criminals who wear body
11 armor during the commission of a violent crime;

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

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

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

23 (8) Congress has the power, under the inter-
24 state commerce clause and other provisions of the
25 Constitution of the United States, to enact legisla-

1 tion to regulate interstate commerce that affects the
2 integrity and safety of our communities.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) **BODY ARMOR.**—The term “body armor”
6 means any product sold or offered for sale, in inter-
7 state or foreign commerce, as personal protective
8 body covering intended to protect against gunfire,
9 regardless of whether the product is to be worn
10 alone or is sold as a complement to another product
11 or garment.

12 (2) **LAW ENFORCEMENT AGENCY.**—The term
13 “law enforcement agency” means an agency of the
14 United States, a State, or a political subdivision of
15 a State, authorized by law or by a government agen-
16 cy to engage in or supervise the prevention, detec-
17 tion, investigation, or prosecution of any violation of
18 criminal law.

19 (3) **LAW ENFORCEMENT OFFICER.**—The term
20 “law enforcement officer” means any officer, agent,
21 or employee of the United States, a State, or a polit-
22 ical subdivision of a State, authorized by law or by
23 a government agency to engage in or supervise the
24 prevention, detection, investigation, or prosecution of
25 any violation of criminal law.

1 **SEC. 4. AMENDMENT OF SENTENCING GUIDELINES WITH**
2 **RESPECT TO BODY ARMOR.**

3 (a) IN GENERAL.—Pursuant to its authority under
4 section 994(p) of title 28, United States Code, the United
5 States Sentencing Commission shall review and amend the
6 Federal sentencing guidelines and the policy statements
7 of the Commission, as appropriate, to provide an appro-
8 priate sentencing enhancement for any crime of violence
9 (as defined in section 16 of title 18, United States Code)
10 or drug trafficking crime (as defined in section 924(e) of
11 title 18, United States Code) (including a crime of violence
12 or drug trafficking crime that provides for an enhanced
13 punishment if committed by the use of a deadly or dan-
14 gerous weapon or device) in which the defendant used
15 body armor.

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

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

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

24 “(35) The term ‘body armor’ means any prod-
25 uct sold or offered for sale, in interstate or foreign
26 commerce, as personal protective body covering in-

1 tended to protect against gunfire, regardless of
2 whether the product is to be worn alone or is sold
3 as a complement to another product or garment.”.

4 (b) PROHIBITION.—

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

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

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

14 “(1) a crime of violence (as defined in section
15 16); or

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

20 “(b) AFFIRMATIVE DEFENSE.—

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

23 “(A) the defendant obtained prior written
24 certification from his or her employer that the
25 defendant’s purchase, use, or possession of body

1 armor was necessary for the safe performance
2 of lawful business activity; and

3 “(B) the use and possession by the defend-
4 ant were limited to the course of such perform-
5 ance.

6 “(2) EMPLOYER.—In this subsection, the term
7 ‘employer’ means any other individual employed by
8 the defendant’s business that supervises defendant’s
9 activity. If that defendant has no supervisor, prior
10 written certification is acceptable from any other
11 employee of the business.”.

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

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

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

18 “(7) Whoever knowingly violates section 931 shall be
19 fined under this title, imprisoned not more than 3 years,
20 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—

13 (1) is in serviceable condition;

14 (2) is surplus property; and

15 (3) meets or exceeds the requirements of Na-
16 tional Institute of Justice Standard 0101.03 (as in
17 effect on the date of enactment of this Act).

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

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

25 (1) **DEPARTMENT OF JUSTICE.**—In the admin-
26 istration of this section with respect to the Depart-

1 ment of Justice, in addition to any other officer of
2 the Department of Justice designated by the Attor-
3 ney General, the following officers may act as the
4 head of a Federal agency:

5 (A) The Administrator of the Drug En-
6 forcement Administration.

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

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

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

13 (2) DEPARTMENT OF THE TREASURY.—In the
14 administration of this section with respect to the De-
15 partment of the Treasury, in addition to any other
16 officer of the Department of the Treasury des-
17 ignated by the Secretary of the Treasury, the fol-
18 lowing officers may act as the head of a Federal
19 agency:

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

22 (B) The Commissioner of Customs.

23 (C) The Director of the United States Se-
24 cret Service.

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

Chairman SENSENBRENNER. The question is on the adoption of the Subcommittee amendment in the nature of a substitute.

Those in favor will signify by saying aye.

Those opposed, no.

The ayes appear to have it. The ayes have it, and the Subcommittee amendment in the nature of a substitute is agreed to.

The Chair notes the presence of a reporting quorum. The question occurs on the motion to report the bill H.R. 1007 favorably, as amended by the amendment in the nature of a substitute.

All those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the bill is favorably reported.

Without objection, the Chair is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, pursuant to House rules, in which to submit additional dissenting supplemental or minority views.