

WITHDRAWAL SHEET

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Collection: Cicconi, James W.: Files
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Date: 08/05/2004

DOCUMENT NO. & TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. letter	Robert Powis to Mike Horowitz re ban on armor-piercing ammunition [y/notations], 4p [Item is still under review under the provisions of EO 13233]	4/17/84	
2. memo	Robert McConnell to M. Horowitz, J. Cicconi, <i>et al.</i> re armor-piercing bullet legislation, 5p [Item is still under review under the provisions of EO 13233]	4/10/84	
3 report	Test Procedure for Armor Piercing Handgun Ammunition, 2p	12/21/83	B2 B7e
4 diagram	attachment to item 1, 1p	n.d.	B2 B7e
5 diagram	attachment to item 1, 1p	n.d.	B2 B7e

RESTRICTIONS

- B-1 National security classified information [(b)(1) of the FOIA].
- B-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- B-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- B-7a Release could reasonably be expected to interfere with enforcement proceedings [(b)(7)(A) of the FOIA].
- B-7b Release would deprive an individual of the right to a fair trial or impartial adjudication [(b)(7)(B) of the FOIA].
- B-7c Release could reasonably be expected to cause unwarranted invasion or privacy [(b)(7)(C) of the FOIA].
- B-7d Release could reasonably be expected to disclose the identity of a confidential source [(b)(7)(D) of the FOIA].
- B-7e Release would disclose techniques or procedures for law enforcement investigations or prosecutions or would disclose guidelines which could reasonably be expected to risk circumvention of the law [(b)(7)(E) of the FOIA].
- B-7f Release could reasonably be expected to endanger the life or physical safety of any individual [(b)(7)(F) of the FOIA].
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

C. Closed in accordance with restrictions contained in donor's deed of gift.



**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

DATE: April 19

TO: Jim Cicconi

FROM: Mike Horowitz

The attached was received this morning from Treasury.

OMB FORM 38
Rev. Aug 73



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY

APR 17 1984

Dear Mike:

Enclosed is a very rough draft of legislative and regulatory proposals which attempt to codify a ban on armor-piercing ammunition which are presently being restricted by voluntary agreements with the manufacturers. This proposal needs a lot more study and a lot more refinement.

The enclosed proposal is overshadowed by serious if not insurmountable enforcement problems. Among them are the following:

1. It will place a severe burden on ATF with respect to the classification of armor-piercing ammunition. This will require the hiring of at least six additional ballistics experts.
2. Enforcement of the amendments will require a tremendous outlay of manpower and fiscal resources. An undetermined but significant additional number of Special Agents and Inspectors would be necessary to ensure any degree of compliance, as well as the enforcement of the mandatory penalty provisions.
3. The proposed regulation (178.28, Armor-Piercing Ammunition Determination) must have a degree of subjectivity or we will be outlawing much sporting ammunition which can penetrate Kevlar soft body armor.
4. There can be expected attempts by certain parties to circumvent the amendments by purposely misrepresenting and/or mislabeling ammunition which is in reality armor-piercing. Conversely, there can be expected attempts by some interest groups to have certain sporting cartridges, primarily handgun ammunition, determined to be armor-piercing based solely on its use in handguns and its ability to penetrate soft body armor.
5. The amendments provide no exemption for gun/cartridge collectors to acquire this type ammunition.
6. The amendments would not permit thousands of unlicensed handloaders to produce this ammunition.

7. The amendments would require a constant re-examination and reclassification of newly designed domestic and foreign ammunition.
8. The importation of unknown types of surplus military ammunition would have to be constantly monitored to ensure that no armor-piercing ammunition is permitted into the country.
9. This proposal will require some testing by ATF although it will not be on the order of magnitude of the testing required by the Justice Department legislative proposal.

Because of the enforcement problems described above, however, we do not recommend adoption of this legislative proposal. This draft represents an honest effort to codify our voluntary agreements pursuant to your request.

Sincerely,

/s/ Robert E. Powis

Robert E. Powis
Deputy Assistant Secretary
for Enforcement

The Honorable
Michael J. Horowitz
Counsel to the Director
Office of Management and Budget
Washington, D.C. 20503

Enclosure

ARMOR PIERCING AMMUNITION LEGISLATION

Section 921(a), Chapter 44, Title 18, USC (Title 1 of the Gun Control Act)

Add the following new section:

sub section 921(a)(18):

Armor piercing ammunition means cartridges or projectiles designed, manufactured, advertised or sold to defeat any physical protective covering designed to protect personnel or equipment against projectiles or fragments.

Section 922, Chapter 44, Title 18, USC, add the following new section:

(a) It shall be unlawful—

(7) for any person to manufacture or import armor piercing ammunition.

Section 923, Chapter 44, Title 18, USC, amend the following section:

subsection 923(a)(1):

If the applicant is a manufacturer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1000.00 per year.

sub section 923(a)(2):

If the applicant is an importer—

(A) of destructive devices, ammunition for destructive devices or armor piercing ammunition, a fee of \$1000.00 per year.

Section 924, Chapter 44, Title 18, USC, add the following new subsection

Subsection 924(c)(3)

Whoever, during and in relation to the commission of a felony uses or carries a firearm loaded with armor piercing ammunition shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than five years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor piercing ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

Section 925, Chapter 44, Title 18, USC, add the following new section:

sub section 925(a)(6):

The provisions of Section 922(a)(7) shall not apply to the manufacture or importation of armor piercing ammunition for the use of the United States or any department or agency thereof or any State or any department agency, or political subdivision thereof, **OR TO THE MANUFACTURE OF ARMOR PIERCING AMMUNITION FOR THE SOLE PURPOSE OF EXPORTATION.**

Section 925, Chapter 44, Title 18, USC, amend the following sections:

sub section 925(d)(3):

is of a type that does not fall within the definition of a firearm as defined in Section 5845(a) of the Internal Revenue code of 1954 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms and armor piercing ammunition or,

sub section 925(d)(4):

was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition, excluding armor piercing ammunition.

PART 178. TITLE 27, CODE OF FEDERAL REGULATIONS

Part 178, add new sub section 178.28

178.28 Armor Piercing ammunition Determination

The Director shall determine in accordance with 18 U.S.C. 921(a)(18)((new section)) whether a cartridge or projectile is excluded from the definition of armor piercing ammunition. A person who desires to obtain a determination under that provision of law for any cartridge or projectile which he believes is not armor piercing shall submit a written request, in triplicate, for a ruling thereon to the Director. Each such request shall be executed under the penalties of perjury and contain a complete and accurate description of the cartridge or projectile, the name and address of the manufacturer or importer thereof, the purpose of and use for which it is intended, and such photographs, drawings and samples as may be necessary to enable the Director to make his determination. The Director shall publish a listing of all cartridges and projectiles which have been tested and determined to be armor piercing.



U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

110 APR 1964

M E M O R A N D U M

TO: Michael J. Horowitz
Counsel to the Director
Policy Analysis and Law
Office of Management and Budget

✓ James W. Cicconi
Special Assistant to the President
Office of the Chief of Staff
The White House

Constance Horner
Associate Director
Economics and Government
Office of Management and Budget

Robert E. Powis
Deputy Assistant Secretary, Enforcement
Department of the Treasury

C. A. Howlett
Special Assistant to the President
for Intergovernmental Affairs
The White House

FROM: Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

SUBJECT: Armor-piercing Bullet Legislation

Enclosed is a slightly revised version of the bill and section-by-section summary (Attachment A) that reflect suggestions received since we submitted our draft bill on January 26th. As the Department of the Treasury is currently reviewing this issue in an effort to develop an alternative proposal, we wanted to be certain that you have the benefit of our latest thinking on this

issue. Moreover, by submitting the attached in this form, we hope to focus attention upon the technical aspects of our proposal and pass over for the time being questions as to how such a measure should be described and justified should it be determined to submit a proposal to the Congress. In short, we can decide later upon an appropriate transmittal letter.

As we have not previously replied in writing to Treasury's March 1st memorandum, I would like to respond now to the following major points raised.

1. Bullets should be tested against soft body armor rather than aluminum plates. Our original armor-piercing bullet bill, submitted to OMB on January 22, 1982, provided for testing against soft body armor. That proposal was criticized for being too imprecise and we submitted to the National Bureau of Standards (NBS) the question of an appropriate test medium. NBS developed the aluminum plate test procedure incorporated by reference in our January 26, 1984 bill. NBS and Department of Justice technicians are confident that the aluminum plate test procedure accurately equates to the new Type IIIA armor standard scheduled to be promulgated this summer. Treasury seems to agree as they note, at page 3 of their March 1 memorandum "we do not question that thickness (of aluminum) approximates this new vest . . ."

The Treasury position, at bottom, seems to be that the correlation between aluminum plates and soft body armor is not "perfect" and that we should thus test against body armor. We believe, however, aluminum plates are a preferable test medium because aluminum:

(a) yields more precise and uniform results (penetration resistance of Kevlar varies from weaver to weaver and batch to batch); and

(b) permits inexpensive testing as compared with testing against Kevlar draped over clay models.

In addition, extensive testing has been done with aluminum plates and we thus know the number of plates required to distinguish between legitimate and armor-piercing bullets. Laboratory procedures for testing products ranging from motorcycle helmets to automobiles involve "artificial" test media which simulate -- in a controlled environment -- real world conditions. NBS has considerable experience in the development of such test standards and vouches for the aluminum plate test.

2. Efforts should be made to establish uniformity in manufacture of Kevlar. We view this as an irrelevant argument as no one suggests that there is any problem with Kevlar vests: they regularly perform at or above their rated capabilities. In essence, federal armor standards prescribe the threats which

armor must defeat to receive a rating. Thus different armor manufacturers use different numbers of layers of Kevlar and other materials in order to receive a particular rating. This leaves the way clear for private industry to innovate; to prescribe that vests must consist of a specific number of layers of Kevlar of a particular yarn twist and crimp balance would be the very worst type of government regulation.

In short, the problem here is not that armor is deficient; it is that ammunition exists which will defeat it. Moreover, we believe that some of the ammunition which will defeat armor has no legitimate sporting or recreational use and thus poses a needless danger to law enforcement officers who wear body armor.

3. The Justice bill does not ban all ammunition capable of defeating Type II-A and II body armor. We agree entirely with this point, but do not feel that this is a criticism of our approach. We believe it would be impractical and unjustifiable to ban all handgun ammunition capable of defeating existing body armor. Everyone connected with this debate recognizes that it is not desirable or feasible to ban every bullet capable of defeating a Type II or II-A vest. A ban on manufacture or importation for public sale of true "armor-piercing" bullets would, however, contribute to some extent to the safety of law enforcement officers.

4. The Justice bill would ban rifle ammunition capable of being fired from "specialty" handguns. Our bill seeks to avoid this result by excepting "specialty" handguns capable of firing rifle ammunition. We do not believe that specialty handguns, which have long barrels and are -- for the most part -- single-shot weapons, pose a significant threat to law enforcement officers. If Treasury has suggestions as to how to improve the definitions section of our bill, we will certainly consider them. At this point, however, we believe our bill does not cover any rifle ammunition.

5. The Justice bill is not enforceable. We believe our bill is enforceable and that it will, in practice, be largely self-enforcing as the vast majority of ammunition manufacturers and importers are law-abiding citizens who will avoid producing or importing ammunition in violation of federal law. Treasury's remarks about enforceability, at bottom, are that our proposed law can be violated. Of course, this is true of any law. To the extent that violations do occur, it will admittedly be difficult (but not impossible) to trace the ammunition back to the manufacturer or importer because rounds of ammunition -- unlike firearms -- do not bear serial numbers or other identifying marks. We do not propose to require such labeling of ammunition by manufacturers or importers, however, in view of the regulatory burden involved. The enforcement problems will be

no greater here than in other areas. In fact, tracing armor-piercing bullets back to the manufacturer or importer will likely be easier than tracing diverted controlled substances. Capsules and tablets of controlled substances do not bear serial numbers yet we do not believe this fact means that laws limiting production and distribution of controlled substances are "unenforceable".

6. The mandatory-minimum portion of the Justice bill is defective. We are frankly surprised by these comments as Treasury did not object to this part of the President's Comprehensive Crime Control Act when it was circulated for review prior to submission to the Congress by the President on March 16, 1983. In short, we reject the specific criticisms of the mandatory sentencing provision of our bill as ill-conceived and untimely.

7. The Justice bill will be burdensome to small manufacturers. Although Treasury apparently concedes that our bill would not be burdensome to the "big-three" American ammunition manufacturers, they suggest that our proposal would be burdensome to small manufacturers and handloaders. It should be kept in mind that we have taken a number of steps to make our bill self-enforcing and to minimize any burden on private concerns by:

(a) establishing a test procedure which yields precise and uniform results;

(b) clarifying that not every lot of ammunition be tested but that a one-time test is sufficient so long as the manufacturer produces according to written specifications (see footnote 1 of the section-by-section summary);

(c) recognizing that quality control in ammunition manufacture is such that "hot" rounds will occasionally be produced and allowing a 10% exception for such "hot" rounds;

(d) establishing an objective and precise test procedure that cannot be manipulated by future Administrations to ban more ammunition;

(e) setting the penetration ceiling so high that only a few types of ammunition will even approach the penetration cap; and

(f) superseding inconsistent State laws which purport to ban armor-piercing bullets.

See the attached legal-sized sheet showing test results: none of the 23 types of legitimate small-bore handgun ammunition tested would penetrate more than 3 plates and thus all 23 fall

so far short of the 5-plate cap as not to require testing; */ only 11 of the 77 types of large-bore ammunition tested were sufficiently close to exceeding the 7-plate cap as to require testing. **/ In short, the vast majority of handgun bullets would not absolutely require testing. In fact, the bullets which would need to be tested are largely limited to the 9mm and the .357, .41 and .44 Magnum calibers. Even in these calibers, only those loaded to a very high velocity or using exotic projectiles approach the penetration cap. Small manufacturers and handloaders could, therefore, avoid testing by using standard propellant charges as it is only when ammunition is loaded toward the upper end of the spectrum that it approaches our proposed ceiling. If a handloader or small manufacturer desires to load up to the maximum allowable velocity, he would likely want to invest in a chronograph to test velocity, an investment of approximately \$300. Alternatively, the small manufacturer or the handloader, if desiring to load to the very peak of allowable penetration, could have sample rounds tested by an independent ballistics laboratory. The cost of having such a laboratory test five rounds of ammunition of a particular specification would be approximately \$500. Under our procedure, such tests would not need to be repeated so long as ammunition is manufactured pursuant to an appropriate written specification.

Again, however, small manufacturers and handloaders would need to do little or no testing as they can "piggyback" on the "big three" in that, as long as a particular round is generally comparable to similar Remington, Winchester and Federal rounds in terms of velocity, projectile hardness and projectile conformation, it will not exceed our penetration cap.

Of course, we hope these comments will be helpful. While we believe our bill and test procedure are workable and appropriate for the reasons set out above, we have no pride of authorship in this approach and will render all possible assistance to the Department of the Treasury in its efforts to develop an alternative approach.

*/ Three small-bore bullets tested would be banned (two imported 9mm bullets plus the "KTW" 9mm) and three others would be excepted from the ban under our definitions as they can be used only in "specialty" handguns.

**/ One large-bore bullet tested (the "KTW") would be banned.

A BILL

To amend title 18, United States Code, to establish criminal sanctions for the manufacture, importation or criminal use of certain handgun ammunition.

Be it enacted by the Senate and House of Representatives of United States of America in Congress assembled, That this Act may be cited as the "Peace Officer Protection Act of 1984."

Sec. 2. (a) Chapter 44 of title 18 of the United States Code is amended by adding a new section 929 as follows:

"§ 929. Prohibited armor-piercing handgun ammunition

"(a) Whoever knowingly manufactures or imports armor-piercing handgun ammunition shall be punished by a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

"(b) The provisions of this section do not apply to the manufacture or importation of armor-piercing handgun ammunition for sale to a Federal intelligence agency or a Federal, State or local law enforcement agency for use by officers thereof authorized to carry firearms, for sale to a component of the Armed Forces of the United States for use by the members thereof, or for research activities authorized by the Attorney General, provided that the manufacture or importation of the handgun ammunition is pursuant to a written order submitted by such law enforcement agency or component of the Armed Forces.

"(c)(1) Any armor-piercing handgun ammunition in the care, custody, or control of a manufacturer or importer shall be subject to forfeiture to the United States, except in cases where

the handgun ammunition has been manufactured or imported for the purpose specified in subsection (b) of this section.

"(2) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

"(d) Whenever there is reason to believe that any person is engaged or is about to engage in the manufacture or importation of armor-piercing handgun ammunition, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such manufacture or importation. The court shall proceed as soon as practicable to the hearing and determination of such an action and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action as is warranted to prevent a continuing and substantial danger to the public. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an

indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"(e)(1) As used in this section and section 930, the term 'handgun ammunition' means ammunition manufactured or imported primarily for use in a pistol, revolver or other firearm originally designed to be fired by the use of a single hand. The Attorney General shall publish a list of the various types of handgun ammunition. If his review indicates that there are in the United States more privately held handguns than long guns chambered for such ammunition, he shall designate such ammunition as 'handgun ammunition' for purposes of this section. Ammunition manufactured primarily for use in longguns or handguns other than revolvers or selfloading pistols shall be considered long-gun ammunition for purposes of this section.

"(2) As used in this section, the term 'armor-piercing handgun ammunition' means that handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates

"(A) five (5) or more plates of the test target if the ammunition is of nominal 3550 caliber (nominal 9mm) or less; or

"(B) seven (7) or more plates of the test target if the ammunition is of greater than nominal 3550 caliber.

"(f) The detection and investigation of offenses in violation of this section shall be the responsibility of the Attorney General and persons designated by him.

"(g) Any state law or local ordinance purporting to restrict the manufacture, importation, sale or possession of handgun ammunition based upon its penetration capability and which is inconsistent with the provisions of this section shall be null and void."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 929. Prohibited armor-piercing handgun ammunition."

Sec. 3. (a) Chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 930. Criminal use of high-power handgun ammunition

"(a) Whoever, during and in relation to the commission of a Federal crime of violence including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device for which he may be prosecuted in a court of the United States, uses or carries any handgun loaded with high-power handgun ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such crime of violence be sentenced to a term of imprisonment of not less than five nor more than ten years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried.

No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

"(b) For purposes of this section --

"(1) 'high-power handgun ammunition' means handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates one (1) or more plates of the test target; and

"(2) 'crime of violence' means --

"(A) an offense that has as an element the use, or threatened use of physical force against the person or property of another, or

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"930. Criminal use of high-power handgun ammunition."

Sec. 4. The analysis at the beginning of chapter 44 of title 18 is amended by adding at the end thereof the following:

"929. Prohibited armor-piercing handgun ammunition.

"930. Criminal use of high-power handgun ammunition."

Sec. 5. Section 927 of title 18 is amended by striking out the phrase: "No provision of this chapter" where it appears at the beginning thereof and inserting in lieu thereof: "Except as provided in section 929 with respect to the manufacture or importation of handgun ammunition, no provision of this chapter".

Section-by-Section Summary

Section 1. This section provides that this bill may be referred to as the "Peace Officer Protection Act of 1984" reflecting that the sole purpose of the proposal is to protect law enforcement officers who wear soft body armor.

Section 2. This section creates a new section 929 of title 18 setting out the ban on manufacture or importation of armor-piercing handgun ammunition and incorporates by reference the test procedure developed by NIJ and NBS.

The bill provides felony sanctions of imprisonment for up to five years and a fine of up to \$50,000 for the manufacture or importation of handgun ammunition which the manufacturer or importer knows exceeds the penetration limits of the test standard. This is not to say that manufacturers and importers are entitled to operate without bothering to test the ammunition they are making or importing which has penetration characteristics that approach the limits in the bill. On the contrary, the testing of ammunition and the application of established quality control standards are important and persons engaged in the business of manufacturing or importing ammunition must adhere to such procedures as a cost of doing business. It is anticipated that the provisions of NIJ Standard 100-84 and acceptable standards concerning sampling will be published in the Federal Register and made available to manufacturers and importers by the Department of Justice. 1/ A showing that a particular manufacturer or importer had received a copy of the test and sampling standards but had not followed them would constitute strong evidence that the violation was "knowing."

1/ We anticipate that the test and sampling standards will provide in essence that ammunition is not in violation if:

(1) a random sample of the ammunition in question was tested pursuant to the procedures set out in NIJ Report 100-84 and that no more than ten percentum of the rounds tested exceeded the penetration limitations of 18 U.S.C. 929; or

(2) the ammunition, although not from a lot tested for penetration, was

(A) manufactured pursuant to written specifications identical to those governing the manufacture of ammunition which has been tested and found not to exceed the limitations of 18 U.S.C. 929, and

(B) standard velocity tests of such ammunition yielded results averaging not more than ninety feet per second greater than for the lot which was tested for penetration.

On the other hand, quality control in ammunition manufacture is such that an occasional "hot" round will be produced or imported, the velocity, and hence the penetration characteristics of which, will be significantly greater than normal. It is not the intention of the legislation to require any changes in ammunition manufacturing or quality control procedures or to penalize the manufacturer or importer of such a "hot" round under the new section provided the bullet can be shown to have come from a lot tested or sampled according to the standard published by the Department of Justice.

Subsection (b) sets out an exemption from the Act for ammunition produced for intelligence, military, law enforcement or research use.

Subsection (c) sets out a procedure by which handgun ammunition that exceeds the penetration limitations of NIJ Standard 100-84 in the care, custody, or control of manufacturers or importers can be civilly forfeited to the United States. The forfeiture provision would apply whether or not the manufacturer or importer knew the bullets in question exceeded the NIJ Standard. The purpose of section 929 is to protect law enforcement officers and others who wear body armor. From the officers' perspective, an armor-piercing round is just as much of a threat if produced or imported accidentally or without knowledge that it was prohibited as is a round produced or imported in deliberate defiance of the NIJ Standard. Consequently, the forfeiture subsection is designed to prevent armor-piercing bullets from entering the channels of commerce. It should, however, be underscored that the forfeiture provisions, like the rest of the section, only apply to manufacturers and importers, not to individuals or dealers. Nothing in the section makes it illegal for any individual to possess or even sell an armor-piercing round nor could the United States seize such a round from anyone other than a manufacturer or importer. Rather, the criminal penalty and civil forfeiture provisions of the section are both designed to prevent additional armor-piercing handgun ammunition from coming onto the market and becoming readily available to criminals.

As for the forfeiture provision itself, subsection (c) provides that the procedures applicable under the customs laws are equally applicable here with the provision that the Department of Justice may designate persons to fulfill seizure and forfeiture responsibilities instead of customs officers. An important feature of the customs forfeiture provisions which is carried into subsection (c) is the ability of persons (here the manufacturers or importers) whose property has been seized to file a petition for remission or mitigation of the forfeiture. Such petitions are filed with the Attorney General. The decision to grant or reject a petition is based on whether the person whose property has been seized intended to violate the law and on his degree of care in trying to comply. For example, a manufacturer

who made a good faith effort to comply but who had nevertheless produced rounds that exceeded the penetration limits could well have the ammunition returned to him if he could show that it would be segregated from his other stock and sold only to police and military departments.

Subsection (d) authorizes the Attorney General to seek an injunction to prevent the manufacture or importation of prohibited ammunition. This authority could be exercised in circumstances where there is no "knowing" violation of the Act.

Subsection (e) defines the terms "handgun ammunition" and "armor-piercing handgun ammunition". The term "handgun ammunition" is defined as that ammunition manufactured for use in firearms originally designed to be fired by the use of a single hand. Because some ammunition can be fired either from handguns or rifles, the definition provides that the Attorney General shall publish a list of handgun cartridges; this list will include all common handgun calibers (e.g., .25 auto, .32 auto, .38 special, 9 mm .357 and .44 magnum, etc.) so that the list itself will not be of aid to the criminal element by identifying which ammunition is armor-piercing. It will, however, provide notice to manufacturers and importers as to what is "handgun" ammunition as opposed to rifle ammunition. In case of dispute, the Attorney General should refer to the best available statistics on private firearms in this country; if he concludes that there are more handguns than rifles chambered for a particular type of ammunition, that ammunition shall be deemed "handgun" ammunition for purposes of this section. The definition of "armor-piercing handgun ammunition" specifies the number of aluminum plates which correspond to the resistance of the new Type III-A armor standard.

One anomaly with which we have tried to deal is that there are some few high-velocity, small-bore handgun bullets manufactured for use in long-barrel target pistols. These types of bullets will penetrate body armor but are not a significant threat to law enforcement officers as they can only be fired from specialized handguns which are not appealing to criminals as they are normally single-shot weapons with large frames and long barrels which make them difficult to conceal. We propose to treat these small-bore specialty bullets in the same fashion as large-bore bullets so that there is a cap on their penetration capability but that cap is sufficiently high as not to ban these bullets which are popular among target shooters.

Subsection (f) provides for enforcement of this Act by the Department of Justice reflecting the Department's primary role in the development of soft body armor and its resulting responsibility to protect against manufacture or importation of handgun ammunition constituting an unreasonable menace to those who use soft body armor. It is anticipated that no increase in resources will be required for this enforcement role as the Act will be

largely self-policing. Major American manufacturers, for example, have demonstrated a highly responsible approach to this problem and in 1982 voluntarily ceased production of armor-piercing handgun rounds. Occasional "spot checks" of domestic manufacturers and importers will, we believe, be sufficient to achieve compliance with the ban. To the extent that the ban applies to "handloaders", past experience does not give us reason to expect a significant enforcement problem and no effort to "spot check" handloaders is contemplated. Rather, we would expect to investigate individual handloaders only to the extent that information comes to our attention evidencing that a particular individual is producing prohibited ammunition.

Subsection (g) makes clear that this statute would supersede State laws purporting to ban the manufacture, importation, or sale of handgun ammunition based on penetration capability. State laws now in existence are ineffective. Some lack a meaningful definition of what is prohibited and thus may fail to give manufacturers, importers, dealers and users adequate notice as to what is prohibited. Others attempt to ban ammunition based upon the composition of the projectile used in the ammunition, thus reaching only one of the combination of factors affecting penetration.

In short, this area is such a narrow one and the need for uniformity so great that any federal legislation in the area must be applied to the exclusion of inconsistent state or local laws. Because existing state laws on the subject are defective in any event, superseding them with this statute will not have any adverse effect upon law enforcement or the safety of law enforcement officers. It will, however, free legitimate manufacturers and dealers from a host of conflicting and vague state and local regulations. Of course, this provision would not apply to state or local laws designed to regulate firearms or ammunition on some basis other than armor-penetration capability and is not intended to take any position with respect to state or local laws such as that involved in Quilici v. Village of Morton Grove, 695 F.2d 261 (7th Cir. 1982). Moreover, this provision would not prevent states or local governments from passing laws consistent with the federal law, e.g., establishing state or local sanctions for the manufacture, importation, sale or possession of ammunition which is banned by federal law.

Section 3 of the bill would add a new § 930 to title 18 to establish a minimum-mandatory sentence of five years for the use of certain armor-piercing ammunition during the course of a federal crime of violence. While the ban on production and importation in § 929 conforms to the new Type IIIA armor standard now being developed -- the heaviest soft body armor -- we propose that minimum-mandatory sentences be imposed for criminal use of handgun ammunition capable of penetrating Type I armor -- the lightest soft body armor, i.e. ammunition capable of penetrating

one plate when tested pursuant to NIJ Report 100-84. In essence, § 930 would punish the criminal use of high-power handgun ammunition which has legitimate uses but which constitute a serious threat to the safety of law enforcement officers when used during the course of a crime. The proposed § 930 is similar to Part E, Title XIV of the President's Comprehensive Crime Control Act of 1983 except that it draws the line, for purposes of imposition of minimum-mandatory sentences, at the Type I rather than Type IIA level and provides for testing against aluminum plate rather than soft body armor. We believe this new section 930 will serve to deter the use of high-power handgun ammunition during the course of federal crimes of violence.

Section 4 conforms the analysis at the beginning of Chapter 44, title 18, to reflect the two new sections.

Section 5 conforms section 927 of title 18 to reflect the addition of the two new sections.

In conclusion, it should be noted that consideration was given to expanding proposed new section 929 to include a ban on sales or simple possession of armor-piercing handgun ammunition. Such coverage was rejected, however, as dealers and users have no means of assessing the penetration characteristics of ammunition. Moreover, because bullets do not bear individual serial numbers, any attempt to ban the sale or simple possession of armor-piercing bullets would be virtually unenforceable. Finally, because ammunition exceeding the penetration levels of the new standard are in existence and were legal when manufactured or imported, any effort to ban the sale or possession of such ammunition would raise questions as to the rights of owners, under the Due Process Clause, to reimbursement for financial losses that would result from banning the sale or possession of such ammunition which was lawful when manufactured or imported. Again, in view of the fact that we are unaware of any instance in which an armor-clad officer has been attacked with armor-piercing handgun ammunition, we believe that the ban on manufacture and importation, together with the minimum-mandatory sanctions for criminal use during the course of a federal crime of violence, constitute a prudent and effective response to the problem facing us.

SUMMARY OF ALUMINUM PLATE PENETRATION TESTS

Pursuant to NIJ Report 100-84

<u>Caliber</u>	<u># of Bullets Penetrating 0 Plates</u>	<u># of Bullets Penetrating 1 Plate</u>	<u># of Bullets Penetrating 2 Plates</u>	<u># of Bullets Penetrating 3 Plates</u>	<u># of Bullets Penetrating 4 Plates</u>	<u># of Bullets Penetrating 5 Plates</u>	<u># of Bullets Penetrating 6 Plates</u>	<u># of Bullets Penetrating 7 Plates</u>	<u># of Bullets Penetrating 8 or more Plates</u>
-3550	8	6	4	5	0	5*	0	1**	0
+3550	0	20	20	7	7	12	11	0	1***

* 2 of these 5 bullets would be saved by the special treatment of ammunition manufactured primarily for use in single-shot pistols.

** This bullet would be saved by the special treatment of ammunition manufactured primarily for use in single-shot pistols.

*** This is only one of the KTW bullets; the KTW is made in two additional calibers that would likely penetrate more than 8 plates. There are also domestic and imported bullets like the KTW which have comparable penetration capability. Had all of these various specialty rounds been tested, the total number of bullets in this category would likely be 9 or more.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

26 JAN 1984

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Stockman:

Enclosed for review within the Administration is a draft legislative proposal to ban the manufacture or importation of certain armor-piercing handgun bullets capable of penetrating the soft body armor used by many law enforcement officials and certain high-level officials including the President.

Background

In early, 1982, news reports on the ability of certain Teflon-jacketed bullets (the "KTW") to penetrate soft body armor provoked concern in the law enforcement community. The Department of Justice prepared legislation proposing to ban such armor-piercing handgun ammunition but that legislation was defective in its attempt to define such ammunition and was never cleared by OMB.

When then Associate Attorney General Giuliani testified before the House Subcommittee on Crime on this issue in May of 1982, he proposed legislation to establish minimum-mandatory penalties for the use of such ammunition during the course of a federal crime of violence and indicated that the Department would continue to seek to develop a definition of armor-piercing bullets for use in a bill to ban such dangerous ammunition. Because the House Subcommittee on Crime felt that it was not worthwhile to process a bill restricted to mandatory penalties for the criminal use of such ammunition, no further action was taken on this issue in 1982.

In 1983, we included our mandatory penalty proposal in the President's Comprehensive Crime Control Act of 1983. Also in early 1983, the Department funded a research effort by the National Institute of Justice (NIJ) and the National Bureau of Standards (NBS) to develop a proper definition of armor-piercing bullets for a bill to ban such ammunition. The NIJ-NBS interim report was submitted in August and, following further testing, a final report was submitted in December.

In the meantime, public support for legislation to ban armor-piercing bullets has grown. Congressman Mario Biaggi has 181 House sponsors for his bill, H.R. 953, which uses a seriously defective definition of "armor-piercing ammunition." An identical Senate bill introduced by Senator Moynihan, S. 555, has 17 sponsors. Editorials in the New York Times, Washington Post, Los Angeles Herald and other newspapers support such legislation and have criticized the Administration for its failure to support the Biaggi bill. We have received a number of letters from State Attorneys General and police groups urging us to endorse legislation to ban such ammunition.

The Bill

Our technicians believe that the enclosed bill, based on the new NIJ-NBS test procedure, is a workable and precise proposal. The "Speaker" letter describes the bill in some detail. It is felt that major American ammunition manufacturers will not object to this proposal as it is far preferable, from their perspective, to the Biaggi and Moynihan bills.

In this regard, the Biaggi-Moynihan bills, if strictly construed, would ban a number of bullets which have legitimate uses. In fact, those bills would effectively deprive thousands of citizens of the use of their handguns by banning all bullets manufactured for handguns chambered for certain cartridges. Moreover, the Biaggi-Moynihan bills are so imprecise in defining "armor-piercing handgun ammunition" that manufacturers and importers could not be certain whether the ammunition they are producing or importing is lawful or unlawful. Furthermore, the Biaggi-Moynihan bill is unclear as to its effect upon the growing number of State and local armor-piercing bullet laws which pose an increasing problem for ammunition manufacturers.

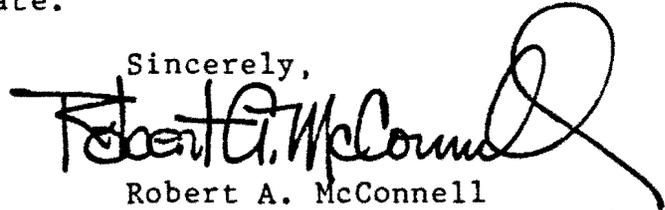
We believe our proposal avoids these various problems and that it will be well received by the law enforcement community and ammunition manufacturers alike.

Need for Prompt Action

In view of the strong support in the Congress for prompt action on armor-piercing bullet legislation, we will appreciate your expeditious review of the enclosed proposal. In an effort to facilitate review of the proposal, I am, by copy of this letter, sending copies of the package to the Department of the Treasury. In addition to Congressional pressure, the Administration is being criticized in the press and by police organizations for our failure to support the Biaggi-Moynihan bills or to offer

an alternative. We believe we have now developed a responsible and prudent alternative to the bills before the Congress and recommend that this proposal be submitted to the Congress at the earliest possible date.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McConnell". The signature is fluid and cursive, with a large loop at the end of the last name.

Robert A. McConnell
Assistant Attorney General

Enclosures

cc: Assistant Secretary John Walker
U.S. Department of the Treasury



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a draft bill, the "Peace Officer Protection Act of 1984", to "amend title 18, United States Code, to establish criminal sanctions for the manufacture, importation or criminal use of certain handgun ammunition."

Background

In 1971, a Justice Department employee working with the Department's technology development program became aware of a new synthetic fiber, marketed under the trade name "Kevlar", originally developed for use as a replacement for steel cords in automobile tires. Recognizing the potential of this fiber, the Department of Justice pioneered the development of a prototype vest made from "Kevlar" and, following extensive laboratory work, conducted field tests of this new type of body armor in fifteen cities. Results exceeded expectations. In addition to offering exceptional ballistics resistance, the new vests were light, flexible and could be worn unobtrusively under normal street clothes and uniforms.

By 1975, dozens of manufacturers had entered the body armor market producing a wide range of soft, lightweight body armor. Because few state or local agencies had the resources to test the quality of such body armor, the National Institute of Justice of the Department of Justice, in concert with the National Bureau of Standards of the Department of Commerce, developed a body armor standard published in December of 1978. This standard established procedures for testing body armor and created five different armor categories: Type I, Type IIA, Type II, Type III and Type IV. These body armor categories protect against increasing threat levels. For example, the Type I armor is the lightest weight providing protection against designated handgun ammunition when fired from a distance of five meters under specified conditions; the Type IV armor is the heaviest providing protection against designated armor-piercing rifle ammunition. Types I, IIA and II are soft body armor. Types III and IV incorporate metallic or ceramic materials and are normally used by special weapons teams in sniper or seige situations.

The focus of this proposed legislation is the soft body armor (Types I, IIA, and II) designed to protect wearers against threats posed by criminals armed with handguns. Surveys have shown that handguns are the weapons of choice for criminals representing more than four of every five firearms seized by police. An estimated 50% of the nation's law enforcement officials use such soft body armor, primarily due to the efforts of the Department of Justice and the International Association of Chiefs of Police, both of which strongly advocate its use. Soft body armor has saved the lives of an estimated 400 police officers during the past eight years. We are, therefore, deeply concerned over the availability of handgun ammunition capable of defeating soft body armor and have devoted substantial efforts in recent months to developing an appropriate and workable legislative remedy to the problem.

Our technicians have known from the beginning that soft body armor, like all other forms of armor, can be pierced by particular types of rounds. As noted above, the standards used for testing different classes of body armor require that the armor be able to stop specific types of bullets posing particular threat levels in order to receive a rating. It is for this reason that body armor is referred to by technicians as "ballistics-resistant" apparel. The fact that body armor is more commonly referred to by the public as "bullet-proof" has created the mistaken impression that body armor can or should be able to stop any bullet. Rather, soft body armor is designed to stop the most common threats that police officers face.

With this background, experts were not at all surprised by a network television news program in early 1982 on the "KTW" bullet and its ability to penetrate multiple thicknesses of soft body armor. Our technicians were, however, deeply disturbed that such information was so widely distributed to the public, in essence creating a shopping list for criminals.

The concern of the experts over the publicity surrounding the "KTW" bullet is two-fold. First, we fear that publicity surrounding the availability of ammunition capable of defeating body armor will encourage assassins and other criminals to search out these particularly dangerous classes of ammunition to use in their endeavors. Although our technicians have known about the "KTW" bullet for many years, this and other forms of armor-piercing ammunition were not felt to constitute a substantial threat because most criminals are not so sophisticated as to realize that the protection afforded by body armor is limited and that there are varieties of ammunition available which will penetrate it. The conclusion that armor-piercing rounds posed only a minimal threat was difficult to fault as we are unaware of any instance in which an armor-clad police officer has been

shot with armor-piercing handgun ammunition. Now, however, the publicity surrounding the "KTW" bullet has, in our view, increased the likelihood of such attacks.

Our second concern over the publicity is that it has, we believe, encouraged a fatalistic attitude among police officers resulting in reduced use of body armor. In this regard, although the new soft body armor is comfortable to wear by comparison with earlier types of armor, it is a constant problem for police administrators to ensure that body armor issued to officers is indeed worn. Too often, officers to whom body armor was issued have been killed or severely wounded because the armor was left in a dressing room locker or the trunk of a squad car. Continuing publicity about the availability of armor-piercing handgun ammunition, together with the absence of any effective statutory safeguards, has caused some police officers to decide that it is useless to wear their armor when ammunition is available on the streets that will defeat the armor. This indirect effect of armor-piercing handgun ammunition could result in more deaths and crippling injuries than the actual use of armor-piercing bullets against officers wearing body armor. In short, we believe it is important to let the law enforcement officers of the nation know that measures are being taken to prevent the criminal use of armor-piercing ammunition. In addition to banning the manufacture or importation of unreasonably dangerous handgun ammunition and providing increased sanctions for the criminal use of ammunition capable of penetrating armor, legislation in this area will, we believe, have the effect of encouraging law enforcement officers to wear body armor issued to them.

Efforts to Develop Workable and Appropriate Legislation

In early 1982, the Department of Justice commenced work on legislation to ban certain armor-piercing ammunition. Our initial efforts produced a draft bill very similar to H.R. 953 and other bills currently pending before the Congress. Careful review of these proposals, however, revealed that they were overbroad in their reach inadvertently banning ammunition with legitimate recreational uses. In fact, early proposals would have inadvertently deprived thousands of citizens of the use of their firearms by banning all ammunition being manufactured for certain handguns. Moreover, our early efforts at a legislative definition of "armor-piercing" bullets were imprecise with the result that they did not give adequate notice to manufacturers and importers as to precisely which bullets are legal and which are prohibited. H.R. 953 and other similar bills now before the Congress suffer from these same grave defects.

With respect to creating criminal sanctions for the criminal use of armor-piercing handgun ammunition, absolute precision is not necessary as law enforcement officials will normally be in possession of both the suspect ammunition and the handgun in which it was loaded thereby facilitating testing to ensure that the

ammunition is armor-piercing when fired from the weapon in possession of the felon. We were able, therefore, to propose legislation in 1982 to establish minimum-mandatory penalties for the use of armor-piercing ammunition during the course of a federal crime of violence. This proposal was included as Title XIV, Part E of the Comprehensive Crime Control Act of 1983 submitted to the Congress by the President on March 16, 1983 and introduced as S. 829 and H.R. 2151.

Because of the lack of a proper definition of "armor-piercing" ammunition, we funded a research project in early 1983, carried out by the Department's National Institute of Justice (NIJ) and the National Bureau of Standards (NBS) to develop a precise definition of "armor-piercing handgun ammunition." After review of preliminary research results in August, further testing was conducted and a final test procedure submitted in December of 1983. Based upon this test procedure, we have developed and are submitting the enclosed draft bill.

The Test Procedure

The test procedure itself is a "complete" one in that it recognizes that the penetration potential of ammunition cannot be precisely evaluated without reference to the system from which it is fired. Barrel length, the type of handgun used (i.e., pistol or revolver), the tolerances to which the weapon is manufactured, and the amount of wear to which the weapon has been subjected affect the velocity at which projectiles emerge from weapons. The test procedure, therefore, provides for firing of test ammunition from test fixtures used by manufacturers to develop ballistics tables and to test velocity of ammunition. Detailed written standards exist for these test fixtures. Furthermore, rather than using layers of "Kevlar" as the test medium, the NIJ test procedure provides for use of a series of aluminum plates to determine penetration. Metal plate is much more uniform than fabric in its composition and penetration resistance and thus yields more precise and predictable results. The use of metal plates rather than fabric as the test medium also reduces costs associated with performing penetration tests.

With respect to the penetration levels established by the proposed bill, these conform to the new armor standard currently being developed by NIJ and NBS which will establish a new Type IIIA soft body armor. To draw the line at a lower level would result in banning popular handgun ammunition with legitimate recreational uses, a result we do not believe is justifiable under the circumstances. In effect, the proposed legislation would not ban any handgun ammunition currently being produced for sale to the public by the three major American ammunition manufacturers: Remington, Olin-Winchester, or Federal. It would,

however, ban the "KTW", ^{1/} some other specialty handgun cartridges manufactured by small American manufacturers, and a number of types of foreign-made handgun ammunition being imported into the United States. Because of our desire to avoid creating a "shopping list" for criminals, we cannot, in this public letter, identify those bullets which would be banned. We will be pleased to brief Members of Congress in detail, however, so that this information can be furnished on a confidential basis. In short, we believe the proposal appropriately and accurately distinguishes between legitimate handgun cartridges and those which pose an unreasonable danger to law enforcement officers. Again, as mentioned, the proposed penetration limit is consistent with the new Type IIIA armor standard now being developed so that police departments which desire to purchase body armor capable of defeating all legal handgun ammunition will be able to do so in the near future.

Section-by-Section Summary

Section 1. This section provides that this bill may be referred to as the "Peace Officer Protection Act of 1984" reflecting that the sole purpose of the proposal is to protect law enforcement officers who wear soft body armor.

Section 2. This section creates a new section 929 of title 18 setting out the ban on manufacture or importation of armor-piercing handgun ammunition and incorporates by reference the test procedure developed by NIJ and NBS.

The bill provides felony sanctions of imprisonment for up to five years and a fine of up to \$50,000 for the manufacture or importation of handgun ammunition which the manufacturer or importer knows exceeds the penetration limits of the test standard. This is not to say that manufacturers and importers are entitled to operate without bothering to test the ammunition they are making or importing and thus avoid the reach of the new section. On the contrary, the testing of ammunition and the application of established quality control standards are important and persons engaged in the business of manufacturing or importing ammunition must adhere to such procedures as a cost of doing business. It is anticipated that the provisions of NIJ Standard 100-84 and acceptable standards concerning sampling will be published in the Federal Register and made available to manu-

^{1/} The "KTW" is produced in a number of different calibers, some of which are of such limited velocity that they do not exceed the new penetration standard.

facturers and importers by the Department of Justice. 2/ A showing that a particular manufacturer or importer had received a copy of the test and sampling standards but had not followed them would constitute strong evidence that the violation was "knowing."

On the other hand, quality control in ammunition manufacture is such that an occasional "hot" round will be produced or imported, the velocity, and hence the penetration characteristics of which, will be significantly greater than normal. It is not the intention of the legislation to require any changes in ammunition manufacturing or quality control procedures or to penalize the manufacturer or importer of such a "hot" round under the new section provided the bullet can be shown to have come from a lot tested or sampled according to the standard published by the Department of Justice.

Subsection (b) sets out an exemption from the Act for ammunition produced for military or law enforcement use.

Subsection (c) sets out a procedure by which handgun ammunition that exceeds the penetration limitations of NIJ Standard 100-84 in the care, custody, or control of manufacturers of importers can be civilly forfeited to the United States. The forfeiture provision would apply whether or not the manufacturer of importer knew the bullets in question exceeded the NIJ Standard. The purpose of section 929 is to protect law enforcement officers and others who wear body armor. From the officers' perspective, an armor-piercing round is just as much of a threat

2/ We anticipate that the test and sampling standards will provide in essence that ammunition is not in violation if:

(1) a random sample of the ammunition in question was tested pursuant to the procedures set out in NIJ Report 100-84 and that no more than ten percentum of the rounds tested exceeded the penetration limitations of 18 U.S.C. 929; or

(2) the ammunition, although not from a lot tested for penetration, was

(A) manufactured pursuant to written specifications identical to those governing the manufacture of ammunition which has been tested and found not to exceed the limitations of 18 U.S.C. 929, and

(B) standard velocity tests of such ammunition yielded results averaging not more than fifty feet per second greater than for the lot which was tested for penetration.

if produced or imported accidentally or without knowledge that it was prohibited as is a round produced or imported in deliberate defiance of the NIJ Standard. Consequently, the forfeiture subsection is designed to prevent armor-piercing bullets from entering the channels of commerce. It should, however, be underscored that the forfeiture provisions, like the rest of the section, only apply to manufacturers and importers, not to individuals or dealers. Nothing in the section makes it illegal for any individual to possess or even sell an armor-piercing round nor could the United States seize such a round from anyone other than a manufacturer or importer. Rather, the criminal penalty and civil forfeiture provisions of the section are both designed to prevent additional armor-piercing handgun ammunition from coming onto the market and becoming readily available to criminals.

As for the forfeiture provision itself, subsection (c) provides that the procedures applicable under the customs laws are equally applicable here with the provision that the Department of Justice may designate persons to fulfill seizure and forfeiture responsibilities instead of customs officers. An important feature of the customs forfeiture provisions which is carried into subsection (c) is the ability of persons (here the manufacturers or importers) whose property has been seized to file a petition for remission or mitigation of the forfeiture. Such petitions are filed with the Attorney General. The decision to grant or reject a petition is based on whether the person whose property has been seized intended to violate the law and on his degree of care in trying to comply. For example, a manufacturer who made a good faith effort to comply but who had nevertheless produced rounds that exceeded the penetration limits could well have the ammunition returned to him if he could show that it would be segregated from his other stock and sold only to police and military departments.

Subsection (d) authorizes the Attorney General to seek an injunction to prevent the manufacture or importation of prohibited ammunition. This authority could be exercised in circumstances where there is no "knowing" violation of the Act.

Subsection (e) defines the terms "handgun ammunition" and "armor-piercing handgun ammunition". The term "handgun ammunition" is defined as that ammunition manufactured for use in firearms originally designed to be fired by the use of a single hand. Because some ammunition can be fired either from handguns or rifles, the definition provides that the Attorney General shall publish a list of handgun cartridges; this list will include all common handgun calibers (e.g., .25 auto, .32 auto, .38 special, 9 mm .357 and .44 magnum, etc.) so that the list itself will not be of aid to the criminal element by identifying which ammunition is armor-piercing. It will, however, provide notice to manufacturers and importers as to what is "handgun" ammunition as opposed to rifle ammunition. In case of dispute, the Attorney

General should refer to the best available statistics on private firearms in this country; if he concludes that there are more handguns than rifles chambered for a particular type of ammunition, that ammunition shall be deemed "handgun" ammunition for purposes of this section. The definition of "armor-piercing handgun ammunition" specifies the number of aluminum plates which equal the resistance of the new Type IIIA armor standard.

Subsection (f) provides for enforcement of this Act by the Department of Justice reflecting the Department's primary role in the development of soft body armor and its resulting responsibility to protect against manufacture or importation of handgun ammunition constituting an unreasonable menace to those who use soft body armor. It is anticipated that no increase in resources will be required for this enforcement role as the Act will be largely self-policing. Major American manufacturers, for example, have demonstrated a highly responsible approach to this problem and in 1982 voluntarily ceased production of armor-piercing handgun rounds. Occasional "spot checks" of domestic manufacturers and importers will, we believe, be sufficient to achieve compliance with the ban. To the extent that the ban applies to "handloaders", past experience does not give us reason to expect a significant enforcement problem and no effort to "spot check" handloaders is contemplated. Rather, we would expect to investigate individual handloaders only to the extent that information comes to our attention evidencing that a particular individual is producing prohibited ammunition.

Subsection (g) makes clear that this statute would supersede State laws purporting to ban the manufacture, importation, or sale of handgun ammunition based on penetration capability. State laws now in existence are ineffective. Some lack a meaningful definition of what is prohibited and thus may fail to give manufacturers, importers, dealers and users adequate notice as to what is prohibited. Others attempt to ban ammunition based upon the composition of the projectile used in the ammunition, thus reaching only one of the combination of factors affecting penetration.

In short, this area is such a narrow one and the need for uniformity so great that we are strongly of the view that any federal legislation in the area must be applied to the exclusion of inconsistent state or local laws. Because we believe existing state laws on the subject are defective in any event, superseding them with this statute will not have any adverse effect upon law enforcement or the safety of law enforcement officers. It will, however, free legitimate manufacturers and dealers from a host of conflicting and vague state and local regulations. Of course, this provision would not apply to state or local laws designed to regulate firearms or ammunition on some basis other than armor-penetration capability and is not intended to take any position

with respect to state or local laws such as that involved in Quilici v. Village of Morton Grove, 695 F.2d 261 (7th Cir. 1982). Moreover, this provision would not prevent states or local governments from passing laws consistent with the federal law, e.g., establishing state or local sanctions for the manufacture, importation, sale or possession of ammunition which is banned by federal law.

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Section 5 conforms section 927 of title 18 to reflect the addition of the two new sections.

In conclusion, it should be noted that consideration was given to expanding proposed new section 929 to include a ban on sales or simple possession of armor-piercing handgun ammunition. Such coverage was rejected, however, as dealers and users have no means of assessing the penetration characteristics of ammunition. Moreover, because bullets do not bear individual serial numbers, any attempt to ban the sale or simple possession of armor-piercing bullets would be virtually unenforceable. Finally, because ammunition exceeding the penetration levels of the new standard are in existence and were legal when manufactured or imported, any effort to ban the sale or possession of such ammunition would raise questions as to the rights of owners, under the Due Process Clause, to reimbursement for financial losses that would result from banning the sale or possession of such

ammunition which was lawful when manufactured or imported. Again, in view of the fact that we are unaware of any instance in which an armor-clad officer has been attacked with armor-piercing handgun ammunition, we believe that the ban on manufacture and importation, together with the minimum-mandatory sanctions for criminal use during the course of a federal crime of violence, constitute a prudent and effective response to the problem facing us.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this proposal from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General

Enclosures

A BILL

To amend title 18, United States Code, to establish criminal sanctions for the manufacture, importation or criminal use of certain handgun ammunition.

Be it enacted by the Senate and House of Representatives of United States of America in Congress assembled, That this Act may be cited as the "Peace Officer Protection Act of 1984."

Sec. 2. (a) Chapter 44 of title 18 of the United States Code is amended by adding a new section 929 as follows:

"§ 929. Prohibited armor-piercing handgun ammunition

"(a) Whoever knowingly manufactures or imports armor-piercing handgun ammunition shall be punished by a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

"(b) The provisions of this section do not apply to the manufacture or importation of armor-piercing handgun ammunition for sale to a Federal, State or local law enforcement agency for use by officers thereof authorized to carry firearms, for sale to a component of the Armed Forces of the United States for use by the members thereof, or for research activities authorized by the Attorney General, provided that the manufacture or importation of the handgun ammunition is pursuant to a written order submitted by such law enforcement agency or component of the Armed Forces.

"(c)(1) Any armor-piercing handgun ammunition in the care, custody, or control of a manufacturer or importer shall be subject to forfeiture to the United States, except in cases where

the handgun ammunition has been manufactured or imported for the purpose specified in subsection (b) of this section.

"(2) The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

"(d) Whenever there is reason to believe that any person is engaged or is about to engage in the manufacture or importation of armor-piercing handgun ammunition, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such manufacture or importation. The court shall proceed as soon as practicable to the hearing and determination of such an action and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action as is warranted to prevent a continuing and substantial danger to the public. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an

indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

"(e)(1) As used in this section and section 930, the term 'handgun ammunition' means ammunition manufactured or imported primarily for use in a pistol, revolver or other firearm originally designed to be fired by the use of a single hand. The Attorney General shall publish a list of the various types of handgun ammunition. If his review indicates that there are in the United States more privately held handguns than long guns chambered for such ammunition, he shall designate such ammunition as 'handgun ammunition' for purposes of this section.

"(2) As used in this section, the term 'armor-piercing handgun ammunition' means that handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates

"(A) five (5) or more plates of the test target if the ammunition is of 3550 caliber (nominal 9mm) or less; or

"(B) seven (7) or more plates of the test target if the ammunition is of greater than 3550 caliber.

"(f) The detection and investigation of offenses in violation of this section shall be the responsibility of the Attorney General and persons designated by him.

"(g) Any state law or local ordinance purporting to restrict the manufacture, importation, sale or possession of handgun ammunition based upon its penetration capability and which is inconsistent with the provisions of this section shall be null and void."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 929. Prohibited armor-piercing handgun ammunition."

Sec. 3. (a) Chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 930. Criminal use of high-power handgun ammunition

"(a) Whoever, during and in relation to the commission of a Federal crime of violence including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device for which he may be prosecuted in a court of the United States, uses or carries any handgun loaded with high-power handgun ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such crime of violence be sentenced to a term of imprisonment of not less than five nor more than ten years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

"(b) For purposes of this section --

"(1) 'high-power handgun ammunition' means handgun ammunition which, when tested in accordance with the procedure specified in NIJ Report 100-84, perforates one (1) or more plates of the test target; and

"(2) 'crime of violence' means --

"(A) an offense that has as an element the use, or threatened use of physical force against the person or property of another, or

"(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

(b) The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end thereof the following:

"930. Criminal use of high-power handgun ammunition."

Sec. 4. The analysis at the beginning of chapter 44 of title 18 is amended by adding at the end thereof the following:

"929. Prohibited armor-piercing handgun ammunition.

"930. Criminal use of high-power handgun ammunition."

Sec. 5. Section 927 of title 18 is amended by striking out the phrase: "No provision of this chapter" where it appears at the beginning thereof and inserting in lieu thereof: "Except as provided in section 929 with respect to the manufacture or importation of handgun ammunition, no provision of this chapter".

Technology Assessment Program

TEST PROCEDURE FOR ARMOR PIERCING HANDGUN AMMUNITION

NIJ REPORT 100-84

PRELIMINARY DRAFT

ABOUT THE TECHNOLOGY ASSESSMENT PROGRAM

The Technology Assessment Program is sponsored by the Office of Development, Testing, and Dissemination of the National Institute of Justice (NIJ), U.S. Department of Justice. The program responds to the mandate of the Justice System Improvement Act of 1979, which created NIJ and directed it to encourage research and development to improve the criminal justice system and to disseminate the results to Federal, State, and local agencies.

The Technology Assessment Program is an applied research effort that determines the technological needs of justice system agencies, sets minimum performance standards for specific devices, tests commercially available equipment against those standards, and disseminates the standards and the test results to criminal justice agencies nationwide and internationally.

The program operates through:

The Technology Assessment Program Advisory Council (TAPAC) consisting of nationally recognized criminal justice practitioners from Federal, State, and local agencies, which assesses technological needs and sets priorities for research programs and items to be evaluated and tested.

The Law Enforcement Standards Laboratory (LESL) at the National Bureau of Standards, which develops voluntary National performance standards for compliance testing to ensure that individual items of equipment are suitable for use by criminal justice agencies. The standards are based upon laboratory testing and evaluation of representative samples of each item of equipment to determine the key attributes, develop test methods, and establish minimum performance requirements for each essential attribute. In addition to the highly technical standards, LESL also produces user guides that explain in nontechnical terms the capabilities of available equipment.

The Technology Assessment Program Information Center (TAPIC) operated by the International Association of Chiefs of Police (IACP), which supervises a national compliance testing program conducted by independent agencies. The standards developed by LESL serve as performance bench marks against which commercial equipment is measured. The facilities, personnel, and testing capabilities of the independent laboratories are evaluated by LESL prior to testing each item of equipment, and LESL helps the Information Center staff review and analyze data. Test results are published in Consumer Product Reports designed to help justice system procurement officials make informed purchasing decisions.

All publications issued by the National Institute of Justice, including those of the Technology Assessment Program, are available from the National Criminal Justice Reference Service (NCJRS), which serves as a central information and reference source for the Nation's criminal justice community. For further information, or to register with NCJRS, write to the National Institute of Justice, National Criminal Justice Reference Service, Washington, DC 20531.

James K. Stewart, Director
National Institute of Justice

Technology Assessment Program

TEST PROCEDURE FOR ARMOR PIERCING HANDGUN AMMUNITION

NIJ Report 100-84

by the

Law Enforcement Standards Laboratory
National Engineering Laboratory
National Bureau of Standards
Washington, DC 20234

December 21, 1983

U.S. Department of Justice
National Institute of Justice
Office of Development, Testing, and Dissemination

National Institute of Justice
James K. Stewart
Director

ACKNOWLEDGMENTS

This report was prepared by the Law Enforcement Standards Laboratory (LESL) of the National Bureau of Standards under the direction of Daniel E. Frank, Protective Equipment Program Manager, and Lawrence K. Eliason, Chief of LESL. This work was sponsored by the National Institute of Justice, Lester D. Shubin, Standards Program Manager.

FOREWORD

The Law Enforcement Standards Laboratory (LESL) of the National Bureau of Standards (NBS) furnishes technical support to the National Institute of Justice (NIJ) program to strengthen law enforcement and criminal justice in the United States. LESL's function is to conduct research that will assist law enforcement and criminal justice agencies in the selection and procurement of quality equipment.

LESL is: (1) Subjecting existing equipment to laboratory testing and evaluation and (2) conducting research leading to the development of several series of documents, including national voluntary equipment standards, user guides, and technical reports.

This document covers research on law enforcement equipment conducted by LESL under the sponsorship of NIJ. Additional documents are being issued under the LESL program in the areas of protective equipment, communications equipment, security systems, weapons, emergency equipment, investigative aids, vehicles, and clothing.

Technical comments and suggestions concerning this document are invited from all interested parties. They may be addressed to the Law Enforcement Standards Laboratory, National Bureau of Standards, Washington, DC 20234.

Lester D. Shubin
Program Manager for Standards
National Institute of Justice

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