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SENATE

{ REPORT
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THE LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2003

MARCH 26, 2003.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 253]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 253) to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed firearms, having considered the same, reports favorably thereon, and recommends that the bill pass.

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I. PURPOSE

The purpose of S. 253, the “Law Enforcement Officers Safety Act of 2003,” is to amend title 18, United States Code, to authorize

qualified off-duty law enforcement officers and qualified retired law enforcement officers carrying photographic identification issued by a governmental agency for which the individual is, or was, employed as a law enforcement officer, notwithstanding State or local laws, to carry a concealed firearm that has been shipped or transported in interstate or foreign commerce. This Act, however, does not seek to supersede Federal law or limit the laws of any State that permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or prohibits or restricts the possession of firearms on any State or local government property, installation, building, base, or park.¹

II. BACKGROUND ON THE LEGISLATION

THE 107TH CONGRESS

During the 107th Congress, the “Law Enforcement Officers Safety Act of 2002,” S. 2480, was introduced on May 8, 2002 by Senate Judiciary Committee Chairman Leahy and Senate Judiciary Committee Ranking Republican Member Hatch. Forty-one Senators—including Senate Judiciary Committee Members Thurmond, McConnell, Edwards, Feinstein, Grassley, Sessions, Brownback, Cantwell, DeWine and Kyl—cosponsored S. 2480 in an effort to make communities safer and to better protect law enforcement officers and their families.

Representative Randy “Duke” Cunningham first introduced similar legislation in the 102nd Congress as the “National Police and Peace Officer Protection Act,” H.R. 4897, which was cosponsored by 15 House members. It was referred to the House Judiciary Committee Subcommittee on Crime and Criminal Justice for consideration, but the Subcommittee took no action on the bill.

Representative Cunningham reintroduced versions of this legislation in the House in the 103rd, 104th, 105th, 106th and 107th Congresses. In the 105th Congress, as the “Community Protection Act,” this legislation was ordered to be reported, as amended, by voice vote by the House Judiciary Committee and placed on the Union Calendar. No further action, however, was taken on the bill in the 105th Congress. In 1999, the House of Representatives adopted similar legislation, by a vote of 372–53, as a floor amendment during its juvenile justice debate before the overall legislation was defeated.

In the 107th Congress, Representative Cunningham reintroduced the “Community Protection Act,” H.R. 218 on January 3, 2001 and it garnered 275 cosponsors. On November 11, 2001, a motion was filed to discharge the Rules Committee from consideration of H. Res. 271, which provided for the consideration of H.R. 218. The discharge petition (No. 107–4) obtained 44 of the required 218 signatures for further action. No further action on H.R. 218 was taken by the House during the 107th Congress.

¹ In his Minority View, Senator Kennedy claims that S. 253 takes the unprecedented tack of permitting certain governmental employees the right to carry weapons in “violation” of state and local laws. He is mistaken in his recollection of precedent. In 1993, Congress passed the “Armored Car Industry Reciprocity Act”, Public Law No. 103–55, which permitted armored car guards who have a license to carry a firearm in one State to continue to carry a firearm in other States while protecting shipments—notwithstanding the laws of the States. If Congress extended these benefits to private security guards, it is difficult to discern why we should not extend them to qualified law enforcement officers who have substantially more training and experience in using firearms.

Chairman Leahy introduced the “Local Law Enforcement Officers Safety Act of 2002” in the Senate at the request of the late National President of the Fraternal Order of Police (FOP), Lieutenant Steve Young of Ohio. Lt. Young and the FOP have long dedicated themselves to this matter, and led the campaign to focus Congress on this measure that will help make our communities safer and protect those who are sworn to guard and serve the American public.

THE 108TH CONGRESS

During the 108th Congress, on January 30, 2003 Senator Campbell, Senate Judiciary Committee Ranking Member Leahy and Senate Judiciary Committee Chairman Hatch introduced the “Law Enforcement Officers Safety Act of 2003”. Forty Senators—including Senate Judiciary Committee Members Grassley, Kyl, DeWine, Sessions, Feinstein, Schumer, Craig, Edwards, Graham and Cornyn—have cosponsored the bill in an effort to make communities safer and to better protect law enforcement officers and their families. The bill, S. 253, was introduced in the same form as reported out of the Senate Judiciary Committee during the 107th Congress.

Again, during the 108th Congress, Representative Cunningham introduced the companion to this bill, H.R. 218, in the House of Representatives with one-hundred fifty eight cosponsors.

III. NEED FOR THE LEGISLATION ²

Law enforcement officers are never “off-duty.” They are dedicated public servants trained to uphold the law and keep the peace. When there is a threat to the peace or to our public safety, law enforcement officers are sworn to answer that call. The Law Enforcement Officers Safety Act of 2003 enables law enforcement officers nationwide to be armed and prepared when they answer that call, no matter where, when, or in what form it comes.

There are approximately 740,000 sworn law enforcement officers currently serving in the United States. Since the first recorded police death in 1792, there have been more than 16,300 law enforcement officers killed in the line of duty. A total of 1,800 law enforcement officers died in the line of duty over the last decade, an average of 180 deaths per year. In 2001 alone, there were 232 police deaths, representing a 49 percent increase from the 156 officers who died in 2000. Roughly 5 percent of officers who die are killed while taking law enforcement action in an off-duty capacity. On av-

² Senator Kennedy offered an amendment to S. 253 to prohibit certain sales of armor piercing ammunition. This Trojan horse amendment did not command the support of the Judiciary Committee. To the contrary, a decided majority of members concluded that such a ban would do little to protect law enforcement officials, and would unnecessarily bog down the overwhelming bipartisan support for S. 253. Indeed, the data cited by Sen. Kennedy—Federal Bureau of Investigation statistics which show that nineteen law enforcement officers have been killed when their body armor was pierced—did not remotely support his proposed amendment. Each of these 19 reprehensible murders was committed with a rifle—a high-powered weapon against which standard body armor offers little protection. Indeed, many of these murders did not even involve armor piercing ammunition. See <http://www.fbi.gov/ucr/killed/2001leoka.pdf>, Table 11. Notably, Senator Kennedy offers not a single example where law enforcement officers were killed with armor piercing ammunition that was fired from a handgun.

erage, more than 62,000 law enforcement officers are assaulted each year, resulting in some 21,000 injuries.³

While a police officer may not remember the name and face of every criminal he or she has locked behind bars, criminals often have long and exacting memories. A law enforcement officer is a target in uniform and out; active or retired; on duty or off.

The Law Enforcement Officers Safety Act of 2003, S. 253, is designed to protect officers and their families from vindictive criminals, and to allow thousands of equipped, trained and certified law enforcement officers, whether on-duty, off-duty or retired, to carry concealed firearms in situations where they can respond immediately to a crime across state and other jurisdictional lines.

As Lt. Steve Young stated in his testimony before the Senate Judiciary Committee:

Among the many tools of a professional law enforcement officer are the badge and the gun. The badge symbolizes the officer's authority and, in worst-case scenarios, the gun enforces that authority. These tools are given to the officer in trust by the public to enforce the peace and fight crime. In asking Congress to pass this bill, we seek a measured extension of that trust. In certain emergency circumstances, an officer's knowledge and training would be rendered virtually useless without a firearm, as would his ability to provide for his own self-defense or that of his family. This bill will provide the means for law enforcement officers to enforce the law, keep the peace and respond to crisis situations by enabling them to put to use that training and answer the call to duty when need arises.

Today, a complex patchwork of Federal, state and local laws govern the carrying of concealed firearms for current and retired law enforcement officers. Many members of the law enforcement community, including the FOP, the National Association of Police Officers (NAPO), Federal Law Enforcement Officers Association (FLEOA), and International Brotherhood of Police Officers (IBPO), believe that national legislation is necessary because of this patchwork of concealed-carry laws. This bill addresses this need by establishing national measures of uniformity and consistency to permit law enforcement officers to respond immediately to a crime when off duty, as well as to protect officers and their families from vindictive criminals.

The Law Enforcement Officers Safety Act of 2003 creates a mechanism by which law enforcement officers may travel interstate with a firearm. Qualified active-duty law enforcement officers will be permitted to travel interstate with a firearm, subject to certain limitations, provided that officers are carrying their official badges and photographic identification.⁴

³ "The Officer Down Memorial Page, Inc." See <http://www.odmp.org/>. See also "Law Enforcement Officers Killed and Assaulted—2001 (Preliminary)." United States Department of Justice, Federal Bureau of Investigations, Uniform Crime Reports.

⁴ Senator Kennedy imagines that this legislation will undermine discipline and control within police departments. This is so, he contends, because S. 253 will strip the ability of police departments to enforce the rules and policies regarding what weapons officers may carry while on-duty. Nothing of the sort is true. S. 253 imposes no restriction on what weapons local police departments can require its officers to carry—or not carry—while on-duty. It is settled law, moreover, that local police departments have the authority to regulate certain legally protected

Generally, an active-duty officer is qualified to carry a concealed firearm under S. 253 if he or she is authorized to engage in or supervise any violation of law, is authorized to carry a firearm, is not subject to any disciplinary action by the agency, and meets any agency standards with respect to qualification with a firearm. In his or her official capacity, though, a law enforcement officer is permitted to carry weapons whenever Federal, state, or local law allows. This bill is not intended to interfere with any law enforcement officer's right to carry a concealed firearm, on private or government property, while on duty or in the course of official business.

Off-duty and retired officers should also be permitted to carry their firearms across State and other jurisdictional lines, at no cost to taxpayers, in order to better serve and protect our communities. The Law Enforcement Officers Safety Act of 2003 would permit qualified law enforcement officers and qualified retired law enforcement officers across the nation to carry concealed firearms in most situations. It also preserves, however, any State law that permits citizens from restricting a concealed firearm on private property and any State law that restricts the possession of a firearm on State or local government property.

In order to qualify for the bill's exemptions to permit a qualified off-duty law enforcement officer to carry a concealed firearm, notwithstanding the law of the state or political subdivision of the state, he or she must have authority to use a firearm by the law enforcement agency where he or she works; not be subject to any disciplinary action; satisfy every standard of the agency to regularly use a firearm; not be prohibited by Federal law from receiving a firearm; and carry a photo identification issued by the agency. The bill preserves any State law that restricts concealed firearms on private property, and preserves any State law that restricts the possession of a firearm on State or local government property or park.

For a retired law enforcement officer to qualify for exemption from state laws prohibiting the carrying of concealed firearms, he or she must have retired in good standing; have been qualified by the agency to carry or use a firearm; have been employed at least fifteen years as a law enforcement officer unless forced to retire due to a service-connected disability; have a non-forfeitable right to retirement plan benefits of the law enforcement agency; meet the same state firearms training and qualifications as an active officer; not be prohibited by Federal law from receiving a firearm; and be carrying a photo identification issued by the agency. This section preserves any State law that permits restrictions of concealed firearms on private property and preserves any State law that restricts the possession of a firearm on State or local government property or park.

activities while officers are on duty. Not surprisingly, police departments can require its officers to wear certain uniforms and bar its officers from carrying certain equipment—even though the officers are free to wear and carry whatever they want on their own time. See *Kelley v. Johnson*, 425 U.S. 238 (1976) (upholding police uniform and grooming standards); *Daniels v. City of Arlington*, 246 F.3d 500 (5th Cir. 2001). The right supplied by S. 253 simply does not bar the authority of local police departments to govern the duty standards of its officers.

IV. HEARINGS

On July 23, 2002 during the 107th Congress, the Senate Judiciary Committee held one hearing on “The Law Enforcement Officers Safety Act of 2002, S. 2480.” Testimony was received from six witnesses, including Senator Max Baucus of Montana and Representative Cunningham. The other witnesses were: Lieutenant Steve Young, National President of the Fraternal Order of Police; Mr. Arthur Gordon, a National Executive Board Member of the Federal Law Enforcement Officers Association; Deputy Chief of Police David Johnson of the Cedar Rapids Police Department in Cedar Rapids, Iowa; and Colonel Lonnie J. Westphal, Chief of the Colorado State Patrol.

V. COMMITTEE CONSIDERATION

THE SENATE JUDICIARY COMMITTEE CONSIDERATION DURING THE
107TH CONGRESS

The Committee on the Judiciary, with a quorum present, met in open session for an executive business meeting on September 19, 2002, to consider S. 2480, the “Law Enforcement Officers Safety Act of 2002.”

The Committee approved by voice vote an amendment introduced by Senator Durbin. The Durbin amendment increased the service requirement for a retired officer to qualify to carry a concealed firearm under the bill from 5 years to 15 years of regular employment for a law enforcement agency. The Durbin amendment also required retired officers to meet the same firearms training qualifications as active law enforcement officers. Finally, the Durbin amendment explicitly provided that an active officer does not qualify under the bill if he or she is prohibited by federal law from receiving a firearm.

Senator Kennedy offered an amendment to bar officers from carrying a concealed firearm into another state unless they were permitted to carry that particular firearm while on active duty. The Committee, on a 9–9 roll call vote, defeated this amendment. The Committee did not complete consideration of S. 2480 on September 19.

On October 8, 2002, the Committee resumed consideration of S. 2480, but no amendments were offered, and the Committee did not complete consideration of the bill.

On November 14, 2002, the Committee adopted, without objection, an amendment by Chairman Leahy and Senator Hatch to clarify that the legislation does not cover any machinegun (as defined in section 5845 of title 26), any firearm silencer (as defined in section 921 of title 18) and any destructive device (as defined in section 921 of title 18). The Committee then ordered the Law Enforcement Officers Safety Act of 2002 to be reported favorably to the full Senate, with Senator Kennedy dissenting, with a recommendation that the bill do pass.

VOTES OF THE COMMITTEE DURING THE 107TH CONGRESS

The Committee approved by voice vote the amendment by Senator Durbin.

The rollcall vote on the amendment by Senator Kennedy barring officers from carrying any concealed firearm unless the officer was authorized and qualified to carry that same firearm was as follows:

Tally: 9 Yes, 9 No, 1 Not Voting

<i>Democrats (10)</i>	<i>Republicans (9)</i>
N Leahy (Vt.)	N Hatch (Utah)
Y Kennedy (Mass.)	N Thurmond (S.C.)
Y Biden (Del.)	N Grassley (Iowa)
Y Kohl (Wis.)	Y Specter (Pa.)
Y Feinstein (Calif.)	N Kyl (Ariz.)
Y Feingold (Wis.)	N DeWine (Ohio)
Y Schumer (N.Y.)	N Sessions (Ala.)
Y Durbin (Ill.)	N Brownback (Kan.)
Y Cantwell (Wash.)	N McConnell (Ky.)
NV Edwards (N.C.)	

The Committee approved without objection the amendment by Chairman Leahy and Senator Hatch regarding the types of firearms covered by the legislation.

The Committee then ordered the Law Enforcement Officers Safety Act of 2002, as amended, to be reported favorably to the full Senate, with Senator Kennedy dissenting, with a recommendation that the bill do pass. The full Senate took no action on S. 2480 during the 107th Congress.

THE SENATE JUDICIARY COMMITTEE CONSIDERATION DURING THE 108TH CONGRESS

The Committee on the Judiciary, with a quorum present, met in open for an executive business meeting on March 6, 2003, to consider S. 253, the "Law Enforcement Officers Safety Act of 2003."

Senator Kennedy offered an amendment to clarify that the bill does not interfere with the ability of State or local law enforcement agencies from regulating the conditions under which their officers may carry firearms.

The Committee, on a 16–3 rollcall vote, tabled this amendment. The vote to table this amendment was as follows:

Tally: 16 Yes, 3 No

<i>Republicans (10)</i>	<i>Democrats (9)</i>
Y Hatch (Utah)	Y Leahy (Vt.)
Y Grassley (Iowa)	N Kennedy (Mass.)
Y Specter (Pa.)	Y Biden (Del.)
Y Kyl (Ariz.)	Y Kohl (Wis.)
Y DeWine (Ohio)	Y Feinstein (Calif.)
Y Sessions (Ala.)	N Feingold (Wis.)
Y Graham (S.C.)	Y Schumer (N.Y.)
Y Craig (ID)	N Durbin (Ill.)
Y Chambliss (Ga.)	Y Edwards (N.C.)
Y Cornyn (Tex.)	

Senator Kennedy offered an amendment to expand the definition of armor piercing ammunition and to require the Attorney General to promulgate standards for the uniform testing of projectiles against body armor.

The Committee, on a 10–6–3 rollcall vote, tabled this amendment. The vote to table this amendment was as follows:

Tally: 10 Yes, 6 No, 3 not voting

<i>Republicans (10)</i>	<i>Democrats (9)</i>
Y Hatch (Utah)	Y Leahy (Vt.)
Y Grassley (Iowa)	N Kennedy (Mass.)
Y Specter (Pa.)	NV Biden (Del.)
Y Kyl (Ariz.)	N Kohl (Wis.)
NV DeWine (Ohio)	NV Feinstein (Calif.)
Y Sessions (Ala.)	N Feingold (Wis.)
Y Graham (S.C.)	N Schumer (N.Y.)
Y Craig (ID)	N Durbin (Ill.)
Y Chambliss (Ga.)	N Edwards (N.C.)
Y Cornyn (Tex.)	

Senator Kennedy offered an amendment to permit individual States to opt out from the provisions of the Act.

The Committee, on a 15–4 rollcall vote, tabled this amendment. The vote to table this amendment was as follows:

Tally: 15 Yes, 4 No

<i>Republicans (10)</i>	<i>Democrats (9)</i>
Y Hatch (Utah)	Y Leahy (Vt.)
Y Grassley (Iowa)	N Kennedy (Mass.)
Y Specter (Pa.)	Y Biden (Del.)
Y Kyl (Ariz.)	N Kohl (Wis.)
Y DeWine (Ohio)	Y Feinstein (Calif.)
Y Sessions (Ala.)	N Feingold (Wis.)
Y Graham (S.C.)	Y Schumer (N.Y.)
Y Craig (ID)	N Durbin (Ill.)
Y Chambliss (Ga.)	Y Edwards (N.C.)
Y Cornyn (Tex.)	

Senator Kennedy offered an amendment to clarify that the bill does not supersede State or local laws that prohibit or restrict the possession of concealed firearms in various public places.

The Committee, on a 14–4 rollcall vote, tabled this amendment. The vote to table this amendment was as follows:

Tally: 14 Yes, 4 No, 1 not voting

<i>Republicans (10)</i>	<i>Democrats (9)</i>
Y Hatch (Utah)	Y Leahy (Vt.)
Y Grassley (Iowa)	N Kennedy (Mass.)
Y Specter (Pa.)	Y Biden (Del.)
Y Kyl (Ariz.)	N Kohl (Wis.)
NV DeWine (Ohio)	Y Feinstein (Calif.)
Y Sessions (Ala.)	N Feingold (Wis.)
Y Graham (S.C.)	Y Schumer (N.Y.)
Y Craig (ID)	N Durbin (Ill.)
Y Chambliss (Ga.)	Y Edwards (N.C.)
Y Cornyn (Tex.)	

The Committee then ordered S. 253, the Law Enforcement Officers Safety Act of 2003, to be reported favorably to the full Senate with a recommendation that the bill do pass on a vote of 18–1, Sen-

ator Kennedy dissenting. The Committee vote on S. 253 was as follows:

<i>Republicans (10)</i>	<i>Democrats (9)</i>
Y Hatch (Utah)	Y Leahy (Vt.)
Y Grassley (Iowa)	N Kennedy (Mass.)
Y Specter (Pa.)	Y Biden (Del.)
Y Kyl (Ariz.)	Y Kohl (Wis.)
Y DeWine (Ohio)	Y Feinstein (Calif.)
Y Sessions (Ala.)	Y Feingold (Wis.)
Y Graham (S.C.)	Y Schumer (N.Y.)
Y Craig (ID)	Y Durbin (Ill.)
Y Chambliss (Ga.)	Y Edwards (N.C.)
Y Cornyn (Tex.)	

VI. SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

Section 1 provides that the short title of the bill shall be the Law Enforcement Officers Safety Act of 2003.

Section 2. Exemption of qualified law enforcement officers from state laws prohibiting the carrying of concealed firearms

Section 2 would permit qualified law enforcement officers to carry a concealed firearm notwithstanding the law of the state or political subdivision of the state. A qualified law enforcement officer under this section must be authorized to use a firearm by the law enforcement agency where he or she works, not be subject to any disciplinary action, meet the standards of the agency to regularly use a firearm, not be prohibited by Federal law from receiving a firearm, and be carrying a photo identification issued by the agency. This section preserves any State law that restricts concealed firearms on private property and preserves any State law that restricts the possession of a firearm on State or local government property or park. This section does not supercede any other Federal law.

Section 3. Exemption of qualified retired law enforcement officers from state laws prohibiting the carrying of concealed firearms

Section 3 would permit a qualified retired law enforcement officer to carry a concealed firearm notwithstanding the law of the State or political subdivision of the State. A qualified retired law enforcement officer under this section must have retired in good standing, have been qualified by the agency to carry or use a firearm, have been employed at least fifteen years as a law enforcement officer unless forced to retire due to a service-connected disability, have a non-forfeitable right to retirement plan benefits of the law enforcement agency, annually meet State firearms training and qualifications that are the same as active law enforcement officers, not be prohibited by Federal law from receiving a firearm, and be carrying a photo identification issued by the agency. This section preserves any state law that permits restrictions of concealed firearms on private property and preserves any state law that restricts the possession of a firearm on State or local government property or park. This section does not supercede any other Federal law.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The cost estimate from the Congressional Budget Office estimates that implementing the bill would result in no costs to the federal government, would not affect direct spending or receipts, and would result in no direct costs to state and local governments.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 12, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 253, the Law Enforcement Officers Safety Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 253—*Law Enforcement Officers Safety Act of 2003*

S. 253 would exempt certain current and retired law enforcement officers from most state and local laws prohibiting the carrying of concealed handguns. CBO estimates that implementing the bill would result in no costs to the federal government. Enacting S. 253 would not affect direct spending or receipts.

S. 253 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state and local laws that prohibit carrying concealed weapons. CBO estimates that complying with the mandate would result in no direct costs to state and local governments, and thus would not exceed the threshold established by UMRA (\$59 million in 2003, adjusted annually for inflation). S. 253 contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), and Greg Waring (for the impact on state and local governments). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 253 will not have significant regulatory impact.

IX. ADDITIONAL VIEWS OF SENATOR KOHL

While I supported S. 253 in the Judiciary Committee, I did so with one major reservation.

Wisconsin has a 130 year old prohibition against carrying concealed weapons. Efforts to overturn the ban in the state legislature and the state courts have been denied time and time again. Indeed, the Wisconsin legislature addressed the issue as recently as March 2002.

Wisconsin is one of only a handful of states that do not permit concealed weapons to be carried. An overwhelming majority of Wisconsinites—68 percent—oppose a concealed carry law for private citizens. Among law enforcement officers, 48 percent oppose permitting citizens to carry concealed weapons and only 45 percent support it. Additionally, the Wisconsin Chiefs of Police Association has consistently opposed legislation that would lift the ban.

I expect that Wisconsin will have the opportunity to continue this prohibition on concealed carry laws if the state legislature chooses. We certainly trust our law enforcement professionals, but I would prefer that Wisconsin decide for itself the policy on this important issue. For this reason, I support S. 253, the Law Enforcement Officers Safety Act of 2003 with the expectation that either before it passes the full Senate or in conference with the House version of the bill, a state opt-in or state opt-out provision will be included. I prefer a requirement for states to decide whether or not they will opt-in, however under no circumstances should a bill be signed into law that does not take into consideration a state's choice to prohibit the carrying of concealed weapons within that state.

HERB KOHL.

X. MINORITY VIEWS OF SENATOR KENNEDY

I oppose S. 253, the “Law Enforcement Officers Safety Act.” If we had voted on the title of this bill alone, I would have supported it. Day in and day out, law enforcement officers put their lives on the line so that we can all live more securely. We should do everything we can to protect their safety.

This legislation, however, is a serious step in the wrong direction. It will undermine the safety of our communities and the safety of police officers by broadly overriding state and local gun-safety laws. It will also nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Because of the substantial danger that S. 253 poses to police officers and communities, it is vigorously opposed by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Conference of Mayors.

A. S. 253’s Sweeping Override of State and Local Gun Safety Laws is Unprecedented and Unwarranted

There is no precedent for what the supporters of S. 253 intend to accomplish. Congress has never passed a law giving current and former state and local employees the right to carry weapons in violation of controlling state and local laws. Congress has never passed a law interfering with the ability of state and local police chiefs to regulate their own officers’ carrying of firearms.

Every year, thousands of our fellow citizens are killed by guns. The rate of firearm deaths among children is nearly twelve times higher in the United States than in other industrial countries. These deaths are senseless, and we all know that the vast majority of them could be prevented by sensible gun laws. It is shameful that we are not doing more in Congress to achieve gun safety and reduce gun violence. The “gun show loophole,” which allows firearms to be purchased illegally at gun shows, should have been closed long ago, and there are many other steps that Congress should take to protect our citizens from the scourge of gun violence.

At the very least, Congress should refrain from interfering with gun-safety laws enacted by states and local governments. Today, each state has the authority to decide what kind of concealed-carry law, if any, best fits the needs of its communities. Each state can make its own judgment about whether private citizens should be allowed to carry concealed weapons, and whether on-duty, off-duty, or retired police officers should be included or exempted in any prohibition.

There is no evidence that states or local governments have failed to consider the interests and needs of law enforcement officers. Consider, for example, New Jersey law. In 1995, retired police chief John Deventer was shot and killed while heroically trying to stop a robbery. This incident prompted New Jersey to enact a law allow-

ing retired officers to carry handguns under a number of conditions. In drafting this law, the New Jersey legislature made a deliberate effort to balance the safety of police officers with the safety of the public at large, by including a number of important safeguards that are not contained in S. 253. For example:

- New Jersey's law is limited to handguns. S. 253 is not.
- New Jersey's law has a maximum age—70. S. 253 does not.
- Under New Jersey's law, retired police officers must file renewal applications yearly. There is no application process under S. 253.
- New Jersey's law requires retirees to list all their guns. No such record is required under S. 253.
- New Jersey gives police departments discretion to deny permits to retirees. No such discretion is provided under S. 253.

By enacting S. 253, Congress will be gutting all of the safeguards contained in the New Jersey statute—as well as the judgment of other states that have considered this issue.

The sponsors of S. 253 have presented no evidence that states and local governments are unable or unwilling to decide these important issues for themselves. They have offered no explanation why Congress is better suited than states, cities, and towns to decide how to best protect police officers, schoolchildren, church-goers, and other members of their communities. Congress should bolster, not undermine, the efforts of states and local governments to protect their citizens from gun violence.

In the House of Representatives, Chairman James Sensenbrenner has described this bill as “an affront to state sovereignty and the Constitution.” In the Senate Judiciary Committee, on March 6, I offered an amendment to give states the opportunity to opt out of the bill's broad federal mandate. It would have allowed state legislatures to decide for themselves whether they would provide special privileges for current and former law enforcement officers, or whether they will address this issue on their own terms and keep their existing gun-safety laws intact. The Committee voted to table this amendment, 15–4.

I also offered an amendment to preserve state and local laws that prohibit concealed weapons in churches, schools, bars and other places where alcohol is served, sports arenas, government offices, and hospitals. In many states, cities, and towns, these places are singled out as deserving special protection from the threat of gun violence. Michigan has a law that prohibits concealed firearms in schools, sports arenas, bars, churches, and hospitals. Georgia law allows active and retired police officers to carry firearms in publicly owned buildings, but not in churches, sports arenas, or places where alcohol is sold. Kentucky prohibits carrying concealed firearms in bars and schools. South Carolina prohibits concealed firearms in churches and hospitals.

S. 253 will override most such “safe harbor” laws at the state level. It will override laws that categorically prohibit guns in churches and other houses of worship, since only laws that permit private entities to post signs prohibiting concealed firearms on their property will remain in force. In most states, churches are not currently required to post signs in order to have a gun-free zone. S. 253 will also override laws that prohibit concealed weapons in

places where alcohol is served. Surely, it is reasonable for a state to prohibit people from bringing guns into bars, to prevent the extreme danger that results when liquor and firearms are together!

At the local level, S. 253 inexplicably overrides all gun-safety laws, without exception. In the 1990's, Boston, New York, and other cities made great strides in the fight against crime precisely because they were able to pass laws that addressed the factors that lead to violence—including the prevalence of firearms in inner cities. As Congressman Henry Hyde has said, "the best decisions on fighting crime are made at the local level." By overriding all local gun-safety laws, S. 253 will undermine the ability of cities to fight crime. The bill will indiscriminately abrogate "safe harbor" laws in Boston, New York City, Cincinnati, Columbus, Chicago, Kansas City, and many other cities and towns.

Congress has no business overriding the judgment of states and local governments in deciding where concealed weapons should be prohibited. My amendment sought to preserve at least a few basic "safe harbors" from the threat of gun violence. The Committee voted to table this amendment, 14-4.

B. S. 253 Will Undermine the Safety of Our Communities and the Safety of Police Officers

The Committee majority argues that S. 253 is needed because the "complex patchwork of Federal, state and local" concealed-carry laws prevents officers from protecting themselves and their families from "vindictive" criminals. Supporters of this bill have distributed two lists of officers and prison guards who were killed while off-duty or in retirement. The stories of these slain men and women are tragic, and their killers deserve to be severely punished. But none of these incidents involved officers who were killed outside their home state. They do not demonstrate a need for a federal override of state and local gun-safety laws. To the contrary, as New Jersey's response to the tragic shooting of Chief Deventer shows, states and local governments are best equipped to implement policies, regulations, and laws that protect the safety of their own law enforcement officers, and also protect the public at large.

The supporters of S. 253 also argue that by authorizing officers to carry guns across state lines, in violation of whatever state and local gun-safety laws would otherwise apply, they will be able to effectively respond to crimes and terrorist attacks. As the majority argues, the bill will enable "law enforcement officers nationwide to be armed and prepared when they answer that call, no matter where, when, or in what form it comes." The Committee apparently envisages a nation-wide unregulated police force, consisting of retired officers and off-duty officers who are armed while on vacation or traveling outside their home jurisdictions.

This bill is no way for the federal government to support state and local law enforcement. Congress should be providing full funding for first responders employed by state and local governments; communications gear and other law enforcement technology; and specific assistance programs such as the COPS Universal Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program. Congress should also enact needed gun-safety measures to protect the safety and security of all Ameri-

cans. We should strengthen Brady Law criminal background checks for gun purchases, close the “gun show loophole,” reauthorize the assault weapons ban, and amend federal law to ensure that all “cop killer” bullets are banned.

On this last issue, at the Judiciary Committee’s meeting on March 6, I offered an amendment to close the loopholes in the federal ban on armor-piercing ammunition. Current law lacks a “performance based” standard for handgun ammunition that can penetrate body armor. Even more important, there are no restrictions on armor-piercing ammunition used in centerfire rifles. According to the Federal Bureau of Investigation, nineteen law enforcement officers were murdered in the last decade after bullets penetrated their armored vests. Fourteen of these officers were killed by bullets fired from .223 caliber rifles or 7.62 caliber assault weapons—and armor-piercing bullets for these weapons continue to be marketed on web sites today. Because it has no place in our society, I offered an amendment banning all such armor-piercing ammunition. The Committee defeated my amendment by a vote of 10–6, with three members not voting.

S. 253 stands in stark contrast to such needed gun-safety legislation. Allowing off-duty or retired officers with concealed weapons to go into other jurisdictions will only make conditions more dangerous for police officers and civilians. As the Executive Director of the IACP explained in a letter dated February 12, 2003:

One of the reasons that this legislation is especially troubling to our nation’s law enforcement executives is that it could in fact threaten the safety of police officers by creating tragic situations where officers from other jurisdictions are wounded or killed by the local officers. Police departments throughout the nation train their officers to respond as a team to dangerous situations. This teamwork requires months of training to develop and provides the officers with an understanding of how their coworkers will respond when faced with different situations. Injecting an armed, unknown officer, who has received different training and is operating under different assumptions, can turn an already dangerous situation deadly.

S. 253 neither promotes consistent training policies among different police jurisdictions nor limits the conditions under which officers may use their firearms. The idea that more crimes will be prevented when more concealed weapons are carried by untrained and unregulated out-of-state, off-duty, and retired officers is pure fiction.

It is important to note that in giving off-duty and retired police officers broad authority to nullify state and local gun-safety laws, S. 253 is not limited to the carrying of officers’ authorized weapons. In most police departments, officers may seek authorization to carry a range of weapons. If an officer wants to carry a weapon other than his service weapon (typically, a nine-millimeter semi-automatic pistol), he must prove that he is qualified before the department will authorize him to carry it. To become qualified, the officer must demonstrate that he can handle that weapon safely.

Rather than limiting its provisions to authorized weapons, the initial version of this bill provided that as long as an officer received authorization to carry a particular kind of firearm (such as his service weapon), he could carry concealed any other kind of firearm while off-duty or retired—even if he never received authorization from his own police department to carry that other weapon. Because the term “firearm” is defined very broadly under federal law, see 18 U.S.C. § 921(a)(3), as long as an officer was authorized to use his service weapon on the job, the initial version of this bill would have allowed him to carry a concealed bomb or grenade while off-duty or in retirement.

In the 107th Congress, I introduced an amendment providing that an off-duty or retired officer could carry a concealed firearm only if he had been authorized to carry that firearm by the agency he works for, or if he had been so authorized at the time of his retirement. The Committee rejected this amendment by a 9–9 vote. The Committee later adopted an amendment providing that the bill does not authorize the carrying of machine guns, silencers, and destructive devices such as bombs and grenades. This subsequent amendment took a step in the direction of common sense. Clearly, no civilian—not even an off-duty or retired police officer—needs to carry a machine gun, bomb, or grenade. It is equally clear, however, that off-duty and retired officers do not need to carry concealed shotguns, sniper rifles, or other weapons that their own police departments have not authorized them to carry. The Committee’s failure to limit the bill to authorized police weapons—or even to handguns, as New Jersey law provides—will further undermine the safety of American communities.

Serious safety problems are also raised by the bill’s override of gun-safety laws for retired officers, a category that is defined to include anyone who has served in a law enforcement capacity for fifteen years “in the aggregate” before retiring or resigning and taking a different job. There is no requirement under S. 253 that a retiree demonstrate a special need for a firearm. While S. 253 provides that an officer must have technically left law enforcement in “good standing,” it is well known that sub-par government employees are routinely released from their positions without a formal finding of misconduct. The bill does not draw a distinction between officers who served ably and those who did not. Officers who retire in “good standing” while under investigation for domestic violence, racial profiling, excessive force, or substance abuse could still qualify for broad concealed-carry authority for the remainder of their lives. As the International Association of Chiefs of Police has observed:

This legislation fails to take into account those officers who have retired under threat of disciplinary action or dismissal for emotional problems that did not rise to the level of “mental instability.” Officers who retire or quit just prior to a disciplinary or competency hearing may still be eligible for benefits and appear to have left the agency in good standing. Even a police officer who retires with exceptional skills today may be stricken with an illness or other problem that makes him or her unfit to carry a concealed weapon, but they will not be overseen by a police manage-

ment structure that identifies such problems in current officers.

Although Senator Durbin's amendment, approved by the Committee in the 107th Congress and incorporated into the current bill, clarified the firearms training standards that retired officers must meet, these officers will not be subject to any continuing police department policies or guidelines. Section C, below, discusses the fact that S. 253 is likely to nullify the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Even if courts interpret this legislation as not overriding police rules for active-duty officers, however, such rules will still not apply to retired officers. In that event, Congress will be perversely extending to former police officers greater authority to carry concealed weapons than it extends to active police officers. Community safety will be the casualty.

C. S. 253 Will Undermine Discipline and Control within Police Departments

Perhaps the most troubling aspect of S. 253 is its potential to undermine the effective and safe functioning of police departments throughout the nation. The bill removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on-duty or off-duty.

Section 2 of the bill provides that regardless of "any other provision of the law of any State or any political subdivision thereof," any individual who qualifies as a law enforcement officer and who carries photo identification will be authorized to carry any firearm. In a variety of contexts, including the federal preemption of state law, courts have interpreted the term "law" to include agency rules and regulations. The Supreme Court has ruled that this term specifically includes contractual obligations between employers and employees, such as work rules, policies, and practices promulgated by state and local police departments. See *Norfolk & Western Ry. Co. v. Am. Train Dispatchers' Assoc.*, 499 U.S. 117 (1991).

As discussed in Section B, above, there is no requirement in S. 253 that active-duty officers be authorized to carry each firearm that they wish to carry concealed. All that subsection (c)(2) requires is that an officer be authorized to carry "a firearm." Pursuant to subsection (c)(4), the officer need only satisfy the agency's standards with respect to "a firearm." In other words, once an officer qualifies to carry a service weapon, he will have the right under this bill to carry any gun, on-duty or off-duty—even if doing so violates his own police department's rules.

Thus, if Congress enacts this legislation, police chiefs will be stripped of their authority to tell their own officers, for example, that they cannot bring guns into bars while off-duty; that they cannot carry their service weapons on vacation; or that they cannot carry certain shotguns, rifles, or handguns on the job.

As the International Association of Chiefs of Police stated in a letter to the Committee, "under the provisions of S. 253, police chiefs and local governments would lose the authority to regulate

what type of firearms the officers they employ can carry even while they are on duty.”

As a result, the legislation would effectively eliminate the ability of a police department to establish rules restricting the ability of officers to carry only department-authorized firearms while on duty. The prospect of officers carrying unauthorized firearms while on duty is very troubling to the IACP for several reasons.

First, an unauthorized weapon is unlikely to meet departmental standards. This in turn means that the officer will not have received approved departmental training in its use, and will not have qualified with the weapon under departmental regulations. Carrying an unauthorized weapon thus presents a risk of injury to the officer, fellow officers, and citizens, for the weapon itself may be unsafe or otherwise unsuitable for police use, and the officer may not be sufficiently proficient with its use to avoid adverse consequences.

In addition to the risk of injury involved, the carrying of unauthorized weapons is a major source of police civil liability in the U.S. today. An officer who fires an unauthorized weapon in the line of duty risks civil liability for the officer and for the department, even though the shooting may have been otherwise legally justified. A number of civil-suit plaintiffs have contended that the mere fact that the weapon that caused the plaintiff's injury was unauthorized is, in itself, sufficient legal grounds for a finding of liability.

For these and other reasons, the IACP concluded that S. 253 “has the potential to significantly and negatively impact the safety of our communities and our officers.”

Law enforcement executives face extremely difficult challenges today. As crime rates have started to rise again and new concerns about domestic security have emerged, police chiefs are forced to do more with less. The weak economy has forced cities and states to cut back on funding for law enforcement. The Administration's budget proposes to eliminate all federal funding for such critical programs as the COPS Universal Hiring Program, the Byrne Grant program, and the Local Law Enforcement Block Grant program.

The last thing Congress should do now is pass a bill that expands the civil liability of police departments and nullifies the ability of police chiefs to regulate their own officers' use of firearms and to maintain discipline. At the Committee's meeting on March 6, I offered an amendment providing that S. 253 would not supersede or limit the rules, regulations, policies, and practices of any state or local law enforcement agency. The Committee defeated this amendment by a vote of 16–3. By denying police chiefs the right to run their own departments, the Committee dealt a blow to common sense and public safety.

D. Conclusion

Each state and local government should be allowed to make its own judgment as to when citizens and out-of-state visitors may

carry concealed weapons—and whether active or retired law enforcement officers should be included in or exempted from any prohibition. In the words of the International Association of Chiefs of Police, it is “essential that state and local governments maintain the ability to legislate concealed carry laws that best fit the needs of their communities.”

S. 253 will unnecessarily damage the efforts of states and local governments to protect their citizens from gun violence. It will also expose state and local governments to unnecessary liability and nullify the ability of police chiefs to maintain discipline and control within their own departments. I regret that the Committee did not adopt the amendments that I offered to correct the bill’s most serious flaws. The nation will be better served if Congress puts this misguided legislation aside, and turns its attention to measures that we know will reduce crime and enhance the safety of police officers and all Americans.

EDWARD M. KENNEDY.

XI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 253, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman);

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

Part	Section
I. CRIMES	1
* * * * *	*

PART I—CRIMES

Chapter	Section
1. General provisions	1
* * * * *	*
44. Firearms	921
* * * * *	*

CHAPTER 44—FIREARMS

Sec.
921. Definitions.
* * * * *
926. Rules and regulations.
926A. Interstate transportation of firearms.
926B. <i>Carrying of concealed firearms by qualified law enforcement officers.</i>
926C. <i>Carrying of concealed firearms by qualified retired law enforcement officers.</i>
* * * * *

§ 926A. Interstate transportation of firearms

Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is di-

rectly accessible from the passenger compartment of such transporting vehicle: *Provided*, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console.

§926B. Carrying of concealed firearms by qualified law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term “qualified law enforcement officer” means an employee of a governmental agency who—

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for any violation of law, and has statutory powers of arrest;

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm; and

(5) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the government agency for which the individual is, or was, employed as a law enforcement officer.

(e) **DEFINED TERM.**—As used in this section, the term “firearm” does not include—

(1) any machinegun (as defined in section 5845 of title 26);

(2) any firearm silencer (as defined in section 921); and

(3) any destructive device (as defined in section 921).

§926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) *prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.*

(c) *As used in this section, the term “qualified retired law enforcement officer” means an individual who—*

(1) *retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;*

(2) *before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;*

(3)(A) *before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or*

(B) *retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;*

(4) *has a nonforfeitable right to benefits under the retirement plan of the agency;*

(5) *during the most recent 12-month period, has met, at the expense of the individual, the State’s standards for training and qualification for active law enforcement officers to carry firearms; and*

(6) *is not prohibited by Federal law from receiving a firearm.*

(d) *The identification required by this subsection is photographic identification issued by the agency for which the individual was employed as a law enforcement officer.*

(e) *DEFINED TERM.—As used in this section, the term “firearm” does not include—*

(1) *any machinegun (as defined in section 5845 of title 26);*

(2) *any firearm silencer (as defined in section 921); and*

(3) *a destructive device (as defined in section 921).*

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