

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To affirm that the United States may not engage in torture or cruel, inhuman, or degrading treatment or punishment.

**IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.**

**S. 2400**

To authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DURBIN

Viz:

1 At the end of subtitle F of title X, insert the fol-  
2 lowing:

3 **SEC. 1055. HUMANE TREATMENT OF DETAINEES.**

4 (a) FINDINGS.—Congress makes the following find-  
5 ings:

6 (1) After World War II, the United States and  
7 its allies created a new international legal order

1 based on respect for human rights. One of its funda-  
2 mental tenets was a universal prohibition on torture  
3 and ill treatment.

4 (2) On June 26, 2003, the International Day in  
5 Support of Victims of Torture, President George W.  
6 Bush stated, “The United States is committed to  
7 the world-wide elimination of torture and we are  
8 leading this fight by example. I call on all govern-  
9 ments to join with the United States and the com-  
10 munity of law-abiding nations in prohibiting, inves-  
11 tigating, and prosecuting all acts of torture and in  
12 undertaking to prevent other cruel and unusual pun-  
13 ishment.”.

14 (3) The United States is a party to the Geneva  
15 Conventions, which prohibit torture, cruel treatment,  
16 or outrages upon personal dignity, in particular,  
17 humiliating and degrading treatment, during armed  
18 conflict.

19 (4) The United States is a party to 2 treaties  
20 that prohibit torture and cruel, inhuman, or degrad-  
21 ing treatment or punishment, as follows:

22 (A) The International Covenant on Civil  
23 and Political Rights, done at New York Decem-  
24 ber 16, 1966.

1           (B) The Convention against Torture and  
2           Other Cruel, Inhuman or Degrading Treatment  
3           or Punishment, done at New York December  
4           10, 1984.

5           (5) The United States filed reservations to the  
6           treaties described in subparagraphs (A) and (B) of  
7           paragraph (4) stating that the United States con-  
8           siders itself bound to prevent “cruel, inhuman or de-  
9           grading treatment or punishment” to the extent that  
10          phrase means the cruel, unusual, and inhumane  
11          treatment or punishment prohibited by the 5th  
12          amendment, 8th amendment, or 14th amendment to  
13          the Constitution.

14          (6) Army Regulation 190-8 entitled “Enemy  
15          Prisoners of War, Retained Personnel, Civilian In-  
16          ternees and Other Detainees” provides that “Inhu-  
17          mane treatment is a serious and punishable violation  
18          under international law and the Uniform Code of  
19          Military Justice (UCMJ)... All prisoners will re-  
20          ceive humane treatment without regard to race, na-  
21          tionality, religion, political opinion, sex, or other cri-  
22          teria. The following acts are prohibited: murder, tor-  
23          ture, corporal punishment, mutilation, the taking of  
24          hostages, sensory deprivation, collective punish-  
25          ments, execution without trial by proper authority,

1 and all cruel and degrading treatment... All per-  
2 sons will be respected as human beings. They will be  
3 protected against all acts of violence to include rape,  
4 forced prostitution, assault and theft, insults, public  
5 curiosity, bodily injury, and reprisals of any kind...  
6 This list is not exclusive.”.

7 (7) The Field Manual on Intelligence Interroga-  
8 tion of the Department of the Army states that  
9 “acts of violence or intimidation, including physical  
10 or mental torture, threats, insults, or exposure to in-  
11 humane treatment as a means of or an aid to inter-  
12 rogation” are “illegal”. Such Manual defines “infliec-  
13 tion of pain through... bondage (other than legiti-  
14 mate use of restraints to prevent escape)”, “forcing  
15 an individual to stand, sit, or kneel in abnormal po-  
16 sitions for prolonged periods of time”, “food depriva-  
17 tion”, and “any form of beating” as “physical tor-  
18 ture”, defines “abnormal sleep deprivation” as  
19 “mental torture”, and prohibits the use of such tac-  
20 tics under any circumstances.

21 (8) The Field Manual on Intelligence Interroga-  
22 tion of the Department of the Army states that  
23 “Use of torture and other illegal methods is a poor  
24 technique that yields unreliable results, may damage  
25 subsequent collection efforts, and can induce the

1 source to say what he thinks the interrogator wants  
2 to hear. Revelation of use of torture by U.S. per-  
3 sonnel will bring discredit upon the U.S. and its  
4 armed forces while undermining domestic and inter-  
5 national support for the war effort. It may also place  
6 U.S. and allied personnel in enemy hands at a great-  
7 er risk of abuse by their captors.”.

8 (b) PROHIBITION ON TORTURE OR CRUEL, INHU-  
9 MAN, OR DEGRADING TREATMENT OR PUNISHMENT.—(1)  
10 No person in the custody or under the physical control  
11 of the United States shall be subject to torture or cruel,  
12 inhuman, or degrading treatment or punishment that is  
13 prohibited by the Constitution, laws, or treaties of the  
14 United States.

15 (2) Nothing in this section shall affect the status of  
16 any person under the Geneva Conventions or whether any  
17 person is entitled to the protections of the Geneva Conven-  
18 tions.

19 (c) RULES, REGULATIONS, AND GUIDELINES.—(1)  
20 Not later than 180 days after the date of enactment of  
21 this Act, the Secretary shall prescribe the rules, regula-  
22 tions, or guidelines necessary to ensure compliance with  
23 the prohibition in subsection (b)(1) by the members of the  
24 United States Armed Forces and by any person providing  
25 services to the Department of Defense on a contract basis.

1           (2) The Secretary shall submit to the congressional  
2 defense committees the rules, regulations, or guidelines  
3 prescribed under paragraph (1), and any modifications to  
4 such rules, regulations, or guidelines—

5           (A) not later than 30 days after the effective  
6 date of such rules, regulations, guidelines, or modi-  
7 fications; and

8           (B) in a manner and form that will protect the  
9 national security interests of the United States.

10          (d) REPORT TO CONGRESS.—(1) The Secretary shall  
11 submit, on a timely basis and not less than twice each  
12 year, a report to Congress on the circumstances sur-  
13 rounding any investigation of a possible violation of the  
14 prohibition in subsection (b)(1) by a member of the Armed  
15 Forces or by a person providing services to the Depart-  
16 ment of Defense on a contract basis.

17          (2) A report required under paragraph (1) shall be  
18 submitted in a manner and form that—

19           (A) will protect the national security interests  
20 of the United States; and

21           (B) will not prejudice any prosecution of an in-  
22 dividual involved in, or responsible for, a violation of  
23 the prohibition in subsection (b)(1).

24          (e) DEFINITIONS.—In this section:

1           (1) The term “cruel, inhuman, or degrading  
2 treatment or punishment” means the cruel, unusual,  
3 and inhumane treatment or punishment prohibited  
4 by the 5th amendment, 8th amendment, or 14th  
5 amendment to the Constitution.

6           (2) The term “Geneva Conventions” means—

7               (A) the Convention for the Amelioration of  
8 the Condition of the Wounded and Sick in  
9 Armed Forces in the Field, done at Geneva Au-  
10 gust 12, 1949 (6 UST 3114);

11               (B) the Convention for the Amelioration of  
12 the Condition of the Wounded, Sick, and Ship-  
13 wrecked Members of Armed Forces at Sea,  
14 done at Geneva August 12, 1949 (6 UST  
15 3217);

16               (C) the Convention Relative to the Treat-  
17 ment of Prisoners of War, done at Geneva Au-  
18 gust 12, 1949 (6 UST 3316); and

19               (D) the Convention Relative to the Protec-  
20 tion of Civilian Persons in Time of War, done  
21 at Geneva August 12, 1949 (6 UST 3516).

22           (3) The term “Secretary” means the Secretary  
23 of Defense.

1           (4) The term “torture” has the meaning given  
2           that term in section 2340 of title 18, United States  
3           Code.