



McCain-Feinstein Amendment to NDAA FY 2016: STRENGTHENING THE PROHIBITION ON TORTURE

Senators John McCain (R-AZ), Dianne Feinstein (D-CA), Jack Reed (D-RI), and Susan Collins (R-ME) introduced an amendment to the National Defense Authorization Act of FY 2016 designed to strengthen the prohibition on torture and ensure that the United States never engages in torture again.

The McCain-Feinstein amendment will:

Make the U.S. Army Field Manual on Interrogations (Interrogation Manual) the single standard for all U.S. government interrogations. Any person in the custody or under the effective control of the U.S. or detained in a U.S. facility in any armed conflict can only be subjected to interrogation techniques authorized by the Interrogation Manual. Federal law enforcement officials would however be permitted to continue to use approved, non-coercive techniques.

This does not change current interrogation practice. The Detainee Treatment Act, which was approved in 2005 with strong bi-partisan support, required Defense Department personnel to follow the Interrogation Manual. Since 2009, all government agencies conducting interrogations outside a law enforcement context have been required to follow the Interrogation Manual. McCain-Feinstein amendment codifies current practice.

The Interrogation Manual includes clear prohibitions on torture and is effective. The Interrogation Manual explicitly prohibits waterboarding, forced nudity and other forms of torture and only allows interrogation methods expressly described in the manual. In 2009, a “Special Task Force on Interrogations” which included the CIA unanimously concluded that “the practices and techniques identified by the [Interrogation] Manual or currently used by law enforcement provide adequate and effective means of conducting interrogations.”¹

Require the Interrogation Manual to be reviewed and revised to reflect lawful, evidence-based best practices for non-coercive interrogations and be kept public. No later than 1 year after enactment and once every 3 years after, the Secretary of Defense, in coordination with the Attorney General, the FBI Director, and the Director of National Intelligence must review

¹ <http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>

the Interrogation Manual, and revise as necessary, to ensure that it complies with U.S. legal obligations and “reflects current, evidenced-based, best practices for interrogation that are designed to elicit reliable and voluntary statements and do not involve the use or threat of force.” The High-Value Detainee Interrogation Group (HIG) must submit a report on current, evidence-based, best practices for interrogation. The Interrogation Manual, any revisions, and the HIG report must be made public.

The intelligence community endorsed having the Interrogation Manual be kept public under the Bush administration. In 2006, Lt. General John Kimmons, Army Deputy Chief of Staff for Intelligence announced that the new manual would remain wholly unclassified and public, and that none of the techniques needed to be secret.²

Require the International Committee of the Red Cross (ICRC) to have prompt access to all detainees in U.S. custody regardless of location. The ICRC must be notified of, and have prompt access to, any person detained in an armed conflict in the custody or under the effective control of the U.S. or detained in a U.S. owned, operated, or controlled facility.

Why Support the McCain-Feinstein Amendment

It will prevent any future torture program from being authorized again. Had the McCain-Feinstein amendment been in place following the 9/11 attacks it would have significantly bolstered other prohibitions on torture and made it far more difficult, if not impossible, for the CIA to establish and operate their torture program. The Interrogation Manual explicitly prohibits waterboarding, forced nudity and other forms of torture employed by the CIA and it specifies that only interrogation methods that are expressly described in the Interrogation Manual are permitted. In addition, under the McCain-Feinstein legislation no prisoner could have been hidden away at CIA "black sites" without access to the ICRC.

Vast majority of Americans across the political spectrum support legislation that would strengthen U.S. laws against torture. In a [national poll](#) released by The Constitution Project in January 2015, Americans were asked if they would approve or disapprove of a proposal to strengthen U.S. laws against torture by making it clearer to the CIA and the military what behavior is legal and what is illegal, when interrogating people who may have information about terrorists. 67% said they would approve of such a proposal, with 75% of Democrats, 69% of independents and 56% of Republicans backing the idea.

It will send a clear, unambiguous message to the world that the United States will not engage in torture again. The U.S. needs to engage the international community on many national security issues requiring multilateral cooperation. U.S. engagement in torture discourages cooperation from allies and international partners critical to furthering U.S. interests abroad. Passing the McCain-Feinstein amendment will let our partners know that the U.S. is serious in never returning to a government sanctioned torture program again.

² <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3712>