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Senate Votes to Limit Detainees' Access to Courts

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WASHINGTON - The Senate voted overwhelmingly Tuesday to limit the rights of detainees in the Guantanamo Bay prison camp to sue in federal court, putting more pressure on the Bush administration to accept a ban it opposes on the abusive treatment of prisoners.

In passing the final version of a defense-policy bill, the Senate coupled the limits for the 500-plus Guantanamo prisoners with a measure prohibiting "cruel, inhuman and degrading" treatment of all prisoners in U.S. custody.

The administration has opposed the ban, sponsored by Sen. John McCain, R-Ariz., and has threatened to veto it. Vice President Dick Cheney has sought an exemption from the ban for the CIA so its agents can use harsh interrogation tactics on suspected terrorists.

"This is a package deal," said Sen. Lindsey Graham, R-S.C., who said his measure, approved 84-14, would end legal confusion at Guantanamo and establish new, tight rules on interrogation in the war on terrorism.

"This is a war of values, and we can win without sacrificing our values," Graham said.

A White House spokesman, Blair Jones, said the administration would work with the House of Representatives and the Senate on the bill, but wouldn't comment on either the Graham or McCain proposal. Last Friday, a different White House spokesman had voiced support for the Graham move.

The measure the Senate approved Tuesday was less restrictive of detainees' rights than Graham's original version, which had been adopted last week, though it still takes away rights that the Supreme Court granted to the prisoners in June 2004.

Graham wanted to block all access to federal courts for Guantanamo prisoners, many of whom have been held almost four years without charges. The final version - a compromise that Graham worked out with Sen. Carl Levin, D-Mich. - said appeals could be filed with the U.S. Court of Appeals in Washington to challenge the "standards and procedure" used to declare a detainee an enemy combatant.

The Senate bill also would allow any Guantanamo prisoner who's convicted in a military trial to appeal to the Court of Appeals in Washington. So far, only nine prisoners at Guantanamo have been charged with war crimes.

Constitutional experts said the Senate bill, if it became law, might create more confusion and litigation. The Supreme Court decided last week to review a challenge to a military trial, based on habeas corpus statutes, and

the Senate bill could halt that.

"There is a great deal of ambiguity and uncertainty in what they did, and I would not predict how the courts will decide this," said Scott Silliman, the director of the Center on Law, Ethics and National Security at Duke University.

Lawyers for detainees denounced the Senate action, but others who usually are critical of detainee policy, including the American Civil Liberties Union, were more measured in their response. The ACLU called the Graham-Levin measure "an improvement" over Graham's original amendment because it restored "minimal due process."

Eugene Fidell, the president of the National Institute of Military Justice, said the final version of Graham's proposal "at least provides some judicial review."

"It is particularly disturbing that this legislation was enacted stealthily and without any meaningful deliberation," said lawyers for the Center for Constitutional Rights, which initiated the first challenges to Guantanamo detentions.

Silliman said the Senate's action showed that four years after the Sept. 11 terrorist attacks, Congress finally was willing to tackle the difficult issues of detention and interrogation.

"For the first time, they are challenging the executive in an area where the president had complete control," Silliman said.

If the House accepts the Senate version of the \$492 billion bill, the Bush administration would face the choice of signing the bill or vetoing it. The House bill has no detainee provisions.

The Senate vote Tuesday was hastily arranged and confusing to many members. Legal experts said the provision allowing limited access to the appellate court was vague and ambiguous.

The speed with which the proposal was prepared sparked an acrimonious exchange between Graham and his fellow Republican Sen. Arlen Specter of Pennsylvania, the chairman of the Judiciary Committee, who called the proposal "blatant court-stripping, taking away the jurisdiction of the Supreme Court and setting a very bad precedent."

The Graham-Levin compromise was approved after the Senate rejected 54-44 an amendment by Sen. Jeff Bingaman, D-N.M., to keep the habeas corpus protections at Guantanamo.

At a news conference after the vote, Levin said the Senate measure wouldn't affect pending habeas corpus cases.

Almost 300 detainees - most of them captured in Afghanistan and Pakistan - have filed petitions in federal district court in Washington challenging their imprisonment and their designation as enemy combatants.