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President Relents, Backs Torture Ban; McCain Proposal Had Veto-Proof Support

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President Bush reversed position yesterday and endorsed a torture ban crafted by Sen. John McCain (R-Ariz.) after months of White House attempts to weaken the measure, which would prohibit the "cruel, inhuman, or degrading" treatment of any detainee in U.S. custody anywhere in the world.

The announcement of a deal at the White House yesterday was a setback for the administration, which had pressed the senator to either drop the measure or modify it so that interrogators, especially with the CIA, would have the flexibility to use a range of extreme tactics on terrorism suspects. In the end, McCain, bolstered by strong support in both houses of Congress, was willing to add only two paragraphs that would give civilian interrogators legal protections that are already afforded to military interrogators.

That language specifically would allow those civilians to defend their use of interrogation tactics by arguing in court that a "person of ordinary sense and understanding would not know the practices were unlawful." But legal experts said that provision also carries with it an implicit responsibility: Should CIA operatives or other civilians believe they were being directed to use an interrogation technique that was illegal, they would be obligated to disobey the order.

Such details aside, the debate over the amendment was viewed by many on Capitol Hill as a question of taking a broad stand for or against torture after international condemnations of the alleged abuse at Iraq's Abu Ghraib prison and other U.S.-controlled facilities.

Bush gave his support publicly in a joint appearance with McCain in the Oval Office yesterday, one day after the House gave veto-proof support for the senator's language in a symbolic 308 to 122 vote. The Senate had already approved the provision 90 to 9. Bush praised McCain's effort.

"We've been happy to work with him to achieve a common objective, and that is

to make it clear to the world that this government does not torture and that we adhere to the international convention [on] torture, whether it be here at home or abroad," Bush said.

Though the White House held out the agreement as a compromise, McCain retained the language he has been proposing all along, which would prohibit the abuse of any detainee in U.S. custody and would also make it a legal requirement that Defense Department interrogators abide by the rules in the Army's field manual on interrogations.

"We've sent a message to the world that the United States is not like the terrorists," McCain said while sitting next to Bush at the White House. "We are . . . a nation that upholds values and standards of behavior and treatment of all people, no matter how evil or bad they are. And I think that this will help us enormously in winning the war for the hearts and minds of people throughout the world."

McCain's provision is included in the defense appropriations bill and the defense authorization bill, both of which Congress hopes to adopt by year's end. Bush had previously threatened to veto the bills, and Rep. Duncan Hunter (R-Calif.), chairman of the House Armed Services Committee, threatened yesterday to block the legislation unless he receives written assurances from the White House that they will not handcuff intelligence officials.

Human rights groups applauded the agreement, calling it a giant leap forward. "We've come a long way as a country since 9/11, and this development is a sign of that," said Tom Malinowski, Washington advocacy director for Human Rights Watch. "We've gone from a sense of 'anything goes' to a recognition that torture hurts America even more than it hurts the enemy."

Malinowski and others, however, warned that a separate proposed amendment by Sen. Lindsey O. Graham (R-S.C.) could eliminate certain rights of detainees held at the U.S. detention facility at Guantanamo Bay, Cuba. In a new draft of the amendment, the U.S. government would be allowed to indefinitely detain people at Guantanamo based on evidence obtained through "coercion." Some attorneys for prisoners say that they think the White House is still trying to protect its ability to use techniques they believe amount to torture, and that the administration has shifted that fight to Graham's amendment.

Tom Wilner, a lawyer who represents a group of Kuwaiti detainees at Guantanamo Bay, said the new Graham language would make the U.S. military prison in Cuba a place where the McCain-backed prohibition against torture would be essentially unenforceable. The Graham amendment, he said, could give U.S. troops an incentive to engage in coercive interrogations of detainees, without fear of being held liable. The provision would also strip detainees of access to U.S. courts.

"This is a tremendous reversal of U.S. law," Wilner said. "I think this language being enacted will more than erase anything good that comes out of McCain."

Meanwhile, an unidentified Republican senator has used Senate rules to hold up approval of the intelligence authorization bill, objecting to language that would require the administration to give Congress regular reports on detainees held in secret CIA detention facilities abroad, officials said. The facilities, known in classified documents as "black sites," have stirred international controversy.

Congressional aides said the language had been accepted by Sen. Pat Roberts (R-Kan.), chairman of the Senate intelligence committee.

"Yesterday, however, we were told there were Republican objections and the bill would not come up unless the amendments were removed," a staff aide said.

The White House announcement yesterday ended months of negotiations with McCain.

The discussions began seriously in July, when Vice President Cheney pulled McCain, Graham and Sen. John W. Warner (R-Va.) into a room off the Senate floor and sternly argued that the provision could usurp the president's authority and would interfere with his ability to protect the nation from terrorist attack.

But McCain would not budge, officials said, and after several months of tense negotiations with Cheney, he went to Bush, said congressional aides. Bush tapped national security adviser Stephen J. Hadley to take over the discussions about six weeks ago.

First, Hadley asked McCain to exempt CIA officials from the ban on harsh treatment, a move McCain rejected. Then Hadley requested language that would allow the president or the attorney general to grant waivers in extraordinary circumstances -- such as if a terrorism suspect has information about an impending attack on the United States -- which McCain also rejected, congressional aides said.