

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a national commission on policies and practices on the treatment of detainees since September 11, 2001.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1042

To authorize appropriations for fiscal year 2006 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. LEVIN,
Viz: *Mr. Kennedy, Mr. Rockefeller, and Mr. Reed*

1 At the end of division A, add the following:

2 **TITLE XV—NATIONAL COMMIS-**
3 **SION ON POLICIES AND PRAC-**
4 **TICES ON TREATMENT OF DE-**
5 **TAINEES SINCE SEPTEMBER**
6 **11, 2001**

7 **SEC. 1501. FINDINGS.**

8 Congress makes the following findings:

1 (1) The vast majority of the members of the
2 Armed Forces have served honorably and upheld the
3 highest standards of professionalism and morality.

4 (2) While there have been numerous reviews,
5 inspections, and investigations by the Department of
6 Defense and others regarding aspects of the treat-
7 ment of individuals detained in the course of Oper-
8 ation Enduring Freedom, Operation Iraqi Freedom,
9 or United States activities to counter international
10 terrorism since September 11, 2001, none has pro-
11 vided a comprehensive, objective, and independent
12 investigation of United States policies and practices
13 relating to the treatment of such detainees.

14 (3) The reports of the various reviews, inspec-
15 tions, and investigations conducted by the Depart-
16 ment of Defense and others have left numerous
17 omissions and reached conflicting conclusions re-
18 garding institutional and personal responsibility for
19 United States policies and practices on the treat-
20 ment of the detainees described in paragraph (2)
21 that may have caused or contributed to the mistreat-
22 ment of such detainees.

23 (4) Omissions in the reports produced to date
24 also include omissions relating to—

1 (A) the authorities of the intelligence com-
2 munity for activities to counter international
3 terrorism since September 11, 2001, including
4 the rendition of detainees to foreign countries,
5 and whether such authorities differed from the
6 authorities of the military for the detention and
7 interrogation of detainees;

8 (B) the role of intelligence personnel in the
9 detention and interrogation of detainees;

10 (C) the role of special operations forces in
11 the detention and interrogation of detainees;
12 and

13 (D) the role of contract employees in the
14 detention and interrogation of detainees.

15 **SEC. 1502. ESTABLISHMENT OF COMMISSION.**

16 There is established the National Commission on
17 United States Policies and Practices Relating to the
18 Treatment of Detainees Since September 11, 2001 (in this
19 title referred to as the “Commission”).

20 **SEC. 1503. COMPOSITION OF THE COMMISSION.**

21 (a) MEMBERS.—The Commission shall be composed
22 of 10 members, of whom—

23 (1) 1 member shall be appointed by the Presi-
24 dent, who shall serve as chairman of the Commis-
25 sion;

(2) 1 member shall be appointed by the senior member of the leadership of the Senate of the Democratic Party, in consultation with the senior member of the leadership of the House of Representatives of the Democratic Party, who shall serve as vice chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party;

(4) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(5) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an

1 officer or employee of the Federal Government or
2 any State or local government.

3 (3) OTHER QUALIFICATIONS.—It is the sense of
4 Congress that individuals appointed to the Commis-
5 sion should be prominent United States citizens,
6 with national recognition and significant depth of ex-
7 perience in such professions as governmental service,
8 the Armed Forces, intelligence gathering or analysis,
9 law, public administration, law enforcement, and for-
10 eign affairs.

11 (4) DEADLINE FOR APPOINTMENT.—All mem-
12 bers of the Commission shall be appointed not later
13 than 30 days after the date of the enactment of this
14 Act.

15 (c) MEETINGS; QUORUM; VACANCIES.—

16 (1) INITIAL MEETING.—The Commission shall
17 meet and begin the operations as soon as practicable
18 after all members have been appointed under sub-
19 section (b).

20 (2) MEETINGS.—After its initial meeting under
21 paragraph (1), the Commission shall meet upon the
22 call of the chairman or a majority of its members.

23 (3) QUORUM.—Six members of the Commission
24 shall constitute a quorum.

1 (4) VACANCIES.—Any vacancy in the Commis-
2 sion shall not affect its powers, but shall be filled in
3 the same manner in which the original appointment
4 was made.

5 **SEC. 1504. PURPOSES.**

6 (a) IN GENERAL.—The purposes of the Commission
7 are to—

8 (1) examine and report upon the policies and
9 practices of the United States relating to the treat-
10 ment of individuals detained in Operation Enduring
11 Freedom (OEF), Operation Iraqi Freedom (OIF), or
12 United States activities to counter international ter-
13 rorism since September 11, 2001 (in this title re-
14 ferred to as “detainees”) , including the rendition of
15 detainees to foreign countries;

16 (2) examine, evaluate, and report on the causes
17 of and factors that may have contributed to the al-
18 leged mistreatment of detainees, including, but not
19 limited to—

20 (A) laws and policies of the United States
21 relating to the detention or interrogation of de-
22 tainees, including the rendition of detainees to
23 foreign countries;

24 (B) activities of special operations forces of
25 the Armed Forces;

1 (C) activities of contract employees of any
2 department, agency, or other entity of the
3 United States Government, including for the
4 rendition of detainees to foreign countries; and

5 (D) activities of employees of the Central
6 Intelligence Agency, the Defense Intelligence
7 Agency, or any other element of the intelligence
8 community;

9 (3) assess the responsibility of leaders, whether
10 military or civilian, within and outside the Depart-
11 ment of Defense for policies and actions, or failures
12 to act, that may have contributed, directly or indi-
13 rectly, to the mistreatment of detainees;

14 (4) ascertain, evaluate, and report on the effec-
15 tiveness and propriety of interrogation techniques,
16 policies, and practices for producing useful and reli-
17 able intelligence;

18 (5) ascertain, evaluate, and report on all plan-
19 ning for long-term detention, or procedures for pros-
20 ecution by civilian courts or military tribunals or
21 commission, of detainees in the custody of any de-
22 partment, agency, or other entity of the United
23 States Government or who have been rendered to
24 any foreign government or entity; and

1 (6) investigate and submit a report to the
2 President and Congress on the Commission's find-
3 ings, conclusions, and recommendations, including
4 any modifications to existing treaties, laws, policies,
5 or regulations, as appropriate.

6 (b) UTILIZATION OF OTHER MATERIALS.—The Com-
7 mission may build upon reports conducted by the Depart-
8 ment of Defense or other entities by reviewing the source
9 materials, findings, conclusions, and recommendations of
10 those other reviews in order to—

- 11 (1) avoid unnecessary duplication; and
12 (2) identify any omissions in or conflicts be-
13 tween such reports which in the Commission's view
14 merit further investigation.

15 **SEC. 1505. FUNCTIONS OF COMMISSION.**

16 The functions of the Commission are to—

- 17 (1) conduct an investigation that ascertains rel-
18 evant facts and circumstances relating to—

19 (A) laws, policies, and practices of the
20 United States relating to the treatment of de-
21 tainees since September 11, 2001, including
22 any relevant treaties, statutes, Executive or-
23 ders, regulations, plans, policies, practices, or
24 procedures;

1 (B) activities of any department, agency,
2 or other entity of the United States Govern-
3 ment relating to Operation Enduring Freedom,
4 Operation Iraqi Freedom, and efforts to
5 counter international terrorism since September
6 11, 2001;

7 (C) the role of private contract employees
8 in the treatment of detainees;

9 (D) the role of legal and medical personnel
10 in the treatment of detainees, including the role
11 of medical personnel in advising on plans for,
12 and the conduct of, interrogations;

13 (E) dealings of any department, agency, or
14 other entity of the United States Government
15 with the International Committee of the Red
16 Cross;

17 (F) the role of congressional oversight; and

18 (G) other areas of the public and private
19 sectors determined relevant by the Commission
20 for its inquiry;

21 (2) identify and review how policies regarding
22 the detention, interrogation, and rendition of detain-
23 ees were formulated and implemented, and evaluate
24 such policies in light of lessons learned from activi-

1 ties in Iraq, Afghanistan, Guantanamo Bay, Cuba,
2 and elsewhere; and

3 (3) submit to the President and Congress such
4 reports as are required by this title containing such
5 findings, conclusions, and recommendations as the
6 Commission shall determine, including proposing
7 any appropriate modifications in legislation, organi-
8 zation, coordination, planning, management, proce-
9 dures, rules, and regulations.

10 **SEC. 1506. POWERS OF COMMISSION.**

11 (a) IN GENERAL.—

12 (1) HEARINGS AND EVIDENCE.—The Commis-
13 sion or, on the authority of the Commission, any
14 subcommittee or member thereof, may, for the pur-
15 pose of carrying out this title—

16 (A) hold such hearings and sit and act at
17 such times and places, take such testimony, re-
18 ceive such evidence, and administer such oaths;
19 and

20 (B) subject to paragraph (2)(A), require,
21 by subpoena or otherwise, the attendance and
22 testimony of such witnesses and the production
23 of such books, records, correspondence, memo-
24 randa, papers, and documents,

1 as the Commission or such designated subcommittee
2 or designated member may determine advisable.

3 (2) SUBPOENAS.—

4 (A) ISSUANCE.—

5 (i) IN GENERAL.—A subpoena may be
6 issued under this subsection only—

7 (I) by the agreement of the
8 chairman and the vice chairman; or

9 (II) by the affirmative vote of 6
10 members of the Commission.

11 (ii) SIGNATURE.—Subject to clause
12 (i), subpoenas issued under this subsection
13 may be issued under the signature of the
14 chairman or any member designated by a
15 majority of the Commission, and may be
16 served by any person designated by the
17 chairman or by a member designated by a
18 majority of the Commission.

19 (B) ENFORCEMENT.—

20 (i) IN GENERAL.—In the case of con-
21 tumacy or failure to obey a subpoena
22 issued under subparagraph (A), the United
23 States district court for the judicial district
24 in which the subpoenaed person resides, is
25 served, or may be found, or where the sub-

1 poena is returnable, may issue an order re-
2 quiring such person to appear at any des-
3 ignated place to testify or to produce docu-
4 mentary or other evidence. Any failure to
5 obey the order of the court may be pun-
6 ished by the court as a contempt of that
7 court.

8 (ii) ADDITIONAL ENFORCEMENT.—In
9 the case of any failure of any witness to
10 comply with any subpoena or to testify
11 when summoned under authority of this
12 section, the Commission may, by majority
13 vote, certify a statement of fact consti-
14 tuting such failure to the appropriate
15 United States attorney, who may bring the
16 matter before the grand jury for its action,
17 under the same statutory authority and
18 procedures as if the United States attorney
19 had received a certification under sections
20 102 through 104 of the Revised Statutes
21 of the United States (2 U.S.C. 192
22 through 194).

23 (b) CONTRACTING.—The Commission may, to such
24 extent and in such amounts as are provided in appropia-

1 tion Acts, enter into contracts to enable the Commission
2 to discharge its duties under this title.

3 (c) INFORMATION AND MATERIALS FROM FEDERAL
4 AGENCIES.—

5 (1) IN GENERAL.—

6 (A) COOPERATION OF AGENCIES.—The
7 Commission shall receive the full and timely co-
8 operation of any department, agency, element,
9 bureau, board, commission, independent estab-
10 lishment, or other instrumentality of the United
11 States Government, and of any officer or em-
12 ployee thereof, whose assistance is necessary for
13 the fulfillment of the duties of the Commission
14 under this title.

15 (B) FURNISHING OF MATERIALS.—The
16 Commission is authorized to secure directly
17 from any department, agency, element, bureau,
18 board, commission, independent establishment,
19 or other instrumentality of the United States
20 Government information, materials (including
21 classified materials), suggestions, estimates,
22 and statistics for the purposes of this title.
23 Each such department, agency, element, bu-
24 reau, board, commission, independent establish-
25 ment, or other instrumentality shall, to the

1 maximum extent authorized by law, furnish all
2 such information, materials, suggestions, esti-
3 mates, and statistics directly to the Commis-
4 sion, promptly upon a request made by the
5 chairman, the chairman of any subcommittee
6 created by a majority of the Commission, or
7 any member designated by a majority of the
8 Commission, but in no case later than 14 days
9 after such a request.

10 (2) RECEIPT, HANDLING, STORAGE, AND DIS-
11 SEMINATION.—Information and materials shall be
12 received, handled, stored, and disseminated by mem-
13 bers of the Commission and its staff consistent with
14 all applicable statutes, regulations, and Executive or-
15 ders. The Commission shall maintain all classified
16 information and materials provided to the Commis-
17 sion under this title in a secure location in the of-
18 fices of the Commission or as designated by the
19 Commission.

20 (3) ACCESS TO INFORMATION AND MATE-
21 RIALS.—No department, agency, element, bureau,
22 board, commission, independent establishment, or
23 other instrumentality of the United States may with-
24 hold information or materials, including classified
25 materials, from the Commission on the grounds that

1 providing the information or materials would con-
2 stitute the unauthorized disclosure of classified in-
3 formation, pre-decisional materials, or information
4 relating to intelligence sources or methods.

5 (d) ASSISTANCE FROM PARTICULAR FEDERAL
6 AGENCIES.—

7 (1) GENERAL SERVICES ADMINISTRATION.—

8 The Administrator of General Services shall provide
9 to the Commission on a reimbursable basis adminis-
10 trative support and other services for the perform-
11 ance of the Commission's functions.

12 (2) OTHER DEPARTMENTS AND AGENCIES.—In

13 addition to the assistance prescribed in paragraph
14 (1), departments, agencies, and other elements of
15 the United States Government may provide to the
16 Commission such services, funds, facilities, staff,
17 and other support services as they may determine
18 advisable and as may be authorized by law.

19 (e) POSTAL SERVICES.—The Commission may use
20 the United States mails in the same manner and under
21 the same conditions as departments and agencies of the
22 United States Government.

23 **SEC. 1507. COMPENSATION AND TRAVEL EXPENSES.**

24 (a) COMPENSATION.—Each member of the Commis-
25 sion shall be compensated at not to exceed the daily equiv-

1 alent of the annual rate of basic pay in effect for a position
2 at level IV of the Executive Schedule under section 5315
3 of title 5, United States Code, for each day during which
4 that member is engaged in the actual performance of the
5 duties of the Commission.

6 (b) TRAVEL EXPENSES.—While away from their
7 homes or regular places of business in the performance
8 of services for the Commission, members of the Commis-
9 sion shall be allowed travel expenses, including per diem
10 in lieu of subsistence, in the same manner as persons em-
11 ployed intermittently in the Government service are al-
12 lowed expenses under section 5703(b) of title 5, United
13 States Code.

14 **SEC. 1508. STAFF OF COMMISSION.**

15 (a) IN GENERAL.—

16 (1) APPOINTMENT AND COMPENSATION.—The
17 chairman, in consultation with the vice chairman
18 and in accordance with rules agreed upon by the
19 Commission, may appoint and fix the compensation
20 of a staff director and such other personnel as may
21 be necessary to enable the Commission to carry out
22 its functions, without regard to the provisions of
23 title 5, United States Code, governing appointments
24 in the competitive service, and without regard to the
25 provisions of chapter 51 and subchapter III of chap-

1 ter 53 of such title relating to classification and
2 General Schedule pay rates, except that no rate of
3 pay fixed under this subsection may exceed the
4 equivalent of that payable for a position at level V
5 of the Executive Schedule under section 5316 of title
6 5, United States Code.

7 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

8 (A) TREATMENT.—The staff director and
9 any personnel of the Commission who are em-
10 ployees of the Commission shall be treated as
11 employees of the Federal Government under
12 section 2105 of title 5, United States Code, for
13 purposes of chapters 63, 81, 83, 84, 85, 87, 89,
14 and 90 of that title.

15 (B) EXCEPTION.—Subparagraph (A) shall
16 not apply to members of the Commission.

17 (b) DETAILEES.—Any Federal Government employee
18 may be detailed to the Commission without reimbursement
19 from the Commission, and such detailee shall retain the
20 rights, status, and privileges of his or her regular employ-
21 ment without interruption.

22 (c) CONSULTANT SERVICES.—The Commission is au-
23 thorized to procure the services of experts and consultants
24 in accordance with section 3109 of title 5, United States
25 Code, but at rates not to exceed the daily rate paid a per-

1 son occupying a position at level IV of the Executive
2 Schedule under section 5315 of title 5, United States
3 Code.

4 **SEC. 1509. SECURITY CLEARANCES FOR COMMISSION MEM-**
5 **BERS AND STAFF.**

6 The departments, agencies, and elements of the
7 United States Government shall cooperate with the Com-
8 mission in expeditiously providing to the Commission
9 members and staff appropriate security clearances to the
10 extent possible pursuant to existing procedures and re-
11 quirements. No person shall be provided with access to
12 classified information under this title without the appro-
13 priate security clearances.

14 **SEC. 1510. NONAPPLICABILITY OF FEDERAL ADVISORY**
15 **COMMITTEE ACT.**

16 (a) IN GENERAL.—The Federal Advisory Committee
17 Act (5 U.S.C. App.) shall not apply to the Commission.

18 (b) PUBLIC MEETINGS AND RELEASE OF PUBLIC
19 VERSIONS OF REPORTS.—The Commission shall—

20 (1) hold public hearings and meetings to the ex-
21 tent appropriate; and

22 (2) release public versions of the reports re-
23 quired under section 1511.

24 (c) PUBLIC HEARINGS.—Any public hearings of the
25 Commission shall be conducted in a manner consistent

1 with the protection of information provided to or developed
2 for or by the Commission as required by any applicable
3 statute, regulation, or Executive order.

4 **SEC. 1511. REPORTS OF COMMISSION; TERMINATION.**

5 (a) **INTERIM REPORTS.**—The Commission may sub-
6 mit to the President and Congress interim reports con-
7 taining such findings, conclusions and recommendations
8 as have been agreed to by a majority of Commission mem-
9 bers.

10 (b) **FINAL REPORT.**—Not later than 12 months after
11 the date of the enactment of this Act, the Commission
12 shall submit to the President and Congress a final report
13 containing such findings, conclusions, and recommenda-
14 tions as have been agreed to by a majority of Commission
15 members.

16 (c) **TERMINATION.**—

17 (1) **IN GENERAL.**—The Commission, and all the
18 authorities of this title, shall terminate 60 days after
19 the date on which the final report is submitted
20 under subsection (b).

21 (2) **ADMINISTRATIVE ACTIVITIES BEFORE TER-**
22 **MINATION.**—The Commission may use the 60-day
23 period referred to in paragraph (1) for the purpose
24 of concluding its activities, including providing testi-

1 money to committees of Congress concerning its re-
2 ports, disseminating the final report.

3 **SEC. 1512. FUNDING.**

4 (a) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Commission to
6 carry out this section \$2,500,000.

7 (b) DURATION OF AVAILABILITY.—Amounts made
8 available to the Commission under subsection (a) shall re-
9 main available until the termination of the Commission.