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War Crimes Act Changes Would Reduce Threat Of Prosecution

By [R. Jeffrey Smith](#)

Washington Post Staff Writer
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The Bush administration has drafted amendments to a war crimes law that would eliminate the risk of prosecution for political appointees, CIA officers and former military personnel for humiliating or degrading war prisoners, according to U.S. officials and a copy of the amendments.

Officials say the amendments would alter a U.S. law passed in the mid-1990s that criminalized violations of the Geneva Conventions, a set of international treaties governing military conduct in wartime. The conventions generally bar the cruel, humiliating and degrading treatment of wartime prisoners without spelling out what all those terms mean.

The draft U.S. amendments to the War Crimes Act would narrow the scope of potential criminal prosecutions to 10 specific categories of illegal acts against detainees during a war, including torture, murder, rape and hostage-taking.

Left off the list would be what the Geneva Conventions refer to as "outrages upon [the] personal dignity" of a prisoner and

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deliberately humiliating acts -- such as the forced nakedness, use of dog leashes and wearing of women's underwear seen at the U.S.-run Abu Ghraib prison in Iraq -- that fall short of torture.



"People have gotten worried, thinking that it's quite likely they might be under a microscope," said a U.S. official. Foreigners are using accusations of unlawful U.S. behavior as a way to rein in American power, the official said, and the amendments are partly meant to fend this off.

The plan has provoked concern at the International Committee of the Red Cross, the entity responsible for safeguarding the Geneva Conventions. A U.S. official confirmed that the group's lawyers visited the Pentagon and the State Department last week to discuss the issue but left without any expectation that their objections would be heeded.

The administration has not officially released the draft amendments. Although they are part of broader legislation on military courts still being discussed within the government, their substance has already been embraced by key officials and will not change, two government sources said.

No criminal prosecutions have been brought under the War Crimes Act, which Congress passed in 1996 and expanded in 1997. But 10 experts on the laws of war, who reviewed a draft of the amendments at the request of The Washington Post, said the changes could affect how those involved in detainee matters act and how other nations view Washington's respect for its treaty obligations.

"This removal of [any] reference to humiliating and degrading treatment will be perceived by experts and probably allies as 'rewriting' " the Geneva Conventions, said retired Army Lt. Col. Geoffrey S. Corn, who was recently chief of the war law branch of the Army's Office of the Judge Advocate General. Others said the changes could affect how foreigners treat U.S. soldiers.

The amendments would narrow the reach of the War Crimes Act, which now states in general terms that Americans can be prosecuted in federal criminal courts for violations of "Common Article 3" of the Geneva Conventions, which the United States ratified in 1949.

U.S. officials have long interpreted the War Crimes Act as applying to civilians, including CIA officers, and former U.S. military personnel. Misconduct by serving military personnel is handled by military courts, which enforce a prohibition on cruelty and mistreatment. The Army Field Manual,

which is being revised, separately bars cruel and degrading treatment, corporal punishment, assault, and sensory deprivation.

Common Article 3 is considered the universal minimum standard of treatment for civilian detainees in wartime. It requires that they be treated humanely and bars "violence to life and person," including murder, mutilation, cruel treatment and torture. It further prohibits "outrages upon personal dignity" such as "humiliating and degrading treatment." And it prohibits sentencing or execution by courts that fail to provide "all the judicial guarantees . . . recognized as indispensable by civilized peoples."

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