

109TH CONGRESS
2^D SESSION

H. R. 6166

AN ACT

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Military Commissions Act of 2006”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Construction of Presidential authority to establish military commissions.
- Sec. 3. Military commissions.
- Sec. 4. Amendments to Uniform Code of Military Justice.
- Sec. 5. Treaty obligations not establishing grounds for certain claims.
- Sec. 6. Implementation of treaty obligations.
- Sec. 7. Habeas corpus matters.
- Sec. 8. Revisions to Detainee Treatment Act of 2005 relating to protection of
certain United States Government personnel.
- Sec. 9. Review of judgments of military commissions.
- Sec. 10. Detention covered by review of decisions of Combatant Status Review
Tribunals of propriety of detention.

6 **SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO**
7 **ESTABLISH MILITARY COMMISSIONS.**

8 The authority to establish military commissions
9 under chapter 47A of title 10, United States Code, as
10 added by section 3(a), may not be construed to alter or
11 limit the authority of the President under the Constitution
12 of the United States and laws of the United States to es-
13 tablish military commissions for areas declared to be
14 under martial law or in occupied territories should cir-
15 cumstances so require.

16 **SEC. 3. MILITARY COMMISSIONS.**

17 (a) MILITARY COMMISSIONS.—

18 (1) IN GENERAL.—Subtitle A of title 10,
19 United States Code, is amended by inserting after
20 chapter 47 the following new chapter:

1 **“CHAPTER 47A—MILITARY COMMISSIONS**

“Subchapter	
“I. General Provisions	948a
“II. Composition of Military Commissions	948h
“III. Pre-Trial Procedure	948q
“IV. Trial Procedure	949a
“V. Sentences	949s
“VI. Post-Trial Procedure and Review of Military Commissions	950a
“VII. Punitive Matters	950p

2 **“SUBCHAPTER I—GENERAL PROVISIONS**

“Sec.	
“948a. Definitions.	
“948b. Military commissions generally.	
“948c. Persons subject to military commissions.	
“948d. Jurisdiction of military commissions.	
“948e. Annual report to congressional committees.	

3 **“§ 948a. Definitions**

4 “In this chapter:

5 “(1) UNLAWFUL ENEMY COMBATANT.—(A) The
6 term ‘unlawful enemy combatant’ means—

7 “(i) a person who has engaged in hos-
8 tilities or who has purposefully and materially
9 supported hostilities against the United States
10 or its co-belligerents who is not a lawful enemy
11 combatant (including a person who is part of
12 the Taliban, al Qaeda, or associated forces); or

13 “(ii) a person who, before, on, or after the
14 date of the enactment of the Military Commis-
15 sions Act of 2006, has been determined to be
16 an unlawful enemy combatant by a Combatant
17 Status Review Tribunal or another competent

1 tribunal established under the authority of the
2 President or the Secretary of Defense.

3 “(B) CO-BELLIGERENT.—In this paragraph,
4 the term ‘co-belligerent’, with respect to the United
5 States, means any State or armed force joining and
6 directly engaged with the United States in hostilities
7 or directly supporting hostilities against a common
8 enemy.

9 “(2) LAWFUL ENEMY COMBATANT.—The term
10 ‘lawful enemy combatant’ means a person who is—

11 “(A) a member of the regular forces of a
12 State party engaged in hostilities against the
13 United States;

14 “(B) a member of a militia, volunteer
15 corps, or organized resistance movement belong-
16 ing to a State party engaged in such hostilities,
17 which are under responsible command, wear a
18 fixed distinctive sign recognizable at a distance,
19 carry their arms openly, and abide by the law
20 of war; or

21 “(C) a member of a regular armed force
22 who professes allegiance to a government en-
23 gaged in such hostilities, but not recognized by
24 the United States.

1 “(3) ALIEN.—The term ‘alien’ means a person
2 who is not a citizen of the United States.

3 “(4) CLASSIFIED INFORMATION.—The term
4 ‘classified information’ means the following:

5 “(A) Any information or material that has
6 been determined by the United States Govern-
7 ment pursuant to statute, Executive order, or
8 regulation to require protection against unau-
9 thorized disclosure for reasons of national secu-
10 rity.

11 “(B) Any restricted data, as that term is
12 defined in section 11 y. of the Atomic Energy
13 Act of 1954 (42 U.S.C. 2014(y)).

14 “(5) GENEVA CONVENTIONS.—The term ‘Gene-
15 va Conventions’ means the international conventions
16 signed at Geneva on August 12, 1949.

17 **“§ 948b. Military commissions generally**

18 “(a) PURPOSE.—This chapter establishes procedures
19 governing the use of military commissions to try alien un-
20 lawful enemy combatants engaged in hostilities against the
21 United States for violations of the law of war and other
22 offenses triable by military commission.

23 “(b) AUTHORITY FOR MILITARY COMMISSIONS
24 UNDER THIS CHAPTER.—The President is authorized to
25 establish military commissions under this chapter for of-

1 fenses triable by military commission as provided in this
2 chapter.

3 “(c) CONSTRUCTION OF PROVISIONS.—The proce-
4 dures for military commissions set forth in this chapter
5 are based upon the procedures for trial by general courts-
6 martial under chapter 47 of this title (the Uniform Code
7 of Military Justice). Chapter 47 of this title does not, by
8 its terms, apply to trial by military commission except as
9 specifically provided in this chapter. The judicial construc-
10 tion and application of that chapter are not binding on
11 military commissions established under this chapter.

12 “(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—
13 (1) The following provisions of this title shall not apply
14 to trial by military commission under this chapter:

15 “(A) Section 810 (article 10 of the Uniform
16 Code of Military Justice), relating to speedy trial,
17 including any rule of courts-martial relating to
18 speedy trial.

19 “(B) Sections 831(a), (b), and (d) (articles
20 31(a), (b), and (d) of the Uniform Code of Military
21 Justice), relating to compulsory self-incrimination.

22 “(C) Section 832 (article 32 of the Uniform
23 Code of Military Justice), relating to pretrial inves-
24 tigation.

1 “(2) Other provisions of chapter 47 of this title shall
2 apply to trial by military commission under this chapter
3 only to the extent provided by this chapter.

4 “(e) TREATMENT OF RULINGS AND PRECEDENTS.—
5 The findings, holdings, interpretations, and other prece-
6 dents of military commissions under this chapter may not
7 be introduced or considered in any hearing, trial, or other
8 proceeding of a court-martial convened under chapter 47
9 of this title. The findings, holdings, interpretations, and
10 other precedents of military commissions under this chap-
11 ter may not form the basis of any holding, decision, or
12 other determination of a court-martial convened under
13 that chapter.

14 “(f) STATUS OF COMMISSIONS UNDER COMMON AR-
15 TICLE 3.—A military commission established under this
16 chapter is a regularly constituted court, affording all the
17 necessary ‘judicial guarantees which are recognized as in-
18 dispensable by civilized peoples’ for purposes of common
19 Article 3 of the Geneva Conventions.

20 “(g) GENEVA CONVENTIONS NOT ESTABLISHING
21 SOURCE OF RIGHTS.—No alien unlawful enemy combat-
22 ant subject to trial by military commission under this
23 chapter may invoke the Geneva Conventions as a source
24 of rights.

1 **“§ 948c. Persons subject to military commissions**

2 “Any alien unlawful enemy combatant is subject to
3 trial by military commission under this chapter.

4 **“§ 948d. Jurisdiction of military commissions**

5 “(a) JURISDICTION.—A military commission under
6 this chapter shall have jurisdiction to try any offense made
7 punishable by this chapter or the law of war when com-
8 mitted by an alien unlawful enemy combatant before, on,
9 or after September 11, 2001.

10 “(b) LAWFUL ENEMY COMBATANTS.—Military com-
11 missions under this chapter shall not have jurisdiction
12 over lawful enemy combatants. Lawful enemy combatants
13 who violate the law of war are subject to chapter 47 of
14 this title. Courts-martial established under that chapter
15 shall have jurisdiction to try a lawful enemy combatant
16 for any offense made punishable under this chapter.

17 “(c) DETERMINATION OF UNLAWFUL ENEMY COM-
18 BATANT STATUS DISPOSITIVE.—A finding, whether be-
19 fore, on, or after the date of the enactment of the Military
20 Commissions Act of 2006, by a Combatant Status Review
21 Tribunal or another competent tribunal established under
22 the authority of the President or the Secretary of Defense
23 that a person is an unlawful enemy combatant is dispo-
24 sitive for purposes of jurisdiction for trial by military com-
25 mission under this chapter.

1 “(d) PUNISHMENTS.—A military commission under
 2 this chapter may, under such limitations as the Secretary
 3 of Defense may prescribe, adjudge any punishment not
 4 forbidden by this chapter, including the penalty of death
 5 when authorized under this chapter or the law of war.

6 **“§ 948e. Annual report to congressional committees**

7 “(a) ANNUAL REPORT REQUIRED.—Not later than
 8 December 31 each year, the Secretary of Defense shall
 9 submit to the Committees on Armed Services of the Sen-
 10 ate and the House of Representatives a report on any
 11 trials conducted by military commissions under this chap-
 12 ter during such year.

13 “(b) FORM.—Each report under this section shall be
 14 submitted in unclassified form, but may include a classi-
 15 fied annex.

16 **“SUBCHAPTER II—COMPOSITION OF MILITARY**
 17 **COMMISSIONS**

“Sec.

“948h. Who may convene military commissions.

“948i. Who may serve on military commissions.

“948j. Military judge of a military commission.

“948k. Detail of trial counsel and defense counsel.

“948l. Detail or employment of reporters and interpreters.

“948m. Number of members; excuse of members; absent and additional mem-
 bers.

18 **“§ 948h. Who may convene military commissions**

19 “Military commissions under this chapter may be
 20 convened by the Secretary of Defense or by any officer

1 or official of the United States designated by the Secretary
2 for that purpose.

3 **“§ 948i. Who may serve on military commissions**

4 “(a) IN GENERAL.—Any commissioned officer of the
5 armed forces on active duty is eligible to serve on a mili-
6 tary commission under this chapter.

7 “(b) DETAIL OF MEMBERS.—When convening a mili-
8 tary commission under this chapter, the convening author-
9 ity shall detail as members of the commission such mem-
10 bers of the armed forces eligible under subsection (a), as
11 in the opinion of the convening authority, are best quali-
12 fied for the duty by reason of age, education, training,
13 experience, length of service, and judicial temperament.
14 No member of an armed force is eligible to serve as a
15 member of a military commission when such member is
16 the accuser or a witness for the prosecution or has acted
17 as an investigator or counsel in the same case.

18 “(c) EXCUSE OF MEMBERS.—Before a military com-
19 mission under this chapter is assembled for the trial of
20 a case, the convening authority may excuse a member
21 from participating in the case.

22 **“§ 948j. Military judge of a military commission**

23 “(a) DETAIL OF MILITARY JUDGE.—A military judge
24 shall be detailed to each military commission under this
25 chapter. The Secretary of Defense shall prescribe regula-

1 tions providing for the manner in which military judges
2 are so detailed to military commissions. The military judge
3 shall preside over each military commission to which he
4 has been detailed.

5 “(b) QUALIFICATIONS.—A military judge shall be a
6 commissioned officer of the armed forces who is a member
7 of the bar of a Federal court, or a member of the bar
8 of the highest court of a State, and who is certified to
9 be qualified for duty under section 826 of this title (article
10 26 of the Uniform Code of Military Justice) as a military
11 judge in general courts-martial by the Judge Advocate
12 General of the armed force of which such military judge
13 is a member.

14 “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
15 person is eligible to act as military judge in a case of a
16 military commission under this chapter if he is the accuser
17 or a witness or has acted as investigator or a counsel in
18 the same case.

19 “(d) CONSULTATION WITH MEMBERS; INELIGI-
20 BILITY TO VOTE.—A military judge detailed to a military
21 commission under this chapter may not consult with the
22 members of the commission except in the presence of the
23 accused (except as otherwise provided in section 949d of
24 this title), trial counsel, and defense counsel, nor may he
25 vote with the members of the commission.

1 “(e) OTHER DUTIES.—A commissioned officer who
2 is certified to be qualified for duty as a military judge of
3 a military commission under this chapter may perform
4 such other duties as are assigned to him by or with the
5 approval of the Judge Advocate General of the armed
6 force of which such officer is a member or the designee
7 of such Judge Advocate General.

8 “(f) PROHIBITION ON EVALUATION OF FITNESS BY
9 CONVENING AUTHORITY.—The convening authority of a
10 military commission under this chapter shall not prepare
11 or review any report concerning the effectiveness, fitness,
12 or efficiency of a military judge detailed to the military
13 commission which relates to his performance of duty as
14 a military judge on the military commission.

15 **“§ 948k. Detail of trial counsel and defense counsel**

16 “(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial
17 counsel and military defense counsel shall be detailed for
18 each military commission under this chapter.

19 “(2) Assistant trial counsel and assistant and asso-
20 ciate defense counsel may be detailed for a military com-
21 mission under this chapter.

22 “(3) Military defense counsel for a military commis-
23 sion under this chapter shall be detailed as soon as prac-
24 ticable after the swearing of charges against the accused.

1 “(4) The Secretary of Defense shall prescribe regula-
2 tions providing for the manner in which trial counsel and
3 military defense counsel are detailed for military commis-
4 sions under this chapter and for the persons who are au-
5 thorized to detail such counsel for such commissions.

6 “(b) TRIAL COUNSEL.—Subject to subsection (e),
7 trial counsel detailed for a military commission under this
8 chapter must be—

9 “(1) a judge advocate (as that term is defined
10 in section 801 of this title (article 1 of the Uniform
11 Code of Military Justice) who—

12 “(A) is a graduate of an accredited law
13 school or is a member of the bar of a Federal
14 court or of the highest court of a State; and

15 “(B) is certified as competent to perform
16 duties as trial counsel before general courts-
17 martial by the Judge Advocate General of the
18 armed force of which he is a member; or

19 “(2) a civilian who—

20 “(A) is a member of the bar of a Federal
21 court or of the highest court of a State; and

22 “(B) is otherwise qualified to practice be-
23 fore the military commission pursuant to regu-
24 lations prescribed by the Secretary of Defense.

1 “(c) MILITARY DEFENSE COUNSEL.—Subject to sub-
2 section (e), military defense counsel detailed for a military
3 commission under this chapter must be a judge advocate
4 (as so defined) who is—

5 “(1) a graduate of an accredited law school or
6 is a member of the bar of a Federal court or of the
7 highest court of a State; and

8 “(2) certified as competent to perform duties as
9 defense counsel before general courts-martial by the
10 Judge Advocate General of the armed force of which
11 he is a member.

12 “(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUN-
13 SEL.—(1) The Chief Prosecutor in a military commission
14 under this chapter shall meet the requirements set forth
15 in subsection (b)(1).

16 “(2) The Chief Defense Counsel in a military com-
17 mission under this chapter shall meet the requirements set
18 forth in subsection (c)(1).

19 “(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No
20 person who has acted as an investigator, military judge,
21 or member of a military commission under this chapter
22 in any case may act later as trial counsel or military de-
23 fense counsel in the same case. No person who has acted
24 for the prosecution before a military commission under
25 this chapter may act later in the same case for the de-

1 fense, nor may any person who has acted for the defense
2 before a military commission under this chapter act later
3 in the same case for the prosecution.

4 **“§ 948l. Detail or employment of reporters and inter-**
5 **preters**

6 “(a) COURT REPORTERS.—Under such regulations
7 as the Secretary of Defense may prescribe, the convening
8 authority of a military commission under this chapter
9 shall detail to or employ for the commission qualified court
10 reporters, who shall make a verbatim recording of the pro-
11 ceedings of and testimony taken before the commission.

12 “(b) INTERPRETERS.—Under such regulations as the
13 Secretary of Defense may prescribe, the convening author-
14 ity of a military commission under this chapter may detail
15 to or employ for the military commission interpreters who
16 shall interpret for the commission and, as necessary, for
17 trial counsel and defense counsel and for the accused.

18 “(c) TRANSCRIPT; RECORD.—The transcript of a
19 military commission under this chapter shall be under the
20 control of the convening authority of the commission, who
21 shall also be responsible for preparing the record of the
22 proceedings.

1 **“§ 948m. Number of members; excuse of members; ab-**
2 **sent and additional members**

3 “(a) NUMBER OF MEMBERS.—(1) A military com-
4 mission under this chapter shall, except as provided in
5 paragraph (2), have at least five members.

6 “(2) In a case in which the accused before a military
7 commission under this chapter may be sentenced to a pen-
8 alty of death, the military commission shall have the num-
9 ber of members prescribed by section 949m(e) of this title.

10 “(b) EXCUSE OF MEMBERS.—No member of a mili-
11 tary commission under this chapter may be absent or ex-
12 cused after the military commission has been assembled
13 for the trial of a case unless excused—

14 “(1) as a result of challenge;

15 “(2) by the military judge for physical disability
16 or other good cause; or

17 “(3) by order of the convening authority for
18 good cause.

19 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-
20 ever a military commission under this chapter is reduced
21 below the number of members required by subsection (a),
22 the trial may not proceed unless the convening authority
23 details new members sufficient to provide not less than
24 such number. The trial may proceed with the new mem-
25 bers present after the recorded evidence previously intro-
26 duced before the members has been read to the military

1 commission in the presence of the military judge, the ac-
 2 cused (except as provided in section 949d of this title),
 3 and counsel for both sides.

4 “SUBCHAPTER III—PRE-TRIAL PROCEDURE

“Sec.

“948q. Charges and specifications.

“948r. Compulsory self-incrimination prohibited; treatment of statements ob-
 tained by torture and other statements.

“948s. Service of charges.

5 “§ 948q. Charges and specifications

6 “(a) CHARGES AND SPECIFICATIONS.—Charges and
 7 specifications against an accused in a military commission
 8 under this chapter shall be signed by a person subject to
 9 chapter 47 of this title under oath before a commissioned
 10 officer of the armed forces authorized to administer oaths
 11 and shall state—

12 “(1) that the signer has personal knowledge of,
 13 or reason to believe, the matters set forth therein;
 14 and

15 “(2) that they are true in fact to the best of the
 16 signer’s knowledge and belief.

17 “(b) NOTICE TO ACCUSED.—Upon the swearing of
 18 the charges and specifications in accordance with sub-
 19 section (a), the accused shall be informed of the charges
 20 against him as soon as practicable.

1 **“§ 948r. Compulsory self-incrimination prohibited;**
2 **treatment of statements obtained by tor-**
3 **ture and other statements**

4 “(a) IN GENERAL.—No person shall be required to
5 testify against himself at a proceeding of a military com-
6 mission under this chapter.

7 “(b) EXCLUSION OF STATEMENTS OBTAINED BY
8 TORTURE.—A statement obtained by use of torture shall
9 not be admissible in a military commission under this
10 chapter, except against a person accused of torture as evi-
11 dence that the statement was made.

12 “(c) STATEMENTS OBTAINED BEFORE ENACTMENT
13 OF DETAINEE TREATMENT ACT OF 2005.—A statement
14 obtained before December 30, 2005 (the date of the enact-
15 ment of the Defense Treatment Act of 2005) in which the
16 degree of coercion is disputed may be admitted only if the
17 military judge finds that—

18 “(1) the totality of the circumstances renders
19 the statement reliable and possessing sufficient pro-
20 bative value; and

21 “(2) the interests of justice would best be
22 served by admission of the statement into evidence.

23 “(d) STATEMENTS OBTAINED AFTER ENACTMENT
24 OF DETAINEE TREATMENT ACT OF 2005.—A statement
25 obtained on or after December 30, 2005 (the date of the
26 enactment of the Defense Treatment Act of 2005) in

1 which the degree of coercion is disputed may be admitted
 2 only if the military judge finds that—

3 “(1) the totality of the circumstances renders
 4 the statement reliable and possessing sufficient pro-
 5 bative value;

6 “(2) the interests of justice would best be
 7 served by admission of the statement into evidence;
 8 and

9 “(3) the interrogation methods used to obtain
 10 the statement do not amount to cruel, inhuman, or
 11 degrading treatment prohibited by section 1003 of
 12 the Detainee Treatment Act of 2005.

13 **“§ 948s. Service of charges**

14 “The trial counsel assigned to a case before a military
 15 commission under this chapter shall cause to be served
 16 upon the accused and military defense counsel a copy of
 17 the charges upon which trial is to be had. Such charges
 18 shall be served in English and, if appropriate, in another
 19 language that the accused understands. Such service shall
 20 be made sufficiently in advance of trial to prepare a de-
 21 fense.

22 “SUBCHAPTER IV—TRIAL PROCEDURE

“Sec.

“949a. Rules.

“949b. Unlawfully influencing action of military commission.

“949c. Duties of trial counsel and defense counsel.

“949d. Sessions.

“949e. Continuances.

“949f. Challenges.

“949g. Oaths.

“949h. Former jeopardy.

“949i. Pleas of the accused.

“949j. Opportunity to obtain witnesses and other evidence.

“949k. Defense of lack of mental responsibility.

“949l. Voting and rulings.

“949m. Number of votes required.

“949n. Military commission to announce action.

“949o. Record of trial.

1 **“§ 949a. Rules**

2 “(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-
 3 trial, trial, and post-trial procedures, including elements
 4 and modes of proof, for cases triable by military commis-
 5 sion under this chapter may be prescribed by the Secretary
 6 of Defense, in consultation with the Attorney General.
 7 Such procedures shall, so far as the Secretary considers
 8 practicable or consistent with military or intelligence ac-
 9 tivities, apply the principles of law and the rules of evi-
 10 dence in trial by general courts-martial. Such procedures
 11 and rules of evidence may not be contrary to or incon-
 12 sistent with this chapter.

13 “(b) RULES FOR MILITARY COMMISSION.—(1) Not-
 14 withstanding any departures from the law and the rules
 15 of evidence in trial by general courts-martial authorized
 16 by subsection (a), the procedures and rules of evidence in
 17 trials by military commission under this chapter shall in-
 18 clude the following:

19 “(A) The accused shall be permitted to present
 20 evidence in his defense, to cross-examine the wit-
 21 nesses who testify against him, and to examine and

1 respond to evidence admitted against him on the
2 issue of guilt or innocence and for sentencing, as
3 provided for by this chapter.

4 “(B) The accused shall be present at all ses-
5 sions of the military commission (other than those
6 for deliberations or voting), except when excluded
7 under section 949d of this title.

8 “(C) The accused shall receive the assistance of
9 counsel as provided for by section 948k.

10 “(D) The accused shall be permitted to rep-
11 resent himself, as provided for by paragraph (3).

12 “(2) In establishing procedures and rules of evidence
13 for military commission proceedings, the Secretary of De-
14 fense may prescribe the following provisions:

15 “(A) Evidence shall be admissible if the mili-
16 tary judge determines that the evidence would have
17 probative value to a reasonable person.

18 “(B) Evidence shall not be excluded from trial
19 by military commission on the grounds that the evi-
20 dence was not seized pursuant to a search warrant
21 or other authorization.

22 “(C) A statement of the accused that is other-
23 wise admissible shall not be excluded from trial by
24 military commission on grounds of alleged coercion
25 or compulsory self-incrimination so long as the evi-

1 dence complies with the provisions of section 948r of
2 this title.

3 “(D) Evidence shall be admitted as authentic so
4 long as—

5 “(i) the military judge of the military com-
6 mission determines that there is sufficient basis
7 to find that the evidence is what it is claimed
8 to be; and

9 “(ii) the military judge instructs the mem-
10 bers that they may consider any issue as to au-
11 thentication or identification of evidence in de-
12 termining the weight, if any, to be given to the
13 evidence.

14 “(E)(i) Except as provided in clause (ii), hear-
15 say evidence not otherwise admissible under the
16 rules of evidence applicable in trial by general
17 courts-martial may be admitted in a trial by military
18 commission if the proponent of the evidence makes
19 known to the adverse party, sufficiently in advance
20 to provide the adverse party with a fair opportunity
21 to meet the evidence, the intention of the proponent
22 to offer the evidence, and the particulars of the evi-
23 dence (including information on the general cir-
24 cumstances under which the evidence was obtained).

25 The disclosure of evidence under the preceding sen-

1 tence is subject to the requirements and limitations
2 applicable to the disclosure of classified information
3 in section 949j(c) of this title.

4 “(ii) Hearsay evidence not otherwise admissible
5 under the rules of evidence applicable in trial by
6 general courts-martial shall not be admitted in a
7 trial by military commission if the party opposing
8 the admission of the evidence demonstrates that the
9 evidence is unreliable or lacking in probative value.

10 “(F) The military judge shall exclude any evi-
11 dence the probative value of which is substantially
12 outweighed—

13 “(i) by the danger of unfair prejudice, con-
14 fusion of the issues, or misleading the commis-
15 sion; or

16 “(ii) by considerations of undue delay,
17 waste of time, or needless presentation of cu-
18 mulative evidence.

19 “(3)(A) The accused in a military commission under
20 this chapter who exercises the right to self-representation
21 under paragraph (1)(D) shall conform his deportment and
22 the conduct of the defense to the rules of evidence, proce-
23 dure, and decorum applicable to trials by military commis-
24 sion.

1 “(B) Failure of the accused to conform to the rules
2 described in subparagraph (A) may result in a partial or
3 total revocation by the military judge of the right of self-
4 representation under paragraph (1)(D). In such case, the
5 detailed defense counsel of the accused or an appropriately
6 authorized civilian counsel shall perform the functions nec-
7 essary for the defense.

8 “(c) DELEGATION OF AUTHORITY TO PRESCRIBE
9 REGULATIONS.—The Secretary of Defense may delegate
10 the authority of the Secretary to prescribe regulations
11 under this chapter.

12 “(d) NOTIFICATION TO CONGRESSIONAL COMMIT-
13 TEES OF CHANGES TO PROCEDURES.—Not later than 60
14 days before the date on which any proposed modification
15 of the procedures in effect for military commissions under
16 this chapter goes into effect, the Secretary of Defense
17 shall submit to the Committee on Armed Services of the
18 Senate and the Committee on Armed Services of the
19 House of Representatives a report describing the modifica-
20 tion.

21 **“§ 949b. Unlawfully influencing action of military**
22 **commission**

23 “(a) IN GENERAL.—(1) No authority convening a
24 military commission under this chapter may censure, rep-
25 rimand, or admonish the military commission, or any

1 member, military judge, or counsel thereof, with respect
2 to the findings or sentence adjudged by the military com-
3 mission, or with respect to any other exercises of its or
4 his functions in the conduct of the proceedings.

5 “(2) No person may attempt to coerce or, by any un-
6 authorized means, influence—

7 “(A) the action of a military commission under
8 this chapter, or any member thereof, in reaching the
9 findings or sentence in any case;

10 “(B) the action of any convening, approving, or
11 reviewing authority with respect to his judicial acts;
12 or

13 “(C) the exercise of professional judgment by
14 trial counsel or defense counsel.

15 “(3) Paragraphs (1) and (2) do not apply with re-
16 spect to—

17 “(A) general instructional or informational
18 courses in military justice if such courses are de-
19 signed solely for the purpose of instructing members
20 of a command in the substantive and procedural as-
21 pects of military commissions; or

22 “(B) statements and instructions given in open
23 proceedings by a military judge or counsel.

24 “(b) PROHIBITION ON CONSIDERATION OF ACTIONS
25 ON COMMISSION IN EVALUATION OF FITNESS.—In the

1 preparation of an effectiveness, fitness, or efficiency report
2 or any other report or document used in whole or in part
3 for the purpose of determining whether a commissioned
4 officer of the armed forces is qualified to be advanced in
5 grade, or in determining the assignment or transfer of any
6 such officer or whether any such officer should be retained
7 on active duty, no person may—

8 “(1) consider or evaluate the performance of
9 duty of any member of a military commission under
10 this chapter; or

11 “(2) give a less favorable rating or evaluation
12 to any commissioned officer because of the zeal with
13 which such officer, in acting as counsel, represented
14 any accused before a military commission under this
15 chapter.

16 **“§ 949c. Duties of trial counsel and defense counsel**

17 “(a) TRIAL COUNSEL.—The trial counsel of a mili-
18 tary commission under this chapter shall prosecute in the
19 name of the United States.

20 “(b) DEFENSE COUNSEL.—(1) The accused shall be
21 represented in his defense before a military commission
22 under this chapter as provided in this subsection.

23 “(2) The accused shall be represented by military
24 counsel detailed under section 948k of this title.

1 “(3) The accused may be represented by civilian
2 counsel if retained by the accused, but only if such civilian
3 counsel—

4 “(A) is a United States citizen;

5 “(B) is admitted to the practice of law in a
6 State, district, or possession of the United States or
7 before a Federal court;

8 “(C) has not been the subject of any sanction
9 of disciplinary action by any court, bar, or other
10 competent governmental authority for relevant mis-
11 conduct;

12 “(D) has been determined to be eligible for ac-
13 cess to classified information that is classified at the
14 level Secret or higher; and

15 “(E) has signed a written agreement to comply
16 with all applicable regulations or instructions for
17 counsel, including any rules of court for conduct
18 during the proceedings.

19 “(4) Civilian defense counsel shall protect any classi-
20 fied information received during the course of representa-
21 tion of the accused in accordance with all applicable law
22 governing the protection of classified information and may
23 not divulge such information to any person not authorized
24 to receive it.

1 “(5) If the accused is represented by civilian counsel,
2 detailed military counsel shall act as associate counsel.

3 “(6) The accused is not entitled to be represented by
4 more than one military counsel. However, the person au-
5 thorized under regulations prescribed under section 948k
6 of this title to detail counsel, in that person’s sole discre-
7 tion, may detail additional military counsel to represent
8 the accused.

9 “(7) Defense counsel may cross-examine each witness
10 for the prosecution who testifies before a military commis-
11 sion under this chapter.

12 **“§ 949d. Sessions**

13 “(a) SESSIONS WITHOUT PRESENCE OF MEM-
14 BERS.—(1) At any time after the service of charges which
15 have been referred for trial by military commission under
16 this chapter, the military judge may call the military com-
17 mission into session without the presence of the members
18 for the purpose of—

19 “(A) hearing and determining motions raising
20 defenses or objections which are capable of deter-
21 mination without trial of the issues raised by a plea
22 of not guilty;

23 “(B) hearing and ruling upon any matter which
24 may be ruled upon by the military judge under this

1 chapter, whether or not the matter is appropriate for
2 later consideration or decision by the members;

3 “(C) if permitted by regulations prescribed by
4 the Secretary of Defense, receiving the pleas of the
5 accused; and

6 “(D) performing any other procedural function
7 which may be performed by the military judge under
8 this chapter or under rules prescribed pursuant to
9 section 949a of this title and which does not require
10 the presence of the members.

11 “(2) Except as provided in subsections (c) and (e),
12 any proceedings under paragraph (1) shall—

13 “(A) be conducted in the presence of the ac-
14 cused, defense counsel, and trial counsel; and

15 “(B) be made part of the record.

16 “(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—
17 Except as provided in subsections (c) and (e), all pro-
18 ceedings of a military commission under this chapter, in-
19 cluding any consultation of the members with the military
20 judge or counsel, shall—

21 “(1) be in the presence of the accused, defense
22 counsel, and trial counsel; and

23 “(2) be made a part of the record.

1 “(c) DELIBERATION OR VOTE OF MEMBERS.—When
2 the members of a military commission under this chapter
3 deliberate or vote, only the members may be present.

4 “(d) CLOSURE OF PROCEEDINGS.—(1) The military
5 judge may close to the public all or part of the proceedings
6 of a military commission under this chapter, but only in
7 accordance with this subsection.

8 “(2) The military judge may close to the public all
9 or a portion of the proceedings under paragraph (1) only
10 upon making a specific finding that such closure is nec-
11 essary to—

12 “(A) protect information the disclosure of which
13 could reasonably be expected to cause damage to the
14 national security, including intelligence or law en-
15 forcement sources, methods, or activities; or

16 “(B) ensure the physical safety of individuals.

17 “(3) A finding under paragraph (2) may be based
18 upon a presentation, including a presentation ex parte or
19 in camera, by either trial counsel or defense counsel.

20 “(e) EXCLUSION OF ACCUSED FROM CERTAIN PRO-
21 CEEDINGS.—The military judge may exclude the accused
22 from any portion of a proceeding upon a determination
23 that, after being warned by the military judge, the accused
24 persists in conduct that justifies exclusion from the court-
25 room—

1 “(1) to ensure the physical safety of individuals;
2 or

3 “(2) to prevent disruption of the proceedings by
4 the accused.

5 “(f) PROTECTION OF CLASSIFIED INFORMATION.—

6 “(1) NATIONAL SECURITY PRIVILEGE.—(A)
7 Classified information shall be protected and is privi-
8 leged from disclosure if disclosure would be detri-
9 mental to the national security. The rule in the pre-
10 ceding sentence applies to all stages of the pro-
11 ceedings of military commissions under this chapter.

12 “(B) The privilege referred to in subparagraph
13 (A) may be claimed by the head of the executive or
14 military department or government agency con-
15 cerned based on a finding by the head of that de-
16 partment or agency that—

17 “(i) the information is properly classified;
18 and

19 “(ii) disclosure of the information would be
20 detrimental to the national security.

21 “(C) A person who may claim the privilege re-
22 ferred to in subparagraph (A) may authorize a rep-
23 resentative, witness, or trial counsel to claim the
24 privilege and make the finding described in subpara-
25 graph (B) on behalf of such person. The authority

1 of the representative, witness, or trial counsel to do
2 so is presumed in the absence of evidence to the con-
3 trary.

4 “(2) INTRODUCTION OF CLASSIFIED INFORMA-
5 TION.—

6 “(A) ALTERNATIVES TO DISCLOSURE.—To
7 protect classified information from disclosure,
8 the military judge, upon motion of trial counsel,
9 shall authorize, to the extent practicable—

10 “(i) the deletion of specified items of
11 classified information from documents to
12 be introduced as evidence before the mili-
13 tary commission;

14 “(ii) the substitution of a portion or
15 summary of the information for such clas-
16 sified documents; or

17 “(iii) the substitution of a statement
18 of relevant facts that the classified infor-
19 mation would tend to prove.

20 “(B) PROTECTION OF SOURCES, METHODS,
21 OR ACTIVITIES.—The military judge, upon mo-
22 tion of trial counsel, shall permit trial counsel
23 to introduce otherwise admissible evidence be-
24 fore the military commission, while protecting
25 from disclosure the sources, methods, or activi-

1 ties by which the United States acquired the
2 evidence if the military judge finds that (i) the
3 sources, methods, or activities by which the
4 United States acquired the evidence are classi-
5 fied, and (ii) the evidence is reliable. The mili-
6 tary judge may require trial counsel to present
7 to the military commission and the defense, to
8 the extent practicable and consistent with na-
9 tional security, an unclassified summary of the
10 sources, methods, or activities by which the
11 United States acquired the evidence.

12 “(C) ASSERTION OF NATIONAL SECURITY
13 PRIVILEGE AT TRIAL.—During the examination
14 of any witness, trial counsel may object to any
15 question, line of inquiry, or motion to admit evi-
16 dence that would require the disclosure of clas-
17 sified information. Following such an objection,
18 the military judge shall take suitable action to
19 safeguard such classified information. Such ac-
20 tion may include the review of trial counsel’s
21 claim of privilege by the military judge in cam-
22 era and on an ex parte basis, and the delay of
23 proceedings to permit trial counsel to consult
24 with the department or agency concerned as to

1 whether the national security privilege should
2 be asserted.

3 “(3) CONSIDERATION OF PRIVILEGE AND RE-
4 LATED MATERIALS.—A claim of privilege under this
5 subsection, and any materials submitted in support
6 thereof, shall, upon request of the Government, be
7 considered by the military judge in camera and shall
8 not be disclosed to the accused.

9 “(4) ADDITIONAL REGULATIONS.—The Sec-
10 retary of Defense may prescribe additional regula-
11 tions, consistent with this subsection, for the use
12 and protection of classified information during pro-
13 ceedings of military commissions under this chapter.
14 A report on any regulations so prescribed, or modi-
15 fied, shall be submitted to the Committees on Armed
16 Services of the Senate and the House of Representa-
17 tives not later than 60 days before the date on which
18 such regulations or modifications, as the case may
19 be, go into effect.

20 **“§ 949e. Continuances**

21 “The military judge in a military commission under
22 this chapter may, for reasonable cause, grant a continu-
23 ance to any party for such time, and as often, as may
24 appear to be just.

1 “§ 949f. Challenges

2 “(a) CHALLENGES AUTHORIZED.—The military
3 judge and members of a military commission under this
4 chapter may be challenged by the accused or trial counsel
5 for cause stated to the commission. The military judge
6 shall determine the relevance and validity of challenges for
7 cause. The military judge may not receive a challenge to
8 more than one person at a time. Challenges by trial coun-
9 sel shall ordinarily be presented and decided before those
10 by the accused are offered.

11 “(b) PEREMPTORY CHALLENGES.—Each accused
12 and the trial counsel are entitled to one peremptory chal-
13 lenge. The military judge may not be challenged except
14 for cause.

15 “(c) CHALLENGES AGAINST ADDITIONAL MEM-
16 BERS.—Whenever additional members are detailed to a
17 military commission under this chapter, and after any
18 challenges for cause against such additional members are
19 presented and decided, each accused and the trial counsel
20 are entitled to one peremptory challenge against members
21 not previously subject to peremptory challenge.

22 “§ 949g. Oaths

23 “(a) IN GENERAL.—(1) Before performing their re-
24 spective duties in a military commission under this chap-
25 ter, military judges, members, trial counsel, defense coun-

1 sel, reporters, and interpreters shall take an oath to per-
2 form their duties faithfully.

3 “(2) The form of the oath required by paragraph (1),
4 the time and place of the taking thereof, the manner of
5 recording the same, and whether the oath shall be taken
6 for all cases in which duties are to be performed or for
7 a particular case, shall be as prescribed in regulations of
8 the Secretary of Defense. Those regulations may provide
9 that—

10 “(A) an oath to perform faithfully duties as a
11 military judge, trial counsel, or defense counsel may
12 be taken at any time by any judge advocate or other
13 person certified to be qualified or competent for the
14 duty; and

15 “(B) if such an oath is taken, such oath need
16 not again be taken at the time the judge advocate
17 or other person is detailed to that duty.

18 “(b) WITNESSES.—Each witness before a military
19 commission under this chapter shall be examined on oath.

20 **“§ 949h. Former jeopardy**

21 “(a) IN GENERAL.—No person may, without his con-
22 sent, be tried by a military commission under this chapter
23 a second time for the same offense.

24 “(b) SCOPE OF TRIAL.—No proceeding in which the
25 accused has been found guilty by military commission

1 under this chapter upon any charge or specification is a
2 trial in the sense of this section until the finding of guilty
3 has become final after review of the case has been fully
4 completed.

5 **“§ 949i. Pleas of the accused**

6 “(a) ENTRY OF PLEA OF NOT GUILTY.—If an ac-
7 cused in a military commission under this chapter after
8 a plea of guilty sets up matter inconsistent with the plea,
9 or if it appears that the accused has entered the plea of
10 guilty through lack of understanding of its meaning and
11 effect, or if the accused fails or refuses to plead, a plea
12 of not guilty shall be entered in the record, and the mili-
13 tary commission shall proceed as though the accused had
14 pleaded not guilty.

15 “(b) FINDING OF GUILT AFTER GUILTY PLEA.—
16 With respect to any charge or specification to which a plea
17 of guilty has been made by the accused in a military com-
18 mission under this chapter and accepted by the military
19 judge, a finding of guilty of the charge or specification
20 may be entered immediately without a vote. The finding
21 shall constitute the finding of the commission unless the
22 plea of guilty is withdrawn prior to announcement of the
23 sentence, in which event the proceedings shall continue as
24 though the accused had pleaded not guilty.

1 **“§ 949j. Opportunity to obtain witnesses and other**
2 **evidence**

3 “(a) RIGHT OF DEFENSE COUNSEL.—Defense coun-
4 sel in a military commission under this chapter shall have
5 a reasonable opportunity to obtain witnesses and other evi-
6 dence as provided in regulations prescribed by the Sec-
7 retary of Defense.

8 “(b) PROCESS FOR COMPULSION.—Process issued in
9 a military commission under this chapter to compel wit-
10 nesses to appear and testify and to compel the production
11 of other evidence—

12 “(1) shall be similar to that which courts of the
13 United States having criminal jurisdiction may law-
14 fully issue; and

15 “(2) shall run to any place where the United
16 States shall have jurisdiction thereof.

17 “(c) PROTECTION OF CLASSIFIED INFORMATION.—

18 (1) With respect to the discovery obligations of trial coun-
19 sel under this section, the military judge, upon motion of
20 trial counsel, shall authorize, to the extent practicable—

21 “(A) the deletion of specified items of classified
22 information from documents to be made available to
23 the accused;

24 “(B) the substitution of a portion or summary
25 of the information for such classified documents; or

1 “(C) the substitution of a statement admitting
2 relevant facts that the classified information would
3 tend to prove.

4 “(2) The military judge, upon motion of trial counsel,
5 shall authorize trial counsel, in the course of complying
6 with discovery obligations under this section, to protect
7 from disclosure the sources, methods, or activities by
8 which the United States acquired evidence if the military
9 judge finds that the sources, methods, or activities by
10 which the United States acquired such evidence are classi-
11 fied. The military judge may require trial counsel to pro-
12 vide, to the extent practicable, an unclassified summary
13 of the sources, methods, or activities by which the United
14 States acquired such evidence.

15 “(d) EXCULPATORY EVIDENCE.—(1) As soon as
16 practicable, trial counsel shall disclose to the defense the
17 existence of any evidence known to trial counsel that rea-
18 sonably tends to exculpate the accused. Where exculpatory
19 evidence is classified, the accused shall be provided with
20 an adequate substitute in accordance with the procedures
21 under subsection (c).

22 “(2) In this subsection, the term ‘evidence known to
23 trial counsel’, in the case of exculpatory evidence, means
24 exculpatory evidence that the prosecution would be re-

1 quired to disclose in a trial by general court-martial under
2 chapter 47 of this title.

3 **“§ 949k. Defense of lack of mental responsibility**

4 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative
5 defense in a trial by military commission under this chap-
6 ter that, at the time of the commission of the acts consti-
7 tuting the offense, the accused, as a result of a severe
8 mental disease or defect, was unable to appreciate the na-
9 ture and quality or the wrongfulness of the acts. Mental
10 disease or defect does not otherwise constitute a defense.

11 “(b) BURDEN OF PROOF.—The accused in a military
12 commission under this chapter has the burden of proving
13 the defense of lack of mental responsibility by clear and
14 convincing evidence.

15 “(c) FINDINGS FOLLOWING ASSERTION OF DE-
16 FENSE.—Whenever lack of mental responsibility of the ac-
17 cused with respect to an offense is properly at issue in
18 a military commission under this chapter, the military
19 judge shall instruct the members of the commission as to
20 the defense of lack of mental responsibility under this sec-
21 tion and shall charge them to find the accused—

22 “(1) guilty;

23 “(2) not guilty; or

24 “(3) subject to subsection (d), not guilty by rea-
25 son of lack of mental responsibility.

1 “(d) MAJORITY VOTE REQUIRED FOR FINDING.—
2 The accused shall be found not guilty by reason of lack
3 of mental responsibility under subsection (c)(3) only if a
4 majority of the members present at the time the vote is
5 taken determines that the defense of lack of mental re-
6 sponsibility has been established.

7 **“§ 949l. Voting and rulings**

8 “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting
9 by members of a military commission under this chapter
10 on the findings and on the sentence shall be by secret writ-
11 ten ballot.

12 “(b) RULINGS.—(1) The military judge in a military
13 commission under this chapter shall rule upon all ques-
14 tions of law, including the admissibility of evidence and
15 all interlocutory questions arising during the proceedings.

16 “(2) Any ruling made by the military judge upon a
17 question of law or an interlocutory question (other than
18 the factual issue of mental responsibility of the accused)
19 is conclusive and constitutes the ruling of the military
20 commission. However, a military judge may change his
21 ruling at any time during the trial.

22 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote
23 is taken of the findings of a military commission under
24 this chapter, the military judge shall, in the presence of

1 the accused and counsel, instruct the members as to the
2 elements of the offense and charge the members—

3 “(1) that the accused must be presumed to be
4 innocent until his guilt is established by legal and
5 competent evidence beyond a reasonable doubt;

6 “(2) that in the case being considered, if there
7 is a reasonable doubt as to the guilt of the accused,
8 the doubt must be resolved in favor of the accused
9 and he must be acquitted;

10 “(3) that, if there is reasonable doubt as to the
11 degree of guilt, the finding must be in a lower de-
12 gree as to which there is no reasonable doubt; and

13 “(4) that the burden of proof to establish the
14 guilt of the accused beyond a reasonable doubt is
15 upon the United States.

16 **“§ 949m. Number of votes required**

17 “(a) CONVICTION.—No person may be convicted by
18 a military commission under this chapter of any offense,
19 except as provided in section 949i(b) of this title or by
20 concurrence of two-thirds of the members present at the
21 time the vote is taken.

22 “(b) SENTENCES.—(1) No person may be sentenced
23 by a military commission to suffer death, except insofar
24 as—

1 “(A) the penalty of death is expressly author-
2 ized under this chapter or the law of war for an of-
3 fense of which the accused has been found guilty;

4 “(B) trial counsel expressly sought the penalty
5 of death by filing an appropriate notice in advance
6 of trial;

7 “(C) the accused is convicted of the offense by
8 the concurrence of all the members present at the
9 time the vote is taken; and

10 “(D) all the members present at the time the
11 vote is taken concur in the sentence of death.

12 “(2) No person may be sentenced to life imprison-
13 ment, or to confinement for more than 10 years, by a mili-
14 tary commission under this chapter except by the concur-
15 rence of three-fourths of the members present at the time
16 the vote is taken.

17 “(3) All other sentences shall be determined by a
18 military commission by the concurrence of two-thirds of
19 the members present at the time the vote is taken.

20 “(c) NUMBER OF MEMBERS REQUIRED FOR PEN-
21 ALTY OF DEATH.—(1) Except as provided in paragraph
22 (2), in a case in which the penalty of death is sought, the
23 number of members of the military commission under this
24 chapter shall be not less than 12.

1 “(2) In any case described in paragraph (1) in which
2 12 members are not reasonably available because of phys-
3 ical conditions or military exigencies, the convening au-
4 thority shall specify a lesser number of members for the
5 military commission (but not fewer than 9 members), and
6 the military commission may be assembled, and the trial
7 held, with not fewer than the number of members so speci-
8 fied. In such a case, the convening authority shall make
9 a detailed written statement, to be appended to the record,
10 stating why a greater number of members were not rea-
11 sonably available.

12 **“§ 949n. Military commission to announce action**

13 “A military commission under this chapter shall an-
14 nounce its findings and sentence to the parties as soon
15 as determined.

16 **“§ 949o. Record of trial**

17 “(a) RECORD; AUTHENTICATION.—Each military
18 commission under this chapter shall keep a separate, ver-
19 batim, record of the proceedings in each case brought be-
20 fore it, and the record shall be authenticated by the signa-
21 ture of the military judge. If the record cannot be authen-
22 ticated by the military judge by reason of his death, dis-
23 ability, or absence, it shall be authenticated by the signa-
24 ture of the trial counsel or by a member of the commission
25 if the trial counsel is unable to authenticate it by reason

1 of his death, disability, or absence. Where appropriate,
 2 and as provided in regulations prescribed by the Secretary
 3 of Defense, the record of a military commission under this
 4 chapter may contain a classified annex.

5 “(b) COMPLETE RECORD REQUIRED.—A complete
 6 record of the proceedings and testimony shall be prepared
 7 in every military commission under this chapter.

8 “(c) PROVISION OF COPY TO ACCUSED.—A copy of
 9 the record of the proceedings of the military commission
 10 under this chapter shall be given the accused as soon as
 11 it is authenticated. If the record contains classified infor-
 12 mation, or a classified annex, the accused shall be given
 13 a redacted version of the record consistent with the re-
 14 quirements of section 949d of this title. Defense counsel
 15 shall have access to the unredacted record, as provided
 16 in regulations prescribed by the Secretary of Defense.

17 “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

18 “§ 949s. **Cruel or unusual punishments prohibited**

19 “Punishment by flogging, or by branding, marking,
 20 or tattooing on the body, or any other cruel or unusual
 21 punishment, may not be adjudged by a military commis-
 22 sion under this chapter or inflicted under this chapter
 23 upon any person subject to this chapter. The use of irons,

1 single or double, except for the purpose of safe custody,
2 is prohibited under this chapter.

3 **“§ 949t. Maximum limits**

4 “The punishment which a military commission under
5 this chapter may direct for an offense may not exceed such
6 limits as the President or Secretary of Defense may pre-
7 scribe for that offense.

8 **“§ 949u. Execution of confinement**

9 “(a) IN GENERAL.—Under such regulations as the
10 Secretary of Defense may prescribe, a sentence of confine-
11 ment adjudged by a military commission under this chap-
12 ter may be carried into execution by confinement—

13 “(1) in any place of confinement under the con-
14 trol of any of the armed forces; or

15 “(2) in any penal or correctional institution
16 under the control of the United States or its allies,
17 or which the United States may be allowed to use.

18 “(b) TREATMENT DURING CONFINEMENT BY OTHER
19 THAN THE ARMED FORCES.—Persons confined under
20 subsection (a)(2) in a penal or correctional institution not
21 under the control of an armed force are subject to the
22 same discipline and treatment as persons confined or com-
23 mitted by the courts of the United States or of the State,
24 District of Columbia, or place in which the institution is
25 situated.

1 “SUBCHAPTER VI—POST-TRIAL PROCEDURE
2 AND REVIEW OF MILITARY COMMISSIONS

“Sec.

“950a. Error of law; lesser included offense.

“950b. Review by the convening authority.

“950c. Appellate referral; waiver or withdrawal of appeal.

“950d. Appeal by the United States.

“950e. Rehearings.

“950f. Review by Court of Military Commission Review.

“950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.

“950h. Appellate counsel.

“950i. Execution of sentence; procedures for execution of sentence of death.

“950j. Finality or proceedings, findings, and sentences.

3 **“§ 950a. Error of law; lesser included offense**

4 “(a) ERROR OF LAW.—A finding or sentence of a
5 military commission under this chapter may not be held
6 incorrect on the ground of an error of law unless the error
7 materially prejudices the substantial rights of the accused.

8 “(b) LESSER INCLUDED OFFENSE.—Any reviewing
9 authority with the power to approve or affirm a finding
10 of guilty by a military commission under this chapter may
11 approve or affirm, instead, so much of the finding as in-
12 cludes a lesser included offense.

13 **“§ 950b. Review by the convening authority**

14 “(a) NOTICE TO CONVENING AUTHORITY OF FIND-
15 INGS AND SENTENCE.—The findings and sentence of a
16 military commission under this chapter shall be reported
17 in writing promptly to the convening authority after the
18 announcement of the sentence.

1 “(b) SUBMITTAL OF MATTERS BY ACCUSED TO CON-
2 VENING AUTHORITY.—(1) The accused may submit to the
3 convening authority matters for consideration by the con-
4 vening authority with respect to the findings and the sen-
5 tence of the military commission under this chapter.

6 “(2)(A) Except as provided in subparagraph (B), a
7 submittal under paragraph (1) shall be made in writing
8 within 20 days after the accused has been given an au-
9 thenticated record of trial under section 949o(c) of this
10 title.

11 “(B) If the accused shows that additional time is re-
12 quired for the accused to make a submittal under para-
13 graph (1), the convening authority may, for good cause,
14 extend the applicable period under subparagraph (A) for
15 not more than an additional 20 days.

16 “(3) The accused may waive his right to make a sub-
17 mittal to the convening authority under paragraph (1).
18 Such a waiver shall be made in writing and may not be
19 revoked. For the purposes of subsection (c)(2), the time
20 within which the accused may make a submittal under this
21 subsection shall be deemed to have expired upon the sub-
22 mittal of a waiver under this paragraph to the convening
23 authority.

24 “(c) ACTION BY CONVENING AUTHORITY.—(1) The
25 authority under this subsection to modify the findings and

1 sentence of a military commission under this chapter is
2 a matter of the sole discretion and prerogative of the con-
3 vening authority.

4 “(2)(A) The convening authority shall take action on
5 the sentence of a military commission under this chapter.

6 “(B) Subject to regulations prescribed by the Sec-
7 retary of Defense, action on the sentence under this para-
8 graph may be taken only after consideration of any mat-
9 ters submitted by the accused under subsection (b) or
10 after the time for submitting such matters expires, which-
11 ever is earlier.

12 “(C) In taking action under this paragraph, the con-
13 vening authority may, in his sole discretion, approve, dis-
14 approve, commute, or suspend the sentence in whole or
15 in part. The convening authority may not increase a sen-
16 tence beyond that which is found by the military commis-
17 sion.

18 “(3) The convening authority is not required to take
19 action on the findings of a military commission under this
20 chapter. If the convening authority takes action on the
21 findings, the convening authority may, in his sole discre-
22 tion, may—

23 “(A) dismiss any charge or specification by set-
24 ting aside a finding of guilty thereto; or

1 “(B) change a finding of guilty to a charge to
2 a finding of guilty to an offense that is a lesser in-
3 cluded offense of the offense stated in the charge.

4 “(4) The convening authority shall serve on the ac-
5 cused or on defense counsel notice of any action taken by
6 the convening authority under this subsection.

7 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-
8 ject to paragraphs (2) and (3), the convening authority
9 of a military commission under this chapter may, in his
10 sole discretion, order a proceeding in revision or a rehear-
11 ing.

12 “(2)(A) Except as provided in subparagraph (B), a
13 proceeding in revision may be ordered by the convening
14 authority if—

15 “(i) there is an apparent error or omission in
16 the record; or

17 “(ii) the record shows improper or inconsistent
18 action by the military commission with respect to
19 the findings or sentence that can be rectified without
20 material prejudice to the substantial rights of the
21 accused.

22 “(B) In no case may a proceeding in revision—

23 “(i) reconsider a finding of not guilty of a spec-
24 ification or a ruling which amounts to a finding of
25 not guilty;

1 “(ii) reconsider a finding of not guilty of any
2 charge, unless there has been a finding of guilty
3 under a specification laid under that charge, which
4 sufficiently alleges a violation; or

5 “(iii) increase the severity of the sentence un-
6 less the sentence prescribed for the offense is man-
7 datory.

8 “(3) A rehearing may be ordered by the convening
9 authority if the convening authority disapproves the find-
10 ings and sentence and states the reasons for disapproval
11 of the findings. If the convening authority disapproves the
12 finding and sentence and does not order a rehearing, the
13 convening authority shall dismiss the charges. A rehearing
14 as to the findings may not be ordered by the convening
15 authority when there is a lack of sufficient evidence in the
16 record to support the findings. A rehearing as to the sen-
17 tence may be ordered by the convening authority if the
18 convening authority disapproves the sentence.

19 **“§ 950c. Appellate referral; waiver or withdrawal of**
20 **appeal**

21 “(a) AUTOMATIC REFERRAL FOR APPELLATE RE-
22 VIEW.—Except as provided under subsection (b), in each
23 case in which the final decision of a military commission
24 (as approved by the convening authority) includes a find-
25 ing of guilty, the convening authority shall refer the case

1 to the Court of Military Commission Review. Any such re-
2 ferral shall be made in accordance with procedures pre-
3 scribed under regulations of the Secretary.

4 “(b) WAIVER OF RIGHT OF REVIEW.—(1) In each
5 case subject to appellate review under section 950f of this
6 title, except a case in which the sentence as approved
7 under section 950b of this title extends to death, the ac-
8 cused may file with the convening authority a statement
9 expressly waiving the right of the accused to such review.

10 “(2) A waiver under paragraph (1) shall be signed
11 by both the accused and a defense counsel.

12 “(3) A waiver under paragraph (1) must be filed, if
13 at all, within 10 days after notice on the action is served
14 on the accused or on defense counsel under section
15 950b(c)(4) of this title. The convening authority, for good
16 cause, may extend the period for such filing by not more
17 than 30 days.

18 “(c) WITHDRAWAL OF APPEAL.—Except in a case in
19 which the sentence as approved under section 950b of this
20 title extends to death, the accused may withdraw an ap-
21 peal at any time.

22 “(d) EFFECT OF WAIVER OR WITHDRAWAL.—A
23 waiver of the right to appellate review or the withdrawal
24 of an appeal under this section bars review under section
25 950f of this title.

1 **“§ 950d. Appeal by the United States**

2 “(a) INTERLOCUTORY APPEAL.—(1) Except as pro-
3 vided in paragraph (2), in a trial by military commission
4 under this chapter, the United States may take an inter-
5 locutory appeal to the Court of Military Commission Re-
6 view of any order or ruling of the military judge that—

7 “(A) terminates proceedings of the military
8 commission with respect to a charge or specification;

9 “(B) excludes evidence that is substantial proof
10 of a fact material in the proceeding; or

11 “(C) relates to a matter under subsection (d),
12 (e), or (f) of section 949d of this title or section
13 949j(c) of this title.

14 “(2) The United States may not appeal under para-
15 graph (1) an order or ruling that is, or amounts to, a find-
16 ing of not guilty by the military commission with respect
17 to a charge or specification.

18 “(b) NOTICE OF APPEAL.—The United States shall
19 take an appeal of an order or ruling under subsection (a)
20 by filing a notice of appeal with the military judge within
21 five days after the date of such order or ruling.

22 “(c) APPEAL.—An appeal under this section shall be
23 forwarded, by means specified in regulations prescribed
24 the Secretary of Defense, directly to the Court of Military
25 Commission Review. In ruling on an appeal under this sec-

1 tion, the Court may act only with respect to matters of
2 law.

3 “(d) APPEAL FROM ADVERSE RULING.—The United
4 States may appeal an adverse ruling on an appeal under
5 subsection (c) to the United States Court of Appeals for
6 the District of Columbia Circuit by filing a petition for
7 review in the Court of Appeals within 10 days after the
8 date of such ruling. Review under this subsection shall be
9 at the discretion of the Court of Appeals.

10 **“§ 950e. Rehearings**

11 “(a) COMPOSITION OF MILITARY COMMISSION FOR
12 REHEARING.—Each rehearing under this chapter shall
13 take place before a military commission under this chapter
14 composed of members who were not members of the mili-
15 tary commission which first heard the case.

16 “(b) SCOPE OF REHEARING.—(1) Upon a rehear-
17 ing—

18 “(A) the accused may not be tried for any of-
19 fense of which he was found not guilty by the first
20 military commission; and

21 “(B) no sentence in excess of or more than the
22 original sentence may be imposed unless—

23 “(i) the sentence is based upon a finding
24 of guilty of an offense not considered upon the
25 merits in the original proceedings; or

1 “(ii) the sentence prescribed for the of-
2 fense is mandatory.

3 “(2) Upon a rehearing, if the sentence approved after
4 the first military commission was in accordance with a
5 pretrial agreement and the accused at the rehearing
6 changes his plea with respect to the charges or specifica-
7 tions upon which the pretrial agreement was based, or oth-
8 erwise does not comply with pretrial agreement, the sen-
9 tence as to those charges or specifications may include any
10 punishment not in excess of that lawfully adjudged at the
11 first military commission.

12 **“§ 950f. Review by Court of Military Commission Re-**
13 **view**

14 “(a) ESTABLISHMENT.—The Secretary of Defense
15 shall establish a Court of Military Commission Review
16 which shall be composed of one or more panels, and each
17 such panel shall be composed of not less than three appel-
18 late military judges. For the purpose of reviewing military
19 commission decisions under this chapter, the court may
20 sit in panels or as a whole in accordance with rules pre-
21 scribed by the Secretary.

22 “(b) APPELLATE MILITARY JUDGES.—The Secretary
23 shall assign appellate military judges to a Court of Mili-
24 tary Commission Review. Each appellate military judge
25 shall meet the qualifications for military judges prescribed

1 by section 948j(b) of this title or shall be a civilian with
2 comparable qualifications. No person may be serve as an
3 appellate military judge in any case in which that person
4 acted as a military judge, counsel, or reviewing official.

5 “(c) CASES TO BE REVIEWED.—The Court of Mili-
6 tary Commission Review, in accordance with procedures
7 prescribed under regulations of the Secretary, shall review
8 the record in each case that is referred to the Court by
9 the convening authority under section 950e of this title
10 with respect to any matter of law raised by the accused.

11 “(d) SCOPE OF REVIEW.—In a case reviewed by the
12 Court of Military Commission Review under this section,
13 the Court may act only with respect to matters of law.

14 **“§ 950g. Review by the United States Court of Ap-
15 peals for the District of Columbia Circuit
16 and the Supreme Court**

17 “(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A)
18 Except as provided in subparagraph (B), the United
19 States Court of Appeals for the District of Columbia Cir-
20 cuit shall have exclusive jurisdiction to determine the va-
21 lidity of a final judgment rendered by a military commis-
22 sion (as approved by the convening authority) under this
23 chapter.

1 “(B) The Court of Appeals may not review the final
2 judgment until all other appeals under this chapter have
3 been waived or exhausted.

4 “(2) A petition for review must be filed by the ac-
5 cused in the Court of Appeals not later than 20 days after
6 the date on which—

7 “(A) written notice of the final decision of the
8 Court of Military Commission Review is served on
9 the accused or on defense counsel; or

10 “(B) the accused submits, in the form pre-
11 scribed by section 950c of this title, a written notice
12 waiving the right of the accused to review by the
13 Court of Military Commission Review under section
14 950f of this title.

15 “(b) STANDARD FOR REVIEW.—In a case reviewed
16 by it under this section, the Court of Appeals may act
17 only with respect to matters of law.

18 “(c) SCOPE OF REVIEW.—The jurisdiction of the
19 Court of Appeals on an appeal under subsection (a) shall
20 be limited to the consideration of—

21 “(1) whether the final decision was consistent
22 with the standards and procedures specified in this
23 chapter; and

24 “(2) to the extent applicable, the Constitution
25 and the laws of the United States.

1 “(d) SUPREME COURT.—The Supreme Court may re-
2 view by writ of certiorari the final judgment of the Court
3 of Appeals pursuant to section 1257 of title 28.

4 “§ 950h. Appellate counsel

5 “(a) APPOINTMENT.—The Secretary of Defense
6 shall, by regulation, establish procedures for the appoint-
7 ment of appellate counsel for the United States and for
8 the accused in military commissions under this chapter.
9 Appellate counsel shall meet the qualifications for counsel
10 appearing before military commissions under this chapter.

11 “(b) REPRESENTATION OF UNITED STATES.—Appel-
12 late counsel appointed under subsection (a)—

13 “(1) shall represent the United States in any
14 appeal or review proceeding under this chapter be-
15 fore the Court of Military Commission Review; and

16 “(2) may, when requested to do so by the At-
17 torney General in a case arising under this chapter,
18 represent the United States before the United States
19 Court of Appeals for the District of Columbia Cir-
20 cuit or the Supreme Court.

21 “(c) REPRESENTATION OF ACCUSED.—The accused
22 shall be represented by appellate counsel appointed under
23 subsection (a) before the Court of Military Commission
24 Review, the United States Court of Appeals for the Dis-
25 trict of Columbia Circuit, and the Supreme Court, and by

1 civilian counsel if retained by the accused. Any such civil-
2 ian counsel shall meet the qualifications under paragraph
3 (3) of section 949e(b) of this title for civilian counsel ap-
4 pearing before military commissions under this chapter
5 and shall be subject to the requirements of paragraph (4)
6 of that section.

7 **“§ 950i. Execution of sentence; procedures for execu-**
8 **tion of sentence of death**

9 “(a) IN GENERAL.—The Secretary of Defense is au-
10 thorized to carry out a sentence imposed by a military
11 commission under this chapter in accordance with such
12 procedures as the Secretary may prescribe.

13 “(b) EXECUTION OF SENTENCE OF DEATH ONLY
14 UPON APPROVAL BY THE PRESIDENT.—If the sentence
15 of a military commission under this chapter extends to
16 death, that part of the sentence providing for death may
17 not be executed until approved by the President. In such
18 a case, the President may commute, remit, or suspend the
19 sentence, or any part thereof, as he sees fit.

20 “(c) EXECUTION OF SENTENCE OF DEATH ONLY
21 UPON FINAL JUDGMENT OF LEGALITY OF PRO-
22 CEEDINGS.—(1) If the sentence of a military commission
23 under this chapter extends to death, the sentence may not
24 be executed until there is a final judgment as to the legal-

1 ity of the proceedings (and with respect to death, approval
2 under subsection (b)).

3 “(2) A judgment as to legality of proceedings is final
4 for purposes of paragraph (1) when—

5 “(A) the time for the accused to file a petition
6 for review by the Court of Appeals for the District
7 of Columbia Circuit has expired and the accused has
8 not filed a timely petition for such review and the
9 case is not otherwise under review by that Court; or

10 “(B) review is completed in accordance with the
11 judgment of the United States Court of Appeals for
12 the District of Columbia Circuit and—

13 “(i) a petition for a writ of certiorari is not
14 timely filed;

15 “(ii) such a petition is denied by the Su-
16 preme Court; or

17 “(iii) review is otherwise completed in ac-
18 cordance with the judgment of the Supreme
19 Court.

20 “(d) SUSPENSION OF SENTENCE.—The Secretary of
21 the Defense, or the convening authority acting on the case
22 (if other than the Secretary), may suspend the execution
23 of any sentence or part thereof in the case, except a sen-
24 tence of death.

1 **“§ 950j. Finality or proceedings, findings, and sen-**
2 **tences**

3 “(a) FINALITY.—The appellate review of records of
4 trial provided by this chapter, and the proceedings, find-
5 ings, and sentences of military commissions as approved,
6 reviewed, or affirmed as required by this chapter, are final
7 and conclusive. Orders publishing the proceedings of mili-
8 tary commissions under this chapter are binding upon all
9 departments, courts, agencies, and officers of the United
10 States, except as otherwise provided by the President.

11 “(b) PROVISIONS OF CHAPTER SOLE BASIS FOR RE-
12 VIEW OF MILITARY COMMISSION PROCEDURES AND AC-
13 TIONS.—Except as otherwise provided in this chapter and
14 notwithstanding any other provision of law (including sec-
15 tion 2241 of title 28 or any other habeas corpus provi-
16 sion), no court, justice, or judge shall have jurisdiction to
17 hear or consider any claim or cause of action whatsoever,
18 including any action pending on or filed after the date of
19 the enactment of the Military Commissions Act of 2006,
20 relating to the prosecution, trial, or judgment of a military
21 commission under this chapter, including challenges to the
22 lawfulness of procedures of military commissions under
23 this chapter.

24 **“SUBCHAPTER VII—PUNITIVE MATTERS**

“Sec.

“950p. Statement of substantive offenses.

“950q. Principals.

“950r. Accessory after the fact.

“950s. Conviction of lesser included offense.

“950t. Attempts.

“950u. Solicitation.

“950v. Crimes triable by military commissions.

“950w. Perjury and obstruction of justice; contempt.

1 **“§ 950p. Statement of substantive offenses**

2 “(a) PURPOSE.—The provisions of this subchapter
3 codify offenses that have traditionally been triable by mili-
4 tary commissions. This chapter does not establish new
5 crimes that did not exist before its enactment, but rather
6 codifies those crimes for trial by military commission.

7 “(b) EFFECT.—Because the provisions of this sub-
8 chapter (including provisions that incorporate definitions
9 in other provisions of law) are declarative of existing law,
10 they do not preclude trial for crimes that occurred before
11 the date of the enactment of this chapter.

12 **“§ 950q. Principals**

13 “Any person is punishable as a principal under this
14 chapter who—

15 “(1) commits an offense punishable by this
16 chapter, or aids, abets, counsels, commands, or pro-
17 cures its commission;

18 “(2) causes an act to be done which if directly
19 performed by him would be punishable by this chap-
20 ter; or

21 “(3) is a superior commander who, with regard
22 to acts punishable under this chapter, knew, had

1 reason to know, or should have known, that a subor-
2 dinate was about to commit such acts or had done
3 so and who failed to take the necessary and reason-
4 able measures to prevent such acts or to punish the
5 perpetrators thereof.

6 **“§ 950r. Accessory after the fact**

7 “Any person subject to this chapter who, knowing
8 that an offense punishable by this chapter has been com-
9 mitted, receives, comforts, or assists the offender in order
10 to hinder or prevent his apprehension, trial, or punishment
11 shall be punished as a military commission under this
12 chapter may direct.

13 **“§ 950s. Conviction of lesser included offense**

14 “An accused may be found guilty of an offense nec-
15 essarily included in the offense charged or of an attempt
16 to commit either the offense charged or an attempt to
17 commit either the offense charged or an offense nec-
18 essarily included therein.

19 **“§ 950t. Attempts**

20 “(a) IN GENERAL.—Any person subject to this chap-
21 ter who attempts to commit any offense punishable by this
22 chapter shall be punished as a military commission under
23 this chapter may direct.

24 “(b) SCOPE OF OFFENSE.—An act, done with spe-
25 cific intent to commit an offense under this chapter,

1 amounting to more than mere preparation and tending,
2 even though failing, to effect its commission, is an attempt
3 to commit that offense.

4 “(c) EFFECT OF CONSUMMATION.—Any person sub-
5 ject to this chapter may be convicted of an attempt to com-
6 mit an offense although it appears on the trial that the
7 offense was consummated.

8 **“§ 950u. Solicitation**

9 “Any person subject to this chapter who solicits or
10 advises another or others to commit one or more sub-
11 stantive offenses triable by military commission under this
12 chapter shall, if the offense solicited or advised is at-
13 tempted or committed, be punished with the punishment
14 provided for the commission of the offense, but, if the of-
15 fense solicited or advised is not committed or attempted,
16 he shall be punished as a military commission under this
17 chapter may direct.

18 **“§ 950v. Crimes triable by military commissions**

19 “(a) DEFINITIONS AND CONSTRUCTION.—In this sec-
20 tion:

21 “(1) MILITARY OBJECTIVE.—The term ‘military
22 objective’ means—

23 “(A) combatants; and

24 “(B) those objects during an armed con-
25 flict—

1 “(i) which, by their nature, location,
2 purpose, or use, effectively contribute to
3 the opposing force’s war-fighting or war-
4 sustaining capability; and

5 “(ii) the total or partial destruction,
6 capture, or neutralization of which would
7 constitute a definite military advantage to
8 the attacker under the circumstances at
9 the time of the attack.

10 “(2) PROTECTED PERSON.—The term ‘pro-
11 tected person’ means any person entitled to protec-
12 tion under one or more of the Geneva Conventions,
13 including—

14 “(A) civilians not taking an active part in
15 hostilities;

16 “(B) military personnel placed hors de
17 combat by sickness, wounds, or detention; and

18 “(C) military medical or religious per-
19 sonnel.

20 “(3) PROTECTED PROPERTY.—The term ‘pro-
21 tected property’ means property specifically pro-
22 tected by the law of war (such as buildings dedicated
23 to religion, education, art, science or charitable pur-
24 poses, historic monuments, hospitals, or places
25 where the sick and wounded are collected), if such

1 property is not being used for military purposes or
2 is not otherwise a military objective. Such term in-
3 cludes objects properly identified by one of the dis-
4 tinctive emblems of the Geneva Conventions, but
5 does not include civilian property that is a military
6 objective.

7 “(4) CONSTRUCTION.—The intent specified for
8 an offense under paragraph (1), (2), (3), (4), or
9 (12) of subsection (b) precludes the applicability of
10 such offense with regard to—

11 “(A) collateral damage; or

12 “(B) death, damage, or injury incident to
13 a lawful attack.

14 “(b) OFFENSES.—The following offenses shall be tri-
15 able by military commission under this chapter at any
16 time without limitation:

17 “(1) MURDER OF PROTECTED PERSONS.—Any
18 person subject to this chapter who intentionally kills
19 one or more protected persons shall be punished by
20 death or such other punishment as a military com-
21 mission under this chapter may direct.

22 “(2) ATTACKING CIVILIANS.—Any person sub-
23 ject to this chapter who intentionally engages in an
24 attack upon a civilian population as such, or indi-
25 vidual civilians not taking active part in hostilities,

1 shall be punished, if death results to one or more of
2 the victims, by death or such other punishment as
3 a military commission under this chapter may direct,
4 and, if death does not result to any of the victims,
5 by such punishment, other than death, as a military
6 commission under this chapter may direct.

7 “(3) ATTACKING CIVILIAN OBJECTS.—Any per-
8 son subject to this chapter who intentionally engages
9 in an attack upon a civilian object that is not a mili-
10 tary objective shall be punished as a military com-
11 mission under this chapter may direct.

12 “(4) ATTACKING PROTECTED PROPERTY.—Any
13 person subject to this chapter who intentionally en-
14 gages in an attack upon protected property shall be
15 punished as a military commission under this chap-
16 ter may direct.

17 “(5) PILLAGING.—Any person subject to this
18 chapter who intentionally and in the absence of mili-
19 tary necessity appropriates or seizes property for
20 private or personal use, without the consent of a
21 person with authority to permit such appropriation
22 or seizure, shall be punished as a military commis-
23 sion under this chapter may direct.

24 “(6) DENYING QUARTER.—Any person subject
25 to this chapter who, with effective command or con-

1 trol over subordinate groups, declares, orders, or
2 otherwise indicates to those groups that there shall
3 be no survivors or surrender accepted, with the in-
4 tent to threaten an adversary or to conduct hos-
5 tilities such that there would be no survivors or sur-
6 render accepted, shall be punished as a military
7 commission under this chapter may direct.

8 “(7) TAKING HOSTAGES.—Any person subject
9 to this chapter who, having knowingly seized or de-
10 tained one or more persons, threatens to kill, injure,
11 or continue to detain such person or persons with
12 the intent of compelling any nation, person other
13 than the hostage, or group of persons to act or re-
14 frain from acting as an explicit or implicit condition
15 for the safety or release of such person or persons,
16 shall be punished, if death results to one or more of
17 the victims, by death or such other punishment as
18 a military commission under this chapter may direct,
19 and, if death does not result to any of the victims,
20 by such punishment, other than death, as a military
21 commission under this chapter may direct.

22 “(8) EMPLOYING POISON OR SIMILAR WEAP-
23 ONS.—Any person subject to this chapter who inten-
24 tionally, as a method of warfare, employs a sub-
25 stance or weapon that releases a substance that

1 causes death or serious and lasting damage to health
2 in the ordinary course of events, through its asphyx-
3 iating, bacteriological, or toxic properties, shall be
4 punished, if death results to one or more of the vic-
5 tims, by death or such other punishment as a mili-
6 tary commission under this chapter may direct, and,
7 if death does not result to any of the victims, by
8 such punishment, other than death, as a military
9 commission under this chapter may direct.

10 “(9) USING PROTECTED PERSONS AS A
11 SHIELD.—Any person subject to this chapter who
12 positions, or otherwise takes advantage of, a pro-
13 tected person with the intent to shield a military ob-
14 jective from attack, or to shield, favor, or impede
15 military operations, shall be punished, if death re-
16 sults to one or more of the victims, by death or such
17 other punishment as a military commission under
18 this chapter may direct, and, if death does not result
19 to any of the victims, by such punishment, other
20 than death, as a military commission under this
21 chapter may direct.

22 “(10) USING PROTECTED PROPERTY AS A
23 SHIELD.—Any person subject to this chapter who
24 positions, or otherwise takes advantage of the loca-
25 tion of, protected property with the intent to shield

1 a military objective from attack, or to shield, favor,
2 or impede military operations, shall be punished as
3 a military commission under this chapter may direct.

4 “(11) TORTURE.—

5 “(A) OFFENSE.—Any person subject to
6 this chapter who commits an act specifically in-
7 tended to inflict severe physical or mental pain
8 or suffering (other than pain or suffering inci-
9 dental to lawful sanctions) upon another person
10 within his custody or physical control for the
11 purpose of obtaining information or a confes-
12 sion, punishment, intimidation, coercion, or any
13 reason based on discrimination of any kind,
14 shall be punished, if death results to one or
15 more of the victims, by death or such other
16 punishment as a military commission under this
17 chapter may direct, and, if death does not re-
18 sult to any of the victims, by such punishment,
19 other than death, as a military commission
20 under this chapter may direct.

21 “(B) SEVERE MENTAL PAIN OR SUF-
22 FERING DEFINED.—In this section, the term
23 ‘severe mental pain or suffering’ has the mean-
24 ing given that term in section 2340(2) of title
25 18.

1 “(12) CRUEL OR INHUMAN TREATMENT.—

2 “(A) OFFENSE.—Any person subject to
3 this chapter who commits an act intended to in-
4 flict severe or serious physical or mental pain or
5 suffering (other than pain or suffering inci-
6 dental to lawful sanctions), including serious
7 physical abuse, upon another within his custody
8 or control shall be punished, if death results to
9 the victim, by death or such other punishment
10 as a military commission under this chapter
11 may direct, and, if death does not result to the
12 victim, by such punishment, other than death,
13 as a military commission under this chapter
14 may direct.

15 “(B) DEFINITIONS.—In this paragraph:

16 “(i) The term ‘serious physical pain
17 or suffering’ means bodily injury that in-
18 volves—

19 “(I) a substantial risk of death;

20 “(II) extreme physical pain;

21 “(III) a burn or physical dis-
22 figurement of a serious nature (other
23 than cuts, abrasions, or bruises); or

1 “(IV) significant loss or impair-
2 ment of the function of a bodily mem-
3 ber, organ, or mental faculty.

4 “(ii) The term ‘severe mental pain or
5 suffering’ has the meaning given that term
6 in section 2340(2) of title 18.

7 “(iii) The term ‘serious mental pain
8 or suffering’ has the meaning given the
9 term ‘severe mental pain or suffering’ in
10 section 2340(2) of title 18, except that—

11 “(I) the term ‘serious’ shall re-
12 place the term ‘severe’ where it ap-
13 pears; and

14 “(II) as to conduct occurring
15 after the date of the enactment of the
16 Military Commissions Act of 2006,
17 the term ‘serious and non-transitory
18 mental harm (which need not be pro-
19 longed)’ shall replace the term ‘pro-
20 longed mental harm’ where it appears.

21 “(13) INTENTIONALLY CAUSING SERIOUS BOD-
22 ILY INJURY.—

23 “(A) OFFENSE.—Any person subject to
24 this chapter who intentionally causes serious
25 bodily injury to one or more persons, including

1 lawful combatants, in violation of the law of
2 war shall be punished, if death results to one or
3 more of the victims, by death or such other
4 punishment as a military commission under this
5 chapter may direct, and, if death does not re-
6 sult to any of the victims, by such punishment,
7 other than death, as a military commission
8 under this chapter may direct.

9 “(B) SERIOUS BODILY INJURY DEFINED.—

10 In this paragraph, the term ‘serious bodily in-
11 jury’ means bodily injury which involves—

12 “(i) a substantial risk of death;

13 “(ii) extreme physical pain;

14 “(iii) protracted and obvious dis-
15 figurement; or

16 “(iv) protracted loss or impairment of
17 the function of a bodily member, organ, or
18 mental faculty.

19 “(14) MUTILATING OR MAIMING.—Any person
20 subject to this chapter who intentionally injures one
21 or more protected persons by disfiguring the person
22 or persons by any mutilation of the person or per-
23 sons, or by permanently disabling any member, limb,
24 or organ of the body of the person or persons, with-
25 out any legitimate medical or dental purpose, shall

1 be punished, if death results to one or more of the
2 victims, by death or such other punishment as a
3 military commission under this chapter may direct,
4 and, if death does not result to any of the victims,
5 by such punishment, other than death, as a military
6 commission under this chapter may direct.

7 “(15) MURDER IN VIOLATION OF THE LAW OF
8 WAR.—Any person subject to this chapter who inten-
9 tionally kills one or more persons, including lawful
10 combatants, in violation of the law of war shall be
11 punished by death or such other punishment as a
12 military commission under this chapter may direct.

13 “(16) DESTRUCTION OF PROPERTY IN VIOLA-
14 TION OF THE LAW OF WAR.—Any person subject to
15 this chapter who intentionally destroys property be-
16 longing to another person in violation of the law of
17 war shall punished as a military commission under
18 this chapter may direct.

19 “(17) USING TREACHERY OR PERFIDY.—Any
20 person subject to this chapter who, after inviting the
21 confidence or belief of one or more persons that they
22 were entitled to, or obliged to accord, protection
23 under the law of war, intentionally makes use of
24 that confidence or belief in killing, injuring, or cap-
25 turing such person or persons shall be punished, if

1 death results to one or more of the victims, by death
2 or such other punishment as a military commission
3 under this chapter may direct, and, if death does not
4 result to any of the victims, by such punishment,
5 other than death, as a military commission under
6 this chapter may direct.

7 “(18) IMPROPERLY USING A FLAG OF TRUCE.—
8 Any person subject to this chapter who uses a flag
9 of truce to feign an intention to negotiate, sur-
10 render, or otherwise suspend hostilities when there is
11 no such intention shall be punished as a military
12 commission under this chapter may direct.

13 “(19) IMPROPERLY USING A DISTINCTIVE EM-
14 BLEM.—Any person subject to this chapter who in-
15 tentiously uses a distinctive emblem recognized by
16 the law of war for combatant purposes in a manner
17 prohibited by the law of war shall be punished as a
18 military commission under this chapter may direct.

19 “(20) INTENTIONALLY MISTREATING A DEAD
20 BODY.—Any person subject to this chapter who in-
21 tentiously mistreats the body of a dead person,
22 without justification by legitimate military necessity,
23 shall be punished as a military commission under
24 this chapter may direct.

1 “(21) RAPE.—Any person subject to this chap-
2 ter who forcibly or with coercion or threat of force
3 wrongfully invades the body of a person by pene-
4 trating, however slightly, the anal or genital opening
5 of the victim with any part of the body of the ac-
6 cused, or with any foreign object, shall be punished
7 as a military commission under this chapter may di-
8 rect.

9 “(22) SEXUAL ASSAULT OR ABUSE.—Any per-
10 son subject to this chapter who forcibly or with coer-
11 cion or threat of force engages in sexual contact
12 with one or more persons, or causes one or more
13 persons to engage in sexual contact, shall be pun-
14 ished as a military commission under this chapter
15 may direct.

16 “(23) HIJACKING OR HAZARDING A VESSEL OR
17 AIRCRAFT.—Any person subject to this chapter who
18 intentionally seizes, exercises unauthorized control
19 over, or endangers the safe navigation of a vessel or
20 aircraft that is not a legitimate military objective
21 shall be punished, if death results to one or more of
22 the victims, by death or such other punishment as
23 a military commission under this chapter may direct,
24 and, if death does not result to any of the victims,

1 by such punishment, other than death, as a military
2 commission under this chapter may direct.

3 “(24) **TERRORISM.**—Any person subject to this
4 chapter who intentionally kills or inflicts great bodily
5 harm on one or more protected persons, or inten-
6 tionally engages in an act that evinces a wanton dis-
7 regard for human life, in a manner calculated to in-
8 fluence or affect the conduct of government or civil-
9 ian population by intimidation or coercion, or to re-
10 taliate against government conduct, shall be pun-
11 ished, if death results to one or more of the victims,
12 by death or such other punishment as a military
13 commission under this chapter may direct, and, if
14 death does not result to any of the victims, by such
15 punishment, other than death, as a military commis-
16 sion under this chapter may direct.

17 “(25) **PROVIDING MATERIAL SUPPORT FOR**
18 **TERRORISM.**—

19 “(A) **OFFENSE.**—Any person subject to
20 this chapter who provides material support or
21 resources, knowing or intending that they are to
22 be used in preparation for, or in carrying out,
23 an act of terrorism (as set forth in paragraph
24 (24)), or who intentionally provides material
25 support or resources to an international ter-

1 rorist organization engaged in hostilities against
2 the United States, knowing that such organiza-
3 tion has engaged or engages in terrorism (as so
4 set forth), shall be punished as a military com-
5 mission under this chapter may direct.

6 “(B) MATERIAL SUPPORT OR RESOURCES
7 DEFINED.—In this paragraph, the term ‘mate-
8 rial support or resources’ has the meaning
9 given that term in section 2339A(b) of title 18.

10 “(26) WRONGFULLY AIDING THE ENEMY.—Any
11 person subject to this chapter who, in breach of an
12 allegiance or duty to the United States, knowingly
13 and intentionally aids an enemy of the United
14 States, or one of the co-belligerents of the enemy,
15 shall be punished as a military commission under
16 this chapter may direct.

17 “(27) SPYING.—Any person subject to this
18 chapter who with intent or reason to believe that it
19 is to be used to the injury of the United States or
20 to the advantage of a foreign power, collects or at-
21 tempts to collect information by clandestine means
22 or while acting under false pretenses, for the pur-
23 pose of conveying such information to an enemy of
24 the United States, or one of the co-belligerents of
25 the enemy, shall be punished by death or such other

1 punishment as a military commission under this
2 chapter may direct.

3 “(28) CONSPIRACY.—Any person subject to this
4 chapter who conspires to commit one or more sub-
5 stantive offenses triable by military commission
6 under this chapter, and who knowingly does any
7 overt act to effect the object of the conspiracy, shall
8 be punished, if death results to one or more of the
9 victims, by death or such other punishment as a
10 military commission under this chapter may direct,
11 and, if death does not result to any of the victims,
12 by such punishment, other than death, as a military
13 commission under this chapter may direct.

14 **“§ 950w. Perjury and obstruction of justice; contempt**

15 “(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A
16 military commission under this chapter may try offenses
17 and impose such punishment as the military commission
18 may direct for perjury, false testimony, or obstruction of
19 justice related to military commissions under this chapter.

20 “(b) CONTEMPT.—A military commission under this
21 chapter may punish for contempt any person who uses any
22 menacing word, sign, or gesture in its presence, or who
23 disturbs its proceedings by any riot or disorder.”.

24 (2) TABLES OF CHAPTERS AMENDMENTS.—The
25 tables of chapters at the beginning of subtitle A, and

1 at the beginning of part II of subtitle A, of title 10,
 2 United States Code, are each amended by inserting
 3 after the item relating to chapter 47 the following
 4 new item:

“47A. Military Commissions 948a.”.

5 (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—
 6 Not later than 90 days after the date of the enactment
 7 of this Act, the Secretary of Defense shall submit to the
 8 Committees on Armed Services of the Senate and the
 9 House of Representatives a report setting forth the proce-
 10 dures for military commissions prescribed under chapter
 11 47A of title 10, United States Code (as added by sub-
 12 section (a)).

13 **SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY**
 14 **JUSTICE.**

15 (a) CONFORMING AMENDMENTS.—Chapter 47 of
 16 title 10, United States Code (the Uniform Code of Military
 17 Justice), is amended as follows:

18 (1) APPLICABILITY TO LAWFUL ENEMY COM-
 19 BATANTS.—Section 802(a) (article 2(a)) is amended
 20 by adding at the end the following new paragraph:

21 “(13) Lawful enemy combatants (as that term
 22 is defined in section 948a(2) of this title) who vio-
 23 late the law of war.”.

24 (2) EXCLUSION OF APPLICABILITY TO CHAPTER
 25 47A COMMISSIONS.—Sections 821, 828, 848, 850(a),

1 904, and 906 (articles 21, 28, 48, 50(a), 104, and
2 106) are amended by adding at the end the fol-
3 lowing new sentence: “This section does not apply to
4 a military commission established under chapter
5 47A of this title.”.

6 (3) INAPPLICABILITY OF REQUIREMENTS RE-
7 LATING TO REGULATIONS.—Section 836 (article 36)
8 is amended—

9 (A) in subsection (a), by inserting “, ex-
10 cept as provided in chapter 47A of this title,”
11 after “but which may not”; and

12 (B) in subsection (b), by inserting before
13 the period at the end “, except insofar as appli-
14 cable to military commissions established under
15 chapter 47A of this title”.

16 (b) PUNITIVE ARTICLE OF CONSPIRACY.—Section
17 881 of title 10, United States Code (article 81 of the Uni-
18 form Code of Military Justice), is amended—

19 (1) by inserting “(a)” before “Any person”; and

20 (2) by adding at the end the following new sub-
21 section:

22 “(b) Any person subject to this chapter who conspires
23 with any other person to commit an offense under the law
24 of war, and who knowingly does an overt act to effect the
25 object of the conspiracy, shall be punished, if death results

1 (3) the Convention Relative to the Treatment of
2 Prisoners of War, done at Geneva August 12, 1949
3 (6 UST 3316); and

4 (4) the Convention Relative to the Protection of
5 Civilian Persons in Time of War, done at Geneva
6 August 12, 1949 (6 UST 3516).

7 **SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.**

8 (a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

9 (1) IN GENERAL.—The acts enumerated in sub-
10 section (d) of section 2441 of title 18, United States
11 Code, as added by subsection (b) of this section, and
12 in subsection (c) of this section, constitute violations
13 of common Article 3 of the Geneva Conventions pro-
14 hibited by United States law.

15 (2) PROHIBITION ON GRAVE BREACHES.—The
16 provisions of section 2441 of title 18, United States
17 Code, as amended by this section, fully satisfy the
18 obligation under Article 129 of the Third Geneva
19 Convention for the United States to provide effective
20 penal sanctions for grave breaches which are encom-
21 passed in common Article 3 in the context of an
22 armed conflict not of an international character. No
23 foreign or international source of law shall supply a
24 basis for a rule of decision in the courts of the

1 United States in interpreting the prohibitions enu-
2 merated in subsection (d) of such section 2441.

3 (3) INTERPRETATION BY THE PRESIDENT.—

4 (A) As provided by the Constitution and by
5 this section, the President has the authority for
6 the United States to interpret the meaning and
7 application of the Geneva Conventions and to
8 promulgate higher standards and administrative
9 regulations for violations of treaty obligations
10 which are not grave breaches of the Geneva
11 Conventions.

12 (B) The President shall issue interpreta-
13 tions described by subparagraph (A) by Execu-
14 tive Order published in the Federal Register.

15 (C) Any Executive Order published under
16 this paragraph shall be authoritative (except as
17 to grave breaches of common Article 3) as a
18 matter of United States law, in the same man-
19 ner as other administrative regulations.

20 (D) Nothing in this section shall be con-
21 strued to affect the constitutional functions and
22 responsibilities of Congress and the judicial
23 branch of the United States.

24 (4) DEFINITIONS.—In this subsection:

1 (A) GENEVA CONVENTIONS.—The term
2 “Geneva Conventions” means—

3 (i) the Convention for the Ameliora-
4 tion of the Condition of the Wounded and
5 Sick in Armed Forces in the Field, done at
6 Geneva August 12, 1949 (6 UST 3217);

7 (ii) the Convention for the Ameliora-
8 tion of the Condition of the Wounded,
9 Sick, and Shipwrecked Members of the
10 Armed Forces at Sea, done at Geneva Au-
11 gust 12, 1949 (6 UST 3217);

12 (iii) the Convention Relative to the
13 Treatment of Prisoners of War, done at
14 Geneva August 12, 1949 (6 UST 3316);
15 and

16 (iv) the Convention Relative to the
17 Protection of Civilian Persons in Time of
18 War, done at Geneva August 12, 1949 (6
19 UST 3516).

20 (B) THIRD GENEVA CONVENTION.—The
21 term “Third Geneva Convention” means the
22 international convention referred to in subpara-
23 graph (A)(iii).

24 (b) REVISION TO WAR CRIMES OFFENSE UNDER
25 FEDERAL CRIMINAL CODE.—

1 (1) IN GENERAL.—Section 2441 of title 18,
2 United States Code, is amended—

3 (A) in subsection (c), by striking para-
4 graph (3) and inserting the following new para-
5 graph (3):

6 “(3) which constitutes a grave breach of com-
7 mon Article 3 (as defined in subsection (d)) when
8 committed in the context of and in association with
9 an armed conflict not of an international character;
10 or”;

11 (B) by adding at the end the following new
12 subsection:

13 “(d) COMMON ARTICLE 3 VIOLATIONS.—

14 “(1) PROHIBITED CONDUCT.—In subsection
15 (c)(3), the term ‘grave breach of common Article 3’
16 means any conduct (such conduct constituting a
17 grave breach of common Article 3 of the inter-
18 national conventions done at Geneva August 12,
19 1949), as follows:

20 “(A) TORTURE.—The act of a person who
21 commits, or conspires or attempts to commit,
22 an act specifically intended to inflict severe
23 physical or mental pain or suffering (other than
24 pain or suffering incidental to lawful sanctions)
25 upon another person within his custody or

1 physical control for the purpose of obtaining in-
2 formation or a confession, punishment, intimi-
3 dation, coercion, or any reason based on dis-
4 crimination of any kind.

5 “(B) CRUEL OR INHUMAN TREATMENT.—
6 The act of a person who commits, or conspires
7 or attempts to commit, an act intended to in-
8 flict severe or serious physical or mental pain or
9 suffering (other than pain or suffering inci-
10 dental to lawful sanctions), including serious
11 physical abuse, upon another within his custody
12 or control.

13 “(C) PERFORMING BIOLOGICAL EXPERI-
14 MENTS.—The act of a person who subjects, or
15 conspires or attempts to subject, one or more
16 persons within his custody or physical control to
17 biological experiments without a legitimate med-
18 ical or dental purpose and in so doing endan-
19 gers the body or health of such person or per-
20 sons.

21 “(D) MURDER.—The act of a person who
22 intentionally kills, or conspires or attempts to
23 kill, or kills whether intentionally or uninten-
24 tionally in the course of committing any other
25 offense under this subsection, one or more per-

1 sons taking no active part in the hostilities, in-
2 cluding those placed out of combat by sickness,
3 wounds, detention, or any other cause.

4 “(E) MUTILATION OR MAIMING.—The act
5 of a person who intentionally injures, or con-
6 spires or attempts to injure, or injures whether
7 intentionally or unintentionally in the course of
8 committing any other offense under this sub-
9 section, one or more persons taking no active
10 part in the hostilities, including those placed
11 out of combat by sickness, wounds, detention,
12 or any other cause, by disfiguring the person or
13 persons by any mutilation thereof or by perma-
14 nently disabling any member, limb, or organ of
15 his body, without any legitimate medical or den-
16 tal purpose.

17 “(F) INTENTIONALLY CAUSING SERIOUS
18 BODILY INJURY.—The act of a person who in-
19 tentionally causes, or conspires or attempts to
20 cause, serious bodily injury to one or more per-
21 sons, including lawful combatants, in violation
22 of the law of war.

23 “(G) RAPE.—The act of a person who
24 forcibly or with coercion or threat of force
25 wrongfully invades, or conspires or attempts to

1 invade, the body of a person by penetrating,
2 however slightly, the anal or genital opening of
3 the victim with any part of the body of the ac-
4 cused, or with any foreign object.

5 “(H) SEXUAL ASSAULT OR ABUSE.—The
6 act of a person who forcibly or with coercion or
7 threat of force engages, or conspires or at-
8 tempts to engage, in sexual contact with one or
9 more persons, or causes, or conspires or at-
10 tempts to cause, one or more persons to engage
11 in sexual contact.

12 “(I) TAKING HOSTAGES.—The act of a
13 person who, having knowingly seized or de-
14 tained one or more persons, threatens to kill,
15 injure, or continue to detain such person or per-
16 sons with the intent of compelling any nation,
17 person other than the hostage, or group of per-
18 sons to act or refrain from acting as an explicit
19 or implicit condition for the safety or release of
20 such person or persons.

21 “(2) DEFINITIONS.—In the case of an offense
22 under subsection (a) by reason of subsection
23 (c)(3)—

24 “(A) the term ‘severe mental pain or suf-
25 fering’ shall be applied for purposes of para-

1 graphs (1)(A) and (1)(B) in accordance with
2 the meaning given that term in section 2340(2)
3 of this title;

4 “(B) the term ‘serious bodily injury’ shall
5 be applied for purposes of paragraph (1)(F) in
6 accordance with the meaning given that term in
7 section 113(b)(2) of this title;

8 “(C) the term ‘sexual contact’ shall be ap-
9 plied for purposes of paragraph (1)(G) in ac-
10 cordance with the meaning given that term in
11 section 2246(3) of this title;

12 “(D) the term ‘serious physical pain or
13 suffering’ shall be applied for purposes of para-
14 graph (1)(B) as meaning bodily injury that in-
15 volves—

16 “(i) a substantial risk of death;

17 “(ii) extreme physical pain;

18 “(iii) a burn or physical disfigurement
19 of a serious nature (other than cuts, abra-
20 sions, or bruises); or

21 “(iv) significant loss or impairment of
22 the function of a bodily member, organ, or
23 mental faculty; and

24 “(E) the term ‘serious mental pain or suf-
25 fering’ shall be applied for purposes of para-

1 graph (1)(B) in accordance with the meaning
2 given the term ‘severe mental pain or suffering’
3 (as defined in section 2340(2) of this title), ex-
4 cept that—

5 “(i) the term ‘serious’ shall replace
6 the term ‘severe’ where it appears; and

7 “(ii) as to conduct occurring after the
8 date of the enactment of the Military Com-
9 missions Act of 2006, the term ‘serious
10 and non-transitory mental harm (which
11 need not be prolonged)’ shall replace the
12 term ‘prolonged mental harm’ where it ap-
13 pears.

14 “(3) INAPPLICABILITY OF CERTAIN PROVISIONS
15 WITH RESPECT TO COLLATERAL DAMAGE OR INCI-
16 DENT OF LAWFUL ATTACK.—The intent specified for
17 the conduct stated in subparagraphs (D), (E), and
18 (F) or paragraph (1) precludes the applicability of
19 those subparagraphs to an offense under subsection
20 (a) by reasons of subsection (c)(3) with respect to—

21 “(A) collateral damage; or

22 “(B) death, damage, or injury incident to
23 a lawful attack.

24 “(4) INAPPLICABILITY OF TAKING HOSTAGES
25 TO PRISONER EXCHANGE.—Paragraph (1)(I) does

1 not apply to an offense under subsection (a) by rea-
2 son of subsection (c)(3) in the case of a prisoner ex-
3 change during wartime.

4 “(5) DEFINITION OF GRAVE BREACHES.—The
5 definitions in this subsection are intended only to de-
6 fine the grave breaches of common Article 3 and not
7 the full scope of United States obligations under
8 that Article.”.

9 (2) RETROACTIVE APPLICABILITY.—The
10 amendments made by this subsection, except as
11 specified in subsection (d)(2)(E) of section 2441 of
12 title 18, United States Code, shall take effect as of
13 November 26, 1997, as if enacted immediately after
14 the amendments made by section 583 of Public Law
15 105–118 (as amended by section 4002(e)(7) of Pub-
16 lic Law 107–273).

17 (c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN,
18 OR DEGRADING TREATMENT OR PUNISHMENT.—

19 (1) IN GENERAL.—No individual in the custody
20 or under the physical control of the United States
21 Government, regardless of nationality or physical lo-
22 cation, shall be subject to cruel, inhuman, or degrad-
23 ing treatment or punishment.

24 (2) CRUEL, INHUMAN, OR DEGRADING TREAT-
25 MENT OR PUNISHMENT DEFINED.—In this sub-

1 section, the term “cruel, inhuman, or degrading
2 treatment or punishment” means cruel, unusual,
3 and inhumane treatment or punishment prohibited
4 by the Fifth, Eighth, and Fourteenth Amendments
5 to the Constitution of the United States, as defined
6 in the United States Reservations, Declarations and
7 Understandings to the United Nations Convention
8 Against Torture and Other Forms of Cruel, Inhu-
9 man or Degrading Treatment or Punishment done
10 at New York, December 10, 1984.

11 (3) COMPLIANCE.—The President shall take ac-
12 tion to ensure compliance with this subsection, in-
13 cluding through the establishment of administrative
14 rules and procedures.

15 **SEC. 7. HABEAS CORPUS MATTERS.**

16 (a) IN GENERAL.—Section 2241 of title 28, United
17 States Code, is amended by striking both the subsection
18 (e) added by section 1005(e)(1) of Public Law 109–148
19 (119 Stat. 2742) and the subsection (e) added by added
20 by section 1405(e)(1) of Public Law 109–163 (119 Stat.
21 3477) and inserting the following new subsection (e):

22 “(e)(1) No court, justice, or judge shall have jurisdic-
23 tion to hear or consider an application for a writ of habeas
24 corpus filed by or on behalf of an alien detained by the
25 United States who has been determined by the United

1 States to have been properly detained as an enemy com-
2 batant or is awaiting such determination.

3 “(2) Except as provided in paragraphs (2) and (3)
4 of section 1005(e) of the Detainee Treatment Act of 2005
5 (10 U.S.C. 801 note), no court, justice, or judge shall have
6 jurisdiction to hear or consider any other action against
7 the United States or its agents relating to any aspect of
8 the detention, transfer, treatment, trial, or conditions of
9 confinement of an alien who is or was detained by the
10 United States and has been determined by the United
11 States to have been properly detained as an enemy com-
12 batant or is awaiting such determination.”

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on the date of the enact-
15 ment of this Act, and shall apply to all cases, without ex-
16 ception, pending on or after the date of the enactment of
17 this Act which relate to any aspect of the detention, trans-
18 fer, treatment, trial, or conditions of detention of an alien
19 detained by the United States since September 11, 2001.

20 **SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005**

21 **RELATING TO PROTECTION OF CERTAIN**

22 **UNITED STATES GOVERNMENT PERSONNEL.**

23 (a) COUNSEL AND INVESTIGATIONS.—Section
24 1004(b) of the Detainee Treatment Act of 2005 (42
25 U.S.C. 2000dd–1(b)) is amended—

1 (1) by striking “may provide” and inserting
2 “shall provide”;

3 (2) by inserting “or investigation” after “crimi-
4 nal prosecution”; and

5 (3) by inserting “whether before United States
6 courts or agencies, foreign courts or agencies, or
7 international courts or agencies,” after “described in
8 that subsection”.

9 (b) PROTECTION OF PERSONNEL.—Section 1004 of
10 the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–
11 1) shall apply with respect to any criminal prosecution
12 that—

13 (1) relates to the detention and interrogation of
14 aliens described in such section;

15 (2) is grounded in section 2441(c)(3) of title
16 18, United States Code; and

17 (3) relates to actions occurring between Sep-
18 tember 11, 2001, and December 30, 2005.

19 **SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMIS-**
20 **SIONS.**

21 Section 1005(e)(3) of the Detainee Treatment Act of
22 2005 (title X of Public Law 109–148; 119 Stat. 2740;
23 10 U.S.C. 801 note) is amended—

24 (1) in subparagraph (A), by striking “pursuant
25 to Military Commission Order No. 1. dated August

1 31, 2005 (or any successor military order)” and in-
2 sserting “by a military commission under chapter
3 47A of title 10, United States Code”;

4 (2) by striking subparagraph (B) and inserting
5 the following new subparagraph (B):

6 “(B) GRANT OF REVIEW.—Review under
7 this paragraph shall be as of right.”;

8 (3) in subparagraph (C)—

9 (A) in clause (i)—

10 (i) by striking “pursuant to the mili-
11 tary order” and inserting “by a military
12 commission”; and

13 (ii) by striking “at Guantanamo Bay,
14 Cuba”; and

15 (B) in clause (ii), by striking “pursuant to
16 such military order” and inserting “by the mili-
17 tary commission”; and

18 (4) in subparagraph (D)(i), by striking “speci-
19 fied in the military order” and inserting “specified
20 for a military commission”.

21 **SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS**
22 **OF COMBATANT STATUS REVIEW TRIBUNALS**
23 **OF PROPRIETY OF DETENTION.**

24 Section 1005(e)(2)(B)(i) of the Detainee Treatment
25 Act of 2005 (title X of Public Law 109–148; 119 Stat.

1 2742; 10 U.S.C. 801 note) is amended by striking “the
2 Department of Defense at Guantanamo Bay, Cuba” and
3 inserting “the United States”.

Passed the House of Representatives September 27,
2006.

Attest:

Clerk.

109TH CONGRESS
2^D SESSION

H. R. 6166

AN ACT

To amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.