

108TH CONGRESS
2D SESSION

H. R. 5222

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to provide standards for the use of military commissions for the trial of offenses under the law of war or in furtherance of international terrorism.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2004

Ms. LORETTA SANCHEZ of California introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to provide standards for the use of military commissions for the trial of offenses under the law of war or in furtherance of international terrorism.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Commissions
5 Act of 2004”.

1 **SEC. 2. USE OF MILITARY COMMISSIONS FOR OFFENSES**
2 **UNDER LAW OF WAR OR IN FURTHERANCE**
3 **OF TERRORISM.**

4 (a) IN GENERAL.—Subchapter XI of chapter 47 of
5 title 10, United States Code (the Uniform Code of Military
6 Justice), is amended by inserting after section 935 (article
7 135) the following new section:

8 **“§ 935a. Art. 135a. Military commissions for offenses**
9 **against the law of war or in furtherance**
10 **of terrorism**

11 “(a) A military commission covered by this section
12 may be appointed only by the President or a person des-
13 ignated by the President for such purpose.

14 “(b) A military commission appointed under sub-
15 section (a) may try any person, not a citizen of the United
16 States, for one or more offenses against the law of war
17 or in furtherance of terrorism.

18 “(c) A military commission shall consist of not less
19 than three members and not more than seven members.
20 However, in a case in which the accused may be sentenced
21 to a penalty of death, the commission shall consist of seven
22 members. The commission may also include not more than
23 two alternate members. Each member and alternate mem-
24 ber shall be a commissioned officer of the armed forces.

25 “(d) A military commission shall have a presiding of-
26 ficer, who shall be appointed from among the members.

1 The presiding officer shall be a judge advocate and shall
2 preside over the proceedings of the commission to ensure
3 a full, fair, and expeditious trial. The presiding officer
4 shall rule upon all questions of law and all interlocutory
5 questions arising during the proceedings. A majority of
6 the members may overrule the presiding officer on any rul-
7 ing that excludes evidence on the merits.

8 “(e) Trial and defense counsel shall be detailed for
9 a military commission on the same basis as such counsel
10 are detailed for a general court-martial under section 827
11 (article 27).

12 “(f) Members of a military commission shall deliber-
13 ate and vote in closed conference. Voting on the findings
14 and on the sentence shall be by secret written ballot.

15 “(g) A military commission covered by this section
16 may not find a person guilty of an offense, and may not
17 determine a sentence, except by the concurrence of two-
18 thirds of the members present at the time the vote is
19 taken. The commission may not sentence a person to suf-
20 fer death except by the concurrence of all the members
21 as to the findings and as to the sentence.

22 “(h) A military commission may, under such limita-
23 tions as the President may prescribe, adjudge any punish-
24 ment permitted by the law of war, including death, impris-
25 onment for life or for any lesser term, payment of a fine

1 or restitution, or such other lawful punishment or punish-
2 ments as the commission shall determine to be proper. The
3 sentence of death may be adjudged only if the accused
4 has been found guilty of spying or an offense causing the
5 death of one or more persons. A commission may not sen-
6 tence any person to suffer death for an offense committed
7 before the person attained the age of eighteen years. A
8 sentence of death may not be executed until approved by
9 the President.

10 “(i) Pursuant to section 936 (Article 36) of the chap-
11 ter, the President may prescribe rules of evidence and pro-
12 cedure for trial by a military commission. The accused in
13 a military commission shall be given the following min-
14 imum rights and protections:

15 “(1) The accused shall have the right to a fair
16 trial, without adverse distinction based upon race,
17 color, gender, language, religion, birth, wealth, or
18 any similar criteria.

19 “(2) The accused shall be presumed innocent
20 until proven guilty. The burden of proof shall be
21 upon the prosecution to prove each element of an of-
22 fense beyond a reasonable doubt.

23 “(3) The accused shall be informed of the
24 charges against him in a language he understands
25 as soon as practicable prior to trial.

1 “(4) The accused shall have the right to a pub-
2 lic trial, unless the appointing authority determines
3 that a closed trial, or any portion thereof, is nec-
4 essary to the national security of the United States.

5 “(5) The accused may not be compelled to tes-
6 tify or present evidence against himself.

7 “(6) No adverse inference will be drawn against
8 him by reason of a decision not to testify on his own
9 behalf.

10 “(7) Evidence obtained through the use of tor-
11 ture (as defined in section 2340 of title 18), will not
12 be admitted in evidence at trial by a military com-
13 mission.

14 “(8) The accused shall be entitled to assistance
15 of counsel at all stages of proceedings and shall have
16 adequate time and facilities available for the prepa-
17 ration of his defense. The accused shall have the
18 right to represent himself in trial by military com-
19 mission, subject to the discretion of the presiding of-
20 ficer.

21 “(9) The accused shall have the right to present
22 evidence and to cross-examine each witness.

23 “(10) The accused shall have equal opportunity
24 to obtain witnesses and other evidence in accordance

1 with such regulations as the President may pre-
2 scribe.

3 “(11) The accused shall have access to all evi-
4 dence that trial counsel intends to offer at trial and
5 all evidence known to trial counsel or to the commis-
6 sion that tends to exculpate him.

7 “(12) The accused shall have the right to be
8 present at each stage of the proceedings, unless he
9 engages in conduct that the presiding officer deter-
10 mines to be disruptive.

11 “(13) The accused shall not be tried a second
12 time for the same offense.

13 “(j) A person found guilty by military commission
14 shall have a right to review of that finding and any ad-
15 judged sentence in accordance with this section.

16 “(k)(1) After trial, the presiding officer shall prompt-
17 ly authenticate a verbatim transcript and record of trial.

18 “(2) The appointing authority shall, within a reason-
19 able period of time, carry out an administrative review of
20 the transcript and record of trial and take such adminis-
21 trative actions as the authority considers appropriate,
22 which may include directing the commission to conduct
23 any necessary supplemental proceedings.

1 “(3) The Secretary of Defense shall review the record
2 of trial and, within a reasonable period of time, take one
3 or more of the following actions of the case:

4 “(A) Approve, disapprove, commute, mitigate,
5 or suspend the sentence in whole or in part.

6 “(B) Approve or disapprove a finding of guilty,
7 or change a finding of guilty to a charge or speci-
8 fication to a finding of guilty to a lesser included of-
9 fense of the offense stated in the charge.

10 “(4)(A) Following action by the Secretary of Defense,
11 the Court of Appeals for the Armed Forces shall review
12 the record of a military commission—

13 “(i) in any case in which the sentence extends
14 to death or to confinement in excess of five years;
15 and

16 “(ii) in any other case that the President may
17 prescribe.

18 “(B) In any case reviewed by it under this subsection,
19 the Court of Appeals for the Armed Forces may act only
20 with respect to the findings and sentence as in effect after
21 review by the convening authority and the Secretary of
22 Defense under subsection (k)(3).

23 “(C) The Court of Appeals for the Armed Forces
24 shall take action only with respect to matters of law and

1 shall take such action as is permitted under section 867
2 (Article 67) of this chapter.

3 “(5) The Supreme Court of the United States shall
4 have jurisdiction to review, by writ of certiorari, an action
5 of the Court of Appeals for the Armed Forces under this
6 subsection.

7 “(l) The Secretary of Defense shall submit to Con-
8 gress each order, rule, and regulation prescribed under
9 this section. Such order, rule, or regulation may not take
10 effect until 30 days after it is so submitted.

11 “(m) Not later than March 15 of each year, the Sec-
12 retary of Defense shall submit to Congress a report on
13 the use of military commissions covered by this section
14 during the preceding calendar year. The report shall set
15 forth a summary of each case covered by this section dur-
16 ing such year, together with the disposition and current
17 status of that case. The report shall also set forth a de-
18 tailed description of the activities of the Department with
19 respect to military commissions, a copy of all current rules
20 and regulations relating to the use of military commis-
21 sions, and an accounting of all funds expended on matters
22 relating to the use of military commissions.”.

23 (b) The table of sections at the beginning of such sub-
24 chapter is amended by adding at the end the following
25 new item:

“935a. Art. 135a. Military commissions for offenses against the law of war or in furtherance of terrorism.”.

