

Public Law 106-523
106th Congress

An Act

Nov. 22, 2000

[S. 768]

Military
Extraterritorial
Jurisdiction Act
of 2000.
18 USC 3261
note.

To amend title 18, United States Code, to establish Federal jurisdiction over offenses committed outside the United States by persons employed by or accompanying the Armed Forces, or by members of the Armed Forces who are released or separated from active duty prior to being identified and prosecuted for the commission of such offenses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Military Extraterritorial Jurisdiction Act of 2000".

SEC. 2. FEDERAL JURISDICTION.

(a) **CERTAIN CRIMINAL OFFENSES COMMITTED OUTSIDE THE UNITED STATES.**—Title 18, United States Code, is amended by inserting after chapter 211 the following new chapter:

"CHAPTER 212—MILITARY EXTRATERRITORIAL JURISDICTION

- "Sec.
"3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States.
"3262. Arrest and commitment.
"3263. Delivery to authorities of foreign countries.
"3264. Limitation on removal.
"3265. Initial proceedings.
"3266. Regulations.
"3267. Definitions.

"§ 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States

"(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

"(1) while employed by or accompanying the Armed Forces outside the United States; or

"(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice), shall be punished as provided for that offense.

"(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting

such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

“(c) Nothing in this chapter may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

“(d) No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) under this section unless—

- “(1) such member ceases to be subject to such chapter;
- or
- “(2) an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

“§ 3262. Arrest and commitment

“(a) The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside the United States any person described in section 3261(a) if there is probable cause to believe that such person violated section 3261(a).

“(b) Except as provided in sections 3263 and 3264, a person arrested under subsection (a) shall be delivered as soon as practicable to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

“§ 3263. Delivery to authorities of foreign countries

“(a) Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if—

“(1) appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

“(2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

“(b) The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

“§ 3264. Limitation on removal

“(a) Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed—

“(1) to the United States; or

“(2) to any foreign country other than a country in which such person is believed to have violated section 3261(a).

“(b) The limitation in subsection (a) does not apply if—

“(1) a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);

“(2) a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;

“(3) the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;

“(4) a Federal magistrate judge otherwise orders the person to be removed to the United States; or

“(5) the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in section 3265(a).

“§ 3265. Initial proceedings

“(a)(1) In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure—

“(A) shall be conducted by a Federal magistrate judge; and

“(B) may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

“(2) In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

“(3) If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person’s detention before trial, the Federal magistrate judge shall also determine at the initial appearance the conditions of the person’s release before trial under chapter 207 of this title.

“(b) In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f)—

“(1) shall be conducted by a Federal magistrate judge; and

“(2) at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

“(c)(1) If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United States, and the person is entitled to have counsel appointed for purposes of such proceeding, the Federal magistrate judge may appoint as such counsel for purposes of such hearing a qualified military counsel.

“(2) For purposes of this subsection, the term ‘qualified military counsel’ means a judge advocate made available by the Secretary of Defense for purposes of such proceedings, who—

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

“(B) is certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

“§ 3266. Regulations

“(a) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations governing the apprehension, detention, delivery, and removal of persons under this chapter and the facilitation of proceedings under section 3265. Such regulations shall be uniform throughout the Department of Defense.

“(b)(1) The Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations requiring that, to the maximum extent practicable, notice shall be provided to any person employed by or accompanying the Armed Forces outside the United States who is not a national of the United States that such person is potentially subject to the criminal jurisdiction of the United States under this chapter.

“(2) A failure to provide notice in accordance with the regulations prescribed under paragraph (1) shall not defeat the jurisdiction of a court of the United States or provide a defense in any judicial proceeding arising under this chapter.

“(c) The regulations prescribed under this section, and any amendments to those regulations, shall not take effect before the date that is 90 days after the date on which the Secretary of Defense submits a report containing those regulations or amendments (as the case may be) to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

Effective date.
Reports.

“§ 3267. Definitions

“As used in this chapter:

“(1) The term ‘employed by the Armed Forces outside the United States’ means—

“(A) employed as a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department), as a Department of Defense contractor (including a subcontractor at any tier), or as an employee of a Department of Defense contractor (including a subcontractor at any tier);

“(B) present or residing outside the United States in connection with such employment; and

“(C) not a national of or ordinarily resident in the host nation.

“(2) The term ‘accompanying the Armed Forces outside the United States’ means—

“(A) a dependent of—

“(i) a member of the Armed Forces;

“(ii) a civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

“(iii) a Department of Defense contractor (including a subcontractor at any tier) or an employee of a Department of Defense contractor (including a subcontractor at any tier);

“(B) residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

“(C) not a national of or ordinarily resident in the host nation.

“(3) The term ‘Armed Forces’ has the meaning given the term ‘armed forces’ in section 101(a)(4) of title 10.

“(4) The terms ‘Judge Advocate General’ and ‘judge advocate’ have the meanings given such terms in section 801 of title 10.”.

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by inserting after the item relating to chapter 211 the following new item:

“212. Military extraterritorial jurisdiction 3261”.

Approved November 22, 2000.

LEGISLATIVE HISTORY—S. 768 (H.R. 3380):

HOUSE REPORTS: No. 106-778, Pt. 1 accompanying H.R. 3380 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 145 (1999): July 1, considered and passed Senate.

Vol. 146 (2000): July 25, considered and passed House, amended, in lieu of H.R. 3380.

Oct. 26, Senate concurred in House amendments.