

of punishment, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 949u. Execution of confinement

(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

- (1) in any place of confinement under the control of any of the armed forces; or
- (2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

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

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2598.)

Editorial Notes

PRIOR PROVISIONS

A prior section 949u, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to execution of a sentence of confinement, prior to the general amendment of this chapter by Pub. L. 111-84.

SUBCHAPTER VII—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

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Editorial Notes

AMENDMENTS

2018—Pub. L. 115-232, div. A, title X, §1081(a)(11), Aug. 13, 2018, 132 Stat. 1983, substituted “United States Court of Appeals” for “United States Court of Court of Appeals” in item 950g.

§ 950a. Error of law; lesser included offense

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

(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a

finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2599.)

Editorial Notes

PRIOR PROVISIONS

A prior section 950a, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to error of law and lesser included offense, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 950b. Review by the convening authority

(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

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

(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

(3) The accused may waive the accused’s right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in the sole discretion of the convening authority, only—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

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

(B) Subject to regulations prescribed by the Secretary of Defense, action under this para-

graph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

(C) In taking action under this paragraph, the convening authority may, in the sole discretion of the convening authority, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in the sole discretion of the convening authority, order a proceeding in revision or a rehearing.

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

- (i) there is an apparent error or omission in the record; or
- (ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

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

- (i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;
- (ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or
- (iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2599; amended Pub. L. 113-291, div. A, title X, §1071(f)(10), Dec. 19, 2014, 128 Stat. 3510.)

Editorial Notes

PRIOR PROVISIONS

A prior section 950b, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2618, related to review by the convening authority, prior to the general amendment of this chapter by Pub. L. 111-84.

AMENDMENTS

2014—Subsec. (b)(2)(A). Pub. L. 113-291 substituted “given” for “give”.

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

(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided in subsection (b), in each case in which the final decision of a military commission under this chapter (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the United States Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

(b) WAIVER OF RIGHT OF REVIEW.—(1) Except in a case in which the sentence as approved under section 950b of this title extends to death, an accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Military Commission Review under section 950f of this title of the final decision of the military commission under this chapter.

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

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

(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

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

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2600.)

Editorial Notes

PRIOR PROVISIONS

A prior section 950c, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appellate referral and waiver or withdrawal of appeal, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 950d. Interlocutory appeals by the United States

(a) INTERLOCUTORY APPEAL.—Except as provided in subsection (b), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Military Commission Review of any order or ruling of the military judge—

- (1) that terminates proceedings of the military commission with respect to a charge or specification;
- (2) that excludes evidence that is substantial proof of a fact material in the proceeding;
- (3) that relates to a matter under subsection (c) or (d) of section 949d of this title; or