

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6166

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

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2006

Mr. HUNTER (for himself and Mr. SENSENBRENNER) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on the Judiciary and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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,*

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

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for  
7 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.

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

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

11 **SEC. 3. MILITARY COMMISSIONS.**

12 (a) **MILITARY COMMISSIONS.**—

13 (1) **IN GENERAL.**—Subtitle A of title 10,  
 14 United States Code, is amended by inserting after  
 15 chapter 47 the following new chapter:

16 **“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

## 1       “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.

2       **“§ 948a. Definitions**

3       “In this chapter:

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

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

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

19               “(B) CO-BELLIGERENT.—In this paragraph,  
20       the term ‘co-belligerent’, with respect to the United  
21       States, means any State or armed force joining and  
22       directly engaged with the United States in hostilities

1 or directly supporting hostilities against a common  
2 enemy.

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

5 “(A) a member of the regular forces of a  
6 State party engaged in hostilities against the  
7 United States;

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

15 “(C) a member of a regular armed force  
16 who professes allegiance to a government en-  
17 gaged in such hostilities, but not recognized by  
18 the United States.

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

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

23 “(A) Any information or material that has  
24 been determined by the United States Govern-  
25 ment pursuant to statute, Executive order, or

1 regulation to require protection against unau-  
2 thorized disclosure for reasons of national secu-  
3 rity.

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

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

10 **“§ 948b. Military commissions generally**

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

16 “(b) AUTHORITY FOR MILITARY COMMISSIONS  
17 UNDER THIS CHAPTER.—The President is authorized to  
18 establish military commissions under this chapter for of-  
19 fenses triable by military commission as provided in this  
20 chapter.

21 “(c) CONSTRUCTION OF PROVISIONS.—The proce-  
22 dures for military commissions set forth in this chapter  
23 are based upon the procedures for trial by general courts-  
24 martial under chapter 47 of this title (the Uniform Code  
25 of Military Justice). Chapter 47 of this title does not, by

1 its terms, apply to trial by military commission except as  
2 specifically provided in this chapter. The judicial construc-  
3 tion and application of that chapter are not binding on  
4 military commissions established under this chapter.

5 “(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—

6 (1) The following provisions of this title shall not apply  
7 to trial by military commission under this chapter:

8 “(A) Section 810 (article 10 of the Uniform  
9 Code of Military Justice), relating to speedy trial,  
10 including any rule of courts-martial relating to  
11 speedy trial.

12 “(B) Sections 831(a), (b), and (d) (articles  
13 31(a), (b), and (d) of the Uniform Code of Military  
14 Justice), relating to compulsory self-incrimination.

15 “(C) Section 832 (article 32 of the Uniform  
16 Code of Military Justice), relating to pretrial inves-  
17 tigation.

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

21 “(e) TREATMENT OF RULINGS AND PRECEDENTS.—

22 The findings, holdings, interpretations, and other prece-  
23 dents of military commissions under this chapter may not  
24 be introduced or considered in any hearing, trial, or other  
25 proceeding of a court-martial convened under chapter 47

1 of this title. The findings, holdings, interpretations, and  
2 other precedents of military commissions under this chap-  
3 ter may not form the basis of any holding, decision, or  
4 other determination of a court-martial convened under  
5 that chapter.

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

12 “(g) GENEVA CONVENTIONS NOT ESTABLISHING  
13 SOURCE OF RIGHTS.—No alien unlawful enemy combat-  
14 ant subject to trial by military commission under this  
15 chapter may invoke the Geneva Conventions as a source  
16 of rights.

17 **“§ 948c. Persons subject to military commissions**

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

20 **“§ 948d. Jurisdiction of military commissions**

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

1           “(b) **LAWFUL ENEMY COMBATANTS.**—Military com-  
2 missions under this chapter shall not have jurisdiction  
3 over lawful enemy combatants. Lawful enemy combatants  
4 who violate the law of war are subject to chapter 47 of  
5 this title. Courts-martial established under that chapter  
6 shall have jurisdiction to try a lawful enemy combatant  
7 for any offense made punishable under this chapter.

8           “(c) **DETERMINATION OF UNLAWFUL ENEMY COM-**  
9 **BATANT STATUS DISPOSITIVE.**—A finding, whether be-  
10 fore, on, or after the date of the enactment of the Military  
11 Commissions Act of 2006, by a Combatant Status Review  
12 Tribunal or another competent tribunal established under  
13 the authority of the President or the Secretary of Defense  
14 that a person is an unlawful enemy combatant is disposi-  
15 tive for purposes of jurisdiction for trial by military com-  
16 mission under this chapter.

17           “(d) **PUNISHMENTS.**—A military commission under  
18 this chapter may, under such limitations as the Secretary  
19 of Defense may prescribe, adjudge any punishment not  
20 forbidden by this chapter, including the penalty of death  
21 when authorized under this chapter or the law of war.

22 **“§ 948e. Annual report to congressional committees**

23           “(a) **ANNUAL REPORT REQUIRED.**—Not later than  
24 December 31 each year, the Secretary of Defense shall  
25 submit to the Committees on Armed Services of the Sen-



1 ate and the House of Representatives a report on any  
 2 trials conducted by military commissions under this chap-  
 3 ter during such year.

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

7 “SUBCHAPTER II—COMPOSITION OF MILITARY  
 8 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.

9 “§ 948h. Who may convene military commissions

10 “Military commissions under this chapter may be  
 11 convened by the Secretary of Defense or by any officer  
 12 or official of the United States designated by the Secretary  
 13 for that purpose.

14 “§ 948i. Who may serve on military commissions

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

18 “(b) DETAIL OF MEMBERS.—When convening a mili-  
 19 tary commission under this chapter, the convening author-  
 20 ity shall detail as members of the commission such mem-  
 21 bers of the armed forces eligible under subsection (a), as

1 in the opinion of the convening authority, are best quali-  
2 fied for the duty by reason of age, education, training,  
3 experience, length of service, and judicial temperament.  
4 No member of an armed force is eligible to serve as a  
5 member of a military commission when such member is  
6 the accuser or a witness for the prosecution or has acted  
7 as an investigator or counsel in the same case.

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

12 **“§ 948j. Military judge of a military commission**

13 “(a) DETAIL OF MILITARY JUDGE.—A military judge  
14 shall be detailed to each military commission under this  
15 chapter. The Secretary of Defense shall prescribe regula-  
16 tions providing for the manner in which military judges  
17 are so detailed to military commissions. The military judge  
18 shall preside over each military commission to which he  
19 has been detailed.

20 “(b) QUALIFICATIONS.—A military judge shall be a  
21 commissioned officer of the armed forces who is a member  
22 of the bar of a Federal court, or a member of the bar  
23 of the highest court of a State, and who is certified to  
24 be qualified for duty under section 826 of this title (article  
25 26 of the Uniform Code of Military Justice) as a military

1 judge in general courts-martial by the Judge Advocate  
2 General of the armed force of which such military judge  
3 is a member.

4       “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No  
5 person is eligible to act as military judge in a case of a  
6 military commission under this chapter if he is the accuser  
7 or a witness or has acted as investigator or a counsel in  
8 the same case.

9       “(d) CONSULTATION WITH MEMBERS; INELIGI-  
10 BILITY TO VOTE.—A military judge detailed to a military  
11 commission under this chapter may not consult with the  
12 members of the commission except in the presence of the  
13 accused (except as otherwise provided in section 949d of  
14 this title), trial counsel, and defense counsel, nor may he  
15 vote with the members of the commission.

16       “(e) OTHER DUTIES.—A commissioned officer who  
17 is certified to be qualified for duty as a military judge of  
18 a military commission under this chapter may perform  
19 such other duties as are assigned to him by or with the  
20 approval of the Judge Advocate General of the armed  
21 force of which such officer is a member or the designee  
22 of such Judge Advocate General.

23       “(f) PROHIBITION ON EVALUATION OF FITNESS BY  
24 CONVENING AUTHORITY.—The convening authority of a  
25 military commission under this chapter shall not prepare

1 or review any report concerning the effectiveness, fitness,  
2 or efficiency of a military judge detailed to the military  
3 commission which relates to his performance of duty as  
4 a military judge on the military commission.

5 **“§ 948k. Detail of trial counsel and defense counsel**

6 “(a) **DETAIL OF COUNSEL GENERALLY.**—(1) Trial  
7 counsel and military defense counsel shall be detailed for  
8 each military commission under this chapter.

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

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

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

20 “(b) **TRIAL COUNSEL.**—Subject to subsection (e),  
21 trial counsel detailed for a military commission under this  
22 chapter must be—

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

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

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

8           “(2) a civilian who—

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

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

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

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

21           “(2) certified as competent to perform duties as  
22 defense counsel before general courts-martial by the  
23 Judge Advocate General of the armed force of which  
24 he is a member.

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

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

8           “(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No  
9 person who has acted as an investigator, military judge,  
10 or member of a military commission under this chapter  
11 in any case may act later as trial counsel or military de-  
12 fense counsel in the same case. No person who has acted  
13 for the prosecution before a military commission under  
14 this chapter may act later in the same case for the de-  
15 fense, nor may any person who has acted for the defense  
16 before a military commission under this chapter act later  
17 in the same case for the prosecution.

18 **“§ 9481. Detail or employment of reporters and inter-**  
19 **preters**

20           “(a) COURT REPORTERS.—Under such regulations  
21 as the Secretary of Defense may prescribe, the convening  
22 authority of a military commission under this chapter  
23 shall detail to or employ for the commission qualified court  
24 reporters, who shall make a verbatim recording of the pro-  
25 ceedings of and testimony taken before the commission.

1           “(b) INTERPRETERS.—Under such regulations as the  
2 Secretary of Defense may prescribe, the convening author-  
3 ity of a military commission under this chapter may detail  
4 to or employ for the military commission interpreters who  
5 shall interpret for the commission and, as necessary, for  
6 trial counsel and defense counsel and for the accused.

7           “(c) TRANSCRIPT; RECORD.—The transcript of a  
8 military commission under this chapter shall be under the  
9 control of the convening authority of the commission, who  
10 shall also be responsible for preparing the record of the  
11 proceedings.

12       **“§ 948m. Number of members; excuse of members; ab-**  
13   **sent and additional members**

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

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

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

25                                   “(1) as a result of challenge;

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

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

5           “(c) ABSENT AND ADDITIONAL MEMBERS.—When-  
6           ever a military commission under this chapter is reduced  
7           below the number of members required by subsection (a),  
8           the trial may not proceed unless the convening authority  
9           details new members sufficient to provide not less than  
10          such number. The trial may proceed with the new mem-  
11          bers present after the recorded evidence previously intro-  
12          duced before the members has been read to the military  
13          commission in the presence of the military judge, the ac-  
14          cused (except as provided in section 949d of this title),  
15          and counsel for both sides.

## 16          “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.

### 17          “§ 948q. Charges and specifications

18          “(a) CHARGES AND SPECIFICATIONS.—Charges and  
19          specifications against an accused in a military commission  
20          under this chapter shall be signed by a person subject to  
21          chapter 47 of this title under oath before a commissioned  
22          officer of the armed forces authorized to administer oaths  
23          and shall state—



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

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

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

10   **“§ 948r. Compulsory self-incrimination prohibited;**  
11                           **treatment of statements obtained by tor-**  
12                           **ture and other statements**

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

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

21           “(c) STATEMENTS OBTAINED BEFORE ENACTMENT  
22           OF DETAINEE TREATMENT ACT OF 2005.—A statement  
23           obtained before December 30, 2005 (the date of the enact-  
24           ment of the Defense Treatment Act of 2005) in which the

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

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

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

8 “(d) STATEMENTS OBTAINED AFTER ENACTMENT  
9 OF DETAINEE TREATMENT ACT OF 2005.—A statement  
10 obtained on or after December 30, 2005 (the date of the  
11 enactment of the Defense Treatment Act of 2005) in  
12 which the degree of coercion is disputed may be admitted  
13 only if the military judge finds that—

14 “(1) the totality of the circumstances renders  
15 the statement reliable and possessing sufficient pro-  
16 bative value;

17 “(2) the interests of justice would best be  
18 served by admission of the statement into evidence;  
19 and

20 “(3) the interrogation methods used to obtain  
21 the statement do not violate the cruel, unusual, or  
22 inhumane treatment or punishment prohibited by  
23 the Fifth, Eighth, and Fourteenth Amendments to  
24 the Constitution of the United States.

1 **“§ 948s. Service of charges**

2       “The trial counsel assigned to a case before a military  
3 commission under this chapter shall cause to be served  
4 upon the accused and military defense counsel a copy of  
5 the charges upon which trial is to be had. Such charges  
6 shall be served in English and, if appropriate, in another  
7 language that the accused understands. Such service shall  
8 be made sufficiently in advance of trial to prepare a de-  
9 fense.

10       “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.

11 **“§ 949a. Rules**

12       “(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-  
13 trial, trial, and post-trial procedures, including elements  
14 and modes of proof, for cases triable by military commis-  
15 sion under this chapter may be prescribed by the Secretary  
16 of Defense, in consultation with the Attorney General.  
17 Such procedures shall, so far as the Secretary considers  
18 practicable or consistent with military or intelligence ac-

1 tivities, apply the principles of law and the rules of evi-  
2 dence in trial by general courts-martial. Such procedures  
3 and rules of evidence may not be contrary to or incon-  
4 sistent with this chapter.

5 “(b) RULES FOR MILITARY COMMISSION.—(1) Not-  
6 withstanding any departures from the law and the rules  
7 of evidence in trial by general courts-martial authorized  
8 by subsection (a), the procedures and rules of evidence in  
9 trials by military commission under this chapter shall in-  
10 clude the following:

11 “(A) The accused shall be permitted to present  
12 evidence in his defense, to cross-examine the wit-  
13 nesses who testify against him, and to respond to  
14 evidence admitted against him on the issue of guilt  
15 or innocence and for sentencing, as provided for by  
16 this chapter.

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

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

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

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

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

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

11          “(C) A statement of the accused that is other-  
12 wise admissible shall not be excluded from trial by  
13 military commission on grounds of alleged coercion  
14 or compulsory self-incrimination so long as the evi-  
15 dence complies with the provisions of section 948r of  
16 this title.

17          “(D) Evidence shall be admitted as authentic so  
18 long as—

19           “(i) the military judge of the military com-  
20 mission determines that there is sufficient basis  
21 to find that the evidence is what it is claimed  
22 to be; and

23           “(ii) the military judge instructs the mem-  
24 bers that they may consider any issue as to au-  
25 thentication or identification of evidence in de-

1           termining the weight, if any, to be given to the  
2           evidence.

3           “(E)(i) Except as provided in clause (ii), hear-  
4           say evidence not otherwise admissible under the  
5           rules of evidence applicable in trial by general  
6           courts-martial may be admitted in a trial by military  
7           commission if the proponent of the evidence makes  
8           known to the adverse party, sufficiently in advance  
9           to provide the adverse party with a fair opportunity  
10          to meet the evidence, the intention of the proponent  
11          to offer the evidence, and the particulars of the evi-  
12          dence (including information on the general cir-  
13          cumstances under which the evidence was obtained).  
14          The disclosure of evidence under the preceding sen-  
15          tence is subject to the requirements and limitations  
16          applicable to the disclosure of classified information  
17          in section 949j(c) of this title.

18          “(ii) Hearsay evidence not otherwise admissible  
19          under the rules of evidence applicable in trial by  
20          general courts-martial shall not be admitted in a  
21          trial by military commission if the party opposing  
22          the admission of the evidence demonstrates that the  
23          evidence is unreliable or lacking in probative value.

1           “(F) The military judge shall exclude any evi-  
2           dence the probative value of which is substantially  
3           outweighed—

4                   “(i) by the danger of unfair prejudice, con-  
5           fusion of the issues, or misleading the commis-  
6           sion; or

7                   “(ii) by considerations of undue delay,  
8           waste of time, or needless presentation of cu-  
9           mulative evidence.

10          “(3)(A) The accused in a military commission under  
11          this chapter who exercises the right to self-representation  
12          under paragraph (1)(D) shall conform his deportment and  
13          the conduct of the defense to the rules of evidence, proce-  
14          dure, and decorum applicable to trials by military commis-  
15          sion.

16          “(B) Failure of the accused to conform to the rules  
17          described in subparagraph (A) may result in a partial or  
18          total revocation by the military judge of the right of self-  
19          representation under paragraph (1)(D). In such case, the  
20          detailed defense counsel of the accused or an appropriately  
21          authorized civilian counsel shall perform the functions nec-  
22          essary for the defense.

23          “(c) DELEGATION OF AUTHORITY TO PRESCRIBE  
24          REGULATIONS.—The Secretary of Defense may delegate

1 the authority of the Secretary to prescribe regulations  
2 under this chapter.

3 “(d) NOTIFICATION TO CONGRESSIONAL COMMIT-  
4 TEES OF CHANGES TO PROCEDURES.—Not later than 60  
5 days before the date on which any proposed modification  
6 of the procedures in effect for military commissions under  
7 this chapter goes into effect, the Secretary of Defense  
8 shall submit to the Committee on Armed Services of the  
9 Senate and the Committee on Armed Services of the  
10 House of Representatives a report describing the modifica-  
11 tion.

12 **“§ 949b. Unlawfully influencing action of military**  
13 **commission**

14 “(a) IN GENERAL.—(1) No authority convening a  
15 military commission under this chapter may censure, rep-  
16 rimand, or admonish the military commission, or any  
17 member, military judge, or counsel thereof, with respect  
18 to the findings or sentence adjudged by the military com-  
19 mission, or with respect to any other exercises of its or  
20 his functions in the conduct of the proceedings.

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

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



1           “(B) the action of any convening, approving, or  
2           reviewing authority with respect to his judicial acts;  
3           or

4           “(C) the exercise of professional judgment by  
5           trial counsel or defense counsel.

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

8           “(A) general instructional or informational  
9           courses in military justice if such courses are de-  
10          signed solely for the purpose of instructing members  
11          of a command in the substantive and procedural as-  
12          pects of military commissions; or

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

15          “(b) PROHIBITION ON CONSIDERATION OF ACTIONS  
16          ON COMMISSION IN EVALUATION OF FITNESS.—In the  
17          preparation of an effectiveness, fitness, or efficiency report  
18          or any other report or document used in whole or in part  
19          for the purpose of determining whether a commissioned  
20          officer of the armed forces is qualified to be advanced in  
21          grade, or in determining the assignment or transfer of any  
22          such officer or whether any such officer should be retained  
23          on active duty, no person may—

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

4           “(2) give a less favorable rating or evaluation  
5           to any commissioned officer because of the zeal with  
6           which such officer, in acting as counsel, represented  
7           any accused before a military commission under this  
8           chapter.

9   **“§ 949c. Duties of trial counsel and defense counsel**

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

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

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

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

21                  “(A) is a United States citizen;

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

1           “(C) has not been the subject of any sanction  
2 of disciplinary action by any court, bar, or other  
3 competent governmental authority for relevant mis-  
4 conduct;

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

8           “(E) has signed a written agreement to comply  
9 with all applicable regulations or instructions for  
10 counsel, including any rules of court for conduct  
11 during the proceedings.

12          “(4) Civilian defense counsel shall protect any classi-  
13 fied information received during the course of representa-  
14 tion of the accused in accordance with all applicable law  
15 governing the protection of classified information and may  
16 not divulge such information to any person not authorized  
17 to receive it.

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

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

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

4 **“§ 949d. Sessions**

5           “(a) SESSIONS WITHOUT PRESENCE OF MEM-  
6 BERS.—(1) At any time after the service of charges which  
7 have been referred for trial by military commission under  
8 this chapter, the military judge may call the military com-  
9 mission into session without the presence of the members  
10 for the purpose of—

11           “(A) hearing and determining motions raising  
12 defenses or objections which are capable of deter-  
13 mination without trial of the issues raised by a plea  
14 of not guilty;

15           “(B) hearing and ruling upon any matter which  
16 may be ruled upon by the military judge under this  
17 chapter, whether or not the matter is appropriate for  
18 later consideration or decision by the members;

19           “(C) if permitted by regulations prescribed by  
20 the Secretary of Defense, receiving the pleas of the  
21 accused; and

22           “(D) performing any other procedural function  
23 which may be performed by the military judge under  
24 this chapter or under rules prescribed pursuant to

1 section 949a of this title and which does not require  
2 the presence of the members.

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

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

7 “(B) be made part of the record.

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

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

15 “(2) be made a part of the record.

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

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

23 “(2) The military judge may close to the public all  
24 or a portion of the proceedings under paragraph (1) only

1 upon making a specific finding that such closure is nec-  
2 essary to—

3 “(A) protect information the disclosure of which  
4 could reasonably be expected to cause damage to the  
5 national security, including intelligence or law en-  
6 forcement sources, methods, or activities; or

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

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

11 “(e) EXCLUSION OF ACCUSED FROM CERTAIN PRO-  
12 CEEDINGS.—The military judge may exclude the accused  
13 from any portion of a proceeding upon a determination  
14 that, after being warned by the military judge, the accused  
15 persists in conduct that justifies exclusion from the court-  
16 room—

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

19 “(2) to prevent disruption of the proceedings by  
20 the accused.

21 “(f) PROTECTION OF CLASSIFIED INFORMATION.—

22 “(1) NATIONAL SECURITY PRIVILEGE.—(A)  
23 Classified information shall be protected and is privi-  
24 leged from disclosure if disclosure would be detri-  
25 mental to the national security. The rule in the pre-

1 ceding sentence applies to all stages of the pro-  
2 ceedings of military commissions under this chapter.

3 “(B) The privilege referred to in subparagraph  
4 (A) may be claimed by the head of the executive or  
5 military department or government agency con-  
6 cerned based on a finding by the head of that de-  
7 partment or agency that—

8 “(i) the information is properly classified;  
9 and

10 “(ii) disclosure of the information would be  
11 detrimental to the national security.

12 “(C) A person who may claim the privilege re-  
13 ferred to in subparagraph (A) may authorize a rep-  
14 resentative, witness, or trial counsel to claim the  
15 privilege and make the finding described in subpara-  
16 graph (B) on behalf of such person. The authority  
17 of the representative, witness, or trial counsel to do  
18 so is presumed in the absence of evidence to the con-  
19 trary.

20 “(2) INTRODUCTION OF CLASSIFIED INFORMA-  
21 TION.—

22 “(A) ALTERNATIVES TO DISCLOSURE.—To  
23 protect classified information from disclosure,  
24 the military judge, upon motion of trial counsel,  
25 shall authorize, to the extent practicable—

1           “(i) the deletion of specified items of  
2           classified information from documents to  
3           be introduced as evidence before the mili-  
4           tary commission;

5           “(ii) the substitution of a portion or  
6           summary of the information for such clas-  
7           sified documents; or

8           “(iii) the substitution of a statement  
9           of relevant facts that the classified infor-  
10          mation would tend to prove.

11          “(B) PROTECTION OF SOURCES, METHODS,  
12          OR ACTIVITIES.—The military judge, upon mo-  
13          tion of trial counsel, shall permit trial counsel  
14          to introduce otherwise admissible evidence be-  
15          fore the military commission, while protecting  
16          from disclosure the sources, methods, or activi-  
17          ties by which the United States acquired the  
18          evidence if the military judge finds that (i) the  
19          sources, methods, or activities by which the  
20          United States acquired the evidence are classi-  
21          fied, and (ii) the evidence is reliable. The mili-  
22          tary judge may require trial counsel to present  
23          to the military commission and the defense, to  
24          the extent practicable and consistent with na-  
25          tional security, an unclassified summary of the



1 sources, methods, or activities by which the  
2 United States acquired the evidence.

3 “(C) ASSERTION OF NATIONAL SECURITY  
4 PRIVILEGE AT TRIAL.—During the examination  
5 of any witness, trial counsel may object to any  
6 question, line of inquiry, or motion to admit evi-  
7 dence that would require the disclosure of clas-  
8 sified information. Following such an objection,  
9 the military judge shall take suitable action to  
10 safeguard such classified information. Such ac-  
11 tion may include the review of trial counsel’s  
12 claim of privilege by the military judge in cam-  
13 era and on an ex parte basis, and the delay of  
14 proceedings to permit trial counsel to consult  
15 with the department or agency concerned as to  
16 whether the national security privilege should  
17 be asserted.

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

24 “(4) ADDITIONAL REGULATIONS.—The Sec-  
25 retary of Defense may prescribe additional regula-

1 tions, consistent with this subsection, for the use  
2 and protection of classified information during pro-  
3 ceedings of military commissions under this chapter.  
4 A report on any regulations so prescribed, or modi-  
5 fied, shall be submitted to the Committees on Armed  
6 Services of the Senate and the House of Representa-  
7 tives not later than 60 days before the date on which  
8 such regulations or modifications, as the case may  
9 be, go into effect.

10 **“§ 949e. Continuances**

11 “The military judge in a military commission under  
12 this chapter may, for reasonable cause, grant a continu-  
13 ance to any party for such time, and as often, as may  
14 appear to be just.

15 **“§ 949f. Challenges**

16 “(a) CHALLENGES AUTHORIZED.—The military  
17 judge and members of a military commission under this  
18 chapter may be challenged by the accused or trial counsel  
19 for cause stated to the commission. The military judge  
20 shall determine the relevance and validity of challenges for  
21 cause. The military judge may not receive a challenge to  
22 more than one person at a time. Challenges by trial coun-  
23 sel shall ordinarily be presented and decided before those  
24 by the accused are offered.

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

5       “(c) CHALLENGES AGAINST ADDITIONAL MEM-  
6 BERS.—Whenever additional members are detailed to a  
7 military commission under this chapter, and after any  
8 challenges for cause against such additional members are  
9 presented and decided, each accused and the trial counsel  
10 are entitled to one peremptory challenge against members  
11 not previously subject to peremptory challenge.

12       **“§ 949g. Oaths**

13       “(a) IN GENERAL.—(1) Before performing their re-  
14 spective duties in a military commission under this chap-  
15 ter, military judges, members, trial counsel, defense coun-  
16 sel, reporters, and interpreters shall take an oath to per-  
17 form their duties faithfully.

18       “(2) The form of the oath required by paragraph (1),  
19 the time and place of the taking thereof, the manner of  
20 recording the same, and whether the oath shall be taken  
21 for all cases in which duties are to be performed or for  
22 a particular case, shall be as prescribed in regulations of  
23 the Secretary of Defense. Those regulations may provide  
24 that—

1           “(A) an oath to perform faithfully duties as a  
2           military judge, trial counsel, or defense counsel may  
3           be taken at any time by any judge advocate or other  
4           person certified to be qualified or competent for the  
5           duty; and

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

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

11       **“§ 949h. Former jeopardy**

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

15          “(b) SCOPE OF TRIAL.—No proceeding in which the  
16          accused has been found guilty by military commission  
17          under this chapter upon any charge or specification is a  
18          trial in the sense of this section until the finding of guilty  
19          has become final after review of the case has been fully  
20          completed.

21       **“§ 949i. Pleas of the accused**

22          “(a) ENTRY OF PLEA OF NOT GUILTY.—If an ac-  
23          cused in a military commission under this chapter after  
24          a plea of guilty sets up matter inconsistent with the plea,  
25          or if it appears that the accused has entered the plea of

1 guilty through lack of understanding of its meaning and  
2 effect, or if the accused fails or refuses to plead, a plea  
3 of not guilty shall be entered in the record, and the mili-  
4 tary commission shall proceed as though the accused had  
5 pleaded not guilty.

6       “(b) FINDING OF GUILT AFTER GUILTY PLEA.—  
7 With respect to any charge or specification to which a plea  
8 of guilty has been made by the accused in a military com-  
9 mission under this chapter and accepted by the military  
10 judge, a finding of guilty of the charge or specification  
11 may be entered immediately without a vote. The finding  
12 shall constitute the finding of the commission unless the  
13 plea of guilty is withdrawn prior to announcement of the  
14 sentence, in which event the proceedings shall continue as  
15 though the accused had pleaded not guilty.

16 **“§ 949j. Opportunity to obtain witnesses and other**  
17 **evidence**

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

23       “(b) PROCESS FOR COMPULSION.—Process issued in  
24 a military commission under this chapter to compel wit-

1 nesses to appear and testify and to compel the production  
2 of other evidence—

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

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

8 “(c) PROTECTION OF CLASSIFIED INFORMATION.—

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

12 “(A) the deletion of specified items of classified  
13 information from documents to be made available to  
14 the accused;

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

17 “(C) the substitution of a statement admitting  
18 relevant facts that the classified information would  
19 tend to prove.

20 “(2) The military judge, upon motion of trial counsel,  
21 shall authorize trial counsel, in the course of complying  
22 with discovery obligations under this section, to protect  
23 from disclosure the sources, methods, or activities by  
24 which the United States acquired evidence if the military  
25 judge finds that the sources, methods, or activities by

1 which the United States acquired such evidence are classi-  
2 fied. The military judge may require trial counsel to pro-  
3 vide, to the extent practicable, an unclassified summary  
4 of the sources, methods, or activities by which the United  
5 States acquired such evidence.

6 “(d) EXCULPATORY EVIDENCE.—(1) As soon as  
7 practicable, trial counsel shall disclose to the defense the  
8 existence of any evidence known to trial counsel that rea-  
9 sonably tends to exculpate the accused. Where exculpatory  
10 evidence is classified, the accused shall be provided with  
11 an adequate substitute in accordance with the procedures  
12 under subsection (c).

13 “(2) In this subsection, the term ‘evidence known to  
14 trial counsel’, in the case of exculpatory evidence, means  
15 exculpatory evidence that the prosecution would be re-  
16 quired to disclose in a trial by general court-martial under  
17 chapter 47 of this title.

18 **“§ 949k. Defense of lack of mental responsibility**

19 “(a) AFFIRMATIVE DEFENSE.—It is an affirmative  
20 defense in a trial by military commission under this chap-  
21 ter that, at the time of the commission of the acts consti-  
22 tuting the offense, the accused, as a result of a severe  
23 mental disease or defect, was unable to appreciate the na-  
24 ture and quality or the wrongfulness of the acts. Mental  
25 disease or defect does not otherwise constitute a defense.

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

5       “(c) FINDINGS FOLLOWING ASSERTION OF DE-  
6 FENSE.—Whenever lack of mental responsibility of the ac-  
7 cused with respect to an offense is properly at issue in  
8 a military commission under this chapter, the military  
9 judge shall instruct the members of the commission as to  
10 the defense of lack of mental responsibility under this sec-  
11 tion and shall charge them to find the accused—

12               “(1) guilty;

13               “(2) not guilty; or

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

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

22 **“§ 949l. Voting and rulings**

23       “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting  
24 by members of a military commission under this chapter



1 on the findings and on the sentence shall be by secret writ-  
2 ten ballot.

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

7 “(2) Any ruling made by the military judge upon a  
8 question of law or an interlocutory question (other than  
9 the factual issue of mental responsibility of the accused)  
10 is conclusive and constitutes the ruling of the military  
11 commission. However, a military judge may change his  
12 ruling at any time during the trial.

13 “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote  
14 is taken of the findings of a military commission under  
15 this chapter, the military judge shall, in the presence of  
16 the accused and counsel, instruct the members as to the  
17 elements of the offense and charge the members—

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

21 “(2) that in the case being considered, if there  
22 is a reasonable doubt as to the guilt of the accused,  
23 the doubt must be resolved in favor of the accused  
24 and he must be acquitted;

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

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

7 **“§ 949m. Number of votes required**

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

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

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

19           “(B) trial counsel expressly sought the penalty  
20 of death by filing an appropriate notice in advance  
21 of trial;

22           “(C) the accused is convicted of the offense by  
23 the concurrence of all the members present at the  
24 time the vote is taken; and

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

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

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

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

16          “(2) In any case described in paragraph (1) in which  
17          12 members are not reasonably available because of phys-  
18          ical conditions or military exigencies, the convening au-  
19          thority shall specify a lesser number of members for the  
20          military commission (but not fewer than 9 members), and  
21          the military commission may be assembled, and the trial  
22          held, with not fewer than the number of members so speci-  
23          fied. In such a case, the convening authority shall make  
24          a detailed written statement, to be appended to the record,

1 stating why a greater number of members were not rea-  
2 sonably available.

3 **“§ 949n. Military commission to announce action**

4 “A military commission under this chapter shall an-  
5 nounce its findings and sentence to the parties as soon  
6 as determined.

7 **“§ 949o. Record of trial**

8 “(a) RECORD; AUTHENTICATION.—Each military  
9 commission under this chapter shall keep a separate, ver-  
10 batim, record of the proceedings in each case brought be-  
11 fore it, and the record shall be authenticated by the signa-  
12 ture of the military judge. If the record cannot be authen-  
13 ticated by the military judge by reason of his death, dis-  
14 ability, or absence, it shall be authenticated by the signa-  
15 ture of the trial counsel or by a member of the commission  
16 if the trial counsel is unable to authenticate it by reason  
17 of his death, disability, or absence. Where appropriate,  
18 and as provided in regulations prescribed by the Secretary  
19 of Defense, the record of a military commission under this  
20 chapter may contain a classified annex.

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

24 “(c) PROVISION OF COPY TO ACCUSED.—A copy of  
25 the record of the proceedings of the military commission

1 under this chapter shall be given the accused as soon as  
 2 it is authenticated. If the record contains classified infor-  
 3 mation, or a classified annex, the accused shall be given  
 4 a redacted version of the record consistent with the re-  
 5 quirements of section 949d of this title. Defense counsel  
 6 shall have access to the unredacted record, as provided  
 7 in regulations prescribed by the Secretary of Defense.

8                   “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

9   **“§ 949s. Cruel or unusual punishments prohibited**

10           “Punishment by flogging, or by branding, marking,  
 11 or tattooing on the body, or any other cruel or unusual  
 12 punishment, may not be adjudged by a military commis-  
 13 sion under this chapter or inflicted under this chapter  
 14 upon any person subject to this chapter. The use of irons,  
 15 single or double, except for the purpose of safe custody,  
 16 is prohibited under this chapter.

17   **“§ 949t. Maximum limits**

18           “The punishment which a military commission under  
 19 this chapter may direct for an offense may not exceed such  
 20 limits as the President or Secretary of Defense may pre-  
 21 scribe for that offense.

1 **“§ 949u. Execution of confinement**

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

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

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

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

19 “SUBCHAPTER VI—POST-TRIAL PROCEDURE  
20 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 Colum-  
bia 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.

1 **“§ 950a. Error of law; lesser included offense**

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

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

11 **“§ 950b. Review by the convening authority**

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

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

22 “(2)(A) Except as provided in subparagraph (B), a  
23 submittal under paragraph (1) shall be made in writing  
24 within 20 days after the accused has been given an au-

1 thenticated record of trial under section 949o(c) of this  
2 title.

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

8 “(3) The accused may waive his right to make a sub-  
9 mittal to the convening authority under paragraph (1).  
10 Such a waiver shall be made in writing and may not be  
11 revoked. For the purposes of subsection (c)(2), the time  
12 within which the accused may make a submittal under this  
13 subsection shall be deemed to have expired upon the sub-  
14 mittal of a waiver under this paragraph to the convening  
15 authority.

16 “(c) ACTION BY CONVENING AUTHORITY.—(1) The  
17 authority under this subsection to modify the findings and  
18 sentence of a military commission under this chapter is  
19 a matter of the sole discretion and prerogative of the con-  
20 vening authority.

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

23 “(B) Subject to regulations prescribed by the Sec-  
24 retary of Defense, action on the sentence under this para-  
25 graph may be taken only after consideration of any mat-



1 ters submitted by the accused under subsection (b) or  
2 after the time for submitting such matters expires, which-  
3 ever is earlier.

4 “(C) In taking action under this paragraph, the con-  
5 vening authority may, in his sole discretion, approve, dis-  
6 approve, commute, or suspend the sentence in whole or  
7 in part. The convening authority may not increase a sen-  
8 tence beyond that which is found by the military commis-  
9 sion.

10 “(3) The convening authority is not required to take  
11 action on the findings of a military commission under this  
12 chapter. If the convening authority takes action on the  
13 findings, the convening authority may, in his sole discre-  
14 tion, may—

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

17 “(B) change a finding of guilty to a charge to  
18 a finding of guilty to an offense that is a lesser in-  
19 cluded offense of the offense stated in the charge.

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

23 “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-  
24 ject to paragraphs (2) and (3), the convening authority  
25 of a military commission under this chapter may, in his

1 sole discretion, order a proceeding in revision or a rehear-  
2 ing.

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

6 “(i) there is an apparent error or omission in  
7 the record; or

8 “(ii) the record shows improper or inconsistent  
9 action by the military commission with respect to  
10 the findings or sentence that can be rectified without  
11 material prejudice to the substantial rights of the  
12 accused.

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

14 “(i) reconsider a finding of not guilty of a spec-  
15 ification or a ruling which amounts to a finding of  
16 not guilty;

17 “(ii) reconsider a finding of not guilty of any  
18 charge, unless there has been a finding of guilty  
19 under a specification laid under that charge, which  
20 sufficiently alleges a violation; or

21 “(iii) increase the severity of the sentence un-  
22 less the sentence prescribed for the offense is man-  
23 datory.

24 “(3) A rehearing may be ordered by the convening  
25 authority if the convening authority disapproves the find-

1 ings and sentence and states the reasons for disapproval  
2 of the findings. If the convening authority disapproves the  
3 finding and sentence and does not order a rehearing, the  
4 convening authority shall dismiss the charges. A rehearing  
5 as to the findings may not be ordered by the convening  
6 authority when there is a lack of sufficient evidence in the  
7 record to support the findings. A rehearing as to the sen-  
8 tence may be ordered by the convening authority if the  
9 convening authority disapproves the sentence.

10 **“§ 950c. Appellate referral; waiver or withdrawal of**  
11 **appeal**

12 “(a) AUTOMATIC REFERRAL FOR APPELLATE RE-  
13 VIEW.—Except as provided under subsection (b), in each  
14 case in which the final decision of a military commission  
15 (as approved by the convening authority) includes a find-  
16 ing of guilty, the convening authority shall refer the case  
17 to the Court of Military Commission Review. Any such re-  
18 ferral shall be made in accordance with procedures pre-  
19 scribed under regulations of the Secretary.

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

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

3       “(3) A waiver under paragraph (1) must be filed, if  
4 at all, within 10 days after notice on the action is served  
5 on the accused or on defense counsel under section  
6 950b(c)(4) of this title. The convening authority, for good  
7 cause, may extend the period for such filing by not more  
8 than 30 days.

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

13       “(d) EFFECT OF WAIVER OR WITHDRAWAL.—A  
14 waiver of the right to appellate review or the withdrawal  
15 of an appeal under this section bars review under section  
16 950f of this title.

17 **“§ 950d. Appeal by the United States**

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

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

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

3           “(C) relates to a matter under subsection (d),  
4 (e), or (f) of section 949d of this title or section  
5 949j(c) of this title.

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

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

14          “(c) APPEAL.—An appeal under this section shall be  
15 forwarded, by means specified in regulations prescribed  
16 the Secretary of Defense, directly to the Court of Military  
17 Commission Review. In ruling on an appeal under this sec-  
18 tion, the Court may act only with respect to matters of  
19 law.

20          “(d) APPEAL FROM ADVERSE RULING.—The United  
21 States may appeal an adverse ruling on an appeal under  
22 subsection (c) to the United States Court of Appeals for  
23 the District of Columbia Circuit by filing a petition for  
24 review in the Court of Appeals within 10 days after the

1 date of such ruling. Review under this subsection shall be  
2 at the discretion of the Court of Appeals.

3 **“§ 950e. Rehearings**

4 “(a) COMPOSITION OF MILITARY COMMISSION FOR  
5 REHEARING.—Each rehearing under this chapter shall  
6 take place before a military commission under this chapter  
7 composed of members who were not members of the mili-  
8 tary commission which first heard the case.

9 “(b) SCOPE OF REHEARING.—(1) Upon a rehear-  
10 ing—

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

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

16 “(i) the sentence is based upon a finding  
17 of guilty of an offense not considered upon the  
18 merits in the original proceedings; or

19 “(ii) the sentence prescribed for the of-  
20 fense is mandatory.

21 “(2) Upon a rehearing, if the sentence approved after  
22 the first military commission was in accordance with a  
23 pretrial agreement and the accused at the rehearing  
24 changes his plea with respect to the charges or specifica-  
25 tions upon which the pretrial agreement was based, or oth-

1 erwise does not comply with pretrial agreement, the sen-  
2 tence as to those charges or specifications may include any  
3 punishment not in excess of that lawfully adjudged at the  
4 first military commission.

5 **“§ 950f. Review by Court of Military Commission Re-**  
6 **view**

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

15 “(b) APPELLATE MILITARY JUDGES.—The Secretary  
16 shall assign appellate military judges to a Court of Mili-  
17 tary Commission Review. Each appellate military judge  
18 shall meet the qualifications for military judges prescribed  
19 by section 948j(b) of this title or shall be a civilian with  
20 comparable qualifications. No person may be serve as an  
21 appellate military judge in any case in which that person  
22 acted as a military judge, counsel, or reviewing official.

23 “(c) CASES TO BE REVIEWED.—The Court of Mili-  
24 tary Commission Review, in accordance with procedures  
25 prescribed under regulations of the Secretary, shall review

1 the record in each case that is referred to the Court by  
2 the convening authority under section 950c of this title  
3 with respect to any matter of law raised by the accused.

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

7 **“§ 950g. Review by the United States Court of Ap-**  
8 **peals for the District of Columbia Circuit**  
9 **and the Supreme Court**

10 “(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A)  
11 Except as provided in subparagraph (B), the United  
12 States Court of Appeals for the District of Columbia Cir-  
13 cuit shall have exclusive jurisdiction to determine the va-  
14 lidity of a final judgment rendered by a military commis-  
15 sion (as approved by the convening authority) under this  
16 chapter.

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

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

23 “(A) written notice of the final decision of the  
24 Court of Military Commission Review is served on  
25 the accused or on defense counsel; or



1           “(B) the accused submits, in the form pre-  
2           scribed by section 950c of this title, a written notice  
3           waiving the right of the accused to review by the  
4           Court of Military Commission Review under section  
5           950f of this title.

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

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

12                 “(1) whether the final decision was consistent  
13                 with the standards and procedures specified in this  
14                 chapter; and

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

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

20          **“§ 950h. Appellate counsel**

21                 “(a) APPOINTMENT.—The Secretary of Defense  
22                 shall, by regulation, establish procedures for the appoint-  
23                 ment of appellate counsel for the United States and for  
24                 the accused in military commissions under this chapter.

1 Appellate counsel shall meet the qualifications for counsel  
2 appearing before military commissions under this chapter.

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

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

8 “(2) may, when requested to do so by the At-  
9 torney General in a case arising under this chapter,  
10 represent the United States before the United States  
11 Court of Appeals for the District of Columbia Cir-  
12 cuit or the Supreme Court.

13 “(c) REPRESENTATION OF ACCUSED.—The accused  
14 shall be represented by appellate counsel appointed under  
15 subsection (a) before the Court of Military Commission  
16 Review, the United States Court of Appeals for the Dis-  
17 trict of Columbia Circuit, and the Supreme Court, and by  
18 civilian counsel if retained by the accused. Any such civil-  
19 ian counsel shall meet the qualifications under paragraph  
20 (3) of section 949c(b) of this title for civilian counsel ap-  
21 pearing before military commissions under this chapter  
22 and shall be subject to the requirements of paragraph (4)  
23 of that section.

1 **“§ 950i. Execution of sentence; procedures for execu-**  
2 **tion of sentence of death**

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

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

14 “(c) EXECUTION OF SENTENCE OF DEATH ONLY  
15 UPON FINAL JUDGMENT OF LEGALITY OF PRO-  
16 CEEDINGS.—(1) If the sentence of a military commission  
17 under this chapter extends to death, the sentence may not  
18 be executed until there is a final judgment as to the legal-  
19 ity of the proceedings (and with respect to death, approval  
20 under subsection (b)).

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

23 “(A) the time for the accused to file a petition  
24 for review by the Court of Appeals for the District  
25 of Columbia Circuit has expired and the accused has

1 not filed a timely petition for such review and the  
2 case is not otherwise under review by that Court; or

3 “(B) review is completed in accordance with the  
4 judgment of the United States Court of Appeals for  
5 the District of Columbia Circuit and—

6 “(i) a petition for a writ of certiorari is not  
7 timely filed;

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

10 “(iii) review is otherwise completed in ac-  
11 cordance with the judgment of the Supreme  
12 Court.

13 “(d) SUSPENSION OF SENTENCE.—The Secretary of  
14 the Defense, or the convening authority acting on the case  
15 (if other than the Secretary), may suspend the execution  
16 of any sentence or part thereof in the case, except a sen-  
17 tence of death.

18 “§ 950j. **Finality or proceedings, findings, and sen-**  
19 **tences**

20 “(a) FINALITY.—The appellate review of records of  
21 trial provided by this chapter, and the proceedings, find-  
22 ings, and sentences of military commissions as approved,  
23 reviewed, or affirmed as required by this chapter, are final  
24 and conclusive. Orders publishing the proceedings of mili-  
25 tary commissions under this chapter are binding upon all

1 departments, courts, agencies, and officers of the United  
2 States, except as otherwise provided by the President.

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

16 “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.

17 “§ 950p. **Statement of substantive offenses**

18 “(a) PURPOSE.—The provisions of this subchapter  
19 codify offenses that have traditionally been triable by mili-  
20 tary commissions. This chapter does not establish new

1 crimes that did not exist before its enactment, but rather  
2 codifies those crimes for trial by military commission.

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

8 **“§ 950q. Principals**

9 “Any person is punishable as a principal under this  
10 chapter who—

11 “(1) commits an offense punishable by this  
12 chapter, or aids, abets, counsels, commands, or pro-  
13 cures its commission;

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

17 “(3) is a superior commander who, with regard  
18 to acts punishable under this chapter, knew, had  
19 reason to know, or should have known, that a subor-  
20 dinate was about to commit such acts or had done  
21 so and who failed to take the necessary and reason-  
22 able measures to prevent such acts or to punish the  
23 perpetrators thereof.

1 **“§ 950r. Accessory after the fact**

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

8 **“§ 950s. Conviction of lesser included offense**

9 “An accused may be found guilty of an offense nec-  
10 essarily included in the offense charged or of an attempt  
11 to commit either the offense charged or an attempt to  
12 commit either the offense charged or an offense nec-  
13 essarily included therein.

14 **“§ 950t. Attempts**

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

19 “(b) SCOPE OF OFFENSE.—An act, done with spe-  
20 cific intent to commit an offense under this chapter,  
21 amounting to more than mere preparation and tending,  
22 even though failing, to effect its commission, is an attempt  
23 to commit that offense.

24 “(c) EFFECT OF CONSUMMATION.—Any person sub-  
25 ject to this chapter may be convicted of an attempt to com-

1 mit an offense although it appears on the trial that the  
2 offense was consummated.

3 **“§ 950u. Solicitation**

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

13 **“§ 950v. Crimes triable by military commissions**

14 “(a) DEFINITIONS AND CONSTRUCTION.—In this sec-  
15 tion:

16 “(1) MILITARY OBJECTIVE.—The term ‘military  
17 objective’ means—

18 “(A) combatants; and

19 “(B) those objects during an armed con-  
20 flict—

21 “(i) which, by their nature, location,  
22 purpose, or use, effectively contribute to  
23 the opposing force’s war-fighting or war-  
24 sustaining capability; and



1                   “(ii) the total or partial destruction,  
2                   capture, or neutralization of which would  
3                   constitute a definite military advantage to  
4                   the attacker under the circumstances at  
5                   the time of the attack.

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

10                   “(A) civilians not taking an active part in  
11                   hostilities;

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

14                   “(C) military medical or religious per-  
15                   sonnel.

16                   “(3) PROTECTED PROPERTY.—The term ‘pro-  
17                   tected property’ means property specifically pro-  
18                   tected by the law of war (such as buildings dedicated  
19                   to religion, education, art, science or charitable pur-  
20                   poses, historic monuments, hospitals, or places  
21                   where the sick and wounded are collected), if such  
22                   property is not being used for military purposes or  
23                   is not otherwise a military objective. Such term in-  
24                   cludes objects properly identified by one of the dis-  
25                   tinctive emblems of the Geneva Conventions, but

1 does not include civilian property that is a military  
2 objective.

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

7 “(A) collateral damage; or

8 “(B) death, damage, or injury incident to  
9 a lawful attack.

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

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

18 “(2) ATTACKING CIVILIANS.—Any person sub-  
19 ject to this chapter who intentionally engages in an  
20 attack upon a civilian population as such, or indi-  
21 vidual civilians not taking active part in hostilities,  
22 shall be punished, if death results to one or more of  
23 the victims, by death or such other punishment as  
24 a military commission under this chapter may direct,  
25 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 “(3) ATTACKING CIVILIAN OBJECTS.—Any per-  
4 son subject to this chapter who intentionally engages  
5 in an attack upon a civilian object that is not a mili-  
6 tary objective shall be punished as a military com-  
7 mission under this chapter may direct.

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

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

20 “(6) DENYING QUARTER.—Any person subject  
21 to this chapter who, with effective command or con-  
22 trol over subordinate groups, declares, orders, or  
23 otherwise indicates to those groups that there shall  
24 be no survivors or surrender accepted, with the in-  
25 tent to threaten an adversary or to conduct hos-

1       tilities such that there would be no survivors or sur-  
2       render accepted, shall be punished as a military  
3       commission under this chapter may direct.

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

18              “(8) EMPLOYING POISON OR SIMILAR WEAP-  
19      ONS.—Any person subject to this chapter who inten-  
20      tionally, as a method of warfare, employs a sub-  
21      stance or weapon that releases a substance that  
22      causes death or serious and lasting damage to health  
23      in the ordinary course of events, through its asphyx-  
24      iating, bacteriological, or toxic properties, shall be  
25      punished, if death results to one or more of the vic-

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

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

18 “(10) USING PROTECTED PROPERTY AS A  
19 SHIELD.—Any person subject to this chapter who  
20 positions, or otherwise takes advantage of the loca-  
21 tion of, protected property with the intent to shield  
22 a military objective from attack, or to shield, favor,  
23 or impede military operations, shall be punished as  
24 a military commission under this chapter may direct.

25 “(11) TORTURE.—

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

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

22           “(12) CRUEL OR INHUMAN TREATMENT.—

23           “(A) OFFENSE.—Any person subject to  
24 this chapter who commits an act intended to in-  
25 flict severe or serious physical or mental pain or

1 suffering (other than pain or suffering inci-  
2 dental to lawful sanctions), including serious  
3 physical abuse, upon another within his custody  
4 or control shall be punished, if death results to  
5 the victim, by death or such other punishment  
6 as a military commission under this chapter  
7 may direct, and, if death does not result to the  
8 victim, by such punishment, other than death,  
9 as a military commission under this chapter  
10 may direct.

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

12 “(i) The term ‘serious physical pain  
13 or suffering’ means bodily injury that in-  
14 volves—

15 “(I) a substantial risk of death;

16 “(II) extreme physical pain;

17 “(III) a burn or physical dis-  
18 figurement of a serious nature (other  
19 than cuts, abrasions, or bruises); or

20 “(IV) significant loss or impair-  
21 ment of the function of a bodily mem-  
22 ber, organ, or mental faculty.

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

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

5                   “(I) the term ‘serious’ shall re-  
6                   place the term ‘severe’ where it ap-  
7                   pears; and

8                   “(II) as to conduct occurring  
9                   after the date of the enactment of the  
10                  Military Commissions Act of 2006,  
11                  the term ‘serious and non-transitory  
12                  mental harm (which need not be pro-  
13                  longed)’ shall replace the term ‘pro-  
14                  longed mental harm’ where it appears.

15           “(13) INTENTIONALLY CAUSING SERIOUS BOD-  
16           ILY INJURY.—

17                   “(A) OFFENSE.—Any person subject to  
18                   this chapter who intentionally causes serious  
19                   bodily injury to one or more persons, including  
20                   lawful combatants, in violation of the law of  
21                   war shall be punished, if death results to one or  
22                   more of the victims, by death or such other  
23                   punishment as a military commission under this  
24                   chapter may direct, and, if death does not re-  
25                   sult to any of the victims, by such punishment,



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

3 “(B) SERIOUS BODILY INJURY DEFINED.—

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

6 “(i) a substantial risk of death;

7 “(ii) extreme physical pain;

8 “(iii) protracted and obvious dis-  
9 figurement; or

10 “(iv) protracted loss or impairment of  
11 the function of a bodily member, organ, or  
12 mental faculty.

13 “(14) MUTILATING OR MAIMING.—Any person  
14 subject to this chapter who intentionally injures one  
15 or more protected persons by disfiguring the person  
16 or persons by any mutilation of the person or per-  
17 sons, or by permanently disabling any member, limb,  
18 or organ of the body of the person or persons, with-  
19 out any legitimate medical or dental purpose, shall  
20 be punished, if death results to one or more of the  
21 victims, by death or such other punishment as a  
22 military commission under this chapter may direct,  
23 and, if death does not result to any of the victims,  
24 by such punishment, other than death, as a military  
25 commission under this chapter may direct.

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

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

13          “(17) USING TREACHERY OR PERFIDY.—Any  
14          person subject to this chapter who, after inviting the  
15          confidence or belief of one or more persons that they  
16          were entitled to, or obliged to accord, protection  
17          under the law of war, intentionally makes use of  
18          that confidence or belief in killing, injuring, or cap-  
19          turing such person or persons shall be punished, if  
20          death results to one or more of the victims, by death  
21          or such other punishment as a military commission  
22          under this chapter may direct, and, if death does not  
23          result to any of the victims, by such punishment,  
24          other than death, as a military commission under  
25          this chapter may direct.

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

7           “(19) IMPROPERLY USING A DISTINCTIVE EM-  
8     BLEM.—Any person subject to this chapter who in-  
9     tentionally uses a distinctive emblem recognized by  
10    the law of war for combatant purposes in a manner  
11    prohibited by the law of war shall be punished as a  
12    military commission under this chapter may direct.

13          “(20) INTENTIONALLY MISTREATING A DEAD  
14    BODY.—Any person subject to this chapter who in-  
15    tentionally mistreats the body of a dead person,  
16    without justification by legitimate military necessity,  
17    shall be punished as a military commission under  
18    this chapter may direct.

19          “(21) RAPE.—Any person subject to this chap-  
20    ter who forcibly or with coercion or threat of force  
21    wrongfully invades the body of a person by pene-  
22    trating, however slightly, the anal or genital opening  
23    of the victim with any part of the body of the ac-  
24    cused, or with any foreign object, shall be punished

1 as a military commission under this chapter may di-  
2 rect.

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

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

21 “(24) TERRORISM.—Any person subject to this  
22 chapter who intentionally kills or inflicts great bodily  
23 harm on one or more protected persons, or inten-  
24 tionally engages in an act that evinces a wanton dis-  
25 regard for human life, in a manner calculated to in-

1       fluence or affect the conduct of government or civil-  
2       ian population by intimidation or coercion, or to re-  
3       taliate against government conduct, shall be pun-  
4       ished, if death results to one or more of the victims,  
5       by death or such other punishment as a military  
6       commission under this chapter may direct, and, if  
7       death does not result to any of the victims, by such  
8       punishment, other than death, as a military commis-  
9       sion under this chapter may direct.

10           “(25) PROVIDING MATERIAL SUPPORT FOR  
11       TERRORISM.—

12           “(A) OFFENSE.—Any person subject to  
13       this chapter who provides material support or  
14       resources, knowing or intending that they are to  
15       be used in preparation for, or in carrying out,  
16       an act of terrorism (as set forth in paragraph  
17       (24)), or who intentionally provides material  
18       support or resources to an international ter-  
19       rorist organization engaged in hostilities against  
20       the United States, knowing that such organiza-  
21       tion has engaged or engages in terrorism (as so  
22       set forth), shall be punished as a military com-  
23       mission under this chapter may direct.

24           “(B) MATERIAL SUPPORT OR RESOURCES  
25       DEFINED.—In this paragraph, the term ‘mate-

1           rial support or resources' has the meaning  
2           given that term in section 2339A(b) of title 18.

3           “(26) WRONGFULLY AIDING THE ENEMY.—Any  
4           person subject to this chapter who, in breach of an  
5           allegiance or duty to the United States, knowingly  
6           and intentionally aids an enemy of the United  
7           States, or one of the co-belligerents of the enemy,  
8           shall be punished as a military commission under  
9           this chapter may direct.

10           “(27) SPYING.—Any person subject to this  
11           chapter who with intent or reason to believe that it  
12           is to be used to the injury of the United States or  
13           to the advantage of a foreign power, collects or at-  
14           tempts to collect information by clandestine means  
15           or while acting under false pretenses, for the pur-  
16           pose of conveying such information to an enemy of  
17           the United States, or one of the co-belligerents of  
18           the enemy, shall be punished by death or such other  
19           punishment as a military commission under this  
20           chapter may direct.

21           “(28) CONSPIRACY.—Any person subject to this  
22           chapter who conspires to commit one or more sub-  
23           stantive offenses triable by military commission  
24           under this chapter, and who knowingly does any  
25           overt act to effect the object of the conspiracy, 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 **“§ 950w. Perjury and obstruction of justice; contempt**

8 “(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A  
 9 military commission under this chapter may try offenses  
 10 and impose such punishment as the military commission  
 11 may direct for perjury, false testimony, or obstruction of  
 12 justice related to military commissions under this chapter.

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

17 (2) TABLES OF CHAPTERS AMENDMENTS.—The  
 18 tables of chapters at the beginning of subtitle A, and  
 19 at the beginning of part II of subtitle A, of title 10,  
 20 United States Code, are each amended by inserting  
 21 after the item relating to chapter 47 the following  
 22 new item:

“47A. Military Commissions ..... 948a.”.

23 (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—  
 24 Not later than 90 days after the date of the enactment  
 25 of this Act, the Secretary of Defense shall submit to the

1 Committees on Armed Services of the Senate and the  
2 House of Representatives a report setting forth the proce-  
3 dures for military commissions prescribed under chapter  
4 47A of title 10, United States Code (as added by sub-  
5 section (a)).

6 **SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY**  
7 **JUSTICE.**

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

11 (1) APPLICABILITY TO LAWFUL ENEMY COM-  
12 BATANTS.—Section 802(a) (article 2(a)) is amended  
13 by adding at the end the following new paragraph:  
14 “(13) Lawful enemy combatants (as that term  
15 is defined in section 948a(2) of this title) who vio-  
16 late the law of war.”.

17 (2) EXCLUSION OF APPLICABILITY TO CHAPTER  
18 47A COMMISSIONS.—Sections 821, 828, 848, 850(a),  
19 904, and 906 (articles 21, 28, 48, 50(a), 104, and  
20 106) are amended by adding at the end the fol-  
21 lowing new sentence: “This section does not apply to  
22 a military commission established under chapter  
23 47A of this title.”.



1           (3) INAPPLICABILITY OF REQUIREMENTS RE-  
2           LATING TO REGULATIONS.—Section 836 (article  
3           36(b)) is amended—

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

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

11          (b) PUNITIVE ARTICLE OF CONSPIRACY.—Section  
12          881 of title 10, United States Code (article 81 of the Uni-  
13          form Code of Military Justice), is amended—

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

15                  (2) by adding at the end the following new sub-  
16          section:

17          “(b) Any person subject to this chapter who conspires  
18          with any other person to commit an offense under the law  
19          of war, and who knowingly does an overt act to effect the  
20          object of the conspiracy, shall be punished, if death results  
21          to one or more of the victims, by death or such other pun-  
22          ishment as a court-martial or military commission may di-  
23          rect, and, if death does not result to any of the victims,  
24          by such punishment, other than death, as a court-martial  
25          or military commission may direct.”.

1 **SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING**  
2 ******GROUND******  
3 ******S******  
4 ******E******  
5 ******T******  
6 ******I******  
7 ******N******  
8 ******G******  
9 ******O******  
10 ******U******  
11 ******R******  
12 ******E******  
13 ******S******  
14 ******T******  
15 ******R******  
16 ******E******  
17 ******S******  
18 ******T******  
19 ******R******  
20 ******I******  
21 ******O******  
22 ******N******  
23 ******G******  
24 ******R******  
25 ******O******

3 (a) IN GENERAL.—No person may invoke the Geneva  
4 Conventions or any protocols thereto in any habeas corpus  
5 or other civil action or proceeding to which the United  
6 States, or a current or former officer, employee, member  
7 of the Armed Forces, or other agent of the United States  
8 is a party as a source of rights in any court of the United  
9 States or its States or territories.

10 (b) GENEVA CONVENTIONS DEFINED.—In this sec-  
11 tion, the term “Geneva Conventions” means—

12 (1) the Convention for the Amelioration of the  
13 Condition of the Wounded and Sick in Armed  
14 Forces in the Field, done at Geneva August 12,  
15 1949 (6 UST 3114);

16 (2) the Convention for the Amelioration of the  
17 Condition of the Wounded, Sick, and Shipwrecked  
18 Members of the Armed Forces at Sea, done at Gene-  
19 va August 12, 1949 (6 UST 3217);

20 (3) the Convention Relative to the Treatment of  
21 Prisoners of War, done at Geneva August 12, 1949  
22 (6 UST 3316); and

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

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

2 (a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

3 (1) IN GENERAL.—The acts enumerated in sub-  
4 section (d) of section 2441 of title 18, United States  
5 Code, as added by subsection (b) of this section, and  
6 in subsection (c) of this section, constitute violations  
7 of common Article 3 of the Geneva Conventions pro-  
8 hibited by United States law.

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

21 (3) INTERPRETATION BY THE PRESIDENT.—

22 (A) As provided by the Constitution and by  
23 this section, the President has the authority for  
24 the United States to interpret the meaning and  
25 application of the Geneva Conventions and to  
26 promulgate higher standards and administrative

1 regulations for violations of treaty obligations  
2 which are not grave breaches of the Geneva  
3 Conventions.

4 (B) The President shall issue interpreta-  
5 tions described by subparagraph (A) by Execu-  
6 tive Order published in the Federal Register.

7 (C) Any Executive Order published under  
8 this paragraph shall be authoritative (except as  
9 to grave breaches of common Article 3) as a  
10 matter of United States law, in the same man-  
11 ner as other administrative regulations.

12 (D) Nothing in this section shall be con-  
13 strued to affect the constitutional functions and  
14 responsibilities of Congress and the judicial  
15 branch of the United States.

16 (4) DEFINITIONS.—In this subsection:

17 (A) GENEVA CONVENTIONS.—The term  
18 “Geneva Conventions” means—

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

23 (ii) the Convention for the Ameliora-  
24 tion of the Condition of the Wounded,  
25 Sick, and Shipwrecked Members of the

1           Armed Forces at Sea, done at Geneva Au-  
2           gust 12, 1949 (6 UST 3217);

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

7           (iv) the Convention Relative to the  
8           Protection of Civilian Persons in Time of  
9           War, done at Geneva August 12, 1949 (6  
10          UST 3516).

11          (B) THIRD GENEVA CONVENTION.—The  
12          term “Third Geneva Convention” means the  
13          international convention referred to in subpara-  
14          graph (A)(iii).

15          (b) REVISION TO WAR CRIMES OFFENSE UNDER  
16          FEDERAL CRIMINAL CODE.—

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

19           (A) in subsection (c), by striking para-  
20          graph (3) and inserting the following new para-  
21          graph (3):

22           “(3) which constitutes a grave breach of com-  
23          mon Article 3 (as defined in subsection (d)) when  
24          committed in the context of and in association with

1 an armed conflict not of an international character;  
2 or”; and

3 (B) by adding at the end the following new  
4 subsection:

5 “(d) COMMON ARTICLE 3 VIOLATIONS.—

6 “(1) PROHIBITED CONDUCT.—In subsection  
7 (c)(3), the term ‘grave breach of common Article 3’  
8 means any conduct (such conduct constituting a  
9 grave breach of common Article 3 of the inter-  
10 national conventions done at Geneva August 12,  
11 1949), as follows:

12 “(A) TORTURE.—The act of a person who  
13 commits, or conspires or attempts to commit,  
14 an act specifically intended to inflict severe  
15 physical or mental pain or suffering (other than  
16 pain or suffering incidental to lawful sanctions)  
17 upon another person within his custody or  
18 physical control for the purpose of obtaining in-  
19 formation or a confession, punishment, intimi-  
20 dation, coercion, or any reason based on dis-  
21 crimination of any kind.

22 “(B) CRUEL OR INHUMAN TREATMENT.—  
23 The act of a person who commits, or conspires  
24 or attempts to commit, an act intended to in-  
25 flict severe or serious physical or mental pain or

1 suffering (other than pain or suffering inci-  
2 dental to lawful sanctions), including serious  
3 physical abuse, upon another within his custody  
4 or control.

5 “(C) PERFORMING BIOLOGICAL EXPERI-  
6 MENTS.—The act of a person who subjects, or  
7 conspires or attempts to subject, one or more  
8 persons within his custody or physical control to  
9 biological experiments without a legitimate med-  
10 ical or dental purpose and in so doing endan-  
11 gers the body or health of such person or per-  
12 sons.

13 “(D) MURDER.—The act of a person who  
14 intentionally kills, or conspires or attempts to  
15 kill, or kills whether intentionally or uninten-  
16 tionally in the course of committing any other  
17 offense under this subsection, one or more per-  
18 sons taking no active part in the hostilities, in-  
19 cluding those placed out of combat by sickness,  
20 wounds, detention, or any other cause.

21 “(E) MUTILATION OR MAIMING.—The act  
22 of a person who intentionally injures, or con-  
23 spires or attempts to injure, or injures whether  
24 intentionally or unintentionally in the course of  
25 committing any other offense under this sub-

1 section, one or more persons taking no active  
2 part in the hostilities, including those placed  
3 out of combat by sickness, wounds, detention,  
4 or any other cause, by disfiguring the person or  
5 persons by any mutilation thereof or by perma-  
6 nently disabling any member, limb, or organ of  
7 his body, without any legitimate medical or den-  
8 tal purpose.

9 “(F) INTENTIONALLY CAUSING SERIOUS  
10 BODILY INJURY.—The act of a person who in-  
11 tentionally causes, or conspires or attempts to  
12 cause, serious bodily injury to one or more per-  
13 sons, including lawful combatants, in violation  
14 of the law of war.

15 “(G) RAPE.—The act of a person who  
16 forcibly or with coercion or threat of force  
17 wrongfully invades, or conspires or attempts to  
18 invade, the body of a person by penetrating,  
19 however slightly, the anal or genital opening of  
20 the victim with any part of the body of the ac-  
21 cused, or with any foreign object.

22 “(H) SEXUAL ASSAULT OR ABUSE.—The  
23 act of a person who forcibly or with coercion or  
24 threat of force engages, or conspires or at-  
25 tempts to engage, in sexual contact with one or



1 more persons, or causes, or conspires or at-  
2 tempts to cause, one or more persons to engage  
3 in sexual contact.

4 “(I) TAKING HOSTAGES.—The act of a  
5 person who, having knowingly seized or de-  
6 tained one or more persons, threatens to kill,  
7 injure, or continue to detain such person or per-  
8 sons with the intent of compelling any nation,  
9 person other than the hostage, or group of per-  
10 sons to act or refrain from acting as an explicit  
11 or implicit condition for the safety or release of  
12 such person or persons.

13 “(2) DEFINITIONS.—In the case of an offense  
14 under subsection (a) by reason of subsection  
15 (c)(3)—

16 “(A) the term ‘severe mental pain or suf-  
17 fering’ shall be applied for purposes of para-  
18 graphs (1)(A) and (1)(B) in accordance with  
19 the meaning given that term in section 2340(2)  
20 of this title;

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

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

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

9                   “(i) a substantial risk of death;

10                   “(ii) extreme physical pain;

11                   “(iii) a burn or physical disfigurement  
12                   of a serious nature (other than cuts, abra-  
13                   sions, or bruises); or

14                   “(iv) significant loss or impairment of  
15                   the function of a bodily member, organ, or  
16                   mental faculty; and

17           “(E) the term ‘serious mental pain or suf-  
18           fering’ shall be applied for purposes of para-  
19           graph (1)(B) in accordance with the meaning  
20           given the term ‘severe mental pain or suffering’  
21           (as defined in section 2340(2) of this title), ex-  
22           cept that—

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

1           “(ii) as to conduct occurring after the  
2           date of the enactment of the Military Com-  
3           missions Act of 2006, the term ‘serious  
4           and non-transitory mental harm (which  
5           need not be prolonged)’ shall replace the  
6           term ‘prolonged mental harm’ where it ap-  
7           pears.

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

15                 “(A) collateral damage; or

16                 “(B) death, damage, or injury incident to  
17                 a lawful attack.

18          “(4) INAPPLICABILITY OF TAKING HOSTAGES  
19          TO PRISONER EXCHANGE.—Paragraph (1)(I) does  
20          not apply to an offense under subsection (a) by rea-  
21          son of subsection (c)(3) in the case of a prisoner ex-  
22          change during wartime.”.

23          (2)       RETROACTIVE        APPLICABILITY.—The  
24          amendments made by this subsection, except as  
25          specified in subsection (d)(2)(E) of section 2441 of

1 title 18, United States Code, shall take effect as of  
2 November 26, 1997, as if enacted immediately after  
3 the amendments made by section 583 of Public Law  
4 105–118 (as amended by section 4002(e)(7) of Pub-  
5 lic Law 107–273).

6 (c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN,  
7 OR DEGRADING TREATMENT OR PUNISHMENT.—

8 (1) IN GENERAL.—No individual in the custody  
9 or under the physical control of the United States  
10 Government, regardless of nationality or physical lo-  
11 cation, shall be subject to cruel, inhuman, or degrad-  
12 ing treatment or punishment.

13 (2) CRUEL, INHUMAN, OR DEGRADING TREAT-  
14 MENT OR PUNISHMENT DEFINED.—In this sub-  
15 section, the term “cruel, inhuman, or degrading  
16 treatment or punishment” means cruel, unusual,  
17 and inhumane treatment or punishment prohibited  
18 by the Fifth, Eighth, and Fourteenth Amendments  
19 to the Constitution of the United States, as defined  
20 in the United States Reservations, Declarations and  
21 Understandings to the United Nations Convention  
22 Against Torture and Other Forms of Cruel, Inhu-  
23 man or Degrading Treatment or Punishment done  
24 at New York, December 10, 1984.

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

5 **SEC. 7. HABEAS CORPUS MATTERS.**

6           (a) IN GENERAL.—Section 2241 of title 28, United  
7 States Code, is amended by striking both the subsection  
8 (e) added by section 1005(e)(1) of Public Law 109–148  
9 (119 Stat. 2742) and the subsection (e) added by added  
10 by section 1405(e)(1) of Public Law 109–163 (119 Stat.  
11 3477) and inserting the following new subsection (e):

12           “(e)(1) No court, justice, or judge shall have jurisdic-  
13 tion to hear or consider an application for a writ of habeas  
14 corpus filed by or on behalf of an alien detained by the  
15 United States who has been determined by the United  
16 States to have been properly detained as an enemy com-  
17 batant or is awaiting such determination.

18           “(2) Except as provided in paragraphs (2) and (3)  
19 of section 1005(e) of the Detainee Treatment Act of 2005  
20 (10 U.S.C. 801 note), no court, justice, or judge shall have  
21 jurisdiction to hear or consider any other action against  
22 the United States or its agents relating to any aspect of  
23 the detention, transfer, treatment, trial, or conditions of  
24 confinement of an alien who is or was detained by the  
25 United States and 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 (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall take effect on the date of the enact-  
5 ment of this Act, and shall apply to all cases, without ex-  
6 ception, pending on or after the date of the enactment of  
7 this Act which relate to any aspect of the detention, trans-  
8 fer, treatment, trial, or conditions of detention of an alien  
9 detained by the United States since September 11, 2001.

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

11 **RELATING TO PROTECTION OF CERTAIN**

12 **UNITED STATES GOVERNMENT PERSONNEL.**

13 (a) **COUNSEL AND INVESTIGATIONS.**—Section  
14 1004(b) of the Detainee Treatment Act of 2005 (42  
15 U.S.C. 2000dd–1(b)) is amended—

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

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

20 (3) by inserting “whether before United States  
21 courts or agencies, foreign courts or agencies, or  
22 international courts or agencies,” after “described in  
23 that subsection”.

24 (b) **PROTECTION OF PERSONNEL.**—Section 1004 of  
25 the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–

1) shall apply with respect to any criminal prosecution  
that—

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

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

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

**SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.**

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

(1) in subparagraph (A), by striking “pursuant  
to Military Commission Order No. 1. dated August  
31, 2005 (or any successor military order)” and in-  
serting “by a military commission under chapter  
47A of title 10, United States Code”;

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

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

(3) in subparagraph (C)—

(A) in clause (i)—

1 (i) by striking “pursuant to the mili-  
2 tary order” and inserting “by a military  
3 commission”; and

4 (ii) by striking “at Guantanamo Bay,  
5 Cuba”; and

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

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

12 **SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS**  
13 **OF COMBATANT STATUS REVIEW TRIBUNALS**  
14 **OF PROPRIETY OF DETENTION.**

15 Section 1005(e)(2)(B)(i) of the Detainee Treatment  
16 Act of 2005 (title X of Public Law 109–148; 119 Stat.  
17 2742; 10 U.S.C. 801 note) is amended by striking “the  
18 Department of Defense at Guantanamo Bay, Cuba” and  
19 inserting “the United States”.

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