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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2006

Mr. HUNTER (for himself, Mr. BOEHNER, Mr. SENSENBRENNER, Mr. CALVERT, Mrs. MILLER of Michigan, Mr. MILLER of Florida, Mr. SHUSTER, Mr. FRANKS of Arizona, Mr. WILSON of South Carolina, Mr. SAXTON, Mr. PORTER, Mr. KLINE, Mr. HEFLEY, Mr. HAYES, Mr. SWEENEY, Mr. CHOCOLA, and Mr. LoBIONDO) 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

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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Military Commissions Act of 2006”.
(b) Table of Contents.—The table of contents for this Act is as follows:

1. Short title; table of contents.
2. Construction of Presidential authority to establish military commissions.
5. Judicial review.
8. Retroactive applicability.

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

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution to establish military commissions on the battlefield or in occupied territories should circumstances so require.

SEC. 3. MILITARY COMMISSIONS.

(a) Military Commissions.—

(1) In General.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

“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
§ 948a. Definitions

“In this chapter:

“(1) UNLAWFUL ENEMY COMBATANT.—(A) The term ‘unlawful enemy combatant’ means an individual determined by or under the authority of the President or the Secretary of Defense—

“(i) to be part of or affiliated with a force or organization (including al Qaeda, the Taliban, any international terrorist organization, or associated forces) that is engaged in hostilities against the United States or its co-belligerents in violation of the law of war;

“(ii) to have committed a hostile act in aid of such a force or organization so engaged; or

“(iii) to have supported hostilities in aid of such a force or organization so engaged.

“(B) Such term includes any individual determined by a Combatant Status Review Tribunal before the date of the enactment of the Military Commissions Act of 2006 to have been properly detained as an enemy combatant.
“(C) Such term does not include any alien determined by the President or the Secretary of Defense (whether on an individualized or collective basis), or by any competent tribunal established under their authority, to be—

“(i) a lawful enemy combatant (including a prisoner of war); or

“(ii) a protected person whose trial by a military commission under this chapter would be inconsistent with Articles 64 through 76 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

“(D) For purposes of subparagraph (C)(ii), the term ‘protected person’ refers to the category of persons described in Article 4 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

“(2) GENEVA CONVENTIONS.—The term ‘Geneva Conventions’ means the international conventions signed at Geneva on August 12, 1949, including Common Article 3.

“(3) CLASSIFIED INFORMATION.—The term ‘classified information’ means the following:
“(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

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

“(4) ALIEN.—The term ‘alien’ means an individual who is not a citizen of the United States.

§ 948b. Military commissions generally

“(a) Authority for Military Commissions Under This Chapter.—The President is authorized to establish military commissions for violations of offenses triable by military commission as provided in this chapter.

“(b) Construction of Provisions.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general court-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title, including any construction or application of such chapter and any administrative practice under such chapter, does not apply to trial by military commission under this chapter.
“(c) Status of Commissions Under Common Article 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary ‘judicial guarantees which are recognized as indispensable by civilized peoples’ for purposes of common Article 3 of the Geneva Conventions.

“§ 948c. Persons subject to military commissions

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

“§ 948d. Jurisdiction of military commissions

“(a) Jurisdiction.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

“(b) Punishments.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter.

“§ 948e. Annual report to congressional committees

“(a) Annual Report Required.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any
trials conducted by military commissions under this chapter during such year.

“(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

“SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

§ 948h. Who may convene military commissions

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

§ 948i Who may serve on military commissions

“(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

“(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are fully quali-
fied for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

“(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

“§ 948j. Military judges

“(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

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

“(c) Ineligibility of Certain Individuals.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

“(d) Consultation With Members; Ineligibility to Vote.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

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

“(f) Prohibition on Evaluation of Fitness by Convening Authority.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness,
or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

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

“(a) Detail of Counsel Generally.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

“(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

“(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

“(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

“(b) Trial Counsel.—Subject to subsection (d), trial counsel detailed for a military commission under this chapter must be—

“(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who is—
“(A) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

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

“(2) a civilian who is—

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

“(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

“(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (d), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

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

“(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.
“(d) Ineligibility of Certain Individuals.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

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

“(a) Court Reporters.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

“(b) Interpreters.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel.
“(c) Transcript; Record.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

“§948m. Number of members; excuse of members; absent and additional members

“(a) Number of Members.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

“(2) In a case in which the death penalty is sought, the military commission shall have the number of members prescribed by section 949m(c) of this title.

“(b) Excuse of Members.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

“(1) as a result of challenge;

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

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

“(c) Absent and Additional Members.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a),
the trial may not proceed unless the convening authority
details new members sufficient to provide not less than
such number. The trial may proceed with the new mem-
bers present after the recorded evidence previously intro-
duced before the members has been read to the military
commission in the presence of the military judge, the ac-
cused (except as provided in section 949d of this title),
and counsel for both sides.

“SUBCHAPTER III—PRE-TRIAL PROCEDURE

10 “§ 948q. Charges and specifications

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

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

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

“(b) NOTICE TO ACCUSED.—Upon the swearing of

the charges and specifications in accordance with sub-
section (a), the accused shall be informed of the charges
against him as soon as practicable.

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

“(a) In General.—No person shall be required to
testify against himself at a proceeding of a military com-
mission under this chapter.

“(b) Exclusion of Statements Obtained by
Torture.—A statement obtained by use of torture,
whether or not under color of law, shall not be admissible
against the accused in a military commission under this
chapter, except against a person accused of torture as evi-
dence the statement was made.

“(c) Other Statements.—An otherwise admissible
statement, including a statement allegedly obtained by co-
ercion, shall not be admitted in evidence in a military com-
mission under this chapter if the military judge finds that
the circumstances under which the statement was made
render the statement unreliable or lacking in probative
value.

“(d) Torture.—In this section, the term ‘torture’
has the meaning given that term in section 2340 of title
18.
§948s. Service of charges

"The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

"SUBCHAPTER IV—TRIAL PROCEDURE

"§949a. Rules

"(a) PROCEDURES.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter shall be prescribed by the Secretary of Defense, but may not be contrary to or inconsistent with this chapter.

"(b) RULES OF EVIDENCE.—(1) Subject to such exceptions and limitations as the Secretary may prescribe..."
by regulation, evidence in a military commission under this chapter shall be admissible if the military judge deter-
mines that the evidence would have probative value to a reasonable person.

“(2) Hearsay evidence is admissible unless the mili-
tary judge finds that the circumstances render the evi-
dence unreliable or lacking in probative value. However, such evidence may be admitted only if the proponent of the evidence makes the evidence known to the adverse party in advance of trial or hearing.

“(3) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

“(A) by the danger of unfair prejudice, confusion of the issues, or misleading the members of the commission; or

“(B) by considerations of undue delay, waste of time, or needless presentation of cumulative evi-
dence.

“(c) Notification to Congressional Committees of Changes to Procedures.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the
House of Representatives a report describing the modification.

§949b. Unlawfully influencing action of military commission

“(a) In General.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

“(2) No person may attempt to coerce or, by any unauthorized means, influence the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

“(3) Paragraphs (1) and (2) do not apply with respect to—

“(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or
“(B) statements and instructions given in open proceedings by a military judge or counsel.

“(b) Prohibition on Consideration of Actions on Commission in Evaluation of Fitness.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

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

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

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

“(a) Trial Counsel.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.
“(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

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

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

“(A) is a United States citizen;

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

“(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

“(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

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

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

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

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

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

“§ 949d. Sessions

“(a) Sessions Without Presence of Mem-
bers.—(1) At any time after the service of charges which
have been referred for trial by military commission under
this chapter, the military judge may call the military com-
mission into session without the presence of the members
for the purpose of—

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

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

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

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

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

“(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

“(B) be made part of the record.

“(b) PROCEEDINGS IN PRESENCE OF ACCUSED.— Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—
“(1) be in the presence of the accused, defense
counsel, and trial counsel; and
“(2) be made a part of the record.
“(c) Deliberation or Vote of Members.—When
the members of a military commission under this chapter
deliberate or vote, only the members may be present.
“(d) Closure of Proceedings.—(1) The military
date judge may close to the public all or part of the proceedings
of a military commission under this chapter, but only in
accordance with this subsection.
“(2)(A) The military judge may close to the public
all or a portion of the proceedings of a military commis-
sion under paragraph (1), or permit the admission of clas-
sified information outside the presence of the accused,
based upon a presentation (including an ex parte or in
camera presentation) by either the prosecution or the de-
defense.
“(B) Trial counsel may not make a presentation re-
questing the admission of classified information outside
the presence of the accused unless the head of the depart-
ment or agency which has control over the matter (after
personal consideration by that officer) certifies in writing
to the military judge that—
“(i) the disclosure of the classified information to the accused could reasonably be expected to prejudice the national security; and

“(ii) that such evidence has been declassified to the maximum extent possible, consistent with the requirements of national security.

“(3) The military judge may close to the public all or a portion of the proceedings of a military commission under paragraph (1) upon making a specific finding that such closure is necessary to—

“(A) protect information the disclosure of which could reasonably be expected to cause identifiable damage to the public interest or the national security, including intelligence or law enforcement sources, methods, or activities; or

“(B) ensure the physical safety of individuals.

“(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—(1) The military judge may not exclude the accused from any portion of the proceeding except upon a specific finding of each of the following:

“(A) That the exclusion of the accused—

“(i) is necessary to protect classified information the disclosure of which to the accused could reasonably be expected to cause identifiable damage to the national security, including
intelligence or law enforcement sources, methods, or activities;

“(ii) is necessary to ensure the physical safety of individuals; or

“(iii) is necessary to prevent disruption of the proceedings by the accused.

“(B) That the exclusion of the accused—

“(i) is no broader than necessary; and

“(ii) will not deprive the accused of a full and fair trial.

“(2)(A) A finding under paragraph (1) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

“(B) Before trial counsel may make a presentation for purposes of subparagraph (A) requesting the admission of classified information that has not been provided to the accused, the head of the executive or military department or governmental agency concerned shall ensure, and shall certify in writing to the military judge, that such evidence has been declassified to the maximum extent possible, consistent with the requirements of national security.

“(3)(A) No evidence may be admitted that has not been provided to the accused unless the evidence is classi-
fied information and the military judge makes a specific finding that—

“(i) consideration of that evidence by the military commission, without the presence of the accused, is warranted;

“(ii) admission of an unclassified summary or redacted version of that evidence would not be an adequate substitute and, in the case of testimony, alternative methods to obscure the identity of the witness are not adequate; and

“(iii) admission of the evidence would not deprive the accused of a full and fair trial.

“(B) If the accused is excluded from a portion of the proceedings, the accused shall be provided with a redacted transcript of the proceedings from which excluded and, to the extent practicable, an unclassified summary of any evidence introduced. Under no circumstances shall such a summary or redacted transcript compromise the interests warranting the exclusion of the accused under paragraph (1).

“(4)(A) Military defense counsel shall be present and able to participate in all trial proceedings and shall be given access to all evidence admitted under paragraph (3).

“(B) Civilian defense counsel shall be permitted to be present and to participate in proceedings from which
the accused is excluded under this subsection, and shall be given access to classified information admitted under this subsection, if—

“(i) civilian defense counsel has obtained the necessary security clearances; and

“(ii) the presence of civilian defense counsel or access of civilian defense counsel to such information, as applicable, is consistent with regulations to protect classified information that the Secretary of Defense may prescribe.

“(C) Any defense counsel who receives classified information admitted under this subsection shall not be obligated to, and may not, disclose that information to the accused.

“(D) At all times the accused must have defense counsel with sufficient security clearance to participate in any proceeding, including an ex parte or in camera presentation, with respect to classified information.

“(5) If evidence has been admitted under this subsection that has not been provided to the accused, the judge shall instruct the members of the commission—

“(A) that such evidence was so admitted; and

“(B) that, in weighing the value of that evidence, the commission shall consider the fact that
such evidence was admitted without having been
provided to the accused.

“(f) Admission of Statements of Accused.—(1)
A statement described in paragraph (2) that is made by
the accused during an interrogation, even if otherwise
classified, may not be admitted into evidence in a military
commission under this chapter unless the accused is
present for the admission of the statement into evidence
or the statement is otherwise provided to the accused.

“(2) A statement of an accused described in this
paragraph is a statement communicated knowingly and di-
rectly by the accused in response to questioning by United
States or foreign military, intelligence, or criminal inves-
tigative personnel.

“(3) This subsection shall not be construed to prevent
the redaction of intelligence sources or methods, which do
not constitute statements of the accused, from any docu-
ment provided to the accused or admitted into evidence.

“§ 949e. Continuances

“The military judge in a military commission under
this chapter may, for reasonable cause, grant a continu-
ance to any party for such time, and as often, as may
appear to be just.
§ 949f. Challenges

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

(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

§ 949g. Oaths

(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense coun-
(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

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

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

(b) Witnesses.—Each witness before a military commission under this chapter shall be examined on oath.

§949h. Former jeopardy

(a) In General.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

(b) Scope of Trial.—No proceeding in which the accused has been found guilty by military commission
under this chapter upon any charge or specification is a
trial in the sense of this section until the finding of guilty
has become final after review of the case has been fully
completed.

§949i. Pleas of the accused

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

(b) FINDING OF GUILT AFTER GUILTY PLEA.—
With respect to any charge or specification to which a plea
of guilty has been made by the accused in a military com-
mision under this chapter and accepted by the military
judge, a finding of guilty of the charge or specification
may be entered immediately without a vote. The finding
shall constitute the finding of the commission unless the
plea of guilty is withdrawn prior to announcement of the
sentence, in which event the proceedings shall continue as
though the accused had pleaded not guilty.
§949j. Opportunity to obtain witnesses and other evidence

“(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence, including evidence in the possession of the United States, as provided in regulations prescribed by the Secretary of Defense.

“(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

“(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

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

“(c) TREATMENT OF CLASSIFIED INFORMATION.—The military judge in a military commission under this chapter, upon a sufficient showing, may authorize trial counsel, in making documents available to the accused through discovery conducted pursuant to such rules as the Secretary of Defense shall prescribe, to delete specified items of classified information from such documents and, when such a deletion is made—
“(1) to substitute an unclassified summary of the classified information in such documents; or

“(2) to substitute an unclassified statement admitting relevant facts that classified information in such documents would tend to prove.

“(d) Disclosure of Exculpatory Evidence.—

(1) As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused.

“(2) Exculpatory evidence that consists of classified information may be provided solely to defense counsel, and not the accused, after review in camera by the military judge.

“(3) Before evidence may be withheld from the accused under this subsection, the head of the executive or military department or government agency concerned shall ensure, and shall certify in writing to the military judge, that—

“(A) the disclosure of such evidence to the accused could reasonably be expected to prejudice the national security; and

“(B) such evidence has been declassified to the maximum extent possible, consistent with the requirements of national security.
“(4) Any classified exculpatory evidence that is not disclosed to the accused under this subsection—

“(A) shall be provided to military defense counsel;

“(B) shall be provided to civilian defense counsel, if civilian defense counsel has obtained the necessary security clearances and access to such evidence is consistent with regulations that the Secretary may prescribe to protect classified information; and

“(C) shall be provided to the accused in a redacted or summary form, if it is possible to do so without compromising intelligence sources, methods, or activities or other national security interests.

“(5) A defense counsel who receives evidence under this subsection shall not be obligated to, and may not, disclose that evidence to the accused.

“§ 949k. Defense of lack of mental responsibility

“(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.
“(b) Burden of Proof.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

“(c) Findings Following Assertion of Defense.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

“(1) guilty;

“(2) not guilty; or

“(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

“(d) Majority Vote Required for Finding.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

“§949l. Voting and rulings

“(a) Vote by Secret Written Ballot.—Voting by members of a military commission under this chapter
on the findings and on the sentence shall be by secret written ballot.

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

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

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

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

“(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;
“(3) that, if there is reasonable doubt as to the
degree of guilt, the finding must be in a lower de-
gree as to which there is no reasonable doubt; and
“(4) that the burden of proof to establish the
guilt of the accused beyond a reasonable doubt is
upon the United States.

§ 949m. Number of votes required

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

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

“(A) the penalty of death is expressly author-
ized under this chapter for an offense of which the
accused has been found guilty;

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

“(C) the accused is convicted of the offense by
the concurrence of all the members; and

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

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

“(c) Number of Members Required for Pen-
alty of Death.—(1) Except as provided in paragraph
(2), in a case in which the penalty of death is sought, the
number of members of the military commission under this
chapter shall be not less than 12.

“(2) In any case described in paragraph (1) in which
12 members are not reasonably available because of phys-
ical conditions or military exigencies, the convening au-
thority shall specify a lesser number of members for the
military commission (but not fewer than 9 members), and
the military commission may be assembled, and the trial
held, with not fewer than the number of members so speci-
fied. In such a case, the convening authority shall make
a detailed written statement, to be appended to the record,
stating why a greater number of members were not rea-
sonably available.
“§ 949n. Military commission to announce action

“A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

“§ 949o. Record of trial

“(a) Record; Authentication.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

“(b) Complete Record Required.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

“(c) Provision of Copy to Accused.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given
a redacted version of the record. The appropriate defense
counsel shall have access to the unredacted record, as pro-
vided in regulations prescribed by the Secretary of De-
fense.

“SUBCHAPTER V—SENTENCES

§949s. Cruel or unusual punishments prohibited

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

§949t. Maximum limits

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

§949u. Execution of confinement

“(a) IN GENERAL.—Under such regulations as the
Secretary of Defense may prescribe, a sentence of confine-
ment adjudged by a military commission under this chap-
ter may be carried into execution by confinement—
“(1) in any place of confinement under the control of any of the armed forces; or

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

“(b) Treatment During Confinement by Other Than the Armed Forces.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

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

Sec.
950a. Error of law; lesser included offense.
950b. Review by the convening authority.
950c. Waiver or withdrawal of appeal.
950d. Appeal by the United States.
950e. Rehearings.
950f. Review by Court of Military Commission Review.
950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.
950h. Appellate counsel.
950i. Execution of sentence; suspension of sentence.
950j. Finality or proceedings, findings, and sentences.

§ 950a. Error of law; lesser included offense

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

“(b) Lesser Included Offense.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

“§950b. Review by the convening authority

“(a) Notice to Convening Authority of Findings and Sentence.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

“(b) Submittal of Matters by Accused to Convening Authority.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

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

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

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

“(c) Action by Convening Authority.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

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

“(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

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

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

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

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

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

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

“(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—
“(i) there is an apparent error or omission in
the record; or
“(ii) the record shows improper or inconsistent
action by the military commission with respect to
the findings or sentence that can be rectified without
material prejudice to the substantial rights of the
accused.
“(B) In no case may a proceeding in revision—
“(i) reconsider a finding of not guilty of a spec-
ification or a ruling which amounts to a finding of
not guilty;
“(ii) reconsider a finding of not guilty of any
charge, unless there has been a finding of guilty
under a specification laid under that charge, which
sufficiently alleges a violation; or
“(iii) increase the severity of the sentence un-
less the sentence prescribed for the offense is man-
datory.
“(3) A rehearing may be ordered by the convening
authority if the convening authority disapproves the find-
ings and sentence and states the reasons for disapproval
of the findings. If the convening authority disapproves the
finding and sentence and does not order a rehearing, the
convening authority shall dismiss the charges. A rehearing
as to the findings may not be ordered by the convening
authority when there is a lack of sufficient evidence in the
record to support the findings. A rehearing as to the sen-
tence may be ordered by the convening authority if the
convening authority disapproves the sentence.

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

“(a) Automatic Referral for Appellate Review.—Except as provided under subsection (b), in each
case in which the final decision of a military commission
(as approved by the convening authority) includes a find-
ing of guilty, the convening authority shall refer the case
to the Court of Military Commission Review. Any such re-
ferral shall be made in accordance with procedures pre-
scribed under regulations of the Secretary.

“(b) Waiver of Right of Review.—(1) In each
case subject to appellate review under section 950f of this
title, except a case in which the sentence as approved
under section 950b of this title extends to death, the ac-
cused may file with the convening authority a statement
expressly waiving the right of the accused to such review.

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

“(3) A waiver under paragraph (1) must be filed, if
at all, within 10 days after notice on the action is served
on the accused or on defense counsel under section

•HR 6054 IH
950b(c)(4) of this title. The convening authority, for good
cause, may extend the period for such filing by not more
than 30 days.

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

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

§950d. Appeal by the United States

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

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

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

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

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

“(b) Notice of Appeal.—The United States shall
take an appeal of an order or ruling under subsection (a)
by filing a notice of appeal with the military judge within
five days after the date of such order or ruling.

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

“(d) Appeal from Adverse Ruling.—The United
States may appeal an adverse ruling on an appeal under
subsection (c) to the United States Court of Appeals for
the District of Columbia Circuit by filing a petition for
review in the Court of Appeals within 10 days after the
date of such ruling. Review under this subsection shall be
at the discretion of the Court of Appeals.

“§950e. Rehearings

“(a) Composition of Military Commission for
Rehearing.—Each rehearing under this chapter shall
take place before a military commission under this chapter
composed of members who were not members of the mili-
tary commission which first heard the case.
“(b) Scope of Rehearing.—(1) Upon a rehearing—

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

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

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

“(ii) the sentence prescribed for the offense is mandatory.

“(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

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

“(a) Establishment.—The Secretary of Defense shall establish a Court of Military Commission Review
which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

“(b) Appellate Military Judges.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be appointed to serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

“(c) Cases to Be Reviewed.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

“(d) Scope of Review.—In a case reviewed by it under this section, the Court of Military Commission Review may act only with respect to matters of law.
§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

“(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

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

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

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

“(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.
“(b) Standard for Review.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

“(c) Scope of Review.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

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

“(2) to the extent applicable, the Constitution.

“(d) Supreme Court.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

“§950h. Appellate counsel

“(a) Appointment.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

“(b) Representation of United States.—Appellate counsel appointed under subsection (a)—

“(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and
“(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

“(e) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949e(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section. The provisions of subparagraph (D) of section 949d(e)(5) of this title shall apply with respect to appellate counsel.

“§ 950i. Execution of sentence; suspension of sentence

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

“(b) Execution of Sentence of Death Only
 Upon Final Judgment of Legality of Proceedings.—(1) If the sentence of a military commission
under this chapter extends to death, the sentence may not
be executed until there is a final judgement as to the legal-
ity of the proceedings (and with respect to death, approval
under subsection (a)).

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

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

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

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

“(ii) such a petition is denied by the Su-
preme Court; or
“(iii) review is otherwise completed in accord­
cordance with the judgment of the Supreme
Court.

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

“§950j. Finality of proceedings, findings, and sen­
tences

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

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

“SUBCHAPTER VII—PUNITIVE MATTERS

§950p. Statement of substantive offenses

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

“(b) EFFECT.—Because the provisions of this sub-
chapter (including provisions that incorporate definitions
in other provisions of law) are declarative of existing law,
they do not preclude trial for crimes that occurred before
the date of the enactment of this chapter.
§ 950q. Principals

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

“(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

“(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

“(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

§ 950r. Accessory after the fact

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

§ 950s. Conviction of lesser included offense

“An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt
to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

“§ 950t. Attempts

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

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

“(c) EFFECT OF CONsummATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

“§ 950u. Solicitation

“Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted,
he shall be punished as a military commission under this chapter may direct.

§ 950v. Crimes triable by military commissions

(a) Definitions and construction.—In this section:

(1) Military objective.—The term ‘military objective’ refers to—

(A) combatants; and

(B) those objects during an armed conflict—

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

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

(2) Protected person.—The term ‘protected person’ refers to any person entitled to protection under one or more of the Geneva Conventions, including—

(A) civilians not taking an active part in hostilities;
“(B) military personnel placed hors de combat by sickness, wounds, or detention; and

“(C) military medical or religious personnel.

“(3) PROTECTED PROPERTY.—The term ‘protected property’ refers to property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions.

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

“(A) collateral damage; or

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

“(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:
“(1) MURDER OF PROTECTED PERSONS.—An alien unlawful enemy combatant who intentionally kills one or more protected persons is guilty of the offense of intentionally killing a protected person and shall be subject to whatever punishment a commission may direct, including the penalty of death.

“(2) ATTACKING CIVILIANS.—An alien unlawful enemy combatant who intentionally engages in an attack upon a civilian population as such or individual civilians not taking active part in hostilities is guilty of the offense of attacking civilians and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

“(3) ATTACKING CIVILIAN OBJECTS.—An alien unlawful enemy combatant who intentionally engages in an attack upon property that is not a military objective shall be guilty of the offense of attacking civilian objects and shall be subject to whatever punishment a commission may direct.

“(4) ATTACKING PROTECTED PROPERTY.—An alien unlawful enemy combatant who intentionally engages in an attack upon protected property shall be guilty of the offense of attacking protected prop-
erty and shall be subject to whatever punishment a
commission may direct.

“(5) PILLAGING.—An alien unlawful enemy
combatant who intentionally and in the absence of
military necessity appropriates or seizes property for
private or personal use, without the consent of a
person with authority to permit such appropriation
or seizure, shall be guilty of the offense of pillaging
and shall be subject to whatever punishment a com-
mission may direct.

“(6) DENYING QUARTER.—An alien unlawful
enemy combatant who, with effective command or
control over subordinate groups, declares, orders, or
otherwise indicates to those forces that there shall
be no survivors or surrender accepted, with the in-
tent therefore to threaten an adversary or to conduct
hostilities such that there would be no survivors or
surrender accepted, shall be guilty of denying quar-
ter and shall be subject to whatever punishment a
commission may direct.

“(7) TAKING HOSTAGES.—An alien unlawful
enemy combatant who, having knowingly seized or
detained one or more persons, threatens to kill, in-
jure, or continue to detain such person or persons
with the intent of compelling any nation, person
other than the hostage, or group of persons to act
or refrain from acting as an explicit or implicit con-
dition for the safety or release of such person or per-
sons, shall be guilty of the offense of taking hostages
and shall be subject to whatever punishment a com-
mission may direct, including, if death results to one
or more of the victims, the penalty of death.

“(8) Employing poison or analogous weap-
ons.—An alien unlawful enemy combatant who in-
tentionally, as a method of warfare, employs a sub-
stance or a weapon that releases a substance that
causes death or serious and lasting damage to health
in the ordinary course of events, through its asphyx-
iating, bacteriological, or toxic properties, shall be
guilty of employing poison or analogous weapons and
shall be subject to whatever punishment a commis-
sion may direct, including, if death results to one or
more of the victims, the penalty of death.

“(9) Using protected persons as
shields.—An alien unlawful enemy combatant who
positions, or otherwise takes advantage of, a pro-
tected person with the intent to shield a military ob-
jective from attack or to shield, favor, or impede
military operations, shall be guilty of the offense of
using protected persons as shields and shall be sub-
ject to whatever punishment a commission may di-
rect, including, if death results to one or more of the
victims, the penalty of death.

“(10) Using protected property as
shields.—An alien unlawful enemy combatant who
positions, or otherwise takes advantage of the loca-
tion of, protected property under the law of war with
the intent to shield a military objective from attack
or to shield, favor, or impede military operations,
shall be guilty of the offense of using protected prop-
erty as shields and shall be subject to whatever pun-
ishment a commission may direct.

“(11) Torture.—An alien unlawful enemy
combatant who commits an act specifically intended
to inflict severe physical pain or suffering or severe
mental pain or suffering (other than pain or suf-
ferring incidental to lawful sanctions) upon another
person within his custody or physical control for the
purpose of obtaining information or a confession,
punishment, intimidation, coercion, or any reason
based on discrimination of any kind, shall be guilty
of torture and subject to whatever punishment a
commission may direct, including, if death results to
one or more of the victims, the penalty of death. In
this paragraph, the term ‘severe mental pain or suf-
fering’ has the meaning given that term in section 2340(2) of title 18.

“(12) Cruel or inhuman treatment.—An alien unlawful enemy combatant who commits an act intended to inflict severe physical pain or suffering or severe mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including severe physical abuse, upon another person within his custody or physical control shall be guilty of cruel or inhuman treatment and subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death. In this paragraph, the term ‘severe mental pain or suffering’ has the meaning given that term in section 2340(2) of title 18.

“(13) Intentionally causing serious bodily injury.—An alien unlawful enemy combatant who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be guilty of the offense of causing serious bodily injury and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death. In this paragraph, the
term ‘serious bodily injury’ has the meaning given
that term in section 113(b)(2) of title 18.

“(14) MUTILATING OR MAIMING.—An alien un-
lawful enemy combatant who intentionally injures
one or more protected persons, by disfiguring the
person or persons by any mutilation thereof or by
permanently disabling any member, limb, or organ
of his body, without any legitimate medical or dental
purpose, shall be guilty of the offense of mutilation
or maiming and shall be subject to whatever punish-
ment a commission may direct, including, if death
results to one or more of the victims, the penalty of
death.

“(15) MURDER IN VIOLATION OF THE LAW OF
WAR.—An alien unlawful enemy combatant who in-
tentionally kills one or more persons, including law-
ful combatants, in violation of the law of war shall
be guilty of the offense of murder in violation of the
law of war and shall be subject to whatever punish-
ment a commission may direct, including the penalty
of death.

“(16) DESTRUCTION OF PROPERTY IN VIOL-
ATION OF THE LAW OF WAR.—An alien unlawful
enemy combatant who intentionally destroys prop-
erty belonging to another person in violation of the
law of war shall be guilty of the offense of destruction of property in violation of the law of war and shall be subject to whatever punishment a commission may direct.

“(17) Using treachery or perfidy.—An alien unlawful enemy combatant who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons, shall be guilty of using treachery or perfidy and shall be subject to whatever punishment a commission may direct.

“(18) Improperly using a flag of truce.—An alien unlawful enemy combatant who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise to suspend hostilities when there is no such intention, shall be guilty of improperly using a flag of truce and shall be subject to whatever punishment a commission may direct.

“(19) Improperly using a distinctive emblem.—An alien unlawful enemy combatant who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be guilty of im-
properly using a distinctive emblem and shall be subject to whatever punishment a commission may direct.

“(20) INTENTIONALLY MISTREATING A DEAD BODY.—An alien unlawful enemy combatant who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be guilty of the offense of mistreating a dead body and shall be subject to whatever punishment a commission may direct.

“(21) RAPE.—An alien unlawful enemy combatant who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused or with any foreign object shall be guilty of the offense of rape and shall be subject to whatever punishment a commission may direct.

“(22) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—An alien unlawful enemy combatant subject to this title who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of, a vessel or aircraft that was not a legitimate military target is guilty of the offense of hijacking or hazarding a vessel or aircraft and
shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

“(23) TERRORISM.—An alien unlawful enemy combatant subject to this title who intentionally kills or inflicts great bodily harm on one or more persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be guilty of the offense of terrorism and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

“(24) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—An alien unlawful enemy combatant who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as defined in paragraph (23)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as de-
fined in paragraph (23)), shall be guilty of the offense of providing material support for terrorism and shall be subject to whatever punishment a commission may direct. In this paragraph, the term ‘material support or resources’ has the meaning given that term in section 2339A(b) of title 18.

“(25) WRONGFULLY AIDING THE ENEMY.—An alien unlawful enemy combatant who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States or one its co-belligerents shall be guilty of the offense of wrongfully aiding the enemy and shall be subject to whatever punishment a commission may direct.

“(26) SPYING.—An alien unlawful enemy combatant who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect certain information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States or one of its co-belligerents, shall be guilty of the offense of spying and shall be subject to whatever punishment a commission may direct, including the penalty of death.
“(27) CONSPIRACY.—An alien unlawful enemy combatant who conspires to commit one or more substantive offenses triable under this section, and who knowingly does any overt act to effect the object of the conspiracy, shall be guilty of conspiracy and shall be subject to whatever punishment a commission may direct, including, if death results to one or more of the victims, the penalty of death.

“§ 950w. Perjury and obstruction of justice

“A military commission under this chapter may try offenses and impose punishments for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

“§ 950x. Contempt

“A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.”.

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

“47A. Military Commissions ................................................................. 948a”.
(b) CONFORMING AMENDMENT TO UCMJ.—Section 836(a) of title 10, United States Code (article 36(a) of the Uniform Code of Military Justice), is amended by inserting “, except as provided in chapter 47A of this title,” after “but which may not”.

(c) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

SEC. 4. CLARIFICATION OF CONDUCT CONSTITUTING WAR CRIME OFFENSE UNDER FEDERAL CRIMINAL CODE.

(a) APPLICABILITY ONLY TO SERIOUS VIOLATIONS OF COMMON ARTICLE 3.—Section 2441 of title 18, United States Code is amended—

(1) by striking paragraph (3) of subsection (c)

and inserting the following:

“(3) which constitutes a serious violation of common Article 3 of the 1949 Geneva Conventions, when committed in the context of and in association
with an armed conflict not of an international char-
acter; or”; and

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

“(d) COVERED COMMON ARTICLE 3 VIOLATIONS.—

“(1) Serious violations.—In subsection

(e)(3), the term ‘serious violation of common Article
3 of the 1949 Geneva Conventions’ means any of the
following:

“(A) Torture.—The act of a person who
commits, or conspires or attempts to commit,
an act specifically intended to inflict severe
physical pain or suffering or severe mental pain
or suffering (as such term is defined in section
2340(2) of this title), other than pain or suf-
ferring incidental to lawful sanctions, upon an-
other person within his custody or physical con-
trol for the purpose of obtaining information or
a confession, punishment, intimidation, coer-
cion, or any reason based on discrimination of
any kind.

“(B) Cruel or inhuman treatment.—
The act of a person who commits, or conspires
or attempts to commit, an act intended to in-
flict severe physical pain or suffering or severe
mental pain or suffering (as such term is defined in section 2340(2) of this title), other than pain or suffering incidental to lawful sanctions, and including severe physical abuse, upon another person within his custody or physical control.

“(C) Performing biological experiments.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments and in so doing endangers the body or health of such person or persons.

“(D) Murder.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in the hostilities, including those placed hors de combat by sickness, wounds, detention, or any other cause.

“(E) Mutilation or maiming.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of
committing any other offense under this sec-

tion, one or more persons taking no active part
in the hostilities, including those placed hors de
combat by sickness, wounds, detention, or any
other cause, by disfiguring the person or per-
sons by any mutilation thereof or by perma-
nently disabling any member, limb, or organ of
his body, without any legitimate medical or den-
tal purpose.

“(F) INTENTIONALLY CAUSING GREAT
SUFFERING OR SERIOUS INJURY.—The act of a
person who intentionally causes, or conspires or
attempts to cause, serious bodily injury (as
such term is defined in section 113(b)(2) of this
title) to one or more persons taking no active
part in the hostilities, including those placed
hors de combat by sickness, wounds, detention,
or any other cause.

“(G) RAPE.—The act of a person who
forcibly or with coercion or threat of force
wrongfully invades, or conspires or attempts to
invade, the body of a person by penetrating,
however slightly, the anal or genital opening of
the victim with any part of the body of the ac-
cused or with any foreign object.
“(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact (as such term is defined in section 2246(3) of this title) with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact (as so defined).

“(I) TAKING HOSTAGES.—The act of a person who—

“(i) having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons; or

“(ii) attempts to engage or conspires to engage in conduct under clause (i).

“(2) INAPPLICABILITY OF SPECIFIED PROVISIONS WITH RESPECT TO CERTAIN CONDUCT.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) of paragraph (1) precludes
the applicability of those subparagraphs with regard to—

“(A) collateral damage; or

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

(b) RETROACTIVE APPLICABILITY.—The amendments made by this section shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002 of Public Law 107–273).

SEC. 5. JUDICIAL REVIEW.

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

“(e)(1) Except as provided for in this subsection, and notwithstanding any other law, no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action, including an application for a writ of habeas corpus, pending on or filed after the date of the enactment of the Military Commissions Act of 2006, against the United States or its agents, brought by or on behalf of any alien detained by the United States as an unlawful
enemy combatant, relating to any aspect of the alien’s detention, transfer, treatment, or conditions of confinement.

“(2) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal. The scope of such review is defined in section 1005(e)(2) of the Detainee Treatment Act of 2005. If the Court grants a detainee’s petition for review, the Secretary of Defense may conduct a new Combatant Status Review Tribunal.

“(3) Review shall be had only of final judgments of military commissions as provided for pursuant to section 950g of title 10, United States Code.

“(4) The court may consider classified information submitted in camera and ex parte in making any determination under this section.”.

SEC. 6. SATISFACTION OF TREATY OBLIGATIONS.

(a) In General.—Satisfaction of the prohibitions against cruel, inhuman, and degrading treatment set forth in section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd) shall fully satisfy United States obligations with respect to the standards for detention and treatment established by section 1 of Common Article 3 of the Geneva Conventions, with the exception of the obli-
gations imposed by subsections 1(b) and 1(d) of such Arti-

cle.

(b) Rights Not Judicially Enforceable.—

(1) In General.—No person in any habeas ac-
tion or any other action may invoke the Geneva Con-
ventions or any protocols thereto as a source of
rights, whether directly or indirectly, for any pur-
pose in any court of the United States or its States
or territories.

(2) Construction.—Paragraph (1) may not
be construed to affect the obligations of the United
States under the Geneva Conventions.

c) Geneva Conventions Defined.—In this sec-
tion, the term “Geneva Conventions” means the inter-
national conventions signed at Geneva on August 12,
1949, including common Article 3.

Sec. 7. Revisions to Detainee Treatment Act of 2005

Relating to Protection of Certain

United States Government Personnel.

(a) Counsel and Investigations.—Section
1004(b) of the Detainee Treatment Act of 2005 (42
U.S.C. 2000dd–1(b)) is amended—

(1) by striking “may provide” and inserting
“shall provide”;
(2) by inserting “or investigation” after “criminal prosecution”; and

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

(b) Protection of Personnel.—Section 1004 of 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 September 11, 2001, and December 30, 2005.

SEC. 8. RETROACTIVE APPLICABILITY.

This Act shall take effect on the date of the enactment of this Act and shall apply retroactively, including—

(1) to any aspect of the detention, treatment, or trial of any person detained at any time since September 11, 2001; and

(2) to any claim or cause of action pending on or after the date of the enactment of this Act.