

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

# H. R. 6166

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## AN ACT

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,*

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

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

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 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.

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

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

16 **SEC. 3. MILITARY COMMISSIONS.**

17 (a) MILITARY COMMISSIONS.—

18 (1) IN GENERAL.—Subtitle A of title 10,  
19 United States Code, is amended by inserting after  
20 chapter 47 the following new chapter:

# 1 **“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

## 2 **“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.	

### 3 **“§ 948a. Definitions**

4 “In this chapter:

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

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

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

1 tribunal established under the authority of the  
2 President or the Secretary of Defense.

3 “(B) CO-BELLIGERENT.—In this paragraph,  
4 the term ‘co-belligerent’, with respect to the United  
5 States, means any State or armed force joining and  
6 directly engaged with the United States in hostilities  
7 or directly supporting hostilities against a common  
8 enemy.

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

11 “(A) a member of the regular forces of a  
12 State party engaged in hostilities against the  
13 United States;

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

21 “(C) a member of a regular armed force  
22 who professes allegiance to a government en-  
23 gaged in such hostilities, but not recognized by  
24 the United States.

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

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

5                   “(A) Any information or material that has  
6 been determined by the United States Govern-  
7 ment pursuant to statute, Executive order, or  
8 regulation to require protection against unau-  
9 thorized disclosure for reasons of national secu-  
10 rity.

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

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

17 **“§ 948b. Military commissions generally**

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

23           “(b) AUTHORITY FOR MILITARY COMMISSIONS  
24 UNDER THIS CHAPTER.—The President is authorized to  
25 establish military commissions under this chapter for of-

1 fenses triable by military commission as provided in this  
2 chapter.

3       “(c) CONSTRUCTION OF PROVISIONS.—The proce-  
4 dures for military commissions set forth in this chapter  
5 are based upon the procedures for trial by general courts-  
6 martial under chapter 47 of this title (the Uniform Code  
7 of Military Justice). Chapter 47 of this title does not, by  
8 its terms, apply to trial by military commission except as  
9 specifically provided in this chapter. The judicial construc-  
10 tion and application of that chapter are not binding on  
11 military commissions established under this chapter.

12       “(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—  
13 (1) The following provisions of this title shall not apply  
14 to trial by military commission under this chapter:

15           “(A) Section 810 (article 10 of the Uniform  
16 Code of Military Justice), relating to speedy trial,  
17 including any rule of courts-martial relating to  
18 speedy trial.

19           “(B) Sections 831(a), (b), and (d) (articles  
20 31(a), (b), and (d) of the Uniform Code of Military  
21 Justice), relating to compulsory self-incrimination.

22           “(C) Section 832 (article 32 of the Uniform  
23 Code of Military Justice), relating to pretrial inves-  
24 tigation.

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

4           “(e) TREATMENT OF RULINGS AND PRECEDENTS.—  
5 The findings, holdings, interpretations, and other prece-  
6 dents of military commissions under this chapter may not  
7 be introduced or considered in any hearing, trial, or other  
8 proceeding of a court-martial convened under chapter 47  
9 of this title. The findings, holdings, interpretations, and  
10 other precedents of military commissions under this chap-  
11 ter may not form the basis of any holding, decision, or  
12 other determination of a court-martial convened under  
13 that chapter.

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

20           “(g) GENEVA CONVENTIONS NOT ESTABLISHING  
21 SOURCE OF RIGHTS.—No alien unlawful enemy combat-  
22 ant subject to trial by military commission under this  
23 chapter may invoke the Geneva Conventions as a source  
24 of rights.

1 **“§ 948c. Persons subject to military commissions**

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

4 **“§ 948d. Jurisdiction of military commissions**

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

10 “(b) LAWFUL ENEMY COMBATANTS.—Military com-  
11 missions under this chapter shall not have jurisdiction  
12 over lawful enemy combatants. Lawful enemy combatants  
13 who violate the law of war are subject to chapter 47 of  
14 this title. Courts-martial established under that chapter  
15 shall have jurisdiction to try a lawful enemy combatant  
16 for any offense made punishable under this chapter.

17 “(c) DETERMINATION OF UNLAWFUL ENEMY COM-  
18 BATANT STATUS DISPOSITIVE.—A finding, whether be-  
19 fore, on, or after the date of the enactment of the Military  
20 Commissions Act of 2006, by a Combatant Status Review  
21 Tribunal or another competent tribunal established under  
22 the authority of the President or the Secretary of Defense  
23 that a person is an unlawful enemy combatant is dispo-  
24 sitive for purposes of jurisdiction for trial by military com-  
25 mission under this chapter.

1 “(d) PUNISHMENTS.—A military commission under  
2 this chapter may, under such limitations as the Secretary  
3 of Defense may prescribe, adjudge any punishment not  
4 forbidden by this chapter, including the penalty of death  
5 when authorized under this chapter or the law of war.

6 **“§ 948e. Annual report to congressional committees**

7 “(a) ANNUAL REPORT REQUIRED.—Not later than  
8 December 31 each year, the Secretary of Defense shall  
9 submit to the Committees on Armed Services of the Sen-  
10 ate and the House of Representatives a report on any  
11 trials conducted by military commissions under this chap-  
12 ter during such year.

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

16 **“SUBCHAPTER II—COMPOSITION OF MILITARY**  
17 **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.

18 **“§ 948h. Who may convene military commissions**

19 “Military commissions under this chapter may be  
20 convened by the Secretary of Defense or by any officer

1 or official of the United States designated by the Secretary  
2 for that purpose.

3 **“§ 948i. Who may serve on military commissions**

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

7 “(b) DETAIL OF MEMBERS.—When convening a mili-  
8 tary commission under this chapter, the convening author-  
9 ity shall detail as members of the commission such mem-  
10 bers of the armed forces eligible under subsection (a), as  
11 in the opinion of the convening authority, are best quali-  
12 fied for the duty by reason of age, education, training,  
13 experience, length of service, and judicial temperament.  
14 No member of an armed force is eligible to serve as a  
15 member of a military commission when such member is  
16 the accuser or a witness for the prosecution or has acted  
17 as an investigator or counsel in the same case.

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

22 **“§ 948j. Military judge of a military commission**

23 “(a) DETAIL OF MILITARY JUDGE.—A military judge  
24 shall be detailed to each military commission under this  
25 chapter. The Secretary of Defense shall prescribe regula-

1 tions providing for the manner in which military judges  
2 are so detailed to military commissions. The military judge  
3 shall preside over each military commission to which he  
4 has been detailed.

5       “(b) QUALIFICATIONS.—A military judge shall be a  
6 commissioned officer of the armed forces who is a member  
7 of the bar of a Federal court, or a member of the bar  
8 of the highest court of a State, and who is certified to  
9 be qualified for duty under section 826 of this title (article  
10 26 of the Uniform Code of Military Justice) as a military  
11 judge in general courts-martial by the Judge Advocate  
12 General of the armed force of which such military judge  
13 is a member.

14       “(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No  
15 person is eligible to act as military judge in a case of a  
16 military commission under this chapter if he is the accuser  
17 or a witness or has acted as investigator or a counsel in  
18 the same case.

19       “(d) CONSULTATION WITH MEMBERS; INELIGI-  
20 BILITY TO VOTE.—A military judge detailed to a military  
21 commission under this chapter may not consult with the  
22 members of the commission except in the presence of the  
23 accused (except as otherwise provided in section 949d of  
24 this title), trial counsel, and defense counsel, nor may he  
25 vote with the members of the commission.

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

8       “(f) PROHIBITION ON EVALUATION OF FITNESS BY  
9 CONVENING AUTHORITY.—The convening authority of a  
10 military commission under this chapter shall not prepare  
11 or review any report concerning the effectiveness, fitness,  
12 or efficiency of a military judge detailed to the military  
13 commission which relates to his performance of duty as  
14 a military judge on the military commission.

15 **“§ 948k. Detail of trial counsel and defense counsel**

16       “(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial  
17 counsel and military defense counsel shall be detailed for  
18 each military commission under this chapter.

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

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

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

6       “(b) TRIAL COUNSEL.—Subject to subsection (e),  
7 trial counsel detailed for a military commission under this  
8 chapter must be—

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

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

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

19               “(2) a civilian who—

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

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

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

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

8               “(2) certified as competent to perform duties as  
9 defense counsel before general courts-martial by the  
10 Judge Advocate General of the armed force of which  
11 he is a member.

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

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

19       “(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No  
20 person who has acted as an investigator, military judge,  
21 or member of a military commission under this chapter  
22 in any case may act later as trial counsel or military de-  
23 fense counsel in the same case. No person who has acted  
24 for the prosecution before a military commission under  
25 this chapter may act later in the same case for the de-

1 fense, nor may any person who has acted for the defense  
2 before a military commission under this chapter act later  
3 in the same case for the prosecution.

4 **“§ 948l. Detail or employment of reporters and inter-**  
5 **preters**

6 “(a) COURT REPORTERS.—Under such regulations  
7 as the Secretary of Defense may prescribe, the convening  
8 authority of a military commission under this chapter  
9 shall detail to or employ for the commission qualified court  
10 reporters, who shall make a verbatim recording of the pro-  
11 ceedings of and testimony taken before the commission.

12 “(b) INTERPRETERS.—Under such regulations as the  
13 Secretary of Defense may prescribe, the convening author-  
14 ity of a military commission under this chapter may detail  
15 to or employ for the military commission interpreters who  
16 shall interpret for the commission and, as necessary, for  
17 trial counsel and defense counsel and for the accused.

18 “(c) TRANSCRIPT; RECORD.—The transcript of a  
19 military commission under this chapter shall be under the  
20 control of the convening authority of the commission, who  
21 shall also be responsible for preparing the record of the  
22 proceedings.

1 **“§ 948m. Number of members; excuse of members; ab-**  
2 **sent and additional members**

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

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

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

14 “(1) as a result of challenge;

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

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

19 “(c) ABSENT AND ADDITIONAL MEMBERS.—When-  
20 ever a military commission under this chapter is reduced  
21 below the number of members required by subsection (a),  
22 the trial may not proceed unless the convening authority  
23 details new members sufficient to provide not less than  
24 such number. The trial may proceed with the new mem-  
25 bers present after the recorded evidence previously intro-  
26 duced before the members has been read to the military

1 commission in the presence of the military judge, the ac-  
 2 cused (except as provided in section 949d of this title),  
 3 and counsel for both sides.

4 “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.

5 “§ 948q. Charges and specifications

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

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

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

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

1 **“§ 948r. Compulsory self-incrimination prohibited;**  
2 **treatment of statements obtained by tor-**  
3 **ture and other statements**

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

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

12 “(c) STATEMENTS OBTAINED BEFORE ENACTMENT  
13 OF DETAINEE TREATMENT ACT OF 2005.—A statement  
14 obtained before December 30, 2005 (the date of the enact-  
15 ment of the Defense Treatment Act of 2005) in which the  
16 degree of coercion is disputed may be admitted only if the  
17 military judge finds that—

18 “(1) the totality of the circumstances renders  
19 the statement reliable and possessing sufficient pro-  
20 bative value; and

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

23 “(d) STATEMENTS OBTAINED AFTER ENACTMENT  
24 OF DETAINEE TREATMENT ACT OF 2005.—A statement  
25 obtained on or after December 30, 2005 (the date of the  
26 enactment of the Defense Treatment Act of 2005) in

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

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

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

9           “(3) the interrogation methods used to obtain  
 10          the statement do not amount to cruel, inhuman, or  
 11          degrading treatment prohibited by section 1003 of  
 12          the Detainee Treatment Act of 2005.

13 **“§ 948s. Service of charges**

14          “The trial counsel assigned to a case before a military  
 15          commission under this chapter shall cause to be served  
 16          upon the accused and military defense counsel a copy of  
 17          the charges upon which trial is to be had. Such charges  
 18          shall be served in English and, if appropriate, in another  
 19          language that the accused understands. Such service shall  
 20          be made sufficiently in advance of trial to prepare a de-  
 21          fense.

22          “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.

1 **“§ 949a. Rules**

2       “(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-  
 3 trial, trial, and post-trial procedures, including elements  
 4 and modes of proof, for cases triable by military commis-  
 5 sion under this chapter may be prescribed by the Secretary  
 6 of Defense, in consultation with the Attorney General.  
 7 Such procedures shall, so far as the Secretary considers  
 8 practicable or consistent with military or intelligence ac-  
 9 tivities, apply the principles of law and the rules of evi-  
 10 dence in trial by general courts-martial. Such procedures  
 11 and rules of evidence may not be contrary to or incon-  
 12 sistent with this chapter.

13       “(b) RULES FOR MILITARY COMMISSION.—(1) Not-  
 14 withstanding any departures from the law and the rules  
 15 of evidence in trial by general courts-martial authorized  
 16 by subsection (a), the procedures and rules of evidence in  
 17 trials by military commission under this chapter shall in-  
 18 clude the following:

19               “(A) The accused shall be permitted to present  
 20 evidence in his defense, to cross-examine the wit-  
 21 nesses who testify against him, and to examine and

1 respond to evidence admitted against him on the  
2 issue of guilt or innocence and for sentencing, as  
3 provided for by this chapter.

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

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

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

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

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

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

22 “(C) A statement of the accused that is other-  
23 wise admissible shall not be excluded from trial by  
24 military commission on grounds of alleged coercion  
25 or compulsory self-incrimination so long as the evi-

1       dence complies with the provisions of section 948r of  
2       this title.

3               “(D) Evidence shall be admitted as authentic so  
4       long as—

5                       “(i) the military judge of the military com-  
6       mission determines that there is sufficient basis  
7       to find that the evidence is what it is claimed  
8       to be; and

9                       “(ii) the military judge instructs the mem-  
10       bers that they may consider any issue as to au-  
11       thentication or identification of evidence in de-  
12       termining the weight, if any, to be given to the  
13       evidence.

14               “(E)(i) Except as provided in clause (ii), hear-  
15       say evidence not otherwise admissible under the  
16       rules of evidence applicable in trial by general  
17       courts-martial may be admitted in a trial by military  
18       commission if the proponent of the evidence makes  
19       known to the adverse party, sufficiently in advance  
20       to provide the adverse party with a fair opportunity  
21       to meet the evidence, the intention of the proponent  
22       to offer the evidence, and the particulars of the evi-  
23       dence (including information on the general cir-  
24       cumstances under which the evidence was obtained).

25       The disclosure of evidence under the preceding sen-

1 tence is subject to the requirements and limitations  
2 applicable to the disclosure of classified information  
3 in section 949j(c) of this title.

4 “(ii) Hearsay evidence not otherwise admissible  
5 under the rules of evidence applicable in trial by  
6 general courts-martial shall not be admitted in a  
7 trial by military commission if the party opposing  
8 the admission of the evidence demonstrates that the  
9 evidence is unreliable or lacking in probative value.

10 “(F) The military judge shall exclude any evi-  
11 dence the probative value of which is substantially  
12 outweighed—

13 “(i) by the danger of unfair prejudice, con-  
14 fusion of the issues, or misleading the commis-  
15 sion; or

16 “(ii) by considerations of undue delay,  
17 waste of time, or needless presentation of cu-  
18 mulative evidence.

19 “(3)(A) The accused in a military commission under  
20 this chapter who exercises the right to self-representation  
21 under paragraph (1)(D) shall conform his deportment and  
22 the conduct of the defense to the rules of evidence, proce-  
23 dure, and decorum applicable to trials by military commis-  
24 sion.

1           “(B) Failure of the accused to conform to the rules  
2 described in subparagraph (A) may result in a partial or  
3 total revocation by the military judge of the right of self-  
4 representation under paragraph (1)(D). In such case, the  
5 detailed defense counsel of the accused or an appropriately  
6 authorized civilian counsel shall perform the functions nec-  
7 essary for the defense.

8           “(c) DELEGATION OF AUTHORITY TO PRESCRIBE  
9 REGULATIONS.—The Secretary of Defense may delegate  
10 the authority of the Secretary to prescribe regulations  
11 under this chapter.

12           “(d) NOTIFICATION TO CONGRESSIONAL COMMIT-  
13 TEES OF CHANGES TO PROCEDURES.—Not later than 60  
14 days before the date on which any proposed modification  
15 of the procedures in effect for military commissions under  
16 this chapter goes into effect, the Secretary of Defense  
17 shall submit to the Committee on Armed Services of the  
18 Senate and the Committee on Armed Services of the  
19 House of Representatives a report describing the modifica-  
20 tion.

21 **“§ 949b. Unlawfully influencing action of military**  
22 **commission**

23           “(a) IN GENERAL.—(1) No authority convening a  
24 military commission under this chapter may censure, rep-  
25 rimand, or admonish the military commission, or any

1 member, military judge, or counsel thereof, with respect  
2 to the findings or sentence adjudged by the military com-  
3 mission, or with respect to any other exercises of its or  
4 his functions in the conduct of the proceedings.

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

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

10 “(B) the action of any convening, approving, or  
11 reviewing authority with respect to his judicial acts;  
12 or

13 “(C) the exercise of professional judgment by  
14 trial counsel or defense counsel.

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

17 “(A) general instructional or informational  
18 courses in military justice if such courses are de-  
19 signed solely for the purpose of instructing members  
20 of a command in the substantive and procedural as-  
21 pects of military commissions; or

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

24 “(b) PROHIBITION ON CONSIDERATION OF ACTIONS  
25 ON COMMISSION IN EVALUATION OF FITNESS.—In the

1 preparation of an effectiveness, fitness, or efficiency report  
2 or any other report or document used in whole or in part  
3 for the purpose of determining whether a commissioned  
4 officer of the armed forces is qualified to be advanced in  
5 grade, or in determining the assignment or transfer of any  
6 such officer or whether any such officer should be retained  
7 on active duty, no person may—

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

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

16 **“§ 949c. Duties of trial counsel and defense counsel**

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

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

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

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

4               “(A) is a United States citizen;

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

8               “(C) has not been the subject of any sanction  
9 of disciplinary action by any court, bar, or other  
10 competent governmental authority for relevant mis-  
11 conduct;

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

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

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

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

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

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

12 **“§ 949d. Sessions**

13           “(a) SESSIONS WITHOUT PRESENCE OF MEM-  
14 BERS.—(1) At any time after the service of charges which  
15 have been referred for trial by military commission under  
16 this chapter, the military judge may call the military com-  
17 mission into session without the presence of the members  
18 for the purpose of—

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

23                   “(B) hearing and ruling upon any matter which  
24 may be ruled upon by the military judge under this

1 chapter, whether or not the matter is appropriate for  
2 later consideration or decision by the members;

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

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

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

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

15 “(B) be made part of the record.

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

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

23 “(2) be made a part of the record.

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

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

8           “(2) The military judge may close to the public all  
9 or a portion of the proceedings under paragraph (1) only  
10 upon making a specific finding that such closure is nec-  
11 essary to—

12                   “(A) protect information the disclosure of which  
13 could reasonably be expected to cause damage to the  
14 national security, including intelligence or law en-  
15 forcement sources, methods, or activities; or

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

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

20           “(e) EXCLUSION OF ACCUSED FROM CERTAIN PRO-  
21 CEEDINGS.—The military judge may exclude the accused  
22 from any portion of a proceeding upon a determination  
23 that, after being warned by the military judge, the accused  
24 persists in conduct that justifies exclusion from the court-  
25 room—

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

3           “(2) to prevent disruption of the proceedings by  
4           the accused.

5           “(f) PROTECTION OF CLASSIFIED INFORMATION.—

6           “(1) NATIONAL SECURITY PRIVILEGE.—(A)  
7           Classified information shall be protected and is privi-  
8           leged from disclosure if disclosure would be detri-  
9           mental to the national security. The rule in the pre-  
10          ceding sentence applies to all stages of the pro-  
11          ceedings of military commissions under this chapter.

12          “(B) The privilege referred to in subparagraph  
13          (A) may be claimed by the head of the executive or  
14          military department or government agency con-  
15          cerned based on a finding by the head of that de-  
16          partment or agency that—

17                  “(i) the information is properly classified;  
18                  and

19                  “(ii) disclosure of the information would be  
20                  detrimental to the national security.

21          “(C) A person who may claim the privilege re-  
22          ferred to in subparagraph (A) may authorize a rep-  
23          resentative, witness, or trial counsel to claim the  
24          privilege and make the finding described in subpara-  
25          graph (B) on behalf of such person. The authority

1 of the representative, witness, or trial counsel to do  
2 so is presumed in the absence of evidence to the con-  
3 trary.

4 “(2) INTRODUCTION OF CLASSIFIED INFORMA-  
5 TION.—

6 “(A) ALTERNATIVES TO DISCLOSURE.—To  
7 protect classified information from disclosure,  
8 the military judge, upon motion of trial counsel,  
9 shall authorize, to the extent practicable—

10 “(i) the deletion of specified items of  
11 classified information from documents to  
12 be introduced as evidence before the mili-  
13 tary commission;

14 “(ii) the substitution of a portion or  
15 summary of the information for such clas-  
16 sified documents; or

17 “(iii) the substitution of a statement  
18 of relevant facts that the classified infor-  
19 mation would tend to prove.

20 “(B) PROTECTION OF SOURCES, METHODS,  
21 OR ACTIVITIES.—The military judge, upon mo-  
22 tion of trial counsel, shall permit trial counsel  
23 to introduce otherwise admissible evidence be-  
24 fore the military commission, while protecting  
25 from disclosure the sources, methods, or activi-

1           ties by which the United States acquired the  
2           evidence if the military judge finds that (i) the  
3           sources, methods, or activities by which the  
4           United States acquired the evidence are classi-  
5           fied, and (ii) the evidence is reliable. The mili-  
6           tary judge may require trial counsel to present  
7           to the military commission and the defense, to  
8           the extent practicable and consistent with na-  
9           tional security, an unclassified summary of the  
10          sources, methods, or activities by which the  
11          United States acquired the evidence.

12                   “(C) ASSERTION OF NATIONAL SECURITY  
13           PRIVILEGE AT TRIAL.—During the examination  
14           of any witness, trial counsel may object to any  
15           question, line of inquiry, or motion to admit evi-  
16           dence that would require the disclosure of clas-  
17           sified information. Following such an objection,  
18           the military judge shall take suitable action to  
19           safeguard such classified information. Such ac-  
20           tion may include the review of trial counsel’s  
21           claim of privilege by the military judge in cam-  
22           era and on an ex parte basis, and the delay of  
23           proceedings to permit trial counsel to consult  
24           with the department or agency concerned as to

1           whether the national security privilege should  
2           be asserted.

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

9           “(4) ADDITIONAL REGULATIONS.—The Sec-  
10          retary of Defense may prescribe additional regula-  
11          tions, consistent with this subsection, for the use  
12          and protection of classified information during pro-  
13          ceedings of military commissions under this chapter.  
14          A report on any regulations so prescribed, or modi-  
15          fied, shall be submitted to the Committees on Armed  
16          Services of the Senate and the House of Representa-  
17          tives not later than 60 days before the date on which  
18          such regulations or modifications, as the case may  
19          be, go into effect.

20       **“§ 949e. Continuances**

21          “The military judge in a military commission under  
22          this chapter may, for reasonable cause, grant a continu-  
23          ance to any party for such time, and as often, as may  
24          appear to be just.

**1 “§ 949f. Challenges**

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

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

15 “(c) CHALLENGES AGAINST ADDITIONAL MEM-  
16 BERS.—Whenever additional members are detailed to a  
17 military commission under this chapter, and after any  
18 challenges for cause against such additional members are  
19 presented and decided, each accused and the trial counsel  
20 are entitled to one peremptory challenge against members  
21 not previously subject to peremptory challenge.

**22 “§ 949g. Oaths**

23 “(a) IN GENERAL.—(1) Before performing their re-  
24 spective duties in a military commission under this chap-  
25 ter, military judges, members, trial counsel, defense coun-

1 sel, reporters, and interpreters shall take an oath to per-  
2 form their duties faithfully.

3 “(2) The form of the oath required by paragraph (1),  
4 the time and place of the taking thereof, the manner of  
5 recording the same, and whether the oath shall be taken  
6 for all cases in which duties are to be performed or for  
7 a particular case, shall be as prescribed in regulations of  
8 the Secretary of Defense. Those regulations may provide  
9 that—

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

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

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

20 **“§ 949h. Former jeopardy**

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

24 “(b) SCOPE OF TRIAL.—No proceeding in which the  
25 accused has been found guilty by military commission

1 under this chapter upon any charge or specification is a  
2 trial in the sense of this section until the finding of guilty  
3 has become final after review of the case has been fully  
4 completed.

5 **“§ 949i. Pleas of the accused**

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

15       “(b) FINDING OF GUILT AFTER GUILTY PLEA.—  
16 With respect to any charge or specification to which a plea  
17 of guilty has been made by the accused in a military com-  
18 mission under this chapter and accepted by the military  
19 judge, a finding of guilty of the charge or specification  
20 may be entered immediately without a vote. The finding  
21 shall constitute the finding of the commission unless the  
22 plea of guilty is withdrawn prior to announcement of the  
23 sentence, in which event the proceedings shall continue as  
24 though the accused had pleaded not guilty.

1 **“§ 949j. Opportunity to obtain witnesses and other**  
2 **evidence**

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

8 “(b) PROCESS FOR COMPULSION.—Process issued in  
9 a military commission under this chapter to compel wit-  
10 nesses to appear and testify and to compel the production  
11 of other evidence—

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

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

17 “(c) PROTECTION OF CLASSIFIED INFORMATION.—

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

21 “(A) the deletion of specified items of classified  
22 information from documents to be made available to  
23 the accused;

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

1           “(C) the substitution of a statement admitting  
2           relevant facts that the classified information would  
3           tend to prove.

4           “(2) The military judge, upon motion of trial counsel,  
5           shall authorize trial counsel, in the course of complying  
6           with discovery obligations under this section, to protect  
7           from disclosure the sources, methods, or activities by  
8           which the United States acquired evidence if the military  
9           judge finds that the sources, methods, or activities by  
10          which the United States acquired such evidence are classi-  
11          fied. The military judge may require trial counsel to pro-  
12          vide, to the extent practicable, an unclassified summary  
13          of the sources, methods, or activities by which the United  
14          States acquired such evidence.

15          “(d) EXCULPATORY EVIDENCE.—(1) As soon as  
16          practicable, trial counsel shall disclose to the defense the  
17          existence of any evidence known to trial counsel that rea-  
18          sonably tends to exculpate the accused. Where exculpatory  
19          evidence is classified, the accused shall be provided with  
20          an adequate substitute in accordance with the procedures  
21          under subsection (c).

22          “(2) In this subsection, the term ‘evidence known to  
23          trial counsel’, in the case of exculpatory evidence, means  
24          exculpatory evidence that the prosecution would be re-

1 quired to disclose in a trial by general court-martial under  
2 chapter 47 of this title.

3 **“§ 949k. Defense of lack of mental responsibility**

4       “(a) AFFIRMATIVE DEFENSE.—It is an affirmative  
5 defense in a trial by military commission under this chap-  
6 ter that, at the time of the commission of the acts consti-  
7 tuting the offense, the accused, as a result of a severe  
8 mental disease or defect, was unable to appreciate the na-  
9 ture and quality or the wrongfulness of the acts. Mental  
10 disease or defect does not otherwise constitute a defense.

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

15       “(c) FINDINGS FOLLOWING ASSERTION OF DE-  
16 FENSE.—Whenever lack of mental responsibility of the ac-  
17 cused with respect to an offense is properly at issue in  
18 a military commission under this chapter, the military  
19 judge shall instruct the members of the commission as to  
20 the defense of lack of mental responsibility under this sec-  
21 tion and shall charge them to find the accused—

22               “(1) guilty;

23               “(2) not guilty; or

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

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

7       **“§ 949l. Voting and rulings**

8       “(a) VOTE BY SECRET WRITTEN BALLOT.—Voting  
9 by members of a military commission under this chapter  
10 on the findings and on the sentence shall be by secret writ-  
11 ten ballot.

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

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

22       “(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote  
23 is taken of the findings of a military commission under  
24 this chapter, the military judge shall, in the presence of

1 the accused and counsel, instruct the members as to the  
2 elements of the offense and charge the members—

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

6 “(2) that in the case being considered, if there  
7 is a reasonable doubt as to the guilt of the accused,  
8 the doubt must be resolved in favor of the accused  
9 and he must be acquitted;

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

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

16 **“§ 949m. Number of votes required**

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

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

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

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

7           “(C) the accused is convicted of the offense by  
8           the concurrence of all the members present at the  
9           time the vote is taken; and

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

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

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

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

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

12 **“§ 949n. Military commission to announce action**

13       “A military commission under this chapter shall an-  
14 nounce its findings and sentence to the parties as soon  
15 as determined.

16 **“§ 949o. Record of trial**

17       “(a) RECORD; AUTHENTICATION.—Each military  
18 commission under this chapter shall keep a separate, ver-  
19 batim, record of the proceedings in each case brought be-  
20 fore it, and the record shall be authenticated by the signa-  
21 ture of the military judge. If the record cannot be authen-  
22 ticated by the military judge by reason of his death, dis-  
23 ability, or absence, it shall be authenticated by the signa-  
24 ture of the trial counsel or by a member of the commission  
25 if the trial counsel is unable to authenticate it by reason

1 of his death, disability, or absence. Where appropriate,  
2 and as provided in regulations prescribed by the Secretary  
3 of Defense, the record of a military commission under this  
4 chapter may contain a classified annex.

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

8 “(c) PROVISION OF COPY TO ACCUSED.—A copy of  
9 the record of the proceedings of the military commission  
10 under this chapter shall be given the accused as soon as  
11 it is authenticated. If the record contains classified infor-  
12 mation, or a classified annex, the accused shall be given  
13 a redacted version of the record consistent with the re-  
14 quirements of section 949d of this title. Defense counsel  
15 shall have access to the unredacted record, as provided  
16 in regulations prescribed by the Secretary of Defense.

17 “SUBCHAPTER V—SENTENCES

“Sec.

“949s. Cruel or unusual punishments prohibited.

“949t. Maximum limits.

“949u. Execution of confinement.

18 “§ 949s. **Cruel or unusual punishments prohibited**

19 “Punishment by flogging, or by branding, marking,  
20 or tattooing on the body, or any other cruel or unusual  
21 punishment, may not be adjudged by a military commis-  
22 sion under this chapter or inflicted under this chapter  
23 upon any person subject to this chapter. The use of irons,

1 single or double, except for the purpose of safe custody,  
2 is prohibited under this chapter.

3 **“§ 949t. Maximum limits**

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

8 **“§ 949u. Execution of confinement**

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

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

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

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

1 “SUBCHAPTER VI—POST-TRIAL PROCEDURE  
2 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 Columbia 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.

3 **“§ 950a. Error of law; lesser included offense**

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

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

13 **“§ 950b. Review by the convening authority**

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

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

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

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

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

24           “(c) ACTION BY CONVENING AUTHORITY.—(1) The  
25 authority under this subsection to modify the findings and

1 sentence of a military commission under this chapter is  
2 a matter of the sole discretion and prerogative of the con-  
3 vening authority.

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

6 “(B) Subject to regulations prescribed by the Sec-  
7 retary of Defense, action on the sentence under this para-  
8 graph may be taken only after consideration of any mat-  
9 ters submitted by the accused under subsection (b) or  
10 after the time for submitting such matters expires, which-  
11 ever is earlier.

12 “(C) In taking action under this paragraph, the con-  
13 vening authority may, in his sole discretion, approve, dis-  
14 approve, commute, or suspend the sentence in whole or  
15 in part. The convening authority may not increase a sen-  
16 tence beyond that which is found by the military commis-  
17 sion.

18 “(3) The convening authority is not required to take  
19 action on the findings of a military commission under this  
20 chapter. If the convening authority takes action on the  
21 findings, the convening authority may, in his sole discre-  
22 tion, may—

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

1           “(B) change a finding of guilty to a charge to  
2           a finding of guilty to an offense that is a lesser in-  
3           cluded offense of the offense stated in the charge.

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

7           “(d) ORDER OF REVISION OR REHEARING.—(1) Sub-  
8           ject to paragraphs (2) and (3), the convening authority  
9           of a military commission under this chapter may, in his  
10          sole discretion, order a proceeding in revision or a rehear-  
11          ing.

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

15                 “(i) there is an apparent error or omission in  
16                 the record; or

17                 “(ii) the record shows improper or inconsistent  
18                 action by the military commission with respect to  
19                 the findings or sentence that can be rectified without  
20                 material prejudice to the substantial rights of the  
21                 accused.

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

23                 “(i) reconsider a finding of not guilty of a spec-  
24                 ification or a ruling which amounts to a finding of  
25                 not guilty;

1           “(ii) reconsider a finding of not guilty of any  
2 charge, unless there has been a finding of guilty  
3 under a specification laid under that charge, which  
4 sufficiently alleges a violation; or

5           “(iii) increase the severity of the sentence un-  
6 less the sentence prescribed for the offense is man-  
7 datory.

8           “(3) A rehearing may be ordered by the convening  
9 authority if the convening authority disapproves the find-  
10 ings and sentence and states the reasons for disapproval  
11 of the findings. If the convening authority disapproves the  
12 finding and sentence and does not order a rehearing, the  
13 convening authority shall dismiss the charges. A rehearing  
14 as to the findings may not be ordered by the convening  
15 authority when there is a lack of sufficient evidence in the  
16 record to support the findings. A rehearing as to the sen-  
17 tence may be ordered by the convening authority if the  
18 convening authority disapproves the sentence.

19 **“§ 950c. Appellate referral; waiver or withdrawal of**  
20 **appeal**

21           “(a) AUTOMATIC REFERRAL FOR APPELLATE RE-  
22 VIEW.—Except as provided under subsection (b), in each  
23 case in which the final decision of a military commission  
24 (as approved by the convening authority) includes a find-  
25 ing of guilty, the convening authority shall refer the case

1 to the Court of Military Commission Review. Any such re-  
2 ferral shall be made in accordance with procedures pre-  
3 scribed under regulations of the Secretary.

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

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

12 “(3) A waiver under paragraph (1) must be filed, if  
13 at all, within 10 days after notice on the action is served  
14 on the accused or on defense counsel under section  
15 950b(c)(4) of this title. The convening authority, for good  
16 cause, may extend the period for such filing by not more  
17 than 30 days.

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

22 “(d) EFFECT OF WAIVER OR WITHDRAWAL.—A  
23 waiver of the right to appellate review or the withdrawal  
24 of an appeal under this section bars review under section  
25 950f of this title.

1 **“§ 950d. Appeal by the United States**

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

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

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

11 “(C) relates to a matter under subsection (d),  
12 (e), or (f) of section 949d of this title or section  
13 949j(c) of this title.

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

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

22 “(c) APPEAL.—An appeal under this section shall be  
23 forwarded, by means specified in regulations prescribed  
24 the Secretary of Defense, directly to the Court of Military  
25 Commission Review. In ruling on an appeal under this sec-

1 tion, the Court may act only with respect to matters of  
2 law.

3 “(d) APPEAL FROM ADVERSE RULING.—The United  
4 States may appeal an adverse ruling on an appeal under  
5 subsection (c) to the United States Court of Appeals for  
6 the District of Columbia Circuit by filing a petition for  
7 review in the Court of Appeals within 10 days after the  
8 date of such ruling. Review under this subsection shall be  
9 at the discretion of the Court of Appeals.

10 **“§ 950e. Rehearings**

11 “(a) COMPOSITION OF MILITARY COMMISSION FOR  
12 REHEARING.—Each rehearing under this chapter shall  
13 take place before a military commission under this chapter  
14 composed of members who were not members of the mili-  
15 tary commission which first heard the case.

16 “(b) SCOPE OF REHEARING.—(1) Upon a rehear-  
17 ing—

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

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

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

1                   “(ii) the sentence prescribed for the of-  
2                   fense is mandatory.

3                   “(2) Upon a rehearing, if the sentence approved after  
4 the first military commission was in accordance with a  
5 pretrial agreement and the accused at the rehearing  
6 changes his plea with respect to the charges or specifica-  
7 tions upon which the pretrial agreement was based, or oth-  
8 erwise does not comply with pretrial agreement, the sen-  
9 tence as to those charges or specifications may include any  
10 punishment not in excess of that lawfully adjudged at the  
11 first military commission.

12 **“§ 950f. Review by Court of Military Commission Re-**  
13 **view**

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

22                   “(b) APPELLATE MILITARY JUDGES.—The Secretary  
23 shall assign appellate military judges to a Court of Mili-  
24 tary Commission Review. Each appellate military judge  
25 shall meet the qualifications for military judges prescribed

1 by section 948j(b) of this title or shall be a civilian with  
2 comparable qualifications. No person may be serve as an  
3 appellate military judge in any case in which that person  
4 acted as a military judge, counsel, or reviewing official.

5 “(c) CASES TO BE REVIEWED.—The Court of Mili-  
6 tary Commission Review, in accordance with procedures  
7 prescribed under regulations of the Secretary, shall review  
8 the record in each case that is referred to the Court by  
9 the convening authority under section 950e of this title  
10 with respect to any matter of law raised by the accused.

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

14 **“§ 950g. Review by the United States Court of Ap-  
15 peals for the District of Columbia Circuit  
16 and the Supreme Court**

17 “(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A)  
18 Except as provided in subparagraph (B), the United  
19 States Court of Appeals for the District of Columbia Cir-  
20 cuit shall have exclusive jurisdiction to determine the va-  
21 lidity of a final judgment rendered by a military commis-  
22 sion (as approved by the convening authority) under this  
23 chapter.

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

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

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

10                   “(B) the accused submits, in the form pre-  
11 scribed by section 950c of this title, a written notice  
12 waiving the right of the accused to review by the  
13 Court of Military Commission Review under section  
14 950f of this title.

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

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

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

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

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

4       “§ 950h. Appellate counsel

5       “(a) APPOINTMENT.—The Secretary of Defense  
6 shall, by regulation, establish procedures for the appoint-  
7 ment of appellate counsel for the United States and for  
8 the accused in military commissions under this chapter.  
9 Appellate counsel shall meet the qualifications for counsel  
10 appearing before military commissions under this chapter.

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

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

16               “(2) may, when requested to do so by the At-  
17 torney General in a case arising under this chapter,  
18 represent the United States before the United States  
19 Court of Appeals for the District of Columbia Cir-  
20 cuit or the Supreme Court.

21       “(c) REPRESENTATION OF ACCUSED.—The accused  
22 shall be represented by appellate counsel appointed under  
23 subsection (a) before the Court of Military Commission  
24 Review, the United States Court of Appeals for the Dis-  
25 trict of Columbia Circuit, and the Supreme Court, and by

1 civilian counsel if retained by the accused. Any such civil-  
2 ian counsel shall meet the qualifications under paragraph  
3 (3) of section 949c(b) of this title for civilian counsel ap-  
4 pearing before military commissions under this chapter  
5 and shall be subject to the requirements of paragraph (4)  
6 of that section.

7 **“§ 950i. Execution of sentence; procedures for execu-**  
8 **tion of sentence of death**

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

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

20 “(c) EXECUTION OF SENTENCE OF DEATH ONLY  
21 UPON FINAL JUDGMENT OF LEGALITY OF PRO-  
22 CEEDINGS.—(1) If the sentence of a military commission  
23 under this chapter extends to death, the sentence may not  
24 be executed until there is a final judgment as to the legal-

1 ity of the proceedings (and with respect to death, approval  
2 under subsection (b)).

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

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

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

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

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

17 “(iii) review is otherwise completed in ac-  
18 cordance with the judgment of the Supreme  
19 Court.

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

1 **“§ 950j. Finality or proceedings, findings, and sen-**  
2 **tences**

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

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

24 **“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.

1 **“§ 950p. Statement of substantive offenses**

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

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

12 **“§ 950q. Principals**

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

15               “(1) commits an offense punishable by this  
16 chapter, or aids, abets, counsels, commands, or pro-  
17 cures its commission;

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

21               “(3) is a superior commander who, with regard  
22 to acts punishable under this chapter, knew, had

1 reason to know, or should have known, that a subor-  
2 dinate was about to commit such acts or had done  
3 so and who failed to take the necessary and reason-  
4 able measures to prevent such acts or to punish the  
5 perpetrators thereof.

6 **“§ 950r. Accessory after the fact**

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

13 **“§ 950s. Conviction of lesser included offense**

14 “An accused may be found guilty of an offense nec-  
15 essarily included in the offense charged or of an attempt  
16 to commit either the offense charged or an attempt to  
17 commit either the offense charged or an offense nec-  
18 essarily included therein.

19 **“§ 950t. Attempts**

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

24 “(b) SCOPE OF OFFENSE.—An act, done with spe-  
25 cific intent to commit an offense under this chapter,

1 amounting to more than mere preparation and tending,  
2 even though failing, to effect its commission, is an attempt  
3 to commit that offense.

4 “(c) EFFECT OF CONSUMMATION.—Any person sub-  
5 ject to this chapter may be convicted of an attempt to com-  
6 mit an offense although it appears on the trial that the  
7 offense was consummated.

8 **“§ 950u. Solicitation**

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

18 **“§ 950v. Crimes triable by military commissions**

19 “(a) DEFINITIONS AND CONSTRUCTION.—In this sec-  
20 tion:

21 “(1) MILITARY OBJECTIVE.—The term ‘military  
22 objective’ means—

23 “(A) combatants; and

24 “(B) those objects during an armed con-  
25 flict—

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

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

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

14           “(A) civilians not taking an active part in  
15           hostilities;

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

18           “(C) military medical or religious per-  
19           sonnel.

20           “(3) PROTECTED PROPERTY.—The term ‘pro-  
21           tected property’ means property specifically pro-  
22           tected by the law of war (such as buildings dedicated  
23           to religion, education, art, science or charitable pur-  
24           poses, historic monuments, hospitals, or places  
25           where the sick and wounded are collected), if such

1 property is not being used for military purposes or  
2 is not otherwise a military objective. Such term in-  
3 cludes objects properly identified by one of the dis-  
4 tinctive emblems of the Geneva Conventions, but  
5 does not include civilian property that is a military  
6 objective.

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

11 “(A) collateral damage; or

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

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

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

22 “(2) ATTACKING CIVILIANS.—Any person sub-  
23 ject to this chapter who intentionally engages in an  
24 attack upon a civilian population as such, or indi-  
25 vidual civilians not taking active part in hostilities,

1 shall be punished, if death results to one or more of  
2 the victims, by death or such other punishment as  
3 a 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 “(3) ATTACKING CIVILIAN OBJECTS.—Any per-  
8 son subject to this chapter who intentionally engages  
9 in an attack upon a civilian object that is not a mili-  
10 tary objective shall be punished as a military com-  
11 mission under this chapter may direct.

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

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

24 “(6) DENYING QUARTER.—Any person subject  
25 to this chapter who, with effective command or con-

1 trol over subordinate groups, declares, orders, or  
2 otherwise indicates to those groups that there shall  
3 be no survivors or surrender accepted, with the in-  
4 tent to threaten an adversary or to conduct hos-  
5 tilities such that there would be no survivors or sur-  
6 render accepted, shall be punished as a military  
7 commission under this chapter may direct.

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

22 “(8) EMPLOYING POISON OR SIMILAR WEAP-  
23 ONS.—Any person subject to this chapter who inten-  
24 tionally, as a method of warfare, employs a sub-  
25 stance or weapon that releases a substance that

1 causes death or serious and lasting damage to health  
2 in the ordinary course of events, through its asphyx-  
3 iating, bacteriological, or toxic properties, shall be  
4 punished, if death results to one or more of the vic-  
5 tims, by death or such other punishment as a mili-  
6 tary commission under this chapter may direct, and,  
7 if death does not result to any of the victims, by  
8 such punishment, other than death, as a military  
9 commission under this chapter may direct.

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

22 “(10) USING PROTECTED PROPERTY AS A  
23 SHIELD.—Any person subject to this chapter who  
24 positions, or otherwise takes advantage of the loca-  
25 tion of, protected property with the intent to shield

1 a military objective from attack, or to shield, favor,  
2 or impede military operations, shall be punished as  
3 a military commission under this chapter may direct.

4 “(11) TORTURE.—

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

21 “(B) SEVERE MENTAL PAIN OR SUF-  
22 FERING DEFINED.—In this section, the term  
23 ‘severe mental pain or suffering’ has the mean-  
24 ing given that term in section 2340(2) of title  
25 18.

1 “(12) CRUEL OR INHUMAN TREATMENT.—

2 “(A) OFFENSE.—Any person subject to  
3 this chapter who commits an act intended to in-  
4 flict severe or serious physical or mental pain or  
5 suffering (other than pain or suffering inci-  
6 dental to lawful sanctions), including serious  
7 physical abuse, upon another within his custody  
8 or control shall be punished, if death results to  
9 the victim, by death or such other punishment  
10 as a military commission under this chapter  
11 may direct, and, if death does not result to the  
12 victim, by such punishment, other than death,  
13 as a military commission under this chapter  
14 may direct.

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

16 “(i) The term ‘serious physical pain  
17 or suffering’ means bodily injury that in-  
18 volves—

19 “(I) a substantial risk of death;

20 “(II) extreme physical pain;

21 “(III) a burn or physical dis-  
22 figurement of a serious nature (other  
23 than cuts, abrasions, or bruises); or

1                   “(IV) significant loss or impair-  
2                   ment of the function of a bodily mem-  
3                   ber, organ, or mental faculty.

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

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

11                  “(I) the term ‘serious’ shall re-  
12                  place the term ‘severe’ where it ap-  
13                  pears; and

14                  “(II) as to conduct occurring  
15                  after the date of the enactment of the  
16                  Military Commissions Act of 2006,  
17                  the term ‘serious and non-transitory  
18                  mental harm (which need not be pro-  
19                  longed)’ shall replace the term ‘pro-  
20                  longed mental harm’ where it appears.

21                  “(13) INTENTIONALLY CAUSING SERIOUS BOD-  
22                  ILY INJURY.—

23                  “(A) OFFENSE.—Any person subject to  
24                  this chapter who intentionally causes serious  
25                  bodily injury to one or more persons, including

1 lawful combatants, in violation of the law of  
2 war shall be punished, if death results to one or  
3 more of the victims, by death or such other  
4 punishment as a military commission under this  
5 chapter may direct, and, if death does not re-  
6 sult to any of the victims, by such punishment,  
7 other than death, as a military commission  
8 under this chapter may direct.

9 “(B) SERIOUS BODILY INJURY DEFINED.—  
10 In this paragraph, the term ‘serious bodily in-  
11 jury’ means bodily injury which involves—

12 “(i) a substantial risk of death;

13 “(ii) extreme physical pain;

14 “(iii) protracted and obvious dis-  
15 figurement; or

16 “(iv) protracted loss or impairment of  
17 the function of a bodily member, organ, or  
18 mental faculty.

19 “(14) MUTILATING OR MAIMING.—Any person  
20 subject to this chapter who intentionally injures one  
21 or more protected persons by disfiguring the person  
22 or persons by any mutilation of the person or per-  
23 sons, or by permanently disabling any member, limb,  
24 or organ of the body of the person or persons, with-  
25 out any legitimate medical or dental purpose, 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 “(15) MURDER IN VIOLATION OF THE LAW OF  
8 WAR.—Any person subject to this chapter who inten-  
9 tionally kills one or more persons, including lawful  
10 combatants, in violation of the law of war shall be  
11 punished by death or such other punishment as a  
12 military commission under this chapter may direct.

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

19 “(17) USING TREACHERY OR PERFIDY.—Any  
20 person subject to this chapter who, after inviting the  
21 confidence or belief of one or more persons that they  
22 were entitled to, or obliged to accord, protection  
23 under the law of war, intentionally makes use of  
24 that confidence or belief in killing, injuring, or cap-  
25 turing such person or persons shall be punished, if

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

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

13 “(19) IMPROPERLY USING A DISTINCTIVE EM-  
14 BLEM.—Any person subject to this chapter who in-  
15 tentiously uses a distinctive emblem recognized by  
16 the law of war for combatant purposes in a manner  
17 prohibited by the law of war shall be punished as a  
18 military commission under this chapter may direct.

19 “(20) INTENTIONALLY MISTREATING A DEAD  
20 BODY.—Any person subject to this chapter who in-  
21 tentiously mistreats the body of a dead person,  
22 without justification by legitimate military necessity,  
23 shall be punished as a military commission under  
24 this chapter may direct.

1           “(21) RAPE.—Any person subject to this chap-  
2           ter who forcibly or with coercion or threat of force  
3           wrongfully invades the body of a person by pene-  
4           trating, however slightly, the anal or genital opening  
5           of the victim with any part of the body of the ac-  
6           cused, or with any foreign object, shall be punished  
7           as a military commission under this chapter may di-  
8           rect.

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

16          “(23) HIJACKING OR HAZARDING A VESSEL OR  
17          AIRCRAFT.—Any person subject to this chapter who  
18          intentionally seizes, exercises unauthorized control  
19          over, or endangers the safe navigation of a vessel or  
20          aircraft that is not a legitimate military objective  
21          shall be punished, if death results to one or more of  
22          the victims, by death or such other punishment as  
23          a military commission under this chapter may direct,  
24          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 “(24) **TERRORISM.**—Any person subject to this  
4 chapter who intentionally kills or inflicts great bodily  
5 harm on one or more protected persons, or inten-  
6 tionally engages in an act that evinces a wanton dis-  
7 regard for human life, in a manner calculated to in-  
8 fluence or affect the conduct of government or civil-  
9 ian population by intimidation or coercion, or to re-  
10 taliate against government conduct, shall be pun-  
11 ished, if death results to one or more of the victims,  
12 by death or such other punishment as a military  
13 commission under this chapter may direct, and, if  
14 death does not result to any of the victims, by such  
15 punishment, other than death, as a military commis-  
16 sion under this chapter may direct.

17 “(25) **PROVIDING MATERIAL SUPPORT FOR**  
18 **TERRORISM.**—

19 “(A) **OFFENSE.**—Any person subject to  
20 this chapter who provides material support or  
21 resources, knowing or intending that they are to  
22 be used in preparation for, or in carrying out,  
23 an act of terrorism (as set forth in paragraph  
24 (24)), or who intentionally provides material  
25 support or resources to an international ter-

1           rorist organization engaged in hostilities against  
2           the United States, knowing that such organiza-  
3           tion has engaged or engages in terrorism (as so  
4           set forth), shall be punished as a military com-  
5           mission under this chapter may direct.

6           “(B) MATERIAL SUPPORT OR RESOURCES  
7           DEFINED.—In this paragraph, the term ‘mate-  
8           rial support or resources’ has the meaning  
9           given that term in section 2339A(b) of title 18.

10          “(26) WRONGFULLY AIDING THE ENEMY.—Any  
11          person subject to this chapter who, in breach of an  
12          allegiance or duty to the United States, knowingly  
13          and intentionally aids an enemy of the United  
14          States, or one of the co-belligerents of the enemy,  
15          shall be punished as a military commission under  
16          this chapter may direct.

17          “(27) SPYING.—Any person subject to this  
18          chapter who with intent or reason to believe that it  
19          is to be used to the injury of the United States or  
20          to the advantage of a foreign power, collects or at-  
21          tempts to collect information by clandestine means  
22          or while acting under false pretenses, for the pur-  
23          pose of conveying such information to an enemy of  
24          the United States, or one of the co-belligerents of  
25          the enemy, shall be punished by death or such other

1 punishment as a military commission under this  
2 chapter may direct.

3 “(28) CONSPIRACY.—Any person subject to this  
4 chapter who conspires to commit one or more sub-  
5 stantive offenses triable by military commission  
6 under this chapter, and who knowingly does any  
7 overt act to effect the object of the conspiracy, shall  
8 be punished, if death results to one or more of the  
9 victims, by death or such other punishment as a  
10 military commission under this chapter may direct,  
11 and, if death does not result to any of the victims,  
12 by such punishment, other than death, as a military  
13 commission under this chapter may direct.

14 **“§ 950w. Perjury and obstruction of justice; contempt**

15 “(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A  
16 military commission under this chapter may try offenses  
17 and impose such punishment as the military commission  
18 may direct for perjury, false testimony, or obstruction of  
19 justice related to military commissions under this chapter.

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

24 (2) TABLES OF CHAPTERS AMENDMENTS.—The  
25 tables of chapters at the beginning of subtitle A, and

1 at the beginning of part II of subtitle A, of title 10,  
 2 United States Code, are each amended by inserting  
 3 after the item relating to chapter 47 the following  
 4 new item:

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

5 (b) SUBMITTAL OF PROCEDURES TO CONGRESS.—  
 6 Not later than 90 days after the date of the enactment  
 7 of this Act, the Secretary of Defense shall submit to the  
 8 Committees on Armed Services of the Senate and the  
 9 House of Representatives a report setting forth the proce-  
 10 dures for military commissions prescribed under chapter  
 11 47A of title 10, United States Code (as added by sub-  
 12 section (a)).

13 **SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY**  
 14 **JUSTICE.**

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

18 (1) APPLICABILITY TO LAWFUL ENEMY COM-  
 19 BATANTS.—Section 802(a) (article 2(a)) is amended  
 20 by adding at the end the following new paragraph:

21 “(13) Lawful enemy combatants (as that term  
 22 is defined in section 948a(2) of this title) who vio-  
 23 late the law of war.”.

24 (2) EXCLUSION OF APPLICABILITY TO CHAPTER  
 25 47A COMMISSIONS.—Sections 821, 828, 848, 850(a),

1 904, and 906 (articles 21, 28, 48, 50(a), 104, and  
2 106) are amended by adding at the end the fol-  
3 lowing new sentence: “This section does not apply to  
4 a military commission established under chapter  
5 47A of this title.”.

6 (3) INAPPLICABILITY OF REQUIREMENTS RE-  
7 LATING TO REGULATIONS.—Section 836 (article 36)  
8 is amended—

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

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

16 (b) PUNITIVE ARTICLE OF CONSPIRACY.—Section  
17 881 of title 10, United States Code (article 81 of the Uni-  
18 form Code of Military Justice), is amended—

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

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

22 “(b) Any person subject to this chapter who conspires  
23 with any other person to commit an offense under the law  
24 of war, and who knowingly does an overt act to effect the  
25 object of the conspiracy, shall be punished, if death results



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

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

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

8           (a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

9           (1) IN GENERAL.—The acts enumerated in sub-  
10           section (d) of section 2441 of title 18, United States  
11           Code, as added by subsection (b) of this section, and  
12           in subsection (c) of this section, constitute violations  
13           of common Article 3 of the Geneva Conventions pro-  
14           hibited by United States law.

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

1 United States in interpreting the prohibitions enu-  
2 merated in subsection (d) of such section 2441.

3 (3) INTERPRETATION BY THE PRESIDENT.—

4 (A) As provided by the Constitution and by  
5 this section, the President has the authority for  
6 the United States to interpret the meaning and  
7 application of the Geneva Conventions and to  
8 promulgate higher standards and administrative  
9 regulations for violations of treaty obligations  
10 which are not grave breaches of the Geneva  
11 Conventions.

12 (B) The President shall issue interpreta-  
13 tions described by subparagraph (A) by Execu-  
14 tive Order published in the Federal Register.

15 (C) Any Executive Order published under  
16 this paragraph shall be authoritative (except as  
17 to grave breaches of common Article 3) as a  
18 matter of United States law, in the same man-  
19 ner as other administrative regulations.

20 (D) Nothing in this section shall be con-  
21 strued to affect the constitutional functions and  
22 responsibilities of Congress and the judicial  
23 branch of the United States.

24 (4) DEFINITIONS.—In this subsection:

1 (A) GENEVA CONVENTIONS.—The term  
2 “Geneva Conventions” means—

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

7 (ii) the Convention for the Ameliora-  
8 tion of the Condition of the Wounded,  
9 Sick, and Shipwrecked Members of the  
10 Armed Forces at Sea, done at Geneva Au-  
11 gust 12, 1949 (6 UST 3217);

12 (iii) the Convention Relative to the  
13 Treatment of Prisoners of War, done at  
14 Geneva August 12, 1949 (6 UST 3316);  
15 and

16 (iv) the Convention Relative to the  
17 Protection of Civilian Persons in Time of  
18 War, done at Geneva August 12, 1949 (6  
19 UST 3516).

20 (B) THIRD GENEVA CONVENTION.—The  
21 term “Third Geneva Convention” means the  
22 international convention referred to in subpara-  
23 graph (A)(iii).

24 (b) REVISION TO WAR CRIMES OFFENSE UNDER  
25 FEDERAL CRIMINAL CODE.—

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

3           (A) in subsection (c), by striking para-  
4 graph (3) and inserting the following new para-  
5 graph (3):

6           “(3) which constitutes a grave breach of com-  
7 mon Article 3 (as defined in subsection (d)) when  
8 committed in the context of and in association with  
9 an armed conflict not of an international character;  
10 or”;

11           (B) by adding at the end the following new  
12 subsection:

13           “(d) COMMON ARTICLE 3 VIOLATIONS.—

14           “(1) PROHIBITED CONDUCT.—In subsection  
15 (c)(3), the term ‘grave breach of common Article 3’  
16 means any conduct (such conduct constituting a  
17 grave breach of common Article 3 of the inter-  
18 national conventions done at Geneva August 12,  
19 1949), as follows:

20           “(A) TORTURE.—The act of a person who  
21 commits, or conspires or attempts to commit,  
22 an act specifically intended to inflict severe  
23 physical or mental pain or suffering (other than  
24 pain or suffering incidental to lawful sanctions)  
25 upon another person within his custody or

1 physical control for the purpose of obtaining in-  
2 formation or a confession, punishment, intimi-  
3 dation, coercion, or any reason based on dis-  
4 crimination of any kind.

5 “(B) CRUEL OR INHUMAN TREATMENT.—  
6 The act of a person who commits, or conspires  
7 or attempts to commit, an act intended to in-  
8 flict severe or serious physical or mental pain or  
9 suffering (other than pain or suffering inci-  
10 dental to lawful sanctions), including serious  
11 physical abuse, upon another within his custody  
12 or control.

13 “(C) PERFORMING BIOLOGICAL EXPERI-  
14 MENTS.—The act of a person who subjects, or  
15 conspires or attempts to subject, one or more  
16 persons within his custody or physical control to  
17 biological experiments without a legitimate med-  
18 ical or dental purpose and in so doing endan-  
19 gers the body or health of such person or per-  
20 sons.

21 “(D) MURDER.—The act of a person who  
22 intentionally kills, or conspires or attempts to  
23 kill, or kills whether intentionally or uninten-  
24 tionally in the course of committing any other  
25 offense under this subsection, one or more per-

1           sons taking no active part in the hostilities, in-  
2           cluding those placed out of combat by sickness,  
3           wounds, detention, or any other cause.

4           “(E) MUTILATION OR MAIMING.—The act  
5           of a person who intentionally injures, or con-  
6           spires or attempts to injure, or injures whether  
7           intentionally or unintentionally in the course of  
8           committing any other offense under this sub-  
9           section, one or more persons taking no active  
10          part in the hostilities, including those placed  
11          out of combat by sickness, wounds, detention,  
12          or any other cause, by disfiguring the person or  
13          persons by any mutilation thereof or by perma-  
14          nently disabling any member, limb, or organ of  
15          his body, without any legitimate medical or den-  
16          tal purpose.

17          “(F) INTENTIONALLY CAUSING SERIOUS  
18          BODILY INJURY.—The act of a person who in-  
19          tentionally causes, or conspires or attempts to  
20          cause, serious bodily injury to one or more per-  
21          sons, including lawful combatants, in violation  
22          of the law of war.

23          “(G) RAPE.—The act of a person who  
24          forcibly or with coercion or threat of force  
25          wrongfully invades, or conspires or attempts to

1 invade, the body of a person by penetrating,  
2 however slightly, the anal or genital opening of  
3 the victim with any part of the body of the ac-  
4 cused, or with any foreign object.

5 “(H) SEXUAL ASSAULT OR ABUSE.—The  
6 act of a person who forcibly or with coercion or  
7 threat of force engages, or conspires or at-  
8 tempts to engage, in sexual contact with one or  
9 more persons, or causes, or conspires or at-  
10 tempts to cause, one or more persons to engage  
11 in sexual contact.

12 “(I) TAKING HOSTAGES.—The act of a  
13 person who, having knowingly seized or de-  
14 tained one or more persons, threatens to kill,  
15 injure, or continue to detain such person or per-  
16 sons with the intent of compelling any nation,  
17 person other than the hostage, or group of per-  
18 sons to act or refrain from acting as an explicit  
19 or implicit condition for the safety or release of  
20 such person or persons.

21 “(2) DEFINITIONS.—In the case of an offense  
22 under subsection (a) by reason of subsection  
23 (c)(3)—

24 “(A) the term ‘severe mental pain or suf-  
25 fering’ shall be applied for purposes of para-

1 graphs (1)(A) and (1)(B) in accordance with  
2 the meaning given that term in section 2340(2)  
3 of this title;

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

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

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

16 “(i) a substantial risk of death;

17 “(ii) extreme physical pain;

18 “(iii) a burn or physical disfigurement  
19 of a serious nature (other than cuts, abra-  
20 sions, or bruises); or

21 “(iv) significant loss or impairment of  
22 the function of a bodily member, organ, or  
23 mental faculty; and

24 “(E) the term ‘serious mental pain or suf-  
25 fering’ shall be applied for purposes of para-

1 graph (1)(B) in accordance with the meaning  
2 given the term ‘severe mental pain or suffering’  
3 (as defined in section 2340(2) of this title), ex-  
4 cept that—

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

7 “(ii) as to conduct occurring after the  
8 date of the enactment of the Military Com-  
9 missions Act of 2006, the term ‘serious  
10 and non-transitory mental harm (which  
11 need not be prolonged)’ shall replace the  
12 term ‘prolonged mental harm’ where it ap-  
13 pears.

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

21 “(A) collateral damage; or

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

24 “(4) INAPPLICABILITY OF TAKING HOSTAGES  
25 TO PRISONER EXCHANGE.—Paragraph (1)(I) does

1 not apply to an offense under subsection (a) by rea-  
2 son of subsection (c)(3) in the case of a prisoner ex-  
3 change during wartime.

4 “(5) DEFINITION OF GRAVE BREACHES.—The  
5 definitions in this subsection are intended only to de-  
6 fine the grave breaches of common Article 3 and not  
7 the full scope of United States obligations under  
8 that Article.”.

9 (2) RETROACTIVE APPLICABILITY.—The  
10 amendments made by this subsection, except as  
11 specified in subsection (d)(2)(E) of section 2441 of  
12 title 18, United States Code, shall take effect as of  
13 November 26, 1997, as if enacted immediately after  
14 the amendments made by section 583 of Public Law  
15 105–118 (as amended by section 4002(e)(7) of Pub-  
16 lic Law 107–273).

17 (c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN,  
18 OR DEGRADING TREATMENT OR PUNISHMENT.—

19 (1) IN GENERAL.—No individual in the custody  
20 or under the physical control of the United States  
21 Government, regardless of nationality or physical lo-  
22 cation, shall be subject to cruel, inhuman, or degrad-  
23 ing treatment or punishment.

24 (2) CRUEL, INHUMAN, OR DEGRADING TREAT-  
25 MENT OR PUNISHMENT DEFINED.—In this sub-

1 section, the term “cruel, inhuman, or degrading  
2 treatment or punishment” means cruel, unusual,  
3 and inhumane treatment or punishment prohibited  
4 by the Fifth, Eighth, and Fourteenth Amendments  
5 to the Constitution of the United States, as defined  
6 in the United States Reservations, Declarations and  
7 Understandings to the United Nations Convention  
8 Against Torture and Other Forms of Cruel, Inhu-  
9 man or Degrading Treatment or Punishment done  
10 at New York, December 10, 1984.

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

15 **SEC. 7. HABEAS CORPUS MATTERS.**

16 (a) IN GENERAL.—Section 2241 of title 28, United  
17 States Code, is amended by striking both the subsection  
18 (e) added by section 1005(e)(1) of Public Law 109–148  
19 (119 Stat. 2742) and the subsection (e) added by added  
20 by section 1405(e)(1) of Public Law 109–163 (119 Stat.  
21 3477) and inserting the following new subsection (e):

22 “(e)(1) No court, justice, or judge shall have jurisdic-  
23 tion to hear or consider an application for a writ of habeas  
24 corpus filed by or on behalf of an alien detained by the  
25 United States who 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 “(2) Except as provided in paragraphs (2) and (3)  
4 of section 1005(e) of the Detainee Treatment Act of 2005  
5 (10 U.S.C. 801 note), no court, justice, or judge shall have  
6 jurisdiction to hear or consider any other action against  
7 the United States or its agents relating to any aspect of  
8 the detention, transfer, treatment, trial, or conditions of  
9 confinement of an alien who is or was detained by the  
10 United States and has been determined by the United  
11 States to have been properly detained as an enemy com-  
12 batant or is awaiting such determination.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) shall take effect on the date of the enact-  
15 ment of this Act, and shall apply to all cases, without ex-  
16 ception, pending on or after the date of the enactment of  
17 this Act which relate to any aspect of the detention, trans-  
18 fer, treatment, trial, or conditions of detention of an alien  
19 detained by the United States since September 11, 2001.

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

21 **RELATING TO PROTECTION OF CERTAIN**

22 **UNITED STATES GOVERNMENT PERSONNEL.**

23 (a) COUNSEL AND INVESTIGATIONS.—Section  
24 1004(b) of the Detainee Treatment Act of 2005 (42  
25 U.S.C. 2000dd–1(b)) is amended—

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

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

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

9 (b) PROTECTION OF PERSONNEL.—Section 1004 of  
10 the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–  
11 1) shall apply with respect to any criminal prosecution  
12 that—

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

15 (2) is grounded in section 2441(c)(3) of title  
16 18, United States Code; and

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

19 **SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMIS-**  
20 **SIONS.**

21 Section 1005(e)(3) of the Detainee Treatment Act of  
22 2005 (title X of Public Law 109–148; 119 Stat. 2740;  
23 10 U.S.C. 801 note) is amended—

24 (1) in subparagraph (A), by striking “pursuant  
25 to Military Commission Order No. 1. dated August

1 31, 2005 (or any successor military order)” and in-  
2 sserting “by a military commission under chapter  
3 47A of title 10, United States Code”;

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

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

8 (3) in subparagraph (C)—

9 (A) in clause (i)—

10 (i) by striking “pursuant to the mili-  
11 tary order” and inserting “by a military  
12 commission”; and

13 (ii) by striking “at Guantanamo Bay,  
14 Cuba”; and

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

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

21 **SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS**  
22 **OF COMBATANT STATUS REVIEW TRIBUNALS**  
23 **OF PROPRIETY OF DETENTION.**

24 Section 1005(e)(2)(B)(i) of the Detainee Treatment  
25 Act of 2005 (title X of Public Law 109–148; 119 Stat.

1 2742; 10 U.S.C. 801 note) is amended by striking “the  
2 Department of Defense at Guantanamo Bay, Cuba” and  
3 inserting “the United States”.

Passed the House of Representatives September 27,  
2006.

Attest:

*Clerk.*

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

# H. R. 6166

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## AN ACT

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