

any trials conducted by military commissions under chapter 47A of title 10, United States Code (as amended by section 1802), during the preceding year.

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

CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS

Pub. L. 109-366, § 2, Oct. 17, 2006, 120 Stat. 2600, provided that: “The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.”

§ 948b. Military commissions generally

(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unprivileged enemy belligerents for violations of the law of war and other offenses triable by military commission.

(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

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

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

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

(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

(e) GENEVA CONVENTIONS NOT ESTABLISHING PRIVATE RIGHT OF ACTION.—No alien unprivileged enemy belligerent subject to trial by military commission under this chapter may invoke the Geneva Conventions as a basis for a private right of action.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2575.)

PRIOR PROVISIONS

A prior section 948b, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to military commissions generally, prior to the general amendment of this chapter by Pub. L. 111-84.

EX. ORD. NO. 13425. TRIAL OF ALIEN UNLAWFUL ENEMY COMBATANTS BY MILITARY COMMISSION

Ex. Ord. No. 13425, Feb. 14, 2007, 72 F.R. 7737, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Military Commissions Act of 2006 (Public Law 109-366), the Authorization for Use of Military Force (Public Law 107-40), and section 948b(b) of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment of Military Commissions.* There are hereby established military commissions to try alien unlawful enemy combatants for offenses triable by military commission as provided in chapter 47A of title 10.

SEC. 2. *Definitions.* As used in this order:

(a) “unlawful enemy combatant” has the meaning provided for that term in section 948a(1) of title 10; and

(b) “alien” means a person who is not a citizen of the United States.

SEC. 3. *Superseding.* This order supersedes any provision of the President’s Military Order of November 13, 2001 (66 Fed. Reg. 57,833), that relates to trial by military commission, specifically including:

(a) section 4 of the Military Order; and

(b) any requirement in section 2 of the Military Order, as it relates to trial by military commission, for a determination of:

(i) reason to believe specified matters; or

(ii) the interest of the United States.

SEC. 4. *General Provisions.* (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) The heads of executive departments and agencies shall provide such information and assistance to the Secretary of Defense as may be necessary to implement this order and chapter 47A of title 10.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

§ 948c. Persons subject to military commissions

Any alien unprivileged enemy belligerent is subject to trial by military commission as set forth in this chapter.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948c, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2602, related to persons subject to military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948d. Jurisdiction of military commissions

A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, whether such offense was committed before, on, or after September 11, 2001, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically

authorized under this chapter. A military commission is a competent tribunal to make a finding sufficient for jurisdiction.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948d, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to jurisdiction of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

A prior section 948e, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, which required the Secretary of Defense to submit an annual report to congressional committees, was omitted in the general amendment of this chapter by Pub. L. 111–84. See section 1806 of Pub. L. 111–84, set out as a note under section 948a of this title.

SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

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§ 948h. Who may convene military commissions

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

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948h, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may convene military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948i. Who may serve on military commissions

(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

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

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

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

PRIOR PROVISIONS

A prior section 948i, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may serve on military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948j. Military judge of a military commission

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

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

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

(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may such military judge vote with the members.

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

(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2577.)

PRIOR PROVISIONS

A prior section 948j, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to military judges of military commissions, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 948k. Detail of trial counsel and defense counsel

(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be de-