

## AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81 substituted “judges on the Court” for “appellate military judges” in second sentence.

**§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court**

(a) **EXCLUSIVE APPELLATE JURISDICTION.**—Except as provided in subsection (b), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority and, where applicable, as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review) under this chapter.

(b) **EXHAUSTION OF OTHER APPEALS.**—The United States Court of Appeals for the District of Columbia Circuit may not review a final judgment described in subsection (a) until all other appeals under this chapter have been waived or exhausted.

(c) **TIME FOR SEEKING REVIEW.**—A petition for review by the United States Court of Appeals for the District of Columbia Circuit must be filed in the Court of Appeals—

(1) not later than 20 days after the date on which written notice of the final decision of the United States Court of Military Commission Review is served on the parties; or

(2) if the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the United States Court of Military Commission Review, not later than 20 days after the date on which such notice is submitted.

(d) **SCOPE AND NATURE OF REVIEW.**—The United States Court of Appeals for the District of Columbia Circuit may act under this section only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review, and shall take action only with respect to matters of law, including the sufficiency of the evidence to support the verdict.

(e) **REVIEW BY SUPREME COURT.**—The Supreme Court may review by writ of certiorari pursuant to section 1254 of title 28 the final judgment of the United States Court of Appeals for the District of Columbia Circuit under this section.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112-81, div. A, title X, §1034(d), Dec. 31, 2011, 125 Stat. 1573.)

## PRIOR PROVISIONS

A prior section 950g, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court, prior to the general amendment of this chapter by Pub. L. 111-84.

## AMENDMENTS

2011—Subsec. (a). Pub. L. 112-81, §1034(d)(1), inserted “as affirmed or set aside as incorrect in law by” after “where applicable.”

Subsec. (c). Pub. L. 112-81, §1034(d)(2)(A), substituted “in the Court of Appeals—” for “by the accused in the

Court of Appeals not later than 20 days after the date on which—” in introductory provisions.

Subsec. (c)(1). Pub. L. 112-81, §1034(d)(2)(B), inserted “not later than 20 days after the date on which” before “written notice” and substituted “on the parties” for “on the accused or on defense counsel”.

Subsec. (c)(2). Pub. L. 112-81, §1034(d)(2)(C), inserted “if” before “the accused submits” and inserted before period at end “, not later than 20 days after the date on which such notice is submitted”.

**§ 950h. Appellate counsel**

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

(b) **REPRESENTATION OF UNITED STATES.**—Appellate counsel appointed under subsection (a)—

(1) shall represent the United States in any appeal or review proceeding under this chapter before the United States Court of Military Commission Review; and

(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

(c) **REPRESENTATION OF ACCUSED.**—The accused shall be represented by appellate counsel appointed under subsection (a) before the United States Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (7) of that section.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2604.)

## PRIOR PROVISIONS

A prior section 950h, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2622, related to appellate counsel, prior to the general amendment of this chapter by Pub. L. 111-84.

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

(a) **IN GENERAL.**—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

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

(c) **EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.**—(1) If the sentence of a military commis-

sion under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when review is completed in accordance with the judgment of the United States Court of Military Commission Review and—

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

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

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

(ii) such a petition is denied by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

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

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2605.)

#### PRIOR PROVISIONS

A prior section 950i, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2623, related to execution of sentence, procedures for execution of sentence of death, and suspension of sentence prior to the general amendment of this chapter by Pub. L. 111–84.

#### § 950j. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, subject only to action by the Secretary or the convening authority as provided in section 950i(c) of this title and the authority of the President.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2605.)

#### PRIOR PROVISIONS

A prior section 950j, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2623; amended Pub. L. 110–181, div. A, title X, §1063(a)(7), Jan. 28, 2008, 122 Stat. 322, related to finality of proceedings, findings, and sentences, prior to the general amendment of this chapter by Pub. L. 111–84.

#### SUBCHAPTER VIII—PUNITIVE MATTERS

Sec.  
950p. Definitions; construction of certain offenses; common circumstances.

Sec.  
950q. Principals.  
950r. Accessory after the fact.  
950s. Conviction of lesser offenses.  
950t. Crimes triable by military commission.

#### § 950p. Definitions; construction of certain offenses; common circumstances

(a) **DEFINITIONS.**—In this subchapter:

(1) The term “military objective” means combatants and those objects during hostilities which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

(2) The term “protected person” means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

(3) The term “protected property” means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

(b) **CONSTRUCTION OF CERTAIN OFFENSES.**—The intent required for offenses under paragraphs (1), (2), (3), (4), and (12) of section 950t of this title precludes the applicability of such offenses with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

(c) **COMMON CIRCUMSTANCES.**—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with hostilities.

(d) **EFFECT.**—The provisions of this subchapter codify offenses that have traditionally been triable by military commission. This chapter does not establish new crimes that did not exist before the date of the enactment of this subchapter, as amended by the National Defense Authorization Act for Fiscal Year 2010, but rather codifies those crimes for trial by military commission. Because the provisions of this subchapter codify offenses that have traditionally been triable under the law of war or otherwise triable by military commission, this subchapter does not preclude trial for offenses that occurred before the date of the enactment of this subchapter, as so amended.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2606.)

#### REFERENCES IN TEXT

The date of the enactment of this subchapter, as amended by the National Defense Authorization Act for