

under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

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

(c) **FINDINGS FOLLOWING ASSERTION OF DEFENSE.**—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

- (1) guilty;
- (2) not guilty; or
- (3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

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

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2588.)

#### PRIOR PROVISIONS

A prior section 949k, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2615, related to the defense of lack of mental responsibility, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 949l. Voting and rulings

(a) **VOTE BY SECRET WRITTEN BALLOT.**—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

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

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

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

- (1) that the accused must be presumed to be innocent until the accused's guilt is established by legal and competent evidence beyond a reasonable doubt;
- (2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

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

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

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2589.)

#### PRIOR PROVISIONS

A prior section 949l, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2615, related to voting and rulings, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 949m. Number of votes required

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

(b) **SENTENCES.**—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the primary members present at the time the vote is taken.

(2) No person may be sentenced to death by a military commission, except insofar as—

(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

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

(C) the accused was convicted of the offense by the concurrence of all the primary members present at the time the vote is taken, or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i(b) of this title; and

(D) all primary members present at the time the vote was taken on the sentence concurred in the sentence of death.

(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the primary members present at the time the vote is taken.

(4) The primary members present for a vote on a sentence need not be the same primary members who voted on the conviction if the requirements of section 948m(d) of this title are met.

(c) **NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.**—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of primary members of the military commission under this chapter shall be not less than 12 primary members.

(2) In any case described in paragraph (1) in which 12 primary members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of primary members for the military commission (but not fewer than 9 primary members), and the military commission may be as-

sembled, and the trial held, with not less than the number of primary members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of primary members were not reasonably available.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2589; amended Pub. L. 112-81, div. A, title X, §1030(a), Dec. 31, 2011, 125 Stat. 1570; Pub. L. 113-66, div. A, title X, §1031(c), Dec. 26, 2013, 127 Stat. 850.)

#### PRIOR PROVISIONS

A prior section 949m, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2616, related to number of votes required for conviction and sentences and number of members required on military commission for penalty of death, prior to the general amendment of this chapter by Pub. L. 111-84.

#### AMENDMENTS

2013—Pub. L. 113-66, §1031(c)(1), inserted “primary” before “members” wherever appearing.

Subsec. (b)(4). Pub. L. 113-66, §1031(c)(2), added par. (4).

2011—Subsec. (b)(2)(C). Pub. L. 112-81, §1030(a)(1), inserted before semicolon “, or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i(b) of this title”.

Subsec. (b)(2)(D). Pub. L. 112-81, §1030(a)(2), inserted “on the sentence” after “vote was taken”.

#### § 949n. Military commission to announce action

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

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2590.)

#### PRIOR PROVISIONS

A prior section 949n, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, required a military commission to announce its findings and sentence as soon as determined, prior to the general amendment of this chapter by Pub. L. 111-84.

#### § 949o. Record of trial

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

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

(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given

the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of subchapter V of this chapter. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2590.)

#### PRIOR PROVISIONS

A prior section 949o, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to record of trial, prior to the general amendment of this chapter by Pub. L. 111-84.

### SUBCHAPTER V—CLASSIFIED INFORMATION PROCEDURES

#### Sec.

- 949p-1. Protection of classified information: applicability of subchapter.
- 949p-2. Pretrial conference.
- 949p-3. Protective orders.
- 949p-4. Discovery of, and access to, classified information by the accused.
- 949p-5. Notice by accused of intention to disclose classified information.
- 949p-6. Procedure for cases involving classified information.
- 949p-7. Introduction of classified information into evidence.

#### § 949p-1. Protection of classified information: applicability of subchapter

(a) PROTECTION OF CLASSIFIED INFORMATION.—Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information.

(b) ACCESS TO EVIDENCE.—Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge shall be provided to the accused.

(c) DECLASSIFICATION.—Trial counsel shall work with the original classification authorities for evidence that may be used at trial to ensure that such evidence is declassified to the maximum extent possible, consistent with the requirements of national security. A decision not to declassify evidence under this section shall not be subject to review by a military commission or upon appeal.

(d) CONSTRUCTION OF PROVISIONS.—The judicial construction of the Classified Information Procedures Act (18 U.S.C. App.) shall be authoritative in the interpretation of this subchapter, except to the extent that such construction is inconsistent with the specific requirements of this chapter.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2590.)

#### REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (d), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

#### § 949p-2. Pretrial conference

(a) MOTION.—At any time after service of charges, any party may move for a pretrial con-