

Subsec. (d). Pub. L. 113–66, §1031(a)(2)(A), (3), redesignated subsec. (b) as (d), inserted “primary or alternate” before “member” in introductory provisions, and added par. (4).

Subsec. (e). Pub. L. 113–66, §1031(a)(2)(A), (4), redesignated subsec. (c) as (e), substituted “Whenever the number of primary members of a military commission under this chapter is reduced below the number of primary members required by subsection (a) and there are no remaining alternate members to replace the excused primary members” for “Whenever a military commission under this chapter is reduced below the number of members required by subsection (a)”, and inserted at end “An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member.”

### SUBCHAPTER III—PRE-TRIAL PROCEDURE

Sec.

948q. Charges and specifications.

948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused.

948s. Service of charges.

#### § 948q. Charges and specifications

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

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

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

(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against the accused as soon as practicable.

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2579.)

#### PRIOR PROVISIONS

A prior section 948q, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2606, related to charges and specifications, prior to the general amendment of this chapter by Pub. L. 111–84.

#### § 948r. Exclusion of statements obtained by torture or cruel, inhuman, or degrading treatment; prohibition of self-incrimination; admission of other statements of the accused

(a) EXCLUSION OF STATEMENTS OBTAIN BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—No statement obtained by the use of torture or by cruel, inhuman, or degrading treatment (as defined by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd)), whether or not under color of law, shall be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence that the statement was made.

(b) SELF-INCRIMINATION PROHIBITED.—No person shall be required to testify against himself or herself at a proceeding of a military commission under this chapter.

(c) OTHER STATEMENTS OF THE ACCUSED.—A statement of the accused may be admitted in evidence in a military commission under this chapter only if the military judge finds—

(1) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(2) that—

(A) the statement was made incident to lawful conduct during military operations at the point of capture or during closely related active combat engagement, and the interests of justice would best be served by admission of the statement into evidence; or

(B) the statement was voluntarily given.

(d) DETERMINATION OF VOLUNTARINESS.—In determining for purposes of subsection (c)(2)(B) whether a statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

(1) The details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities.

(2) The characteristics of the accused, such as military training, age, and education level.

(3) The lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

(Added by Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2580.)

#### PRIOR PROVISIONS

A prior section 948r, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2607; amended Pub. L. 110–181, div. A, title X, §1063(a)(4), Jan. 28, 2008, 122 Stat. 321, related to prohibition of compulsory self-incrimination and treatment of statements obtained by torture and other statements, prior to the general amendment of this chapter by Pub. L. 111–84.

#### § 948s. Service of charges

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

(Added Pub. L. 111–84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2580.)

#### PRIOR PROVISIONS

A prior section 948s, added Pub. L. 109–366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2607, related to service of charges, prior to the general amendment of this chapter by Pub. L. 111–84.

### SUBCHAPTER IV—TRIAL PROCEDURE

Sec.

949a. Rules.

949b. Unlawfully influencing action of military commission and United States Court of Military Commission Review.

949c. Duties of trial counsel and defense counsel.

949d. Sessions.

949e. Continuances.

949f. Challenges.