

## 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.
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.

**§ 949a. Rules**

(a) PROCEDURES AND RULES OF EVIDENCE.—Pre-trial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

(b) EXCEPTIONS.—(1) In trials by military commission under this chapter, the Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability of the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need consistent with this chapter.

(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evi-

dence in trials by military commission under this chapter shall include, at a minimum, the following rights of the accused:

(A) To present evidence in the accused's defense, to cross-examine the witnesses who testify against the accused, and to examine and respond to all evidence admitted against the accused on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

(C)(i) When none of the charges sworn against the accused are capital, to be represented before a military commission by civilian counsel if provided at no expense to the Government, and by either the defense counsel detailed or the military counsel of the accused's own selection, if reasonably available.

(ii) When any of the charges sworn against the accused are capital, to be represented before a military commission in accordance with clause (i) and, to the greatest extent practicable, by at least one additional counsel who is learned in applicable law relating to capital cases and who, if necessary, may be a civilian and compensated in accordance with regulations prescribed by the Secretary of Defense.

(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

(E) To the suppression of evidence that is not reliable or probative.

(F) To the suppression of evidence the probative value of which is substantially outweighed by—

(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

(C) Evidence shall be admitted as authentic so long as—

(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.