

Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) Counsel

The United States Government shall provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution or investigation arising out of practices described in that subsection, whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10.

(Pub. L. 109-148, div. A, title X, §1004, Dec. 30, 2005, 119 Stat. 2740; Pub. L. 109-163, div. A, title XIV, §1404, Jan. 6, 2006, 119 Stat. 3475; Pub. L. 109-366, §8(a), Oct. 17, 2006, 120 Stat. 2636; Pub. L. 110-181, div. A, title X, §1063(d)(1), Jan. 28, 2008, 122 Stat. 323; Pub. L. 110-417, [div. A], title X, §1061(b)(10), Oct. 14, 2008, 122 Stat. 4613.)

CODIFICATION

Pub. L. 109-148 and Pub. L. 109-163 enacted identical sections. The section enacted by Pub. L. 109-148, but not the section enacted by Pub. L. 109-163, was amended by Pub. L. 109-366, see 2006 Amendment notes below. The text of this section is based on the text of section 1004 of Pub. L. 109-148 as amended by Pub. L. 109-366.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-181, §1063(d)(1), as amended by Pub. L. 110-417, made technical correction to directory language of Pub. L. 109-366, §8(a)(3). See 2006 Amendment note below.

2006—Subsec. (b). Pub. L. 109-366, §8(a)(3), as amended by Pub. L. 110-181, §1063(d)(1), as amended by Pub. L. 110-417, inserted “whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,” after “described in that subsection.”

Pub. L. 109-366, §8(a)(1), (2), substituted “shall provide” for “may provide” and inserted “or investigation” after “criminal prosecution”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-417 effective Jan. 28, 2008, and as if included in Pub. L. 110-181 as enacted, see section 1061(b) of Pub. L. 110-417, set out as a note under section 6382 of Title 5, Government Organization and Employees.

Pub. L. 110-181, div. A, title X, §1063(d), Jan. 28, 2008, 122 Stat. 323, provided that the amendments made by section 1063(d), which amended this section and provisions set out as a note under section 801 of Title 10, Armed Forces, are effective as of Oct. 17, 2006, and as if included in Pub. L. 109-366 as enacted.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-366, §8(b), Oct. 17, 2006, 120 Stat. 2636, provided that: “Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-1) shall apply with respect to any criminal prosecution that—

“(1) relates to the detention and interrogation of aliens described in such section;

“(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

“(3) relates to actions occurring between September 11, 2001, and December 30, 2005.”

§ 2000dd-2. Limitation on interrogation techniques

(a) Limitation on interrogation techniques to those in the Army Field Manual

(1) Army Field Manual 2-22.3 defined

In this subsection, the term “Army Field Manual 2-22.3” means the Army Field Manual 2-22.3 entitled “Human Intelligence Collector Operations” in effect on November 25, 2015, or any similar successor Army Field Manual.

(2) Restriction

(A) In general

An individual described in subparagraph (B) shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in the Army Field Manual 2-22.3.

(B) Individual described

An individual described in this subparagraph is an individual who is—

(i) in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or

(ii) detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.

(3) Implementation

Interrogation techniques, approaches, and treatments described in Army Field Manual 2-22.3 shall be implemented strictly in accord with the principles, processes, conditions, and limitations prescribed by Army Field Manual 2-22.3.

(4) Agencies other than the Department of Defense

If a process required by Army Field Manual 2-22.3, such as a requirement of approval by a specified Department of Defense official, is inapposite to a department or an agency other than the Department of Defense, the head of such department or agency shall ensure that a process that is substantially equivalent to the

process prescribed by Army Field Manual 2-22.3 for the Department of Defense is utilized by all officers, employees, or other agents of such department or agency.

(5) Interrogation by Federal law enforcement

The limitations in this subsection shall not apply to officers, employees, or agents of the Federal Bureau of Investigation, the Department of Homeland Security, or other Federal law enforcement entities.

(6) Update of the Army Field Manual

(A) Requirement to update

(i) In general

Not sooner than three years after November 25, 2015, and once every three years thereafter, the Secretary of Defense, in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall complete a thorough review of Army Field Manual 2-22.3, and revise Army Field Manual 2-22.3, as necessary to ensure that Army Field Manual 2-22.3 complies with the legal obligations of the United States and the practices for interrogation described therein do not involve the use or threat of force.

(ii) Availability to the public

Army Field Manual 2-22.3 shall remain available to the public and any revisions to the Army Field Manual 2-22.3 adopted by the Secretary of Defense shall be made available to the public 30 days prior to the date the revisions take effect.

(B) Report on best practices of interrogations

(i) Requirement for report

Not later than 120 days after November 25, 2015, the interagency body established pursuant to Executive Order 13491 (commonly known as the High-Value Detainee Interrogation Group) shall submit to the Secretary of Defense, the Director of National Intelligence, the Attorney General, and other appropriate officials a report on best practices for interrogation that do not involve the use of force.

(ii) Recommendations

The report required by clause (i) may include recommendations for revisions to Army Field Manual 2-22.3 based on the body of research commissioned by the High-Value Detainee Interrogation Group.

(iii) Availability to the public

Not later than 30 days after the report required by clause (i) is submitted such report shall be made available to the public.

(b) International Committee of the Red Cross access to detainees

(1) Requirement

The head of any department or agency of the United States Government shall provide the International Committee of the Red Cross with notification of, and prompt access to, any individual detained in any armed conflict in

the custody or under the effective control of an officer, employee, contractor, subcontractor, or other agent of the United States Government or detained within a facility owned, operated, or effectively controlled by a department, agency, contractor, or subcontractor of the United States Government, consistent with Department of Defense regulations and policies.

(2) Construction

Nothing in this subsection shall be construed—

(A) to create or otherwise imply the authority to detain; or

(B) to limit or otherwise affect any other individual rights or state obligations which may arise under United States law or international agreements to which the United States is a party, including the Geneva Conventions, or to state all of the situations under which notification to and access for the International Committee of the Red Cross is required or allowed.

(Pub. L. 114-92, div. A, title X, § 1045, Nov. 25, 2015, 129 Stat. 977.)

REFERENCES IN TEXT

Executive Order 13491, referred to in subsec. (a)(6)(B)(i), is Ex. Ord. No. 13491, Jan. 22, 2009, 74 F.R. 4893, which is set out as a note under section 2000dd of this title.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2016, and not as part of the Detainee Treatment Act of 2005 which comprises this chapter.

CHAPTER 21E—PRIVACY AND CIVIL LIBERTIES PROTECTION AND OVERSIGHT

Sec.	
2000ee.	Privacy and Civil Liberties Oversight Board.
2000ee-1.	Privacy and civil liberties officers.
2000ee-2.	Privacy and data protection policies and procedures.
2000ee-3.	Federal agency data mining reporting.

§ 2000ee. Privacy and Civil Liberties Oversight Board

(a) In general

There is established as an independent agency within the executive branch a Privacy and Civil Liberties Oversight Board (referred to in this section as the “Board”).

(b) Findings

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.