

Editorial Notes

PRIOR PROVISIONS

A prior section 948d, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to jurisdiction of military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

A prior section 948e, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, which required the Secretary of Defense to submit an annual report to congressional committees, was omitted in the general amendment of this chapter by Pub. L. 111-84. See section 1806 of Pub. L. 111-84, set out as a note under section 948a of this title.

SUBCHAPTER II—COMPOSITION OF
MILITARY COMMISSIONS

Sec.	
948h.	Who may convene military commissions.
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948j.	Military judge of a military commission.
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948m.	Number of members; excuse of members; absent and additional members.

§ 948h. Who may convene military commissions

Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

Editorial Notes

PRIOR PROVISIONS

A prior section 948h, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may convene military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948i. Who may serve on military commissions

(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2576.)

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PRIOR PROVISIONS

A prior section 948i, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2603, related to who may serve on military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948j. Military judge of a military commission

(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which such military judge has been detailed.

(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge of general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if such person is the accuser or a witness or has acted as investigator or a counsel in the same case.

(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may such military judge vote with the members.

(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to such officer by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter may not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to such judge's performance of duty as a military judge on the military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2577.)

Editorial Notes

PRIOR PROVISIONS

A prior section 948j, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to military judges of military commissions, prior to the general amendment of this chapter by Pub. L. 111-84.

§ 948k. Detail of trial counsel and defense counsel

(a) **DETAIL OF COUNSEL GENERALLY.**—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

(b) **TRIAL COUNSEL.**—Subject to subsection (e), a trial counsel detailed for a military commission under this chapter shall be—

(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which such judge advocate is a member; or

(2) a civilian who is—

(A) a member of the bar of a Federal court or of the highest court of a State; and

(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

(c) **DEFENSE COUNSEL.**—(1) Subject to subsection (e), a military defense counsel detailed for a military commission under this chapter shall be a judge advocate (as so defined) who is—

(A) a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; and

(B) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which such judge advocate is a member.

(2) The Secretary of Defense shall prescribe regulations for the appointment and performance of defense counsel in capital cases under this chapter.

(d) **CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.**—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

(e) **INELIGIBILITY OF CERTAIN INDIVIDUALS.**—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this

chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

(Added Pub. L. 111-84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2577.)

Editorial Notes

PRIOR PROVISIONS

A prior section 948k, added Pub. L. 109-366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2604, related to detail of trial counsel and defense counsel, prior to the general amendment of this chapter by Pub. L. 111-84.

Statutory Notes and Related Subsidiaries

GRADE OF CHIEF PROSECUTOR AND CHIEF DEFENSE COUNSEL IN MILITARY COMMISSIONS ESTABLISHED TO TRY INDIVIDUALS DETAINED AT GUANTANAMO

Pub. L. 113-66, div. A, title X, § 1037, Dec. 26, 2013, 127 Stat. 854, provided that:

“(a) **IN GENERAL.**—For purposes of any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba, the chief defense counsel and the chief prosecutor shall have the same grade (as that term is defined in section 101(b)(7) of such title).

“(b) **WAIVER.**—

“(1) **IN GENERAL.**—The Secretary of Defense may temporarily waive the requirement specified in subsection (a), if the Secretary determines that compliance with such subsection would—

“(A) be infeasible due to a non-availability of qualified officers of the same grade to fill the billets of chief defense counsel and chief prosecutor; or

“(B) cause a significant disruption to proceedings established under chapter 47A of title 10, United States Code.

“(2) **REPORTS.**—Not later than 30 days after the Secretary issues a waiver under paragraph (1), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the following:

“(A) A copy of the waiver and the determination of the Secretary to issue the waiver.

“(B) A statement of the basis for the determination, including an explanation of the non-availability of qualified officers or the significant disruption concerned.

“(C) Notice of the time period during which the waiver is in effect.

“(c) **GUIDANCE.**—Not later than 60 days after the date of the enactment of this Act [Dec. 26, 2013], the Secretary of Defense shall issue guidance to ensure that the office of the chief defense counsel and the office of the chief prosecutor receive equitable resources, personnel support, and logistical support for conducting their respective duties in connection with any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba.”

§ 948l. Detail or employment of reporters and interpreters

(a) **COURT REPORTERS.**—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the