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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, September 25, 2006, at 12:30 p.m.

Senate

FRIDAY, SEPTEMBER 22, 2006

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The PRESIDENT pro tempore. The Senate will be led in prayer by the Chaplain of the House of Representatives, Rev. Daniel P. Coughlin.

The guest chaplain offered the following prayer:

Lord God Almighty, accept our prayer no matter our faith heritage. Today, we of Abrahamic faith join our Jewish brothers and sisters as they approach the celebration of Rosh Hashanah and Muslim brothers and sisters who begin Ramadan. The marking of a lunar new year can be both unnerving and heartening because it is a holiday about life and death.

Called to turn a new page, we see life and mercy win out over death and judgment. Seeking forgiveness of our sins, as God-fearing people, we find our true identity and are ready to begin anew.

Your biblical story of the birth of Abraham's son, Isaac, and Abraham's near sacrifice of Isaac, would have us face the fear and trembling story of fragile life and the sacrifice of faith.

Lord God of Abrahamic faith, unite us in being attentive to Your holy will and our ability to make the right choices of life for the future.

In Your holy Name we pray, and to Your holy Name be the glory both now and forever. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that I be permitted to proceed notwithstanding the order of last night, as we have a few housekeeping items to complete this morning.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

CREDIT RATING AGENCY REFORM ACT OF 2006

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 590, S. 3850.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 3850) to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

There being no objection, the Senate proceeded to consider the bill.

Mr. SARBANES. Mr. President, I support this important legislation to enhance competition and improve the Federal oversight of credit rating agencies—S. 3850, as amended, the Credit Rating Agency Reform Act of 2006.

I applaud Chairman SHELBY for his strong leadership on this issue and am pleased to have worked closely with him on this legislation. The bill also reflects important contributions from Senators MENENDEZ, SCHUMER, ENZI, and SUNUNU.

Credit rating agencies play an important and valuable role in the capital markets by providing opinions to investors on the ability and willingness of issuers to make timely payments on debt instruments. These ratings can have significant impact. The Washington Post of November 22, 2004 wrote: ''they can, with the stroke of a pen, effectively add or subtract millions from a company's bottom line, rattle a city budget, shock the stock and bond markets and reroute international investment.''

Investors trust the agencies' impartiality and rely on their ratings. The SEC created the designation of Nationally Recognized Statistical Rating Organization, NRSRO, which it currently applies to five agencies. Many institutional investors buy debt only if it has been rated by an NRSRO. A Reuters article dated February 1, 2006 stated:

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

''The SEC designation gives these firms a major advantage in competing for business against other firms.''

Rating agencies earn their revenues pursuant to one of two business models: either by receiving a fee from an issuer to give a rating to that issuer or by charging investors to subscribe for access to the ratings of issuers who do not pay the rating agency. Some NRSROs or their affiliates offer other products and services to the companies, States or other issuers they rate.

In recent years, concerns have been raised about some aspects of the industry. In late 2001, the largest credit rating agencies maintained an investment grade rating on Enron debt after its major financial restatements and until 4 days before Enron's bankruptcy. As a result, as Business Week reported on November 29, 2004, there was a ''barrage of criticism . . . that raters should have uncovered the problems sooner at Enron, WorldCom and other corporate disasters.''

In 2002, concerns about credit rating agencies were raised by Senators BUNNING and ENZI and by Consumer Federation of America during the Senate Banking Committee hearings which led ultimately to the enactment of the Sarbanes-Oxley Act. Their concerns prompted the creation of Section 702 of that Act, which directed the SEC to conduct a study of credit rating agencies. The SEC issued a report and, subsequently, published a Concept Release and proposed a regulation to define the term ''NRSRO.''

Many observers feel that more competition would benefit the markets. Two NRSROs, Standard & Poor's and Moody's, control 8 percent of market share and a third, Fitch Ratings, controls an additional 15 percent. Some have also called for a more transparent and shorter application process for recognition to obtain the NRSRO designation. Others have raised concerns about conflicts of interest, including those involving issuers paying for their ratings, NRSROs having a director who holds an executive position in an issuer, and NRSROs that sell other products or services to issuers they rate. Some have raised questions about alleged abusive practices involving ''tying arrangements, solicitation of payment for unsolicited ratings, and threats to modify ratings based on payment for related services.'' That is a letter from former SEC Chairman William Donaldson to Congressman PAUL E. KANJORSKI dated June 6, 2005.

Under Chairman SHELBY's leadership, the Banking Committee has held hearings on credit rating agencies and received testimony from witnesses representing the Securities and Exchange Commission, rating agencies, the bond markets, the mutual fund industry, labor, academics, and financial professionals. Witnesses testified about a number of issues including the NRSRO application process, conflicts of interest, business practices, the appropriate level of Federal regulation and commission authority.

The legislation before the Senate addresses these issues. Under it, a credit rating agency can obtain the NRSRO designation unless the SEC determines that it lacks adequate financial and managerial resources to consistently produce credit ratings with integrity and to comply with its stated methodologies and procedures. It creates a transparent application process for becoming a NRSRO which requires a decision within a time certain. The application must describe procedures and methodologies used to determine ratings, conflicts of interest, the types of ratings intended to be issued, organization structure, and other matters, and must include a code of ethics, certifications from qualified institutional buyers that have used the ratings for at least 3 years and other items. Most parts of the application must be certified annually and updated when there is a material change.

The legislation also requires the commission to adopt rules that prohibit unfair, coercive and abusive business practices; prohibit or require the management and disclosure of any conflicts of interest; and require NRSROs to establish policies and procedures designed to prevent the misuse of nonpublic information.

The bill does not favor a particular credit rating agency business model.

Prior to its mark-up, the bill received strong support from a number of market participants and interested parties. Let me quote from some of their letters: The Bond Market Association said the bill creates ''a clear process using a credible standard for the designation of NRSRO's.''

The Investment Company Institution said it ''brings much needed sunlight to credit ratings by requiring disclosure of an NRSRO's rating criteria, its methodologies and policies, how an NRSRO addresses conflicts of interest (as well as the conflicts themselves), and the organizational structure of an NRSRO.''

The AFL–CIO said it will ''protect the investing public against conflicts of interest within the credit rating agencies . . . [and] encourages in a responsible manner greater competition.''

The Association for Financial Professionals said the bill will ''foster competition, impose accountability and provide the necessary SEC oversight to restore confidence in credit rating agencies and the ratings they issue.''

Consumer Federation of America wrote that it will ''help ensure that only high quality ratings will be used for economically important regulatory purposes'' and praised the bill's requirements for ''certifications by Qualified Institutional Buyers . . . and [for] giving the . . . SEC . . . authority to deny NRSRO status to rating agencies that lack the financial and managerial resources to produce ratings of integrity.''

Financial Executives International said the bill ''will greatly enhance the accountability of rating agencies.''

Fitch said it ''represents a significant step forward to prudently enhance competition in the rating agency industry.''

Fidelity Investments said the bill ''will improve ratings quality by fostering transparency and accountability.''

The Banking Committee passed this legislation without objection on a voice vote on August 2.

The managers' amendment to this legislation exempts the five existing NRSROs from the requirement that they include certifications in the applications they must file to become NRSROs under the new regulatory framework. This amendment also clarifies the role of Federal regulation in the registration, licensing and qualification of NRSROs, and that the legislation would not regulate the substance of credit ratings or the procedures and methodologies that NRSROs use to determine them, subject to the Federal oversight required in various parts of the legislation.

Once again, I commend Chairman SHELBY on his leadership on this legislation. In doing so, I also want to acknowledge the outstanding work of Justin Daly on the Chairman's staff and Dean Shahinian on my staff.

I support this legislation and encourage my colleagues to do so as well.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 5035) was agreed to, as follows:

On page 8, line 23, insert before the semicolon '', except as provided in subparagraph (D)''.

On page 10, line 3, strike ''(D)'' and insert ''(E)''.

On page 10, between lines 2 and 3, insert the following:

''(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.''.

On page 14, line 15, strike ''the authority'' and insert ''exclusive authority''.

On page 15, line 11, strike ''organizations,'' and all that follows through line 15 and insert the following: ''organizations. Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.''.

On page 27, between lines 5 and 6, insert the following:

''(o) NRSROs SUBJECT TO COMMISSION AUTHORITY.—

''(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

''(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.''.

On page 27, line 6, strike ''(o)'' and insert ''(p)'',

On page 27, strike lines 6 and 7, and insert the following:

''(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—''.

On page 28, line 25, strike ''and'' and all that follows through ''(B) in'' on page 29, line 1, and insert the following:

''(B) in section 202(a)(11) (15 U.S.C. 80b–2(a)(11)), by striking 'or (F)' and inserting the following: '(F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (G)'; and

''(C) in''.

On page 33, strike lines 1 through 5.

The bill (S. 3850), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3850

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Credit Rating Agency Reform Act of 2006''.

SEC. 2. FINDINGS.

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

(1) their ratings, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their ratings, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System;

(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, the securities markets, the national banking system, and the national economy;

(4) the oversight of such credit rating agencies serves the compelling interest of investor protection;

(5) the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest; and

(6) the Commission has indicated that it needs statutory authority to oversee the credit rating industry.

SEC. 3. DEFINITIONS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

''(60) CREDIT RATING.—The term 'credit rating' means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

''(61) CREDIT RATING AGENCY.—The term 'credit rating agency' means any person—

''(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

''(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

''(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

''(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'nationally recognized statistical rating organization' means a credit rating agency that—

''(A) has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 15E;

''(B) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

''(i) financial institutions, brokers, or dealers;

''(ii) insurance companies;

''(iii) corporate issuers;

''(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

''(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

''(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

''(C) is registered under section 15E.

''(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'person associated with' a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

''(64) QUALIFIED INSTITUTIONAL BUYER.—The term 'qualified institutional buyer' has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.''.

(b) APPLICABLE DEFINITIONS.—As used in this Act—

(1) the term ''Commission'' means the Securities and Exchange Commission; and

(2) the term ''nationally recognized statistical rating organization'' has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934, as added by this Act.

SEC. 4. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) AMENDMENT.—The Securities Exchange Act of 1934 is amended by inserting after section 15D (15 U.S.C. 78o–6) the following new section:

''SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

''(a) REGISTRATION PROCEDURES.—

''(1) APPLICATION FOR REGISTRATION.—

''(A) IN GENERAL.—A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this title (in this section referred to as the 'applicant'), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

''(B) REQUIRED INFORMATION.—An application for registration under this section shall contain information regarding—

''(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

''(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

''(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this title (or the rules and regulations hereunder), of material, nonpublic information;

''(iv) the organizational structure of the applicant;

''(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

''(vi) any conflict of interest relating to the issuance of credit ratings by the applicant;

''(vii) the categories described in any of clauses (i) through (v) of section 3(a)(62)(B) with respect to which the applicant intends to apply for registration under this section;

''(viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;

''(ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 3(a)(62)(B), written certifications described in subparagraph (C), except as provided in subparagraph (D); and

''(x) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(C) WRITTEN CERTIFICATIONS.—Written certifications required by subparagraph (B)(ix)—

''(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

''(ii) may address more than one category of obligors described in any of clauses (i) through (v) of section 3(a)(62)(B);

''(iii) shall include not fewer than 2 certifications for each such category of obligor; and

''(iv) shall state that the qualified institutional buyer—

''(I) meets the definition of a qualified institutional buyer under section 3(a)(64); and

''(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

''(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

''(E) LIMITATION ON LIABILITY OF QUALIFIED INSTITUTIONAL BUYERS.—No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

''(2) REVIEW OF APPLICATION.—

''(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

''(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 3(a)(62)(B); or

''(ii) institute proceedings to determine whether registration should be denied.

''(B) CONDUCT OF PROCEEDINGS.—

''(i) CONTENT.—Proceedings referred to in subparagraph (A)(ii) shall—

''(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

''(II) be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission under paragraph (1).

''(ii) DETERMINATION.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

''(iii) EXTENSION AUTHORIZED.—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

''(C) GROUNDS FOR DECISION.—The Commission shall grant registration under this subsection—

''(i) if the Commission finds that the requirements of this section are satisfied; and

''(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

''(I) the applicant does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

''(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

''(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission shall, by rule, require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (b), publicly available on its website, or through another comparable, readily accessible means, except as provided in clauses (viii) and (ix) of paragraph (1)(B).

''(b) UPDATE OF REGISTRATION.—

''(1) UPDATE.—Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

''(A) the information required to be furnished under subsection (a)(1)(B)(i) by furnishing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection; or

''(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by furnishing information under this paragraph.

''(2) CERTIFICATION.—Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall furnish to the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

''(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

''(B) listing any material change that occurred to such information or documents during the previous calendar year.

''(c) ACCOUNTABILITY FOR RATINGS PROCEDURES.—

''(1) AUTHORITY.—The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this title with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of nonpublic information and conflicts of interest, that such nationally recognized statistical rating organization—

''(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

''(B) makes and disseminates in reports pursuant to section 17(a) or the rules and regulations thereunder.

''(2) LIMITATION.—The rules and regulations that the Commission may prescribe pursuant to this title, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this title applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.

''(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is necessary for the protection of investors and in the public interest and that such nationally recognized statistical rating organization, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

''(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

''(2) has been convicted during the 10-year period preceding the date on which an application for registration is furnished to the Commission under this section, or at any time thereafter, of—

''(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

''(B) a substantially equivalent crime by a foreign court of competent jurisdiction;

''(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization;

''(4) fails to furnish the certifications required under subsection (b)(2); or

''(5) fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity.

''(e) TERMINATION OF REGISTRATION.—

''(1) VOLUNTARY WITHDRAWAL.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission.

''(2) COMMISSION AUTHORITY.—In addition to any other authority of the Commission under this title, if the Commission finds that a nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

''(f) REPRESENTATIONS.—

''(1) BAN ON REPRESENTATIONS OF SPONSORSHIP BY UNITED STATES OR AGENCY THEREOF.—It shall be unlawful for any nationally recognized statistical rating organization to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that the abilities or qualifications thereof have in any respect been passed upon, by the United States or any agency, officer, or employee thereof.

''(2) BAN ON REPRESENTATION AS NRSRO OF UNREGISTERED CREDIT RATING AGENCIES.—It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this title.

''(3) STATEMENT OF REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this title, if such statement is true in fact and if the effect of such registration is not misrepresented.

''(g) PREVENTION OF MISUSE OF NONPUBLIC INFORMATION.—

''(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and

procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this title, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

''(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent misuse in violation of this title (or the rules or regulations hereunder) of material, nonpublic information.

''(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

''(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

''(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

''(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

''(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

''(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

''(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

''(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(i) PROHIBITED CONDUCT.—

''(1) PROHIBITED ACTS AND PRACTICES.—The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

''(A) conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

''(B) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

''(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.

''(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

''(j) DESIGNATION OF COMPLIANCE OFFICER.—Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

''(k) STATEMENTS OF FINANCIAL CONDITION.—Each nationally recognized statistical rating organization shall, on a confidential basis, furnish to the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(l) SOLE METHOD OF REGISTRATION.—

''(1) IN GENERAL.—On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

''(2) PROHIBITION ON RELIANCE ON NO-ACTION RELIEF.—On and after the effective date of this section—

''(A) an entity that, before that date, received advice, approval, or a no-action letter from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3–1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

''(i) during Commission consideration of the application, if such entity has furnished an application for registration under this section; and

''(ii) on and after the date of approval of its application for registration under this section; and

''(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

''(3) NOTICE TO OTHER AGENCIES.—Not later than 30 days after the date of enactment of this section, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term 'nationally recognized statistical rating organization' (as that term is used under Commission rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on the date of enactment of this section).

''(m) RULES OF CONSTRUCTION.—

''(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR DEFENSES.—Registration under and compliance with this section does not constitute a waiver of, or otherwise diminish, any right, privilege, or defense that a nationally recognized statistical rating organization may otherwise have under any provision of State or Federal law, including any rule, regulation, or order thereunder.

''(2) NO PRIVATE RIGHT OF ACTION.—Nothing in this section may be construed as creating any private right of action, and no report furnished by a nationally recognized statistical rating organization in accordance with this section or section 17 shall create a private right of action under section 18 or any other provision of law.

''(n) REGULATIONS.—

''(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

''(A) shall be issued by the Commission in final form, not later than 270 days after the date of enactment of this section; and

''(B) shall become effective not later than 270 days after the date of enactment of this section.

''(2) REVIEW OF EXISTING REGULATIONS.—Not later than 270 days after the date of enactment of this section, the Commission shall—

''(A) review its existing rules and regulations which employ the term 'nationally recognized statistical rating organization' or 'NRSRO'; and

''(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(o) NRSROs SUBJECT TO COMMISSION AUTHORITY.—

''(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

''(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

''(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

''(1) the date on which regulations are issued in final form under subsection (n)(1); or

''(2) 270 days after the date of enactment of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(A) in section 15(b)(4) (15 U.S.C. 78o(b)(4))—

(i) in subparagraph (B)(ii), by inserting ''nationally recognized statistical rating organization,'' after ''transfer agent,''; and

(ii) in subparagraph (C), by inserting ''nationally recognized statistical rating organization,'' after ''transfer agent,''; and

(B) in section 21B(a) (15 U.S.C. 78u–2(a)), by inserting ''15E,'' after ''15C,''.

(2) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a et seq.) is amended—

(A) in section 2(a) (15 U.S.C. 80a–2(a)), by adding at the end the following new paragraph:

''(53) The term 'credit rating agency' has the same meaning as in section 3 of the Securities Exchange Act of 1934.''; and

(B) in section 9(a) (15 U.S.C. 80a–9(a))—

(i) in paragraph (1), by inserting ''credit rating agency,'' after ''transfer agent,''; and

(ii) in paragraph (2), by inserting ''credit rating agency,'' after ''transfer agent,''.

(3) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) is amended—

(A) in section 202(a) (15 U.S.C. 80b–2(a)), by adding at the end the following new paragraph:

''(28) The term 'credit rating agency' has the same meaning as in section 3 of the Securities Exchange Act of 1934.'';

(B) in section 202(a)(11) (15 U.S.C. 80b–2(a)(11)), by striking ''or (F)'' and inserting the following: ''(F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (G)''; and

(C) in section 203(e) (15 U.S.C. 80b–3(e))—

(i) in paragraph (2)(B), by inserting ''credit rating agency,'' after ''transfer agent,''; and

(ii) in paragraph (4), by inserting ''credit rating agency,'' after ''transfer agent,''.

(4) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4519) is amended by striking ''effectively'' and all that follows through ''broker-dealers'' and inserting ''that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934''.

(5) HIGHER EDUCATION ACT OF 1965.—Section 439(r)(15)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087–2(r)(15)(A)) is amended by striking ''means any entity recognized as such by the Securities and Exchange Commission'' and inserting ''means any nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934''.

(6) TITLE 23.—Section 181(11) of title 23, United States Code, is amended by striking ''identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization'' and inserting ''registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934''.

SEC. 5. ANNUAL AND OTHER REPORTS.

Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended—

(1) by inserting ''nationally recognized statistical rating organization,'' after ''registered transfer agent,''; and

(2) by adding at the end the following: ''Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.''.

SEC. 6. COMMISSION ANNUAL REPORT.

The Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934, as added by this Act;

(2) specifies the number of and actions taken on such applications; and

(3) specifies the views of the Commission on the state of competition, transparency, and conflicts of interest among nationally recognized statistical rating organizations.

SEC. 7. GAO STUDY AND REPORT REGARDING NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to determine the impact of this Act and the amendments made by this Act on—

(A) the quality of credit ratings issued by nationally recognized statistical ratings organizations;

(B) the financial markets;

(C) competition among credit rating agencies;

(D) the incidence of inappropriate conflicts of interest and sales practices by nationally recognized statistical rating organizations;

(E) the process for registering as a nationally recognized statistical rating organization; and

(F) such other matters relevant to the implementation of this Act and the amendments made by this Act, as the Comptroller General deems necessary to bring to the attention of the Congress;

(2) to identify problems, if any, that have resulted from the implementation of this Act and the amendments made by this Act; and

(3) to recommend solutions, including any legislative or regulatory solutions, to any problems identified under paragraphs (1) and (2).

(b) REPORT REQUIRED.—Not earlier than 3 years nor later than 4 years after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. President, I ask unanimous consent, notwithstanding the order of last night, that it be reflected that the leader or his designee may offer 3 bills under the provisions of rule XIV, and that all other provisions under the order be in effect; further, that the RECORD remain open until 11 a.m. for submitted statements.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

JEWISH HOLIDAY SEASON

Mr. FRIST. Tomorrow, Saturday September 23—the first day of the month of Tishri on the Hebrew Calendar—Jewish people all over the world will celebrate the holiday of Rosh Hashana. On the 10th of Tishri, October 2 on the Gregorian calendar, will mark the holiday of Yom Kippur—The Day of Atonement. These two days: one a spiritually important New Years celebration, the other an opportunity for solemn reflection coupled with a recognition of God's mercy, rank alongside the weekly Sabbath as the most important holidays in Judaism.

The coming weeks bring two other important, joyous holidays: Sukkot—a commemoration of the mercy of God that allowed the Israelites to survive while wandering in the desert and Simchat Torah, a celebration of the completion of the annual cycle of readings from the scriptures most sacred to Jews.

In their observances, these holidays run the gamut. Jewish law requires fasting on Yom Kippur while the celebration of Sukkot focuses on festive meals eaten in a temporary shelter. All of them, however, have a common thread: a focus on justice, on the Eternal, and upon improving—healing—the world. On ethnical monotheism. All these are important traditions that Judaism transmitted to Christianity and Islam.

As we enter the Jewish holiday season, I urge all Americans to reflect on the need to heal the world, to work for peace, and to do justice.

And, on this, the day before Rosh Hashana. I wish all of my Jewish friends and colleagues a Happy New Year. L'Shana Tova.

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

At 9:38 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 260. An act to authorize the Secretary of the Interior to provide technical and financial assistance to private landowners to restore, enhance, and manage private land to improve fish and wildlife habitats through the Partners for Fish and Wildlife Program.

S.418. An act to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

S. 1025. An act to amend the Act entitled ''An Act to provide for the construction of the Cheney division, Wichita Federal reclamation project, Kansas, and for other purposes'' to authorize the Equus Beds Division of the Wichita Project.

H.R. 3408. An act to reauthorize the Livestock Mandatory Reporting Act of 1999 and to amend the swine reporting provisions of that Act.

H.R. 3858. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to ensure that State and local emergency preparedness operational plans address the needs of individuals with household pets and service animals following a major disaster or emergency÷.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 3929. A bill to authorize military commissions to bring terrorists to justice, to strengthen and modernize terrorist surveillance capabilities, and for other purposes.

S. 3930. A bill to authorize trial by military commission for violations of the law of war, and for other purposes.

S. 3931. A bill to establish procedures for the review of electronic surveillance programs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. MCCONNELL (for himself and Mr. FRIST):

S. 3929. A bill to authorize military commissions to bring terrorists to justice, to strengthen and modernize terrorist surveillance capabilities, and for other purposes; read the first time.

By Mr. MCCONNELL (for himself, Mr. FRIST, and Mr. WARNER):

S. 3930. A bill to authorize trial by military commission for violations of the law of war, and for other purposes; read the first time.

By Mr. MCCONNELL (for himself and Mr. FRIST):

S. 3931. A bill to establish procedures for the review of electronic surveillance programs; read the first time.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCONNELL (for himself and Mr. FRIST):

S. 3929. A bill to authorize military commissions to bring terrorists to justice, to strengthen and modernize terrorist surveillance capabilities, and for other purposes; read the first time.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3929

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—MILITARY COMMISSIONS

SECTION 101. SHORT TITLE.

This title may be cited as the ''Military Commissions Act of 2006''.

SEC. 102. FINDINGS.

Congress makes the following findings:

(1) The Constitution of the United States grants to Congress the power ''To define and punish . . . Offenses against the Law of Nations'', as well as the power ''To declare War . . . To raise and support Armies . . . [and] To provide and maintain a Navy''.

(2) The military commission is the traditional tribunal for the trial of persons engaged in hostilities for violations of the law of war.

(3) Congress has, in the past, both authorized the use of military commission by statute and recognized the existence and authority of military commissions.

(4) Military commissions have been convened both by the President and by military commanders in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to exercise its authority under the Constitution to enact legislation authorizing and regulating the use of military commissions to try and punish violations of the law of war.

SEC. 103. AUTHORIZATION FOR MILITARY COMMISSIONS.

(a) IN GENERAL.—The President is authorized to establish military commissions for the trial of alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable by military commission as provided in chapter 47 of title 10, United States Code, and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(c) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, imprisonment for life or a term of years, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

(e) ANNUAL REPORT ON TRIALS BY MILITARY COMMISSIONS.—

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

SEC. 104. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

''CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 948a. Definitions

''In this chapter:

''(1) ALIEN.—The term 'alien' means an individual who is not a citizen of the United States.

''(2) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(3) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means an individual who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(4) UNLAWFUL ENEMY COMBATANT.—The term 'unlawful enemy combatant' means an individual engaged in hostilities against the United States who is not a lawful enemy combatant.

''§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title is therefore not binding on military commissions established under this chapter.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

''(d) STATUS OF MILITARY COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other

precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien enemy unlawful combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights at his trial by military commission.

''§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States is subject to trial by military commission as set forth in this chapter.

''§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) PUNISHMENTS.—A miliary commission under this chapter may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''§ 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.

''§ 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, as 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.

''§ 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 he 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 in 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 he 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 he 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 him 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 shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 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 after the swearing of charges.

''(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), trial counsel detailed for a military commission under this chapter must 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 is 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 he 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) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

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

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

''(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.

''§ 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 proceedings of and testimony taken before the military commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''§ 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 they are true in fact to the best of his 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 him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; statements obtained by torture or other methods of coercion

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Detainee Treatment Act of 2005), in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders it reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Detainee Treatment Act of 2005), in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders it reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not violate the cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the United States Constitution.

''§ 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.

''SUBCHAPTER IV—TRIAL PROCEDURE

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, 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) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from 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.

''(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

''(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

''(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) To the assistance of counsel.

''(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.

''(D)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under this clause is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(b) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(4)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (2)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) The provisions of this subsection shall not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

''(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

''(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(e) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This rule applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall

be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

"§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

"§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

"§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''(c) OATH DEFINED.—In this section, the term 'oath' includes an affirmation.

"§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

"§ 949i. Pleas of the accused

''(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

"§ 949j. Opportunity to obtain witnesses and other evidence

''(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(B) shall run to any place where the United States shall have jurisdiction thereof.

''(b) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(c) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (b).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by courts-martial under chapter 47 of this title.

"§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission 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.

"§ 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 his 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 his 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 he 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.

"§ 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 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 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 members present at the time the vote is taken; and

''(D) all members present at the time the vote was taken 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 members present at the time the vote is taken.

''(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 members of the military commission under this chapter shall be not less than 12 members.

''(2) In any case described in paragraph (1) in which 12 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 members for the military commission (but not fewer than 5 members), and the military commission may be assembled, and the trial held, with not less than the number of 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 members were not reasonably available.

''§ 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.

''§ 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 his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member if the trial counsel is unable to authenticate it by reason of his 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 section 949d(e) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

''§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after accused has been give an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Waiver or withdrawal of appeal

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the Court of Military Commission Review under section 950f of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c), (d), or (e) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the Court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) RIGHT OF APPEAL.—The accused may appeal from a final decision of a military commission, and the United States may appeal as provided in section 950d of this title, to the Court of Military Commission Review in accordance with procedures prescribed under regulations of the Secretary.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the District of Columbia Circuit may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the District of Columbia Circuit of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which—

''(i) written notice of the final decision of the military commission is served on the accused or defense counsel; or

''(ii) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the District of Columbia Circuit of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the District of Columbia Circuit in a determination under subsection (a).

''§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

''§ 950i. Execution of sentence; suspension of sentence

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of

any sentence or part thereof in the case, except a sentence of death.

"§ 950j. Finality of proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

"§ 950aa. Definitions; construction of certain offenses; common circumstances

''(a) DEFINITIONS.—In this subchapter:

''(1) The term 'military objective' means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

''(2) The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

''(3) The term 'protected property' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

''(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.

"§ 950bb. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

"§ 950cc. Principals

''Any person is punishable as a principle under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

"§ 950dd. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

"§ 950ee. Conviction of lesser offenses

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

"§ 950ff. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

"§ 950gg. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

"§ 950hh. Murder of protected persons

''Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

"§ 950ii. Attacking civilians

''Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950jj. Attacking civilian objects

''Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

"§ 950kk. Attacking protected property

''Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

"§ 950ll. Pillaging

''Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

"§ 950mm. Denying quarter

''Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

"§ 950nn. Taking hostages

''Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or

continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950oo. Employing poison or similar weapons

''Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950pp. Using protected persons as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack. or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950qq. Using protected property as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

"§ 950rr. Torture

''(a) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

"§ 950ss. Cruel or inhuman treatment

''(a) OFFENSE.—Any person subject to this chapter who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) DEFINITIONS.—In this section:

''(1) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(2) The term 'serious physical pain or suffering' means bodily injury that involves—

''(A) a substantial risk of death;

''(B) extreme physical pain;

''(C) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(D) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(3) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(A) the term 'serious' shall replace the term 'severe' where it appears; and

''(B) as to conduct occurring after the date of the enactment of the Military Commission Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

"§ 950tt. Intentionally causing serious bodily injury

''(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SERIOUS BODILY INJURY DEFINED.—In this section, the term 'serious bodily injury' means bodily injury which involves—

''(1) a substantial risk of death;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"§ 950uu. Mutilating or maiming

''Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950vv. Murder in violation of the law of war

''Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

"§ 950ww. Destruction of property in violation of the law of war

''Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

"§ 950xx. Using treachery or perfidy

''Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950yy. Improperly using a flag of truce

''Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

"§ 950zz. Improperly using a distinctive emblem

''Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

"§ 950aaa. Intentionally mistreating a dead body

''Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

"§ 950bbb. Rape

''Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

"§ 950ccc. Hijacking or hazarding a vessel or aircraft

''Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950ddd. Terrorism

''Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950eee. Providing material support for terrorism

''(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the

United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''§ 950fff. Wrongfully aiding the enemy

''Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''§ 950ggg. Spying

''Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''§ 950hhh. Conspiracy

''Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950iii. Contempt

''A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

''§ 950jjj. Perjury and obstruction of justice

''A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A and part II of subtitle A of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''Chapter 47A. Military Commissions 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modification.

SEC. 105. AMENDMENTS TO OTHER LAWS.

(a) DETAINEE TREATMENT ACT OF 2005.—Section 1004(b) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 42 U.S.C. 200dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of title, 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.''.

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking ''by statute or law of war''.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting ''(other than military commissions under chapter 47A of this title)'' after ''other military tribunals''.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice)), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

(d) REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.—

(1) REVIEW BY SUPREME COURT.—Section 1259 of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) Cases tried by military commission and reviewed by the United States Court of Appeals for the District of Columbia Circuit under section 950g of title 10.''.

(2) DETAINEE TREATMENT ACT OF 2005.—Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(A) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(B) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(C) in subparagraph (C)—

(i) in clause (i)—

(I) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(II) by striking ''at Guantanamo Bay, Cuba''; and

(ii) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(D) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 106. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—

(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

(2) by adding at the end the following new subsection:

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who—

''(A) is currently in United States custody; and

''(B) has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien detained by the United States who—

''(A) is currently in United States custody; and

''(B) has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 107. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions, or any protocols thereto, in any habeas or civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States, is a party, as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 108. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (as to non-grave breach provisions of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 as defined in subsection (d) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(B) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commission Act of 2006, the term 'serious and non-transitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take appropriate action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 109. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is

amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

SEC. 110. SEVERABILITY.

If any provision of this Act or amendment made by a provision of this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of such provisions and amendments to any other person or circumstance, shall not be affected thereby.

TITLE II—TERRORIST SURVEILLANCE ACT

SECTION 201. SHORT TITLE.

This title may be cited as the ''Terrorist Surveillance Act of 2006''.

SEC. 202. FINDINGS.

Congress finds the following:

(1) After the terrorist attacks of September 11, 2001, President Bush authorized the National Security Agency to intercept communications between people inside the United States, including American citizens, and terrorism suspects overseas.

(2) One of the lessons learned from September 11, 2001, is that the enemies who seek to greatly harm and terrorize our Nation utilize technologies and techniques that defy conventional law enforcement practices.

(3) The President, as the constitutional officer most directly responsible for protecting the United States from attack, requires the ability and means to detect and track an enemy that can master and exploit modern technology.

(4) It is equally essential, however, that in protecting the United States against our enemies, the President does not compromise the very civil liberties that he seeks to safeguard. As Justice Hugo Black observed, ''The President's power, if any, to issue [an] order must stem either from an Act of Congress or from the Constitution itself.'' Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952) (opinion by Black, J.). Similarly, in 2004, Justice Sandra Day O'Connor explained in her plurality opinion for the Supreme Court in Hamdi v. Rumsfeld: ''We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.'' Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004) (citations omitted).

(5) When deciding issues of national security, it is in our Nation's best interest that, to the extent feasible, all 3 branches of the Federal Government should be involved. This helps guarantee that electronic surveillance programs do not infringe on the constitutional rights of Americans, while at the same time ensuring that the President has all the powers and means necessary to detect and track our enemies and protect our Nation from attack.

(6) As Justice Sandra Day O'Connor explained in her plurality opinion for the Supreme Court in Hamdi v. Rumsfeld, ''Whatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all 3 branches when individual liberties are at stake.'' Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004) (citations omitted).

(7) Similarly, Justice Jackson famously explained in his Youngstown concurrence: ''When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate . . . When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility . . . When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject.'' Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

(8) Congress clearly has the authority to enact legislation with respect to electronic surveillance programs. The Constitution provides Congress with broad powers of oversight over national security and foreign policy, under article I, section 8 of the Constitution of the United States, which confers on Congress numerous powers, including the powers—

(A) ''To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water'';

(B) ''To raise and support Armies'';

(C) ''To provide and maintain a Navy'';

(D) ''To make Rules for the Government and Regulation of the land and naval Forces'';

(E) ''To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions''; and

(F) ''To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States''.

(9) While Attorney General Alberto Gonzales explained that the executive branch reviews the electronic surveillance program of the National Security Agency every 45 days to ensure that the program is not overly broad, it is the belief of Congress that approval and supervision of electronic surveillance programs should be conducted outside of the executive branch, by the article III court established under section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) and the congressional intelligence committees. It is also the belief of Congress that it is appropriate for an article III court to pass upon the constitutionality of electronic surveillance programs that may be directed at Americans.

(10) The Foreign Intelligence Surveillance Court is the proper court to approve and supervise classified electronic surveillance programs because it is adept at maintaining the secrecy with which it was charged and it possesses the requisite expertise and discretion for adjudicating sensitive issues of national security.

(11) In 1975, [then] Attorney General Edward Levi, a strong defender of executive authority, testified that in times of conflict, the President needs the power to conduct long-range electronic surveillance and that a foreign intelligence surveillance court should be empowered to issue special approval orders in these circumstances.

(12) Granting the Foreign Intelligence Surveillance Court the authority to review electronic surveillance programs and pass upon their constitutionality is consistent with well-established, longstanding practices.

(13) The Foreign Intelligence Surveillance Court already has broad authority to approve surveillance of members of international conspiracies, in addition to granting warrants for surveillance of a particular individual under sections 104, 105, and 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804, 1805, and 1842).

(14) Prosecutors have significant flexibility in investigating domestic conspiracy cases. Courts have held that flexible warrants comply with the 4th amendment to the Constitution of the United States when they relate to complex, far-reaching, and multifaceted criminal enterprises like drug conspiracies and money laundering rings. The courts recognize that applications for search warrants must be judged in a common sense and realistic fashion, and the courts permit broad warrant language where, due to the nature and circumstances of the investigation and the criminal organization, more precise descriptions are not feasible.

(15) The Supreme Court, in the ''Keith Case'', United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297 (1972), recognized that the standards and procedures used to fight ordinary crime may not be applicable to cases involving national security. The Court recognized that national ''security surveillance may involve different policy and practical considerations from the surveillance of ordinary crime'' and that courts should be more flexible in issuing warrants in national security cases. United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297, 322 (1972).

(16) By authorizing the Foreign Intelligence Surveillance Court to review electronic surveillance programs, Congress enables the President to use the necessary means to guard our national security, while also protecting the civil liberties and constitutional rights that we cherish.

SEC. 203. DEFINITIONS.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating title VII as title VIII;

(2) by redesignating section 701 as section 801; and

(3) by inserting after title VI the following:

''TITLE VII—ELECTRONIC SURVEILLANCE PROGRAMS

''SEC. 701. DEFINITIONS.

''As used in this title—

''(1) the terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign power', 'international terrorism', 'minimization procedures', 'person', 'United States', and 'United States person' have the same meaning as in section 101;

''(2) the term 'congressional intelligence committees' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

''(3) the term 'electronic surveillance program' means a program to engage in electronic surveillance—

''(A) that has as a significant purpose the gathering of foreign intelligence information or protecting against international terrorism;

''(B) where it is not feasible to name every person, address, or location to be subjected to electronic surveillance;

''(C) where effective gathering of foreign intelligence information requires the flexibility to begin electronic surveillance immediately after learning of suspect activity; and

''(D) where effective gathering of foreign intelligence information requires an extended period of electronic surveillance;

''(4) the term 'foreign intelligence information' has the same meaning as in section 101(e) and includes information necessary to protect against international terrorism;

''(5) the term 'Foreign Intelligence Surveillance Court' means the court established under section 103(a); and

''(6) the term 'Foreign Intelligence Surveillance Court of Review' means the court established under section 103(b).''.

SEC. 204. FOREIGN INTELLIGENCE SURVEILLANCE COURT JURISDICTION TO REVIEW ELECTRONIC SURVEILLANCE PROGRAMS.

(a) IN GENERAL.—Title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 3, is amended by adding at the end the following:

"SEC. 702. FOREIGN INTELLIGENCE SURVEILLANCE COURT JURISDICTION TO REVIEW ELECTRONIC SURVEILLANCE PROGRAMS.

''(a) AUTHORIZATION OF REVIEW.—

''(1) INITIAL AUTHORIZATION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to issue an order under this title, lasting not longer than 90 days, that authorizes an electronic surveillance program to obtain foreign intelligence information or to protect against international terrorism.

''(2) REAUTHORIZATION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to reauthorize an electronic surveillance program for a period of time not longer than such court determines to be reasonable. There shall be no limit on the number of times the Attorney General may seek reauthorization of an electronic surveillance program.

''(3) RESUBMISSION OR APPEAL.—In the event that the Foreign Intelligence Surveillance Court refuses to approve an application under this subsection, the court shall state its reasons in a written opinion, which it shall submit to the Attorney General. The Attorney General or his designee may submit a new application under section 703 for the electronic surveillance program, with no limit on the number of resubmissions that may be made. Alternatively, the Attorney General may appeal the decision of the Foreign Intelligence Surveillance Court to the Foreign Intelligence Surveillance Court of Review.

''(4) CONTINUED SURVEILLANCE UNDER TITLE I.—

''(A) IN GENERAL.—If, at any time, the Attorney General determines that the known facts and circumstances relating to any target within the United States under this title satisfy the criteria for an application under section 104 for an order for electronic surveillance of the target under section 105, the Attorney General shall—

''(i) discontinue the surveillance of the target under this title; or

''(ii) continue the surveillance of the target under this title, subject to the requirements of subparagraph (B).

''(B) CONTINUATION OF SURVEILLANCE.—

''(i) IN GENERAL.—The Attorney General may continue surveillance of a target under this title as specified in subparagraph (A)(ii) only if the Attorney General makes an application under section 104 for an order for electronic surveillance of the target under section 105 as soon as the Attorney General determines practicable after the date on which the Attorney General makes the determination to continue surveillance of the target under subparagraph (A)(ii).

''(ii) PERIOD.—The period during which the Attorney General may continue surveillance of a target under this title after the Attorney General has determined that making an application is practicable shall be limited to a reasonable period, as determined by the Attorney General, during which the application is prepared and the period during which the application of the Attorney General under section 104 for an order for electronic surveillance of the target under section 105 is pending under title I, including during any period in which appeal from the denial of the application is pending with the Foreign Intelligence Surveillance Court of Review or the Supreme Court under section 103(b).

''(b) MANDATORY TRANSFER FOR REVIEW.—

''(1) IN GENERAL.—In any case before any court challenging the legality of classified communications intelligence activity relating to a foreign threat, including an electronic surveillance program, or in which the legality of any such activity or program is in issue, if the Attorney General files an affidavit under oath that the case should be transferred to the Foreign Intelligence Surveillance Court of Review because further proceedings in the originating court would harm the national security of the United States, the originating court shall transfer the case of the Foreign Intelligence Surveillance for further proceedings under this subsection.

''(2) PROCEDURES FOR REVIEW.—The Foreign Intelligence Surveillance Court shall have jurisdiction as appropriate to determine standing and the legality of the program to the extent necessary for resolution of the underlying case. All proceedings under this paragraph shall be conducted in accordance with the procedures set forth in section 106(f). In the event the Foreign Intelligence Surveillance Court determines that, in the context of a criminal proceeding, the Constitution of the United States would require the disclosure of national security information, any such constitutionally required disclosure shall be governed by the Classified Information Procedures Act, (18 U.S.C. App.), or if applicable, section 2339B(f) of title 18, United States Code.

''(3) APPEAL, CERTIORARI, AND EFFECTS OF DECISIONS.—The decision of the Foreign Intelligence Surveillance Court made under paragraphs (1) and (2), including a decision that the disclosure of national security information is constitutionally required, shall be subject to review by the Foreign Intelligence Surveillance Court of Review under section 103(b). The Supreme Court of the United States shall have jurisdiction to review decisions of the Foreign Intelligence Surveillance Court of Review by writ of certiorari granted upon the petition of the United States. The decision by the Foreign Intelligence Surveillance Court shall otherwise be binding in all other courts.

''(4) DISMISSAL.—The Foreign Intelligence Surveillance Court or a court that is an originating court under paragraph (1) may dismiss a challenge to the legality of an electronic surveillance program for any reason provided for under law.

''(5) PRESERVATION OF LITIGATION PRIVILEGES.—Nothing in this Act shall be construed to abrogate, limit, or affect any litigation privileges in any court.''.

SEC. 205. APPLICATIONS FOR APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

Title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 4, is amended by adding at the end the following:

"SEC. 703. APPLICATIONS FOR APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

''(a) IN GENERAL.—Each application for approval of an electronic surveillance program under this title (including resubmission or application for reauthorization) shall—

''(1) be made by the Attorney General or his designee;

''(2) include a statement of the authority conferred on the Attorney General by the President of the United States;

''(3) include a statement setting forth the legal basis for the conclusion by the Attorney General that the electronic surveillance program is consistent with the Constitution of the United States;

''(4) certify that a significant purpose of the electronic surveillance program is to obtain foreign intelligence information or to protect against international terrorism;

''(5) certify that the information sought cannot reasonably be obtained by normal investigative techniques

''(6) certify that the information sought cannot reasonably be obtained through an application under section 104;

''(7) include a statement of the means and operational procedures by which the electronic surveillance will be executed and effected;

''(8) include an explanation of how the electronic surveillance program is reasonably designed to ensure that the communications that are acquired are communications of or with—

''(A) a foreign power that engages in international terrorism or activities in preparation therefor;

''(B) an agent of a foreign power that engages in international terrorism or activities in preparation therefor;

''(C) a person reasonably believed to have communication with or be associated with a foreign power that engages in international terrorism or activities in preparation therefor or an agent of a foreign power that engages in international terrorism or activities in preparation therefor; or

''(D) a foreign power that poses an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States, or an agent of a foreign power thereof;

''(9) include a statement of the proposed minimization procedures;

''(10) if the electronic surveillance program that is the subject of the application was initiated prior to the date the application was submitted, specify the date that the program was initiated;

''(11) include a description of all previous applications that have been made under this title involving the electronic surveillance program in the application (including the minimization procedures and the means and operational procedures proposed) and the decision on each previous application; and

''(12) include a statement of facts concerning the implementation of the electronic surveillance program described in the application, including, for any period of operation of the program authorized not less than 90 days prior to the date of submission of the application—

''(A) the minimization procedures implemented; and

''(B) the means and operational procedures by which the electronic surveillance was executed and effected.

''(b) ADDITIONAL INFORMATION.—The Foreign Intelligence Surveillance Court may require the Attorney General to furnish such other information as may be necessary to make a determination under section 704.''.

SEC. 206. APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

Title VII of the Foreign Intelligence Surveillance Act 18 of 1978, as amended by section 5, is amended by adding at the end the following:

"SEC. 704. APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

''(a) NECESSARY FINDINGS.—Upon receipt of an application under section 703, the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested, or as modified, approving the electronic surveillance program if it finds that—

''(1) the President has authorized the Attorney General to make the application for electronic surveillance for foreign intelligence information or to protect against international terrorism;

''(2) approval of the electronic surveillance program in the application is consistent with the Constitution of the United States;

''(3) the electronic surveillance program is reasonably designed to ensure that the communications that are acquired are communications of or with—

''(A) a foreign power that engages in international terrorism or activities in preparation therefor;

''(B) an agent of a foreign power that is engaged in international terrorism or activities in preparation therefor;

''(C) a person reasonably believed to have communication with or be associated with a foreign power that is engaged in international terrorism or activities in preparation therefor or an agent of a foreign power that is engaged in international terrorism or activities in preparation therefor; or

''(D) a foreign power that poses an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States, or an agent of a foreign power thereof;

''(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

''(5) the application contains all statements and certifications required by section 703.

''(b) CONSIDERATIONS.—In considering the constitutionality of the electronic surveillance program under subsection (a), the Foreign Intelligence Surveillance Court may consider—

''(1) whether the electronic surveillance program has been implemented in accordance with the proposal by the Attorney General, by comparing—

''(A) the minimization procedures proposed with the minimization procedures actually implemented;

''(B) the nature of the information sought with the nature of the information actually obtained; and

''(C) the means and operational procedures proposed with the means and operational procedures actually implemented; and

''(2) whether foreign intelligence information has been obtained through the electronic surveillance program.

''(c) CONTENTS OF ORDER.—An order approving an electronic surveillance program under this section shall direct—

''(1) that the minimization procedures be followed;

''(2) that, upon the request of the applicant, specified communication or other common carriers, landlords, custodians, or other specified persons, furnish the applicant forthwith with all information, facilities, or technical assistance necessary to undertake the electronic surveillance program in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carriers, landlords, custodians, or other persons are providing potential targets of the electronic surveillance program;

''(3) that any records concerning the electronic surveillance program or the aid furnished or retained by such carriers, landlords, custodians, or other persons are maintained under security procedures approved by the Attorney General and the Director of National Intelligence; and

''(4) that the applicant compensate, at the prevailing rate, such carriers, landlords, custodians, or other persons for furnishing such aid.''.

SEC. 207. CONGRESSIONAL OVERSIGHT.

Title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 6, is amended by adding at the end the following:

''SEC. 705. CONGRESSIONAL OVERSIGHT.

''(a) IN GENERAL.—Not less often than every 180 days, the Attorney General shall submit to the congressional intelligence committees a report in classified form on the activities during the previous 180-day period under any electronic surveillance program authorized under this title.

''(b) CONTENTS.—Each report submitted under subsection (a) shall provide, with respect to the previous 180-day period, a description of—

''(1) the minimization procedures implemented;

''(2) the means and operational procedures by which the electronic surveillance program was executed and effected;

''(3) significant decisions of the Foreign Intelligence Surveillance Court on applications made under section 703;

''(4) the total number of applications made for orders approving electronic surveillance programs pursuant to this title; and

''(5) the total number of orders applied for that have been granted, modified, or denied.

''(c) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the authority or responsibility of any committee of either House of Congress to obtain such information as such committee may need to carry out its respective functions and duties.''.

SEC. 208. CLARIFICATION OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) REPEAL.—Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are repealed.

(b) CLARIFYING AMENDMENTS.—

(1) TITLE 18.—Section 2511(2) of title 18, United States Code, is amended—

(A) in paragraph (e), by striking '', as defined in section 101'' and all that follows through the end of the paragraph and inserting the following: ''under the Constitution or the Foreign Intelligence Surveillance Act of 1978.''; and

(B) in paragraph (f), by striking ''from international or foreign communications,'' and all that follows through the end of the paragraph and inserting ''that is authorized under a Federal statute or the Constitution of the United States.''.

(2) FISA.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking ''authorized by statute'' and inserting ''authorized by law''; and

(II) by striking ''or'' at the end;

(ii) in paragraph (2)—

(I) by striking ''authorized by statute'' and inserting ''authorized by law''; and

(II) by striking the period and inserting ''; or''; and

(iii) by adding at the end the following:

''(3) and knowingly discloses or uses information obtained under color of law by electronic surveillance in a manner or for a purpose not authorized by law.''; and

(B) in subsection (c)—

(i) by striking ''$10,000'' and inserting ''$100,000''; and

(ii) by striking ''five years'' and inserting ''15 years''.

SEC. 209. MODERNIZING AMENDMENTS TO FISA.

(a) REFERENCE.—In this section, a reference to ''FISA'' shall mean the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) DEFINITIONS.—Section 101 of FISA (50 U.S.C. 1801) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (C), by striking ''or'' after the semicolon; and

(B) by adding at the end the following:

''(D) otherwise is reasonably expected to possess, control, transmit, or receive foreign intelligence information while that person is in the United States, provided that the official making the certification required by section 104(a)(6) deems such foreign intelligence information to be significant; or'';

(2) by striking subsection (f) and inserting the following:

''(f) 'Electronic surveillance' means—

''(1) the installation or use of an electronic, mechanical, or other surveillance device for acquiring information by intentionally directing the surveillance at a particular known person who is reasonably believed to be in the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; or

''(2) the intentional acquisition of the contents of any communication under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are reasonably believed to be located within the United States.'';

(3) in subsection (h), by striking paragraph (4) and inserting the following:

''(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102 or 704, procedures that require that no contents of any communication originated or sent by a United States person shall be disclosed, disseminated, used or retained for longer than 7 days unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.''.

(4) by striking subsection (l); and

(5) by striking subsection (n) and inserting the following:

''(n) 'contents', when used with respect to a communication, includes any information concerning the substance, symbols, sounds, words, purport, or meaning of a communication, and does not include dialing, routing, addressing, or signaling information.''.

(c) ELECTRONIC SURVEILLANCE AUTHORIZATION.—Section 102 of FISA (50 U.S.C. 1802) is amended to read as follows:

''ELECTRONIC SURVEILLANCE AUTHORIZATION WITHOUT COURT ORDER; CERTIFICATION BY ATTORNEY GENERAL; REPORTS TO CONGRESSIONAL COMMITTEES; TRANSMITTAL UNDER SEAL; DUTIES AND COMPENSATION OF COMMUNICATION COMMON CARRIER; APPLICATIONS; JURISDICTION OF COURT

''SEC. 102. (a)(1) Notwithstanding any other law, the President through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to 1 year if the Attorney General certifies in writing under oath that the electronic surveillance is directed at—

''(A)(i) the acquisition of the contents of communications of foreign powers, as defined in paragraph (1), (2), or (3) of section 101(a), or a person other than a United States person acting as an agent of a foreign power, as defined in section 101(b)(1)(A) or (B); or

''(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in paragraph (1), (2), or (3) of section 101(a); and

''(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h);

if the Attorney General reports such minimization procedures and any changes thereto to the Select Committee on Intelligence of

the Senate and the Permanent Select Committee on Intelligence of the House of Representatives at least 30 days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

''(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under section 108(a). If an electronic surveillance authorized by this subsection is directed at an agent of a foreign power, the Attorney General's report assessing compliance with the minimization procedures shall also include a statement of the facts and circumstances relied upon to justify the belief that the target of the electronic surveillance is an agent of a foreign power.

''(3) The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of any certification under this subsection. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

''(A) an application for a court order with respect to the surveillance is made under section 104; or

''(B) the certification is necessary to determine the legality of the surveillance under section 106(f).

''(b)(1) Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the acquisition of foreign intelligence information for periods of up to 1 year concerning a person reasonably believed to be outside the United States if the Attorney General certifies in writing under oath that he has determined that—

''(A) the acquisition does not constitute electronic surveillance as defined in section 101(f);

''(B) the acquisition involves obtaining the foreign intelligence information from or with the assistance of a wire or electronic communications service provider, custodian, or other person (including any officer, employee, agent, or other specified person thereof) who has access to wire or electronic communications, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(C) a significant purpose of the acquisition is to obtain foreign intelligence information; and

''(D) the minimization procedures to be employed with respect to such acquisition activity meet the definition of minimization procedures under section 101(h).

''(2) Such certification need not identify the specific facilities, places, premises, or property at which the acquisition will be directed.

''(3) An acquisition undertaken pursuant to this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under section 108(a).

''(4) The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of any certification of the Attorney General under this subsection. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless the certification is necessary to determine the legality of the acquisition under subsection (o).

''(c) With respect to the acquisition authorized under this section, the Attorney General may direct a specified person to—

''(1) furnish the government forthwith all information, facilities, and assistance necessary to accomplish the acquisition in such a manner as will protect its secrecy and produce a minimum of interference with the services that such person is providing to the target; and

''(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such person wishes to maintain.

''(d) The government shall compensate, at the prevailing rate, such specified person for furnishing the aid set forth in subsection (c).

''(e) In the case of a failure to comply with a directive issued pursuant to this section, the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the directive. The court shall issue an order requiring the person or entity to comply with the directive forthwith if it finds that the directive was issued in accordance with subsection (a) or (b) and is otherwise lawful. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person or entity may be found.

''(f)(1)(A) A person receiving an Attorney General directive issued pursuant to this section may challenge the legality of that directive by filing a petition with the pool established by section 103(e)(1).

''(B) The presiding judge shall immediately assign a petition to one of the judges serving in the pool established by section 103(e)(1). Not later than 24 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part thereof that is the subject of the petition. If the assigned judge determines the petition is not frivolous, the assigned judge shall within 72 hours consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subsection.

''(2) A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that such directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply therewith.

''(3) Any directive not explicitly modified or set aside consistent with this subsection shall remain in full effect.

''(g) A petition for review of a decision under subsection (f) to affirm, modify, or set aside a directive by the Government or any person receiving such directive shall be made within 7 days of issuance of the decision required by subsection (f) to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such directive for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(h) Judicial proceedings under this section shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(i) All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

''(j) No cause of action shall lie in any court against any provider of a communication service or other person (including any officer, employee, agent, or other specified person thereof) for furnishing any information, facilities, or assistance in accordance with a directive under subsection (a) or (b).

''(k) Information acquired pursuant to an Attorney General authorization under this section concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by subsection (a) or (b), as applicable. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this section shall lose its privileged character. No information from an acquisition under this section may be used or disclosed by Federal officers or employees except for lawful purposes.

''(l) No information acquired pursuant to this section shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

''(m) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an acquisition under this section, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

''(n) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an acquisition under this section, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

''(o) Any person against whom evidence obtained or derived from an acquisition authorized pursuant to this section to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such acquisition on the grounds that—

''(1) the information was unlawfully acquired; or

''(2) the acquisition was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

''(p) Whenever a court or other authority is notified pursuant to subsection (m) or (n), whenever a motion is made pursuant to subsection (o), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain an Attorney General directive or other materials relating to the acquisition authorized under this section or to discover, obtain, or suppress evidence or information obtained or derived from the acquisition authorized under this section, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the directive, and such other materials relating to the acquisition as may be necessary to determine whether the acquisition authorized under this section was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the directive or other materials relating to the acquisition only where such disclosure is necessary to make an accurate determination of the legality of the acquisition.

''(q) If the United States district court pursuant to subsection (o) determines that the acquisition authorized under this section was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived or otherwise grant the motion of the aggrieved person. If the court determines that such acquisition was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

''(r) Orders granting motions or requests under subsection (o), decisions under this section that an acquisition was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of directives or other materials relating to such acquisition shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

''(s) Federal officers who acquire foreign intelligence information under this section may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

''(1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

''(2) sabotage, international terrorism, or the development or proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

''(3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

''(t) Coordination authorized by subsection (s) shall not preclude the certification required by subsection (a) or (b), as applicable.

''(u) RETENTION OF DIRECTIVES AND ORDERS.—Directives made and orders granted under this section shall be retained for a period of at least 10 years from the date when they were made.''.

(d) DESIGNATION OF JUDGES.—Section 103 of FISA (50 U.S.C. 1803) is amended—

(1) in subsection (a), by inserting, ''at least'' before ''seven of the United States judicial circuits''; and

(2) at the end by adding the following new subsection:

''(g) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under this section, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.''.

(e) APPLICATIONS FOR COURT ORDERS.—Section 104 of FISA (50 U.S.C. 1804) is amended—

(1) in subsection (a), by striking paragraphs (6) through (11) and inserting the following:

''(6) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official authorized by the President to conduct electronic surveillance for foreign intelligence purposes—

''(A) that the certifying official deems the information sought to be foreign intelligence information;

''(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;

''(C) that such information cannot reasonably be obtained by normal investigative techniques; and

''(D) including a statement of the basis for the certification that—

''(i) the information sought is the type of foreign intelligence information designated; and

''(ii) such information cannot reasonably be obtained by normal investigative techniques;

''(7) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter;

''(8) a summary description of the nature of the information sought and the type of communications or activities to be subject to the surveillance;

''(9) a summary statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

''(10) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance.'';

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in subsection (d)(1)(A), as redesignated by paragraph (3), by inserting after ''Secretary of State'' inserting ''Director of the Central Intelligence Agency''.

(f) ISSUANCE OF ORDER.—Section 105 of FISA (50 U.S.C. 1805) is amended—

(1) in subsection (a), by—

(A) striking paragraph (1); and

(B) redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) by striking paragraph (1) of subsection (c) and inserting the following:

''(1) An order approving an electronic surveillance under this section shall specify—

''(A) the identity, if known, or a description of the target of the electronic surveillance identified or described in the application pursuant to section 104(a)(3);

''(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;

''(C) the period of time during which the electronic surveillance is approved;

''(D) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance; and

''(E) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance.'';

(3) by striking subsection (d) and inserting the following:

''(d) Each order under this section shall specify the type of electronic surveillance involved, including whether physical entry is required.'';

(4) by striking paragraph (2) of subsection (e) and inserting the following:

''(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order and may be for a period not longer than the court determines to be reasonable or 1 year, whichever is less.'';

(5) by striking subsection (f) and inserting the following:

''(f)(1) Notwithstanding any other provision of this title, when an executive branch officer appointed by the President with the advice and consent of the Senate who is authorized by the President to conduct electronic surveillance reasonably determines that—

''(A) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

''(B) the factual basis for issuance of an order under this title to approve such surveillance exists;

that official may authorize the emergency employment of electronic surveillance in accordance with paragraph (2).

''(2) Under paragraph (1), the following requirements shall be satisfied:

''(A) The Attorney General shall be informed of the emergency electronic surveillance.

''(B) A judge having jurisdiction under section 103 shall be informed by the Attorney

General or his designee as soon as practicable following such authorization that the decision has been made to employ emergency electronic surveillance.

''(C) An application in accordance with this title shall be made to that judge or another judge having jurisdiction under section 103 as soon as practicable, but not more than 7 days after such surveillance is authorized. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of emergency authorization, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

''(D) The official authorizing the emergency employment of electronic surveillance shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.''; and

(6) in subsection (i)—

(A) by striking ''a wire or'' and inserting ''any'';

(B) by striking ''chapter'' and inserting ''title''; and

(C) by adding at the end '', or in response to certification by the Attorney General or his designee seeking information, facilities, or technical assistance from such person under section 102 of this title''.

(g) USE OF INFORMATION.—Section 106 of FISA (50 U.S.C. 1806) is amended—

(1) in subsection (i)—

(A) by striking ''radio''; and

(B) by inserting ''contain foreign intelligence information or'' after ''the Attorney General determines that the contents'' inserting ''contain foreign intelligence information or''; and

(2) in subsection (k), by striking ''1804(a)(7)'' and inserting ''104(a)(6)''.

(h) CONGRESSIONAL OVERSIGHT.—Section 108 of FISA (50 U.S.C. 1808) is amended by adding at the end the following:

''(c) DOCUMENT MANAGEMENT SYSTEM FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.—

''(1) SYSTEM PROPOSED.—The Attorney General and Director of National Intelligence shall, in consultation with the Director of the Federal Bureau of Investigation, the Director of the National Security Agency, the Director of the Central Intelligence Agency, and the court established under section 103(b), conduct a feasibility study to develop and implement a secure, classified document management system that permits the prompt preparation, modification, and review by appropriate personnel of the Department of Justice, the Federal Bureau of Investigation, the National Security Agency, and other applicable elements of the United States Government of applications under section 104 before their submittal to that court.

''(2) SCOPE OF SYSTEM.—The document management system proposed in paragraph (1) shall—

''(A) permit and facilitate the prompt submittal of applications and all other matters, including electronic filings, to the court established under section 103(b) under section 104 or 105(g)(5); and

''(B) permit and facilitate the prompt transmittal of rulings of that court to personnel submitting applications described in paragraph (1).''.

(i) AMENDMENTS TO FISA TITLE I RELATING TO WEAPONS OF MASS DESTRUCTION.—

(1) Section 101 of FISA, as amended by subsection (b) of this section, is further amended—

(A) in subsection (b)(1)—

(i) by striking ''or'' at the end of subparagraph (D);

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph (E):

''(E) engages in the development or proliferation of weapons of mass destruction, or activities in preparation therefor; or;'';

(B) in subsection (b)(2)(C), by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the development or proliferation of weapons of mass destruction''; and

(C) by inserting after subsection (k) the following new subsection (l):

''(l) 'Weapon of mass destruction' means—

''(1) any destructive device (as that term is defined in section 921 of title 18, United States Code) that is intended or has the capability, to cause death or serious bodily injury to a significant number of people;

''(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

''(3) any weapon involving a biological agent, toxin, or vector (as those terms are defined in section 178 of title 18, United States Code); or

''(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.''.

(2) Sections 101(e)(1)(B), 106(k)(1)(B), and 305(k)(1)(B) of FISA are each amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the development or proliferation of weapons of mass destruction''.

(j) CONFORMING AMENDMENTS TO TITLES I AND III OF FISA TO ACCOMMODATE INTERNATIONAL MOVEMENTS OF TARGETS.—

(1) Section 105(e) of FISA is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of surveillance notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

(2) Section 304(d) of FISA is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of physical search notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

SEC. 210. CONFORMING AMENDMENT TO TABLE OF CONTENTS.

The table of contents for the Foreign Intelligence Surveillance Act of 1978 is amended—

(1) by striking the item relating to section 102 and inserting the following new item:

''Sec. 102. Electronic surveillance authorization without court order; certification by attorney general; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court.'';

(2) by striking the items relating to sections 111, 309, and 404; and

(3) by striking the items related to title VII and section 701 and inserting the following:

''TITLE VII—ELECTRONIC SURVEILLANCE PROGRAMS

''Sec. 701. Definitions.

''Sec. 702. Foreign intelligence surveillance court jurisdiction to review electronic surveillance programs.

''Sec. 703. Applications for approval of electronic surveillance programs.

''Sec. 704. Approval of electronic surveillance programs.

''Sec. 705. Congressional oversight.

''TITLE VIII—EFFECTIVE DATE

''Sec. 801.Effective date.''.

By Mr. MCCONNELL (for himself, Mr. FRIST, and Mr. WARNER):

S. 3930. A bill to authorize trial by military commission for violations of the law of war, and for other purposes; read the first time.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3930

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Military Commissions Act of 2006''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Constitution of the United States grants to Congress the power ''To define and punish . . . Offenses against the Law of Nations'', as well as the power ''To declare War . . . To raise and support Armies . . . [and] To provide and maintain a Navy''.

(2) The military commission is the traditional tribunal for the trial of persons engaged in hostilities for violations of the law of war.

(3) Congress has, in the past, both authorized the use of military commission by statute and recognized the existence and authority of military commissions.

(4) Military commissions have been convened both by the President and by military commanders in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to exercise its authority under the Constitution to enact legislation authorizing and regulating the use of military commissions to try and punish violations of the law of war.

SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.

(a) IN GENERAL.—The President is authorized to establish military commissions for the trial of alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable

by military commission as provided in chapter 47 of title 10, United States Code, and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(c) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, imprisonment for life or a term of years, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

(e) ANNUAL REPORT ON TRIALS BY MILITARY COMMISSIONS.—

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

SEC. 4. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

"CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER I—GENERAL PROVISIONS

"§ 948a. Definitions

''In this chapter:

''(1) ALIEN.—The term 'alien' means an individual who is not a citizen of the United States.

''(2) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(3) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means an individual who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(4) UNLAWFUL ENEMY COMBATANT.—The term 'unlawful enemy combatant' means an individual engaged in hostilities against the United States who is not a lawful enemy combatant.

"§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title is therefore not binding on military commissions established under this chapter.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

''(d) STATUS OF MILITARY COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien enemy unlawful combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights at his trial by military commission.

"§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States is subject to trial by military commission as set forth in this chapter.

"§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) PUNISHMENTS.—A miliary commission under this chapter may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

"§ 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.

"§ 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, as 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.

"§ 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 he 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 in 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 he 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 he 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 him 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 shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

"§ 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 after the swearing of charges.

''(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), trial counsel detailed for a military commission under this chapter must 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 is 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 he 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) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

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

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

''(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.

"§ 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 proceedings of and testimony taken before the military commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

"§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

"§ 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 they are true in fact to the best of his 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 him as soon as practicable.

"§ 948r. Compulsory self-incrimination prohibited; statements obtained by torture or other methods of coercion

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Detainee Treatment Act of 2005), in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders it reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Detainee Treatment Act of 2005), in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders it reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not violate the cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the United States Constitution.

''§ 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.

''SUBCHAPTER IV—TRIAL PROCEDURE

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, 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) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from 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.

''(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

''(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

''(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) To the assistance of counsel.

''(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.

''(D)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under this clause is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(b) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(4)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (2)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) The provisions of this subsection shall not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

''(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

''(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(e) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This rule applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''(c) OATH DEFINED.—In this section, the term 'oath' includes an affirmation.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the

charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

"§ 949j. Opportunity to obtain witnesses and other evidence

''(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(B) shall run to any place where the United States shall have jurisdiction thereof.

''(b) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(c) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (b).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by courts-martial under chapter 47 of this title.

"§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission 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.

"§ 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 his 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 his 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 he 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.

"§ 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 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 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 members present at the time the vote is taken; and

''(D) all members present at the time the vote was taken 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 members present at the time the vote is taken.

''(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 members of the military commission under this chapter shall be not less than 12 members.

''(2) In any case described in paragraph (1) in which 12 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 members for the military commission (but not fewer than 5 members), and the military commission may be assembled, and the trial held, with not less than the number of 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 members were not reasonably available.

"§ 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.

"§ 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 his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member if the trial counsel is unable to authenticate it by reason of his 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 section 949d(e) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

"§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

"§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an

offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by Court of Military Commission Review.
''950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.
''950h. Appellate counsel
''950i. Execution of sentence; suspension of sentence.
''950j. Finality of proceedings, findings, and sentences.

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after accused has been give an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Waiver or withdrawal of appeal

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the Court of Military Commission Review under section 950f of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c), (d), or (e) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his

plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

"§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the Court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) RIGHT OF APPEAL.—The accused may appeal from a final decision of a military commission, and the United States may appeal as provided in section 950d of this title, to the Court of Military Commission Review in accordance with procedures prescribed under regulations of the Secretary.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

"§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the District of Columbia Circuit may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the District of Columbia Circuit of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which—

''(i) written notice of the final decision of the military commission is served on the accused or defense counsel; or

''(ii) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the District of Columbia Circuit of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the District of Columbia Circuit in a determination under subsection (a).

"§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

"§ 950i. Execution of sentence; suspension of sentence

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

"§ 950j. Finality of proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

"§ 950aa. Definitions; construction of certain offenses; common circumstances

''(a) DEFINITIONS.—In this subchapter:

''(1) The term 'military objective' means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

''(2) The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

''(3) The term 'protected property' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

''(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.

''§ 950bb. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

''§ 950cc. Principals

''Any person is punishable as a principle under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

''§ 950dd. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950ee. Conviction of lesser offenses

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950ff. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950gg. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

''§ 950hh. Murder of protected persons

''Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''§ 950ii. Attacking civilians

''Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950jj. Attacking civilian objects

''Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''§ 950kk. Attacking protected property

''Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''§ 950ll. Pillaging

''Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''§ 950mm. Denying quarter

''Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''§ 950nn. Taking hostages

''Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950oo. Employing poison or similar weapons

''Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950pp. Using protected persons as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack. or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950qq. Using protected property as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''§ 950rr. Torture

''(a) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''§ 950ss. Cruel or inhuman treatment

''(a) OFFENSE.—Any person subject to this chapter who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) DEFINITIONS.—In this section:

''(1) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(2) The term 'serious physical pain or suffering' means bodily injury that involves—

''(A) a substantial risk of death;

''(B) extreme physical pain;

''(C) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(D) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(3) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(A) the term 'serious' shall replace the term 'severe' where it appears; and

''(B) as to conduct occurring after the date of the enactment of the Military Commission Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''§ 950tt. Intentionally causing serious bodily injury

''(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SERIOUS BODILY INJURY DEFINED.—In this section, the term 'serious bodily injury' means bodily injury which involves—

''(1) a substantial risk of death;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''§ 950uu. Mutilating or maiming

''Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950vv. Murder in violation of the law of war

''Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''§ 950ww. Destruction of property in violation of the law of war

''Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''§ 950xx. Using treachery or perfidy

''Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950yy. Improperly using a flag of truce

''Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''§ 950zz. Improperly using a distinctive emblem

''Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''§ 950aaa. Intentionally mistreating a dead body

''Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

''§ 950bbb. Rape

''Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''§ 950ccc. Hijacking or hazarding a vessel or aircraft

''Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950ddd. Terrorism

''Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950eee. Providing material support for terrorism

''(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''§ 950fff. Wrongfully aiding the enemy

''Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''§ 950ggg. Spying

''Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''§ 950hhh. Conspiracy

''Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950iii. Contempt

''A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

''§ 950jjj. Perjury and obstruction of justice

''A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A and part II of subtitle A of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''Chapter 47A. Military Commissions 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modification.

SEC. 5. AMENDMENTS TO OTHER LAWS.

(a) DETAINEE TREATMENT ACT OF 2005.—Section 1004(b) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 42 U.S.C. 200dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of title, 10, United States Code

(the Uniform Code of Military Justice), is amended as follows:

(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.''.

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking ''by statute or law of war''.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting ''(other than military commissions under chapter 47A of this title)'' after ''other military tribunals''.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice)), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

(d) REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.—

(1) REVIEW BY SUPREME COURT.—Section 1259 of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) Cases tried by military commission and reviewed by the United States Court of Appeals for the District of Columbia Circuit under section 950g of title 10.''.

(2) DETAINEE TREATMENT ACT OF 2005.—Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(A) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(B) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(C) in subparagraph (C)—

(i) in clause (i)—

(I) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(II) by striking ''at Guantanamo Bay, Cuba''; and

(ii) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(D) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 6. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—

(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

(2) by adding at the end the following new subsection:

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who—

''(A) is currently in United States custody; and

''(B) has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien detained by the United States who—

''(A) is currently in United States custody; and

''(B) has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions, or any protocols thereto, in any habeas or civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States, is a party, as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 8. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (as to non-grave breach provisions of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 as defined in subsection (d) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(B) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or

conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commission Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take appropriate action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

SEC. 10. SEVERABILITY.

If any provision of this Act or amendment made by a provision of this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of such provisions and amendments to any other person or circumstance, shall not be affected thereby.

By Mr. MCCONNELL (for himself and Mr. FRIST):

S. 3931. A bill to establish procedures for the review of electronic surveillance programs; read the first time.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 3931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Terrorist Surveillance Act of 2006''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) After the terrorist attacks of September 11, 2001, President Bush authorized the National Security Agency to intercept communications between people inside the United States, including American citizens, and terrorism suspects overseas.

(2) One of the lessons learned from September 11, 2001, is that the enemies who seek to greatly harm and terrorize our Nation utilize technologies and techniques that defy conventional law enforcement practices.

(3) The President, as the constitutional officer most directly responsible for protecting the United States from attack, requires the ability and means to detect and track an enemy that can master and exploit modern technology.

(4) It is equally essential, however, that in protecting the United States against our enemies, the President does not compromise the very civil liberties that he seeks to safeguard. As Justice Hugo Black observed, ''The President's power, if any, to issue [an] order must stem either from an Act of Congress or from the Constitution itself.'' Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952) (opinion by Black, J.). Similarly, in 2004, Justice Sandra Day O'Connor explained in her plurality opinion for the Supreme Court in Hamdi v. Rumsfeld: ''We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens.'' Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004) (citations omitted).

(5) When deciding issues of national security, it is in our Nation's best interest that, to the extent feasible, all 3 branches of the Federal Government should be involved. This helps guarantee that electronic surveillance programs do not infringe on the constitutional rights of Americans, while at the same time ensuring that the President has all the powers and means necessary to detect and track our enemies and protect our Nation from attack.

(6) As Justice Sandra Day O'Connor explained in her plurality opinion for the Supreme Court in Hamdi v. Rumsfeld, ''Whatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all 3 branches when individual liberties are at stake.'' Hamdi v. Rumsfeld, 542 U.S. 507, 536 (2004) (citations omitted).

(7) Similarly, Justice Jackson famously explained in his Youngstown concurrence: ''When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate . . . When the President acts in absence of either

a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility . . . When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject.'' Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

(8) Congress clearly has the authority to enact legislation with respect to electronic surveillance programs. The Constitution provides Congress with broad powers of oversight over national security and foreign policy, under article I, section 8 of the Constitution of the United States, which confers on Congress numerous powers, including the powers—

(A) ''To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water'';

(B) ''To raise and support Armies'';

(C) ''To provide and maintain a Navy'';

(D) ''To make Rules for the Government and Regulation of the land and naval Forces'';

(E) ''To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions''; and

(F) ''To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States''.

(9) While Attorney General Alberto Gonzales explained that the executive branch reviews the electronic surveillance program of the National Security Agency every 45 days to ensure that the program is not overly broad, it is the belief of Congress that approval and supervision of electronic surveillance programs should be conducted outside of the executive branch, by the article III court established under section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) and the congressional intelligence committees. It is also the belief of Congress that it is appropriate for an article III court to pass upon the constitutionality of electronic surveillance programs that may be directed at Americans.

(10) The Foreign Intelligence Surveillance Court is the proper court to approve and supervise classified electronic surveillance programs because it is adept at maintaining the secrecy with which it was charged and it possesses the requisite expertise and discretion for adjudicating sensitive issues of national security.

(11) In 1975, [then] Attorney General Edward Levi, a strong defender of executive authority, testified that in times of conflict, the President needs the power to conduct long-range electronic surveillance and that a foreign intelligence surveillance court should be empowered to issue special approval orders in these circumstances.

(12) Granting the Foreign Intelligence Surveillance Court the authority to review electronic surveillance programs and pass upon their constitutionality is consistent with well-established, longstanding practices.

(13) The Foreign Intelligence Surveillance Court already has broad authority to approve surveillance of members of international conspiracies, in addition to granting warrants for surveillance of a particular individual under sections 104, 105, and 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804, 1805, and 1842).

(14) Prosecutors have significant flexibility in investigating domestic conspiracy cases. Courts have held that flexible warrants comply with the 4th amendment to the Constitution of the United States when they relate to complex, far-reaching, and multifaceted criminal enterprises like drug conspiracies and money laundering rings. The courts recognize that applications for search warrants must be judged in a common sense and realistic fashion, and the courts permit broad warrant language where, due to the nature and circumstances of the investigation and the criminal organization, more precise descriptions are not feasible.

(15) The Supreme Court, in the ''Keith Case'', United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297 (1972), recognized that the standards and procedures used to fight ordinary crime may not be applicable to cases involving national security. The Court recognized that national ''security surveillance may involve different policy and practical considerations from the surveillance of ordinary crime'' and that courts should be more flexible in issuing warrants in national security cases. United States v. United States District Court for the Eastern District of Michigan, 407 U.S. 297, 322 (1972).

(16) By authorizing the Foreign Intelligence Surveillance Court to review electronic surveillance programs, Congress enables the President to use the necessary means to guard our national security, while also protecting the civil liberties and constitutional rights that we cherish.

SEC. 3. DEFINITIONS.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating title VII as title VIII;

(2) by redesignating section 701 as section 801; and

(3) by inserting after title VI the following:

''TITLE VII—ELECTRONIC SURVEILLANCE PROGRAMS

''SEC. 701. DEFINITIONS.

''As used in this title—

''(1) the terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign power', 'international terrorism', 'minimization procedures', 'person', 'United States', and 'United States person' have the same meaning as in section 101;

''(2) the term 'congressional intelligence committees' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

''(3) the term 'electronic surveillance program' means a program to engage in electronic surveillance—

''(A) that has as a significant purpose the gathering of foreign intelligence information or protecting against international terrorism;

''(B) where it is not feasible to name every person, address, or location to be subjected to electronic surveillance;

''(C) where effective gathering of foreign intelligence information requires the flexibility to begin electronic surveillance immediately after learning of suspect activity; and

''(D) where effective gathering of foreign intelligence information requires an extended period of electronic surveillance;

''(4) the term 'foreign intelligence information' has the same meaning as in section 101(e) and includes information necessary to protect against international terrorism;

''(5) the term 'Foreign Intelligence Surveillance Court' means the court established under section 103(a); and

''(6) the term 'Foreign Intelligence Surveillance Court of Review' means the court established under section 103(b).''.

SEC. 4. FOREIGN INTELLIGENCE SURVEILLANCE COURT JURISDICTION TO REVIEW ELECTRONIC SURVEILLANCE PROGRAMS.

(a) IN GENERAL.—Title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 3, is amended by adding at the end the following:

''SEC. 702. FOREIGN INTELLIGENCE SURVEILLANCE COURT JURISDICTION TO REVIEW ELECTRONIC SURVEILLANCE PROGRAMS.

''(a) AUTHORIZATION OF REVIEW.—

''(1) INITIAL AUTHORIZATION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to issue an order under this title, lasting not longer than 90 days, that authorizes an electronic surveillance program to obtain foreign intelligence information or to protect against international terrorism.

''(2) REAUTHORIZATION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to reauthorize an electronic surveillance program for a period of time not longer than such court determines to be reasonable. There shall be no limit on the number of times the Attorney General may seek reauthorization of an electronic surveillance program.

''(3) RESUBMISSION OR APPEAL.—In the event that the Foreign Intelligence Surveillance Court refuses to approve an application under this subsection, the court shall state its reasons in a written opinion, which it shall submit to the Attorney General. The Attorney General or his designee may submit a new application under section 703 for the electronic surveillance program, with no limit on the number of resubmissions that may be made. Alternatively, the Attorney General may appeal the decision of the Foreign Intelligence Surveillance Court to the Foreign Intelligence Surveillance Court of Review.

''(4) CONTINUED SURVEILLANCE UNDER TITLE I.—

''(A) IN GENERAL.—If, at any time, the Attorney General determines that the known facts and circumstances relating to any target within the United States under this title satisfy the criteria for an application under section 104 for an order for electronic surveillance of the target under section 105, the Attorney General shall—

''(i) discontinue the surveillance of the target under this title; or

''(ii) continue the surveillance of the target under this title, subject to the requirements of subparagraph (B).

''(B) CONTINUATION OF SURVEILLANCE.—

''(i) IN GENERAL.—The Attorney General may continue surveillance of a target under this title as specified in subparagraph (A)(ii) only if the Attorney General makes an application under section 104 for an order for electronic surveillance of the target under section 105 as soon as the Attorney General determines practicable after the date on which the Attorney General makes the determination to continue surveillance of the target under subparagraph (A)(ii).

''(ii) PERIOD.—The period during which the Attorney General may continue surveillance of a target under this title after the Attorney General has determined that making an application is practicable shall be limited to a reasonable period, as determined by the Attorney General, during which the application is prepared and the period during which the application of the Attorney General under section 104 for an order for electronic surveillance of the target under section 105 is pending under title I, including during any period in which appeal from the denial of the

application is pending with the Foreign Intelligence Surveillance Court of Review or the Supreme Court under section 103(b).

''(b) MANDATORY TRANSFER FOR REVIEW.—

''(1) IN GENERAL.—In any case before any court challenging the legality of classified communications intelligence activity relating to a foreign threat, including an electronic surveillance program, or in which the legality of any such activity or program is in issue, if the Attorney General files an affidavit under oath that the case should be transferred to the Foreign Intelligence Surveillance Court of Review because further proceedings in the originating court would harm the national security of the United States, the originating court shall transfer the case of the Foreign Intelligence Surveillance for further proceedings under this subsection.

''(2) PROCEDURES FOR REVIEW.—The Foreign Intelligence Surveillance Court shall have jurisdiction as appropriate to determine standing and the legality of the program to the extent necessary for resolution of the underlying case. All proceedings under this paragraph shall be conducted in accordance with the procedures set forth in section 106(f). In the event the Foreign Intelligence Surveillance Court determines that, in the context of a criminal proceeding, the Constitution of the United States would require the disclosure of national security information, any such constitutionally required disclosure shall be governed by the Classified Information Procedures Act, (18 U.S.C. App.), or if applicable, section 2339B(f) of title 18, United States Code.

''(3) APPEAL, CERTIORARI, AND EFFECTS OF DECISIONS.—The decision of the Foreign Intelligence Surveillance Court made under paragraphs (1) and (2), including a decision that the disclosure of national security information is constitutionally required, shall be subject to review by the Foreign Intelligence Surveillance Court of Review under section 103(b). The Supreme Court of the United States shall have jurisdiction to review decisions of the Foreign Intelligence Surveillance Court of Review by writ of certiorari granted upon the petition of the United States. The decision by the Foreign Intelligence Surveillance Court shall otherwise be binding in all other courts.

''(4) DISMISSAL.—The Foreign Intelligence Surveillance Court or a court that is an originating court under paragraph (1) may dismiss a challenge to the legality of an electronic surveillance program for any reason provided for under law.

''(5) PRESERVATION OF LITIGATION PRIVILEGES.—Nothing in this Act shall be construed to abrogate, limit, or affect any litigation privileges in any court.''.

SEC. 5. APPLICATIONS FOR APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

Title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 4, is amended by adding at the end the following:

''SEC. 703. APPLICATIONS FOR APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

''(a) IN GENERAL.—Each application for approval of an electronic surveillance program under this title (including resubmission or application for reauthorization) shall—

''(1) be made by the Attorney General or his designee;

''(2) include a statement of the authority conferred on the Attorney General by the President of the United States;

''(3) include a statement setting forth the legal basis for the conclusion by the Attorney General that the electronic surveillance program is consistent with the Constitution of the United States;

''(4) certify that a significant purpose of the electronic surveillance program is to obtain foreign intelligence information or to protect against international terrorism;

''(5) certify that the information sought cannot reasonably be obtained by normal investigative techniques

''(6) certify that the information sought cannot reasonably be obtained through an application under section 104;

''(7) include a statement of the means and operational procedures by which the electronic surveillance will be executed and effected;

''(8) include an explanation of how the electronic surveillance program is reasonably designed to ensure that the communications that are acquired are communications of or with—

''(A) a foreign power that engages in international terrorism or activities in preparation therefor;

''(B) an agent of a foreign power that engages in international terrorism or activities in preparation therefor;

''(C) a person reasonably believed to have communication with or be associated with a foreign power that engages in international terrorism or activities in preparation therefor or an agent of a foreign power that engages in international terrorism or activities in preparation therefor; or

''(D) a foreign power that poses an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States, or an agent of a foreign power thereof;

''(9) include a statement of the proposed minimization procedures;

''(10) if the electronic surveillance program that is the subject of the application was initiated prior to the date the application was submitted, specify the date that the program was initiated;

''(11) include a description of all previous applications that have been made under this title involving the electronic surveillance program in the application (including the minimization procedures and the means and operational procedures proposed) and the decision on each previous application; and

''(12) include a statement of facts concerning the implementation of the electronic surveillance program described in the application, including, for any period of operation of the program authorized not less than 90 days prior to the date of submission of the application—

''(A) the minimization procedures implemented; and

''(B) the means and operational procedures by which the electronic surveillance was executed and effected.

''(b) ADDITIONAL INFORMATION.—The Foreign Intelligence Surveillance Court may require the Attorney General to furnish such other information as may be necessary to make a determination under section 704.''.

SEC. 6. APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

Title VII of the Foreign Intelligence Surveillance Act 18 of 1978, as amended by section 5, is amended by adding at the end the following:

''SEC. 704. APPROVAL OF ELECTRONIC SURVEILLANCE PROGRAMS.

''(a) NECESSARY FINDINGS.—Upon receipt of an application under section 703, the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested, or as modified, approving the electronic surveillance program if it finds that—

''(1) the President has authorized the Attorney General to make the application for electronic surveillance for foreign intelligence information or to protect against international terrorism;

''(2) approval of the electronic surveillance program in the application is consistent with the Constitution of the United States;

''(3) the electronic surveillance program is reasonably designed to ensure that the communications that are acquired are communications of or with—

''(A) a foreign power that engages in international terrorism or activities in preparation therefor;

''(B) an agent of a foreign power that is engaged in international terrorism or activities in preparation therefor;

''(C) a person reasonably believed to have communication with or be associated with a foreign power that is engaged in international terrorism or activities in preparation therefor or an agent of a foreign power that is engaged in international terrorism or activities in preparation therefor; or

''(D) a foreign power that poses an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States, or an agent of a foreign power thereof;

''(4) the proposed minimization procedures meet the definition of minimization procedures under section 101(h); and

''(5) the application contains all statements and certifications required by section 703.

''(b) CONSIDERATIONS.—In considering the constitutionality of the electronic surveillance program under subsection (a), the Foreign Intelligence Surveillance Court may consider—

''(1) whether the electronic surveillance program has been implemented in accordance with the proposal by the Attorney General, by comparing—

''(A) the minimization procedures proposed with the minimization procedures actually implemented;

''(B) the nature of the information sought with the nature of the information actually obtained; and

''(C) the means and operational procedures proposed with the means and operational procedures actually implemented; and

''(2) whether foreign intelligence information has been obtained through the electronic surveillance program.

''(c) CONTENTS OF ORDER.—An order approving an electronic surveillance program under this section shall direct—

''(1) that the minimization procedures be followed;

''(2) that, upon the request of the applicant, specified communication or other common carriers, landlords, custodians, or other specified persons, furnish the applicant forthwith with all information, facilities, or technical assistance necessary to undertake the electronic surveillance program in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carriers, landlords, custodians, or other persons are providing potential targets of the electronic surveillance program;

''(3) that any records concerning the electronic surveillance program or the aid furnished or retained by such carriers, landlords, custodians, or other persons are maintained under security procedures approved by the Attorney General and the Director of National Intelligence; and

''(4) that the applicant compensate, at the prevailing rate, such carriers, landlords, custodians, or other persons for furnishing such aid.''.

SEC. 7. CONGRESSIONAL OVERSIGHT.

Title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 6, is amended by adding at the end the following:

"SEC. 705. CONGRESSIONAL OVERSIGHT.

''(a) IN GENERAL.—Not less often than every 180 days, the Attorney General shall submit to the congressional intelligence committees a report in classified form on the activities during the previous 180-day period under any electronic surveillance program authorized under this title.

''(b) CONTENTS.—Each report submitted under subsection (a) shall provide, with respect to the previous 180-day period, a description of—

''(1) the minimization procedures implemented;

''(2) the means and operational procedures by which the electronic surveillance program was executed and effected;

''(3) significant decisions of the Foreign Intelligence Surveillance Court on applications made under section 703;

''(4) the total number of applications made for orders approving electronic surveillance programs pursuant to this title; and

''(5) the total number of orders applied for that have been granted, modified, or denied.

''(c) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the authority or responsibility of any committee of either House of Congress to obtain such information as such committee may need to carry out its respective functions and duties.''.

SEC. 8. CLARIFICATION OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) REPEAL.—Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are repealed.

(b) CLARIFYING AMENDMENTS.—

(1) TITLE 18.—Section 2511(2) of title 18, United States Code, is amended—

(A) in paragraph (e), by striking '', as defined in section 101'' and all that follows through the end of the paragraph and inserting the following: ''under the Constitution or the Foreign Intelligence Surveillance Act of 1978.''; and

(B) in paragraph (f), by striking ''from international or foreign communications,'' and all that follows through the end of the paragraph and inserting ''that is authorized under a Federal statute or the Constitution of the United States.''.

(2) FISA.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking ''authorized by statute'' and inserting ''authorized by law''; and

(II) by striking ''or'' at the end;

(ii) in paragraph (2)—

(I) by striking ''authorized by statute'' and inserting ''authorized by law''; and

(II) by striking the period and inserting ''; or''; and

(iii) by adding at the end the following:

''(3) and knowingly discloses or uses information obtained under color of law by electronic surveillance in a manner or for a purpose not authorized by law.''; and

(B) in subsection (c)—

(i) by striking ''$10,000'' and inserting ''$100,000''; and

(ii) by striking ''five years'' and inserting ''15 years''.

SEC. 9. MODERNIZING AMENDMENTS TO FISA.

(a) REFERENCE.—In this section, a reference to ''FISA'' shall mean the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) DEFINITIONS.—Section 101 of FISA (50 U.S.C. 1801) is amended—

(1) in subsection (b)(1)—

(A) in subparagraph (C), by striking ''or'' after the semicolon; and

(B) by adding at the end the following:

''(D) otherwise is reasonably expected to possess, control, transmit, or receive foreign intelligence information while that person is in the United States, provided that the official making the certification required by section 104(a)(6) deems such foreign intelligence information to be significant; or'';

(2) by striking subsection (f) and inserting the following:

''(f) 'Electronic surveillance' means—

''(1) the installation or use of an electronic, mechanical, or other surveillance device for acquiring information by intentionally directing the surveillance at a particular known person who is reasonably believed to be in the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; or

''(2) the intentional acquisition of the contents of any communication under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are reasonably believed to be located within the United States.'';

(3) in subsection (h), by striking paragraph (4) and inserting the following:

''(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 102 or 704, procedures that require that no contents of any communication originated or sent by a United States person shall be disclosed, disseminated, used or retained for longer than 7 days unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.''.

(4) by striking subsection (l); and

(5) by striking subsection (n) and inserting the following:

''(n) 'contents', when used with respect to a communication, includes any information concerning the substance, symbols, sounds, words, purport, or meaning of a communication, and does not include dialing, routing, addressing, or signaling information.''.

(c) ELECTRONIC SURVEILLANCE AUTHORIZATION.—Section 102 of FISA (50 U.S.C. 1802) is amended to read as follows:

''ELECTRONIC SURVEILLANCE AUTHORIZATION WITHOUT COURT ORDER; CERTIFICATION BY ATTORNEY GENERAL; REPORTS TO CONGRESSIONAL COMMITTEES; TRANSMITTAL UNDER SEAL; DUTIES AND COMPENSATION OF COMMUNICATION COMMON CARRIER; APPLICATIONS; JURISDICTION OF COURT

''SEC. 102. (a)(1) Notwithstanding any other law, the President through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to 1 year if the Attorney General certifies in writing under oath that the electronic surveillance is directed at—

''(A)(i) the acquisition of the contents of communications of foreign powers, as defined in paragraph (1), (2), or (3) of section 101(a), or a person other than a United States person acting as an agent of a foreign power, as defined in section 101(b)(1)(A) or (B); or

''(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in paragraph (1), (2), or (3) of section 101(a); and

''(B) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h);

if the Attorney General reports such minimization procedures and any changes thereto to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives at least 30 days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

''(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under section 108(a). If an electronic surveillance authorized by this subsection is directed at an agent of a foreign power, the Attorney General's report assessing compliance with the minimization procedures shall also include a statement of the facts and circumstances relied upon to justify the belief that the target of the electronic surveillance is an agent of a foreign power.

''(3) The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of any certification under this subsection. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

''(A) an application for a court order with respect to the surveillance is made under section 104; or

''(B) the certification is necessary to determine the legality of the surveillance under section 106(f).

''(b)(1) Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the acquisition of foreign intelligence information for periods of up to 1 year concerning a person reasonably believed to be outside the United States if the Attorney General certifies in writing under oath that he has determined that—

''(A) the acquisition does not constitute electronic surveillance as defined in section 101(f);

''(B) the acquisition involves obtaining the foreign intelligence information from or with the assistance of a wire or electronic communications service provider, custodian, or other person (including any officer, employee, agent, or other specified person thereof) who has access to wire or electronic communications, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(C) a significant purpose of the acquisition is to obtain foreign intelligence information; and

''(D) the minimization procedures to be employed with respect to such acquisition activity meet the definition of minimization procedures under section 101(h).

''(2) Such certification need not identify the specific facilities, places, premises, or property at which the acquisition will be directed.

''(3) An acquisition undertaken pursuant to this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under section 108(a).

''(4) The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of any certification of the Attorney General under this subsection. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless the certification is necessary to determine the legality of the acquisition under subsection (o).

''(c) With respect to the acquisition authorized under this section, the Attorney General may direct a specified person to—

''(1) furnish the government forthwith all information, facilities, and assistance necessary to accomplish the acquisition in such a manner as will protect its secrecy and produce a minimum of interference with the services that such person is providing to the target; and

''(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such person wishes to maintain.

''(d) The government shall compensate, at the prevailing rate, such specified person for furnishing the aid set forth in subsection (c).

''(e) In the case of a failure to comply with a directive issued pursuant to this section, the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the directive. The court shall issue an order requiring the person or entity to comply with the directive forthwith if it finds that the directive was issued in accordance with subsection (a) or (b) and is otherwise lawful. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person or entity may be found.

''(f)(1)(A) A person receiving an Attorney General directive issued pursuant to this section may challenge the legality of that directive by filing a petition with the pool established by section 103(e)(1).

''(B) The presiding judge shall immediately assign a petition to one of the judges serving in the pool established by section 103(e)(1). Not later than 24 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part thereof that is the subject of the petition. If the assigned judge determines the petition is not frivolous, the assigned judge shall within 72 hours consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subsection.

''(2) A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that such directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply therewith.

''(3) Any directive not explicitly modified or set aside consistent with this subsection shall remain in full effect.

''(g) A petition for review of a decision under subsection (f) to affirm, modify, or set aside a directive by the Government or any person receiving such directive shall be made within 7 days of issuance of the decision required by subsection (f) to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such directive for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(h) Judicial proceedings under this section shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(i) All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

''(j) No cause of action shall lie in any court against any provider of a communication service or other person (including any officer, employee, agent, or other specified person thereof) for furnishing any information, facilities, or assistance in accordance with a directive under subsection (a) or (b).

''(k) Information acquired pursuant to an Attorney General authorization under this section concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by subsection (a) or (b), as applicable. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this section shall lose its privileged character. No information from an acquisition under this section may be used or disclosed by Federal officers or employees except for lawful purposes.

''(l) No information acquired pursuant to this section shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

''(m) Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an acquisition under this section, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

''(n) Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an acquisition under this section, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

''(o) Any person against whom evidence obtained or derived from an acquisition authorized pursuant to this section to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such acquisition on the grounds that—

''(1) the information was unlawfully acquired; or

''(2) the acquisition was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

''(p) Whenever a court or other authority is notified pursuant to subsection (m) or (n), whenever a motion is made pursuant to subsection (o), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain an Attorney General directive or other materials relating to the acquisition authorized under this section or to discover, obtain, or suppress evidence or information obtained or derived from the acquisition authorized under this section, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the directive, and such other materials relating to the acquisition as may be necessary to determine whether the acquisition authorized under this section was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the directive or other materials relating to the acquisition only where such disclosure is necessary to make an accurate determination of the legality of the acquisition.

''(q) If the United States district court pursuant to subsection (o) determines that the acquisition authorized under this section was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived or otherwise grant the motion of the aggrieved person. If the court determines that such acquisition was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

''(r) Orders granting motions or requests under subsection (o), decisions under this section that an acquisition was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of directives or other materials relating to such acquisition shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

''(s) Federal officers who acquire foreign intelligence information under this section may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the

authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

''(1) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

''(2) sabotage, international terrorism, or the development or proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

''(3) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

''(t) Coordination authorized by subsection (s) shall not preclude the certification required by subsection (a) or (b), as applicable.

''(u) RETENTION OF DIRECTIVES AND ORDERS.—Directives made and orders granted under this section shall be retained for a period of at least 10 years from the date when they were made.''.

(d) DESIGNATION OF JUDGES.—Section 103 of FISA (50 U.S.C. 1803) is amended—

(1) in subsection (a), by inserting, ''at least'' before ''seven of the United States judicial circuits''; and

(2) at the end by adding the following new subsection:

''(g) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under this section, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.''.

(e) APPLICATIONS FOR COURT ORDERS.—Section 104 of FISA (50 U.S.C. 1804) is amended—

(1) in subsection (a), by striking paragraphs (6) through (11) and inserting the following:

''(6) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official authorized by the President to conduct electronic surveillance for foreign intelligence purposes—

''(A) that the certifying official deems the information sought to be foreign intelligence information;

''(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;

''(C) that such information cannot reasonably be obtained by normal investigative techniques; and

''(D) including a statement of the basis for the certification that—

''(i) the information sought is the type of foreign intelligence information designated; and

''(ii) such information cannot reasonably be obtained by normal investigative techniques;

''(7) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this title should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter;

''(8) a summary description of the nature of the information sought and the type of communications or activities to be subject to the surveillance;

''(9) a summary statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

''(10) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance.'';

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in subsection (d)(1)(A), as redesignated by paragraph (3), by inserting after ''Secretary of State'' inserting ''Director of the Central Intelligence Agency''.

(f) ISSUANCE OF ORDER.—Section 105 of FISA (50 U.S.C. 1805) is amended—

(1) in subsection (a), by—

(A) striking paragraph (1); and

(B) redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) by striking paragraph (1) of subsection (c) and inserting the following:

''(1) An order approving an electronic surveillance under this section shall specify—

''(A) the identity, if known, or a description of the target of the electronic surveillance identified or described in the application pursuant to section 104(a)(3);

''(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;

''(C) the period of time during which the electronic surveillance is approved;

''(D) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance; and

''(E) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance.'';

(3) by striking subsection (d) and inserting the following:

''(d) Each order under this section shall specify the type of electronic surveillance involved, including whether physical entry is required.'';

(4) by striking paragraph (2) of subsection (e) and inserting the following:

''(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order and may be for a period not longer than the court determines to be reasonable or 1 year, whichever is less.'';

(5) by striking subsection (f) and inserting the following:

''(f)(1) Notwithstanding any other provision of this title, when an executive branch officer appointed by the President with the advice and consent of the Senate who is authorized by the President to conduct electronic surveillance reasonably determines that—

''(A) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

''(B) the factual basis for issuance of an order under this title to approve such surveillance exists;

that official may authorize the emergency employment of electronic surveillance in accordance with paragraph (2).

''(2) Under paragraph (1), the following requirements shall be satisfied:

''(A) The Attorney General shall be informed of the emergency electronic surveillance.

''(B) A judge having jurisdiction under section 103 shall be informed by the Attorney General or his designee as soon as practicable following such authorization that the decision has been made to employ emergency electronic surveillance.

''(C) An application in accordance with this title shall be made to that judge or another judge having jurisdiction under section 103 as soon as practicable, but not more than 7 days after such surveillance is authorized. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of emergency authorization, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.

''(D) The official authorizing the emergency employment of electronic surveillance shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.''; and

(6) in subsection (i)—

(A) by striking ''a wire or'' and inserting ''any'';

(B) by striking ''chapter'' and inserting ''title''; and

(C) by adding at the end '', or in response to certification by the Attorney General or his designee seeking information, facilities, or technical assistance from such person under section 102 of this title''.

(g) USE OF INFORMATION.—Section 106 of FISA (50 U.S.C. 1806) is amended—

(1) in subsection (i)—

(A) by striking ''radio''; and

(B) by inserting ''contain foreign intelligence information or'' after ''the Attorney General determines that the contents'' inserting ''contain foreign intelligence information or''; and

(2) in subsection (k), by striking ''1804(a)(7)'' and inserting ''104(a)(6)''.

(h) CONGRESSIONAL OVERSIGHT.—Section 108 of FISA (50 U.S.C. 1808) is amended by adding at the end the following:

''(c) DOCUMENT MANAGEMENT SYSTEM FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.—

''(1) SYSTEM PROPOSED.—The Attorney General and Director of National Intelligence shall, in consultation with the Director of the Federal Bureau of Investigation, the Director of the National Security Agency, the Director of the Central Intelligence Agency, and the court established under section 103(b), conduct a feasibility study to develop and implement a secure, classified document management system that permits the prompt preparation, modification, and review by appropriate personnel of the Department of Justice, the Federal Bureau of Investigation, the National Security Agency, and other applicable elements of the United States Government of applications under section 104 before their submittal to that court.

''(2) SCOPE OF SYSTEM.—The document management system proposed in paragraph (1) shall—

''(A) permit and facilitate the prompt submittal of applications and all other matters, including electronic filings, to the court established under section 103(b) under section 104 or 105(g)(5); and

''(B) permit and facilitate the prompt transmittal of rulings of that court to personnel submitting applications described in paragraph (1).''.

(i) AMENDMENTS TO FISA TITLE I RELATING TO WEAPONS OF MASS DESTRUCTION.—

(1) Section 101 of FISA, as amended by subsection (b) of this section, is further amended—

(A) in subsection (b)(1)—

(i) by striking ''or'' at the end of subparagraph (D);

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph (E):

''(E) engages in the development or proliferation of weapons of mass destruction, or activities in preparation therefor; or;'';

(B) in subsection (b)(2)(C), by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the development or proliferation of weapons of mass destruction''; and

(C) by inserting after subsection (k) the following new subsection (l):

''(l) 'Weapon of mass destruction' means—

''(1) any destructive device (as that term is defined in section 921 of title 18, United States Code) that is intended or has the capability, to cause death or serious bodily injury to a significant number of people;

''(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

''(3) any weapon involving a biological agent, toxin, or vector (as those terms are defined in section 178 of title 18, United States Code); or

''(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.''.

(2) Sections 101(e)(1)(B), 106(k)(1)(B), and 305(k)(1)(B) of FISA are each amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the development or proliferation of weapons of mass destruction''.

(j) CONFORMING AMENDMENTS TO TITLES I AND III OF FISA TO ACCOMMODATE INTERNATIONAL MOVEMENTS OF TARGETS.—

(1) Section 105(e) of FISA is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of surveillance notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

(2) Section 304(d) of FISA is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of physical search notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

SEC. 10. CONFORMING AMENDMENT TO TABLE OF CONTENTS.

The table of contents for the Foreign Intelligence Surveillance Act of 1978 is amended—

(1) by striking the item relating to section 102 and inserting the following new item:

''Sec. 102. Electronic surveillance authorization without court order; certification by attorney general; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court.'';

(2) by striking the items relating to sections 111, 309, and 404; and

(3) by striking the items related to title VII and section 701 and inserting the following:

''TITLE VII—ELECTRONIC SURVEILLANCE PROGRAMS

''Sec. 701. Definitions.

''Sec. 702. Foreign intelligence surveillance court jurisdiction to review electronic surveillance programs.

''Sec. 703. Applications for approval of electronic surveillance programs.

''Sec. 704. Approval of electronic surveillance programs.

''Sec. 705. Congressional oversight.

''TITLE VIII—EFFECTIVE DATE

''Sec. 801. Effective date.''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5035. Mr. MCCONNELL (for Mr. SHELBY (for himself and Mr. SARBANES)) proposed an amendment to the bill S. 3850, to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

TEXT OF AMENDMENTS

SA 5035. Mr. MCCONNELL (for Mr. SHELBY (for himself and Mr. SARBANES)) proposed an amendment to the bill S. 3850, to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry; as follows:

On page 8, line 23, insert before the semicolon '', except as provided in subparagraph (D)''.

On page 10, line 3, strike ''(D)'' and insert ''(E)''.

On page 10, between lines 2 and 3, insert the following:

''(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a non-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.''.

On page 14, line 15, strike ''the authority'' and insert ''exclusive authority''.

On page 15, line 11, strike ''organizations,'' and all that follows through line 15 and insert the following: ''organizations. Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.''.

On page 27, between lines 5 and 6, insert the following:

''(o) NRSROs SUBJECT TO COMMISSION AUTHORITY.—

''(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

''(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.''.

On page 27, line 6, strike ''(o)'' and insert ''(p)''.

On page 27, strike lines 6 and 7, and insert the following:

''(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—''.

On page 28, line 25, strike ''and'' and all that follows through ''(B) in'' on page 29, line 1, and insert the following:

''(B) in section 202(a)(11) (15 U.S.C. 80b–2(a)(11)), by striking 'or (F)' and inserting the following: '(F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (G)'; and

''(C) in''.

On page 33, strike lines 1 through 5.

ADJOURNMENT UNTIL MONDAY, SEPTEMBER 25, 2006, AT 2 P.M.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:40 a.m., adjourned until Monday, September 25, 2006, at 2 p.m.