

## **Changes to Military Commissions Act of 2009 from 2010 to 2013**

### **10 USCS § 949a**

#### **§ 949a. Rules**

2011. Act Dec. 31, 2011, in subsec. (b)(2)(C), in cls. (i) and (ii), substituted "sworn" for "preferred".

### **10 USCS § 949b**

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

2011. Act Dec. 31, 2011, in subsec. (b), in para. (1)(A), substituted "a judge on" for "a military appellate judge or other duly appointed judge under this chapter on", in para. (2), substituted "a judge on" for "a military appellate judge on", and in para. (3)(B), substituted "a judge on" for "an appellate military judge or a duly appointed appellate judge on".

### **10 USCS § 949f**

#### **§ 949f. Challenges**

2013. Act Dec. 26, 2013, in subsec. (a), inserted "primary or alternate"; and in subsec. (b), added the sentence beginning "Nothing in this section. . .".

### **10 USCS § 949i**

#### **§ 949i. Pleas of the accused**

2011. Act Dec. 31, 2011, in subsec. (b), inserted ", including a charge or specification that has been referred capital,", inserted "by the military judge" following "entered", and inserted "by the members"; and added subsec. (c).

## **10 USCS § 949m**

### **§ 949m. Number of votes required**

2011. Act Dec. 31, 2011, in subsec. (b)(2), in subpara. (C), inserted ", or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i(b) of this title", and in subpara. (D), inserted "on the sentence".

2013. Act Dec. 31, 2013, in subsecs. (a) through (c), inserted "primary" preceding "members" wherever appearing; and added subsec. (b)(4).

## **10 USCS § 950f**

### **§ 950f. Review by United States Court of Military Commission Review**

2011. Act Dec. 31, 2011, in subsec. (a), substituted "judges on the Court" for "appellate military judges".

## **10 USCS § 950g**

### **§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court**

2011. Act Dec. 31, 2011, in subsec. (a), inserted "as affirmed or set aside as incorrect in law by"; and in subsec. (c), in the introductory matter, substituted "in the Court of Appeals--" for "by the accused in the Court of Appeals not later than 20 days after the date on which--", in para. (1), inserted "not later than 20 days after the date on which", and substituted "on the parties" for "on the accused or on defense counsel", and in para. (2), inserted "if" and ", not later than 20 days after the date on which such notice is submitted".

# Changes in National Defense Authorization Act for Fiscal Year 2014

Public Law 113-66 [H.R. 3304]

Dec. 26, 2013

113 P.L. 66; 127 Stat. 672; 2013 Enacted H.R. 3304; 113 Enacted H.R. 3304

## **[\*1031] Sec. 1031. CLARIFICATION OF PROCEDURES FOR USE OF ALTERNATE MEMBERS ON MILITARY COMMISSIONS.**

(a) Primary and Alternate Members.--

(1) Number of Members.-- Subsection (a) of section 948m of title 10, United States Code, is amended--

(A) in paragraph (1)--

(i) by striking "at least five members" and inserting "at least five primary members and as many alternate members as the convening authority shall detail"; and

(ii) by adding at the end the following new sentence: "Alternate members shall be designated in the order in which they will replace an excused primary member."; and

(B) in paragraph (2), by inserting "primary" after "the number of".

(2) General Rules.-- Such section is further amended--

(A) by redesignating subsection (b) and (c) as subsections (d) and (e), respectively; and

(B) by inserting after subsection (a) the following new subsections (b) and (c):

"(b) Primary Members.--Primary members of a military commission under this

chapter are voting members.

"(c) Alternate Members.--(1) A military commission may include alternate members to replace primary members who are excused from service on the commission.

"(2) Whenever a primary member is excused from service on the commission, an alternate member, if available, shall replace the excused primary member and the trial may proceed."

(3) Excuse of Members.-- Subsection (d) of such section, as redesignated by paragraph (2)(A), is amended--

(A) in the matter before paragraph (1), by inserting "primary or alternate" before "member";

(B) by striking "or" at the end of paragraph (2);

(C) by striking the period at the end of paragraph (3) and inserting "; or"; and

(D) by adding at the end the following new paragraph:

[\*\*850] "(4) in the case of an alternate member, in order to reduce the number of alternate members required for service on the commission, as determined by the convening authority."

(4) Absent and Additional Members.-- Subsection (e) of such section, as redesignated by paragraph (2)(A), is amended--

(A) in the first sentence--

(i) by inserting "the number of primary members of" after "Whenever";

(ii) by inserting "primary" before "members required by"; and

(iii) by inserting "and there are no remaining alternate members to replace the excused primary members" after "subsection (a)"; and

(B) by adding at the end the following new sentence: "An alternate member who was present for the introduction of all evidence shall not be considered to be a new or additional member."

(b) Challenges.--Section 949f of such title is amended--

(1) in subsection (a), by inserting "primary or alternate" before "members"; and

(2) by adding at the end of subsection (b) the following new sentence: "Nothing in this section prohibits the military judge from awarding to each party such additional peremptory challenges as may be required in the interests of justice."

(c) Number of Votes Required.--Section 949m of such title is amended--

(1) by inserting "primary" before "members" each place it appears; and

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

"(4) The primary members present for a vote on a sentence need not be the same primary members who voted on the conviction if the requirements of section 948m(d) of this title are met."

**Amendment of subsec. (d)(1)(C), effective Dec. 26, 2014.** Act Dec. 26, 2013, P.L. 113-66, Div A, Title XVII, Subtitle A, § 1702(c)(3)(E), [127 Stat. 958](#) (effective one year after enactment and applicable as provided by § 1702(d)(1) of such Act, which appears as [10 USCS § 802](#) note), provides: "Section 948b(d)(1)(C) of such title is amended by striking 'pretrial investigation' and inserting 'preliminary hearing'."

**[\*1037] Sec. 1037. GRADE OF CHIEF PROSECUTOR AND CHIEF DEFENSE COUNSEL IN MILITARY COMMISSIONS ESTABLISHED TO TRY INDIVIDUALS DETAINED AT GUANTANAMO.**

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

(b) Waiver.--

(1) In General.-- The Secretary of Defense may temporarily waive the requirement specified in subsection (a), if the Secretary determines that compliance with such subsection would--

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

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

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

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

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

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

(c) Guidance.--Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance to ensure that the office of the chief defense counsel and the office of the chief prosecutor receive equitable resources, personnel [\*\*855] support, and logistical support for conducting their respective duties in connection with any military commission established under chapter 47A of title 10, United States Code, to try an alien unprivileged enemy belligerent (as such terms are defined in section 948a of such title) who is detained at United States Naval Station, Guantanamo Bay, Cuba.