

109TH CONGRESS
1ST SESSION

H. R. 3044

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to provide standards for the use of military commissions for the trial of offenses under the law of war or in furtherance of international terrorism.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2005

Ms. LORETTA SANCHEZ of California introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to provide standards for the use of military commissions for the trial of offenses under the law of war or in furtherance of international terrorism.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Commissions
5 Act of 2005”.

1 **SEC. 2. USE OF MILITARY COMMISSIONS FOR OFFENSES**
2 **UNDER LAW OF WAR OR IN FURTHERANCE**
3 **OF TERRORISM.**

4 (a) IN GENERAL.—Subchapter XI of chapter 47 of
5 title 10, United States Code (the Uniform Code of Military
6 Justice), is amended by inserting after section 935 (article
7 135) the following new section:

8 **“§ 935a. Art. 135a. Military commissions for offenses**
9 **against the law of war or in furtherance**
10 **of terrorism**

11 “(a) A military commission covered by this section
12 may be appointed only by the President or a person des-
13 ignated by the President for such purpose.

14 “(b) A military commission appointed under sub-
15 section (a) may try any person, not a citizen of the United
16 States, for one or more offenses against the law of war
17 or any offense defined in United States law when such
18 offense is committed in furtherance of international ter-
19 rorism as defined in section 2331 of title 18.

20 “(c) A military commission shall consist of not less
21 than three members and not more than seven members.
22 However, in a case in which the accused may be sentenced
23 to a penalty of death, the commission shall consist of seven
24 members. The commission may also include not more than
25 two alternate members. Each member and alternate mem-
26 ber shall be a commissioned officer of the armed forces.

1 “(d) A military commission shall have a presiding of-
2 ficer, who shall be a nonvoting member of the commission.
3 The presiding officer shall be a judge advocate and shall
4 preside over the proceedings of the commission to ensure
5 a full, fair, and expeditious trial. The presiding officer
6 shall instruct the members of the commission on all mat-
7 ters of law and procedure and shall rule upon all questions
8 of law and all interlocutory questions arising during the
9 proceedings.

10 “(e) Trial and defense counsel shall be detailed for
11 a military commission on the same basis as such counsel
12 are detailed for a general court-martial under section 827
13 (article 27).

14 “(f) Members of a military commission shall delib-
15 erate and vote in closed conference. Voting on the findings
16 and on the sentence shall be by secret written ballot.

17 “(g) A military commission covered by this section
18 may not find a person guilty of an offense, and may not
19 determine a sentence, except by the concurrence of two-
20 thirds of the members present at the time the vote is
21 taken. The commission may not sentence a person to suf-
22 fer death except by the concurrence of all the members
23 as to the findings and as to the sentence.

24 “(h) A military commission may, under such limita-
25 tions as the President may prescribe, adjudge any punish-

1 ment permitted by the law of war, including death, impris-
2 onment for life or for any lesser term, payment of a fine
3 or restitution, or such other lawful punishment or punish-
4 ments as the commission shall determine to be proper. The
5 sentence of death may be adjudged only if the accused
6 has been found guilty of spying or an offense causing the
7 death of one or more persons. A commission may not sen-
8 tence any person to suffer death for an offense committed
9 before the person attained the age of eighteen years. A
10 sentence of death may not be executed until approved by
11 the President.

12 “(i) Pursuant to section 936 (article 36) of this chap-
13 ter, the President may prescribe rules of evidence and pro-
14 cedure for trial by a military commission. The President
15 may further delegate authority to prescribe such rules to
16 the Secretary of Defense. The accused in a military com-
17 mission shall be given the following minimum rights and
18 protections:

19 “(1) The accused shall have the right to a fair
20 trial, without adverse distinction based upon race,
21 color, gender, language, religion, birth, wealth, or
22 any similar criteria.

23 “(2) The accused shall be presumed innocent
24 until proven guilty. The burden of proof shall be

1 upon the prosecution to prove each element of an of-
2 fense beyond a reasonable doubt.

3 “(3) The accused shall be informed of the
4 charges against him in a language he understands
5 as soon as practicable prior to trial.

6 “(4) The accused shall have the right to a pub-
7 lic trial, unless the appointing authority or presiding
8 officer determines that a closed trial, or any portion
9 thereof, is necessary to the national security of the
10 United States.

11 “(5) The accused may not be compelled to tes-
12 tify or present evidence against himself.

13 “(6) No adverse inference will be drawn against
14 him by reason of a decision not to testify on his own
15 behalf.

16 “(7) Evidence obtained through the use of tor-
17 ture (as defined in section 2340 of title 18), will not
18 be admitted in evidence at trial by a military com-
19 mission.

20 “(8) The accused shall be entitled to assistance
21 of counsel at all stages of proceedings and shall have
22 adequate time and facilities available for the prepa-
23 ration of his defense. The accused shall have the
24 right to represent himself in trial by military com-

1 mission, subject to the discretion of the presiding of-
2 ficer.

3 “(9) The accused shall have the right to present
4 evidence and to cross-examine each witness.

5 “(10) The accused shall have equal opportunity
6 to obtain witnesses and other evidence in accordance
7 with such regulations as the President may pre-
8 scribe.

9 “(11) The accused shall have access to all evi-
10 dence that trial counsel intends to offer at trial and
11 all evidence known to trial counsel or to the commis-
12 sion that tends to exculpate him.

13 “(12) The accused shall have the right to be
14 present at each stage of the proceedings, unless he
15 engages in conduct that the presiding officer deter-
16 mines to be disruptive, or the presiding officer deter-
17 mines that exclusion of the accused is necessary to
18 protect national security interests of the United
19 States. Detailed defense counsel may not be ex-
20 cluded from any trial proceeding or any portion
21 thereof.

22 “(13) The accused shall not be tried a second
23 time for the same offense.

1 “(j) A person found guilty by military commission
2 shall have a right to review of that finding and any ad-
3 judged sentence in accordance with this section.

4 “(k)(1) After trial, the presiding officer shall prompt-
5 ly authenticate a verbatim transcript and record of trial.

6 “(2) The appointing authority shall, within a reason-
7 able period of time, carry out an administrative review of
8 the transcript and record of trial and take such adminis-
9 trative actions as the appointing authority considers ap-
10 propriate, which may include directing the commission to
11 conduct any necessary supplemental proceedings.

12 “(3) The Secretary of Defense shall review the record
13 of trial and, within a reasonable period of time, take one
14 or more of the following actions of the case:

15 “(A) Approve, disapprove, commute, mitigate,
16 or suspend the sentence in whole or in part.

17 “(B) Approve or disapprove a finding of guilty,
18 or change a finding of guilty to a charge or speci-
19 fication to a finding of guilty to a lesser included of-
20 fense of the offense stated in the charge.

21 “(4)(A) Following action by the Secretary of Defense,
22 the Court of Appeals for the Armed Forces shall review
23 the record of a military commission—

1 “(i) in any case in which the sentence extends
2 to death or to confinement in excess of five years;
3 and

4 “(ii) in any other case that the President may
5 prescribe.

6 “(B) In any case reviewed by it under this subsection,
7 the Court of Appeals for the Armed Forces may act only
8 with respect to the findings and sentence as in effect after
9 review by the convening authority and the Secretary of
10 Defense under subsection (k)(3).

11 “(C) The Court of Appeals for the Armed Forces
12 shall take action only with respect to matters of law and
13 shall take such action as is permitted under section 867
14 (article 67) of this chapter.

15 “(5) The Supreme Court of the United States shall
16 have jurisdiction to review, by writ of certiorari, an action
17 of the Court of Appeals for the Armed Forces under this
18 subsection.

19 “(l) The Secretary of Defense shall submit to Con-
20 gress each order, rule, and regulation prescribed under
21 this section. Such order, rule, or regulation may not take
22 effect until 30 days after it is so submitted.

23 “(m) Not later than March 15 of each year, the Sec-
24 retary of Defense shall submit to Congress a report on
25 the use of military commissions covered by this section

1 during the preceding calendar year. The report shall set
2 forth a summary of each case covered by this section dur-
3 ing such year, together with the disposition and current
4 status of that case. The report shall also set forth a de-
5 tailed description of the activities of the Department with
6 respect to military commissions, a copy of all current rules
7 and regulations relating to the use of military commis-
8 sions, and an accounting of all funds expended on matters
9 relating to the use of military commissions.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of such subchapter is amended by adding
12 at the end the following new item:

“935a. Art. 135a. Military commissions for offenses against the law of war or
in furtherance of terrorism.”.

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