

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4060

To amend the Military Commissions Act of 2006 to improve and enhance due process and appellate procedures, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 16, 2006

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To amend the Military Commissions Act of 2006 to improve and enhance due process and appellate procedures, and for other purposes.

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 “Effective Terrorists  
5        Prosecution Act of 2006”.

6        **SEC. 2. DEFINITION OF UNLAWFUL ENEMY COMBATANT.**

7        Paragraph (1) of section 948a of title 10, United  
8        States Code (as enacted by the Military Commissions Act  
9        of 2006 (Public Law 109–366)), is amended to read as  
10       follows:

1           “(1) UNLAWFUL ENEMY COMBATANT.—The  
 2 term ‘unlawful enemy combatant’ means an indi-  
 3 vidual who directly participates in hostilities as part  
 4 of an armed conflict against the United States who  
 5 is not a lawful enemy combatant. The term is used  
 6 solely to designate individuals triable by military  
 7 commission under this chapter.”.

8 **SEC. 3. DETERMINATION OF UNLAWFUL ENEMY COMBAT-**  
 9 **ANT STATUS BY COMBATANT STATUS REVIEW**  
 10 **TRIBUNAL NOT DISPOSITIVE FOR PURPOSES**  
 11 **OF JURISDICTION OF MILITARY COMMIS-**  
 12 **SIONS.**

13           Section 948d of title 10, United States Code (as en-  
 14 acted by the Military Commissions Act of 2006 (Public  
 15 Law 109–366)), is amended—

16           (1) by striking subsection (c); and

17           (2) by redesignating subsection (d) as sub-  
 18 section (c).

19 **SEC. 4. EXCLUSION FROM TRIAL BY MILITARY COMMIS-**  
 20 **SION OF STATEMENTS OBTAINED BY COER-**  
 21 **SION.**

22           Section 948r of title 10, United States Code (as en-  
 23 acted by the Military Commissions Act of 2006 (Public  
 24 Law 109–366)), is amended by striking subsections (c)  
 25 and (d) and inserting the following new subsection (c):

1       “(c) EXCLUSION OF STATEMENTS OBTAINED BY CO-  
2 ERSION.—A statement obtained by use of coercion shall  
3 not be admissible in a military commission under this  
4 chapter, except against a person accused of coercion as  
5 evidence that the statement was made.”.

6 **SEC. 5. DISCRETION OF MILITARY JUDGE TO EXCLUDE**  
7                   **HEARSAY EVIDENCE DETERMINED TO BE UN-**  
8                   **RELIABLE OR LACKING IN PROBATIVE**  
9                   **VALUE.**

10       Section 949a(b)(2)(E)(ii) of title 10, United States  
11 Code (as enacted by the Military Commissions Act of 2006  
12 (Public Law 109–366)), is amended by striking “if the  
13 party opposing the admission of the evidence demonstrates  
14 that the evidence is unreliable or lacking in probative  
15 value” and inserting “if the military judge determines,  
16 upon motion by counsel, that the evidence is unreliable  
17 or lacking in probative value”.

18 **SEC. 6. DISCRETION OF MILITARY JUDGE TO TAKE CER-**  
19                   **TAIN ACTIONS IN EVENT THAT A SUBSTITUTE**  
20                   **FOR CLASSIFIED EXCULPATORY EVIDENCE IS**  
21                   **INSUFFICIENT TO PROTECT THE RIGHT OF A**  
22                   **DEFENDANT TO A FAIR TRIAL.**

23       Section 949j(d)(1) of title 10, United States Code (as  
24 enacted by the Military Commissions Act of 2006 (Public  
25 Law 109–366)), is amended by adding at the end the fol-

1 lowing: “If the military judge determines that the sub-  
 2 stitute is not sufficient to protect the right of the defend-  
 3 ant to a fair trial, the military judge may—

4           “(A) dismiss the charges in their entirety;

5           “(B) dismiss the charges or specifications or  
 6 both to which the information relates; or

7           “(C) take such other actions as may be re-  
 8 quired in the interest of justice.”.

9 **SEC. 7. REVIEW OF MILITARY COMMISSION DECISIONS BY**  
 10 **UNITED STATES COURT OF APPEALS FOR**  
 11 **THE ARMED FORCES RATHER THAN COURT**  
 12 **OF MILITARY COMMISSION REVIEW.**

13 (a) REVIEW.—

14 (1) IN GENERAL.—Section 950f of title 10,  
 15 United States Code (as enacted by the Military  
 16 Commissions Act of 2006 (Public Law 109–366)), is  
 17 amended to read as follows:

18 **“§ 950f. Review by Court of Appeals for the Armed**  
 19 **Forces**

20           “(a) CASES TO BE REVIEWED.—The United States  
 21 Court of Appeals for the Armed Forces, in accordance  
 22 with procedures prescribed under regulations of the Sec-  
 23 retary, shall review the record in each case that is referred  
 24 to the Court by the convening authority under section

1 950c of this title with respect to any matter of law raised  
2 by the accused.

3 “(b) SCOPE OF REVIEW.—In a case reviewed by the  
4 United States Court of Appeals for the Armed Forces  
5 under this section, the Court may only act with respect  
6 to matters of law.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions at the beginning of subchapter VI of chapter  
9 47A of such title (as so enacted) is amended by  
10 striking the item relating to section 950f and insert-  
11 ing the following new item:

“950f. Review by Court of Appeals for the Armed Forces.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) IN GENERAL.—Chapter 47A of title 10,  
14 United States Code (as so enacted), is further  
15 amended as follows:

16 (A) In section 950c(a), by striking “the  
17 Court of Military Commission Review” and in-  
18 serting “the United States Court of Appeals for  
19 the Armed Forces”.

20 (B) In section 950d, by striking “the  
21 Court of Military Commission Review” each  
22 place it appears and inserting “the United  
23 States Court of Appeals for the Armed Forces”.

24 (C) In section 950g(a)(2), by striking “the  
25 Court of Military Commission Review” each

1 place it appears and inserting “the United  
2 States Court of Appeals for the Armed Forces”.

3 (D) In section 950h, by striking “the  
4 Court of Military Commission Review” each  
5 place it appears and inserting “the United  
6 States Court of Appeals for the Armed Forces”.

7 (2) UNIFORM CODE OF MILITARY JUSTICE.—  
8 Section 867a(a) of title 10, United States Code (ar-  
9 ticle 67a(a) of the Uniform Code of Military Jus-  
10 tice), is amended by striking “Decisions” and insert-  
11 ing “Except as provided in sections 950d and 950g  
12 of this title, decisions”.

13 **SEC. 8. IMPLEMENTATION OF TREATY OBLIGATIONS.**

14 (a) IN GENERAL.—Section 6(a) of the Military Com-  
15 missions Act of 2006 (Public Law 109–366) is amended—

16 (1) in paragraph (2)—

17 (A) in the first sentence, by inserting after  
18 “international character” the following: “and  
19 preserve the capacity of the United States to  
20 prosecute nationals of enemy powers for engag-  
21 ing in acts against members of the United  
22 States Armed Forces and United States citizens  
23 that have been prosecuted by the United States  
24 as war crimes in the past”; and

25 (B) by striking the second sentence; and

1 (2) in paragraph (3)—

2 (A) in subparagraph (A)—

3 (i) by striking “the President has the  
4 authority for the United States to interpret  
5 the meaning and application of the Geneva  
6 Conventions and to promulgate” and in-  
7 serting “the President has the authority,  
8 subject to congressional oversight and judi-  
9 cial review, to promulgate”; and

10 (ii) by striking “higher standards  
11 and”;

12 (B) in subparagraph (B), by striking “in-  
13 terpretations” and inserting “rules”; and

14 (C) by amending subparagraph (D) to read  
15 as follows:

16 “(D) The President shall notify other par-  
17 ties to the Geneva Conventions that the United  
18 States expects members of the United States  
19 Armed Forces and other United States citizens  
20 detained in a conflict not of an international  
21 character to be treated in a manner consistent  
22 with the standards described in subparagraph  
23 (A) and embodied in section 2441 of title 18,  
24 United States Code, as amended by subsection  
25 (b).”.

1 (b) MODIFICATIONS OF WAR CRIMES OFFENSES.—

2 (1) INCLUSION OF DENIAL OF TRIAL RIGHTS  
3 AMONG OFFENSES.—Paragraph (1) of section  
4 2441(d) of title 18, United States Code (as enacted  
5 by the Military Commissions Act of 2006), is  
6 amended by adding at the end the following new  
7 subparagraph:

8 “(J) DENIAL OF TRIAL RIGHTS.—The act  
9 of a person who intentionally denies one or  
10 more persons the right to be tried before a reg-  
11 ularly constituted court affording all the judi-  
12 cial guarantees which are recognized as indis-  
13 pensable by civilized peoples as prescribed by  
14 common Article 3 of the Geneva Conventions.”.

15 (2) DEFINITION OF SERIOUS PHYSICAL PAIN OR  
16 SUFFERING.—Clause (ii) of subparagraph ((D) of  
17 paragraph (2) of such section (as so enacted) is  
18 amended to read as follows:

19 “(ii) serious physical pain;”.

20 **SEC. 9. RESTORATION OF HABEAS CORPUS FOR INDIVID-**  
21 **UALS DETAINED BY THE UNITED STATES.**

22 (a) RESTORATION.—Subsection (e) of section 2241  
23 of title 28, United States Code, as amended by section  
24 7(a) of the Military Commissions Act of 2006 (Public Law  
25 109–366), is repealed.

1 (b) CONFORMING AMENDMENT.—Subsection (b) of  
2 section 7 of the Military Commissions Act of 2006 (Public  
3 Law 109–366) is repealed.

4 **SEC. 10. EXPEDITED JUDICIAL REVIEW OF MILITARY COM-**  
5 **MISSIONS ACT OF 2006.**

6 Notwithstanding any other provision of law, the fol-  
7 lowing rules shall apply to any civil action, including an  
8 action for declaratory judgment, that challenges any provi-  
9 sion of the Military Commissions Act of 2006 (Public Law  
10 109–366), or any amendment made by that Act, on the  
11 ground that such provision or amendment violates the  
12 Constitution or the laws of the United States:

13 (1) The action shall be filed in the United  
14 States District Court for the District of Columbia  
15 and shall be heard in that Court by a court of three  
16 judges convened pursuant to section 2284 of title  
17 28, United States Code.

18 (2) An interlocutory or final judgment, decree,  
19 or order of the United States District Court for the  
20 District of Columbia in an action under paragraph  
21 (1) shall be reviewable as a matter of right by direct  
22 appeal to the Supreme Court of the United States.  
23 Any such appeal shall be taken by a notice of appeal  
24 filed within 10 days after the date on which such  
25 judgment, decree, or order is entered. The jurisdic-

1 tional statement with respect to any such appeal  
2 shall be filed within 30 days after the date on which  
3 such judgment, decree, or order is entered.

4 (3) It shall be the duty of the United States  
5 District Court for the District of Columbia and the  
6 Supreme Court of the United States to advance on  
7 the docket and to expedite to the greatest possible  
8 extent the disposition of any action or appeal, re-  
9 spectively, brought under this section.

10 **SEC. 11. EFFECTIVE DATE.**

11 The amendments made by this Act shall take effect  
12 on October 17, 2006, the date of the enactment of the  
13 Military Commissions Act of 2006 (Public Law 109–366),  
14 immediately after the enactment of that Act and shall  
15 apply to all cases, without exception, that are pending on  
16 or after such date.

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