

112TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 112-____

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL
YEAR 2012

_____, 2011.—Ordered to be printed

Mr. McKeon, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 1540]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1540), to authorize appropriations for fiscal year 2012 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

1 (B) Updated consideration of life exten-
2 sions of FFG-7 class frigates in light of contin-
3 ued delays in deliveries of the Littoral Combat
4 Ship deliveries.

5 (C) Consideration of the possibility of
6 bringing additional surface warships to Naval
7 Station Mayport for maintenance with the con-
8 sequence of spreading the ship repair workload
9 appropriately amongst the various public and
10 private shipyards and ensuring the long-term
11 health of the shipyard in Mayport.

12 (b) COMPTROLLER GENERAL OF THE UNITED
13 STATES ASSESSMENT.—Not later than 120 days after the
14 submittal of the report required by subsection (a), the
15 Comptroller General of the United States shall submit to
16 Congress an assessment by the Comptroller General of the
17 report, including a determination whether or not the re-
18 port complies with applicable best practices.

19 **Subtitle D—Counterterrorism**

20 **SEC. 1021. AFFIRMATION OF AUTHORITY OF THE ARMED** 21 **FORCES OF THE UNITED STATES TO DETAIN** 22 **COVERED PERSONS PURSUANT TO THE AU-** 23 **THORIZATION FOR USE OF MILITARY FORCE.**

24 (a) IN GENERAL.—Congress affirms that the author-
25 ity of the President to use all necessary and appropriate

1 force pursuant to the Authorization for Use of Military
2 Force (Public Law 107–40; 50 U.S.C. 1541 note) includes
3 the authority for the Armed Forces of the United States
4 to detain covered persons (as defined in subsection (b))
5 pending disposition under the law of war.

6 (b) COVERED PERSONS.—A covered person under
7 this section is any person as follows:

8 (1) A person who planned, authorized, com-
9 mitted, or aided the terrorist attacks that occurred
10 on September 11, 2001, or harbored those respon-
11 sible for those attacks.

12 (2) A person who was a part of or substantially
13 supported al-Qaeda, the Taliban, or associated forces
14 that are engaged in hostilities against the United
15 States or its coalition partners, including any person
16 who has committed a belligerent act or has directly
17 supported such hostilities in aid of such enemy
18 forces.

19 (c) DISPOSITION UNDER LAW OF WAR.—The dis-
20 position of a person under the law of war as described
21 in subsection (a) may include the following:

22 (1) Detention under the law of war without
23 trial until the end of the hostilities authorized by the
24 Authorization for Use of Military Force.

1 (2) Trial under chapter 47A of title 10, United
2 States Code (as amended by the Military Commis-
3 sions Act of 2009 (title XVIII of Public Law 111–
4 84)).

5 (3) Transfer for trial by an alternative court or
6 competent tribunal having lawful jurisdiction.

7 (4) Transfer to the custody or control of the
8 person’s country of origin, any other foreign coun-
9 try, or any other foreign entity.

10 (d) CONSTRUCTION.—Nothing in this section is in-
11 tended to limit or expand the authority of the President
12 or the scope of the Authorization for Use of Military
13 Force.

14 (e) AUTHORITIES.—Nothing in this section shall be
15 construed to affect existing law or authorities relating to
16 the detention of United States citizens, lawful resident
17 aliens of the United States, or any other persons who are
18 captured or arrested in the United States.

19 (f) REQUIREMENT FOR BRIEFINGS OF CONGRESS.—
20 The Secretary of Defense shall regularly brief Congress
21 regarding the application of the authority described in this
22 section, including the organizations, entities, and individ-
23 uals considered to be “covered persons” for purposes of
24 subsection (b)(2).

1 **SEC. 1022. MILITARY CUSTODY FOR FOREIGN AL-QAEDA**
2 **TERRORISTS.**

3 (a) CUSTODY PENDING DISPOSITION UNDER LAW OF
4 WAR.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (4), the Armed Forces of the United States
7 shall hold a person described in paragraph (2) who
8 is captured in the course of hostilities authorized by
9 the Authorization for Use of Military Force (Public
10 Law 107–40) in military custody pending disposition
11 under the law of war.

12 (2) COVERED PERSONS.—The requirement in
13 paragraph (1) shall apply to any person whose de-
14 tention is authorized under section 1021 who is de-
15 termined—

16 (A) to be a member of, or part of, al-
17 Qaeda or an associated force that acts in co-
18 ordination with or pursuant to the direction of
19 al-Qaeda; and

20 (B) to have participated in the course of
21 planning or carrying out an attack or attempted
22 attack against the United States or its coalition
23 partners.

24 (3) DISPOSITION UNDER LAW OF WAR.—For
25 purposes of this subsection, the disposition of a per-
26 son under the law of war has the meaning given in

1 section 1021(c), except that no transfer otherwise
2 described in paragraph (4) of that section shall be
3 made unless consistent with the requirements of sec-
4 tion 1028.

5 (4) WAIVER FOR NATIONAL SECURITY.—The
6 President may waive the requirement of paragraph
7 (1) if the President submits to Congress a certifi-
8 cation in writing that such a waiver is in the na-
9 tional security interests of the United States.

10 (b) APPLICABILITY TO UNITED STATES CITIZENS
11 AND LAWFUL RESIDENT ALIENS.—

12 (1) UNITED STATES CITIZENS.—The require-
13 ment to detain a person in military custody under
14 this section does not extend to citizens of the United
15 States.

16 (2) LAWFUL RESIDENT ALIENS.—The require-
17 ment to detain a person in military custody under
18 this section does not extend to a lawful resident
19 alien of the United States on the basis of conduct
20 taking place within the United States, except to the
21 extent permitted by the Constitution of the United
22 States.

23 (c) IMPLEMENTATION PROCEDURES.—

24 (1) IN GENERAL.—Not later than 60 days after
25 the date of the enactment of this Act, the President

1 shall issue, and submit to Congress, procedures for
2 implementing this section.

3 (2) ELEMENTS.—The procedures for imple-
4 menting this section shall include, but not be limited
5 to, procedures as follows:

6 (A) Procedures designating the persons au-
7 thorized to make determinations under sub-
8 section (a)(2) and the process by which such
9 determinations are to be made.

10 (B) Procedures providing that the require-
11 ment for military custody under subsection
12 (a)(1) does not require the interruption of ongo-
13 ing surveillance or intelligence gathering with
14 regard to persons not already in the custody or
15 control of the United States.

16 (C) Procedures providing that a determina-
17 tion under subsection (a)(2) is not required to
18 be implemented until after the conclusion of an
19 interrogation which is ongoing at the time the
20 determination is made and does not require the
21 interruption of any such ongoing interrogation.

22 (D) Procedures providing that the require-
23 ment for military custody under subsection
24 (a)(1) does not apply when intelligence, law en-
25 forcement, or other Government officials of the

1 United States are granted access to an indi-
2 vidual who remains in the custody of a third
3 country.

4 (E) Procedures providing that a certifi-
5 cation of national security interests under sub-
6 section (a)(4) may be granted for the purpose
7 of transferring a covered person from a third
8 country if such a transfer is in the interest of
9 the United States and could not otherwise be
10 accomplished.

11 (d) AUTHORITIES.—Nothing in this section shall be
12 construed to affect the existing criminal enforcement and
13 national security authorities of the Federal Bureau of In-
14 vestigation or any other domestic law enforcement agency
15 with regard to a covered person, regardless whether such
16 covered person is held in military custody.

17 (e) EFFECTIVE DATE.—This section shall take effect
18 on the date that is 60 days after the date of the enactment
19 of this Act, and shall apply with respect to persons de-
20 scribed in subsection (a)(2) who are taken into the custody
21 or brought under the control of the United States on or
22 after that effective date.

1 **SEC. 1023. PROCEDURES FOR PERIODIC DETENTION RE-**
2 **VIEW OF INDIVIDUALS DETAINED AT UNITED**
3 **STATES NAVAL STATION, GUANTANAMO BAY,**
4 **CUBA.**

5 (a) PROCEDURES REQUIRED.—Not later than 180
6 days after the date of the enactment of this Act, the Sec-
7 retary of Defense shall submit to the appropriate commit-
8 tees of Congress a report setting forth procedures for im-
9 plementing the periodic review process required by Execu-
10 tive Order No. 13567 for individuals detained at United
11 States Naval Station, Guantanamo Bay, Cuba, pursuant
12 to the Authorization for Use of Military Force (Public
13 Law 107–40; 50 U.S.C. 1541 note).

14 (b) COVERED MATTERS.—The procedures submitted
15 under subsection (a) shall, at a minimum—

16 (1) clarify that the purpose of the periodic re-
17 view process is not to determine the legality of any
18 detainee’s law of war detention, but to make discre-
19 tionary determinations whether or not a detainee
20 represents a continuing threat to the security of the
21 United States;

22 (2) clarify that the Secretary of Defense is re-
23 sponsible for any final decision to release or transfer
24 an individual detained in military custody at United
25 States Naval Station, Guantanamo Bay, Cuba, pur-
26 suant to the Executive Order referred to in sub-

1 section (a), and that in making such a final decision,
2 the Secretary shall consider the recommendation of
3 a periodic review board or review committee estab-
4 lished pursuant to such Executive Order, but shall
5 not be bound by any such recommendation;

6 (3) clarify that the periodic review process ap-
7 plies to any individual who is detained as an
8 unprivileged enemy belligerent at United States
9 Naval Station, Guantanamo Bay, Cuba, at any time;
10 and

11 (4) ensure that appropriate consideration is
12 given to factors addressing the need for continued
13 detention of the detainee, including—

14 (A) the likelihood the detainee will resume
15 terrorist activity if transferred or released;

16 (B) the likelihood the detainee will reestab-
17 lish ties with al-Qaeda, the Taliban, or associ-
18 ated forces that are engaged in hostilities
19 against the United States or its coalition part-
20 ners if transferred or released;

21 (C) the likelihood of family, tribal, or gov-
22 ernment rehabilitation or support for the de-
23 tainee if transferred or released;

24 (D) the likelihood the detainee may be sub-
25 ject to trial by military commission; and

1 (E) any law enforcement interest in the de-
2 tainee.

3 (c) APPROPRIATE COMMITTEES OF CONGRESS DE-
4 FINED.—In this section, the term “appropriate commit-
5 tees of Congress” means—

6 (1) the Committee on Armed Services and the
7 Select Committee on Intelligence of the Senate; and

8 (2) the Committee on Armed Services and the
9 Permanent Select Committee on Intelligence of the
10 House of Representatives.

11 **SEC. 1024. PROCEDURES FOR STATUS DETERMINATIONS.**

12 (a) IN GENERAL.—Not later than 90 days after the
13 date of the enactment of this Act, the Secretary of Defense
14 shall submit to the appropriate committees of Congress
15 a report setting forth the procedures for determining the
16 status of persons detained pursuant to the Authorization
17 for Use of Military Force (Public Law 107–40; 50 U.S.C.
18 1541 note) for purposes of section 1021.

19 (b) ELEMENTS OF PROCEDURES.—The procedures
20 required by this section shall provide for the following in
21 the case of any unprivileged enemy belligerent who will
22 be held in long-term detention under the law of war pursu-
23 ant to the Authorization for Use of Military Force:

1 (1) A military judge shall preside at pro-
2 ceedings for the determination of status of an
3 unprivileged enemy belligerent.

4 (2) An unprivileged enemy belligerent may, at
5 the election of the belligerent, be represented by
6 military counsel at proceedings for the determination
7 of status of the belligerent.

8 (c) APPLICABILITY.—The Secretary of Defense is not
9 required to apply the procedures required by this section
10 in the case of a person for whom habeas corpus review
11 is available in a Federal court.

12 (d) REPORT ON MODIFICATION OF PROCEDURES.—
13 The Secretary of Defense shall submit to the appropriate
14 committees of Congress a report on any modification of
15 the procedures submitted under this section. The report
16 on any such modification shall be so submitted not later
17 than 60 days before the date on which such modification
18 goes into effect.

19 (e) APPROPRIATE COMMITTEES OF CONGRESS DE-
20 FINED.—In this section, the term “appropriate commit-
21 tees of Congress” means—

22 (1) the Committee on Armed Services and the
23 Select Committee on Intelligence of the Senate; and

1 (2) the Committee on Armed Services and the
2 Permanent Select Committee on Intelligence of the
3 House of Representatives.

4 **SEC. 1025. REQUIREMENT FOR NATIONAL SECURITY PRO-**
5 **TOCOLS GOVERNING DETAINEE COMMUNICA-**
6 **TIONS.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of the enactment of this Act, the Secretary of Defense
9 shall develop and submit to the congressional defense com-
10 mittees a national security protocol governing communica-
11 tions to and from individuals detained at United States
12 Naval Station, Guantanamo Bay, Cuba, pursuant to the
13 Authorization for Use of Military Force (Public Law 107–
14 40; 50 U.S.C. 1541 note), and related issues.

15 (b) CONTENTS.—The protocol developed pursuant to
16 subsection (a) shall include Department of Defense poli-
17 cies and procedures regarding each of the following:

18 (1) Detainee access to military or civilian legal
19 representation, or both, including any limitations on
20 such access and the manner in which any applicable
21 legal privileges will be balanced with national secu-
22 rity considerations.

23 (2) Detainee communications with persons
24 other than Federal Government personnel and mem-

1 bers of the Armed Forces, including meetings, mail,
2 phone calls, and video teleconferences, including—

3 (A) any limitations on categories of infor-
4 mation that may be discussed or materials that
5 may be shared; and

6 (B) the process by which such communica-
7 tions or materials are to be monitored or re-
8 viewed.

9 (3) The extent to which detainees may receive
10 visits by persons other than military or civilian rep-
11 resentatives.

12 (4) The measures planned to be taken to imple-
13 ment and enforce the provisions of the protocol.

14 (c) UPDATES.—The Secretary of Defense shall notify
15 the congressional defense committees of any significant
16 change to the policies and procedures described in the pro-
17 tocol submitted pursuant to subsection (a) not later than
18 30 days after such change is made.

19 (d) FORM OF PROTOCOL.—The protocol submitted
20 pursuant to subsection (a) may be submitted in classified
21 form.

1 **SEC. 1026. PROHIBITION ON USE OF FUNDS TO CONSTRUCT**
2 **OR MODIFY FACILITIES IN THE UNITED**
3 **STATES TO HOUSE DETAINEES TRANS-**
4 **FERRED FROM UNITED STATES NAVAL STA-**
5 **TION, GUANTANAMO BAY, CUBA.**

6 (a) IN GENERAL.—No amounts authorized to be ap-
7 propriated or otherwise made available to the Department
8 of Defense for fiscal year 2012 may be used to construct
9 or modify any facility in the United States, its territories,
10 or possessions to house any individual detained at Guanta-
11 namo for the purposes of detention or imprisonment in
12 the custody or under the control of the Department of De-
13 fense unless authorized by Congress.

14 (b) EXCEPTION.—The prohibition in subsection (a)
15 shall not apply to any modification of facilities at United
16 States Naval Station, Guantanamo Bay, Cuba.

17 (c) INDIVIDUAL DETAINED AT GUANTANAMO DE-
18 FINED.—In this section, the term “individual detained at
19 Guantanamo” has the meaning given that term in section
20 1028(e)(2).

21 (d) REPEAL OF SUPERSEDED AUTHORITY.—Section
22 1034 of the Ike Skelton National Defense Authorization
23 Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat.
24 4353) is amended by striking subsections (a), (b), and (c).

1 **SEC. 1027. PROHIBITION ON THE USE OF FUNDS FOR THE**
2 **TRANSFER OR RELEASE OF INDIVIDUALS DE-**
3 **TAINED AT UNITED STATES NAVAL STATION,**
4 **GUANTANAMO BAY, CUBA.**

5 None of the funds authorized to be appropriated by
6 this Act for fiscal year 2012 may be used to transfer, re-
7 lease, or assist in the transfer or release to or within the
8 United States, its territories, or possessions of Khalid
9 Sheikh Mohammed or any other detainee who—

10 (1) is not a United States citizen or a member
11 of the Armed Forces of the United States; and

12 (2) is or was held on or after January 20,
13 2009, at United States Naval Station, Guantanamo
14 Bay, Cuba, by the Department of Defense.

15 **SEC. 1028. REQUIREMENTS FOR CERTIFICATIONS RELAT-**
16 **ING TO THE TRANSFER OF DETAINEES AT**
17 **UNITED STATES NAVAL STATION, GUANTA-**
18 **NAMO BAY, CUBA, TO FOREIGN COUNTRIES**
19 **AND OTHER FOREIGN ENTITIES.**

20 (a) CERTIFICATION REQUIRED PRIOR TO TRANS-
21 FER.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2) and subsection (d), the Secretary of De-
24 fense may not use any amounts authorized to be ap-
25 propriated or otherwise available to the Department
26 of Defense for fiscal year 2012 to transfer any indi-

1 vidual detained at Guantanamo to the custody or
2 control of the individual's country of origin, any
3 other foreign country, or any other foreign entity
4 unless the Secretary submits to Congress the certifi-
5 cation described in subsection (b) not later than 30
6 days before the transfer of the individual.

7 (2) EXCEPTION.—Paragraph (1) shall not
8 apply to any action taken by the Secretary to trans-
9 fer any individual detained at Guantanamo to effec-
10 tuate—

11 (A) an order affecting the disposition of
12 the individual that is issued by a court or com-
13 petent tribunal of the United States having law-
14 ful jurisdiction (which the Secretary shall notify
15 Congress of promptly after issuance); or

16 (B) a pre-trial agreement entered in a mili-
17 tary commission case prior to the date of the
18 enactment of this Act.

19 (b) CERTIFICATION.—A certification described in this
20 subsection is a written certification made by the Secretary
21 of Defense, with the concurrence of the Secretary of State
22 and in consultation with the Director of National Intel-
23 ligence, that—

24 (1) the government of the foreign country or
25 the recognized leadership of the foreign entity to

1 which the individual detained at Guantanamo is to
2 be transferred—

3 (A) is not a designated state sponsor of
4 terrorism or a designated foreign terrorist orga-
5 nization;

6 (B) maintains control over each detention
7 facility in which the individual is to be detained
8 if the individual is to be housed in a detention
9 facility;

10 (C) is not, as of the date of the certifi-
11 cation, facing a threat that is likely to substan-
12 tially affect its ability to exercise control over
13 the individual;

14 (D) has taken or agreed to take effective
15 actions to ensure that the individual cannot
16 take action to threaten the United States, its
17 citizens, or its allies in the future;

18 (E) has taken or agreed to take such ac-
19 tions as the Secretary of Defense determines
20 are necessary to ensure that the individual can-
21 not engage or reengage in any terrorist activity;
22 and

23 (F) has agreed to share with the United
24 States any information that—

1 (i) is related to the individual or any
2 associates of the individual; and

3 (ii) could affect the security of the
4 United States, its citizens, or its allies; and

5 (2) includes an assessment, in classified or un-
6 classified form, of the capacity, willingness, and past
7 practices (if applicable) of the foreign country or en-
8 tity in relation to the Secretary's certifications.

9 (c) PROHIBITION IN CASES OF PRIOR CONFIRMED
10 RECIDIVISM.—

11 (1) PROHIBITION.—Except as provided in para-
12 graph (2) and subsection (d), the Secretary of De-
13 fense may not use any amounts authorized to be ap-
14 propriated or otherwise made available to the De-
15 partment of Defense to transfer any individual de-
16 tained at Guantanamo to the custody or control of
17 the individual's country of origin, any other foreign
18 country, or any other foreign entity if there is a con-
19 firmed case of any individual who was detained at
20 United States Naval Station, Guantanamo Bay,
21 Cuba, at any time after September 11, 2001, who
22 was transferred to such foreign country or entity
23 and subsequently engaged in any terrorist activity.

24 (2) EXCEPTION.—Paragraph (1) shall not
25 apply to any action taken by the Secretary to trans-

1 fer any individual detained at Guantanamo to effec-
2 tuate—

3 (A) an order affecting the disposition of
4 the individual that is issued by a court or com-
5 petent tribunal of the United States having law-
6 ful jurisdiction (which the Secretary shall notify
7 Congress of promptly after issuance); or

8 (B) a pre-trial agreement entered in a mili-
9 tary commission case prior to the date of the
10 enactment of this Act.

11 (d) NATIONAL SECURITY WAIVER.—

12 (1) IN GENERAL.—The Secretary of Defense
13 may waive the applicability to a detainee transfer of
14 a certification requirement specified in subparagraph
15 (D) or (E) of subsection (b)(1) or the prohibition in
16 subsection (c), if the Secretary certifies the rest of
17 the criteria required by subsection (b) for transfers
18 prohibited by subsection (c) and, with the concur-
19 rence of the Secretary of State and in consultation
20 with the Director of National Intelligence, deter-
21 mines that—

22 (A) alternative actions will be taken to ad-
23 dress the underlying purpose of the requirement
24 or requirements to be waived;

1 (B) in the case of a waiver of subpara-
2 graph (D) or (E) of subsection (b)(1), it is not
3 possible to certify that the risks addressed in
4 the paragraph to be waived have been com-
5 pletely eliminated, but the actions to be taken
6 under subparagraph (A) will substantially miti-
7 gate such risks with regard to the individual to
8 be transferred;

9 (C) in the case of a waiver of subsection
10 (c), the Secretary has considered any confirmed
11 case in which an individual who was transferred
12 to the country subsequently engaged in terrorist
13 activity, and the actions to be taken under sub-
14 paragraph (A) will substantially mitigate the
15 risk of recidivism with regard to the individual
16 to be transferred; and

17 (D) the transfer is in the national security
18 interests of the United States.

19 (2) REPORTS.—Whenever the Secretary makes
20 a determination under paragraph (1), the Secretary
21 shall submit to the appropriate committees of Con-
22 gress, not later than 30 days before the transfer of
23 the individual concerned, the following:

24 (A) A copy of the determination and the
25 waiver concerned.

1 (B) A statement of the basis for the deter-
2 mination, including—

3 (i) an explanation why the transfer is
4 in the national security interests of the
5 United States; and

6 (ii) in the case of a waiver of subpara-
7 graph (D) or (E) of subsection (b)(1), an
8 explanation why it is not possible to certify
9 that the risks addressed in the subpara-
10 graph to be waived have been completely
11 eliminated.

12 (C) A summary of the alternative actions
13 to be taken to address the underlying purpose
14 of, and to mitigate the risks addressed in, the
15 subparagraph or subsection to be waived.

16 (D) The assessment required by subsection
17 (b)(2).

18 (e) DEFINITIONS.—In this section:

19 (1) The term “appropriate committees of Con-
20 gress” means—

21 (A) the Committee on Armed Services, the
22 Committee on Appropriations, and the Select
23 Committee on Intelligence of the Senate; and

24 (B) the Committee on Armed Services, the
25 Committee on Appropriations, and the Perma-

1 nent Select Committee on Intelligence of the
2 House of Representatives.

3 (2) The term “individual detained at Guanta-
4 namo” means any individual located at United
5 States Naval Station, Guantanamo Bay, Cuba, as of
6 October 1, 2009, who—

7 (A) is not a citizen of the United States or
8 a member of the Armed Forces of the United
9 States; and

10 (B) is—

11 (i) in the custody or under the control
12 of the Department of Defense; or

13 (ii) otherwise under detention at
14 United States Naval Station, Guantanamo
15 Bay, Cuba.

16 (3) The term “foreign terrorist organization”
17 means any organization so designated by the Sec-
18 retary of State under section 219 of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1189).

20 (f) REPEAL OF SUPERSEDED AUTHORITY.—Section
21 1033 of the Ike Skelton National Defense Authorization
22 Act for Fiscal Year 2011 (Public Law 111–383; 124 Stat.
23 4351) is repealed.

1 **SEC. 1029. REQUIREMENT FOR CONSULTATION REGARDING**
2 **PROSECUTION OF TERRORISTS.**

3 (a) IN GENERAL.—Before seeking an indictment of,
4 or otherwise charging, an individual described in sub-
5 section (b) in a Federal court, the Attorney General shall
6 consult with the Director of National Intelligence and the
7 Secretary of Defense about—

8 (1) whether the more appropriate forum for
9 prosecution would be a Federal court or a military
10 commission; and

11 (2) whether the individual should be held in ci-
12 vilian custody or military custody pending prosecu-
13 tion.

14 (b) APPLICABILITY.—The consultation requirement
15 in subsection (a) applies to—

16 (1) a person who is subject to the requirements
17 of section 1022, in accordance with a determination
18 made pursuant to subsection (a)(2) of such section;
19 and

20 (2) any other person who is held in military de-
21 tention outside of the United States pursuant to the
22 authority affirmed by section 1021.

1 **SEC. 1030. CLARIFICATION OF RIGHT TO PLEAD GUILTY IN**
2 **TRIAL OF CAPITAL OFFENSE BY MILITARY**
3 **COMMISSION.**

4 (a) CLARIFICATION OF RIGHT.—Section 949m(b)(2)
5 of title 10, United States Code, is amended—

6 (1) in subparagraph (C), by inserting before the
7 semicolon the following: “, or a guilty plea was ac-
8 cepted and not withdrawn prior to announcement of
9 the sentence in accordance with section 949i(b) of
10 this title”; and

11 (2) in subparagraph (D), by inserting “on the
12 sentence” after “vote was taken”.

13 (b) PRE-TRIAL AGREEMENTS.—Section 949i of such
14 title is amended—

15 (1) in the first sentence of subsection (b)—

16 (A) by inserting after “military judge” the
17 following: “, including a charge or specification
18 that has been referred capital,”;

19 (B) by inserting “by the military judge”
20 after “may be entered”; and

21 (C) by inserting “by the members” after
22 “vote”; and

23 (2) by adding at the end the following new sub-
24 section:

25 “(c) PRE-TRIAL AGREEMENTS.—(1) A plea of guilty
26 made by the accused that is accepted by a military judge

1 under subsection (b) and not withdrawn prior to an-
2 nouncement of the sentence may form the basis for an
3 agreement reducing the maximum sentence approved by
4 the convening authority, including the reduction of a sen-
5 tence of death to a lesser punishment, or that the case
6 will be referred to a military commission under this chap-
7 ter without seeking the penalty of death. Such an agree-
8 ment may provide for terms and conditions in addition to
9 a guilty plea by the accused in order to be effective.

10 “(2) A plea agreement under this subsection may not
11 provide for a sentence of death imposed by a military
12 judge alone. A sentence of death may only be imposed by
13 the unanimous vote of all members of a military commis-
14 sion concurring in the sentence of death as provided in
15 section 949m(b)(2)(D) of this title.”

16 **SEC. 1031. COUNTERTERRORISM OPERATIONAL BRIEFING**
17 **REQUIREMENT.**

18 (a) **BRIEFINGS REQUIRED.**—Beginning not later
19 than March 1, 2012, the Secretary of Defense shall pro-
20 vide to the congressional defense committees quarterly
21 briefings outlining Department of Defense
22 counterterrorism operations and related activities involv-
23 ing special operations forces.

24 (b) **ELEMENTS.**—Each briefing under subsection (a)
25 shall include each of the following:

1 (1) A global update on activity within each geo-
2 graphic combatant command.

3 (2) An overview of authorities and legal issues
4 including limitations.

5 (3) An outline of interagency activities and ini-
6 tiatives.

7 (4) Any other matters the Secretary considers
8 appropriate.

9 **SEC. 1032. NATIONAL SECURITY PLANNING GUIDANCE TO**
10 **DENY SAFE HAVENS TO AL-QAEDA AND ITS**
11 **VIOLENT EXTREMIST AFFILIATES.**

12 (a) PURPOSE.—The purpose of this section is to im-
13 prove interagency strategic planning and execution to
14 more effectively integrate efforts to deny safe havens and
15 strengthen at-risk states to further the goals of the Na-
16 tional Security Strategy related to the disruption, dis-
17 mantlement, and defeat of al-Qaeda and its violent ex-
18 tremist affiliates.

19 (b) NATIONAL SECURITY PLANNING GUIDANCE.—

20 (1) GUIDANCE REQUIRED.—The President shall
21 issue classified or unclassified national security plan-
22 ning guidance in support of objectives stated in the
23 national security strategy report submitted to Con-
24 gress by the President pursuant to section 108 of
25 the National Security Act of 1947 (50 U.S.C. 404a)

1 to deny safe havens to al-Qaeda and its violent ex-
2 tremist affiliates and to strengthen at-risk states.
3 Such guidance shall serve as the strategic plan that
4 governs United States and coordinated international
5 efforts to enhance the capacity of governmental and
6 nongovernmental entities to work toward the goal of
7 eliminating the ability of al-Qaeda and its violent ex-
8 tremist affiliates to establish or maintain safe ha-
9 vens.

10 (2) CONTENTS OF GUIDANCE.—The guidance
11 required under paragraph (1) shall include each of
12 the following:

13 (A) A prioritized list of specified geo-
14 graphic areas that the President determines are
15 necessary to address and an explicit discussion
16 and list of the criteria or rationale used to
17 prioritize the areas on the list, including a dis-
18 cussion of the conditions that would hamper the
19 ability of the United States to strengthen at-
20 risk states or other entities in such areas.

21 (B) For each specified geographic area, a
22 description, analysis, and discussion of the core
23 problems and contributing issues that allow or
24 could allow al-Qaeda and its violent extremist
25 affiliates to use the area as a safe haven from

1 which to plan and launch attacks, engage in
2 propaganda, or raise funds and other support,
3 including any ongoing or potential
4 radicalization of the population, or to use the
5 area as a key transit route for personnel, weap-
6 ons, funding, or other support.

7 (C) A list of short-term, mid-term, and
8 long-term goals for each specified geographic
9 area, prioritized by importance.

10 (D) A description of the role and mission
11 of each Federal department and agency in-
12 volved in executing the guidance, including the
13 Departments of Defense, Justice, Treasury, and
14 State and the Agency for International Devel-
15 opment.

16 (E) A description of gaps in United States
17 capabilities to meet the goals listed pursuant to
18 subparagraph (C), and the extent to which
19 those gaps can be met through coordination
20 with nongovernmental, international, or private
21 sector organizations, entities, or companies.

22 (3) REVIEW AND UPDATE OF GUIDANCE.—The
23 President shall review and update the guidance re-
24 quired under paragraph (1) as necessary. Any such
25 review shall address each of the following:

1 (A) The overall progress made toward
2 achieving the goals listed pursuant to para-
3 graph (2)(C), including an overall assessment of
4 the progress in denying a safe haven to al-
5 Qaeda and its violent extremist affiliates.

6 (B) The performance of each Federal de-
7 partment and agency involved in executing the
8 guidance.

9 (C) The performance of the unified coun-
10 try team and appropriate combatant command,
11 or in the case of a cross-border effort, country
12 teams in the area and the appropriate combat-
13 ant command.

14 (D) Any addition to, deletion from, or
15 change in the order of the prioritized list main-
16 tained pursuant to paragraph (2)(A).

17 (4) SPECIFIED GEOGRAPHIC AREA DEFINED.—
18 In this subsection, the term “specified geographic
19 area” means any country, subnational territory, or
20 region—

21 (A) that serves or may potentially serve as
22 a safe haven for al-Qaeda or a violent extremist
23 affiliate of al-Qaeda—

1 (i) from which to plan and launch at-
2 tacks, engage in propaganda, or raise
3 funds and other support; or

4 (ii) for use as a key transit route for
5 personnel, weapons, funding, or other sup-
6 port; and

7 (B) over which one or more governments
8 or entities exert insufficient governmental or se-
9 curity control to deny al-Qaeda and its violent
10 extremist affiliates the ability to establish a
11 large scale presence.

12 **SEC. 1033. EXTENSION OF AUTHORITY TO MAKE REWARDS**
13 **FOR COMBATING TERRORISM.**

14 Section 127b of title 10, United States Code, is
15 amended—

16 (1) in subsection (c)(3)(C), by striking “Sep-
17 tember 30, 2011” and inserting “September 30,
18 2013”; and

19 (2) in subsection (f)—

20 (A) in paragraph (1), by striking “Decem-
21 ber” and inserting “February”; and

22 (B) in paragraph (2)—

23 (i) in subparagraph (C)(ii), by insert-
24 ing “and the recipient’s geographic loca-
25 tion” after “reward”; and

1 (ii) by adding at the end the following
2 new subparagraphs:

3 “(E) A description of the status of pro-
4 gram implementation in each geographic com-
5 batant command.

6 “(F) A description of efforts to coordinate
7 and de-conflict the authority under subsection
8 (a) with similar rewards programs administered
9 by the United States Government.

10 “(G) An assessment of the effectiveness of
11 the program in meeting its objectives.”.

12 **SEC. 1034. AMENDMENTS RELATING TO THE MILITARY**
13 **COMMISSIONS ACT OF 2009.**

14 (a) REFERENCE TO HOW CHARGES ARE MADE.—
15 Section 949a(b)(2)(C) of title 10, United States Code, is
16 amended by striking “preferred” in clauses (i) and (ii) and
17 inserting “sworn”.

18 (b) JUDGES OF UNITED STATES COURT OF MILI-
19 TARY COMMISSION REVIEW.—Section 949b(b) of such
20 title is amended—

21 (1) in paragraph (1)(A), by striking “a military
22 appellate judge or other duly appointed judge under
23 this chapter on” and inserting “a judge on”;

24 (2) in paragraph (2), by striking “a military
25 appellate judge on” and inserting “a judge on”; and

1 (3) in paragraph (3)(B), by striking “an appel-
2 late military judge or a duly appointed appellate
3 judge on” and inserting “a judge on”.

4 (c) PANELS OF UNITED STATES COURT OF MILI-
5 TARY COMMISSION REVIEW.—Section 950f(a) of such title
6 is amended by striking “appellate military judges” in the
7 second sentence and inserting “judges on the Court”.

8 (d) REVIEW OF FINAL JUDGMENTS BY UNITED
9 STATES COURT OF APPEALS FOR THE D.C. CIRCUIT.—

10 (1) CLARIFICATION OF MATTER SUBJECT TO
11 REVIEW.—Subsection (a) of section 950g of such
12 title is amended by inserting “as affirmed or set
13 aside as incorrect in law by” after “where applica-
14 ble,”.

15 (2) CLARIFICATION ON TIME FOR SEEKING RE-
16 VIEW.—Subsection (c) of such section is amended—

17 (A) in the matter preceding paragraph (1),
18 by striking “by the accused” and all that fol-
19 lows through “which—” and inserting “in the
20 Court of Appeals—”;

21 (B) in paragraph (1)—

22 (i) by inserting “not later than 20
23 days after the date on which” after “(1)”;
24 and

1 (ii) by striking “on the accused or on
2 defense counsel” and inserting “on the
3 parties”; and

4 (C) in paragraph (2)—

5 (i) by inserting “if” after “(2)”; and

6 (ii) by inserting before the period the
7 following: “, not later than 20 days after
8 the date on which such notice is sub-
9 mitted”.

10 **Subtitle E—Nuclear Forces**

11 **SEC. 1041. BIENNIAL ASSESSMENT AND REPORT ON THE** 12 **DELIVERY PLATFORMS FOR NUCLEAR WEAP-** 13 **ONS AND THE NUCLEAR COMMAND AND CON-** 14 **TROL SYSTEM.**

15 (a) IN GENERAL.—Chapter 23 of title 10, United
16 States Code, is amended by adding after section 490 the
17 following new section:

18 **“§ 490a. Biennial assessment and report on the deliv-** 19 **ery platforms for nuclear weapons and** 20 **the nuclear command and control system**

21 “(a) BIENNIAL ASSESSMENTS.—(1) For each even-
22 numbered year, each covered official shall assess the safe-
23 ty, security, reliability, sustainability, performance, and
24 military effectiveness of the systems described in para-
25 graph (2) for which such official has responsibility.