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Section

18 U.S. Code § 2441 - War crimes

U.S. Code Notes

(a) OFFENSE.—

Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) JURISDICTION.—There is jurisdiction over an offense described in subsection (a) if

—

(1) the offense occurs in whole or in part within the United States; or

(2) regardless of where the offense occurs—

(A) the victim or offender is—

(i) a national of the United States or an alien lawfully admitted for permanent residence; or

(ii) a member of the Armed Forces of the United States, regardless of nationality; or

(B) the offender is present in the United States, regardless of the nationality of the victim or offender.

(c) **DEFINITION.**—As used in this section the term “war crime” means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(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

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(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 Commissions 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.

(5) DEFINITION OF GRAVE BREACHES.—

The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

(e) NONAPPLICABILITY OF CERTAIN LIMITATIONS.—

In the case of an offense described in subsection (a) and further described in subsections (c)(1) and (c)(3), an indictment may be found or an information may be instituted at any time without limitation.

(f) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—

No prosecution for an offense described in subsection (a) shall be undertaken by the United States except on written certification of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated, that a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) OFFENDER PRESENT IN UNITED STATES.—For an offense for which jurisdiction exists under subsection (b)(2)(B) (and does not exist under any other provision of subsection (b)), the written certification required under paragraph (1) of this subsection that a prosecution by the United States is in the public interest and necessary to secure substantial justice shall be made by the Attorney General

or the Deputy Attorney General, which function may not be delegated. In issuing such certification, the same official shall weigh and consider, among other relevant factors—

(A) whether the alleged offender can be removed from the United States for purposes of prosecution in another jurisdiction; and

(B) potential adverse consequences for nationals, servicemembers, or employees of the United States.

(g) INPUT FROM OTHER AGENCY HEADS.—

The Secretary of Defense and Secretary of State may submit to the Attorney General for consideration their views generally regarding potential benefits, or potential adverse consequences for nationals, servicemembers, or employees of the United States, of prosecutions of offenses for which jurisdiction exists under subsection (b)(2)(B).

(h) No JUDICIAL REVIEW.—

Certifications under subsection (f) and input from other agency heads under subsection (g) are not subject to judicial review.

(i) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) support for ratification of or accession to the Rome Statute of the International Criminal Court, which entered into force on July 1, 2002; or

(2) consent by the United States to any assertion or exercise of jurisdiction by any international, hybrid, or foreign court.

(Added Pub. L. 104-192, § 2(a), Aug. 21, 1996, 110 Stat. 2104, § 2401; renumbered § 2441, Pub. L. 104-294, title VI, § 605(p)(1), Oct. 11, 1996, 110 Stat. 3510; amended Pub. L. 105-118, title V, § 583, Nov. 26, 1997, 111 Stat. 2436; Pub. L. 107-273, div. B, title IV, § 4002(e)(7), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 109-366, § 6(b)(1), Oct. 17, 2006, 120 Stat. 2633; Pub. L. 117-351, § 2, Jan. 5, 2023, 136 Stat. 6265.)

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