be used to commit or to facilitate the commission of such violation; and
(3) any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(b) PROPERTY SUBJECT TO FORFEITURE.—

(1) IN GENERAL.—The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.
(B) Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) APPLICABILITY OF CHAPTER 46.—The provisions of chapter 46 of this title relating to civil forfeitures shall apply to any seizure or civil forfeiture under this subsection.


CHAPTER 118—WAR CRIMES

860.
2441. War crimes.
2442. Recruitment or use of child soldiers.

AMENDMENTS


§2441. War crimes

(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) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) DISCRIMINATION.—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 1999), 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 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) upon another person within his custody or physical control for the purpose of obtaining information or confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(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.

(2) MUTILATION OR MAMING.—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.

(3) 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 unlawful 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 penetra-
(H) **Sexual Assault or Abuse.**—The act of a person who forcibly or with coercion or threat of force enganges, 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.

(2) **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.

(3) **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 2442(3) 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 1118(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 1337(2) of this title;

(D) the term "serious physical pain or suffering" shall be applied for purposes of paragraph (1)(E) 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)(G) in accordance with the meaning given that term in section 2442(3) 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 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 to 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)(C) 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.


**Repeal**

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1101 of Title 8, Aliens and Nationality.

The date of the enactment of the Military Commissions Act of 2006, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 109–396, which was approved Oct. 17, 2006.

**Amendments**

2006—Subsec. (c)(3). Pub. L. 109–396, 160 Con. Res. 1(1), added par. (3) and struck out former par. (3) which read as follows: "which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or".


Subsec. (c). Pub. L. 105–118, §583(3), as amended by Pub. L. 107–276, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(c) Definitions.—As used in this section, the term 'grave breach' of the Geneva Conventions' means conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party."

1996—Pub. L. 104–294 renumbered section 2441 of this title as this section.

**Effective Date of 2006 Amendment**

Pub. L. 109–396, §602(3), Oct. 17, 2006, 120 Stat. 3205, provided that: "The amendments made by this subsection (amending this section), except as specified in subsection (c)(2) of section 2441 of title 16, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 883 of Public Law 105–118 (amending this section) (as amended by section 202(a)(7) of Public Law 107–276)."
§ 2442  
TITLES 18—CRIMES AND CRIMINAL PROCEDURE  
Page 564

EFFECTIVE DATE OF 2003 AMENDMENT  

SHORT TITLE  
Section 1 of Pub. L. 107-273 provided that: "This Act [enacted this chapter] may be cited as the "War Crimes Act of 1996".

IMPLEMENTATION OF TREATY OBLIGATIONS  
Pub. L. 109-366, § 8(a), Oct. 27, 2006, 120 Stat. 2952, provided that:

(1) In general.—The acts enumerated in subsection (d) of section 2442 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (d) of this section (repealing section 20a of chapter 7 of title 18, United States Code), constitute violations of common Articles 3 of the Geneva Convention prohibited by United States law.

(2) Prohibition on grave breaches.—The provisions of sections 2442 and 2445 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 120 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 345.

(3) Interpretation by the President.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(4) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Articles 3) as a matter of United States law, in the same manner as other administrative regulations.

(5) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) Definitions.—In this section:

(A) PARTICIPATE ACTIVELY IN HOSTILITIES.—The term "participate actively in hostilities" means taking part in—

(A) combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or

(B) direct support functions related to combat, including transporting supplies or providing other services.

(2) ARMED FORCE OR GROUP.—The term "armed force or group" means any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association.


CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

SEC. 2510. Definitions.

2511. Interception and disclosure of wire, oral, or electronic communications prohibited.

2512. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communications interception devices prohibited.

1So in original. Additional closing parentheses probably should precede the semicolon.