nal offense'' includes the production of child pornography, as defined in section 2256(8).

(Added Pub. L. 105–314, title I, § 105(a), Oct. 30, 1998, 112 Stat. 2977.)

§ 2428. Forfeitures

(a) IN GENERAL.—The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(2) 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.

(Added Pub. L. 109–164, title I, § 103(d)(1), Jan. 10, 2006, 119 Stat. 3563.)

CHAPTER 118—WAR CRIMES

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

AMENDMENTS

2008—Pub. L. 110–340, § 2(a)(3)(A), Oct. 3, 2008, 122 Stat. 3736, added item 2442.

1996—Pub. L. 104–294, title VI, § 605(p)(2), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2401 as 2441.

§ 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) 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.

(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.)

REFERENCES IN TEXT

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)(E)(ii), is the date of enactment of Pub. L. 109–366, which was approved Oct. 17, 2006.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–366, § 6(b)(1)(A), 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. (d). Pub. L. 109–366, § 6(b)(1)(B), added subsec. (d).

2002—Subsecs. (a) to (c). Pub. L. 107–273 made technical correction to directory language of Pub. L. 105–118, § 583. See 1997 Amendment notes below.

1997—Subsec. (a). Pub. L. 105–118, § 583(1), as amended by Pub. L. 107–273, substituted ''war crime'' for ''grave breach of the Geneva Conventions''.

Subsec. (b). Pub. L. 105–118, § 583(2), as amended by Pub. L. 107–273, substituted ''war crime'' for ''breach'' in two places.

Subsec. (c). Pub. L. 105–118, § 583(3), as amended by Pub. L. 107–273, 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 2401 of this title as this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, § 6(b)(2), Oct. 17, 2006, 120 Stat. 2635, provided that: ''The amendments made by this subsection [amending this section], except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 [amending this section] (as amended by section 4002(e)(7) of Public Law 107–273).''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4002(e)(7), Nov. 2, 2002, 116 Stat. 1810, provided that the amendment made by section 4002(e)(7) is effective Nov. 26, 1997.

SHORT TITLE

Section 1 of Pub. L. 104–192 provided that: ''This Act [enacting this chapter] may be cited as the 'War Crimes Act of 1996'.''

IMPLEMENTATION OF TREATY OBLIGATIONS

Pub. L. 109–366, § 6(a), Oct. 17, 2006, 120 Stat. 2632, provided that:

''(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section [enacting section 2000dd–0 of Title 42, The Public Health and Welfare], constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

''(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 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 2441.

''(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.

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

''(D) 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 subsection:

''(A) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means—

''(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

''(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

''(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

''(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

''(B) THIRD GENEVA CONVENTION.—The term 'Third Geneva Convention' means the international convention referred to in subparagraph (A)(iii).''

EXECUTIVE ORDER NO. 13440

Ex. Ord. No. 13440, July 20, 2007, 72 F.R. 40707, which interpreted the Geneva Conventions Common Article 3 as applied to a program of detention and interrogation operated by the Central Intelligence Agency, was revoked by Ex. Ord. No. 13491, § 1, Jan. 22, 2009, 74 F.R. 4893, set out as a note under section 2000dd of Title 42, The Public Health and Welfare.

§ 2442. Recruitment or use of child soldiers

(a) OFFENSE.—Whoever knowingly—

(1) recruits, enlists, or conscripts a person to serve while such person is under 15 years of age in an armed force or group; or

(2) uses a person under 15 years of age to participate actively in hostilities;

knowing such person is under 15 years of age, shall be punished as provided in subsection (b).

(b) PENALTY.—Whoever violates, or attempts or conspires to violate, subsection (a) shall be fined under this title or imprisoned not more than 20 years, or both and, if death of any person results, shall be fined under this title and imprisoned for any term of years or for life.

(c) JURISDICTION.—There is jurisdiction over an offense described in subsection (a), and any attempt or conspiracy to commit such offense, if—

(1) the alleged offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)); [1]

(2) the alleged offender is a stateless person whose habitual residence is in the United States;

(3) the alleged offender is present in the United States, irrespective of the nationality of the alleged offender; or

(4) the offense occurs in whole or in part within the United States.

(d) DEFINITIONS.—In this section:

(1) 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

[1] So in original. An additional closing parenthesis probably should precede the semicolon.

assembled solely for nonviolent political association.

(Added Pub. L. 110–340, § 2(a)(1), Oct. 3, 2008, 122 Stat. 3735.)

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 communication intercepting devices prohibited.
2513. Confiscation of wire, oral, or electronic communication intercepting devices.
[2514. Repealed.]
2515. Prohibition of use as evidence of intercepted wire or oral communications.
2516. Authorization for interception of wire, oral, or electronic communications.
2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.
2518. Procedure for interception of wire, oral, or electronic communications.
2519. Reports concerning intercepted wire, oral, or electronic communications.
2520. Recovery of civil damages authorized.
2521. Injunction against illegal interception.
2522. Enforcement of the Communications Assistance for Law Enforcement Act.

AMENDMENTS

1994—Pub. L. 103–414, title II, § 201(b)(3), Oct. 25, 1994, 108 Stat. 4290, added item 2522.

1988—Pub. L. 100–690, title VII, § 7035, Nov. 18, 1988, 102 Stat. 4398, substituted ''wire, oral, or electronic'' for ''wire or oral'' in items 2511, 2512, 2513, 2516, 2517, 2518, and 2519.

1986—Pub. L. 99–508, title I, §§ 101(c)(2), 110(b), Oct. 21, 1986, 100 Stat. 1851, 1859, inserted ''AND ELECTRONIC COMMUNICATIONS'' in chapter heading and added item 2521.

1970—Pub. L. 91–452, title II, § 227(b), Oct. 15, 1970, 84 Stat. 930, struck out item 2514 ''Immunity of witnesses'', which section was repealed four years following the sixtieth day after Oct. 15, 1970.

1968—Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 212, added chapter 119 and items 2510 to 2520.

§ 2510. Definitions

As used in this chapter—

(1) ''wire communication'' means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;

(2) ''oral communication'' means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(4) ''intercept'' means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.[1]

(5) ''electronic, mechanical, or other device'' means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) ''person'' means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(7) ''Investigative or law enforcement officer'' means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(8) ''contents'', when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

(9) ''Judge of competent jurisdiction'' means—

(a) a judge of a United States district court or a United States court of appeals; and

(b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

(10) ''communication common carrier'' has the meaning given that term in section 3 of the Communications Act of 1934;

(11) ''aggrieved person'' means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

(12) ''electronic communication'' means any transfer of signs, signals, writing, images,

[1] So in original. The period probably should be a semicolon.