

II. Potentially Relevant Federal Criminal Statutes

Jurisdictional Statutes

18 U.S.C. 3261 et seq-MEJA

Provides for jurisdiction of conduct that would constitute a felony had the activity been engaged in within the Special Maritime and Territorial Jurisdiction of the United States, where the offender was employed by or accompanying the military outside the United States. Also provides for jurisdiction over military members under specific circumstances, including if military member charged as co-defendant with non-military member.

Provides that DoD shall, after consulting with State and DOJ, prescribe regulations governing the apprehension, detention, delivery and removal of persons under MEJA. The regulations will take effect 90 days after submitted to Congress. Regulations not yet submitted to Congress, but DoD, State and DOJ in final stages of consultation requirement.

Provides that DoD, after consultation with State and DOJ, shall prescribe regulations requiring that, to maximum extent practicable, notice shall be provided to persons employed by or accompanying military, but state that failure to provide such notice shall not defeat jurisdiction or provide a defense.

Provides that persons who are nationals of, or ordinarily resident in the host nation are not considered "employed" by the military for purposes of the Act. (The draft regulations also note that third country nationals may have a nexus to the United States that is so tenuous that the Act should not be applied, and advises consultation with DOJ and with State in such cases.)

18 U.S.C. 7 -Special Maritime and Territorial Jurisdiction of the United States

Defines as within the territorial jurisdiction of the United States acts committed by a national of the United States on the "premises" of United States military...including the buildings, parts of buildings and land used for purposes of those missions or entities. This provision does not apply if person's conduct is chargeable under MEJA.

Substantive Statutes

18 U.S.C. § 113- Assaults within Maritime and Territorial Jurisdiction

includes, assault with intent to commit murder, assault with intent to commit a felony, assault with a dangerous weapon with intent to do bodily harm and without just cause or excuse, assault by striking, beating or wounding (misdemeanor), simple assault (misdemeanor), assault resulting in serious bodily injury, and assault resulting in substantial bodily injury.

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18 U.S.C. § 114 - Maiming within Maritime and Territorial Jurisdiction

whoever, with the intent to torture, maim or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person, or whoever, with like intent, throws or pours upon another person any scalding water, corrosive acid, or caustic substance...

18 U.S.C. 2241 - Aggravated Sexual Abuse

Whoever in special maritime or territorial jurisdiction or in a federal prison, knowingly causes another person to engage in a sexual act-
by using force against that other person, or
by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnaping...

18 U.S.C. 2242 - Sexual Abuse

Whoever in special maritime or territorial jurisdiction or in a federal prison knowingly causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnaping)

18 U.S.C. §2243-Sexual abuse of a minor or ward

.....Whoever, in special maritime or territorial jurisdiction of the United States or in a federal prison, knowingly engages in a sexual act with another person who is-
in official detention; and
under the custodial, supervisory, or disciplinary authority of the person so engaged.

18 U.S.C. 2244 - Abusive Sexual Contact

(Under MEJA, violations of this statute could only be charged for violations of subsections (a)(1)-(3), which are punishable by more than one year in prison)

Whoever, in the special maritime or territorial jurisdiction of the US or in a federal prison, knowingly engages in or causes sexual contact with or by another person, had the sexual contact been a sexual act, shall be fined under this title, or imprisoned....

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18 U.S.C. § 2340A -Torture

(a) Offense.— Whoever outside the United States commits or attempts to commit torture shall... be imprisoned not more than twenty years...

(b) Jurisdiction... There is jurisdiction over the activity prohibited in subsection (a) if—

- (1) the alleged offender is a national of the United States; or
- (2) the alleged offender is present in the United States...

(c) Conspiracy. — A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death)....

18.U.S.C. §2340 Definitions

As used in this chapter—

- (1) "Torture" means an act committed by a person
 - acting under color of law
 - 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 control

(2) "Severe mental pain or suffering" means the prolonged mental harm caused by or resulting from —

- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated profoundly to disrupt the senses or the personality;
- (C) threat of imminent death; or
- (D) the threat that another person will imminently be subjected to death, severe physical pain...

(3) "United States" includes all areas under the jurisdiction of the United States of the places described in sections 5 and 7² of this title....

² 18 U.S.C §7(9) includes military premises in foreign countries, but does not apply with respect to a person described in § 3261 (a) (MEJA).

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18 U.S.C. 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 beimprisoned for life or any term of years...

(b) Circumstances.— The circumstances are....that persons committing such war crime... is a member of the Armed Forces of the United States...or a national of the United States...

(c) Definition. 'war crime' means any conduct —

(1) defined as a grave breach³ in any international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party

* * * * *

(3) which constitutes a violation of common Article 3⁴ of the international conventions signed at Geneva, 12 August 1949, or any protocol....and which deals with non-international armed conflict...

18 U.S.C. § 1510 (a)—Obstruction of Criminal Investigations

Whoever willfully endeavors by means of bribery to obstruct, delay or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned for five years , or both

³ Grave breaches to 1949 Geneva Conventions III (relative to prisoners of war, Article 130), or 1949 Geneva Convention IV (relative to civilians, Article 147) include
wilful killing, torture or inhuman treatment,
wilfully causing great suffering or serious injury to body or health

⁴Violations of Common Article 3 include
violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
outrages upon personal dignity, in particular humiliating and degrading treatment

18 U.S.C. § 1001-False Statements

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully

— falsifies, conceals or covers up by any trick, scheme, or device a material fact;

— makes any materially false, fictitious, or fraudulent statement or representation; or

— make or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

Shall be fined under this title or imprisoned not more than five years or both.

18 U.S.C. § 371 - Conspiracy

If two or more persons conspire either to commit any offense against the United States, or any agency thereof, or to defraud the United States in any manner or for any purpose,

— and one or more of such persons do any act to effect the object of the conspiracy

—each shall be fined or imprisoned under this title

—not more than five years or both⁵

⁵If the offense which was the object of the conspiracy was a misdemeanor, then the punishment shall not exceed the maximum punishment for a misdemeanor

III. Crimes Referral Statute and MOUs

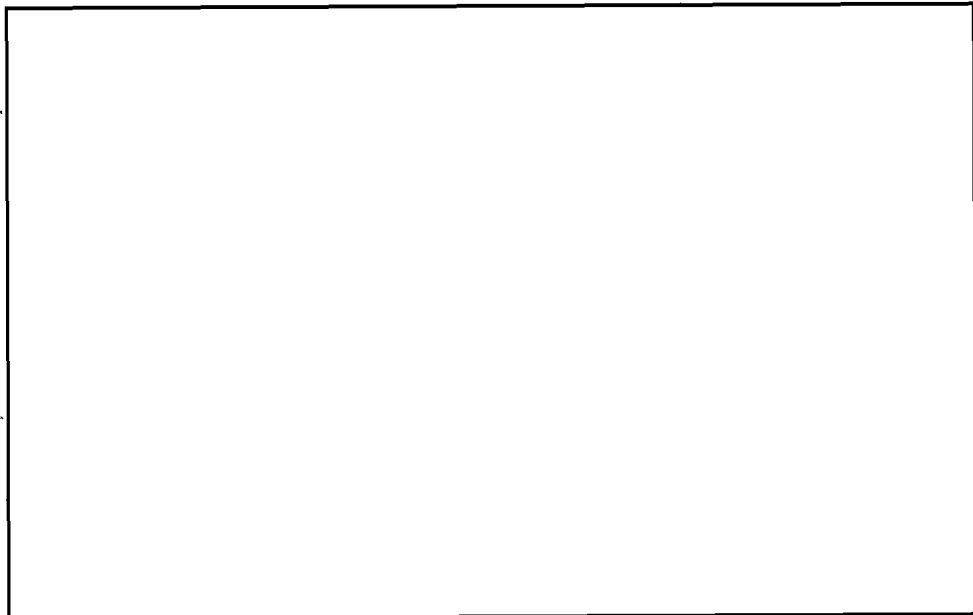
A. Statutory Requirements

Title 28 U.S.C. § 535(b) requires that—

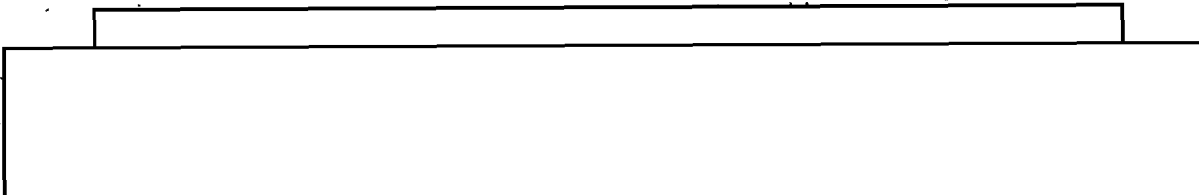
[a]ny information, allegation or complaint received in a department of the executive branch of the Government relating to violations of title 18 involving government officers or employees shall be expeditiously reported to the Attorney General by the head of the department or agency, unless—

(1) the responsibility to perform the investigation ... is assigned otherwise by another provision of law; or

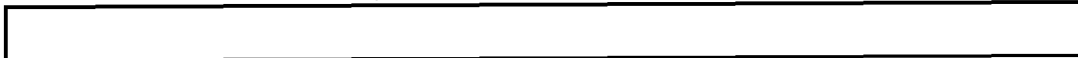
(2) as to any department or agency ... the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.



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