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**National Defense Authorization Act for Fiscal Year 2013 (Enrolled Bill [Final as Passed
Both House and Senate] - ENR)**

Subtitle D--Counterterrorism

**SEC. 1021. EXTENSION OF AUTHORITY TO MAKE REWARDS FOR COMBATING
TERRORISM.**

(a) Extension- Section 127b(c)(3)(C) of title 10, United States Code, is amended by striking `September 30, 2013' and inserting `September 30, 2014'.

(b) Report to Congress- Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report that outlines the future requirements and authorities to make rewards for combating terrorism. The report shall include--

- (1) an analysis of future requirements under section 127b of title 10, United States Code;
- (2) a detailed description of requirements for rewards in support of operations with allied forces; and
- (3) an overview of geographic combatant commander requirements through September 30, 2014.

**SEC. 1022. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY
FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM
UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.**

(a) In General- No amounts authorized to be appropriated or otherwise made available to the Department of Defense for fiscal year 2013 may be used to construct or modify any facility in the United States, its territories, or possessions to house any individual detained at Guantanamo for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense unless authorized by Congress.

(b) Exception- The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) Individual Detained at Guantanamo Defined- In this section, the term `individual detained at Guantanamo' has the meaning given that term in section 1028(f)(2).

SEC. 1023. REPORT ON RECIDIVISM OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, WHO HAVE BEEN TRANSFERRED TO FOREIGN COUNTRIES.

(a) Report Required- Not later than 60 days after the date of the enactment of this Act, and annually thereafter for five years, the Director of the Defense Intelligence Agency, in consultation with the head of each element of the intelligence community that the Director considers appropriate, shall submit to the covered congressional committees a report assessing the factors that cause or contribute to the recidivism of individuals detained at Guantanamo who are transferred or released to a foreign country. Such report shall include--

- (1) a discussion of trends, by country and region, where recidivism has occurred; and
- (2) an assessment of the implementation by foreign countries of the international arrangements relating to the transfer or release of individuals detained at Guantanamo reached between the United States and each foreign country to which an individual detained at Guantanamo has been transferred or released.

(b) Form- The report required under subsection (a) may be submitted in classified form.

(c) Definitions- In this section:

(1) The term `covered congressional committees' means--

- (A) the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives; and
- (B) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.

(2) The term `individual detained at Guantanamo' means any individual who is or was located at United States Naval Station, Guantanamo Bay, Cuba, who--

- (A) is not a citizen of the United States or a member of the Armed Forces of the United States; and
- (B) on or after January 1, 2002, was--
 - (i) in the custody or under the control of the Department of Defense; or
 - (ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

SEC. 1024. NOTICE AND REPORT ON USE OF NAVAL VESSELS FOR DETENTION OF INDIVIDUALS CAPTURED OUTSIDE AFGHANISTAN PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

(a) Notice to Congress- Not later than 30 days after first detaining an individual pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) on a naval vessel outside the United States, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of the detention. In the case of such an individual who is transferred or released before the submittal of the notice of the individual's detention, the Secretary shall also submit to such Committees notice of the transfer or release.

(b) Report-

(1) IN GENERAL- Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the use of naval vessels for the detention outside the United States of any individual who is detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note). Such report shall include--

(A) procedures and any limitations on detaining such individuals at sea on board United States naval vessels;

(B) an assessment of any force protection issues associated with detaining such individuals on such vessels;

(C) an assessment of the likely effect of such detentions on the original mission of such naval vessels; and

(D) any restrictions on long-term detention of individuals on United States naval vessels.

(2) FORM OF REPORT- The report required under paragraph (1) may be submitted in classified form.

SEC. 1025. NOTICE REQUIRED PRIOR TO TRANSFER OF CERTAIN INDIVIDUALS DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN.

(a) Notice Required- The Secretary of Defense shall submit to the appropriate congressional committees notice in writing of the proposed transfer of any individual detained pursuant to the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) who is a national of a country other than the United States or Afghanistan from detention at the Detention Facility at Parwan, Afghanistan, to the custody of the Government of Afghanistan or of any other country. Such notice shall be provided not later than 10 days before such a transfer may take place.

(b) Assessments Required- Prior to any transfer referred to under subsection (a), the Secretary shall ensure that an assessment is conducted as follows:

(1) In the case of the proposed transfer of such an individual by reason of the individual being released, an assessment of the threat posed by the individual and the security environment of the country to which the individual is to be transferred.

(2) In the case of the proposed transfer of such an individual to a country other than Afghanistan for the purpose of the prosecution of the individual, an assessment regarding the capacity, willingness, and historical track record of the country with respect to prosecuting similar cases, including a review of the primary evidence against the individual to be transferred and any significant admissibility issues regarding such evidence that are expected to arise in connection with the prosecution of the individual.

(3) In the case of the proposed transfer of such an individual for reintegration or rehabilitation in a country other than Afghanistan, an assessment regarding the capacity, willingness, and historical track records of the country for reintegrating or rehabilitating similar individuals.

(4) In the case of the proposed transfer of such an individual to the custody of the Government of Afghanistan for prosecution or detention, an assessment regarding the capacity, willingness, and historical track record of Afghanistan to prosecute or detain long-term such individuals.

(c) Appropriate Congressional Committees Defined- In this section, the term `appropriate congressional committees' means the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

SEC. 1026. REPORT ON RECIDIVISM OF INDIVIDUALS FORMERLY DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN.

(a) Report- Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the relevant congressional committees a report on the estimated recidivism rates and the factors that appear to contribute to the recidivism of individuals formerly detained at the Detention Facility at Parwan, Afghanistan, who were transferred or released, including the estimated total number of individuals who have been recaptured on one or more occasion.

(b) Form- The report required under subsection (a) may be submitted in classified form.

(c) Relevant Congressional Committees Defined- In this section, the term `relevant congressional committees' means--

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

SEC. 1027. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

None of the funds authorized to be appropriated by this Act for fiscal year 2013 may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who--

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

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

SEC. 1028. REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES.

(a) Certification Required Prior to Transfer-

(1) IN GENERAL- Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense for fiscal year 2013 to transfer

any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

(2) EXCEPTION- Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

(b) Certification- A certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that--

(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred--

(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

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

(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

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

(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or reengage in any terrorist activity; and

(F) has agreed to share with the United States any information that--

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

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

(2) includes an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary's certifications.

(c) Prohibition in Cases of Prior Confirmed Recidivism-

(1) PROHIBITION- Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

(2) EXCEPTION- Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

(d) National Security Waiver-

(1) IN GENERAL- The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by subsection (b) for transfers prohibited by (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that--

(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

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

(2) REPORTS- Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

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

(B) A statement of the basis for the determination, including--

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

(ii) in the case of a waiver of paragraph (D) or (E) of subsection (b)(1), an explanation why it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated; and

(iii) a classified summary of--

(I) the individual's record of cooperation while in the custody of or under the effective control of the Department of Defense; and

(II) the agreements and mechanisms in place to provide for continuing cooperation.

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

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

(e) Record of Cooperation- In assessing the risk that an individual detained at Guantanamo will engage in terrorist activity or other actions that could affect the security of the United States if released for the purpose of making a certification under subsection (b) or a waiver under subsection (d), the Secretary of Defense may give favorable consideration to any such individual--

- (1) who has substantially cooperated with United States intelligence and law enforcement authorities, pursuant to a pre-trial agreement, while in the custody of or under the effective control of the Department of Defense; and
- (2) for whom agreements and effective mechanisms are in place, to the extent relevant and necessary, to provide for continued cooperation with United States intelligence and law enforcement authorities.

(f) Definitions- In this section:

(1) The term `appropriate committees of Congress' means--

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

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term `individual detained at Guantanamo' means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who-

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

(B) is--

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

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

(3) The term `foreign terrorist organization' means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

SEC. 1029. RIGHTS UNAFFECTED.

Nothing in the Authorization for Use of Military Force (Public Law 107-40; 50 U.S.C. 1541 note) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.