§ 949m. Number of votes required

(a) Conviction.— No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i (b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

(b) Sentences.—

(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) No person may be sentenced to death by a military commission, except insofar as—

(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken, or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i (b) of this title; and

(D) all members present at the time the vote was taken on the sentence concurred in the sentence of death.

(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

(c) Number of Members Required for Penalty of Death.—

(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12 members.

(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not less than the number of members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.


Prior Provisions
A prior section 949m, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2616, related to number of votes required for conviction and sentences and number of members required on military commission for penalty of death, prior to the general amendment of this chapter by Pub. L. 111–84.

Amendments
2011—Subsec. (b)(2)(C). Pub. L. 112–81, § 1030(a)(1), inserted before semicolon “,” or a guilty plea was accepted and not withdrawn prior to announcement of the sentence in accordance with section 949i (b) of this title”.

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Subsec. (b)(2)(D). Pub. L. 112–81, § 1030(a)(2), inserted “on the sentence” after “vote was taken”.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see http://www.law.cornell.edu/uscode/uscprint.html).