

## GUANTÁNAMO BAY

### Accessing Detainee Medical Records as Part of Military Commissions' Proceedings

#### Why GAO Did This Study

Since 2002, the U.S. has operated military detention facilities at Naval Station Guantánamo Bay (NSGB) Cuba. Military commissions' proceedings were first established in 2001 to try non-U.S. citizens who aided, abetted, or conspired to commit acts of terrorism against the U.S. However, detainee defense teams have cited concerns about the completeness of detainee medical records and their timely access to them as part of military commissions' proceedings. These defense claims have been disputed by the prosecution.

House Report 116-120 included a provision for GAO to examine the policies at NSGB related to detainee medical records and their interaction with the military commissions' process. This report describes (1) federal law and DOD's policies and regulations governing the access to detainee medical records; (2) DOD's process for making detainee medical records available; and (3) DOD's efforts to decrease the classification of detainees' medical records within the context of military commissions' proceedings. Additionally, GAO has an ongoing review assessing the policies and procedures for providing health care to detainees and challenges associated with providing care.

GAO reviewed policies and procedures related to detainee medical records at NSGB from fiscal years 2015 through 2021. GAO also interviewed officials from relevant DOD organizations.

GAO received technical comments from DOD and incorporated them as appropriate. GAO is not making recommendations.

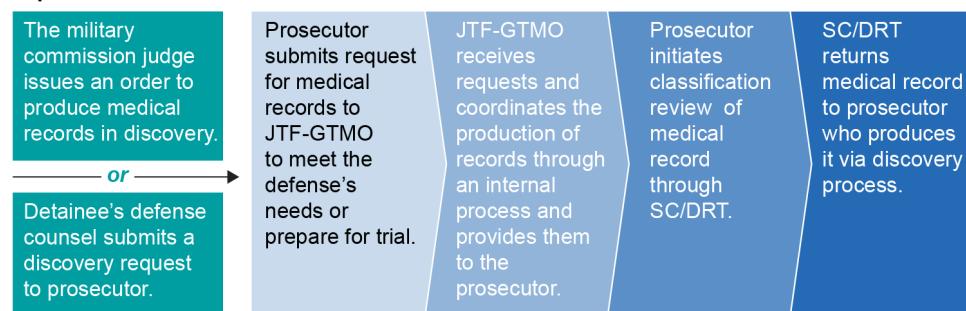
View [GAO-22-105810](#). For more information, contact Brenda S. Farrell at (202) 512-3604 or [FarrellB@gao.gov](mailto:FarrellB@gao.gov).

#### What GAO Found

The Military Commissions Act of 2009 provides the statutory basis for the military commissions' process and states that the defense counsel shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense. The Act also requires the disclosure of exculpatory evidence to the defense from the prosecution, as soon as practicable. DOD's Manual for Military Commissions establishes procedures for the defense to have access to evidence such as the medical records of the accused as part of the discovery process. The discovery process for obtaining access to medical records applies only to detainees who have charges pending before a military commission. The determination of whether information is subject to disclosure initially rests with the prosecution and, if disputed by the defense, is ultimately decided by the military judge, according to DOD officials. The duty to provide discovery is continuous throughout the military commissions' proceeding.

DOD has established multiple steps and layers of review in its process for making records available to the prosecution and defense as part of military commissions' proceedings (see figure). These steps are intended to ensure that relevant law and regulations governing pre-trial discovery and protection of classified information are adhered to, according to DOD officials. The medical records request process is typically initiated when the defense counsel submits a discovery request to the prosecutor or a military commissions' judge issues an order to produce detainee medical records. According to DOD officials, when the prosecution requests detainee medical records for the purposes of a military commission, this initiates a process of an internal request for information within Joint Task Force Guantánamo Bay. Once the process of the internal request for information is complete, the copies of a detainee's medical records are provided to the prosecution, which is responsible for ensuring that the records are reviewed by the Security Classification/ Declassification Review Team and redacted, as appropriate. Under current procedures, detainee medical records are kept at a variety of classification levels and the declassification of those medical records is an essential step in producing detainee medical records as part of military commissions' proceedings.

#### Department of Defense Medical Records Release and Production Process



JTF-GTMO Joint Task Force Guantánamo

SC/DRT Security Classification/Declassification Review Team

Source: GAO analysis of Department of Defense guidance. | GAO-22-105810