

S 3930

Military Commissions Act of 2006

Congress: 109 (2005–2007, Ended)

Chamber: Senate

Policy Area: Armed Forces and National Security

Introduced: Sep 22, 2006

Current Status: Became Public Law No: 109-366.

Latest Action: Became Public Law No: 109-366. (Oct 17, 2006)

Law: 109-366 (Enacted Oct 17, 2006)

Official Text: <https://www.congress.gov/bill/109th-congress/senate-bill/3930>

Sponsor

Name: Sen. McConnell, Mitch [R-KY]

Party: Republican • **State:** KY • **Chamber:** Senate

Cosponsors (2 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Frist, William H. [R-TN]	R · TN		Sep 22, 2006
Sen. Warner, John [R-VA]	R · VA		Sep 22, 2006

Committee Activity

No committee referrals or activity are recorded for this bill.

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

Related Bills

Bill	Relationship	Last Action
109 HR 6166	Related bill	Nov 13, 2006: Read twice and referred to the Committee on Armed Services.
109 HRES 1054	Related bill	Sep 29, 2006: Motion to reconsider laid on the table Agreed to without objection.
109 HR 6054	Related bill	Sep 25, 2006: Placed on the Union Calendar, Calendar No. 409.
109 S 3929	Related bill	Sep 25, 2006: Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 633.
109 S 3886	Related bill	Sep 14, 2006: Sponsor introductory remarks on measure. (CR S9577-9578)
109 S 3901	Related bill	Sep 14, 2006: Placed on Senate Legislative Calendar under General Orders. Calendar No. 611.
109 S 3861	Related bill	Sep 13, 2006: Star Print ordered on the bill.

(This measure has not been amended since it was passed by the Senate on September 28, 2006. The summary of that version is repeated here.)

Military Commissions Act of 2006 - (Sec. 2) States that the authority under this Act to establish military commissions (commissions) may not be construed to alter or limit the the President's authority under the Constitution or laws of the United States to establish commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(Sec. 3) Amends the Uniform Code of Military Justice (UCMJ) to codify and establish procedures governing the use of commissions to try alien unlawful enemy combatants (combatants) engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable by commissions under this Act. Defines an "unlawful enemy combatant" as a person who has: (1) engaged in or supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant; or (2) been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or other tribunal established under the authority of the President or the Secretary of Defense (Secretary). Defines a "lawful enemy combatant" as a person who is a member of: (1) the regular forces of a State party engaged in hostilities against the United States; (2) a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or (3) a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

Authorizes the President to establish such commissions. Prohibits commission findings, holdings, and other precedents from being introduced or considered in any proceeding of a court-martial convened under the UCMJ. Prohibits a combatant subject to trial by commission from invoking the Geneva Conventions as a source of rights. Allows commissions to impose upon any person found guilty any punishment not forbidden under the UCMJ, including the death penalty. Requires an annual report from the Secretary to the congressional defense committees on any trials conducted.

Makes eligible to serve on a commission any commissioned officer of the Armed Forces on active duty. Requires to be detailed to each commission a military judge, trial and military defense counsel, and reporters and interpreters. Requires at least five members in each commission.

Outlines commission pre-trial procedures, including charges and specifications. Prohibits a person from being required to testify against himself (compulsory self-incrimination) at a commission proceeding. Prohibits (with a limited exception) a statement obtained by the use of torture from being admissible against the accused.

Prescribes commission trial procedures, including: (1) rules of evidence; (2) duties of trial and defense counsel; (3) pleas of the accused; (4) opportunity to obtain witnesses and other evidence; (5) the defense of lack of mental responsibility; and (6) the record of trial. Requires: (1) a two-thirds commission member vote for conviction; (2) a three-fourths member vote for a sentence of life imprisonment or confinement of more than ten years; and (3) a unanimous vote by at least 12 members in a case in which the death penalty is sought. Prohibits any sentence from including cruel or unusual punishments such as flogging, branding, or marking or tattooing of the body.

Prescribes commission post-trial procedures, including: (1) review by the convening authority; (2) appeal by the United States; (3) rehearings; (4) reviews by the Court of Military Commission Review, the U.S. Court of Appeals for the District of Columbia, and the U.S. Supreme Court; and (5) the execution of sentences.

Makes the following offenses triable by commissions: (1) murder of protected persons; (2) attacking civilians; (3) attacking civilian objects; (4) attacking protected property; (5) pillaging; (6) denying quarter; (7) taking hostages; (8) employing poison or similar weapons; (9) using protected persons as a shield; (10) using protected property as a shield; (11) torture; (12) cruel or inhuman treatment; (13) intentionally causing serious bodily injury; (14) mutilating or maiming; (15) murder in violation of the law of war; (16) destruction of property in violation of the law of war; (17) using treachery or perfidy; (18) improperly using a flag of truce; (19) improperly using a distinctive emblem; (20) intentionally mistreating a dead body; (21) rape; (22) sexual assault or abuse; (23) hijacking or hazarding a vessel or aircraft; (24) terrorism; (25) providing material support for terrorism; (26) wrongfully aiding the enemy; (27) spying; (28) conspiracy; (29) perjury and obstruction of justice; and (30) contempt.

Requires a report from the Secretary to the defense committees setting forth commission procedures prescribed under this Act.

(Sec. 4) Makes inapplicable to commissions UCMJ provisions concerning: (1) contempt; (2) speedy trial; (3) self-incrimination warnings; and (4) pretrial investigations.

(Sec. 5) Prohibits a person from invoking the Geneva Conventions in any habeas corpus or other civil action to which the United States, a current or former officer, employee, or member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its states or territories.

(Sec. 6) Authorizes the President to interpret the meaning and application of the Geneva Conventions and to promulgate standards and regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions. Directs the President to issue such interpretations through Executive Orders.

Amends the federal criminal code to include the following as violations of the War Crimes Act: (1) torture; (2) cruel or inhuman treatment; (3) performing biological experiments; (4) murder; (5) mutilation or maiming; (6) intentionally causing serious bodily injury; (7) rape; (8) sexual assault or abuse; and (9) taking hostages.

Prohibits any person in the custody or control of the United States, regardless of nationality or physical location, from being subject to cruel, inhuman, or degrading treatment or punishment.

(Sec. 7) Amends federal criminal justice provisions to deny any court or judge jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of, or to hear or consider any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial of, an alien detained outside the United States who is or was detained by the United States and has been determined to have been properly detained as an enemy combatant or is awaiting such determination. Makes the provisions of this section effective upon enactment, and applicable to all cases, without exception, pending on or after enactment which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

(Sec. 8) Amends provisions of the Detainee Treatment Act of 2005 relating to the protection of U.S. government personnel engaged in authorized interrogations to: (1) require (currently authorizes) the U.S. government to provide counsel and pay the legal fees of any such personnel with respect to any civil action or criminal prosecution arising out of an authorized interrogation; and (2) make such provisions effective with respect to actions occurring between September 11, 2001, and December 30, 2005.

(Sec. 9) Amends the Detainee Treatment Act of 2005 to make reviews of all judgments of commissions (currently, only judgments involving a capital case or a case in which the alien was sentenced to imprisonment of ten years or more) a

matter of right.

(Sec. 10) Includes all aliens detained by the United States (currently, only those detained by the Department of Defense at Guantanamo Bay, Cuba) under the authority for the review by the U.S. Court of Appeals for the District of Columbia of a decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

Actions Timeline

- **Oct 17, 2006:** Signed by President.
- **Oct 17, 2006:** Signed by President.
- **Oct 17, 2006:** Became Public Law No: 109-366.
- **Oct 17, 2006:** Became Public Law No: 109-366.
- **Oct 10, 2006:** Presented to President.
- **Oct 10, 2006:** Presented to President.
- **Sep 29, 2006:** Considered under the provisions of rule H. Res. 1054. (consideration: CR H7925-7951)
- **Sep 29, 2006:** DEBATE - The House proceeded with one hour of debate on S. 3930.
- **Sep 29, 2006:** The previous question was ordered pursuant to the rule. (consideration: CR H7951)
- **Sep 29, 2006:** POSTPONED PROCEEDINGS - The Chair put the question on adoption of the bill S. 3930 and announced that by voice vote, the ayes had prevailed. Mr. Sensenbrenner demanded the yeas and nays and the Chair postponed further proceedings on the question of adoption of S. 3930 until later in the legislative day.
- **Sep 29, 2006:** Considered as unfinished business. (consideration: CR H7959)
- **Sep 29, 2006:** Passed/agreed to in House: On passage Passed by the Yeas and Nays: 250 - 170 (Roll no. 508).(text: CR H7925-7936)
- **Sep 29, 2006:** On passage Passed by the Yeas and Nays: 250 - 170 (Roll no. 508). (text: CR H7925-7936)
- **Sep 29, 2006:** Motion to reconsider laid on the table Agreed to without objection.
- **Sep 28, 2006:** Considered by Senate. (consideration: CR S10354-10432)
- **Sep 28, 2006:** Passed/agreed to in Senate: Passed Senate with an amendment by Yea-Nay Vote. 65 - 34. Record Vote Number: 259.(text: CR S10420-10431)
- **Sep 28, 2006:** Passed Senate with an amendment by Yea-Nay Vote. 65 - 34. Record Vote Number: 259. (text: CR S10420-10431)
- **Sep 28, 2006:** Received in the House.
- **Sep 28, 2006:** Message on Senate action sent to the House.
- **Sep 28, 2006:** Held at the desk.
- **Sep 27, 2006:** Measure laid before Senate by unanimous consent. (consideration: CR S10243-10275)
- **Sep 25, 2006:** Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 634.
- **Sep 22, 2006:** Introduced in Senate
- **Sep 22, 2006:** Introduced in the Senate. Read the first time. pursuant to the order of September 21, 2006, as modified on September 22, 2006. Placed on Senate Legislative Calendar under Read the First Time. (text of measure as introduced: CR S10033-10044)