

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99-145, title V, §534(a), Nov. 8, 1985, 99 Stat. 634, §906a; renumbered §903a, Pub. L. 114-328, div. E, title LX, §5401(7), Dec. 23, 2016, 130 Stat. 2938.)

AMENDMENTS

2016—Pub. L. 114-328 renumbered section 906a of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 903b. Art. 103b. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70, §904; Pub. L. 109-366, §4(a)(2), Oct. 17, 2006, 120 Stat. 2631; renumbered §903b, Pub. L. 114-328, div. E, title LX, §5401(5), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
904	50:698.	May 5, 1950, ch. 169, §1 (Art. 104), 64 Stat. 138.

AMENDMENTS

2016—Pub. L. 114-328 renumbered section 904 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 904. Art. 104. Public records offenses

Any person subject to this chapter who, willfully and unlawfully—

(1) alters, conceals, removes, mutilates, obliterates, or destroys a public record; or

(2) takes a public record with the intent to alter, conceal, remove, mutilate, obliterate, or destroy the public record;

shall be punished as a court-martial may direct.

(Added Pub. L. 114-328, div. E, title LX, §5415, Dec. 23, 2016, 130 Stat. 2944.)

PRIOR PROVISIONS

A prior section 904 was renumbered section 903b of this title.

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 904a. Art. 104a. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66, §883; renumbered §904a, Pub. L. 114-328, div. E, title LX, §5401(1), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
883	50:677.	May 5, 1950, ch. 169, §1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words “means of” are omitted as surplusage.

AMENDMENTS

2016—Pub. L. 114-328 renumbered section 883 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 904b. Art. 104b. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66, §884; renumbered §904b, Pub. L. 114-328, title LX, §5401(1), Dec. 23, 2016, 130 Stat. 2938.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 884, 50:678, May 5, 1950, ch. 169, §1 (Art. 84), 64 Stat. 135.

AMENDMENTS

2016—Pub. L. 114-328 renumbered section 884 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 905. Art. 105. Forgery

Any person subject to this chapter who, with intent to defraud—

- (1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or
(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74, §923; renumbered §905, Pub. L. 114-328, div. E, title LX, §5401(12), Dec. 23, 2016, 130 Stat. 2939.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row 1: 923, 50:717, May 5, 1950, ch. 169, §1 (Art. 123), 64 Stat. 141.

PRIOR PROVISIONS

A prior section 905 was renumbered section 898 of this title.

AMENDMENTS

2016—Pub. L. 114-328 renumbered section 923 of this title as this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 905a. Art. 105a. False or unauthorized pass or fenses

(a) WRONGFUL MAKING, ALTERING, ETC.—Any person subject to this chapter who, wrongfully and falsely, makes, alters, counterfeits, or tampers with a military or official pass, permit, discharge certificate, or identification card shall be punished as a court-martial may direct.

(b) WRONGFUL SALE, ETC.—Any person subject to this chapter who wrongfully sells, gives, lends, or disposes of a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(c) WRONGFUL USE OR POSSESSION.—Any person subject to this chapter who wrongfully uses or possesses a false or unauthorized military or official pass, permit, discharge certificate, or identification card, knowing that the pass, permit, discharge certificate, or identification card is false or unauthorized, shall be punished as a court-martial may direct.

(Added Pub. L. 114-328, div. E, title LX, §5416, Dec. 23, 2016, 130 Stat. 2944.)

EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 906. Art. 106. Impersonation of officer, non-commissioned or petty officer, or agent or official

(a) IN GENERAL.—Any person subject to this chapter who, wrongfully and willfully, impersonates—

- (1) an officer, a noncommissioned officer, or a petty officer;
(2) an agent of superior authority of one of the armed forces; or
(3) an official of a government;

shall be punished as a court-martial may direct.

(b) IMPERSONATION WITH INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and with intent to defraud, impersonates any person referred to in paragraph (1), (2), or (3) of subsection (a) shall be punished as a court-martial may direct.

(c) IMPERSONATION OF GOVERNMENT OFFICIAL WITHOUT INTENT TO DEFRAUD.—Any person subject to this chapter who, wrongfully, willfully, and without intent to defraud, impersonates an official of a government by committing an act that exercises or asserts the authority of the office that the person claims to have shall be punished as a court-martial may direct.

(Added Pub. L. 114-328, title LX, §5417, Dec. 23, 2016, 130 Stat. 2945.)