

As Introduced

129th General Assembly
Regular Session
2011-2012

H. B. No. 405

Representative Rosenberger

—

A BILL

To amend sections 124.23, 124.26, 3319.085, 3737.881, 1
3781.10, 4123.022, 5321.04, 5901.01, 5903.10, 2
5903.11, 5911.07, 5923.12, 5924.01, 5924.02, 3
5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 4
5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5
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5924.32, 5924.33, 5924.34, 5924.35, 5924.36, 9
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5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 18
5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 19
5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 20
5924.133, and 5924.146, to enact new sections 21
5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 22
5924.66, 5924.70, 5924.71, and 5924.120 and 23
sections 4743.04, 5924.501, 5924.502, 5924.503, 24

5924.504, 5924.505, 5924.506, 5924.581, 5924.582, 25
5924.67, 5924.68, 5924.69, 5924.761, and 26
5924.1121, and to repeal sections 5924.04, 27
5924.12, 5924.21, 5924.61, 5924.62, 5924.64, 28
5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 29
5924.100, 5924.101, 5924.102, 5924.104, 5924.105, 30
5924.106, 5924.110, 5924.114, 5924.118, 5924.119, 31
5924.120, 5924.122, 5924.1231, 5924.124, 5924.125, 32
5924.126, 5924.129, 5924.130, 5924.145, and 33
5924.147 of the Revised Code to allow extra credit 34
to military veterans and reserve component members 35
on state civil service examinations, to provide 36
for the reemployment of nonteaching school 37
employees following military service in accordance 38
with federal law, to extend the period of time 39
within which persons serving in the Ohio National 40
Guard may meet continuing education requirements 41
for occupational licenses and renew their 42
licenses, to require that workers' compensation 43
claims of members of the organized militia be 44
determined in accordance with applicable line of 45
duty regulations, to require landlords to observe 46
the rights of tenants who are service members 47
under federal law, to recognize former members of 48
the Ohio National Guard as veterans with regard to 49
burial and related rights, to modify the order of 50
priority in which veterans may participate in job 51
training programs, to permit but not require the 52
use of armories by patriotic and national 53
organizations, to update references in the Revised 54
Code to federal statutes relating to the National 55
Guard, to conform the Ohio Code of Military 56
Justice to the United States Code of Military 57

Justice, and to make other changes to the Ohio 58
Code of Military Justice. 59

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 124.23, 124.26, 3319.085, 3737.881, 60
3781.10, 4123.022, 5321.04, 5901.01, 5903.10, 5903.11, 5911.07, 61
5923.12, 5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 62
5924.09, 5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 63
5924.17, 5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 64
5924.25, 5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 65
5924.32, 5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 66
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5924.90, 5924.91, 5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 72
5924.97, 5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 73
5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 74
5924.146 be amended and new sections 5924.21, 5924.61, 5924.62, 75
5924.64, 5924.65, 5924.66, 5924.70, 5924.71, and 5924.120 and 76
sections 4743.04, 5924.501, 5924.502, 5924.503, 5924.504, 77
5924.505, 5924.506, 5924.581, 5924.582, 5924.67, 5924.68, 5924.69, 78
5924.761, and 5924.1121 of the Revised Code be enacted to read as 79
follows: 80

Sec. 124.23. (A) All applicants for positions and places in 81
the classified service shall be subject to examination, except for 82
applicants for positions as professional or certified service and 83
paraprofessional employees of county boards of developmental 84
disabilities, who shall be hired in the manner provided in section 85
124.241 of the Revised Code. 86

(B) Any examination administered under this section shall be 87
public and be open to all citizens of the United States and those 88
persons who have legally declared their intentions of becoming 89
United States citizens. For examinations administered for 90
positions in the service of the state, the director of 91
administrative services or the director's designee may determine 92
certain limitations as to citizenship, age, experience, education, 93
health, habit, and moral character. 94

(C)(1) Any person who has completed service in the uniformed 95
services, who has been honorably discharged from the uniformed 96
services or transferred to the reserve with evidence of 97
satisfactory service, and who is a resident of this state and any 98
member of ~~the national guard~~ or a reserve component of the armed 99
forces of the United States, including the Ohio national guard, 100
who has completed more than one hundred eighty days of active duty 101
service pursuant to an executive order of the president of the 102
United States or an act of the congress of the United States may 103
file with the director a certificate of service or honorable 104
discharge, and, upon this filing, the person shall receive 105
additional credit of twenty per cent of the person's total grade 106
given in the examination in which the person receives a passing 107
grade. 108

(2) A member of a reserve component of the armed forces of 109
the United States, including the Ohio national guard, who 110
successfully completes the member's initial entry-level training 111
shall receive a credit of fifteen per cent of the person's total 112
grade given in the examination in which the person receives a 113
passing grade. 114

(3) As used in this division, "service in the uniformed 115
services" and "uniformed services" have the same meanings as in 116
the "Uniformed Services Employment and Reemployment Rights Act of 117
1994," 108 Stat. 3149, 38 U.S.C.A. 4303. 118

(D) An examination may include an evaluation of such factors 119
as education, training, capacity, knowledge, manual dexterity, and 120
physical or psychological fitness. An examination shall consist of 121
one or more tests in any combination. Tests may be written, oral, 122
physical, demonstration of skill, or an evaluation of training and 123
experiences and shall be designed to fairly test the relative 124
capacity of the persons examined to discharge the particular 125
duties of the position for which appointment is sought. Tests may 126
include structured interviews, assessment centers, work 127
simulations, examinations of knowledge, skills, and abilities, and 128
any other acceptable testing methods. If minimum or maximum 129
requirements are established for any examination, they shall be 130
specified in the examination announcement. 131

(E) Except as otherwise provided in sections 124.01 to 124.64 132
of the Revised Code, when a position in the classified service of 133
the state is to be filled, an examination shall be administered. 134
The director of administrative services shall have control of all 135
examinations administered for positions in the service of the 136
state and all other examinations the director administers as 137
provided in section 124.07 of the Revised Code, except as 138
otherwise provided in sections 124.01 to 124.64 of the Revised 139
Code. The director shall, by rule adopted under Chapter 119. of 140
the Revised Code, prescribe the notification method that is to be 141
used by an appointing authority to notify the director that a 142
position in the classified service of the state is to be filled. 143
In addition to the positions described in section 124.30 of the 144
Revised Code, the director may, with sufficient justification from 145
the appointing authority, allow the appointing authority to fill 146
the position by noncompetitive examination. The director shall 147
establish, by rule adopted under Chapter 119. of the Revised Code, 148
standards that the director shall use to determine what serves as 149
sufficient justification from an appointing authority to fill a 150
position by noncompetitive examination. 151

(F) No questions in any examination shall relate to political 152
or religious opinions or affiliations. No credit for seniority, 153
efficiency, or any other reason shall be added to an applicant's 154
examination grade unless the applicant achieves at least the 155
minimum passing grade on the examination without counting that 156
extra credit. 157

(G) Except as otherwise provided in sections 124.01 to 124.64 158
of the Revised Code, the director of administrative services or 159
the director's designee shall give reasonable notice of the time, 160
place, and general scope of every competitive examination for 161
appointment that the director or the director's designee 162
administers for positions in the classified service of the state. 163
The director or the director's designee shall post notices via 164
electronic media of every examination to be conducted for 165
positions in the classified civil service of the state. The 166
electronic notice shall be posted on the director's internet site 167
on the world wide web for a minimum of one week preceding any 168
examination involved. 169

Sec. 124.26. From the returns of the examinations, the 170
director of administrative services or the director's designee 171
shall prepare an eligible list of the persons whose general 172
average standing upon examinations for the class or position is 173
not less than the minimum fixed by the rules of the director, and 174
who are otherwise eligible. Those persons shall take rank upon the 175
eligible list as candidates in the order of their relative 176
excellence as determined by the examination without reference to 177
priority of the time of examination. If two or more applicants 178
receive the same mark in an open competitive examination, priority 179
in the time of filing the application with the director or the 180
director's designee shall determine the order in which their names 181
shall be placed on the eligible list, except that applicants 182
eligible for the veteran's or the reserve component member's 183

preference under section 124.23 of the Revised Code shall receive 184
priority in rank on the eligible list over nonveterans and 185
nonmembers of the reserve component on the list with a rating 186
equal to that of the veteran or reserve component member. Ties 187
among veterans or among reserve component members shall be decided 188
by priority of filing the application. A tie between a veteran and 189
a reserve component member shall be decided in favor of the 190
veteran. 191

- An eligible list expires upon the filling or closing of the 192
position. An expired eligible list may be used to fill a position 193
of the same classification within the same appointing authority 194
for which the list was created. But, in no event shall an expired 195
list be used more than one year past its expiration date. 196

Sec. 3319.085. Any nonteaching school employee who, 197
~~subsequent to September 1, 1962, has left, or leaves, the employ~~ 198
~~of a board of education for the purpose of entering on extended~~ 199
~~active duty in the armed services of the United States or the~~ 200
~~auxiliaries thereof, and within eight weeks enters such service~~ 201
performs service in the uniformed services or service under 202
section 5923.12 of the Revised Code and who has returned, or 203
returns, from ~~such~~ that service with ~~an honorable~~ a discharge 204
under honorable conditions or ~~certificate of~~ is released from 205
service under section 5923.12 of the Revised Code shall be 206
re-employed by the board of education of the district in which ~~he~~ 207
the nonteaching school employee held ~~such~~ the nonteaching school 208
employee position, ~~under the same type of contract as that which~~ 209
~~he last held in such district, if such nonteaching school employee~~ 210
~~applies, within ninety days after such discharge, to such board of~~ 211
~~education for re-employment. Upon such application, such~~ 212
~~nonteaching school employee shall be re-employed at the first of~~ 213
~~the next school semester, if such application is made not less~~ 214
~~than thirty days prior to the first of such next school semester,~~ 215

~~in which case such nonteaching school employee shall be 216
re-employed the first of the following school semester, unless the 217
board of education waives the requirement for such thirty day 218
period. 219~~

~~For the purposes of seniority and placement on the salary 220
schedule, years of absence on extended active duty in the armed 221
services of the United States or the auxiliaries thereof shall not 222
exceed four, and shall be counted as though school service had 223
been performed during such time as required by the "Uniformed 224
Services Employment and Reemployment Rights Act of 1994," 108 225
Stat. 3149, 38 U.S.C. 4303. 226~~

~~The board of education of ~~this~~ the district in which ~~such~~ the 227
nonteaching school employee was employed and is re-employed under 228
this section may suspend the contract of the nonteaching school 229
employee whose services become unnecessary by reason of the return 230
of a nonteaching school employee from service in the ~~armed 231
uniformed services ~~or auxiliaries thereof.~~ 232~~~~

~~As used in this section, "service in the uniformed services" 233
and "uniformed services" have the same meanings as in the 234
"Uniformed Services Employment and Reemployment Rights Act of 235
1994," 108 Stat. 3149, 38 U.S.C. 4303. 236~~

Sec. 3737.881. (A) The fire marshal shall certify underground 237
storage tank systems installers who meet the standards for 238
certification established in rules adopted under division (D)(1) 239
of this section, pass the certification examination required by 240
this division, and pay the certificate fee established in rules 241
adopted under division (D)(5) of this section. Any individual who 242
wishes to obtain certification as an installer shall apply to the 243
fire marshal on a form prescribed by the fire marshal. The 244
application shall be accompanied by the application and 245
examination fees established in rules adopted under division 246

(D)(5) of this section. 247

The fire marshal shall prescribe an examination designed to 248
test the knowledge of applicants for certification as underground 249
storage tank system installers in the installation, repair, 250
abandonment, and removal of those systems. The examination shall 251
also test the applicants' knowledge and understanding of the 252
requirements and standards established in rules adopted under 253
sections 3737.88 and 3737.882 of the Revised Code pertaining to 254
the installation, repair, abandonment, and removal of those 255
systems. 256

Installer certifications issued under this division shall be 257
renewed annually, upon submission of a certification renewal form 258
prescribed by the fire marshal, provision of proof of successful 259
completion of continuing education requirements, and payment of 260
the certification renewal fee established in rules adopted under 261
division (D)(5) of this section. In addition, the fire marshal may 262
from time to time prescribe an examination for certification 263
renewal and may require applicants to pass the examination and pay 264
the fee established for it in rules adopted under division (D)(5) 265
of this section. 266

The fire marshal may, in accordance with Chapter 119. of the 267
Revised Code, deny, suspend, revoke, or refuse to renew an 268
installer's certification or renewal thereof ~~if he finds~~ after 269
finding that any of the following applies: 270

(1) The applicant for certification or certificate holder 271
fails to meet the standards for certification or renewal thereof 272
under this section and rules adopted under it; 273

(2) The certification was obtained through fraud or 274
misrepresentation; 275

(3) The certificate holder recklessly caused or permitted a 276
person under ~~his~~ the certificate holder's supervision to install, 277

perform major repairs on site to, abandon, or remove an 278
underground storage tank system in violation of the performance 279
standards set forth in rules adopted under section 3737.88 or 280
3737.882 of the Revised Code. 281

As used in division (A)(3) of this section, "recklessly" has 282
the same meaning as in section 2901.22 of the Revised Code. 283

(B) The fire marshal shall certify persons who sponsor 284
training programs for underground storage tank system installers 285
who meet the criteria for certification established in rules 286
adopted by the fire marshal under division (D)(4) of this section 287
and pay the certificate fee established in rules adopted under 288
division (D)(5) of this section. Any person who wishes to obtain 289
certification to sponsor such a training program shall apply to 290
the fire marshal on a form prescribed by ~~him~~ the fire marshal. 291
Training program certificates issued under this division shall 292
expire annually. Upon submission of a certification renewal 293
application form prescribed by the fire marshal and payment of the 294
application and certification renewal fees established in rules 295
adopted under division (D)(5) of this section, the fire marshal 296
shall issue a training program renewal certificate to the 297
applicant. 298

The fire marshal may, in accordance with Chapter 119. of the 299
Revised Code, deny an application for, suspend, or revoke a 300
training program certificate or renewal ~~thereof if he finds or~~ 301
renewal of a training program certificate after finding that the 302
training program does not or will not meet the standards for 303
certification established in rules adopted under division (D)(4) 304
of this section. 305

(C) The fire marshal may conduct or cause to be conducted 306
training programs for underground storage tank systems installers 307
as ~~he~~ the fire marshal considers to be necessary or appropriate. 308
The fire marshal is not subject to division (B) of this section 309

with respect to training programs conducted by employees of the 310
office of the fire marshal. 311

(D) The fire marshal shall adopt, and may amend and rescind, 312
rules doing all of the following: 313

(1) Defining the activities that constitute supervision over 314
the installation, performance of major repairs on site to, 315
abandonment of, and removal of underground storage tank systems; 316

(2) Establishing standards and procedures for certification 317
of underground storage tank systems installers; 318

(3) Establishing standards and procedures for continuing 319
education for certification renewal, subject to the provisions of 320
section 5903.12 of the Revised Code relating to active duty 321
military service; 322

(4) Establishing standards and procedures for certification 323
of training programs for installers; 324

(5) Establishing fees for applications for certifications 325
under this section, the examinations prescribed under division (A) 326
of this section, the issuance and renewal of certificates under 327
divisions (A) and (B) of this section, and attendance at training 328
programs conducted by the fire marshal under division (C) of this 329
section. Fees received under this section shall be credited to the 330
underground storage tank administration fund created in section 331
3737.02 of the Revised Code and shall be used to defray the costs 332
of implementing, administering, and enforcing this section and the 333
rules adopted thereunder, conducting training sessions, and 334
facilitating prevention of releases. 335

(6) That are necessary or appropriate for the implementation, 336
administration, and enforcement of this section. 337

(E) Nothing in this section or the rules adopted under it 338
prohibits an owner or operator of an underground storage tank 339

system from installing, making major repairs on site to, 340
abandoning, or removing an underground storage tank system under 341
the supervision of an installer certified under division (A) of 342
this section who is a full-time or part-time employee of the owner 343
or operator. 344

(F) On and after ~~the date one hundred eighty days after the~~ 345
~~effective date of this section~~ January 7, 1990, no person shall do 346
any of the following: 347

(1) Install, make major repairs on site to, abandon, or 348
remove an underground storage tank system unless the activity is 349
performed under the supervision of a qualified individual who 350
holds a valid installer certificate issued under division (A) of 351
this section; 352

(2) Act in the capacity of providing supervision for the 353
installation of, performance of major repairs on site to, 354
abandonment of, or removal of an underground storage tank system 355
unless the person holds a valid installer certificate issued under 356
division (A) of this section; 357

(3) Except as provided in division (C) of this section, 358
sponsor a training program for underground storage tank systems 359
installers unless the person holds a valid training program 360
certificate issued under division (B) of this section. 361

Sec. 3781.10. (A)(1) The board of building standards shall 362
formulate and adopt rules governing the erection, construction, 363
repair, alteration, and maintenance of all buildings or classes of 364
buildings specified in section 3781.06 of the Revised Code, 365
including land area incidental to those buildings, the 366
construction of industrialized units, the installation of 367
equipment, and the standards or requirements for materials used in 368
connection with those buildings. The board shall incorporate those 369
rules into separate residential and nonresidential building codes. 370

The standards shall relate to the conservation of energy and the 371
safety and sanitation of those buildings. 372

(2) The rules governing nonresidential buildings are the 373
lawful minimum requirements specified for those buildings and 374
industrialized units, except that no rule other than as provided 375
in division (C) of section 3781.108 of the Revised Code that 376
specifies a higher requirement than is imposed by any section of 377
the Revised Code is enforceable. The rules governing residential 378
buildings are uniform requirements for residential buildings in 379
any area with a building department certified to enforce the state 380
residential building code. In no case shall any local code or 381
regulation differ from the state residential building code unless 382
that code or regulation addresses subject matter not addressed by 383
the state residential building code or is adopted pursuant to 384
section 3781.01 of the Revised Code. 385

(3) The rules adopted pursuant to this section are complete, 386
lawful alternatives to any requirements specified for buildings or 387
industrialized units in any section of the Revised Code. Except as 388
otherwise provided in division (I) of this section, the board 389
shall, on its own motion or on application made under sections 390
3781.12 and 3781.13 of the Revised Code, formulate, propose, 391
adopt, modify, amend, or repeal the rules to the extent necessary 392
or desirable to effectuate the purposes of sections 3781.06 to 393
3781.18 of the Revised Code. 394

(B) The board shall report to the general assembly proposals 395
for amendments to existing statutes relating to the purposes 396
declared in section 3781.06 of the Revised Code that public health 397
and safety and the development of the arts require and shall 398
recommend any additional legislation to assist in carrying out 399
fully, in statutory form, the purposes declared in that section. 400
The board shall prepare and submit to the general assembly a 401
summary report of the number, nature, and disposition of the 402

petitions filed under sections 3781.13 and 3781.14 of the Revised Code. 403
404

(C) On its own motion or on application made under sections 405
3781.12 and 3781.13 of the Revised Code, and after thorough 406
testing and evaluation, the board shall determine by rule that any 407
particular fixture, device, material, process of manufacture, 408
manufactured unit or component, method of manufacture, system, or 409
method of construction complies with performance standards adopted 410
pursuant to section 3781.11 of the Revised Code. The board shall 411
make its determination with regard to adaptability for safe and 412
sanitary erection, use, or construction, to that described in any 413
section of the Revised Code, wherever the use of a fixture, 414
device, material, method of manufacture, system, or method of 415
construction described in that section of the Revised Code is 416
permitted by law. The board shall amend or annul any rule or issue 417
an authorization for the use of a new material or manufactured 418
unit on any like application. No department, officer, board, or 419
commission of the state other than the board of building standards 420
or the board of building appeals shall permit the use of any 421
fixture, device, material, method of manufacture, newly designed 422
product, system, or method of construction at variance with what 423
is described in any rule the board of building standards adopts or 424
issues or that is authorized by any section of the Revised Code. 425
Nothing in this section shall be construed as requiring approval, 426
by rule, of plans for an industrialized unit that conforms with 427
the rules the board of building standards adopts pursuant to 428
section 3781.11 of the Revised Code. 429

(D) The board shall recommend rules, codes, and standards to 430
help carry out the purposes of section 3781.06 of the Revised Code 431
and to help secure uniformity of state administrative rulings and 432
local legislation and administrative action to the bureau of 433
workers' compensation, the director of commerce, any other 434

department, officer, board, or commission of the state, and to 435
legislative authorities and building departments of counties, 436
townships, and municipal corporations, and shall recommend that 437
they audit those recommended rules, codes, and standards by any 438
appropriate action that they are allowed pursuant to law or the 439
constitution. 440

(E)(1) The board shall certify municipal, township, and 441
county building departments and the personnel of those building 442
departments, and persons and employees of individuals, firms, or 443
corporations as described in division (E)(7) of this section to 444
exercise enforcement authority, to accept and approve plans and 445
specifications, and to make inspections, pursuant to sections 446
3781.03, 3791.04, and 4104.43 of the Revised Code. 447

(2) The board shall certify departments, personnel, and 448
persons to enforce the state residential building code, to enforce 449
the nonresidential building code, or to enforce both the 450
residential and the nonresidential building codes. Any department, 451
personnel, or person may enforce only the type of building code 452
for which certified. 453

(3) The board shall not require a building department, its 454
personnel, or any persons that it employs to be certified for 455
residential building code enforcement if that building department 456
does not enforce the state residential building code. The board 457
shall specify, in rules adopted pursuant to Chapter 119. of the 458
Revised Code, the requirements for certification for residential 459
and nonresidential building code enforcement, which shall be 460
consistent with this division. The requirements for residential 461
and nonresidential certification may differ. Except as otherwise 462
provided in this division, the requirements shall include, but are 463
not limited to, the satisfactory completion of an initial 464
examination and, to remain certified, the completion of a 465
specified number of hours of continuing building code education 466

within each three-year period following the date of certification 467
which shall be not less than thirty hours. The rules shall provide 468
that continuing education credits and certification issued by the 469
council of American building officials, national model code 470
organizations, and agencies or entities the board recognizes are 471
acceptable for purposes of this division. The rules shall specify 472
requirements that are consistent with the provisions of section 473
5903.12 of the Revised Code relating to active duty military 474
service and are compatible, to the extent possible, with 475
requirements the council of American building officials and 476
national model code organizations establish. 477

(4) The board shall establish and collect a certification and 478
renewal fee for building department personnel, and persons and 479
employees of persons, firms, or corporations as described in this 480
section, who are certified pursuant to this division. 481

(5) Any individual certified pursuant to this division shall 482
complete the number of hours of continuing building code education 483
that the board requires or, for failure to do so, forfeit 484
certification. 485

(6) This division does not require or authorize the board to 486
certify personnel of municipal, township, and county building 487
departments, and persons and employees of persons, firms, or 488
corporations as described in this section, whose responsibilities 489
do not include the exercise of enforcement authority, the approval 490
of plans and specifications, or making inspections under the state 491
residential and nonresidential building codes. 492

(7) Enforcement authority for approval of plans and 493
specifications and enforcement authority for inspections may be 494
exercised, and plans and specifications may be approved and 495
inspections may be made on behalf of a municipal corporation, 496
township, or county, by any of the following who the board of 497
building standards certifies: 498

(a) Officers or employees of the municipal corporation, township, or county;	499 500
(b) Persons, or employees of persons, firms, or corporations, pursuant to a contract to furnish architectural, engineering, or other services to the municipal corporation, township, or county;	501 502 503
(c) Officers or employees of, and persons under contract with, a municipal corporation, township, county, health district, or other political subdivision, pursuant to a contract to furnish architectural, engineering, or other services.	504 505 506 507
(8) Municipal, township, and county building departments have jurisdiction within the meaning of sections 3781.03, 3791.04, and 4104.43 of the Revised Code, only with respect to the types of buildings and subject matters for which they are certified under this section.	508 509 510 511 512
(9) Certification shall be granted upon application by the municipal corporation, the board of township trustees, or the board of county commissioners and approval of that application by the board of building standards. The application shall set forth:	513 514 515 516
(a) Whether the certification is requested for residential or nonresidential buildings, or both;	517 518
(b) The number and qualifications of the staff composing the building department;	519 520
(c) The names, addresses, and qualifications of persons, firms, or corporations contracting to furnish work or services pursuant to division (E)(7)(b) of this section;	521 522 523
(d) The names of any other municipal corporation, township, county, health district, or political subdivision under contract to furnish work or services pursuant to division (E)(7) of this section;	524 525 526 527
(e) The proposed budget for the operation of the building	528

department. 529

(10) The board of building standards shall adopt rules 530
governing all of the following: 531

(a) The certification of building department personnel and 532
persons and employees of persons, firms, or corporations 533
exercising authority pursuant to division (E)(7) of this section. 534
The rules shall disqualify any employee of the department or 535
person who contracts for services with the department from 536
performing services for the department when that employee or 537
person would have to pass upon, inspect, or otherwise exercise 538
authority over any labor, material, or equipment the employee or 539
person furnishes for the construction, alteration, or maintenance 540
of a building or the preparation of working drawings or 541
specifications for work within the jurisdictional area of the 542
department. The department shall provide other similarly qualified 543
personnel to enforce the residential and nonresidential building 544
codes as they pertain to that work. 545

(b) The minimum services to be provided by a certified 546
building department. 547

(11) The board of building standards may revoke or suspend 548
certification to enforce the residential and nonresidential 549
building codes, on petition to the board by any person affected by 550
that enforcement or approval of plans, or by the board on its own 551
motion. Hearings shall be held and appeals permitted on any 552
proceedings for certification or revocation or suspension of 553
certification in the same manner as provided in section 3781.101 554
of the Revised Code for other proceedings of the board of building 555
standards. 556

(12) Upon certification, and until that authority is revoked, 557
any county or township building department shall enforce the 558
residential and nonresidential building codes for which it is 559

certified without regard to limitation upon the authority of 560
boards of county commissioners under Chapter 307. of the Revised 561
Code or boards of township trustees under Chapter 505. of the 562
Revised Code. 563

(F) In addition to hearings sections 3781.06 to 3781.18 and 564
3791.04 of the Revised Code require, the board of building 565
standards shall make investigations and tests, and require from 566
other state departments, officers, boards, and commissions 567
information the board considers necessary or desirable to assist 568
it in the discharge of any duty or the exercise of any power 569
mentioned in this section or in sections 3781.06 to 3781.18, 570
3791.04, and 4104.43 of the Revised Code. 571

(G) The board shall adopt rules and establish reasonable fees 572
for the review of all applications submitted where the applicant 573
applies for authority to use a new material, assembly, or product 574
of a manufacturing process. The fee shall bear some reasonable 575
relationship to the cost of the review or testing of the 576
materials, assembly, or products and for the notification of 577
approval or disapproval as provided in section 3781.12 of the 578
Revised Code. 579

(H) The residential construction advisory committee shall 580
provide the board with a proposal for a state residential building 581
code that the committee recommends pursuant to division (D)(1) of 582
section 4740.14 of the Revised Code. Upon receiving a 583
recommendation from the committee that is acceptable to the board, 584
the board shall adopt rules establishing that code as the state 585
residential building code. 586

(I)(1) The committee may provide the board with proposed 587
rules to update or amend the state residential building code that 588
the committee recommends pursuant to division (E) of section 589
4740.14 of the Revised Code. 590

(2) If the board receives a proposed rule to update or amend the state residential building code as provided in division (I)(1) of this section, the board either may accept or reject the proposed rule for incorporation into the residential building code. If the board does not act to either accept or reject the proposed rule within ninety days after receiving the proposed rule from the committee as described in division (I)(1) of this section, the proposed rule shall become part of the residential building code.

(J) The board shall cooperate with the director of job and family services when the director promulgates rules pursuant to section 5104.05 of the Revised Code regarding safety and sanitation in type A family day-care homes.

(K) The board shall adopt rules to implement the requirements of section 3781.108 of the Revised Code.

Sec. 4123.022. Every member of the Ohio organized militia as defined in section 5923.01 of the Revised Code shall, when called to state active duty, be in the employment of the state for the purposes of sections 4123.01 to 4123.94, ~~inclusive,~~ and 4123.99 of the Revised Code. All claims of members of the organized militia resulting from state active duty shall be determined in accordance with applicable army or air force line of duty regulations.

Sec. 4743.04. (A) The renewal of a license or other authorization to practice a trade or profession issued under Title XLVII of the Revised Code is subject to the provisions of section 5903.10 of the Revised Code relating to service in the armed forces of the United States or the Ohio national guard.

(B) Continuing education requirements applicable to the licensees under Title XLVII of the Revised Code are subject to the provisions of section 5903.12 of the Revised Code relating to

active duty military service. 621

(C) A department, agency, or office of this state or of any 622
political subdivision of this state that issues a license or 623
certificate to practice a trade or profession may, pursuant to 624
rules adopted by the department, agency, or office, issue a 625
temporary license or certificate to practice the trade or 626
profession to a person whose spouse is on active military duty in 627
this state. 628

Sec. 5321.04. (A) A landlord who is a party to a rental 629
agreement shall do all of the following: 630

(1) Comply with the requirements of all applicable building, 631
housing, health, and safety codes that materially affect health 632
and safety; 633

(2) Make all repairs and do whatever is reasonably necessary 634
to put and keep the premises in a fit and habitable condition; 635

(3) Keep all common areas of the premises in a safe and 636
sanitary condition; 637

(4) Maintain in good and safe working order and condition all 638
electrical, plumbing, sanitary, heating, ventilating, and air 639
conditioning fixtures and appliances, and elevators, supplied or 640
required to be supplied by ~~him~~ the landlord; 641

(5) When ~~he~~ the landlord is a party to any rental agreements 642
that cover four or more dwelling units in the same structure, 643
provide and maintain appropriate receptacles for the removal of 644
ashes, garbage, rubbish, and other waste incidental to the 645
occupancy of a dwelling unit, and arrange for their removal; 646

(6) Supply running water, reasonable amounts of hot water, 647
and reasonable heat at all times, except where the building that 648
includes the dwelling unit is not required by law to be equipped 649
for that purpose, or the dwelling unit is so constructed that heat 650

or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code;

(8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of ~~his~~ the landlord's intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

(10) Comply with the rights of tenants under the Servicemembers Civil Relief Act, 117 Stat. 2835, 50 U.S.C. App. 501.

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable

manner, or makes repeated demands for entry otherwise lawful that 682
have the effect of harassing the tenant, the tenant may recover 683
actual damages resulting from the entry or demands, obtain 684
injunctive relief to prevent the recurrence of the conduct, and 685
obtain a judgment for reasonable attorney's fees, or may terminate 686
the rental agreement. 687

Sec. 5901.01. As used in sections 5901.01 to 5901.37 of the 688
Revised Code: 689

(A) Except as otherwise provided in division (B) of this 690
section, "veteran" means either of the following: 691

(1) A former member of the armed forces of the United States 692
who served on active military duty and received an honorable 693
discharge or honorable separation, a former member of the Ohio 694
national guard who was discharged or separated under honorable 695
conditions, a member of the armed forces of the United States who 696
died on active military duty, or a member of the armed forces of 697
the United States missing in action more than ninety days; 698

(2) A member of the United States merchant marine to whom 699
either of the following applies: 700

(a) The member has an honorable report of separation from the 701
active duty military service, form DD214 or DD215. 702

(b) The member served in the United States merchant marine 703
between December 7, 1941, and December 31, 1946, and died on 704
active duty while serving in a war zone during that period of 705
service. 706

(B) As used in section 5901.08 and other sections of the 707
Revised Code with regard to applications for financial assistance 708
under sections 5901.02 to 5901.15 of the Revised Code, "veteran" 709
means either of the following: 710

(1) A person who served in the armed forces of the United 711

States on active military duty and was discharged from the service 712
under honorable conditions, and who either served on active duty 713
for reasons other than training or, while serving on active duty 714
for training, incurred a disability recognized by the department 715
of veterans affairs or department of defense as service-connected; 716

(2) A person who served in the United States merchant marine, 717
who either served on active duty for reasons other than training 718
or, while serving on active duty for training, incurred a 719
disability recognized by the department of veterans affairs or 720
department of defense as service-connected, and to whom either of 721
the following applies: 722

(a) The person has an honorable report of separation from the 723
active duty military service, form DD214 or DD215. 724

(b) The person served in the United States merchant marine 725
between December 7, 1941, and December 31, 1946, and died on 726
active duty while serving in a war zone during that period of 727
service. 728

(C) "Veterans plot" means a plot of land in any cemetery, set 729
apart to be exclusively used for interring the remains of deceased 730
veterans. 731

(D) "United States merchant marine" includes the United 732
States army transport service and the United States naval 733
transport service. 734

Sec. 5903.10. ~~Any (A) A~~ holder of an expired license or 735
certificate from this state or any political subdivision or agency 736
of the state to practice a trade or profession, ~~whose license or~~ 737
~~certificate was not renewed because of the holder's service in the~~ 738
~~armed forces of the United States, or in the national guard or in~~ 739
~~a reserve component,~~ shall, ~~upon presentation of satisfactory~~ 740
~~evidence of honorable discharge or separation under honorable~~ 741

~~conditions therefrom within six months of such discharge or~~ 742
~~separation,~~ be granted a renewal of ~~said~~ the license or 743
certificate by the issuing board or authority at the usual cost 744
without penalty and without re-examination if not otherwise 745
disqualified because of mental or physical disability and if 746
either of the following applies: 747

(1) The license or certificate was not renewed because of the 748
holder's service in the armed forces of the United States or a 749
reserve component of the armed forces of the United States, 750
including the Ohio national guard. 751

(2) The license or certificate was not renewed because the 752
holder's spouse served in the armed forces of the United States or 753
a reserved component of the armed forces of the United States, 754
including the Ohio national guard, and the service resulted in the 755
holder's absence from this state. 756

(B) A renewal shall not be granted under division (A) of this 757
section unless the holder or the holder's spouse, whichever is 758
applicable, has presented satisfactory evidence of the service 759
member's discharge under honorable conditions or release under 760
honorable conditions from active duty or national guard duty 761
within six months after the discharge or release. 762

Sec. 5903.11. (A) Any federally funded employment and 763
training program administered by any state agency including, but 764
not limited to, the "~~Job Training Partnership~~ Workforce Investment 765
Act of 1998," ~~96~~ 112 Stat. ~~1322 (1982)~~ 936, codified in scattered 766
sections of 29 U.S.C.A. ~~1501,~~ as amended, shall include a veteran 767
priority system to provide maximum employment and training 768
opportunities to veterans and ~~other~~ eligible persons within each 769
targeted group as established by federal law and state and federal 770
policy in the service area. Disabled veterans, veterans of the 771
Vietnam era, other veterans, and ~~other~~ eligible persons shall 772

receive preference over nonveterans within each targeted group in 773
the provision of employment and training services available 774
through these programs as required by this section. 775

(B) Each state agency shall refer qualified applicants to job 776
openings and training opportunities in programs described in 777
division (A) of this section in the following order of priority: 778

(1) Special disabled veterans; 779

(2) Veterans of the Vietnam era; 780

(3) Disabled veterans; 781

(4) All other veterans; 782

(5) Other eligible persons; 783

(6) Nonveterans. 784

(C) Each state agency providing employment and training 785
services to veterans and ~~other~~ eligible persons under programs 786
described in division (A) of this section shall submit an annual 787
written report to the speaker of the house of representatives and 788
the president of the senate on the services that it provides to 789
veterans and ~~other~~ eligible persons. Each such agency shall report 790
separately on all entitlement programs, employment or training 791
programs, and any other programs that it provides to each class of 792
persons described in divisions (B)(1) to (6) of this section. Each 793
such agency shall also report on action taken to ensure compliance 794
with statutory requirements. Compliance and reporting procedures 795
shall be in accordance with the reporting procedures then in 796
effect for all employment and training programs described in 797
division (A) of this section, with the addition of veterans as a 798
separate reporting module. 799

(D) All state agencies that administer federally funded 800
employment and training programs described in division (A) of this 801
section for veterans and ~~other~~ eligible persons shall do all of 802

the following:	803
(1) Ensure that veterans are treated with courtesy and respect at all state governmental facilities;	804 805
(2) Give priority in referral to jobs to qualified veterans and other eligible persons;	806 807
(3) Give priority in referral to and enrollment in training programs to qualified veterans and other eligible persons;	808 809
(4) Give preferential treatment to special disabled veterans in the provision of all needed state services;	810 811
(5) Provide information and effective referral assistance to veterans and other eligible persons regarding needed benefits and services that may be obtained through other agencies.	812 813 814
(E) As used in this section:	815
(1) "Special disabled veteran" means a veteran who is entitled to, or who but for the receipt of military pay would be entitled to, compensation under any law administered by the department of veterans affairs for a disability rated at thirty per cent or more or a person who was discharged or released from active duty because of a service-connected disability.	816 817 818 819 820 821
(2) "Veteran of the Vietnam era" means an eligible veteran who served on active duty for a period of more than one hundred eighty days, any part of which occurred from August 5, 1964, through May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge or a person who was discharged or released from active duty for a service-connected disability if any part of the active duty was performed from August 5, 1964, through May 7, 1975.	822 823 824 825 826 827 828 829
(3) "Disabled veteran" means a veteran who is entitled to, or who but for the receipt of military retirement pay would be entitled to compensation, under any law administered by the	830 831 832

department of veterans affairs and who is not a special disabled 833
veteran. 834

(4) "Eligible veteran" means a person who served on active 835
duty for more than one hundred eighty days and was discharged or 836
released from active duty with other than a dishonorable discharge 837
or a person who was discharged or released from active duty 838
because of a service-connected disability. 839

(5) "Other eligible person" means one of the following: 840

(a) The spouse of any person who died of a service-connected 841
disability; 842

(b) The spouse of any member of the armed forces serving on 843
active duty who at the time of the spouse's application for 844
assistance under any program described in division (A) of this 845
section is listed pursuant to the "Act of September 6, 1966," 80 846
Stat. 629, 37 U.S.C.A. 556, and the regulations issued pursuant 847
thereto, as having been in one or more of the following categories 848
for a total of ninety or more days: 849

(i) Missing in action; 850

(ii) Captured in line of duty by a hostile force; 851

(iii) Forcibly detained or interned in line of duty by a 852
foreign government or power. 853

(c) The spouse of any person who has a total disability 854
permanent in nature resulting from a service-connected disability 855
or the spouse of a veteran who died while such a disability was in 856
existence. 857

(6) "Veteran" means either of the following: 858

(a) Any person who was a member of the armed forces of the 859
United States for a period of one hundred eighty days or more or a 860
person who was discharged or released from active duty because of 861
a service-connected disability; 862

(b) A person who served as a member of the United States merchant marine and to whom either of the following applies:

(i) The person has an honorable report of separation from active duty military service, form DD214 or DD215.

(ii) The person served in the United States merchant marine between December 7, 1941, and December 31, 1946, and died on active duty while serving in a war zone during that period of service.

(7) "Armed forces of the United States" means the army, air force, navy, marine corps, coast guard, and any other military service branch that is designated by congress as a part of the armed forces of the United States.

(8) "Employment program" means a program which provides referral of individuals to employer job openings in the federal, state, or private sector.

(9) "Training program" means any program that upgrades the employability of qualified applicants.

(10) "Entitlement program" means any program that enlists specific criteria in determining eligibility, including but not limited to the existence in special segments of the general population of specific financial needs.

(11) "Targeted group" means a group of persons designated by federal law or regulations or by state law to receive special assistance under an employment and training program described in division (A) of this section.

(12) "United States merchant marine" includes the United States army transport service and the United States naval transport service.

Sec. 5911.07. The armories erected by the state are for the use of the organized militia; but in each armory there ~~shall~~ may

be provided and maintained, except as provided in this section, a 893
suitable room including heating, lighting, and janitor services, 894
for the free use of ~~the~~ patriotic and national organizations ~~known~~ 895
~~as the women's relief corps, sons of veterans, sons of veterans'~~ 896
~~auxiliary, daughters of veterans, united Spanish war veterans,~~ 897
~~auxiliary united Spanish war veterans, veterans of foreign wars of~~ 898
~~the United States, veteran organizations of World War I and World~~ 899
~~War II, army and navy union of the United States, and honorably~~ 900
~~retired officers of the Ohio national guard, Ohio military~~ 901
~~reserve, and Ohio naval militia~~ chartered under part B of subtitle 902
II of Title 36 of the United States Code, unless such rooms are 903
already provided by the erection of a county memorial building or 904
otherwise by the state, or by the county, township, or municipal 905
corporation. This section does not require a separate room to be 906
maintained for each organization. The room provided in this 907
section may be used for military training when not in actual use 908
by one of the aforementioned organizations. This section applies only 909
during the time that such armory is being used by ~~an active~~ 910
~~military organization or a~~ unit of the organized militia. 911

Sec. 5923.12. When ordered to state active duty by the 912
governor, for which duty federal basic pay and allowances are not 913
authorized, members of the organized militia of Ohio shall receive 914
the same pay and allowances for each day's service as is provided 915
for commissioned officers, warrant officers, noncommissioned 916
officers, and enlisted personnel of like grade and longevity in 917
the armed forces of the United States, together with the necessary 918
transportation, housing, and subsistence allowances as prescribed 919
by the United States department of defense pay manual, or an 920
amount not less than seventy-five dollars per day as base pay for 921
each day's duty performed, whichever is greater. 922

When ordered by the governor to perform training or duty 923
under this section or section 5919.29 of the Revised Code, members 924

of the Ohio national guard shall have the protections afforded to 925
persons on federal active duty by "The ~~Soldiers and Sailors~~ 926
Servicemembers Civil Relief Act ~~of 1940,~~ " 54 117 Stat. ~~1178~~ 2835, 927
50 ~~App.~~ U.S.C.A. App. 501-~~548~~ and 560-~~591~~. 928

Sec. 5924.01. As used in Chapter 5924. of the Revised Code 929
unless the context otherwise requires: 930

(A) "Organized militia" means the Ohio national guard, the 931
Ohio naval militia, and the Ohio military reserve. 932

(B) "Officer" means commissioned or warrant officer. 933

(C) "Commissioned officer" includes a commissioned warrant 934
officer. 935

(D) "Commanding officer" includes only commissioned or 936
warrant officers in command of a unit. 937

(E) "Superior commissioned officer" means a commissioned 938
officer superior in rank or command. 939

(F) "Enlisted member" means a person in an enlisted grade. 940

(G) "Grade" means a step or degree, in a graduated scale of 941
office or military rank, that is established and designated as a 942
grade by law or regulation. 943

(H) "Rank" means the order of precedence among members of the 944
armed forces. 945

(I) "~~Active state~~ State active duty" means full-time duty in 946
the active military service of the state under ~~an order~~ a 947
proclamation of the governor issued pursuant to authority vested 948
in ~~him~~ the governor by law, and while going to and returning from 949
such duty. 950

(J) "Duty status other than ~~active state~~ active duty" means 951
any other types of duty and while going to and returning from such 952
duty. 953

(K) "Military court" means a court-martial, a court of inquiry, or a provost court.

(L) "Military judge" means an official of a general or special court-martial who is a commissioned officer, who has been duly certified to be qualified for duty as a military judge by the state judge advocate, and who has been properly detailed in accordance with section 5924.26 of the Revised Code.

(M) "Law specialist" means a commissioned officer of the organized naval militia of the state designated for special duty.

(N) "Legal officer" means any commissioned officer of the organized naval militia of the state designated to perform legal duties for a command.

(O) "State judge advocate" means the commissioned officer responsible for supervising the administration of ~~the~~ military justice in the organized militia.

(P) "Accuser" means a person who reports an offense subject to trial by court-martial and who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, ~~and~~ or any other person who has an interest other than an official interest in the prosecution of the accused.

(Q) "Military" refers to any or all of the armed forces.

(R) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(S) "May" is used in a permissive sense. The words "no person may" mean that no person is required, authorized, or permitted to do the act prescribed.

(T) "Shall" is used in an imperative sense.

(U) "Code" means the Ohio code of military justice, as set forth in Chapter 5924. of the Revised Code.

(V) "Trial counsel" means the prosecuting attorney in a 984
general or special court-martial. 985

(W) "Detention facility" means any place that is owned or 986
operated by a municipal corporation, by a county, or by one or 987
more municipal corporations, counties, or both and that is used 988
for the confinement of persons charged with or convicted of any 989
crime in this state or another state or under the laws of the 990
United States. 991

(X) "Examiner" has the same meaning as in division (A)(2)(a) 992
of section 2945.37 of the Revised Code. 993

(Y) "Nonsecured status," "unsupervised, off-grounds 994
movement," "trial visit," "conditional release," and "licensed 995
clinical psychologist" have the same meanings as in section 996
2945.37 of the Revised Code. 997

Sec. 5924.02. The following persons who are not in federal 998
service are subject to this code: 999

(A) Members of the organized militia, including Ohio national 1000
guard dual-status technicians during their normal duty hours; 1001

(B) Persons who have been placed on the state ~~reserve list or~~ 1002
the state retired list pursuant to section 5913.07 or 5919.13 of 1003
the Revised Code; 1004

(C) All other persons lawfully ordered to duty in ~~or with~~ the 1005
organized militia, from the dates they are required by the terms 1006
of the order or other directive to obey the ~~same order or~~ 1007
directive, including any time during which they are going to or 1008
returning from duty in the organized militia. 1009

Sec. 5924.03. (A) Each person discharged from the organized 1010
militia who is later charged with having fraudulently obtained ~~his~~ 1011
the discharge is, subject to section 5924.43 of the Revised Code, 1012

subject to trial by court-martial on that charge and is, after 1013
apprehension, subject to this code while in the custody of the 1014
military for that trial. Upon conviction of that charge ~~he~~ the 1015
person is subject to trial by court-martial for all offenses under 1016
this code committed before the fraudulent charge. 1017

(B) No person who has deserted from the organized militia may 1018
be relieved from amenability to the jurisdiction of this code by 1019
virtue of a separation from any later period of service. 1020

Sec. 5924.06. (A) ~~The governor, on the recommendation of the~~ 1021
~~adjutant general,~~ shall appoint an officer of the ~~organized~~ 1022
~~militia~~ Ohio national guard as state judge advocate, ~~who.~~ The 1023
officer shall be a member in good standing of the bar of ~~the~~ 1024
~~supreme court~~ of this state and ~~shall have been a member of the~~ 1025
~~bar of the state and a member of the organized militia for at~~ 1026
~~least five years~~ be eligible to be recognized as a colonel under 1027
regulations prescribed by the national guard bureau. 1028

(B) The adjutant general ~~may~~ shall appoint ~~as many assistant~~ 1029
~~state judge advocates as he shall deem necessary, which assistant~~ 1030
~~state judge~~ and legal officers on the recommendation of the state 1031
judge advocate. Judge advocates and legal officers shall be 1032
officers of the organized militia and members in good standing of 1033
the bar of ~~the~~ this state. 1034

(C) The state judge advocate or ~~his assistants~~ subordinate 1035
judge advocates shall make frequent inspections in the field in 1036
supervision of the administration of military justice. 1037

(D) ~~The provisions of section 109.02 of the Revised Code~~ 1038
~~shall not be a restriction upon the appointment and duties as~~ 1039
~~provided in this section.~~ 1040

~~(E)~~ Convening authorities shall at all times communicate 1041
directly with their staff judge advocates or legal officers in 1042

matters relating to the administration of military justice; ~~and~~ 1043
~~the.~~ A staff judge advocate or legal officer of ~~any~~ a command is 1044
entitled to communicate directly with ~~the~~ any staff judge advocate 1045
or legal officer of a superior or subordinate command, or with the 1046
state judge advocate. 1047

~~(F)~~(E) No person who has acted as member, military judge, 1048
trial counsel, assistant trial counsel, defense counsel, assistant 1049
defense counsel, or investigating officer, or who has been a 1050
witness for either the prosecution or defense, in any case may 1051
later act as staff judge advocate or legal officer to any 1052
reviewing authority upon the same case. 1053

Sec. 5924.07. (A) Apprehension is the taking of a person into 1054
custody. 1055

(B) Any person authorized by this code, or by regulations 1056
issued pursuant ~~thereto~~ to this code, to apprehend persons subject 1057
to this code, any marshal of a court-martial appointed pursuant to 1058
the provisions of this code, and any peace officer authorized to 1059
do so by law may do so upon reasonable belief that an offense has 1060
been committed and that the person apprehended committed it. 1061

(C) Commissioned officers, warrant officers, ~~petty officers,~~ 1062
and noncommissioned officers ~~have authority~~ may take reasonable 1063
action to quell quarrels, frays, and disorders among persons 1064
subject to this code and to apprehend persons subject to this code 1065
who take part therein. 1066

(D) A person subject to this code may be apprehended in the 1067
person's home, with the assistance of a local law enforcement 1068
agency, only upon probable cause to believe that the person is 1069
legally subject to apprehension and that the person is or will be 1070
present to be apprehended. 1071

Sec. 5924.08. ~~Any civil~~ A peace officer having authority to 1072

apprehend offenders under the laws of the United States, or of a 1073
state, territory, commonwealth, or possession, or the District of 1074
Columbia may summarily apprehend a deserter from the organized 1075
militia and deliver ~~him~~ the deserter into the custody of the 1076
organized militia. ~~If an offender is apprehended outside the~~ 1077
~~state, his return to the area must be in accordance with normal~~ 1078
~~extradition procedures, or reciprocal agreement.~~ 1079

Sec. 5924.09. (A) Arrest is the restraint of a person by an 1080
oral or written order, not imposed as a punishment for an offense, 1081
directing ~~him~~ the person to remain within certain specified 1082
limits. Confinement is the physical restraint of a person that is 1083
imposed by order of competent authority and deprives the person of 1084
freedom pending disposition of criminal charges. 1085

(B) An enlisted member may be ordered into arrest or 1086
confinement by any ~~commissioned~~ commanding officer by an order, 1087
oral or written, delivered in person or through other persons 1088
subject to this code or through any person authorized by this code 1089
to apprehend persons. A commanding officer may authorize warrant 1090
officers, ~~petty officers,~~ or noncommissioned officers to order 1091
enlisted members of ~~his~~ the commanding officer's command or 1092
enlisted members subject to ~~his~~ the commanding officer's authority 1093
into arrest or confinement. 1094

(C) A commissioned officer or a warrant officer may be 1095
ordered apprehended or into arrest or confinement only by a 1096
commanding officer to whose authority ~~he~~ the commissioned officer 1097
or warrant officer is subject, by an order, oral or written, 1098
delivered in person or by another commissioned officer. The 1099
authority to order such persons apprehended or into arrest or 1100
confinement may not be delegated. 1101

(D) No person may be ordered apprehended or into arrest or 1102
confinement except for probable cause. 1103

(E) Nothing in this section shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Sec. 5924.10. (A) Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed into confinement. When any person subject to this code is placed into arrest or confinement prior to trial, ~~immediate steps shall be taken to inform him~~ the person shall be informed within seventy-two hours of the specific wrong of which he the person is accused and to try him or to dismiss the charges and release him of the person's rights under this code.

(B) Confinement ~~other than in a guard house,~~ whether before, during, or after trial by a military court, shall be ~~executed, to the maximum extent practicable,~~ in civil jails or ~~prisons~~ designated by the governor or by such person as he may authorize ~~to act like facilities.~~ An order that an accused person be placed in pretrial confinement shall be reviewed by a military judge within seven days and if confirmed may be reviewed after that confirmation only on motion.

Sec. 5924.11. (A) No ~~provost marshal, commander of a guard, master at arms, warden~~ sheriff, keeper, or officer of a ~~city or county jail or any other jail or prison designated under section 5924.10 of the Revised Code,~~ detention facility may ~~refuse do~~ either of the following:

(1) Refuse to receive or keep any prisoner committed to his the sheriff's, keeper's, or officer's charge, when the committing

person furnishes a statement, signed by ~~him~~ the committing person, 1134
of the offense charged against the prisoner; 1135

(2) Demand payment of any kind for housing prisoners under 1136
this code. 1137

(B) ~~Every commander of a guard, master at arms~~ A sheriff, 1138
~~warden, keeper, or officer of a city or county jail or of any~~ 1139
~~other jail or prison designated under section 5924.10 of the~~ 1140
~~Revised Code,~~ detention facility to whose charge a prisoner is 1141
committed, shall, within twenty-four hours after that commitment 1142
~~or as soon as he is relieved from guard,~~ report to the commanding 1143
officer of the prisoner the name of the prisoner, the offense 1144
charged against ~~him~~ the prisoner, and the name of the person who 1145
ordered or authorized the commitment. 1146

Sec. 5924.13. ~~Subject to section 5924.57 of the Revised Code,~~ 1147
~~no~~ No person, while being held for or after trial ~~or the result of~~ 1148
~~trial~~, may be subjected to punishment or penalty other than arrest 1149
or confinement upon the charges pending against ~~him~~, ~~nor shall~~ the 1150
person. The arrest or confinement imposed upon ~~him~~ the person 1151
shall not be any more rigorous than the circumstances require to 1152
insure ~~his~~ the person's presence, ~~but he.~~ The person may be 1153
subjected to minor punishment during that period for infractions 1154
of discipline, ~~and may be required to perform such labor as may be~~ 1155
~~necessary for the policing and sanitation of his living quarters~~ 1156
~~and messing facilities and the area immediately adjacent thereto.~~ 1157
1158

Sec. 5924.14. (A) Under such regulations as may be prescribed 1159
under this code, a person on ~~active~~ state active duty ~~subject to~~ 1160
~~this code or duty under Title 32 of the United States Code~~ who is 1161
accused of an offense against civil authority may be delivered, 1162
upon request, to the civil authority for ~~trial~~ trial. 1163

(B) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for ~~his~~ the offender's offense shall, upon the request of competent military authority, be returned to military custody for the completion of ~~his~~ the offender's sentence.

Sec. 5924.15. (A) Under such regulations as the ~~governor~~ adjutant general may prescribe, ~~and under such additional regulations as may be prescribed by the adjutant general of Ohio,~~ limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to, or embarked in a vessel, punishment may not be imposed upon ~~any person subject to this code under this section~~ a member of the organized militia if ~~such person~~ the member has, before the imposition of ~~such~~ the punishment, demanded trial by court-martial in lieu of ~~such~~ the punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized ~~hereunder~~ under this section. If authorized by regulations prescribed under this section, the governor or a general officer or officer of flag rank in command may delegate the powers of the governor or general officer under this section to a principal assistant. In all proceedings, the accused shall be allowed a reasonable period of time, normally not exceeding forty-eight hours, to reply to the notification of intent to impose punishment under this section.

(B) Subject to ~~the foregoing~~ division (A) of this section, 1196
any commanding officer, ~~and for the purposes of this section the~~ 1197
~~adjutant general of Ohio,~~ may, in addition to or in lieu of 1198
admonition or reprimand, impose one or more of the following 1199
~~disciplinary~~ punishments for minor offenses without the 1200
intervention of a court-martial: 1201

~~(A)~~(1) Upon officers of the commanding officer's command, any 1202
of the following: 1203

~~(1)~~(a) Restriction to certain specified limits, with or 1204
without suspension from duty, for not more than thirty ~~consecutive~~ 1205
days; 1206

~~(2)~~(b) If imposed by the governor, the adjutant general, ~~the~~ 1207
~~commanding an officer of a force of the organized militia~~ 1208
exercising general court-martial jurisdiction, a general officer, 1209
~~or the commanding general of a division flag officer, any of the~~ 1210
following: 1211

~~(a)~~(i) Arrest in quarters for not more than thirty 1212
~~consecutive~~ days; 1213

~~(b)~~ ~~Fine or forfeiture~~ (ii) Forfeiture of not more than 1214
one-half of one month's pay per month for two months, ~~or the sum a~~ 1215
fine of one not more than two hundred fifty dollars, whichever is 1216
~~greater;~~ 1217

~~(c)~~(iii) Restriction to certain specified limits, with or 1218
without suspension from duty, for not more than sixty ~~consecutive~~ 1219
days; 1220

~~(d)~~ ~~Detention of not more than one half of one month's pay~~ 1221
~~per month for three months, or the sum of two hundred twenty five~~ 1222
~~dollars, whichever is greater.~~ 1223

~~(B)~~(2) Upon other military personnel of the commanding 1224
officer's command, any of the following: 1225

(1) If imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;	1226
	1227
	1228
(2)(a) Correctional custody <u>in a detention facility in the offender's county of residence</u> for not more than seven consecutive days;	1229
	1230
	1231
(3) <u>Fine or forfeiture</u> (b) <u>Forfeiture</u> of not more than seven days' pay, or the sum of twenty five dollars, whichever is greater a fine of not more than one-quarter of one month's actual pay;	1232
	1233
	1234
(4)(c) Reduction to the next inferior pay grade, if the grade from which <u>the service member</u> demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;	1235
	1236
	1237
	1238
(5)(d) Extra duties, including fatigue or other duties, for not more than fourteen consecutive days <u>or for a total of thirty nonconsecutive days</u>;	1239
	1240
	1241
(6)(e) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;	1242
	1243
	1244
(7) Detention of not more than fourteen days' pay, or the sum of fifty dollars, whichever is greater;	1245
	1246
(8)(f) If imposed by an officer of the grade of major or lieutenant commander, or above, <u>any of the following</u>:	1247
	1248
(a)(i) The punishment authorized under division (B)(1)(2)(a) of this section;	1249
	1250
(b)(ii) Correctional custody <u>in a detention facility in the offender's county of residence</u> for not more than thirty consecutive days;	1251
	1252
	1253
(c) <u>Fine or forfeiture</u> (iii) <u>Forfeiture</u> of not more than one-half of one month's pay per month for two months, or the sum	1254
	1255

~~of fifty dollars, whichever is greater a fine of not more than~~ 1256
~~one-half of one month's actual pay for two months;~~ 1257

~~(d)(iv)~~ Reduction to the lowest or any intermediate pay 1258
grade, if the grade from which demoted is within the promotion 1259
authority of the officer imposing the reduction or any officer 1260
subordinate to the one who imposes the reduction, but an enlisted 1261
member in pay grade above E-4 may not be reduced more than ~~two~~ one 1262
pay ~~grades~~ grade; 1263

~~(e)(v)~~ Extra duties, including fatigue or other duties, for 1264
not more than forty-five ~~consecutive~~ days, which need not be 1265
consecutive, and for not more than two hours per day; 1266

~~(f)(vi)~~ Restriction to certain specified limits, with or 1267
without suspension from duty, for not more than sixty ~~consecutive~~ 1268
days, which need not be consecutive; 1269

~~(g)~~ Detention of not more than one half of one month's pay 1270
per month for three months, or the sum of seventy five dollars, 1271
~~whichever is greater.~~ 1272

~~Detention of pay shall be for a stated period of not more~~ 1273
~~than one year, but if the offender's term of service expires~~ 1274
~~earlier, the detention shall terminate upon that expiration. No~~ 1275
~~two or more of the punishments of arrest in quarters, confinement~~ 1276
~~on bread and water or diminished rations, correctional custody,~~ 1277
~~extra duties, and restriction may be combined to run consecutively~~ 1278
~~in the maximum amount imposable for each. Whenever any of those~~ 1279
~~punishments are combined to run consecutively, there must be an~~ 1280
~~apportionment. In addition, forfeiture of pay may not be combined~~ 1281
~~with detention of pay without an apportionment. For the purposes~~ 1282
~~of this section "correctional custody" is the physical restraint~~ 1283
~~of a person during duty or nonduty hours and may include extra~~ 1284
~~duties, fatigue duties, or hard labor. If practicable,~~ 1285
~~correctional custody will not be served in immediate association~~ 1286

with persons awaiting trial or held in confinement pursuant to 1287
trial by court martial or civilian court. 1288

(C) No two or more of the punishments of arrest in quarters, 1289
correctional custody, extra duties, and restriction may be 1290
combined to run consecutively in the maximum amount imposable for 1291
each. If any of those punishments are combined to run 1292
consecutively, there must be apportionment. For the purposes of 1293
this section, "correctional custody" means the physical restraint 1294
of a person during duty or nonduty hours and may include extra 1295
duties, fatigue duties, or hard labor. Correctional custody shall 1296
to the maximum extent practicable be served in a detention 1297
facility in the offender's county of residence. 1298

(D) An officer in charge may impose upon enlisted members 1299
assigned to the unit of which the officer is in charge ~~such~~ any of 1300
the punishments authorized under divisions ~~(B)(1)~~(A)(2)(a) to 1301
~~(B)(7)(f)~~ of this section, ~~as~~ that the governor or adjutant 1302
general may specifically prescribe by regulation. 1303

~~(D)~~(E) The officer who imposes the punishment authorized in 1304
~~divisions (A) or~~ division (B) of this section, or the officer's 1305
successor in command, may, at any time, suspend probationally any 1306
part or amount of the unexecuted punishment imposed and may 1307
suspend probationally a reduction in grade or a forfeiture or fine 1308
imposed under ~~divisions (A) or~~ division (B) of this section, 1309
whether or not executed. In addition, the officer who imposed the 1310
punishment may, at any time, remit or mitigate any part or amount 1311
of the unexecuted punishment imposed and may set aside in whole or 1312
in part the punishment, whether executed or unexecuted, and 1313
restore all rights, privileges, and property affected. The officer 1314
who imposed the punishment may also mitigate reduction in grade to 1315
forfeiture ~~or detention~~ of pay or a fine. When mitigating+ 1316

~~(1) Arrest~~ arrest in quarters to restriction+ 1317

~~(2) Confinement on bread and water or diminished rations to
correctional custody;~~ 1318
1319

~~(3) Correctional custody or confinement on bread and water or
diminished rations to extra duties or restriction, or both; or~~ 1320
1321

~~(4) Extra extra duties to restriction;~~ 1322

the, the mitigated punishment shall not be for a greater period 1323
than the punishment mitigated. ~~When mitigating forfeiture of pay~~ 1324
~~to detention of pay, the amount of the detention shall not be~~ 1325
~~greater than the amount of the forfeiture.~~ When mitigating 1326
reduction in grade to fine or forfeiture ~~or detention~~ of pay, the 1327
amount of the fine or forfeiture ~~or detention~~ shall not be greater 1328
than the amount that could have been imposed initially under this 1329
section by the officer who imposed the punishment mitigated. 1330

~~(E)~~(F) A person punished under this section who considers the 1331
punishment unjust or disproportionate to the offense may, through 1332
the proper channel, appeal to the next superior authority within 1333
seven calendar days. The appeal shall be promptly forwarded and 1334
decided, but the person punished may in the meantime be required 1335
to undergo the punishment adjudged. The superior authority may 1336
exercise the same powers with respect to the punishment imposed as 1337
may be exercised under division ~~(D)~~(E) of this section by the 1338
officer who imposed the punishment. Before acting on an appeal 1339
from a punishment of+ 1340

~~(1) Arrest in quarters for more than seven days;~~ 1341

~~(2) Correctional custody for more than seven days;~~ 1342

~~(3) Forfeiture of more than seven days' pay;~~ 1343

~~(4) Reduction of one or more pay grades from the fourth or a
higher pay grade;~~ 1344
1345

~~(5) Extra duties for more than fourteen days;~~ 1346

~~(6) Restriction for more than fourteen days; or~~ 1347

~~(7) Detention of more than fourteen days' pay;~~ 1348

any of the following, the authority who is to act on the appeal 1349
shall refer the case to a judge advocate or legal officer of the 1350
Ohio organized militia for consideration and advice, and may ~~so~~ 1351
also refer the case upon appeal from any punishment imposed under 1352
~~divisions (A) or~~ division (B) of this section: 1353

(1) Arrest in quarters for more than seven days; 1354

(2) Correctional custody for more than seven days; 1355

(3) Fine or forfeiture of more than seven days' pay; 1356

(4) Reduction of one or more pay grades from the fourth or a 1357
higher pay grade; 1358

(5) Extra duties for more than fourteen days. 1359

~~(F)~~(G) The imposition and enforcement of ~~disciplinary~~ 1360
punishment under this section for any act or omission is not a bar 1361
to trial by court-martial for a serious crime or offense growing 1362
out of the same act or omission, and not properly punishable under 1363
this section; ~~but the.~~ The fact that a ~~disciplinary~~ punishment has 1364
been enforced may be shown by the accused upon trial, and, when so 1365
shown, shall be considered in determining the measure of 1366
punishment to be adjudged in the event of a finding of guilty. 1367

~~(G)~~(H) The ~~governor or the~~ adjutant general may, by 1368
regulation, prescribe the form of records to be kept of 1369
proceedings under this section and may also prescribe that certain 1370
categories of those proceedings shall be in writing. 1371

~~(H) The punishments imposed pursuant to this section, except~~ 1372
~~fine and forfeiture of pay, shall not extend beyond the~~ 1373
~~termination of the duty status of the individual punished.~~ 1374

(I) A commanding officer may delegate authority to make a 1375
reduction in pay grade under division (B)(2)(c) of this section to 1376
the commanding officer's executive officer, deputy commander, vice 1377

commander, or principal assistant. 1378

Sec. 5924.16. (A) In the organized militia ~~not in federal~~ 1379
~~service,~~ there are general, special, and summary courts-martial 1380
~~constituted like similar courts of the army and the air force.~~ 1381
~~They have the jurisdiction and powers, except as to punishments,~~ 1382
~~and shall follow the forms and procedures provided for those~~ 1383
~~courts. General and special courts-martial are courts of record~~ 1384
~~with original jurisdiction.~~ 1385

(B) ~~The constitutions of the three kinds of courts martial~~ 1386
~~are:~~ 1387

~~(1) General courts martial, consisting~~ A general 1388
court-martial consists of one of the following: 1389

~~(A)(1)~~ A military judge and not less fewer than five members; 1390
~~or~~ 1391

~~(B)(2)~~ Only a military judge, if, before the court is 1392
assembled, the accused, knowing the identity of the military judge 1393
and after consultation with defense counsel, requests in writing a 1394
court composed only of a military judge and the military judge 1395
approves; 1396

~~(2) Special courts martial, consisting,~~ 1397

(C) A special court-martial consists of one of the following: 1398

~~(A) not less than three~~ (1) Three or more members; ~~or~~ 1399

~~(B)(2)~~ A military judge and not less fewer than three 1400
members; ~~or~~ 1401

~~(C)(3)~~ Only a military judge, if one has been detailed to the 1402
court, and ~~the accused so requests in writing under the same~~ 1403
~~conditions as those prescribed in division (B)(1)(b) of this~~ 1404
~~section;~~ 1405

~~(3) Summary courts martial, consisting~~ before the court is 1406

assembled the accused, knowing the identity of the military judge 1407
and after consultation with defense counsel, requests in writing a 1408
court composed only of a military judge and the military judge 1409
approves. 1410

(D) A summary court-martial consists of one commissioned 1411
officer in the grade of captain or above. 1412

Sec. 5924.17. ~~Each force of the organized militia~~ The Ohio 1413
national guard has court-martial jurisdiction over all persons 1414
subject to this code. The exercise of jurisdiction by ~~one force~~ 1415
the Ohio national guard over personnel of another ~~force~~ element of 1416
the organized militia shall be in accordance with regulations 1417
prescribed by the ~~governor~~ adjutant general. 1418

Sec. 5924.18. (A) Subject to section 5924.17 of the Revised 1419
Code, general courts-martial have jurisdiction to try persons 1420
subject to this code for any offense made punishable by this code 1421
and may, under ~~such~~ any limitations ~~as that~~ the governor may 1422
prescribe, adjudge any ~~punishment not forbidden by this code,~~ 1423
~~including the penalty of death when specifically authorized by~~ 1424
~~this code. General courts martial also have jurisdiction to try~~ 1425
~~any person who by the law of war is subject to trial by a military~~ 1426
~~tribunal and may adjudge any punishment permitted by the law of~~ 1427
~~war. A general court martial of the kind specified in division~~ 1428
~~(B)(1)(b) of section 5924.16 of the Revised Code does not have~~ 1429
~~jurisdiction to try any person for any offense for which the death~~ 1430
~~penalty may be adjudged unless the case has been previously~~ 1431
~~referred to trial as a noncapital case~~ of the following 1432
punishments: 1433

(1) A fine of not more than two thousand five hundred dollars 1434
or confinement for not more than three hundred sixty-five days; 1435

(2) Forfeiture of all pay and allowances; 1436

<u>(3) Reprimand;</u>	1437
<u>(4) Dismissal and dishonorable discharge or a bad conduct discharge;</u>	1438
<u>(5) Reduction of a noncommissioned officer to the lowest or any intermediate rank;</u>	1439
<u>(6) Any combination of the foregoing punishments.</u>	1440
<u>(B) A general court-martial may not adjudge dismissal or dishonorable discharge unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under division (B) of section 5924.27 of the Revised Code is detailed to represent the accused, and a military judge is detailed to the trial.</u>	1441
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Sec. 5924.19. Subject to section 5924.17 of the Revised Code, special courts-martial shall have jurisdiction to try persons subject to this code for any non-capital offense for which they may be punished under this code. A special court-martial may adjudge any punishment a general court-martial may adjudge, except death, dishonorable discharge, dismissal, confinement for that a special court-martial may not impose a fine of more than six months, hard labor without one thousand dollars, confinement for more than three months, forfeiture of pay exceeding two thirds pay per month, or forfeiture of pay for more than six months one hundred eighty days for a single offense, or dismissal or dishonorable discharge. A bad-conduct discharge special court-martial may not be adjudged <u>adjudge a bad-conduct discharge</u> unless a complete record of the proceedings and testimony has been <u>is</u> made, counsel having the qualifications prescribed under division (B) of section 5924.27 of the Revised Code was <u>is</u> detailed to represent the accused, and a military judge was <u>is</u> detailed to the trial. In any case in which a military judge was not detailed to the trial, except when due to physical conditions	1449
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~~or military exigencies, the convening authority shall make a~~ 1468
~~written statement, to be appended to the record, stating the~~ 1469
~~reason or reasons a military judge could not be detailed.~~ 1470

Sec. 5924.20. (A) Subject to section 5924.17 of the Revised 1471
Code, summary courts-martial have jurisdiction to try persons 1472
subject to this code, ~~except officers and warrant officers,~~ for 1473
any offense made punishable by this code. 1474

(B) No person with respect to whom summary courts-martial 1475
have jurisdiction may be brought to trial before a summary 1476
court-martial if he the person objects thereto to being brought to 1477
trial before a summary court-martial. If objection to trial by 1478
summary court-martial is made by an accused, trial may be ordered 1479
by special or general court-martial, as may be appropriate. 1480

(C) Summary courts-martial may, ~~under such limitations as the~~ 1481
~~governor may prescribe,~~ adjudge punishment of a fine not forbidden 1482
by this code, except death, dismissal, dishonorable or bad conduct 1483
discharge, exceeding five hundred dollars, confinement for not 1484
more than one month, hard labor without confinement for more than 1485
forty five days, restriction to specified limits for more than two 1486
months, or thirty days, forfeiture of not more than two-thirds of 1487
one month's pay, and reduction to the lowest or any intermediate 1488
pay grade. For enlisted members in pay grade above E-4, summary 1489
courts-martial may not adjudge confinement or reduction except to 1490
the next inferior pay grade. 1491

Sec. 5924.21. The provisions of this code that confer 1492
jurisdiction on courts-martial do not deprive military 1493
commissions, provost courts, other military tribunals, or state or 1494
federal courts of concurrent jurisdiction with respect to 1495
offenders or offenses that by statute or by the law of war may be 1496
tried by military commissions, provost courts, other military 1497

tribunals, or state or federal courts. 1498

Sec. 5924.22. In the organized militia not in federal 1499
service, the governor, adjutant general, assistant adjutant 1500
general for army, or assistant adjutant general for air may 1501
convene general courts-martial ~~may be convened by the governor.~~ 1502

Sec. 5924.23. In the organized militia not in federal 1503
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1504
~~air base, auxiliary air base, or other place where troops are on~~ 1505
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1506
~~group, detached battalion, separate squadron, or other detached~~ 1507
~~command, any commander authorized by regulation in the grade of~~ 1508
colonel or a higher grade may convene special courts-martial. 1509
~~Special courts martial may also be convened by superior authority.~~ 1510
~~When any such officer is an accuser, the court shall be convened~~ 1511
~~by superior competent authority.~~ 1512

Sec. 5924.24. (A) In the organized militia not in federal 1513
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1514
~~air base, auxiliary air base, or other place where troops are on~~ 1515
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1516
~~group, detached battalion, detached squadron, detached company, or~~ 1517
~~other detachment, any commander authorized by regulation in the~~ 1518
grade of lieutenant colonel or a higher grade may convene a 1519
summary court-martial ~~consisting of one commissioned officer. The~~ 1520
~~proceedings shall be informal.~~ 1521

~~(B) When only one commissioned officer is present with a~~ 1522
~~command or detachment he shall be the summary court martial of~~ 1523
~~that command or detachment and shall hear and determine all~~ 1524
~~summary court martial cases brought before him. Summary~~ 1525
~~courts martial may, however, be convened in any case by superior~~ 1526
~~competent authority when considered desirable by him.~~ 1527

Sec. 5924.25. (A) Any commissioned officer ~~of or on~~ in a duty 1528
~~with the organized militia status~~ is eligible to serve on all 1529
courts-martial for the trial of any person who may lawfully be 1530
brought before such courts for ~~trial~~ trial. 1531

(B) Any warrant officer ~~of or on~~ in a duty ~~with the organized~~ 1532
~~militia status~~ is eligible to serve on general and special 1533
courts-martial for the trial of any person, other than a 1534
commissioned officer, who may lawfully be brought before such 1535
courts for ~~trial~~ trial. 1536

(C)(1) Any enlisted member of the organized militia in a duty 1537
status who is not a member of the same unit as the accused is 1538
eligible to serve on general and special courts-martial for the 1539
trial of any enlisted member of the organized militia who may 1540
lawfully be brought before such courts for trial, ~~but he shall~~ 1541
~~serve as a member of a court only~~ if, before the conclusion of a 1542
session called by the military judge ~~under division (A) of section~~ 1543
~~5924.39 of the Revised Code~~ or, in the absence of ~~such~~ a session 1544
called by the military judge, before the court is assembled for 1545
the trial of the accused, the accused personally has requested in 1546
writing that enlisted members serve on it. After such a request, 1547
the accused may not be tried by a general or special 1548
court-martial, ~~the membership of which does not include enlisted~~ 1549
members in a number comprising at least one-third of the total 1550
membership of the court, unless eligible members cannot be 1551
obtained on account of physical conditions or military exigencies. 1552
If ~~such~~ enough enlisted members cannot be obtained, the court may 1553
be assembled and trial held without them, but the convening 1554
authority shall make a detailed written statement, to be appended 1555
to the record, stating why they could not be obtained. 1556

(2) ~~In~~ As used in division (C) of this section, ~~the word~~ 1557
"unit" means any regularly organized body of the organized militia 1558

not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them. 1559
1560

(D)(1) ~~When~~ If it can be avoided, ~~no~~ a person subject to this code shall not be tried by a court-martial, any member of which is junior to ~~him~~ the person in rank or grade. 1561
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(2) When convening a court-martial, the convening authority shall detail as members ~~thereof~~ such of the court-martial members ~~as~~ of the organized militia who, in ~~his~~ the convening authority's opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the organized militia is eligible to serve as a member of a general or special court-martial ~~when he~~ if the member of the organized militia is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. ~~If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of the state and of appropriate rank, the convening authority shall appoint him as president of a special court martial. Although this requirement is binding on the convening authority, failure to meet it in any case does not divest a military court of jurisdiction.~~ 1564
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Sec. 5924.26. (A) ~~The authority convening a~~ A military judge shall be detailed to each general court martial shall, and, subject to regulations promulgated by the governor, ~~the authority convening a~~ and special court-martial ~~may, detail a.~~ A military judge ~~to~~ shall preside over each open session of the court-martial to which the judge has been detailed. 1580
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(B) A military judge shall be a commissioned officer of the organized militia who is a member in good standing of the bar of this state, ~~or a member of the bar of a federal court,~~ and who is certified to be qualified for ~~such~~ duty as a military judge by the 1586
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state judge advocate. 1590

(C) The military judge of a general or special court-martial 1591
shall be designated by the state judge advocate ~~or his designee~~ 1592
for detail by the convening authority. Unless the court-martial 1593
was convened by the governor or the adjutant general, neither the 1594
convening authority nor ~~his~~ the convening authority's staff, other 1595
than the state judge advocate or deputy state judge advocate, 1596
shall prepare or review any report concerning the effectiveness, 1597
fitness, or efficiency of the military judge ~~so detailed which~~ 1598
~~relates to his~~ judge's performance of duty as a military judge. A 1599
~~commissioned officer who is certified as a military judge of a~~ 1600
~~general court martial may perform duties other than those relating~~ 1601
~~to his being a military judge of a general court martial when such~~ 1602
~~duties are assigned to him by or with the approval of the state~~ 1603
~~judge advocate or his designee.~~ 1604

(D) No person is eligible to act as a military judge in a 1605
case if ~~he~~ the person is the accuser, is a witness for the 1606
prosecution, has acted as investigating officer, or is a counsel 1607
in the same case. 1608

(E) The military judge of a court-martial may not consult 1609
with the members of the court, except in the presence of the 1610
accused, trial counsel, and defense counsel, nor may ~~he~~ the 1611
military judge vote with the members of the court. 1612

(F) A trial counsel, defense counsel, military judge, legal 1613
officer, summary court officer, or any other person from any one 1614
component of the organized militia certified by the state judge 1615
advocate to perform legal functions under this code may perform 1616
those functions, as needed, for any other component of the 1617
organized militia. 1618

Sec. 5924.27. (A) ~~For each general and special court martial~~ 1619
~~the authority convening the court~~ The state judge advocate shall 1620

detail trial counsel ~~and~~, defense counsel, and ~~such~~ assistants ~~as~~ 1621
he that the state judge advocate considers appropriate. No person 1622
who has acted as investigating officer, military judge, or court 1623
member in any case may act later as trial counsel, assistant trial 1624
counsel, ~~or, unless expressly requested by the accused, as~~ defense 1625
counsel, or assistant defense counsel in the same case. No person 1626
who has acted for the prosecution may act later in the same case 1627
for the defense, nor may any person who has acted for the defense 1628
act later in the same case for the prosecution. 1629

(B) Trial counsel or defense counsel detailed for a general 1630
court-martial must be both of the following: 1631

(1) ~~Must be a person who is a~~ A member in good standing of 1632
the bar of the highest court of this state, ~~or a member of the bar~~ 1633
~~of a federal court, or a law specialist; and~~ 1634

(2) ~~Must be certified~~ Certified as competent to perform ~~such~~ 1635
the duties of trial counsel or defense counsel in a general 1636
court-martial by the state judge advocate. 1637

~~(C) In the case of a special court martial, the accused shall~~ 1638
~~be afforded the opportunity to be represented at the trial by~~ 1639
~~counsel having the qualifications prescribed by division (B) of~~ 1640
~~this section. If counsel having such qualifications cannot be~~ 1641
~~obtained because of physical conditions or military exigencies,~~ 1642
~~the court may be convened and the trial held, but the convening~~ 1643
~~authority shall make a detailed written statement explaining the~~ 1644
~~reasons, which shall be appended to the record.~~ 1645

Sec. 5924.28. Under such regulations as the ~~governor~~ adjutant 1646
general may prescribe, the convening authority of a general or 1647
special court-martial ~~or court of inquiry~~ shall detail or employ 1648
qualified court reporters, who shall record the proceedings of and 1649
testimony taken before that court. ~~Under like regulations the~~ 1650
~~convening authority of a military court, and~~ may detail or employ 1651

interpreters, who shall interpret for the court. 1652

Sec. 5924.29. (A) No member of a general or special 1653
court-martial shall be absent or excused after the court has been 1654
assembled for the trial of the accused except for physical 1655
disability, as a result of a challenge, or by order of the 1656
convening authority for good cause. 1657

(B) Whenever a general court-martial, other than a general 1658
court-martial composed of a military judge only, is reduced below 1659
five members, the trial may not proceed unless the convening 1660
authority details new members sufficient in number to provide not 1661
~~less~~ fewer than five members. When the new members have been 1662
sworn, the trial may proceed with the new members present after 1663
the recorded evidence previously introduced before the members of 1664
the court has been read to the court in the presence of the 1665
military judge, the accused, and counsel for both sides. 1666

(C) Whenever a special court-martial, other than a special 1667
court-martial composed of a military judge only, is reduced below 1668
three members, the trial may not proceed unless the convening 1669
authority details new members sufficient in number to provide not 1670
~~less~~ fewer than three members. When the new members have been 1671
sworn, the trial shall proceed with the new members present as if 1672
no evidence had previously been introduced at the trial, unless a 1673
verbatim record of the evidence previously introduced before the 1674
members of the court or a stipulation thereof is read to the court 1675
in the presence of the military judge, if any, the accused, and 1676
counsel for both sides. 1677

(D) If the military judge of a court-martial composed of a 1678
military judge only is unable to proceed with the trial because of 1679
physical disability, as a result of a challenge, or for other good 1680
cause, the trial shall proceed, ~~subject to any applicable~~ 1681
~~conditions of division (B)(1)(b) or division (B)(2)(c) of section~~ 1682

~~5924.16 of the Revised Code~~, after the detail of a new military 1683
judge as if no evidence had previously been introduced, unless a 1684
verbatim record of the evidence previously introduced or a 1685
stipulation thereof is read in court in the presence of the new 1686
military judge, the accused, and counsel for both sides. 1687

Sec. 5924.30. (A) Charges and specifications shall be signed 1688
by a person subject to this code under oath before a ~~person~~ 1689
commissioned officer of the organized militia authorized ~~by this~~ 1690
~~code~~ to administer oaths and shall state both of the following: 1691

(1) That the signer has personal knowledge of, or has 1692
investigated, the matters set forth ~~therein~~ in the charges and 1693
specifications; and 1694

(2) That ~~they~~ those matters are true in fact to the best of 1695
~~his~~ the person's knowledge and belief. 1696

(B) Upon the preferring of charges, the proper authority 1697
shall take immediate steps to determine ~~what~~ the disposition that 1698
should be made ~~thereof~~ of the charges in the interest of justice 1699
and discipline, and the person accused shall be informed of the 1700
charges ~~against him~~ as soon as practicable. 1701

Sec. 5924.31. (A) No person subject to this code may compel 1702
any other person to incriminate ~~himself~~ the other person or to 1703
answer any question, the answer to which may tend to incriminate 1704
~~him~~ the other person. 1705

(B) No person subject to this code may interrogate, or 1706
request any statement from an accused or a person suspected of an 1707
offense, without first informing ~~him~~ the accused or person 1708
suspected of the nature of the accusation and advising ~~him~~ the 1709
accused or person suspected that ~~he~~ the accused or person 1710
suspected does not have to make any statement regarding the 1711
offense of which ~~he~~ the accused or person suspected is accused or 1712

suspected and that any statement made by ~~him~~ the accused or person 1713
suspected may be used as evidence against ~~him~~ the accused or 1714
person suspected in a trial by court-martial. 1715

(C) No person subject to this code may compel any other 1716
person to make a statement or produce evidence before any ~~military~~ 1717
~~tribunal~~ court-martial if the statement or evidence is not 1718
material to the issue and may tend to degrade ~~him~~ the other 1719
person. 1720

(D) No statement obtained from any person in violation of 1721
this section, or through the use of coercion, unlawful influence, 1722
or unlawful inducement may be received in evidence against ~~him~~ the 1723
person in a trial by court-martial. 1724

Sec. 5924.32. (A) No charge or specification may be referred 1725
to a general court-martial for trial until a thorough and 1726
impartial investigation of all the matters set forth ~~therein in~~ 1727
the charge or specification has been made. This investigation 1728
shall include inquiry as to the truth of the matter set forth in 1729
the charges, consideration of the form of charges, and a 1730
recommendation as to the disposition ~~which~~ that should be made of 1731
the case in the interest of justice and discipline. 1732

(B) The accused shall be advised of the charges against ~~him~~ 1733
the accused and of ~~his~~ the accused's right to be represented at 1734
that investigation by counsel. Upon ~~his~~ the accused's own request 1735
~~he,~~ the accused shall be represented by civilian counsel if 1736
provided by ~~him~~ the accused at the accused's own cost, or by 1737
military counsel of ~~his~~ the accused's own selection if such 1738
counsel is reasonably available, or by counsel detailed by the 1739
officer exercising general court-martial jurisdiction over the 1740
command. At that investigation full opportunity shall be given to 1741
the accused to cross-examine witnesses against ~~him~~ the accused if 1742
they are available and to present anything ~~he~~ the accused may 1743

desire in ~~his~~ the accused's own behalf, either in defense or 1744
mitigation, and the investigating officer shall examine reasonably 1745
available witnesses requested by the accused. If the charges are 1746
forwarded after the investigation, they shall be accompanied by a 1747
statement of the substance of the testimony taken on both sides, 1748
and a copy ~~thereof~~ of that statement shall be given to the 1749
accused. 1750

(C) If an investigation of the subject matter of an offense 1751
has been conducted before the accused is charged with the offense, 1752
and if the accused was present at the investigation and afforded 1753
the opportunities for representation, cross-examination, and 1754
presentation prescribed in division (B) of this section, no 1755
further investigation of that charge is necessary under this 1756
section unless it is demanded by the accused after ~~he~~ the accused 1757
is informed of the charge. A demand for further investigation 1758
entitles the accused to recall witnesses for further 1759
cross-examination and to offer any new evidence in ~~his~~ the 1760
accused's own behalf. 1761

(D) The requirements of this section are binding on all 1762
persons administering this code but failure to follow them does 1763
not divest a military court of jurisdiction. 1764

Sec. 5924.33. When a person is held for trial by general 1765
court-martial, the commanding officer shall, ~~within eight days~~ not 1766
later than the eighth day after the accused is ordered into arrest 1767
or confinement, ~~if practicable,~~ forward the charges, together with 1768
the investigation and allied papers, to the ~~governor~~ general 1769
court-martial convening authority. If that is not practicable, ~~he~~ 1770
the commanding officer shall report in writing to the ~~governor~~ 1771
convening authority the reasons for delay. 1772

Sec. 5924.34. (A) Before directing the trial of any charge by 1774

general court-martial, the convening authority shall refer it to 1775
the ~~state~~ convening authority's staff judge advocate or legal 1776
officer for consideration and advice. The convening authority may 1777
not refer a charge to a general court-martial for trial unless ~~he~~ 1778
the convening authority has found that the charge alleges an 1779
offense under this code and is warranted by evidence indicated in 1780
the report of the investigation. 1781

(B) If the charges or specifications are not formally correct 1782
or do not conform to the substance of the evidence contained in 1783
the report of the investigating officer, formal corrections and 1784
such changes in the charges and specifications as are needed to 1785
make them conform to the evidence may be made. 1786

Sec. 5924.35. The trial counsel to whom court-martial charges 1787
are referred for trial shall cause to be served upon the accused a 1788
copy of the charges upon which trial is to be had. ~~In~~ Except in 1789
time of ~~peace~~ declared war, no person may, against ~~his~~ the 1790
person's objection, be brought to trial or be required to 1791
participate ~~by himself~~ alone or with counsel in a session called 1792
by the military judge ~~under division (A) of section 5924.39 of the~~ 1793
~~Revised Code,~~ in a general or special court-martial case within a 1794
~~period of five days~~ twenty-four hours after the service of charges 1795
upon him, ~~or in a special court martial within a period of three~~ 1796
~~days after the service of the charges upon him~~ the person. 1797

Sec. 5924.36. The procedure, including modes of proof, in 1798
cases before military courts ~~and other military tribunals~~ may be 1799
prescribed by the ~~governor~~ adjutant general by regulations, ~~which~~ 1800
that shall, so far as ~~he~~ the adjutant general considers 1801
practicable, apply the principles of law and the rules of evidence 1802
generally recognized in the trial of criminal cases in the courts 1803
of ~~the~~ this state, but ~~which~~ that may not be contrary to or 1804
inconsistent with this code. 1805

Sec. 5924.37. (A) No authority convening a general, special, 1806
or summary court-martial, ~~nor any~~ other commanding officer, or 1807
officer serving on the staff ~~thereof~~, of a convening authority or 1808
other commanding officer may censure, reprimand, or admonish the 1809
court or any member, military judge, or counsel ~~thereof~~ of the 1810
court, with respect to the findings or sentence adjudged by the 1811
court, or with respect to any other exercise of its or ~~his~~ the 1812
member's, military judge's, or counsel's functions in the conduct 1813
of the proceeding. No person subject to this code may attempt to 1814
coerce or, by any unauthorized means, influence the action of the 1815
court-martial or any other military tribunal or any member ~~thereof~~ 1816
of the court-martial or military tribunal in reaching the findings 1817
or sentence in any case, or the action of any convening, 1818
approving, or reviewing authority with respect to ~~his~~ the 1819
authority's judicial acts. This division does not apply to: 1820

(1) General instructional or informational courses in 1821
military justice, if such courses are designed solely for the 1822
purpose of instructing members of a command in the substantive and 1823
procedural aspects of courts-martial; 1824

(2) Statements and instructions given in open court by the 1825
military judge, the president of a special court-martial, or 1826
counsel. 1827

(B) In the preparation of ~~an effectiveness~~, a fitness, ~~or~~ 1828
~~efficiency~~ evaluation, or performance report, or any other report 1829
or document used in whole or in part for the purpose of 1830
determining whether a member of the organized militia is qualified 1831
to be advanced in grade, ~~or~~ in determining the assignment or 1832
transfer of a member of the organized militia, or in determining 1833
whether a member of the organized militia should be retained ~~in an~~ 1834
~~active status~~ on duty, no person subject to this code may, ~~in~~ 1835
~~preparing any such report~~ do either of the following: 1836

(1) Consider or evaluate the performance of duty of ~~any such~~ the member as a member of a court-martial; 1837
1838

(2) Give a less favorable rating or evaluation of any member 1839
of the organized militia because of the zeal with which ~~such the~~ 1840
member, as counsel, represented any accused before a 1841
court-martial. 1842

Sec. 5924.38. (A) The trial counsel of a general or special 1843
court-martial shall prosecute in the name of the state, and shall, 1844
under the direction of the court, prepare the record of the 1845
proceedings. 1846

(B) The accused has the right to be represented in ~~his the~~ 1847
accused's defense before a general or special court-martial by 1848
civilian counsel if provided by ~~him~~ the accused at the accused's 1849
own cost, ~~or~~ by military counsel of ~~his the accused's~~ own 1850
selection if reasonably available, or by ~~the~~ detailed military 1851
defense counsel ~~detailed under section 5924.27 of the Revised~~ 1852
~~Code.~~ Should the accused have civilian counsel of ~~his the~~ 1853
accused's own selection, the defense counsel, and any assistant 1854
defense counsel, ~~if any,~~ who were detailed, shall, if the accused 1855
so desires, act as ~~his the accused's~~ associate counsel; otherwise 1856
they shall be excused by the military judge ~~or by the president of~~ 1857
~~a court martial without a military judge.~~ 1858

(C) In every court-martial proceeding, the defense counsel 1859
may, in the event of conviction, forward for attachment to the 1860
record of proceedings a brief of such matters as ~~he~~ the defense 1861
counsel feels should be considered in behalf of the accused on 1862
review, including any objection to the contents of the record 1863
which ~~he~~ the defense counsel considers appropriate. 1864

(D) An assistant trial counsel of a ~~general~~ court-martial 1865
may, under the direction of the trial counsel or when ~~he~~ the 1866
assistant trial counsel is qualified to be a trial counsel ~~as~~ 1867

~~required by section 5924.27 of the Revised Code, perform any duty~~ 1868
~~imposed by law, regulation, or the custom of the service upon the~~ 1869
~~trial counsel of the court. An assistant trial counsel of a~~ 1870
~~special court martial may perform any duty of the trial counsel.~~ 1871

(E) An assistant defense counsel of a general or special 1872
court-martial may, under the direction of the defense counsel or 1873
when ~~he~~ the assistant defense counsel is qualified to be the 1874
defense counsel ~~as required by section 5924.27 of the Revised~~ 1875
~~Code,~~ perform any duty imposed by law, regulation, or the custom 1876
of the service upon counsel for the accused. 1877

Sec. 5924.39. (A) At any time after the service of charges 1878
~~which that~~ have been referred for trial to a court-martial 1879
composed of a military judge and members, the military judge may, 1880
subject to section 5924.35 of the Revised Code, call the court 1881
into session without the presence of the members for the following 1882
purposes: 1883

(1) Hearing and determining motions raising defenses or 1884
objections ~~which that~~ are capable of determination without trial 1885
of the issues raised by a plea of not guilty; 1886

(2) Hearing and ruling upon any matter ~~which that~~ may be 1887
ruled upon by the military judge under this code, whether or not 1888
the matter is appropriate for later consideration or decision by 1889
the members of the court; 1890

(3) If permitted by regulations prescribed by the governor, 1891
holding the arraignment and receiving the pleas of the accused; 1892

(4) Performing any other procedural function ~~which that~~ may 1893
be performed by the military judge under this code or under ~~rules~~ 1894
regulations prescribed pursuant to section 5924.36 of the Revised 1895
Code and ~~which that~~ does not require the presence of the members 1896
of the court. 1897

These proceedings shall be conducted in the presence of the
accused, the defense counsel, and the trial counsel, and shall be
made a part of the record.

(B) When the members of a court-martial deliberate or vote,
only the members may be present. All other proceedings, including
any other consultation of the members of the court with counsel or
the military judge, shall be made a part of the record and shall
be in the presence of the accused, the defense counsel, the trial
counsel, and, in cases in which a military judge has been detailed
to the court, the military judge.

Sec. 5924.41. (A) The military judge and members of a general
or special court-martial may be challenged by the accused or the
trial counsel for cause stated to the court. The military judge
or, if none, the court, shall determine the relevancy and validity
of challenges for cause, and may not receive a challenge to more
than one person at a time. Challenges by the trial counsel shall
ordinarily be presented and decided before those by the accused
are offered.

(B) Each accused and the trial counsel is entitled to one
peremptory challenge, but the military judge may not be ~~challenged~~
challenged except for cause.

(C) If the exercise of a peremptory challenge reduces the
number of members of a court-martial below the minimum required
under section 5924.16 of the Revised Code, any remaining
peremptory challenges shall be exercised or waived before
additional members are detailed.

(D) Additional members detailed to a court-martial may be
challenged for cause as provided in division (A) of this section.
After challenges for cause against the additional members are
presented and decided, each accused and trial counsel is entitled
to one peremptory challenge against members not previously

challenged peremptorily. 1929

Sec. 5924.42. (A) Before performing their respective duties, 1930
military judges, interpreters, members of general and special 1931
courts-martial, the trial counsel, the assistant trial counsel, 1932
the defense counsel, the assistant defense counsel, and reporters 1933
shall take an oath or affirmation to perform their duties 1934
faithfully. ~~The form of the oath or affirmation, the time and~~ 1935
~~place of the taking thereof, the manner of recording, and whether~~ 1936
~~the oath shall be taken for all cases in which these duties are to~~ 1937
~~be performed or for a particular case, shall be as prescribed in~~ 1938
~~regulations promulgated by the governor. These regulations may~~ 1939
~~provide that an oath or affirmation to faithfully perform duties~~ 1940
~~as a military judge, trial counsel, assistant trial counsel,~~ 1941
~~defense counsel, or assistant defense counsel may be taken at any~~ 1942
~~time by any judge advocate, law specialist, or other person~~ 1943
~~certified to be qualified or competent for the duty, and if such~~ 1944
~~oath is taken it need not again be taken at the time the judge~~ 1945
~~advocate, law specialist, or other person is detailed to that duty~~ 1946
in the presence of the accused and shall be substantially as 1947
follows: 1948

(1) For a member of the court: 1949

"You,, do swear (or affirm) that you will 1950
faithfully perform all the duties incumbent upon you as a member 1951
of this court; that you will faithfully and impartially try, 1952
according to the evidence, your conscience, and the laws and 1953
regulations provided for trials by courts-martial, the case of 1954
(the) (each) accused now before this court; and that if any doubt 1955
should arise not explained by the laws and regulations, then 1956
according to the best of your understanding and the customs of the 1957
service in like cases; that you will not divulge the findings or 1958
sentence in any case until they shall have been duly announced by 1959

the court; and that you will not disclose or discover the vote or 1960
opinion of any particular member of the court upon a challenge or 1961
upon the findings or sentence unless required to do so before a 1962
court of justice in due course of law. So help you God (or under 1963
penalty of perjury)." 1964

(2) For a military judge: 1965

"You,, do swear (or affirm) that you will 1966
faithfully and impartially perform, according to your conscience 1967
and the laws and regulations provided for trials by 1968
courts-martial, all the duties incumbent upon you as military 1969
judge of this court; that if any doubt should arise not explained 1970
by the laws and regulations, then according to the best of your 1971
understanding and the customs of the service in like cases; and 1972
that you will not divulge the findings or sentence in any case 1973
until they shall have been duly announced by the court. So help 1974
you God (or under penalty of perjury)." 1975

(3) For trial counsel and assistant trial counsel: 1976

"You,, do swear (or affirm) that you will 1977
faithfully perform the duties of trial counsel and will not 1978
divulge the findings or sentence of the court to any but the 1979
proper authority until they shall be duly disclosed. So help you 1980
God (or under penalty of perjury)." 1981

(4) For defense counsel and assistant defense counsel: 1982

"You,, do swear (or affirm) that you will 1983
faithfully perform the duties of defense counsel and will not 1984
divulge the findings or sentence of the court to any but the 1985
proper authority until they shall be duly disclosed. So help you 1986
God (or under penalty of perjury)." 1987

(5) For a reporter or interpreter: 1988

"You,, do swear (or affirm) that you will 1989

faithfully perform the duties of reporter (or interpreter) to this court. So help you God (or under penalty of perjury)." 1990
1991

(B) Each witness before a ~~military court~~ court-martial shall be examined on oath or affirmation. The presiding officer shall administer an oath or affirmation in substantially the following form: 1992
1993
1994
1995

"You,, do swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God (or under penalty of perjury)." 1996
1997
1998
1999

Sec. 5924.43. (A) ~~A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny, or with murder, may be tried and punished at any time without limitation.~~ 2000
2001
2002
2003

~~(B) Except as otherwise provided in this section, a person charged with desertion in time of peace or any of the offenses punishable under sections 5924.119 to 5924.132 of the Revised Code, is not liable to be tried by court martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court martial jurisdiction over the command.~~ 2004
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~~(C) Except as otherwise provided in this section, a person charged with any an offense punishable under this code is not liable to be tried by court-martial or punished under section 5924.15 of the Revised Code if the offense was committed more than ~~two~~ four years before the receipt of sworn charges and specifications by an officer exercising ~~summary~~ court-martial jurisdiction over the command ~~or before the imposition of punishment under section 5924.15 of the Revised Code.~~ 2011
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~~(D)~~(B) Periods in which the accused was absent from ~~territory~~ 2019

~~in which the state has the authority to apprehend him, or is in~~ 2020
~~the custody of civil authorities, or in the hands of the enemy,~~ 2021
shall be excluded in computing the period of limitation prescribed 2022
in this section. 2023

Sec. 5924.44. (A) No person may, ~~without his consent,~~ be 2024
tried a second time in any ~~military or civil court~~ court-martial 2025
of ~~the~~ this state for the same offense. 2026

(B) No proceeding in which an accused has been found guilty 2027
by a court-martial upon any charge or specification is a trial ~~in~~ 2028
~~the sense~~ for purposes of this section until the finding of guilty 2029
has become final after review of the case has been fully 2030
completed. 2031

(C) A proceeding ~~which~~ that, after the introduction of 2032
evidence but before a finding, is dismissed or terminated by the 2033
convening authority or on motion of the prosecution for ~~failure~~ 2034
want of available evidence or witnesses without any fault of the 2035
accused is a trial ~~in the sense~~ for purposes of this section. 2036

Sec. 5924.45. (A) ~~If an~~ An accused after arraignment ~~makes an~~ 2037
~~irregular pleading, or after a plea of guilty sets up matter~~ 2038
~~inconsistent with the plea, or if it appears that he has entered~~ 2039
~~the plea of guilty improvidently or through lack of understanding~~ 2040
~~of its meaning and effect, or if he fails or refuses to~~ may plead, 2041
a plea of not guilty shall be entered in the record, and the court 2042
shall proceed as though he had pleaded not guilty. 2043

~~(B) A plea of guilty by the accused may not be accepted to~~ 2044
~~any charge or specification alleging an offense for which the~~ 2045
~~death penalty may be adjudged. If a plea of guilty has been~~ 2046
~~accepted by the military judge or by a court martial without a~~ 2047
~~military judge, a finding of guilty, if permitted by regulations~~ 2048
~~promulgated by the governor, shall be entered immediately without~~ 2049

~~vote and shall constitute the finding of the court. If the plea of guilty is withdrawn prior to announcement of the sentence, the proceedings shall continue as though the accused had pleaded, not guilty by reason of insanity, guilty, or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the accused or the accused's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined.~~

(B) If an accused refuses to plead, the court shall enter a plea of not guilty on behalf of the accused.

(C) Before accepting a plea of guilty, the military judge shall address the accused personally and inform the accused of, and determine that the accused understands, all of the following:

(1) The nature of the offense to which the plea is offered and the maximum possible penalty provided by law;

(2) In a general or special court-martial, if the accused is not represented by counsel, that the accused has the right to be represented by counsel at every stage of the proceedings;

(3) That the accused has the right to plead not guilty or to persist in that plea if already made, that the accused has the right to be tried by a court-martial, and that at trial the accused has the right to confront and cross-examine witnesses against the accused and the right against self-incrimination.

(4) That if the accused pleads guilty, there will not be a trial of any kind as to those offenses to which the accused has so pleaded and that by pleading guilty the accused waives the rights described in division (C)(3) of this section;

(5) That, if the accused pleads guilty, the military judge will question the accused about the offenses to which the accused has pleaded guilty, and that, if the accused answers the questions under oath, on the record, and in the presence of counsel, the

accused's answers may later be used against the accused in a 2081
prosecution for perjury or false statement. 2082

(D) The military judge shall not accept a plea of guilty 2083
without first addressing the accused personally and determining 2084
that the plea is voluntary and not the result of fear, threats, or 2085
promises. The military judge shall also inquire as to whether the 2086
accused's willingness to plead guilty results from prior 2087
discussions between the convening authority, a representative of 2088
the convening authority, or trial counsel and the accused or 2089
defense counsel. 2090

(E) The military judge shall not accept a plea of guilty 2091
without making an inquiry of the accused that satisfies the 2092
military judge that there is a factual basis for the plea. The 2093
accused shall be questioned under oath about the offenses charged. 2094

(F) When a negotiated plea of guilty or no contest to one or 2095
more offenses charged or to one or more other or lesser offenses 2096
is offered, the underlying agreement upon which the plea is based 2097
shall be stated on the record in open court. 2098

(G) If the court refuses to accept a plea of guilty or no 2099
contest, the court shall enter a plea of not guilty on behalf of 2100
the accused, and neither plea shall be admissible in evidence or 2101
be the subject of comment by the trial counsel or court. 2102

(H) The defense of not guilty by reason of insanity must be 2103
pleaded at the time of arraignment, except that the court for good 2104
cause shown shall permit a plea of not guilty by reason of 2105
insanity to be entered at any time before trial. 2106

(I) A motion to withdraw a plea of guilty or no contest may 2107
be made only before sentence is imposed, but to correct manifest 2108
injustice the court after sentence may set aside the judgment of 2109
conviction and permit the accused to withdraw the plea. 2110

(J) An accused who is found guilty after pleading guilty 2111

waives any objection, whether or not previously raised, relating 2112
to the factual issue of guilt of the offense to which the plea was 2113
made. 2114

Sec. 5924.46. (A) The trial counsel, the defense counsel, and 2115
the court-martial shall have equal opportunity to obtain witnesses 2116
and other evidence in accordance with such regulations as the 2117
~~governor~~ adjutant general may prescribe. 2118

(B) ~~The president of a court martial or a summary court~~ 2119
~~officer may:~~ 2120

~~(1) Issue a warrant for the arrest of any accused person who,~~ 2121
~~having been served with a warrant and a copy of the charges,~~ 2122
~~disobeys a written order by the convening authority to appear~~ 2123
~~before the court;~~ 2124

~~(2) Issue subpoenas duces tecum and other subpoenas;~~ 2125

~~(3) Enforce by attachment the attendance of witnesses and the~~ 2126
~~production of books and papers; and~~ 2127

~~(4) Sentence for refusal to be sworn or to answer, as~~ 2128
~~provided in actions before civil courts of the state.~~ 2129

~~(C)~~ Process issued in court-martial cases to compel witnesses 2130
to appear and testify and to compel the production of other 2131
evidence shall be substantially similar to process that may be 2132
issued by the courts of this state in criminal cases and shall run 2133
to any part of the state. 2134

Sec. 5924.47. ~~(A)~~ Any person not subject to this code who: 2135

~~(1) Has~~ has been duly subpoenaed to appear as a witness or to 2136
produce books and records before a military court or before any 2137
military or civil officer designated to take a deposition to be 2138
read in evidence before ~~such~~ a military court: 2139

~~(2) Has~~ or has been duly paid or tendered the fees and 2140

mileage of a witness at the rates provided for under section 2141
119.094 of the Revised Code~~+~~ and 2142

~~(3) Willfully who willfully~~ neglects or refuses to appear, or 2143
refuses to qualify as a witness or to testify or to produce any 2144
evidence ~~which~~ that the person may have been legally subpoenaed to 2145
produce; ~~is guilty of an offense against the state and,~~ may be 2146
punished for contempt in the ~~same~~ manner ~~as if committed before~~ 2147
~~civil courts of the state~~ provided for in Chapter 2705. of the 2148
Revised Code. 2149

Sec. 5924.48. A military court, in the manner provided for in 2150
Chapter 2705. of the Revised Code, may punish for contempt any 2151
person who ~~uses any menacing word, sign, or gesture in its~~ 2152
~~presence, or who disturbs its proceedings by any riot or disorder.~~ 2153
~~The punishment may not exceed confinement for thirty days or a~~ 2154
~~fine of one hundred dollars, or both~~ is guilty of any act 2155
described in section 2705.02 of the Revised Code. 2156

Sec. 5924.49. ~~(A)~~ At any time after charges have been signed 2157
as provided in section 5924.30 of the Revised Code, any party may 2158
take oral or written depositions ~~unless the military judge or~~ 2159
~~court martial without a military judge hearing the case or, if the~~ 2160
~~case is not being heard, an authority competent to convene a~~ 2161
~~court martial for the trial of those charges forbids it for good~~ 2162
~~cause. If a deposition is to be taken before charges are referred~~ 2163
~~for trial, such an authority may designate commissioned officers~~ 2164
~~to represent the prosecution and the defense and may authorize~~ 2165
~~those officers to take the deposition of any witness.~~ 2166

~~(B) The party at whose instance a deposition is to be taken~~ 2167
~~shall give to every other party reasonable written notice of the~~ 2168
~~time and place for taking the deposition.~~ 2169

~~(C) Depositions may be taken before and authenticated by any~~ 2170

~~military or civil officer authorized by the laws of the state or~~ 2171
~~by the laws of the place where the deposition is taken to~~ 2172
~~administer oaths.~~ 2173

~~(D) A duly authenticated deposition, taken upon reasonable~~ 2174
~~notice to the other parties, so far as otherwise admissible under~~ 2175
~~the rules of evidence, may be read in evidence before any~~ 2176
~~court martial or in any proceeding before a court of inquiry, if~~ 2177
~~it appears:~~ 2178

~~(1) That the witness resides or is beyond the state in which~~ 2179
~~the court martial or court of inquiry is ordered to sit, or beyond~~ 2180
~~the distance of one hundred miles from the place of trial or~~ 2181
~~hearing;~~ 2182

~~(2) That the witness by reason of death, age, sickness,~~ 2183
~~bodily infirmity, imprisonment, military necessity, nonamenability~~ 2184
~~to process, or other reasonable cause, is unable or refused to~~ 2185
~~appear and testify in person at the place of trial or hearing;~~ 2186

~~(3) That the present whereabouts of the witness is unknown;~~ 2187
~~or~~ 2188

~~(4) That the deposition was taken in the physical presence of~~ 2189
~~the accused in the manner and for the purposes provided in the~~ 2190
~~Ohio Rules of Criminal Procedure.~~ 2191

Sec. 5924.50. (A) In any case ~~not capital and not extending~~ 2192
~~to the dismissal of a commissioned officer, the sworn testimony,~~ 2193
contained in the duly authenticated record of proceedings of a 2194
~~court board of inquiry, officers~~ of a person whose oral testimony 2195
cannot be obtained, may, if otherwise admissible under the rules 2196
of evidence, be read in evidence by any party before a 2197
court-martial if the accused was a party before the ~~court board of~~ 2198
~~inquiry officers~~ and if the same issue was involved or if the 2199
accused consents to the introduction of such evidence, ~~and if the~~ 2200

~~accused was physically present when the testimony was taken.~~ 2201

(B) Such testimony may be read in evidence only by the 2202
defense in cases extending to the dismissal of a commissioned 2203
officer. 2204

(C) Such testimony may also be read in evidence before a 2205
court of inquiry or a ~~military~~ board of officers. 2206

Sec. 5924.501. (A) In an action under this code, the military 2207
judge, trial counsel, defense counsel, or civilian counsel may 2208
raise the issue of the accused's competence to stand trial. If the 2209
issue is raised before the trial has commenced, the court shall 2210
hold a hearing on the issue as provided in this section. If the 2211
issue is raised after the trial has commenced, the court shall 2212
hold a hearing on the issue only for good cause shown or on the 2213
court's own motion. 2214

(B) The court shall conduct the hearing required or 2215
authorized under division (A) of this section within thirty days 2216
after the issue is raised unless the accused has been referred for 2217
evaluation in which case the court shall conduct the hearing 2218
within ten days after the filing of the report of the evaluation. 2219
A hearing may be continued for good cause. 2220

(C) The accused shall be represented by counsel at the 2221
hearing conducted under division (B) of this section. 2222

(D) The trial counsel and defense counsel may submit evidence 2223
on the issue of the accused's competence to stand trial. A written 2224
report of the evaluation of the accused may be admitted into 2225
evidence at the hearing by stipulation, but, if either the 2226
government or defense objects to its admission, the report may be 2227
admitted under seal of court in camera to the military judge. 2228

(E) The court shall not find an accused incompetent to stand 2229
trial solely because the accused is receiving or has received 2230

treatment as a voluntary or involuntary mentally ill patient under 2231
Chapter 5122. of the Revised Code or because the accused is 2232
receiving or has received psychotropic drugs or other medication, 2233
even if the accused might become incompetent to stand trial 2234
without the drugs or medication. 2235

(F) An accused is presumed to be competent to stand trial. 2236
If, after a hearing, the court finds by a preponderance of the 2237
evidence that, because of the accused's present mental condition, 2238
the accused is incapable of understanding the nature and objective 2239
of the proceedings against the accused or of assisting in the 2240
accused's defense, the court shall find the accused incompetent to 2241
stand trial and shall enter an order authorized by section 2242
5924.503 of the Revised Code. 2243

Sec. 5924.502. (A) If the issue of an accused's competence to 2244
stand trial is raised or if an accused enters a plea of not guilty 2245
by reason of insanity, the court may order one or more evaluations 2246
of the accused's present mental condition or, in the case of a 2247
plea of not guilty by reason of insanity, of the accused's mental 2248
condition at the time of the offense charged. An examiner shall 2249
conduct the evaluation. 2250

(B) If the court orders more than one evaluation under 2251
division (A) of this section, the trial counsel and the defense 2252
counsel may recommend to the court an examiner whom each prefers 2253
to perform one of the evaluations. If an accused enters a plea of 2254
not guilty by reason of insanity and if the court does not 2255
designate an examiner recommended by the defense counsel, the 2256
court shall inform the accused that the accused may have 2257
independent expert evaluation and that it will be obtained for the 2258
accused at public expense. 2259

(C) If the court orders an evaluation under division (A) of 2260
this section, the accused shall be available at the times and 2261

places established by the examiners who are to conduct the 2262
evaluation. The court may order an accused who is not being held 2263
in pretrial confinement to submit to an evaluation under this 2264
section. If an accused who is not being held in pretrial 2265
confinement refuses to submit to a complete evaluation, the court 2266
may order the sheriff to take the accused into custody and deliver 2267
the accused to a center, program, or facility operated or 2268
certified by the department of mental health where the accused may 2269
be held for evaluation for a reasonable period of time not to 2270
exceed twenty days. 2271

(D) An accused who is being held in pretrial confinement may 2272
be evaluated at the accused's place of detention. Upon the request 2273
of the examiner, the court may order the sheriff to transport the 2274
accused to a program or facility operated or certified by the 2275
department of mental health, where the accused may be held for 2276
evaluation for a reasonable period of time not to exceed twenty 2277
days, and to return the accused to the place of detention after 2278
the evaluation. 2279

(E) If a court orders the evaluation to determine an 2280
accused's mental condition at the time of the offense charged, the 2281
court shall inform the examiner of the offense with which the 2282
accused is charged. 2283

(F) In conducting an evaluation of an accused's mental 2284
condition at the time of the offense charged, the examiner shall 2285
consider all relevant evidence. If the offense charged involves 2286
the use of force against another person, the relevant evidence to 2287
be considered includes, but is not limited to, any evidence that 2288
the accused suffered at the time of the commission of the offense 2289
from the "battered woman syndrome." 2290

(G) The examiner shall file a written report with the court 2291
within thirty days after entry of a court order for evaluation, 2292
and the court shall provide copies of the report to the trial 2293

<u>counsel and defense counsel. The report shall include all of the</u>	2294
<u>following:</u>	2295
<u>(1) The examiner's findings;</u>	2296
<u>(2) The facts in reasonable detail on which the findings are</u> <u>based;</u>	2297 2298
<u>(3) If the evaluation was ordered to determine the accused's</u> <u>competence to stand trial, all of the following findings or</u> <u>recommendations that are applicable:</u>	2299 2300 2301
<u>(a) Whether the accused is capable of understanding the</u> <u>nature and objective of the proceedings against the accused or of</u> <u>assisting in the accused's defense;</u>	2302 2303 2304
<u>(b) If the examiner's opinion is that the accused is</u> <u>incapable of understanding the nature and objective of the</u> <u>proceedings against the accused or of assisting in the accused's</u> <u>defense, whether the accused presently is mentally ill;</u>	2305 2306 2307 2308
<u>(c) If the examiner's opinion is that the accused is</u> <u>incapable of understanding the nature and objective of the</u> <u>proceedings against the accused or of assisting in the accused's</u> <u>defense, the examiner's opinion as to the likelihood of the</u> <u>accused becoming capable of understanding the nature and objective</u> <u>of the proceedings against the accused and of assisting in the</u> <u>accused's defense within one year if the accused is provided with</u> <u>a course of treatment;</u>	2309 2310 2311 2312 2313 2314 2315 2316
<u>(d) If the examiner's opinion is that the accused is</u> <u>incapable of understanding the nature and objective of the</u> <u>proceedings against the accused or of assisting in the accused's</u> <u>defense and that the accused presently is mentally ill, the</u> <u>examiner's recommendation as to the least restrictive placement or</u> <u>commitment alternative, consistent with the accused's treatment</u> <u>needs for restoration to competency and with the safety of the</u> <u>community;</u>	2317 2318 2319 2320 2321 2322 2323 2324

(e) If the accused is charged before a special or summary court-martial with an offense that is not a violation of section 5924.120, 5924.127, or 5924.128 of the Revised Code and the examiner's opinion is that the accused is incapable of understanding the nature and objective of the proceedings against the accused or of assisting in the accused's defense and that the accused is presently mentally ill, the examiner's recommendation as to whether the accused is amenable to engagement in mental health treatment. 2325
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(4) If the evaluation was ordered to determine the accused's mental condition at the time of the offense charged, the examiner's findings as to whether the accused at the time of the offense charged did not know, as a result of a severe mental disease or defect, the wrongfulness of the accused's acts charged. 2334
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(H) An examiner appointed under divisions (A) and (B) of this section to evaluate an accused to determine the accused's competence to stand trial also may be appointed to evaluate an accused who has entered a plea of not guilty by reason of insanity, but an examiner of that nature shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity. 2339
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(I) No statement that an accused makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the accused's competence to stand trial or to the accused's mental condition at the time of the offense charged may be used against the accused on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the trial counsel or defense counsel may call as a witness any person who evaluated the accused or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the trial counsel or defense counsel from calling other witnesses or 2346
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presenting other evidence on competency or insanity issues. 2357

(J) Persons appointed as examiners under divisions (A) and 2358
(B) of this section or under division (H) of this section shall be 2359
paid a reasonable amount for their services and expenses, as 2360
certified by the court. 2361

Sec. 5924.503. (A) If the issue of an accused's competence to 2362
stand trial is raised and if the court, upon conducting the 2363
hearing provided for in section 5924.502 of the Revised Code, 2364
finds that the accused is competent to stand trial, the accused 2365
shall be proceeded against as provided by law. If the court finds 2366
the accused competent to stand trial and the accused is receiving 2367
psychotropic drugs or other medication, the court may authorize 2368
the continued administration of the drugs or medication or other 2369
appropriate treatment in order to maintain the accused's 2370
competence to stand trial unless the accused's attending physician 2371
advises the court against continuation of the drugs, other 2372
medication, or treatment. 2373

(B)(1)(a) If, after taking into consideration all relevant 2374
reports, information, and other evidence, the court finds that the 2375
accused is incompetent to stand trial and that there is a 2376
substantial probability that the accused will become competent to 2377
stand trial within one year if the accused is provided with a 2378
course of treatment, the court shall order the accused to undergo 2379
treatment. If the accused is being tried by a general 2380
court-martial and if, after taking into consideration all relevant 2381
reports, information, and other evidence, the court finds that the 2382
accused is incompetent to stand trial, but the court is unable at 2383
that time to determine whether there is a substantial probability 2384
that the accused will become competent to stand trial within one 2385
year if the accused is provided with a course of treatment, the 2386
court shall order continuing evaluation and treatment of the 2387

accused for a period not to exceed four months to determine 2388
whether there is a substantial probability that the accused will 2389
become competent to stand trial within one year if the accused is 2390
provided with a course of treatment. 2391

(b) The court order for the accused to undergo treatment or 2392
continuing evaluation and treatment under division (B)(1)(a) of 2393
this section shall specify that the accused, if determined to 2394
require mental health treatment or continuing evaluation and 2395
treatment, shall be committed to the department of mental health 2396
for treatment or continuing evaluation and treatment at a 2397
hospital, facility, or agency determined to be clinically 2398
appropriate by the department of mental health. The order may 2399
restrict the accused's freedom of movement as the court considers 2400
necessary. The trial counsel in the accused's case shall send to 2401
the chief clinical officer of the hospital, facility, or agency 2402
where the accused is placed by the department of mental health or 2403
to the managing officer of the institution, the director of the 2404
facility, or the person to which the accused is committed copies 2405
of relevant investigative reports and other background information 2406
that pertains to the accused and is available to the trial counsel 2407
unless the trial counsel determines that the release of any of the 2408
information in the investigative reports or any of the other 2409
background information to unauthorized persons would interfere 2410
with the effective prosecution of any person or would create a 2411
substantial risk of harm to any person. 2412

In committing the accused to the department of mental health, 2413
the court shall consider the extent to which the person is a 2414
danger to the person and to others, the need for security, and the 2415
type of crime involved and, if the court finds that restrictions 2416
on the accused's freedom of movement are necessary, shall specify 2417
the least restrictive limitations on the person's freedom of 2418
movement determined to be necessary to protect public safety. In 2419

weighing these factors, the court shall give preference to 2420
protecting public safety. 2421

(c) If the accused is found incompetent to stand trial, if 2422
the chief clinical officer of the hospital, facility, or agency 2423
where the accused is placed, or the managing officer of the 2424
institution, the director of the facility, or the person to which 2425
the accused is committed for treatment or continuing evaluation 2426
and treatment under division (B)(1)(b) of this section determines 2427
that medication is necessary to restore the accused's competency 2428
to stand trial, and if the accused lacks the capacity to give 2429
informed consent or refuses medication, the chief clinical officer 2430
of the hospital, facility, or agency where the accused is placed 2431
or the managing officer of the institution, the director of the 2432
facility, or the person to which the accused is committed for 2433
treatment or continuing evaluation and treatment may petition the 2434
court for authorization for the involuntary administration of 2435
medication. The court shall hold a hearing on the petition within 2436
five days of the filing of the petition. Following the hearing, 2437
the court may authorize the involuntary administration of 2438
medication or may dismiss the petition. 2439

(d) If the accused is charged before a special or summary 2440
court-martial with an offense that is not a violation of section 2441
5924.120, 5924.127, or 5924.128 of the Revised Code, the trial 2442
counsel may hold the charges in abeyance while the accused engages 2443
in mental health treatment. 2444

(2) If the court finds that the accused is incompetent to 2445
stand trial and that, even if the accused is provided with a 2446
course of treatment, there is not a substantial probability that 2447
the accused will become competent to stand trial within one year, 2448
the court shall order the discharge of the accused, unless upon 2449
motion of the trial counsel or on its own motion, the court either 2450
seeks to retain jurisdiction over the accused pursuant to division 2451

(A)(2) of section 5924.504 of the Revised Code or files an affidavit in the probate court for the civil commitment of the accused pursuant to Chapter 5122. of the Revised Code alleging that the accused is a mentally ill person subject to hospitalization by court order. If an affidavit is filed in the probate court, the trial court shall send to the probate court copies of all written reports of the accused's mental condition that were prepared pursuant to section 5924.502 of the Revised Code. 2452
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The trial court may issue the temporary order of detention that a probate court may issue under section 5122.11 of the Revised Code, to remain in effect until the probable cause or initial hearing in the probate court. Further proceedings in the probate court are civil proceedings governed by Chapter 5122. of the Revised Code. 2461
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(C) No accused shall be required to undergo treatment, including any continuing evaluation and treatment, under division (B)(1) of this section for longer than whichever of the following periods is applicable: 2467
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(1) One year, if the accused is being tried by a general court-martial; 2471
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(2) Six months, if the accused is being tried before a special court-martial; 2473
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(3) Sixty days, if the accused is being tried before a summary court-martial. 2475
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(D) Any accused who is committed pursuant to this section shall not voluntarily admit the accused or be voluntarily admitted to a hospital or institution pursuant to section 5122.02 or 5122.15 of the Revised Code. 2477
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(E) Except as otherwise provided in this division, an accused who is charged with an offense and is committed by the court under 2481
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this section to the department of mental health with restrictions 2483
on the accused's freedom of movement shall not be granted 2484
unsupervised on-grounds movement, supervised off-grounds movement, 2485
or nonsecured status except in accordance with the court order. 2486
The court may grant an accused supervised off-grounds movement to 2487
obtain medical treatment or specialized habilitation treatment 2488
services if the person who supervises the treatment or the 2489
continuing evaluation and treatment of the accused ordered under 2490
division (B)(1)(a) of this section informs the court that the 2491
treatment or continuing evaluation and treatment cannot be 2492
provided at the hospital or facility where the accused is placed 2493
by the department of mental health. The chief clinical officer of 2494
the hospital or facility where the accused is placed by the 2495
department of mental health or the managing officer of the 2496
institution or director of the facility to which the accused is 2497
committed or a designee of any of those persons may grant an 2498
accused movement to a medical facility for an emergency medical 2499
situation with appropriate supervision to ensure the safety of the 2500
accused, staff, and community during that emergency medical 2501
situation. The chief clinical officer of the hospital or facility 2502
where the accused is placed by the department of mental health or 2503
the managing officer of the institution or director of the 2504
facility to which the accused is committed shall notify the court 2505
within twenty-four hours of the accused's movement to the medical 2506
facility for an emergency medical situation under this division. 2507

(F) The person who supervises the treatment or continuing 2508
evaluation and treatment of an accused ordered to undergo 2509
treatment or continuing evaluation and treatment under division 2510
(B)(1)(a) of this section shall file a written report with the 2511
court at the following times: 2512

(1) Whenever the person believes the accused is capable of 2513
understanding the nature and objective of the proceedings against 2514

the accused and of assisting in the accused's defense; 2515

(2) Fourteen days before expiration of the maximum time for 2516
treatment as specified in division (C) of this section and 2517
fourteen days before the expiration of the maximum time for 2518
continuing evaluation and treatment as specified in division 2519
(B)(1)(a) of this section; 2520

(3) At a minimum, after each six months of treatment; 2521

(4) Whenever the person who supervises the treatment or 2522
continuing evaluation and treatment of an accused ordered under 2523
division (B)(1)(a) of this section believes that there is not a 2524
substantial probability that the accused will become capable of 2525
understanding the nature and objective of the proceedings against 2526
the accused or of assisting in the accused's defense even if the 2527
accused is provided with a course of treatment. 2528

(G) A report under division (F) of this section shall contain 2529
the examiner's findings, the facts in reasonable detail on which 2530
the findings are based, and the examiner's opinion as to the 2531
accused's capability of understanding the nature and objective of 2532
the proceedings against the accused and of assisting in the 2533
accused's defense. If, in the examiner's opinion, the accused 2534
remains incapable of understanding the nature and objective of the 2535
proceedings against the accused and of assisting in the accused's 2536
defense and there is a substantial probability that the accused 2537
will become capable of understanding the nature and objective of 2538
the proceedings against the accused and of assisting in the 2539
accused's defense if the accused is provided with a course of 2540
treatment, if in the examiner's opinion the accused remains 2541
mentally ill, and if the maximum time for treatment as specified 2542
in division (C) of this section has not expired, the report also 2543
shall contain the examiner's recommendation as to the least 2544
restrictive placement or commitment alternative that is consistent 2545
with the accused's treatment needs for restoration to competency 2546

and with the safety of the community. The court shall provide 2547
copies of the report to the trial counsel and defense counsel. 2548

(H) If an accused is committed pursuant to division (B)(1) of 2549
this section, within ten days after the treating physician of the 2550
accused or the examiner of the accused who is employed or retained 2551
by the treating facility advises that there is not a substantial 2552
probability that the accused will become capable of understanding 2553
the nature and objective of the proceedings against the accused or 2554
of assisting in the accused's defense even if the accused is 2555
provided with a course of treatment, within ten days after the 2556
expiration of the maximum time for treatment as specified in 2557
division (C) of this section, within ten days after the expiration 2558
of the maximum time for continuing evaluation and treatment as 2559
specified in division (B)(1)(a) of this section, within thirty 2560
days after an accused's request for a hearing that is made after 2561
six months of treatment, or within thirty days after being advised 2562
by the treating physician or examiner that the accused is 2563
competent to stand trial, whichever is the earliest, the court 2564
shall conduct another hearing to determine if the accused is 2565
competent to stand trial and shall do whichever of the following 2566
is applicable: 2567

(1) If the court finds that the accused is competent to stand 2568
trial, the accused shall be proceeded against as provided by law. 2569

(2) If the court finds that the accused is incompetent to 2570
stand trial, but that there is a substantial probability that the 2571
accused will become competent to stand trial if the accused is 2572
provided with a course of treatment, and the maximum time for 2573
treatment as specified in division (C) of this section has not 2574
expired, the court, after consideration of the examiner's 2575
recommendation, shall order that treatment be continued, may 2576
change least restrictive limitations on the accused's freedom of 2577
movement. 2578

(3) If the court finds that the accused is incompetent to stand trial, if the accused is being tried by a general court-martial, and if the court finds that there is not a substantial probability that the accused will become competent to stand trial even if the accused is provided with a course of treatment, or if the maximum time for treatment as specified in division (C) of this section has expired, further proceedings shall be as provided in sections 5924.504 to 5924.506 of the Revised Code.

(4) If the court finds that the accused is incompetent to stand trial, if the accused is being tried before a special court-martial, and if the court finds that there is not a substantial probability that the accused will become competent to stand trial even if the accused is provided with a course of treatment, or if the maximum time for treatment as specified in division (C) of this section has expired, the court shall dismiss the charge against the accused. A dismissal under this division is not a bar to further prosecution based on the same conduct. The court shall discharge the accused unless the court or trial counsel files an affidavit in probate court for civil commitment pursuant to Chapter 5122. of the Revised Code. If an affidavit for civil commitment is filed, the court may detain the accused for ten days pending civil commitment. All of the following provisions apply to persons being tried by a special court-martial who are committed by the probate court subsequent to the court's or trial counsel's filing of an affidavit for civil commitment under authority of this division:

(a) The chief clinical officer of the entity, hospital, or facility, the managing officer of the institution, or the person to which the accused is committed or admitted shall do all of the following:

(i) Notify the trial counsel in writing of the discharge of

the accused, send the notice at least ten days prior to the 2611
discharge unless the discharge is by the probate court and state 2612
in the notice the date on which the accused will be discharged; 2613

(ii) Notify the trial counsel in writing when the accused is 2614
absent without leave or is granted unsupervised, off-grounds 2615
movement and send this notice promptly after the discovery of the 2616
absence without leave or prior to the granting of the 2617
unsupervised, off-grounds movement, whichever is applicable; 2618

(iii) Notify the trial counsel in writing of the change of 2619
the accused's commitment or admission to voluntary status, send 2620
the notice promptly upon learning of the change to voluntary 2621
status, and state in the notice the date on which the accused was 2622
committed or admitted on a voluntary status. 2623

(b) The trial counsel shall promptly inform the convening 2624
authority of any notification received under division (H)(4)(a) of 2625
this section. Upon receiving notice that the accused will be 2626
granted unsupervised, off-grounds movement, the convening 2627
authority either shall refer the charges against the accused to an 2628
investigating officer again or promptly notify the court that the 2629
convening authority does not intend to refer the charges against 2630
the accused again. 2631

(I) If an accused is convicted of a crime and sentenced to 2632
confinement, the accused's sentence shall be reduced by the total 2633
number of days the accused is confined for evaluation to determine 2634
the accused's competence to stand trial or treatment under this 2635
section and sections 5924.502 and 5924.504 of the Revised Code or 2636
by the total number of days the accused is confined for evaluation 2637
to determine the accused's mental condition at the time of the 2638
offense charged. 2639

Sec. 5924.504. (A) If an accused being tried by a general 2640
court-martial is found incompetent to stand trial, after the 2641

expiration of the maximum time for treatment as specified in 2642
division (C) of section 5924.503 of the Revised Code or after the 2643
court finds that there is not a substantial probability that the 2644
accused will become competent to stand trial even if the accused 2645
is provided with a course of treatment, one of the following 2646
applies: 2647

(1) The court or the trial counsel may file an affidavit in 2648
probate court for civil commitment of the accused in the manner 2649
provided in Chapter 5122. of the Revised Code. If the court or 2650
trial counsel files an affidavit for civil commitment, the court 2651
may detain the accused for ten days pending civil commitment. If 2652
the probate court commits the accused subsequent to the court's or 2653
trial counsel's filing of an affidavit for civil commitment, the 2654
chief clinical officer of the entity, hospital, or facility, the 2655
managing officer of the institution, or the person to which the 2656
accused is committed or admitted shall send to the trial counsel 2657
the notices described in divisions (H)(4)(a)(i) to (iii) of 2658
section 5924.503 of the Revised Code within the periods of time 2659
and under the circumstances specified in those divisions. 2660

(2) On the motion of the trial counsel or on its own motion, 2661
the court may retain jurisdiction over the accused if at a hearing 2662
the court finds both of the following by clear and convincing 2663
evidence: 2664

(a) The accused committed the offense with which the accused 2665
is charged. 2666

(b) The accused is a mentally ill person subject to 2667
hospitalization by court order. 2668

(B) In making its determination under division (A)(2) of this 2669
section as to whether to retain jurisdiction over the accused, the 2670
court may consider all relevant evidence, including, but not 2671
limited to, any relevant psychiatric, psychological, or medical 2672

testimony or reports, the acts constituting the offense charged, 2673
and any history of the accused that is relevant to the accused's 2674
ability to conform to the law. 2675

(C) If the court conducts a hearing as described in division 2676
(A)(2) of this section and if the court does not make both 2677
findings described in divisions (A)(2)(a) and (b) of this section 2678
by clear and convincing evidence, the court shall dismiss the 2679
charges against the accused. Upon the dismissal, the court shall 2680
discharge the accused unless the court or trial counsel files an 2681
affidavit in probate court for civil commitment of the accused 2682
pursuant to Chapter 5122. of the Revised Code. If the court or 2683
trial counsel files an affidavit for civil commitment, the court 2684
may order that the accused be detained for up to ten days pending 2685
the civil commitment. If the probate court commits the accused 2686
subsequent to the court's or trial counsel's filing of an 2687
affidavit for civil commitment, the chief clinical officer of the 2688
entity, hospital, or facility, the managing officer of the 2689
institution, or the person to which the accused is committed or 2690
admitted shall send to the trial counsel the notices described in 2691
divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised 2692
Code within the periods of time and under the circumstances 2693
specified in those divisions. A dismissal of charges under this 2694
division is not a bar to further criminal proceedings based on the 2695
same conduct. 2696

(D)(1) If the court conducts a hearing as described in 2697
division (A)(2) of this section and if the court makes the 2698
findings described in divisions (A)(2)(a) and (b) of this section 2699
by clear and convincing evidence, the court shall commit the 2700
accused, if determined to require mental health treatment, to the 2701
department of mental health for treatment at a hospital, facility, 2702
or agency as determined clinically appropriate by the department 2703
of mental health. In committing the accused to the department of 2704

mental health, the court shall specify the least restrictive 2705
limitations on the accused's freedom of movement determined to be 2706
necessary to protect public safety. 2707

(2) If a court makes a commitment of an accused under 2708
division (D)(1) of this section, the trial counsel shall send to 2709
the hospital, facility, or agency where the accused is placed by 2710
the department of mental health or to the accused's place of 2711
commitment all reports of the accused's current mental condition 2712
and, except as otherwise provided in this division, any other 2713
relevant information, including, but not limited to, a transcript 2714
of the hearing held pursuant to division (A)(2) of this section, 2715
copies of relevant investigative reports, and copies of any prior 2716
arrest and conviction records that pertain to the accused and that 2717
the trial counsel possesses. The trial counsel shall send the 2718
reports of the accused's current mental condition in every case of 2719
commitment, and, unless the trial counsel determines that the 2720
release of any of the other relevant information to unauthorized 2721
persons would interfere with the effective prosecution of any 2722
person or would create a substantial risk of harm to any person, 2723
the trial counsel also shall send the other relevant information. 2724

(3) If a court makes a commitment under division (D)(1) of 2725
this section, all further proceedings shall be in accordance with 2726
Chapter 5122. of the Revised Code. 2727

Sec. 5924.505. For purposes of sections 5924.502 and 5924.506 2728
of the Revised Code, a person is "not guilty by reason of 2729
insanity" relative to a charge of an offense only as described in 2730
division (A)(14) of section 2901.01 of the Revised Code. Proof 2731
that a person's reason, at the time of the commission of an 2732
offense, was so impaired that the person did not have the ability 2733
to refrain from doing the person's act or acts, does not 2734
constitute a defense. 2735

Sec. 5924.506. (A) If an accused person is found not guilty 2736
by reason of insanity, the verdict shall state that finding, and 2737
the trial court shall conduct a full hearing to determine whether 2738
the person is a mentally ill person subject to hospitalization by 2739
court order. Prior to the hearing, if the military judge believes 2740
that there is probable cause that the person found not guilty by 2741
reason of insanity is a mentally ill person subject to 2742
hospitalization by court order, the military judge may issue a 2743
temporary order of detention for that person to remain in effect 2744
for ten court days or until the hearing, whichever occurs first. 2745

Any person detained pursuant to a temporary order of 2746
detention issued under this division shall be held in a suitable 2747
facility, taking into consideration the place and type of 2748
confinement prior to and during trial. 2749

(B) The court shall hold the hearing under division (A) of 2750
this section to determine whether the person found not guilty by 2751
reason of insanity is a mentally ill person subject to 2752
hospitalization by court order within ten court days after the 2753
finding of not guilty by reason of insanity. Failure to conduct 2754
the hearing within the ten-day period shall cause the immediate 2755
discharge of the respondent, unless the judge grants a continuance 2756
for not longer than ten court days for good cause shown or for any 2757
period of time upon motion of the respondent. 2758

(C) If a person is found not guilty by reason of insanity, 2759
the person has the right to attend a hearing conducted pursuant to 2760
this section. At the hearing, the court shall inform the person 2761
that the person has all of the following rights: 2762

(1) The right to be represented by defense counsel or to 2763
retain civilian counsel, if the person so chooses; 2764

(2) The right to have independent expert evaluation; 2765

(3) The right to subpoena witnesses and documents, to present evidence on the person's behalf, and to cross-examine witnesses against the person; 2766
2767
2768

(4) The right to testify in the person's own behalf and to not be compelled to testify; 2769
2770

(5) The right to have copies of any relevant medical or mental health document in the custody of the state or of any place of commitment other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person. 2771
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(D) The hearing under division (A) of this section shall be open to the public, and the court shall conduct the hearing in accordance with regulations prescribed by the adjutant general. The court shall make and maintain a full transcript and record of the hearing proceedings. The court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law. 2776
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(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, the court shall discharge the person, unless a detainer has been placed upon the person by the department of rehabilitation and correction, in which case the person shall be returned to that department. 2786
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(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, it shall commit the person to the department of mental 2793
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health for placement in a hospital, facility, or agency as 2797
determined clinically appropriate by the department of mental 2798
health. Further proceedings shall be in accordance with Chapter 2799
5122. or 5123. of the Revised Code. In committing the accused to 2800
the department of mental health, the court shall specify the least 2801
restrictive limitations on the accused's freedom of movement 2802
determined to be necessary to protect public safety. 2803

(G) If a court makes a commitment of a person under division 2804
(F) of this section, the trial counsel shall send to the hospital, 2805
facility, or agency where the defendant is placed by the 2806
department of mental health or to the accused's place of 2807
commitment all reports of the person's current mental condition, 2808
and, except as otherwise provided in this division, any other 2809
relevant information, including, but not limited to, a transcript 2810
of the hearing held pursuant to division (A) of this section, 2811
copies of relevant investigative reports, and copies of any prior 2812
arrest and conviction records that pertain to the person and that 2813
the trial counsel possesses. The trial counsel shall send the 2814
reports of the person's current mental condition in every case of 2815
commitment, and, unless the trial counsel determines that the 2816
release of any of the other relevant information to unauthorized 2817
persons would interfere with the effective prosecution of any 2818
person or would create a substantial risk of harm to any person, 2819
the trial counsel also shall send the other relevant information. 2820

(H) A person who is committed pursuant to this section shall 2821
not voluntarily admit the person or be voluntarily admitted to a 2822
hospital or institution pursuant to sections 5122.02 and 5122.15 2823
of the Revised Code. 2824

Sec. 5924.51. (A) Voting by members of a general or special 2825
court-martial on the findings and on the sentence, and by members 2826
of a court-martial without a military judge upon questions of 2827

challenge, shall be by secret written ballot. The junior member of 2828
the court shall in each case count the votes. The count shall be 2829
checked by the president, who shall forthwith announce the result 2830
of the ballot to the members of the court. 2831

(B) The military judge and, except for questions of 2832
challenge, the president of a court-martial without a military 2833
judge shall rule upon all questions of law and all interlocutory 2834
questions arising during the proceedings. Any such ruling made by 2835
the military judge upon any question of law or any interlocutory 2836
question other than the factual issue of mental responsibility of 2837
the accused, or by the president of a special court-martial, 2838
without a military judge upon any question of law other than a 2839
motion for a finding of not guilty, is final and constitutes the 2840
ruling of the court. However, the military judge or the president 2841
of a court-martial without a military judge may change the ruling 2842
at any time during the trial. Unless the ruling is final, if any 2843
member objects thereto, the court shall be cleared and closed and 2844
the question decided by a voice vote as provided in section 2845
5924.52 of the Revised Code, beginning with the junior in rank. 2846

(C) Before a vote is taken on the findings, the military 2847
judge or the president of a court-martial without a military judge 2848
shall, in the presence of the accused and counsel, instruct the 2849
members of the court as to the elements of the offense and charge 2850
~~the court~~ them: 2851

(1) That the accused must be presumed to be innocent until 2852
~~his~~ guilt is established by legal and competent evidence beyond 2853
reasonable doubt; 2854

(2) That in the case being considered, if there is a 2855
reasonable doubt as to the guilt of the accused, the doubt must be 2856
resolved in favor of the accused, and ~~he~~ the accused must be 2857
acquitted; 2858

(3) That, if there is a reasonable doubt as to the degree of 2859
guilt, the finding must be in a lower degree as to which there is 2860
no reasonable doubt; and 2861

(4) That the burden of proof to establish the guilt of the 2862
accused beyond reasonable doubt is upon the state. 2863

(D) Divisions (A), (B), and (C) of this section do not apply 2864
to a court-martial composed of a military judge only. The military 2865
judge of such a court-martial shall determine all questions of law 2866
and fact arising during the proceedings and, if the accused is 2867
convicted, adjudge an appropriate sentence. The military judge of 2868
such a court-martial shall make a general finding and shall in 2869
addition on request ~~find the facts specially~~ make specific
findings of fact. If an opinion or memorandum of decision is 2870
filed, it will be sufficient if the findings of fact appear 2871
therein. 2872
2873

Sec. 5924.52. ~~(A)(1) No person may be convicted of an offense 2874
for which the death penalty is made mandatory by law, except by 2875
the concurrence of all members of the court martial present at the 2876
time the vote is taken. 2877~~

~~(2) No person may be convicted of any other offense, except 2878
as provided in division (B) of section 5924.45 of the Revised Code 2879
or by the concurrence of two-thirds of the members of the
court-martial present at the time the vote is taken. 2880
2881~~

~~(B)(1) No person may be sentenced to suffer death, except by 2882
the concurrence of all members of the court martial present at the 2883
time the vote is taken and for an offense in this chapter 2884
expressly made punishable by death. 2885~~

~~(2) No person may be sentenced to life imprisonment or to 2886
confinement for more than ten years, except by the concurrence of 2887
three fourths of the members present at the time the vote is 2888~~

~~taken.~~ 2889

~~(3) All other sentences shall be determined by the 2890
concurrence of two thirds of the members present at the time the 2891
vote is taken.~~ 2892

~~(C) All other questions to be decided by the members of a 2893
general or special court-martial shall be determined by a majority 2894
vote, but a determination to reconsider a finding of guilty or to 2895
reconsider a sentence, to decrease or lessen it, may be made by 2896
any lesser vote ~~which~~ that indicates that the reconsideration is 2897
not opposed by the number of votes required for that finding or 2898
sentence. A tie vote on a challenge disqualifies the member 2899
challenged. A tie vote on a motion for a finding of not guilty or 2900
on a motion relating to the question of the accused's sanity is a 2901
determination against the accused. A tie vote on any other 2902
question is a determination in favor of the accused.~~ 2903

Sec. 5924.54. (A) Each general court-martial shall keep a 2904
separate record of the proceedings in each case brought before it, 2905
and the record shall be authenticated by the signature of the 2906
military judge. If the record cannot be authenticated by the 2907
military judge by reason of ~~his~~ death, disability, or absence, it 2908
shall be authenticated by the signature of the trial counsel or by 2909
that of a member if the trial counsel is unable to authenticate it 2910
by reason of ~~his~~ death, disability, or absence. In a court-martial 2911
consisting of only a military judge, the record shall be 2912
authenticated by the court reporter under the same conditions 2913
~~which~~ that would impose such a duty on a member under this 2914
division ~~if the proceedings have resulted in an acquittal of all 2915
charges and specifications or, if not affecting a general or flag 2916
officer, in a sentence not including discharge and not in excess 2917
of that which may otherwise be adjudged by a special 2918
court martial. The record shall contain matters as may be 2919~~

~~prescribed by regulations of the governor.~~ 2920

(B) Each special and summary court-martial shall keep a 2921
separate record of the proceedings in each case, ~~which and the~~ 2922
record shall ~~contain such matter and~~ be authenticated in ~~such the~~ 2923
manner ~~as may be required by regulations which the governor may~~ 2924
~~prescribe~~ prescribed by the adjutant general. 2925

(C)(1) A complete record of the proceedings and testimony 2926
shall be prepared in the following cases: 2927

(a) Each case tried before a general court-martial in which 2928
the sentence adjudged includes a dismissal, a discharge, or any 2929
punishment that exceeds the punishment that may otherwise be 2930
adjudged by a special court-martial; 2931

(b) Each case tried before a special court-martial in which 2932
the sentence adjudged includes a bad-conduct discharge, 2933
confinement for more than six months, or forfeiture of pay for 2934
more than six months. 2935

(2) In all other cases tried before a court-martial, the 2936
record shall contain any matters that are required by regulations 2937
of the adjutant general. A copy of the record of the proceedings 2938
of each general and special court-martial shall be given to the 2939
accused as soon as it is authenticated. ~~If a verbatim record of~~ 2940
~~trial by general or special court martial is not required under~~ 2941
~~divisions (A) and (B) of this section, the accused may buy such a~~ 2942
~~record under such regulations as the governor may prescribe.~~ 2943

Sec. 5924.56. The punishment ~~which~~ that a court-martial may 2944
direct for an offense may not exceed limits prescribed by ~~this~~ 2945
~~code or such lesser limits as the governor may prescribe~~ adjutant 2946
general for the offense. 2947

Sec. 5924.57. (A) ~~Whenever a sentence of a court martial as~~ 2948
~~lawfully adjudged and approved includes a forfeitures~~ (1) A 2949

~~forfeiture of pay or allowances in addition to confinement not 2950
suspended or deferred, the forfeiture may apply to pay or 2951
allowances becoming due on or after the date the sentence is 2952
approved by the convening authority. No forfeiture may extend to 2953
any pay or allowances accrued before that date or reduction in 2954
grade that is included in a sentence of a court-martial takes 2955
effect on the earlier of the date that is fourteen days after the 2956
date on which the sentence is adjudged or the date on which the 2957
sentence is approved by the convening authority. 2958~~

(2) On application of an accused, the convening authority may 2959
defer a forfeiture of pay or allowances or reduction in grade that 2960
would otherwise become effective on the date that is fourteen days 2961
after the date on which the sentence is adjudged until the date on 2962
which the sentence is approved by the convening authority. The 2963
convening authority may at any time rescind a deferment granted 2964
under this division. 2965

(3) A forfeiture of pay or allowances applies to pay or 2966
allowances accruing on and after the date on which the sentence 2967
takes effect. 2968

(B) Any period of confinement included in a sentence of a 2969
court-martial begins to run from the date the sentence is adjudged 2970
by the court-martial, but periods during which the sentence to 2971
confinement is suspended or deferred shall be excluded in 2972
computing the service of the term of confinement. ~~Regulations 2973
prescribed by the governor may provide that sentences of 2974
confinement may not be executed until approved by designated 2975
officers. 2976~~

(C) All other sentences of courts-martial are effective on 2977
the date ordered executed. 2978

(D)(1) On application by an accused who is under sentence to 2979
confinement that has not been ordered executed, the convening 2980

authority or, if the accused is no longer under ~~his~~ the convening 2981
authority's jurisdiction, the ~~governor~~, officer exercising general 2982
court-martial jurisdiction over the command to which the accused 2983
is currently assigned may in ~~his~~ the officer's sole discretion 2984
defer service of the sentence to confinement. The deferment shall 2985
terminate when the sentence is ordered executed. The deferment may 2986
be rescinded at any time by the officer who granted it or, if the 2987
accused is no longer under ~~his~~ the officer's jurisdiction, by the 2988
~~governor~~ officer exercising general court-martial jurisdiction 2989
over the command to which the accused is currently assigned. 2990

(2) In any case in which a court-martial sentences a person 2991
described in division (D)(3) of this section to confinement, the 2992
convening authority may defer the service of the sentence to 2993
confinement, without the consent of that person, until after the 2994
person has been permanently released to the armed forces by a 2995
state or foreign country referred to in that division. 2996

(3) Division (D)(2) of this section applies to a person 2997
subject to this chapter who, while in the custody of a state or 2998
foreign country, is temporarily returned by that state or foreign 2999
country to the armed forces for trial by court-martial and after 3000
the court-martial is returned to that state or foreign country 3001
under the authority of a mutual agreement or treaty. 3002

(4) As used in division (D)(3) of this section, "state" 3003
includes the District of Columbia and any state, commonwealth, 3004
territory, or possession of the United States having a national 3005
guard. 3006

(E) In any case in which a sentence to confinement has been 3007
ordered executed but in which review of the case under section 3008
5924.64 of the Revised Code is pending, the adjutant general may 3009
defer further service of the sentence while the review is pending. 3010

Sec. 5924.58. (A) ~~A~~ Subject to regulations prescribed by the 3011

adjutant general, a sentence of confinement adjudged by a 3012
court-martial or other military court tribunal, whether or not the 3013
sentence includes discharge or dismissal, and whether or not the 3014
discharge or dismissal has been executed, may be carried into 3015
execution by confinement in any ~~place of confinement under the~~ 3016
~~control of any of the forces of the organized militia or in any~~ 3017
~~jail or prison designated for that purpose~~ jail or correctional 3018
facility in this state. Persons so confined ~~in a jail or prison~~ 3019
are subject to the same discipline and treatment as persons 3020
confined or committed to the jail or ~~prison~~ correctional facility 3021
by the courts of the state or of any political subdivision ~~thereof~~ 3022
of the state. 3023

(B) ~~The omission of the words "hard labor" from any sentence~~ 3024
~~or punishment of a court martial adjudging confinement does not~~ 3025
~~deprive the authority executing that sentence or punishment of the~~ 3026
~~power to require hard labor as a part of the punishment.~~ 3027

~~(C) The keepers, officers, and wardens of city or county~~ 3028
~~jails and of other jails or prisons designated by the governor, or~~ 3029
~~by such person as he may authorize to act under section 5924.11 of~~ 3030
~~the Revised Code and of this code, shall receive persons ordered~~ 3031
~~into confinement before trial and persons committed to confinement~~ 3032
~~by a military court and shall confine them according to law. No~~ 3033
~~such keeper, officer, or warden may require payment of any fee or~~ 3034
~~charge~~ kind may be required for so ~~receiving or confining a person~~ 3035
housing a prisoner under this code. 3036

Sec. 5924.581. (A) Except as otherwise provided in 3037
regulations made by the adjutant general, a court-martial sentence 3038
of an enlisted member in a pay grade above E-1 that includes a 3039
dishonorable or bad-conduct discharge, confinement, or hard labor 3040
without confinement reduces the member to pay grade E-1, effective 3041
on the date the convening authority approves the sentence. 3042

(B) If the sentence of a member who is reduced in pay grade under division (A) of this section is set aside or disapproved, or as finally approved does not include a dishonorable or bad-conduct discharge, confinement, or hard labor without confinement, the rights and privileges of which the member was deprived because of the reduction in pay are restored, and the member shall be paid the pay and allowances that the member would have been paid for the period the reduction was in effect had the member not been reduced in pay. 3043
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Sec. 5924.582. (A) A member who receives a court-martial sentence that includes confinement for more than six months or confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal forfeits pay, or pay and allowances, during any period of confinement or parole. The forfeiture takes effect on the date determined under section 5924.57 of the Revised Code and may be deferred as provided by that section. The pay and allowances forfeited as a result of a sentence imposed by a general court-martial shall be all pay and allowances due during any period of confinement or parole. The pay and allowances forfeited as a result of a sentence imposed by a special court-martial shall be two-thirds of all pay and allowances due during any period of confinement or parole. 3052
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(B) If a member subject to forfeiture of pay or pay and allowances under division (A) of this section has dependents, the convening authority or other person acting under section 5924.60 of the Revised Code may waive all or part of the forfeiture of pay and allowances for a period not exceeding six months. Any pay or allowances paid as a result of a waiver shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused member. 3065
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(C) If the sentence of a member who forfeits pay and 3073

allowances under division (A) of this section is set aside or 3074
disapproved or, as finally approved, does not provide for a 3075
punishment that includes confinement for more than six months or 3076
confinement for six months or less and a dishonorable or 3077
bad-conduct discharge or dismissal, the member shall be paid the 3078
pay and allowances that the member would have been paid for the 3079
period the forfeiture was in effect had the member's pay and 3080
allowances not been forfeited. 3081

Sec. 5924.59. (A) A finding or sentence of a court-martial 3082
may not be held incorrect on the ground of an error of law unless 3083
the error materially prejudices the substantial rights of the 3084
accused. 3085

(B) Any reviewing authority with the power to approve or 3086
affirm a finding of guilty may instead approve or affirm so much 3087
of the finding as includes a lesser included offense. 3088

Sec. 5924.60. ~~After a trial by (A) A court-martial, the~~ 3089
~~record shall be forwarded~~ report its findings and sentence to the 3090
~~convening authority, as reviewing authority, and action thereon~~ 3091
~~may be taken by~~ after announcing the person who convened the 3092
~~court, a commissioned officer commanding for the time being, a~~ 3093
~~successor in command, or by the governor~~ sentence. 3094

(B)(1) The accused may submit to the convening authority 3095
matters relating to the findings and sentence to the convening 3096
authority for its consideration. A submission shall be in writing. 3097
A submission shall be made within ten days after the accused has 3098
been given an authenticated record of trial and, if applicable, 3099
the recommendation of the staff judge advocate or legal officer 3100
under division (D) of this section or, in a summary court-martial 3101
case, within seven days after the sentence is announced. 3102

(2) The convening authority or other person taking action 3103

under this section, for good cause shown by the accused, may 3104
extend the period for submission of matters under division (B)(1) 3105
of this section for not more than twenty days. 3106

(3) In a summary court-martial case, the summary court 3107
officer shall promptly provide the accused with a copy of the 3108
record of trial for use in preparing a submission authorized by 3109
division (B)(1) of this section. 3110

(4) The accused may waive the right to make a submission 3111
under division (B)(1) of this section. A waiver shall be made in 3112
writing and may not be revoked. The time within which the accused 3113
may make a submission under this subsection expires upon the 3114
submission of a waiver to the convening authority. 3115

(C)(1) The authority under this section to act on the 3116
findings and sentence of a court-martial is a matter of command 3117
prerogative involving the sole discretion of the convening 3118
authority. Pursuant to regulations prescribed by the adjutant 3119
general, a commissioned officer commanding for the time being, a 3120
successor in command, or any person exercising general 3121
court-martial jurisdiction may act under this section in place of 3122
the convening authority. 3123

(2) The convening authority or another person authorized to 3124
act under this section may act on the sentence of a court-martial 3125
pursuant to division (B)(3) of this section. Subject to 3126
regulations prescribed by the adjutant general, the convening 3127
authority or other authorized person may act only after the 3128
accused submits matters under division (B) of this section or the 3129
time for submitting matters expires, whichever is earlier. If the 3130
accused makes a submission, the convening authority or other 3131
authorized person shall take the submission into consideration 3132
before acting. 3133

(3) The convening authority or other authorized person, in 3134

the convening authority's or other authorized person's sole 3135
discretion, may approve, disapprove, commute, or suspend the 3136
sentence of a court-martial in whole or in part. The convening 3137
authority or other authorized person acting on a sentence may but 3138
is not required to take action on the findings of the 3139
court-martial. A convening authority or other authorized person 3140
that chooses to act on the findings may dismiss any charge or 3141
specification by setting aside a finding of guilt with regard to 3142
that charge or specification or may change a finding of guilty 3143
with regard to a charge or specification to a finding of guilty to 3144
an offense that is a lesser included offense of the offense stated 3145
in the charge or specification. 3146

(D) Before acting under this section on any general 3147
court-martial case or on any special court-martial case that 3148
includes a bad-conduct discharge, the convening authority or other 3149
authorized person shall obtain and consider the written 3150
recommendation of the convening authority's or other authorized 3151
person's staff judge advocate or legal officer. The convening 3152
authority or other authorized person shall refer the record of 3153
trial to the staff judge advocate or legal officer. The staff 3154
judge advocate or legal officer shall use the record in the 3155
preparation of a recommendation. The recommendation shall include 3156
any matters that the adjutant general may require by regulation 3157
and shall be served on the accused. The accused may submit any 3158
matter in response under division (B) of this section. If in the 3159
accused's response, the accused does not object to one or more 3160
matters contained in the recommendation, the accused waives the 3161
right to object to those matters. 3162

(E)(1) The convening authority or other authorized person, in 3163
the convening authority's or other authorized person's sole 3164
discretion, may order a proceeding in revision or a rehearing. 3165

(2) The convening authority or other authorized person may 3166

order a proceeding in revision if there is an apparent error or 3167
omission in the record of a court-martial or if the record shows 3168
improper or inconsistent action by a court-martial with respect to 3169
the findings or sentence that can be rectified without material 3170
prejudice to the substantial rights of the accused. In a 3171
proceeding in revision, the convening authority or other 3172
authorized person may not do any of the following: 3173

(a) Reconsider a finding of not guilty of any specification 3174
or a ruling that amounts to a finding of not guilty; 3175

(b) Reconsider a finding of not guilty of any charge, unless 3176
there has been a finding of guilty under a specification laid 3177
under that charge that sufficiently alleges a violation of any 3178
provision of this chapter; 3179

(c) Increase the severity of the sentence. 3180

(3) The convening authority or other authorized person may 3181
order a rehearing if the convening authority or other authorized 3182
person disapproves the findings or sentence and states the reasons 3183
for disapproval of the findings or sentence. If the convening 3184
authority or other authorized person disapproves the findings or 3185
sentence and does not order a rehearing, the convening authority 3186
or other authorized person shall dismiss the charges. A convening 3187
authority or other authorized person may not order a rehearing as 3188
to the findings if the record does not contain sufficient evidence 3189
to support the findings. A convening authority or other authorized 3190
person may order a rehearing as to the sentence if the convening 3191
authority or other authorized person disapproves the sentence. 3192

Sec. 5924.61. (A) An accused may appeal a finding of guilty 3193
or the sentence of a court-martial to the court of military 3194
appeals. The court shall hear an appeal if the convening authority 3195
or other authorized person approved a sentence of dismissal of a 3196
commissioned officer, dishonorable or bad conduct discharge, or 3197

confinement for one year or more and if the appeal was timely 3198
filed. The court may hear any other appeals that the court, in its 3199
sole discretion, allows. 3200

(B) An accused who is found guilty may appeal under this 3201
section by filing a notice of appeal with the convening authority 3202
that ordered the court-martial within thirty calendar days after 3203
the convening authority serves a copy of the approved findings and 3204
sentence on the trial attorney of record for the accused or, if 3205
the accused waived the right to counsel, on the accused in 3206
accordance with regulations prescribed by the adjutant general. 3207
The notice of appeal shall state the name of the party taking the 3208
appeal, the findings, sentence, or parts of the findings or 3209
sentence appealed from, and the grounds for the appeal. Failure to 3210
file a notice of appeal in a timely manner constitutes a waiver of 3211
the right to appeal. 3212

(C) Upon receiving a notice of appeal, the convening 3213
authority shall serve a copy of the notice on the trial counsel 3214
and on the trial attorney of record for any codefendant or, if a 3215
codefendant waived the right to counsel, on the codefendant in 3216
accordance with regulations prescribed by the adjutant general. 3217
The convening authority shall note on each copy served the date on 3218
which the notice of appeal was filed. Failure of the convening 3219
authority to serve a copy of the notice of appeal does not affect 3220
the validity of the appeal. Service in accordance with division 3221
(C) of this section is sufficient notwithstanding the death of a 3222
party or a party's counsel. The convening authority shall note on 3223
its docket the names of the parties served, the dates on which 3224
they were served, and the method of service. 3225

(D) An accused may waive appellate review by filing with the 3226
convening authority, within ten days after the action under 3227
section 5924.60 of the Revised Code is served on the accused or on 3228
defense counsel, a written waiver signed by the accused and by 3229

defense counsel. The convening authority or other person taking 3230
such action, for good cause, may extend the period for filing by 3231
not more than thirty days. 3232

(E) An accused may voluntarily withdraw an appeal at any time 3233
by filing a notice of withdrawal with the convening authority. 3234

(F) A waiver of the right to appellate review or the 3235
withdrawal of an appeal bars any further review under this section 3236
or section 5924.69 of the Revised Code. 3237

Sec. 5924.62. (A) In a trial by court-martial in which a 3238
military judge presides and in which a punitive discharge may be 3239
adjudged, the state may appeal any of the following, except an 3240
order or ruling that is, or that amounts to, a finding of not 3241
guilty with respect to the charge or specification: 3242

(1) An order or ruling that terminates the proceedings with 3243
respect to a charge or specification; 3244

(2) An order or ruling that excludes evidence that is of 3245
substantial consequence to the determination of the material 3246
issues in the proceeding; 3247

(3) An order or ruling that directs the disclosure of 3248
classified information; 3249

(4) An order or ruling that imposes sanctions for 3250
nondisclosure of classified information; 3251

(5) A refusal by the military judge to issue a protective 3252
order sought by the state to prevent the disclosure of classified 3253
information; 3254

(6) A refusal by the military judge to enforce a protective 3255
order that has previously been issued by appropriate authority to 3256
prevent the disclosure of classified information. 3257

(B) The state may not appeal an order or ruling unless within 3258

seventy-two hours after the military judge serves the order or 3259
ruling the trial counsel files with the military judge a written 3260
notice of appeal from the order or ruling. The notice shall 3261
include a certification by the trial counsel that the appeal is 3262
not taken for the purpose of delay and, if the order or ruling 3263
appealed is one that excludes evidence, that the evidence excluded 3264
is substantial proof of a fact material in the proceeding. 3265

(C) Appellate government counsel shall diligently prosecute 3266
an appeal under this section to the court of military appeals 3267
created by section 5924.66 of the Revised Code. 3268

(D) Any period of delay resulting from an appeal under this 3269
section shall be excluded in deciding any issue regarding denial 3270
of a speedy trial unless an appropriate authority determines that 3271
the appeal was filed solely for the purpose of delay with the 3272
knowledge that it was totally frivolous and without merit. 3273

~~**Sec. 5924.63.** (A) If the convening authority disapproves the~~ 3274
~~findings and sentence of a court-martial he may, except where~~ 3275
~~there is lack of sufficient evidence in the record to support the~~ 3276
~~findings, order a rehearing. In such a case he shall state the~~ 3277
~~reasons for disapproval. If he disapproves the findings and~~ 3278
~~sentence and does not order a rehearing, he shall dismiss the~~ 3279
~~charges.~~ 3280

~~(B) Each rehearing ordered pursuant to section 5924.60 of the~~ 3281
~~Revised Code or by the court of military appeals shall take place~~ 3282
~~before a court-martial composed of members who were not members of~~ 3283
~~the court-martial ~~which~~ that first heard the case. Upon a~~ 3284
~~rehearing the accused may not be tried for any offense of which ~~he~~~~ 3285
~~the accused was found not guilty by the first court-martial, and~~ 3286
~~no sentence in excess of or more severe than the original sentence~~ 3287
~~may be ~~imposed,~~ approved unless the sentence is based upon a~~ 3288
~~finding of guilty of an offense not considered upon the merits in~~ 3289

the original proceedings, or unless the sentence prescribed for 3290
the offense is mandatory. If the sentence approved after the first 3291
court-martial was in accordance with a pretrial agreement and the 3292
accused at the rehearing changes the accused's plea with respect 3293
to the charges or specifications upon which the pretrial agreement 3294
was based or otherwise does not comply with the pretrial 3295
agreement, the approved sentence as to those charges or 3296
specifications may include any punishment not in excess of the 3297
punishment lawfully adjudged at the first court-martial. 3298

Sec. 5924.64. (A) A judge advocate shall review pursuant to 3299
regulations prescribed by the adjutant general each case in which 3300
there has been a finding of guilty and in which no appeal is 3301
taken. A judge advocate may not review a case under this section 3302
if the judge advocate has acted in the same case as an accuser, 3303
investigating officer, member of the court, military judge, or 3304
counsel or has otherwise acted on behalf of the prosecution or 3305
defense. For each case reviewed under this section, the judge 3306
advocate shall issue written findings and recommendations that 3307
contain all of the following: 3308

(1) Conclusions as to whether the court had jurisdiction over 3309
the accused and the offense; 3310

(2) Conclusions as to whether the charge and specification 3311
stated an offense; 3312

(3) Conclusions as to whether the sentence was within the 3313
limits prescribed by law; 3314

(4) A response to each allegation of error made in writing by 3315
the accused; 3316

(5) If the case is sent for action under division (B) of this 3317
section, a recommendation as to the appropriate action to be taken 3318
and an opinion as to whether corrective action is required as a 3319

matter of law. 3320

(B) The record of trial and related documents in each case reviewed under division (A) of this section shall be sent for further action under division (C) of this section to the person exercising general court-martial jurisdiction over the accused at the time the court was convened or that person's successor in command if any of the following applies: 3321
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(1) The judge advocate who reviewed the case recommends corrective action. 3327
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(2) The sentence approved under division (C) of section 5924.60 of the Revised Code includes dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months. 3329
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(3) Regulations prescribed by the adjutant general require further review. 3332
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(C) The person to whom the record of trial and related documents are sent under division (B) of this section may do any of the following: 3334
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(1) Approve or disapprove the findings or sentence in whole or in part; 3337
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(2) Remit, commute, or suspend the sentence in whole or in part; 3339
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(3) Order a rehearing on the findings, the sentence, or both; 3341

(4) Dismiss the charges. 3342

(D) If a rehearing is ordered but the convening authority finds that a rehearing is impracticable, the convening authority shall dismiss the charges. 3343
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(E) If the opinion of the judge advocate who reviews a case under division (A) of this section finds that corrective action is required as a matter of law and the person required to take action under division (B) of this section does not take action that is at 3346
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least as favorable to the accused as that recommended by the judge 3350
advocate, the convening authority shall transmit the record of 3351
trial and action on that record to the state judge advocate for 3352
review. 3353

(F) The judge advocate who under this section reviews a case 3354
conducted by a general court-martial shall be the state judge 3355
advocate. 3356

Sec. 5924.65. If an accused files a notice of appeal, the 3357
convening authority shall transmit the record of trial and 3358
post-trial proceedings in the case to the state judge advocate for 3359
appropriate action. If the accused does not file a notice of 3360
appeal or files a notice of appeal and withdraws the appeal, then 3361
following completion of all post-trial review, the record of trial 3362
and related documents shall be transmitted and disposed of as the 3363
adjutant general may prescribe by regulation. 3364

Sec. 5924.66. (A) There is hereby created the court of 3365
military appeals. The court is a court of record and has exclusive 3366
jurisdiction of all appeals from courts-martial convened pursuant 3367
to this code. The court shall sit in Franklin county. All hearings 3368
conducted by the court shall be public. 3369

(B) The judges of the court of military appeals shall be 3370
military appellate judges appointed by the adjutant general. Each 3371
judge shall be a retired judge advocate officer who has previously 3372
served in the rank of colonel or above in either the Ohio army 3373
national guard or the Ohio air national guard. The judges shall 3374
sit in panels of not less than three members. 3375

(C) The adjutant general may make rules governing practice 3376
and procedure in the court of military appeals. The Rules of 3377
Appellate Procedure apply in proceedings in the court to the 3378
extent that they are not inconsistent with this code or with rules 3379

made by the adjutant general under this division. 3380

Sec. 5924.67. A judge of the court of military appeals shall 3381
receive as compensation for each day of attendance on the business 3382
of the court an amount equal to the annual compensation of a judge 3383
of a court of appeals divided by the number of days in the 3384
calendar year. A judge who does not reside in Franklin county 3385
shall be reimbursed for the judge's actual and necessary expenses 3386
of traveling to and from Franklin county to attend the business of 3387
the court. 3388

Sec. 5924.68. The court of military appeals may subpoena 3389
witnesses, require the production of evidence, and punish for 3390
contempt in the same manner and to the same extent as a common 3391
pleas court. 3392

Sec. 5924.69. Appeals from orders and judgments of the court 3393
of military appeals may be taken to the supreme court in the same 3394
manner and to the same extent as criminal appeals from orders and 3395
judgments of a court of appeals. 3396

Sec. 5924.70. (A) The state judge advocate shall detail one 3397
or more judge advocates as appellate government counsel and one or 3398
more judge advocates assigned to the United States army trial 3399
defense service or the United States air force area defense 3400
counsel as appellate defense counsel. Appellate counsel shall be 3401
members in good standing of the bar of this state and certified by 3402
the state judge advocate to be competent to act as appellate 3403
counsel. 3404

(B) Appellate government counsel shall represent the state in 3405
the court of military appeals. In a case arising under this code 3406
that is heard in the supreme court, appellate government counsel 3407
shall represent the state in the supreme court unless the attorney 3408

general elects to represent the state. 3409

(C) Appellate defense counsel shall represent the accused in 3410
the court of military appeals and the supreme court unless the 3411
accused elects to be represented by civilian counsel at the 3412
accused's own expense. 3413

(D) Appellate government and defense counsel shall perform 3414
any additional functions in connection with post-trial proceedings 3415
in court-martial cases that the state judge advocate directs. 3416

Sec. 5924.71. (A) If the sentence of a court-martial of a 3417
commissioned officer or cadet includes dismissal, that part of the 3418
sentence providing for dismissal may not be executed until it is 3419
approved by the adjutant general. The adjutant general may 3420
commute, remit, or suspend the sentence or any part of the 3421
sentence as the adjutant general sees fit. In time of war or 3422
national emergency, the adjutant general may commute a sentence of 3423
dismissal to reduction to any enlisted grade. A person so reduced 3424
may be required to serve for the duration of the war or emergency 3425
and for six months after the end of the war or emergency. 3426

(B)(1) If the sentence of a court-martial includes dismissal 3427
or dishonorable or bad-conduct discharge and the accused appeals 3428
to the court of military appeals, the dismissal or discharge part 3429
of the sentence may not be executed until the appellate process 3430
has been completed and, in case of dismissal, approval of the 3431
sentence by the adjutant general. The appellate process is 3432
completed when any of the following occurs: 3433

(a) The accused withdraws the appeal. 3434

(b) The court of military appeals renders a decision, and the 3435
time for filing a notice of appeal to the supreme court elapses 3436
without the accused having filed a notice of appeal. 3437

(c) The supreme court issues an order dismissing the appeal 3438

or entering judgment on the leave to appeal. 3439

(2) If the sentence of a court-martial includes dismissal or 3440
dishonorable or bad-conduct discharge and the accused fails to 3441
appeal to the court of military appeals, waives appellate review, 3442
or withdraws an appeal, the dismissal or discharge part of the 3443
sentence may not be executed until a judge advocate has reviewed 3444
the case and the convening authority has completed action in the 3445
review pursuant to section 5924.64 of the Revised Code. Any other 3446
part of a court-martial sentence may be ordered executed by the 3447
convening authority or other person acting on the case under 3448
section 5924.60 of the Revised Code. 3449

(C) The convening authority or other person taking action on 3450
a court-martial case under section 5924.60 of the Revised Code may 3451
suspend at any time the execution of any sentence or part of a 3452
sentence. 3453

Sec. 5924.72. (A) An officer having special court-martial 3454
jurisdiction over a person whose sentence has been suspended may 3455
recommend vacation of the suspension of an approved sentence or 3456
part of a sentence that was imposed by a special court-martial and 3457
includes a bad-conduct discharge or that was imposed by a general 3458
court-martial. 3459

(B) Before the vacation of vacating the suspension of a 3460
special court martial sentence which as approved includes a bad 3461
conduct discharge, or of any general court martial or part of a 3462
sentence under division (A) of this section, the an officer having 3463
special court-martial jurisdiction over the probationer a person 3464
whose sentence has been suspended shall hold a hearing on the 3465
alleged violation of probation the terms of suspension. The 3466
probationer shall person has the right to be represented at the 3467
hearing by counsel if he so desires. 3468

~~(B)~~(C) The record of the hearing and the recommendation of 3469

the officer having special court-martial jurisdiction shall be 3470
sent for action to the ~~governor in cases involving a~~ officer 3471
exercising general court-martial ~~sentence and to the commanding~~ 3472
~~officer of the force of the organized militia of which~~ 3473
jurisdiction over the ~~probationer is a member in all other cases~~ 3474
~~covered by division (A) of this section~~ person whose sentence has 3475
been suspended. If ~~the governor or commanding~~ that officer vacates 3476
the suspension, any unexecuted part of the sentence except a 3477
dismissal shall be executed, subject to applicable restrictions 3478
set forth in section 5924.71 of the Revised Code. A vacation of 3479
the suspension of a dismissal is not effective until it is 3480
approved by the adjutant general. 3481

~~(C)~~(D) The suspension of any other sentence may be vacated by 3482
any authority competent to convene, for the command in which the 3483
accused is serving or assigned, a court of the kind that imposed 3484
the sentence. 3485

Sec. 5924.73. At any time within two years after approval by 3486
the convening authority of a court-martial sentence, the accused 3487
may petition the ~~governor~~ adjutant general for a new trial on the 3488
ground of newly discovered evidence or fraud on the ~~court-martial~~. 3489
The adjutant general shall act upon the petition unless the case 3490
is pending before the court of military appeals or the supreme 3491
court, in which case the adjutant general shall refer the petition 3492
to the court in which the appeal is pending. 3493

Sec. 5924.74. (A) A The adjutant general, the state judge 3494
advocate when authorized by the adjutant general, or a convening 3495
authority may remit or suspend any part or amount of the 3496
unexecuted part of any sentence, including all uncollected 3497
forfeitures, other than a sentence approved by the governor or a 3498
superior convening authority. 3499

(B) The ~~governor~~ adjutant general may, for good cause, 3500
substitute an administrative form of discharge for a discharge or 3501
dismissal executed in accordance with the sentence of a 3502
court-martial. 3503

Sec. 5924.75. (A) Under ~~such~~ any regulations ~~as~~ that the 3504
~~governor~~ adjutant general may prescribe, all rights, privileges, 3505
and property affected by an executed part of a court-martial 3506
sentence ~~which~~ that has been set aside or disapproved, except an 3507
executed dismissal or discharge, shall be restored unless a new 3508
trial or rehearing is ordered and ~~such~~ the executed part of the 3509
sentence is included in a sentence imposed upon the new trial or 3510
rehearing. 3511

(B) If a previously executed sentence of dishonorable or bad 3512
conduct discharge is not imposed on a new trial, the ~~governor~~ 3513
adjutant general shall substitute therefor a form of discharge 3514
authorized for administrative issuance unless the accused is to 3515
serve out the remainder of ~~his~~ the accused's enlistment. 3516

(C) If a previously executed sentence of dismissal is not 3517
imposed on a new trial, the ~~governor~~ adjutant general shall 3518
substitute therefor a form of discharge authorized for 3519
administrative issue, and the commissioned officer dismissed by 3520
that sentence may be reappointed by the ~~governor~~ adjutant general 3521
alone to such commissioned grade and with such rank as in the 3522
opinion of the ~~governor~~ adjutant general that former officer would 3523
have attained had ~~he~~ the former officer not been dismissed. The 3524
reappointment of such a former officer ~~may~~ shall be made ~~if~~ 3525
without regard to the existence of a position vacancy is available 3526
under applicable tables and shall affect the promotion status of 3527
organization other officers only to the extent directed by the 3528
adjutant general. All time between the dismissal and the 3529
reappointment shall be considered as service for all purposes 3530

including the right to pay and allowances. 3531

(D) Pursuant to regulations prescribed by the adjutant 3532
general, an accused who has been sentenced by a court-martial may 3533
be required to take leave pending completion of action under this 3534
code if the sentence, as approved under section 5924.60 of the 3535
Revised Code, includes an unsuspended dismissal or an unsuspended 3536
dishonorable or bad-conduct discharge. The accused may be required 3537
to begin leave on the date on which the sentence is approved or at 3538
any time after that date. Leave may be continued until the date on 3539
which action is completed or may be terminated at any earlier 3540
time. 3541

Sec. 5924.76. The appellate review of records of trial 3542
pursuant to this code, the proceedings, findings, and sentences of 3543
courts-martial as ~~reviewed and~~ approved, ~~as required by~~ reviewed, 3544
or affirmed pursuant to this code, and all dismissals and 3545
discharges carried into execution under sentences by 3546
courts-martial following ~~review and~~ approval, ~~as required by~~ 3547
~~review, or affirmation pursuant to~~ this code, are final and 3548
conclusive. Orders publishing the proceedings of courts-martial 3549
and all action taken pursuant to those proceedings are binding 3550
upon all departments, courts, agencies, and officers of the state, 3551
subject only to action upon a petition for a new trial as provided 3552
in section 5924.73 of the Revised Code and to action by the 3553
adjutant general under section 5924.74 of ~~this code~~ the Revised 3554
Code. 3555

Sec. 5924.761. Pursuant to regulations prescribed by the 3556
adjutant general, an accused who has been sentenced by a 3557
court-martial may be required to take leave pending completion of 3558
action under sections 5924.59 to 5924.761 of the Revised Code if 3559
the sentence, as approved under section 5924.60 of the Revised 3560
Code, includes an unsuspended dismissal or an unsuspended 3561

dishonorable or bad-conduct discharge. The accused may be required 3562
to begin the leave on the date on which the sentence is approved 3563
under section 5924.60 of the Revised Code or at any time after 3564
that date, and the leave may be continued until the date on which 3565
action under sections 5924.59 to 5924.761 of the Revised Code is 3566
terminated or completed. 3567

Sec. 5924.77. Any person subject to this code is a principal 3568
~~who~~ if the person does either of the following: 3569

(A) Commits an offense punishable by this code, or aids, 3570
abets, counsels, commands, or procures its commission; 3571

(B) Causes an act to be done which if directly performed by 3572
~~him~~ the person would be punishable by this code. 3573

Sec. 5924.78. Any person subject to this code who, knowing 3574
that an offense punishable by this code has been committed, 3575
receives, comforts, or assists the offender in order to hinder or 3576
prevent ~~his~~ the offender's apprehension, trial, or punishment 3577
shall be punished as a court-martial may direct. 3578

Sec. 5924.82. (A) Any person subject to this code who 3579
solicits or advises another or others to desert in violation of 3580
section 5924.85 of the Revised Code and of this code or mutiny in 3581
violation of section 5924.94 of the Revised Code and of this code 3582
shall, if the offense solicited or advised is attempted or 3583
committed, be punished with the punishment provided for the 3584
commission of the offense, but, if the offense solicited or 3585
advised is not committed or attempted, ~~he~~ the person shall be 3586
punished as a court-martial may direct. 3587

(B) Any person subject to this code who solicits or advises 3588
another or others to commit an act of ~~misbehavior before the enemy~~ 3589
~~in violation of section 5924.99 of the Revised Code and of this~~ 3590

~~code or~~ sedition in violation of section 5924.94 of the Revised 3591
Code and of this code shall, if the offense solicited or advised 3592
is committed, be punished with the punishment provided for the 3593
commission of the offense, but, if the offense solicited or 3594
advised is not committed, ~~he~~ the person shall be punished as a 3595
court-martial may direct. 3596

Sec. 5924.83. Any person who does either of the following 3597
shall be punished as a court-martial may direct: 3598

(A) Procures ~~his~~ the person's own enlistment or appointment 3599
in the organized militia by knowingly false representation or 3600
deliberate concealment as to ~~his~~ the person's qualifications for 3601
that enlistment or appointment and receives pay or allowances 3602
thereunder; ~~or~~ 3603

(B) Procures ~~his~~ the person's own separation from the 3604
organized militia by knowingly false representation or deliberate 3605
concealment as to ~~his~~ the person's eligibility for that 3606
separation; 3607

~~shall be punished as a court martial may direct.~~ 3608

Sec. 5924.84. Any person subject to this code who effects an 3609
enlistment or appointment in or a separation from the organized 3610
militia of any person who is known to ~~him~~ the person to be 3611
ineligible for that enlistment, appointment, or separation because 3612
it is prohibited by law, regulation, or order shall be punished as 3613
a court-martial may direct. 3614

Sec. 5924.85. (A) Any member of the organized militia who 3615
does any of the following is guilty of desertion: 3616

(1) Without authority goes or remains absent from ~~his~~ the 3617
member's unit, organization, or place of duty with intent to 3618
remain away ~~therefrom~~ from the unit, organization, or place of 3619

duty permanently; 3620

(2) Quits ~~his~~ the member's unit, organization, or place of 3621
duty with intent to avoid hazardous duty or to shirk important 3622
service; ~~or~~ 3623

(3) Without being regularly separated from one of the forces 3624
of the organized militia enlists or accepts an appointment in the 3625
same or another one of the forces of the organized militia without 3626
fully disclosing the fact that ~~he~~ the member has not been 3627
regularly separated; 3628

~~is guilty of desertion~~ 3629

(4) Without being regularly separated from one of the forces 3630
of the organized militia enters any foreign armed services without 3631
the authorization of the United States. 3632

(B) Any commissioned officer of the organized militia who, 3633
after tender of ~~his~~ the commissioned officer's resignation and 3634
before notice of its acceptance, quits ~~his~~ the commissioned 3635
officer's post or proper duties without leave and with intent to 3636
remain away therefrom permanently is guilty of desertion. 3637

(C) Any person found guilty of desertion or attempt to desert 3638
shall be punished, ~~if the offense is committed in time of war, by~~ 3639
~~death or such other punishment as a court-martial may direct, but~~ 3640
~~if the desertion or attempt to desert occurs at any other time, by~~ 3641
~~such punishment, other than death, as a court-martial may direct.~~ 3642

Sec. 5924.86. Any person subject to this code who, without 3643
authority, does any of the following shall be punished as a 3644
court-martial may direct: 3645

(A) Fails to go to ~~his~~ the person's appointed place of duty 3646
at the time prescribed; 3647

(B) Goes from ~~his~~ the person's appointed place of duty; ~~or~~ 3648

(C) Absents ~~himself~~ self or remains absent from ~~his~~ the 3649
person's unit, organization, or place of duty at which ~~he~~ the 3650
person is required to be at the time prescribed; ~~shall be punished~~ 3651
~~as a court martial may direct.~~ 3652

Sec. 5924.87. Any person subject to this code who through 3653
neglect or design misses the movement of a ship, aircraft, or unit 3654
with which ~~he~~ the person is required in the course of duty to move 3655
shall be punished as a court-martial may direct. 3656

Sec. 5924.88. Any ~~person subject to this code~~ commissioned 3657
officer who uses contemptuous words against ~~the president,~~ the 3658
governor, or the legislature, ~~or the governor or legislature of~~ 3659
any this state, territory, commonwealth, or possession wherein 3660
~~that person may be serving,~~ shall be punished as a court-martial 3661
may direct. 3662

Sec. 5924.89. Any person subject to this code who behaves 3663
with disrespect toward ~~his~~ the person's superior commissioned 3664
officer shall be punished as a court-martial may direct. 3665

Sec. 5924.90. Any person subject to this code who does either 3666
of the following shall be punished as a court-martial may direct: 3667

(A) Strikes ~~his~~ the person's superior commissioned officer or 3669
draws or lifts up any weapon or offers any violence against ~~him~~ 3670
the person's superior commissioned officer while ~~he~~ that officer 3671
is in the execution of ~~his office~~ official duties; ~~or~~ 3672

(B) Willfully disobeys a lawful command of ~~his~~ the person's 3673
superior commissioned officer; 3674
~~shall be punished as a court martial may direct.~~ 3675

Sec. 5924.91. Any warrant officer or enlisted member who does 3676
any of the following shall be punished as a court-martial may 3677
direct: 3678

(A) Strikes or assaults a warrant officer, or noncommissioned 3679
officer, ~~or petty officer,~~ while that officer is in the execution 3680
of ~~his office~~ official duties; 3681

(B) Willfully disobeys the lawful order of a warrant officer, 3682
or noncommissioned officer, ~~or petty officer;~~ ~~or~~ 3683

(C) Treats with contempt or is disrespectful in language or 3684
deportment toward a warrant officer, or noncommissioned officer, 3685
~~or petty officer,~~ while that officer is in the execution of ~~his~~ 3686
~~office;~~ 3687
~~shall be punished as a court martial may direct~~ official duties. 3688

Sec. 5924.92. Any person subject to this code who does any of 3689
the following shall be punished as a court-martial may direct: 3690

(A) Violates or fails to obey any lawful general order or 3691
regulation; 3692

(B) Having knowledge of any other lawful order issued by a 3693
member of the organized militia, ~~which it~~ that is ~~his~~ the person's 3694
duty to obey, fails to obey the order; ~~or~~ 3695

(C) Is derelict in the performance of ~~his~~ the person's 3696
duties; 3697
~~shall be punished as a court martial may direct.~~ 3698

Sec. 5924.93. Any person subject to this code who is guilty 3699
of cruelty toward, or oppression or maltreatment of, any other 3700
person subject to ~~his~~ the person's orders shall be punished as a 3701
court-martial may direct. 3702

Sec. 5924.94. (A)~~(1)~~ Any person subject to this code who~~+~~ 3703

~~(1) With,~~ with intent to usurp or override lawful military 3704
authority, refuses, in concert with any other person, to obey 3705
orders or otherwise do ~~his~~ the person's duty or creates any 3706
violence or disturbance is guilty of mutiny~~+~~. 3707

(2) ~~With~~ Any person subject to this code who, with intent to 3708
cause the overthrow or destruction of lawful civil authority, 3709
creates, in concert with any other person, revolt, violence, or 3710
other disturbance against that authority is guilty of sedition~~+~~. 3711

(3) ~~Fails~~ Any person subject to this code who fails to do ~~his~~ 3712
the person's utmost to prevent and suppress a mutiny or sedition 3713
being committed in ~~his~~ the person's presence, or fails to take all 3714
reasonable means to inform ~~his~~ the person's superior commissioned 3715
officer or commanding officer of a mutiny or sedition ~~which he~~ 3716
that the person knows or has reason to believe is taking place, is 3717
guilty of a failure to suppress or report a mutiny or sedition. 3718

(B) A person who is found guilty of attempted mutiny, mutiny, 3719
sedition, or failure to suppress or report a mutiny or sedition 3720
shall be punished ~~by death or such other punishment~~ as a 3721
court-martial may direct. 3722

Sec. 5924.95. Any person subject to this code who resists 3723
apprehension ~~or,~~ flees from apprehension, breaks arrest, or ~~who~~ 3724
escapes from ~~physical restraint lawfully imposed~~ custody or 3725
confinement shall be punished as a court-martial may direct. 3726

Sec. 5924.96. Any person subject to this code who, without 3727
proper authority, releases any prisoner committed to ~~his~~ the 3728
person's charge~~7~~ or who through neglect or design suffers any ~~such~~ 3729
prisoner committed to the person's charge to escape~~7~~ shall be 3730
punished as a court-martial may direct, whether or not the 3731

prisoner was committed in strict compliance with law. 3732

Sec. 5924.97. Any person subject to this code, who, except as 3733
provided by law ~~or regulation~~, apprehends, arrests, or confines 3734
any person shall be punished as a court-martial may direct. 3735

Sec. 5924.98. Any person subject to this code who+ 3736

~~(A) Is~~ is responsible for unnecessary delay in the 3737
disposition of any case of a person accused of an offense under 3738
this code+ or 3739

~~(B) Knowingly~~ who knowingly and intentionally fails to 3740
enforce or comply with any provision of this code regulating the 3741
proceedings before, during, or after trial of an accused+ 3742
shall be punished as a court-martial may direct. 3743

Sec. 5924.103. (A) All persons subject to this code shall 3744
secure all ~~public~~ property taken from the enemy for the service of 3745
the United States, and this state and shall give notice and turn 3746
over to the proper authority without delay all captured or 3747
abandoned property in their possession, custody, or control. 3748

(B) Any person subject to this code who does any of the 3749
following shall be punished as a court-martial may direct: 3750

(1) Fails to carry out the duties prescribed in division (A) 3751
of this section; 3752

(2) Buys, sells, trades, or in any way deals in or disposes 3753
of captured or abandoned property, whereby ~~he~~ the person receives 3754
or expects any profit, benefit, or advantage to ~~himself~~ self or 3755
another directly or indirectly connected with ~~himself~~ self; ~~or~~ 3756

(3) Engages in looting or pillaging+ 3757
~~shall be punished as a court martial may direct.~~ 3758

Sec. 5924.108. Any person subject to this code who, without proper authority, does any of the following with regard to any military property of the United States or of this state shall be punished as a court-martial may direct:

(A) Sells or otherwise disposes of the property;

(B) Willfully or through neglect damages, destroys, or loses the property; ~~or~~

(C) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of~~+~~

~~any military property of the United States or of the state, shall be punished as a court martial may direct~~ the property.

Sec. 5924.109. Any person subject to this code who, ~~while in a duty status,~~ willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct.

Sec. 5924.111. ~~Any~~ (A) Subject to division (B) of this section, any person subject to this code who ~~operates~~ does any of the following shall be punished as a court-martial may direct:

(1) Operates or physically controls any vehicle ~~while drunk,~~ ~~or,~~ aircraft, or vessel in a reckless or wanton manner, ~~shall be punished as a court martial may direct;~~

(2) Operates or physically controls any vehicle, aircraft, or vessel while under the influence of alcohol, a drug of abuse, or a combination of them;

(3) Operates or physically controls any vehicle, aircraft, or vessel while having in the person's whole blood, blood serum or plasma, breath, or urine the minimum concentrations of alcohol set

forth in divisions (A)(1)(b) to (A)(1)(i) of section 4511.19 of 3787
the Revised Code; 3788

(4) Operates or physically controls any vehicle, aircraft, or 3789
vessel while having in the person's whole blood, blood serum or 3790
plasma, or urine the concentrations of controlled substances or 3791
metabolites of a controlled substance set forth in division 3792
(A)(1)(j) of section 4511.19 of the Revised Code. 3793

(B) If a military installation is located partially in this 3794
state and partially in one or more other states, the adjutant 3795
general may select the alcohol and controlled substance levels set 3796
forth in the impaired operating laws of one of the other states to 3797
apply on the installation in place of the levels set forth in 3798
division (A) of this section. 3799

Sec. 5924.1121. (A) As used in this section, "prohibited 3800
substance" means any of the following: 3801

(1) Opium, heroin, cocaine, amphetamine, lysergic acid 3802
diethylamide, methamphetamine, phencyclidine, barbituric acid, or 3803
marihuana or any compound or derivative of any of those 3804
substances; 3805

(2) Any substance not specified in division (A)(1) of this 3806
section that the adjutant general lists on a schedule of 3807
controlled substances or that is listed on a schedule established 3808
under section 202 of the Federal Controlled Substances Act, 21 3809
U.S.C. 812, 84 Stat. 1247, as amended. 3810

(B) A person subject to this code who wrongfully uses, 3811
possesses, manufactures, distributes, imports into the customs 3812
territory of the United States, exports from the United States, or 3813
introduces into an installation, vessel, vehicle, or aircraft used 3814
by or under the control of the armed forces of the United States 3815
or of the organized militia a prohibited substance shall be 3816

punished as a court-martial may direct. 3817

Sec. 5924.113. Any sentinel or lookout who is found drunk or 3818
sleeping on ~~his~~ the sentinel's or lookout's post, or leaves it 3819
before ~~he~~ the sentinel or lookout is regularly relieved, shall be 3820
punished, ~~if the offense is committed in time of war, by death or~~ 3821
~~such other punishment as a court martial may direct, but if the~~ 3822
~~offense is committed at any other time, by such punishment other~~ 3823
~~than death~~ as a court-martial may direct. 3824

Sec. 5924.115. Any person subject to this code who for the 3825
purpose of avoiding work, duty, or service in the organized 3826
militia does either of the following shall be punished as a 3827
court-martial may direct: 3828

(A) Feigns illness, physical disablement, mental lapse, or 3829
derangement; ~~or~~ 3830

(B) Intentionally inflicts self-injury; 3831
~~shall be punished as a court martial may direct.~~ 3832

Sec. 5924.120. (A) As used in this section: 3833

(1) "Affirmative defense" means any special defense that, 3834
although not denying that the accused committed the objective acts 3835
constituting the offense charged, denies, in whole or in part, 3836
criminal responsibility for those acts. 3837

(2) "Bodily harm" means any offensive touching of another, 3838
however slight, that does not result in grievous bodily harm. 3839

(3) "Consent" means words or overt acts indicating a freely 3840
given agreement to the sexual conduct at issue by a competent 3841
person. 3842

(4) "Dangerous weapon or object" means any of the following: 3843

(a) Any firearm, whether loaded or not and whether operable 3844

or not; 3845

(b) Any other weapon, device, instrument, material, or 3846
substance, whether animate or inanimate, that as used or intended 3847
to be used is known to be capable of producing death or grievous 3848
bodily harm; 3849

(c) Any object fashioned or used in such a manner as to lead 3850
a person on whom the object is used or threatened to be used to 3851
reasonably believe under the circumstances that the object is 3852
capable of producing death or grievous bodily harm. 3853

(5) "Force" means action to compel submission of another or 3854
to overcome or prevent another's resistance by either of the 3855
following: 3856

(a) The use, display, or suggestion of possession of a 3857
dangerous weapon or object; 3858

(b) Physical violence, strength, power, or restraint applied 3859
to another person sufficient to prevent the other person from 3860
avoiding or escaping sexual contact. 3861

(6) "Grievous bodily harm" means serious bodily injury, 3862
including but not limited to fractured or dislocated bones, deep 3863
cuts, torn members of the body, and serious damage to internal 3864
organs. 3865

(7) "Indecent conduct" means that form of immorality relating 3866
to sexual impurity that is grossly vulgar, obscene, and repugnant 3867
to common propriety and tends to excite sexual desire or deprave 3868
morals with respect to sexual relations. Indecent conduct includes 3869
observing or making a videotape, photograph, motion picture, 3870
print, negative, slide, or other mechanically, electronically, or 3871
chemically reproduced visual material, without another person's 3872
consent and contrary to that other person's reasonable expectation 3873
of privacy, of either of the following: 3874

<u>(a) That other person's genitalia, anus, or buttocks, or, if</u>	3875
<u>that other person is female, that person's areola or nipple;</u>	3876
<u>(b) That other person while that other person is engaged in a</u>	3877
<u>sexual act, sexual contact, or sodomy.</u>	3878
<u>(8) "Lesser degree of harm" means any of the following:</u>	3879
<u>(a) Physical injury to the person or property of a person</u>	3880
<u>other than the victim of the offense;</u>	3881
<u>(b) A threat to do any of the following:</u>	3882
<u>(i) Accuse any person of a crime;</u>	3883
<u>(ii) Expose a secret or publicize an asserted fact, whether</u>	3884
<u>true or false, tending to subject some person to hatred, contempt,</u>	3885
<u>or ridicule;</u>	3886
<u>(iii) Through the use or abuse of military position, rank, or</u>	3887
<u>authority, to affect or threaten to affect, either positively or</u>	3888
<u>negatively, the military career of some person.</u>	3889
<u>(9) "Mistake of fact as to consent" means a belief that is</u>	3890
<u>incorrect, as a result of ignorance or mistake, that a person</u>	3891
<u>engaging in sexual conduct consented to engage in that conduct, if</u>	3892
<u>both of the following apply:</u>	3893
<u>(a) The ignorance or mistake existed in the mind of the</u>	3894
<u>accused at the time the sexual conduct in issue occurred and was</u>	3895
<u>based on information or lack of information that would have</u>	3896
<u>indicated to a reasonable person that the other person consented;</u>	3897
<u>(b) The ignorance or mistake was not based on the accused's</u>	3898
<u>failure to discover facts that a reasonably careful person would</u>	3899
<u>have discovered under the same or similar circumstances.</u>	3900
<u>(10) "Sexual act" means either of the following:</u>	3901
<u>(a) Contact between the penis and the vulva, including any</u>	3902
<u>penetration, however slight;</u>	3903

(b) Anal intercourse, fellatio, and cunnilingus between 3904
persons, regardless of sex; 3905

(c) The penetration, however slight, of the genital opening 3906
of another by a hand or finger or any object with an intent to 3907
abuse, humiliate, harass, or degrade any person or to arouse or 3908
gratify the sexual desire of any person. 3909

(11) "Sexual contact" means the intentional touching, either 3910
directly or through clothing, of the genitalia, anus, groin, 3911
breast, inner thigh, or buttocks of another person with an intent 3912
to abuse, humiliate, or degrade any person or to arouse or gratify 3913
the sexual desire of any person. 3914

(12) "Sexual conduct" means any act that is prohibited by 3915
this section. 3916

(13)(a) For purposes of divisions (B) and (D) of this 3917
section, "threatening or placing that other person in fear" means 3918
making a communication or performing an action of sufficient 3919
consequence to cause that other person to reasonably fear that 3920
noncompliance will result in that person or another being 3921
subjected to death, grievous bodily harm, or kidnapping. 3922

(b) For purposes of divisions (C) and (E) of this section, 3923
"threatening or placing that other person in fear" means making a 3924
communication or performing an action of sufficient consequence to 3925
cause a victim of the offense to reasonably fear that 3926
noncompliance will result in the victim or another being subjected 3927
to a lesser degree of harm than death, grievous bodily harm, or 3928
kidnapping. 3929

(B) Any person subject to this chapter who causes another 3930
person of any age to engage in a sexual act by doing any of the 3931
following is guilty of rape and shall be punished as a 3932
court-martial may direct: 3933

(1) Using force against that other person; 3934

<u>(2) Causing grievous bodily harm to any person;</u>	3935
<u>(3) Threatening or placing that other person in fear;</u>	3936
<u>(4) Rendering another person unconscious;</u>	3937
<u>(5) Administering to another person by force or threat of</u>	3938
<u>force, or without the knowledge or permission of that person, a</u>	3939
<u>drug, intoxicant, or other similar substance that substantially</u>	3940
<u>impairs the ability of that other person to appraise or control</u>	3941
<u>conduct.</u>	3942
<u>(C) Any person subject to this chapter who does either of the</u>	3943
<u>following is guilty of aggravated sexual assault and shall be</u>	3944
<u>punished as a court-martial may direct:</u>	3945
<u>(1) Causes another person of any age to engage in a sexual</u>	3946
<u>act by doing either of the following:</u>	3947
<u>(a) Threatening or placing that other person in fear;</u>	3948
<u>(b) Causing bodily harm.</u>	3949
<u>(2) Engages in a sexual act with another person of any age if</u>	3950
<u>that other person is substantially incapable of doing any of the</u>	3951
<u>following:</u>	3952
<u>(a) Appraising the nature of the sexual act;</u>	3953
<u>(b) Declining to participate in the sexual act;</u>	3954
<u>(c) Communicating unwillingness to engage in the sexual act.</u>	3955
<u>(D) Any person subject to this chapter who engages in sexual</u>	3956
<u>contact or causes sexual contact with or by another person by</u>	3957
<u>doing any of the following is guilty of aggravated sexual contact</u>	3958
<u>and shall be punished as a court-martial may direct:</u>	3959
<u>(1) Using force against that other person;</u>	3960
<u>(2) Causing grievous bodily harm to any person;</u>	3961
<u>(3) Threatening or placing that other person in fear;</u>	3962

<u>(4) Rendering another person unconscious;</u>	3963
<u>(5) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control conduct.</u>	3964 3965 3966 3967 3968
<u>(E) Any person subject to this chapter who does either of the following is guilty of abusive sexual contact and shall be punished as a court-martial may direct:</u>	3969 3970 3971
<u>(1) Engages in or causes sexual contact with or by another person by doing either of the following:</u>	3972 3973
<u>(a) Threatening or placing that other person in fear;</u>	3974
<u>(b) Causing bodily harm.</u>	3975
<u>(2) Engages in sexual contact with another person of any age if that other person is substantially incapable of doing any of the following:</u>	3976 3977 3978
<u>(a) Appraising the nature of the sexual contact;</u>	3979
<u>(b) Declining to participate in the sexual contact;</u>	3980
<u>(c) Communicating unwillingness to engage in the sexual contact.</u>	3981 3982
<u>(F) Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.</u>	3983 3984 3985
<u>(G) Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.</u>	3986 3987 3988 3989 3990
<u>(H) Any person subject to this chapter who intentionally</u>	3991

exposes, in an indecent manner, in any place where the conduct 3992
involved may reasonably be expected to be viewed by people other 3993
than members of the person's family or household, the person's 3994
genitalia, anus, buttock, or female areola or nipple is guilty of 3995
indecent exposure and shall be punished as a court-martial may 3996
direct. 3997

(I) In a prosecution under this section, in proving that the 3998
accused made a threat, it need not be proven that the accused 3999
actually intended to carry out the threat. 4000

(J)(1) In a prosecution under division (C)(2), (G), or (H) of 4001
this section, it is an affirmative defense that the accused and 4002
the other person, when they engaged in the sexual conduct were 4003
married to each other. 4004

(2) Division (J)(1) of this section does not apply if the 4005
accused's intent at the time of the sexual conduct is to abuse, 4006
humiliate, or degrade any person. 4007

(K)(1) Lack of permission is an element of the offense under 4008
division (G) of this section. Consent and mistake of fact as to 4009
consent are affirmative defenses only to the sexual conduct in 4010
issue in a prosecution under division (B), (C), (D), or (E) of 4011
this section. 4012

(2) The enumeration in this section of some affirmative 4013
defenses shall not be construed as excluding the existence of 4014
other affirmative defenses. 4015

(3) The accused has the burden of proving an affirmative 4016
defense by a preponderance of evidence. After the defense meets 4017
this burden, the prosecution has the burden of proving beyond a 4018
reasonable doubt that the affirmative defense did not exist. 4019

(L)(1) An expression of lack of consent through words or 4020
conduct means there is no consent. Lack of verbal or physical 4021
resistance or submission resulting from an accused's use of force, 4022

threat of force, or placing another person in fear does not 4023
constitute consent. A current or previous dating relationship by 4024
itself or the manner of dress of a person involved with the 4025
accused in the sexual conduct does not constitute consent. 4026

(2) A person cannot consent to sexual conduct if the person 4027
is substantially incapable of any of the following: 4028

(a) Appraising the nature of the sexual conduct due to mental 4029
impairment or unconsciousness resulting from consumption of 4030
alcohol, drugs, or a similar substance or any other cause or to 4031
mental disease or defect that renders the person unable to 4032
understand the nature of the sexual conduct; 4033

(b) Physically declining to participate in the sexual 4034
conduct; 4035

(c) Physically communicating unwillingness to engage in the 4036
sexual conduct. 4037

(M) An accused's state of intoxication, if any, at the time 4038
of an offense under this section occurs is not relevant to the 4039
existence of a mistake of fact as to consent. 4040

Sec. 5924.128. (A) Any person subject to this code who 4041
attempts or offers with unlawful force or violence to do bodily 4042
harm to another person, whether or not the attempt or offer is 4043
consummated, is guilty of assault and shall be punished as a 4044
court-martial may direct. 4045

(B) Any person subject to this code who does either of the 4046
following is guilty of aggravated assault and shall be punished as 4047
a court-martial may direct: 4048

(1) Commits an assault with a dangerous weapon or other means 4049
or force likely to produce death or grievous bodily harm; ~~or~~ 4050

(2) Commits an assault and intentionally inflicts grievous 4051
bodily harm with or without a weapon; 4052

~~is guilty of aggravated assault and shall be punished as a~~ 4053
~~court-martial may direct.~~ 4054

Sec. 5924.131. Any person subject to this code who, in a 4055
judicial proceeding or in a course of justice conducted under this 4056
code, willfully and corruptly ~~gives, upon~~ does either of the 4057
following is guilty of perjury and shall be punished as a 4058
court-martial may direct: 4059

(A) Upon a lawful oath or in any form allowed by law to be 4060
substituted for an oath, gives any false testimony material to the 4061
issue or matter of inquiry ~~is guilty of perjury and shall be~~ 4062
~~punished as a court-martial may direct;~~ 4063

(B) In any declaration, certification, verification, or 4064
statement made under penalty of perjury subscribes any false 4065
statement material to the issue or matter of inquiry. 4066

Sec. 5924.132. Any person subject to this code who does any 4067
of the following shall be punished as a court-martial may direct: 4068

(A) ~~Who, knowing it~~ Knowing a claim to be false or fraudulent 4069
does either of the following: 4070

(1) Makes any claim against the United States, the state, or 4071
any officer ~~thereof~~ of the United States or the state; ~~or~~ 4072

(2) Presents to any person in the civil or military service 4073
~~thereof~~ of the United States or the state, for approval or 4074
payment, any claim against the United States, the state, or any 4075
officer ~~thereof~~ of the United States or the state; 4076

(B) ~~Who, for~~ For the purpose of obtaining the approval, 4077
allowance, or payment of any claim against the United States, the 4078
state, or any officer ~~thereof~~ of the United States or the state 4079
does any of the following: 4080

(1) Makes or uses any writing or other paper knowing it to 4081

contain any false or fraudulent statements; 4082

(2) Makes any oath to any fact or to any writing or other 4083
paper knowing the oath to be false; ~~or~~ 4084

(3) Forges or counterfeits any signature upon any writing or 4085
other paper, or uses any ~~such~~ forged or counterfeit signature 4086
knowing it to be forged or counterfeited; 4087

(C) ~~Who, having~~ Having charge, possession, custody, or 4088
control of any money, or other property of the United States or 4089
the state, furnished or intended for the armed forces of the 4090
United States or the organized militia or any force thereof, 4091
knowingly delivers to any person having authority to receive it, 4092
any amount thereof less than that for which ~~he~~ the person making
the delivery receives a certificate or receipt; ~~or~~ 4094

(D) ~~Who, being~~ Being authorized to make or deliver any paper 4095
certifying the receipt of any property of the United States or the 4096
state, furnished or intended for the armed forces of the United 4097
States or the organized militia or any force thereof, makes or 4098
delivers to any person such writing without having full knowledge 4099
of the truth of the statements therein contained and with intent 4100
to defraud the United States or the state; 4101

~~shall, upon conviction, be punished as a court-martial may direct.~~ 4102

Sec. 5924.133. Any commissioned officer who is convicted of 4103
conduct unbecoming an officer and a lady or gentleman shall be 4104
punished as a court-martial may direct. 4105

Sec. 5924.146. No person may be tried or punished for any 4106
offense provided for in sections 5924.77 to 5924.134, ~~inclusive,~~ 4107
of the Revised Code and of this code, unless it was committed 4108
while ~~he~~ the person was in a military or national guard technician 4109
duty status. 4110

Section 2. That existing sections 124.23, 124.26, 3319.085, 4111
3737.881, 3781.10, 4123.022, 5321.04, 5901.01, 5903.10, 5903.11, 4112
5911.07, 5923.12, 5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 4113
5924.08, 5924.09, 5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 4114
5924.16, 5924.17, 5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 4115
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5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 4125
5924.146 and sections 5924.04, 5924.12, 5924.21, 5924.61, 5924.62, 4126
5924.64, 5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 5924.100, 4127
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5924.114, 5924.118, 5924.119, 5924.120, 5924.122, 5924.1231, 4129
5924.124, 5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 4130
5924.147 of the Revised Code are hereby repealed. 4131