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Representative Rosenberger

Cosponsors: Representatives Johnson, Landis, Pillich, Bubb, Butler, Milkovich, Yuko, Adams, R., Amstutz, Anielski, Antonio, Ashford, Baker, Barnes, Beck, Blair, Boose, Boyd, Brenner, Buchy, Carney, Celebrezze, Celeste, Cera, Combs, Conditt, Damschroder, Derickson, DeVitis, Dovilla, Driehaus, Duffey, Fedor, Fende, Foley, Gardner, Garland, Gerberry, Gonzales, Goodwin, Grossman, Hackett, Hagan, C., Hagan, R., Hall, Hayes, Henne, Hill, Hottinger, Kozlowski, Letson, Lundy, Lynch, Maag, Mallory, Martin, McGregor, Murray, Newbold, O'Brien, Okey, Patmon, Pelanda, Phillips, Ramos, Reece, Roegner, Ruhl, Scherer, Schuring, Sears, Slaby, M., Smith, Sprague, Stautberg, Stebelton, Terhar, Thompson, Uecker, Wachtmann, Williams, Winburn, Young Speaker Batchelder

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A B I L L

To amend sections 124.23, 124.26, 3319.085, 3737.881,	1
3781.10, 5321.04, 5903.10, 5903.11, 5911.07,	2
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5924.108, 5924.109, 5924.111, 5924.113, 5924.115,	19
5924.128, 5924.131, 5924.132, 5924.133, and	20
5924.146, to enact new sections 5924.21, 5924.61,	21
5924.62, 5924.64, 5924.65, 5924.66, 5924.70,	22
5924.71, and 5924.120 and sections 4743.04,	23
5924.501, 5924.502, 5924.503, 5924.504, 5924.505,	24
5924.506, 5924.581, 5924.582, 5924.67, 5924.68,	25
5924.69, 5924.761, and 5924.1121, and to repeal	26
sections 5924.04, 5924.12, 5924.21, 5924.61,	27
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5924.71, 5924.99, 5924.100, 5924.101, 5924.102,	29
5924.104, 5924.105, 5924.106, 5924.110, 5924.114,	30
5924.118, 5924.119, 5924.120, 5924.122, 5924.1231,	31
5924.124, 5924.125, 5924.126, 5924.129, 5924.130,	32
5924.145, and 5924.147 of the Revised Code to	33
allow extra credit to military veterans and	34
reserve component members on state civil service	35
examinations, to provide for the reemployment of	36
nonteaching school employees following military	37
service in accordance with federal law, to extend	38
the period of time within which persons serving in	39
the Ohio National Guard may meet continuing	40
education requirements for occupational licenses	41
and renew their licenses, to require landlords to	42
observe the rights of tenants who are service	43
members under federal law, to modify the order of	44
priority in which veterans may participate in job	45

training programs, to permit but not require the 46
use of armories by patriotic and national 47
organizations, to update references in the Revised 48
Code to federal statutes relating to the National 49
Guard, to conform the Ohio Code of Military 50
Justice to the United States Code of Military 51
Justice, and to make other changes to the Ohio 52
Code of Military Justice. 53

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

Section 1. That sections 124.23, 124.26, 3319.085, 3737.881, 54
3781.10, 5321.04, 5903.10, 5903.11, 5911.07, 5923.12, 5924.01, 55
5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 5924.10, 56
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5924.85, 5924.86, 5924.87, 5924.88, 5924.89, 5924.90, 5924.91, 65
5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 5924.98, 66
5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 5924.115, 67
5924.128, 5924.131, 5924.132, 5924.133, and 5924.146 be amended 68
and new sections 5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 69
5924.66, 5924.70, 5924.71, and 5924.120 and sections 4743.04, 70
5924.501, 5924.502, 5924.503, 5924.504, 5924.505, 5924.506, 71
5924.581, 5924.582, 5924.67, 5924.68, 5924.69, 5924.761, and 72
5924.1121 of the Revised Code be enacted to read as follows: 73

Sec. 124.23. (A) All applicants for positions and places in 74

the classified service shall be subject to examination, except for 75
applicants for positions as professional or certified service and 76
paraprofessional employees of county boards of developmental 77
disabilities, who shall be hired in the manner provided in section 78
124.241 of the Revised Code. 79

(B) Any examination administered under this section shall be 80
public and be open to all citizens of the United States and those 81
persons who have legally declared their intentions of becoming 82
United States citizens. For examinations administered for 83
positions in the service of the state, the director of 84
administrative services or the director's designee may determine 85
certain limitations as to citizenship, age, experience, education, 86
health, habit, and moral character. 87

(C)(1) Any person who has completed service in the uniformed 88
services, who has been honorably discharged from the uniformed 89
services or transferred to the reserve with evidence of 90
satisfactory service, and who is a resident of this state and any 91
member of ~~the national guard~~ or a reserve component of the armed 92
forces of the United States, including the Ohio national guard, 93
who has completed more than one hundred eighty days of active duty 94
service pursuant to an executive order of the president of the 95
United States or an act of the congress of the United States may 96
file with the director a certificate of service or honorable 97
discharge, and, upon this filing, the person shall receive 98
additional credit of twenty per cent of the person's total grade 99
given in the examination in which the person receives a passing 100
grade. 101

(2) A member in good standing of a reserve component of the 102
armed forces of the United States, including the Ohio national 103
guard, who successfully completes the member's initial entry-level 104
training shall receive a credit of fifteen per cent of the 105
person's total grade given in the examination in which the person 106

receives a passing grade. 107

(3) As used in this division, "service in the uniformed 108
services" and "uniformed services" have the same meanings as in 109
the "Uniformed Services Employment and Reemployment Rights Act of 110
1994," 108 Stat. 3149, 38 U.S.C.A. 4303. 111

(D) An examination may include an evaluation of such factors 112
as education, training, capacity, knowledge, manual dexterity, and 113
physical or psychological fitness. An examination shall consist of 114
one or more tests in any combination. Tests may be written, oral, 115
physical, demonstration of skill, or an evaluation of training and 116
experiences and shall be designed to fairly test the relative 117
capacity of the persons examined to discharge the particular 118
duties of the position for which appointment is sought. Tests may 119
include structured interviews, assessment centers, work 120
simulations, examinations of knowledge, skills, and abilities, and 121
any other acceptable testing methods. If minimum or maximum 122
requirements are established for any examination, they shall be 123
specified in the examination announcement. 124

(E) Except as otherwise provided in sections 124.01 to 124.64 125
of the Revised Code, when a position in the classified service of 126
the state is to be filled, an examination shall be administered. 127
The director of administrative services shall have control of all 128
examinations administered for positions in the service of the 129
state and all other examinations the director administers as 130
provided in section 124.07 of the Revised Code, except as 131
otherwise provided in sections 124.01 to 124.64 of the Revised 132
Code. The director shall, by rule adopted under Chapter 119. of 133
the Revised Code, prescribe the notification method that is to be 134
used by an appointing authority to notify the director that a 135
position in the classified service of the state is to be filled. 136
In addition to the positions described in section 124.30 of the 137
Revised Code, the director may, with sufficient justification from 138

the appointing authority, allow the appointing authority to fill 139
the position by noncompetitive examination. The director shall 140
establish, by rule adopted under Chapter 119. of the Revised Code, 141
standards that the director shall use to determine what serves as 142
sufficient justification from an appointing authority to fill a 143
position by noncompetitive examination. 144

(F) No questions in any examination shall relate to political 145
or religious opinions or affiliations. No credit for seniority, 146
efficiency, or any other reason shall be added to an applicant's 147
examination grade unless the applicant achieves at least the 148
minimum passing grade on the examination without counting that 149
extra credit. 150

(G) Except as otherwise provided in sections 124.01 to 124.64 151
of the Revised Code, the director of administrative services or 152
the director's designee shall give reasonable notice of the time, 153
place, and general scope of every competitive examination for 154
appointment that the director or the director's designee 155
administers for positions in the classified service of the state. 156
The director or the director's designee shall post notices via 157
electronic media of every examination to be conducted for 158
positions in the classified civil service of the state. The 159
electronic notice shall be posted on the director's internet site 160
on the world wide web for a minimum of one week preceding any 161
examination involved. 162

Sec. 124.26. From the returns of the examinations, the 163
director of administrative services or the director's designee 164
shall prepare an eligible list of the persons whose general 165
average standing upon examinations for the class or position is 166
not less than the minimum fixed by the rules of the director, and 167
who are otherwise eligible. Those persons shall take rank upon the 168
eligible list as candidates in the order of their relative 169

excellence as determined by the examination without reference to 170
priority of the time of examination. If two or more applicants 171
receive the same mark in an open competitive examination, priority 172
in the time of filing the application with the director or the 173
director's designee shall determine the order in which their names 174
shall be placed on the eligible list, except that applicants 175
eligible for the veteran's or the reserve component member's 176
preference under section 124.23 of the Revised Code shall receive 177
priority in rank on the eligible list over nonveterans and 178
nonmembers of the reserve component on the list with a rating 179
equal to that of the veteran or reserve component member. Ties 180
among veterans or among reserve component members shall be decided 181
by priority of filing the application. A tie between a veteran and 182
a reserve component member shall be decided in favor of the 183
veteran. 184

- An eligible list expires upon the filling or closing of the 185
position. An expired eligible list may be used to fill a position 186
of the same classification within the same appointing authority 187
for which the list was created. But, in no event shall an expired 188
list be used more than one year past its expiration date. 189

Sec. 3319.085. Any nonteaching school employee who~~7~~ 190
~~subsequent to September 1, 1962, has left, or leaves, the employ~~ 191
~~of a board of education for the purpose of entering on extended~~ 192
~~active duty in the armed services of the United States or the~~ 193
~~auxiliaries thereof, and within eight weeks enters such service~~ 194
performs service in the uniformed services or service under 195
section 5923.12 of the Revised Code and who has returned, or 196
returns, from ~~such~~ that service with ~~an honorable~~ a discharge 197
under honorable conditions or ~~certificate of~~ is released from 198
service under section 5923.12 of the Revised Code shall be 199
re-employed by the board of education of the district in which ~~he~~ 200
the nonteaching school employee held ~~such~~ the nonteaching school 201

~~employee position, under the same type of contract as that which~~ 202
~~he last held in such district, if such nonteaching school employee~~ 203
~~applies, within ninety days after such discharge, to such board of~~ 204
~~education for re-employment. Upon such application, such~~ 205
~~nonteaching school employee shall be re-employed at the first of~~ 206
~~the next school semester, if such application is made not less~~ 207
~~than thirty days prior to the first of such next school semester,~~ 208
~~in which case such nonteaching school employee shall be~~ 209
~~re-employed the first of the following school semester, unless the~~ 210
~~board of education waives the requirement for such thirty day~~ 211
~~period.~~ 212

~~For the purposes of seniority and placement on the salary~~ 213
~~schedule, years of absence on extended active duty in the armed~~ 214
~~services of the United States or the auxiliaries thereof shall not~~ 215
~~exceed four, and shall be counted as though school service had~~ 216
~~been performed during such time as required by the "Uniformed~~ 217
~~Services Employment and Reemployment Rights Act of 1994," 108~~ 218
~~Stat. 3149, 38 U.S.C. 4303.~~ 219

The board of education of ~~this~~ the district in which ~~such~~ the 220
nonteaching school employee was employed and is re-employed under 221
this section may suspend the contract of the nonteaching school 222
employee whose services become unnecessary by reason of the return 223
of a nonteaching school employee from service in the ~~armed~~ 224
uniformed services ~~or auxiliaries thereof.~~ 225

As used in this section, "service in the uniformed services" 226
and "uniformed services" have the same meanings as in the 227
"Uniformed Services Employment and Reemployment Rights Act of 228
1994," 108 Stat. 3149, 38 U.S.C. 4303. 229

Sec. 3737.881. (A) The fire marshal shall certify underground 230
storage tank systems installers who meet the standards for 231
certification established in rules adopted under division (D)(1) 232

of this section, pass the certification examination required by 233
this division, and pay the certificate fee established in rules 234
adopted under division (D)(5) of this section. Any individual who 235
wishes to obtain certification as an installer shall apply to the 236
fire marshal on a form prescribed by the fire marshal. The 237
application shall be accompanied by the application and 238
examination fees established in rules adopted under division 239
(D)(5) of this section. 240

The fire marshal shall prescribe an examination designed to 241
test the knowledge of applicants for certification as underground 242
storage tank system installers in the installation, repair, 243
abandonment, and removal of those systems. The examination shall 244
also test the applicants' knowledge and understanding of the 245
requirements and standards established in rules adopted under 246
sections 3737.88 and 3737.882 of the Revised Code pertaining to 247
the installation, repair, abandonment, and removal of those 248
systems. 249

Installer certifications issued under this division shall be 250
renewed annually, upon submission of a certification renewal form 251
prescribed by the fire marshal, provision of proof of successful 252
completion of continuing education requirements, and payment of 253
the certification renewal fee established in rules adopted under 254
division (D)(5) of this section. In addition, the fire marshal may 255
from time to time prescribe an examination for certification 256
renewal and may require applicants to pass the examination and pay 257
the fee established for it in rules adopted under division (D)(5) 258
of this section. 259

The fire marshal may, in accordance with Chapter 119. of the 260
Revised Code, deny, suspend, revoke, or refuse to renew an 261
installer's certification or renewal thereof ~~if he finds~~ after 262
finding that any of the following applies: 263

(1) The applicant for certification or certificate holder 264

fails to meet the standards for certification or renewal thereof 265
under this section and rules adopted under it; 266

(2) The certification was obtained through fraud or 267
misrepresentation; 268

(3) The certificate holder recklessly caused or permitted a 269
person under ~~his~~ the certificate holder's supervision to install, 270
perform major repairs on site to, abandon, or remove an 271
underground storage tank system in violation of the performance 272
standards set forth in rules adopted under section 3737.88 or 273
3737.882 of the Revised Code. 274

As used in division (A)(3) of this section, "recklessly" has 275
the same meaning as in section 2901.22 of the Revised Code. 276

(B) The fire marshal shall certify persons who sponsor 277
training programs for underground storage tank system installers 278
who meet the criteria for certification established in rules 279
adopted by the fire marshal under division (D)(4) of this section 280
and pay the certificate fee established in rules adopted under 281
division (D)(5) of this section. Any person who wishes to obtain 282
certification to sponsor such a training program shall apply to 283
the fire marshal on a form prescribed by ~~him~~ the fire marshal. 284
Training program certificates issued under this division shall 285
expire annually. Upon submission of a certification renewal 286
application form prescribed by the fire marshal and payment of the 287
application and certification renewal fees established in rules 288
adopted under division (D)(5) of this section, the fire marshal 289
shall issue a training program renewal certificate to the 290
applicant. 291

The fire marshal may, in accordance with Chapter 119. of the 292
Revised Code, deny an application for, suspend, or revoke a 293
training program certificate or renewal ~~thereof if he finds or~~ 294
renewal of a training program certificate after finding that the 295

training program does not or will not meet the standards for 296
certification established in rules adopted under division (D)(4) 297
of this section. 298

(C) The fire marshal may conduct or cause to be conducted 299
training programs for underground storage tank systems installers 300
as ~~he~~ the fire marshal considers to be necessary or appropriate. 301
The fire marshal is not subject to division (B) of this section 302
with respect to training programs conducted by employees of the 303
office of the fire marshal. 304

(D) The fire marshal shall adopt, and may amend and rescind, 305
rules doing all of the following: 306

(1) Defining the activities that constitute supervision over 307
the installation, performance of major repairs on site to, 308
abandonment of, and removal of underground storage tank systems; 309

(2) Establishing standards and procedures for certification 310
of underground storage tank systems installers; 311

(3) Establishing standards and procedures for continuing 312
education for certification renewal, subject to the provisions of 313
section 5903.12 of the Revised Code relating to active duty 314
military service; 315

(4) Establishing standards and procedures for certification 316
of training programs for installers; 317

(5) Establishing fees for applications for certifications 318
under this section, the examinations prescribed under division (A) 319
of this section, the issuance and renewal of certificates under 320
divisions (A) and (B) of this section, and attendance at training 321
programs conducted by the fire marshal under division (C) of this 322
section. Fees received under this section shall be credited to the 323
underground storage tank administration fund created in section 324
3737.02 of the Revised Code and shall be used to defray the costs 325
of implementing, administering, and enforcing this section and the 326

rules adopted thereunder, conducting training sessions, and 327
facilitating prevention of releases. 328

(6) That are necessary or appropriate for the implementation, 329
administration, and enforcement of this section. 330

(E) Nothing in this section or the rules adopted under it 331
prohibits an owner or operator of an underground storage tank 332
system from installing, making major repairs on site to, 333
abandoning, or removing an underground storage tank system under 334
the supervision of an installer certified under division (A) of 335
this section who is a full-time or part-time employee of the owner 336
or operator. 337

(F) On and after ~~the date one hundred eighty days after the~~ 338
~~effective date of this section~~ January 7, 1990, no person shall do 339
any of the following: 340

(1) Install, make major repairs on site to, abandon, or 341
remove an underground storage tank system unless the activity is 342
performed under the supervision of a qualified individual who 343
holds a valid installer certificate issued under division (A) of 344
this section; 345

(2) Act in the capacity of providing supervision for the 346
installation of, performance of major repairs on site to, 347
abandonment of, or removal of an underground storage tank system 348
unless the person holds a valid installer certificate issued under 349
division (A) of this section; 350

(3) Except as provided in division (C) of this section, 351
sponsor a training program for underground storage tank systems 352
installers unless the person holds a valid training program 353
certificate issued under division (B) of this section. 354

Sec. 3781.10. (A)(1) The board of building standards shall 355
formulate and adopt rules governing the erection, construction, 356

repair, alteration, and maintenance of all buildings or classes of 357
buildings specified in section 3781.06 of the Revised Code, 358
including land area incidental to those buildings, the 359
construction of industrialized units, the installation of 360
equipment, and the standards or requirements for materials used in 361
connection with those buildings. The board shall incorporate those 362
rules into separate residential and nonresidential building codes. 363
The standards shall relate to the conservation of energy and the 364
safety and sanitation of those buildings. 365

(2) The rules governing nonresidential buildings are the 366
lawful minimum requirements specified for those buildings and 367
industrialized units, except that no rule other than as provided 368
in division (C) of section 3781.108 of the Revised Code that 369
specifies a higher requirement than is imposed by any section of 370
the Revised Code is enforceable. The rules governing residential 371
buildings are uniform requirements for residential buildings in 372
any area with a building department certified to enforce the state 373
residential building code. In no case shall any local code or 374
regulation differ from the state residential building code unless 375
that code or regulation addresses subject matter not addressed by 376
the state residential building code or is adopted pursuant to 377
section 3781.01 of the Revised Code. 378

(3) The rules adopted pursuant to this section are complete, 379
lawful alternatives to any requirements specified for buildings or 380
industrialized units in any section of the Revised Code. Except as 381
otherwise provided in division (I) of this section, the board 382
shall, on its own motion or on application made under sections 383
3781.12 and 3781.13 of the Revised Code, formulate, propose, 384
adopt, modify, amend, or repeal the rules to the extent necessary 385
or desirable to effectuate the purposes of sections 3781.06 to 386
3781.18 of the Revised Code. 387

(B) The board shall report to the general assembly proposals 388

for amendments to existing statutes relating to the purposes 389
declared in section 3781.06 of the Revised Code that public health 390
and safety and the development of the arts require and shall 391
recommend any additional legislation to assist in carrying out 392
fully, in statutory form, the purposes declared in that section. 393
The board shall prepare and submit to the general assembly a 394
summary report of the number, nature, and disposition of the 395
petitions filed under sections 3781.13 and 3781.14 of the Revised 396
Code. 397

(C) On its own motion or on application made under sections 398
3781.12 and 3781.13 of the Revised Code, and after thorough 399
testing and evaluation, the board shall determine by rule that any 400
particular fixture, device, material, process of manufacture, 401
manufactured unit or component, method of manufacture, system, or 402
method of construction complies with performance standards adopted 403
pursuant to section 3781.11 of the Revised Code. The board shall 404
make its determination with regard to adaptability for safe and 405
sanitary erection, use, or construction, to that described in any 406
section of the Revised Code, wherever the use of a fixture, 407
device, material, method of manufacture, system, or method of 408
construction described in that section of the Revised Code is 409
permitted by law. The board shall amend or annul any rule or issue 410
an authorization for the use of a new material or manufactured 411
unit on any like application. No department, officer, board, or 412
commission of the state other than the board of building standards 413
or the board of building appeals shall permit the use of any 414
fixture, device, material, method of manufacture, newly designed 415
product, system, or method of construction at variance with what 416
is described in any rule the board of building standards adopts or 417
issues or that is authorized by any section of the Revised Code. 418
Nothing in this section shall be construed as requiring approval, 419
by rule, of plans for an industrialized unit that conforms with 420
the rules the board of building standards adopts pursuant to 421

section 3781.11 of the Revised Code. 422

(D) The board shall recommend rules, codes, and standards to 423
help carry out the purposes of section 3781.06 of the Revised Code 424
and to help secure uniformity of state administrative rulings and 425
local legislation and administrative action to the bureau of 426
workers' compensation, the director of commerce, any other 427
department, officer, board, or commission of the state, and to 428
legislative authorities and building departments of counties, 429
townships, and municipal corporations, and shall recommend that 430
they audit those recommended rules, codes, and standards by any 431
appropriate action that they are allowed pursuant to law or the 432
constitution. 433

(E)(1) The board shall certify municipal, township, and 434
county building departments and the personnel of those building 435
departments, and persons and employees of individuals, firms, or 436
corporations as described in division (E)(7) of this section to 437
exercise enforcement authority, to accept and approve plans and 438
specifications, and to make inspections, pursuant to sections 439
3781.03, 3791.04, and 4104.43 of the Revised Code. 440

(2) The board shall certify departments, personnel, and 441
persons to enforce the state residential building code, to enforce 442
the nonresidential building code, or to enforce both the 443
residential and the nonresidential building codes. Any department, 444
personnel, or person may enforce only the type of building code 445
for which certified. 446

(3) The board shall not require a building department, its 447
personnel, or any persons that it employs to be certified for 448
residential building code enforcement if that building department 449
does not enforce the state residential building code. The board 450
shall specify, in rules adopted pursuant to Chapter 119. of the 451
Revised Code, the requirements for certification for residential 452
and nonresidential building code enforcement, which shall be 453

consistent with this division. The requirements for residential 454
and nonresidential certification may differ. Except as otherwise 455
provided in this division, the requirements shall include, but are 456
not limited to, the satisfactory completion of an initial 457
examination and, to remain certified, the completion of a 458
specified number of hours of continuing building code education 459
within each three-year period following the date of certification 460
which shall be not less than thirty hours. The rules shall provide 461
that continuing education credits and certification issued by the 462
council of American building officials, national model code 463
organizations, and agencies or entities the board recognizes are 464
acceptable for purposes of this division. The rules shall specify 465
requirements that are consistent with the provisions of section 466
5903.12 of the Revised Code relating to active duty military 467
service and are compatible, to the extent possible, with 468
requirements the council of American building officials and 469
national model code organizations establish. 470

(4) The board shall establish and collect a certification and 471
renewal fee for building department personnel, and persons and 472
employees of persons, firms, or corporations as described in this 473
section, who are certified pursuant to this division. 474

(5) Any individual certified pursuant to this division shall 475
complete the number of hours of continuing building code education 476
that the board requires or, for failure to do so, forfeit 477
certification. 478

(6) This division does not require or authorize the board to 479
certify personnel of municipal, township, and county building 480
departments, and persons and employees of persons, firms, or 481
corporations as described in this section, whose responsibilities 482
do not include the exercise of enforcement authority, the approval 483
of plans and specifications, or making inspections under the state 484
residential and nonresidential building codes. 485

(7) Enforcement authority for approval of plans and 486
specifications and enforcement authority for inspections may be 487
exercised, and plans and specifications may be approved and 488
inspections may be made on behalf of a municipal corporation, 489
township, or county, by any of the following who the board of 490
building standards certifies: 491

(a) Officers or employees of the municipal corporation, 492
township, or county; 493

(b) Persons, or employees of persons, firms, or corporations, 494
pursuant to a contract to furnish architectural, engineering, or 495
other services to the municipal corporation, township, or county; 496

(c) Officers or employees of, and persons under contract 497
with, a municipal corporation, township, county, health district, 498
or other political subdivision, pursuant to a contract to furnish 499
architectural, engineering, or other services. 500

(8) Municipal, township, and county building departments have 501
jurisdiction within the meaning of sections 3781.03, 3791.04, and 502
4104.43 of the Revised Code, only with respect to the types of 503
buildings and subject matters for which they are certified under 504
this section. 505

(9) Certification shall be granted upon application by the 506
municipal corporation, the board of township trustees, or the 507
board of county commissioners and approval of that application by 508
the board of building standards. The application shall set forth: 509

(a) Whether the certification is requested for residential or 510
nonresidential buildings, or both; 511

(b) The number and qualifications of the staff composing the 512
building department; 513

(c) The names, addresses, and qualifications of persons, 514
firms, or corporations contracting to furnish work or services 515

pursuant to division (E)(7)(b) of this section; 516

(d) The names of any other municipal corporation, township, 517
county, health district, or political subdivision under contract 518
to furnish work or services pursuant to division (E)(7) of this 519
section; 520

(e) The proposed budget for the operation of the building 521
department. 522

(10) The board of building standards shall adopt rules 523
governing all of the following: 524

(a) The certification of building department personnel and 525
persons and employees of persons, firms, or corporations 526
exercising authority pursuant to division (E)(7) of this section. 527
The rules shall disqualify any employee of the department or 528
person who contracts for services with the department from 529
performing services for the department when that employee or 530
person would have to pass upon, inspect, or otherwise exercise 531
authority over any labor, material, or equipment the employee or 532
person furnishes for the construction, alteration, or maintenance 533
of a building or the preparation of working drawings or 534
specifications for work within the jurisdictional area of the 535
department. The department shall provide other similarly qualified 536
personnel to enforce the residential and nonresidential building 537
codes as they pertain to that work. 538

(b) The minimum services to be provided by a certified 539
building department. 540

(11) The board of building standards may revoke or suspend 541
certification to enforce the residential and nonresidential 542
building codes, on petition to the board by any person affected by 543
that enforcement or approval of plans, or by the board on its own 544
motion. Hearings shall be held and appeals permitted on any 545
proceedings for certification or revocation or suspension of 546

certification in the same manner as provided in section 3781.101 547
of the Revised Code for other proceedings of the board of building 548
standards. 549

(12) Upon certification, and until that authority is revoked, 550
any county or township building department shall enforce the 551
residential and nonresidential building codes for which it is 552
certified without regard to limitation upon the authority of 553
boards of county commissioners under Chapter 307. of the Revised 554
Code or boards of township trustees under Chapter 505. of the 555
Revised Code. 556

(F) In addition to hearings sections 3781.06 to 3781.18 and 557
3791.04 of the Revised Code require, the board of building 558
standards shall make investigations and tests, and require from 559
other state departments, officers, boards, and commissions 560
information the board considers necessary or desirable to assist 561
it in the discharge of any duty or the exercise of any power 562
mentioned in this section or in sections 3781.06 to 3781.18, 563
3791.04, and 4104.43 of the Revised Code. 564

(G) The board shall adopt rules and establish reasonable fees 565
for the review of all applications submitted where the applicant 566
applies for authority to use a new material, assembly, or product 567
of a manufacturing process. The fee shall bear some reasonable 568
relationship to the cost of the review or testing of the 569
materials, assembly, or products and for the notification of 570
approval or disapproval as provided in section 3781.12 of the 571
Revised Code. 572

(H) The residential construction advisory committee shall 573
provide the board with a proposal for a state residential building 574
code that the committee recommends pursuant to division (D)(1) of 575
section 4740.14 of the Revised Code. Upon receiving a 576
recommendation from the committee that is acceptable to the board, 577
the board shall adopt rules establishing that code as the state 578

residential building code. 579

(I)(1) The committee may provide the board with proposed 580
rules to update or amend the state residential building code that 581
the committee recommends pursuant to division (E) of section 582
4740.14 of the Revised Code. 583

(2) If the board receives a proposed rule to update or amend 584
the state residential building code as provided in division (I)(1) 585
of this section, the board either may accept or reject the 586
proposed rule for incorporation into the residential building 587
code. If the board does not act to either accept or reject the 588
proposed rule within ninety days after receiving the proposed rule 589
from the committee as described in division (I)(1) of this 590
section, the proposed rule shall become part of the residential 591
building code. 592

(J) The board shall cooperate with the director of job and 593
family services when the director promulgates rules pursuant to 594
section 5104.05 of the Revised Code regarding safety and 595
sanitation in type A family day-care homes. 596

(K) The board shall adopt rules to implement the requirements 597
of section 3781.108 of the Revised Code. 598

Sec. 4743.04. (A) The renewal of a license or other 599
authorization to practice a trade or profession issued under Title 600
XLVII of the Revised Code is subject to the provisions of section 601
5903.10 of the Revised Code relating to service in the armed 602
forces of the United States or the Ohio national guard. 603

(B) Continuing education requirements applicable to the 604
licensees under Title XLVII of the Revised Code are subject to the 605
provisions of section 5903.12 of the Revised Code relating to 606
active duty military service. 607

(C) A department, agency, or office of this state or of any 608

political subdivision of this state that issues a license or 609
certificate to practice a trade or profession may, pursuant to 610
rules adopted by the department, agency, or office, issue a 611
temporary license or certificate to practice the trade or 612
profession to a person whose spouse is on active military duty in 613
this state. 614

Sec. 5321.04. (A) A landlord who is a party to a rental 615
agreement shall do all of the following: 616

(1) Comply with the requirements of all applicable building, 617
housing, health, and safety codes that materially affect health 618
and safety; 619

(2) Make all repairs and do whatever is reasonably necessary 620
to put and keep the premises in a fit and habitable condition; 621

(3) Keep all common areas of the premises in a safe and 622
sanitary condition; 623

(4) Maintain in good and safe working order and condition all 624
electrical, plumbing, sanitary, heating, ventilating, and air 625
conditioning fixtures and appliances, and elevators, supplied or 626
required to be supplied by ~~him~~ the landlord; 627

(5) When ~~he~~ the landlord is a party to any rental agreements 628
that cover four or more dwelling units in the same structure, 629
provide and maintain appropriate receptacles for the removal of 630
ashes, garbage, rubbish, and other waste incidental to the 631
occupancy of a dwelling unit, and arrange for their removal; 632

(6) Supply running water, reasonable amounts of hot water, 633
and reasonable heat at all times, except where the building that 634
includes the dwelling unit is not required by law to be equipped 635
for that purpose, or the dwelling unit is so constructed that heat 636
or hot water is generated by an installation within the exclusive 637
control of the tenant and supplied by a direct public utility 638

connection; 639

(7) Not abuse the right of access conferred by division (B) 640
of section 5321.05 of the Revised Code; 641

(8) Except in the case of emergency or if it is impracticable 642
to do so, give the tenant reasonable notice of ~~his~~ the landlord's 643
intent to enter and enter only at reasonable times. Twenty-four 644
hours is presumed to be a reasonable notice in the absence of 645
evidence to the contrary. 646

(9) Promptly commence an action under Chapter 1923. of the 647
Revised Code, after complying with division (C) of section 5321.17 648
of the Revised Code, to remove a tenant from particular 649
residential premises, if the tenant fails to vacate the premises 650
within three days after the giving of the notice required by that 651
division and if the landlord has actual knowledge of or has 652
reasonable cause to believe that the tenant, any person in the 653
tenant's household, or any person on the premises with the consent 654
of the tenant previously has or presently is engaged in a 655
violation as described in division (A)(6)(a)(i) of section 1923.02 656
of the Revised Code, whether or not the tenant or other person has 657
been charged with, has pleaded guilty to or been convicted of, or 658
has been determined to be a delinquent child for an act that, if 659
committed by an adult, would be a violation as described in that 660
division. Such actual knowledge or reasonable cause to believe 661
shall be determined in accordance with that division. 662

(10) Comply with the rights of tenants under the 663
Servicemembers Civil Relief Act, 117 Stat. 2835, 50 U.S.C. App. 664
501. 665

(B) If the landlord makes an entry in violation of division 666
(A)(8) of this section, makes a lawful entry in an unreasonable 667
manner, or makes repeated demands for entry otherwise lawful that 668
have the effect of harassing the tenant, the tenant may recover 669

actual damages resulting from the entry or demands, obtain 670
injunctive relief to prevent the recurrence of the conduct, and 671
obtain a judgment for reasonable attorney's fees, or may terminate 672
the rental agreement. 673

Sec. 5903.10. ~~Any (A) A holder of an expired license or 674
certificate from this state or any political subdivision or agency 675
of the state to practice a trade or profession, whose license or 676
certificate was not renewed because of the holder's service in the 677
armed forces of the United States, or in the national guard or in 678
a reserve component, shall, upon presentation of satisfactory 679
evidence of honorable discharge or separation under honorable 680
conditions therefrom within six months of such discharge or 681
separation, be granted a renewal of said the license or 682
certificate by the issuing board or authority at the usual cost 683
without penalty and without re-examination if not otherwise 684
disqualified because of mental or physical disability and if 685
either of the following applies: 686~~

~~(1) The license or certificate was not renewed because of the 687
holder's service in the armed forces of the United States or a 688
reserve component of the armed forces of the United States, 689
including the Ohio national guard. 690~~

~~(2) The license or certificate was not renewed because the 691
holder's spouse served in the armed forces of the United States or 692
a reserved component of the armed forces of the United States, 693
including the Ohio national guard, and the service resulted in the 694
holder's absence from this state. 695~~

~~(B) A renewal shall not be granted under division (A) of this 696
section unless the holder or the holder's spouse, whichever is 697
applicable, has presented satisfactory evidence of the service 698
member's discharge under honorable conditions or release under 699
honorable conditions from active duty or national guard duty 700~~

within six months after the discharge or release. 701

Sec. 5903.11. (A) Any federally funded employment and 702
training program administered by any state agency including, but 703
not limited to, the "Job Training Partnership Workforce Investment 704
Act of 1998," 96 112 Stat. 1322 (1982) 936, codified in scattered 705
sections of 29 U.S.C.A. 1501, as amended, shall include a veteran 706
priority system to provide maximum employment and training 707
opportunities to veterans and ~~other~~ eligible persons within each 708
targeted group as established by federal law and state and federal 709
policy in the service area. Disabled veterans, veterans of the 710
Vietnam era, other veterans, and ~~other~~ eligible persons shall 711
receive preference over nonveterans within each targeted group in 712
the provision of employment and training services available 713
through these programs as required by this section. 714

(B) Each state agency shall refer qualified applicants to job 715
openings and training opportunities in programs described in 716
division (A) of this section in the following order of priority: 717

- (1) Special disabled veterans; 718
- (2) Veterans of the Vietnam era; 719
- (3) Disabled veterans; 720
- (4) All other veterans; 721
- (5) Other eligible persons; 722
- (6) Nonveterans. 723

(C) Each state agency providing employment and training 724
services to veterans and ~~other~~ eligible persons under programs 725
described in division (A) of this section shall submit an annual 726
written report to the speaker of the house of representatives and 727
the president of the senate on the services that it provides to 728
veterans and ~~other~~ eligible persons. Each such agency shall report 729
separately on all entitlement programs, employment or training 730

programs, and any other programs that it provides to each class of 731
persons described in divisions (B)(1) to (6) of this section. Each 732
such agency shall also report on action taken to ensure compliance 733
with statutory requirements. Compliance and reporting procedures 734
shall be in accordance with the reporting procedures then in 735
effect for all employment and training programs described in 736
division (A) of this section, with the addition of veterans as a 737
separate reporting module. 738

(D) All state agencies that administer federally funded 739
employment and training programs described in division (A) of this 740
section for veterans and ~~other~~ eligible persons shall do all of 741
the following: 742

(1) Ensure that veterans are treated with courtesy and 743
respect at all state governmental facilities; 744

(2) Give priority in referral to jobs to qualified veterans 745
and other eligible persons; 746

(3) Give priority in referral to and enrollment in training 747
programs to qualified veterans and other eligible persons; 748

(4) Give preferential treatment to special disabled veterans 749
in the provision of all needed state services; 750

(5) Provide information and effective referral assistance to 751
veterans and other eligible persons regarding needed benefits and 752
services that may be obtained through other agencies. 753

(E) As used in this section: 754

(1) "Special disabled veteran" means a veteran who is 755
entitled to, or who but for the receipt of military pay would be 756
entitled to, compensation under any law administered by the 757
department of veterans affairs for a disability rated at thirty 758
per cent or more or a person who was discharged or released from 759
active duty because of a service-connected disability. 760

(2) "Veteran of the Vietnam era" means an eligible veteran 761
who served on active duty for a period of more than one hundred 762
eighty days, any part of which occurred from August 5, 1964, 763
through May 7, 1975, and was discharged or released therefrom with 764
other than a dishonorable discharge or a person who was discharged 765
or released from active duty for a service-connected disability if 766
any part of the active duty was performed from August 5, 1964, 767
through May 7, 1975. 768

(3) "Disabled veteran" means a veteran who is entitled to, or 769
who but for the receipt of military retirement pay would be 770
entitled to compensation, under any law administered by the 771
department of veterans affairs and who is not a special disabled 772
veteran. 773

(4) "Eligible veteran" means a person who served on active 774
duty for more than one hundred eighty days and was discharged or 775
released from active duty with other than a dishonorable discharge 776
or a person who was discharged or released from active duty 777
because of a service-connected disability. 778

(5) "Other eligible person" means one of the following: 779

(a) The spouse of any person who died of a service-connected 780
disability; 781

(b) The spouse of any member of the armed forces serving on 782
active duty who at the time of the spouse's application for 783
assistance under any program described in division (A) of this 784
section is listed pursuant to the "Act of September 6, 1966," 80 785
Stat. 629, 37 U.S.C.A. 556, and the regulations issued pursuant 786
thereto, as having been in one or more of the following categories 787
for a total of ninety or more days: 788

(i) Missing in action; 789

(ii) Captured in line of duty by a hostile force; 790

(iii) Forcibly detained or interned in line of duty by a foreign government or power.	791 792
(c) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while such a disability was in existence.	793 794 795 796
(6) "Veteran" means either of the following:	797
(a) Any person who was a member of the armed forces of the United States for a period of one hundred eighty days or more or a person who was discharged or released from active duty because of a service-connected disability;	798 799 800 801
(b) A person who served as a member of the United States merchant marine and to whom either of the following applies:	802 803
(i) The person has an honorable report of separation from active duty military service, form DD214 or DD215.	804 805
(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.	806 807 808 809
(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.	810 811 812 813
(8) "Employment program" means a program which provides referral of individuals to employer job openings in the federal, state, or private sector.	814 815 816
(9) "Training program" means any program that upgrades the employability of qualified applicants.	817 818
(10) "Entitlement program" means any program that enlists specific criteria in determining eligibility, including but not	819 820

limited to the existence in special segments of the general 821
population of specific financial needs. 822

(11) "Targeted group" means a group of persons designated by 823
federal law or regulations or by state law to receive special 824
assistance under an employment and training program described in 825
division (A) of this section. 826

(12) "United States merchant marine" includes the United 827
States army transport service and the United States naval 828
transport service. 829

Sec. 5911.07. The armories erected by the state are for the 830
use of the organized militia; but in each armory there ~~shall~~ may 831
be provided and maintained, except as provided in this section, a 832
suitable room including heating, lighting, and janitor services, 833
for the free use of the patriotic and national organizations ~~known~~ 834
~~as the women's relief corps, sons of veterans, sons of veterans'~~ 835
~~auxiliary, daughters of veterans, united Spanish war veterans,~~ 836
~~auxiliary united Spanish war veterans, veterans of foreign wars of~~ 837
~~the United States, veteran organizations of World War I and World~~ 838
~~War II, army and navy union of the United States, and honorably~~ 839
~~retired officers of the Ohio national guard, Ohio military~~ 840
~~reserve, and Ohio naval militia~~ chartered under part B of subtitle 841
II of Title 36 of the United States Code, unless such rooms are 842
already provided by the erection of a county memorial building or 843
otherwise by the state, or by the county, township, or municipal 844
corporation. This section does not require a separate room to be 845
maintained for each organization. The room provided in this 846
section may be used for military training when not in actual use 847
by one of the aforementioned organizations. This section applies only 848
during the time that such armory is being used by ~~an active~~ 849
~~military organization or a~~ unit of the organized militia. 850

Sec. 5923.12. When ordered to state active duty by the 851
governor, for which duty federal basic pay and allowances are not 852
authorized, members of the organized militia of Ohio shall receive 853
the same pay and allowances for each day's service as is provided 854
for commissioned officers, warrant officers, noncommissioned 855
officers, and enlisted personnel of like grade and longevity in 856
the armed forces of the United States, together with the necessary 857
transportation, housing, and subsistence allowances as prescribed 858
by the United States department of defense pay manual, or an 859
amount not less than seventy-five dollars per day as base pay for 860
each day's duty performed, whichever is greater. 861

When ordered by the governor to perform training or duty 862
under this section or section 5919.29 of the Revised Code, members 863
of the Ohio national guard shall have the protections afforded to 864
persons on federal active duty by "~~The Soldiers and Sailors~~ 865
Servicemembers Civil Relief Act of 1940," 54 117 Stat. ~~1178~~ 2835, 866
50 ~~App.~~ U.S.C.A. App. ~~501-548 and 560-591~~. 867

Sec. 5924.01. As used in Chapter 5924. of the Revised Code 868
unless the context otherwise requires: 869

(A) "Organized militia" means the Ohio national guard, the 870
Ohio naval militia, and the Ohio military reserve. 871

(B) "Officer" means commissioned or warrant officer. 872

(C) "Commissioned officer" includes a commissioned warrant 873
officer. 874

(D) "Commanding officer" includes only commissioned or 875
warrant officers in command of a unit. 876

(E) "Superior commissioned officer" means a commissioned 877
officer superior in rank or command. 878

(F) "Enlisted member" means a person in an enlisted grade. 879

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

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

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

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

(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 910
by another, ~~and~~ or any other person who has an interest other than 911
an official interest in the prosecution of the accused. 912

(Q) "Military" refers to any or all of the armed forces. 913

(R) "Convening authority" includes, in addition to the person 914
who convened the court, a commissioned officer commanding for the 915
time being, or a successor in command. 916

(S) "May" is used in a permissive sense. The words "no person 917
may" mean that no person is required, authorized, or 918
permitted to do the act prescribed. 919

(T) "Shall" is used in an imperative sense. 920

(U) "Code" means the Ohio code of military justice, as set 921
forth in Chapter 5924. of the Revised Code. 922

(V) "Trial counsel" means the prosecuting attorney in a 923
general or special court-martial. 924

(W) "Detention facility" means any place that is owned or 925
operated by a municipal corporation, by a county, or by one or 926
more municipal corporations, counties, or both and that is used 927
for the confinement of persons charged with or convicted of any 928
crime in this state or another state or under the laws of the 929
United States. 930

(X) "Examiner" has the same meaning as in division (A)(2)(a) 931
of section 2945.37 of the Revised Code. 932

(Y) "Nonsecured status," "unsupervised, off-grounds 933
movement," "trial visit," "conditional release," and "licensed 934
clinical psychologist" have the same meanings as in section 935
2945.37 of the Revised Code. 936

Sec. 5924.02. The following persons who are not in federal 937
service are subject to this code: 938

(A) Members of the organized militia, including Ohio national guard dual-status technicians during their normal duty hours; 939
940

(B) Persons who have been placed on the state ~~reserve list or~~ 941
~~the state~~ retired list pursuant to section 5913.07 or 5919.13 of 942
the Revised Code; 943

(C) All other persons lawfully ordered to duty in ~~or with~~ the 944
organized militia, from the dates they are required by the terms 945
of the order or other directive to obey the ~~same order or~~ 946
directive, including any time during which they are going to or 947
returning from duty in the organized militia. 948

Sec. 5924.03. (A) Each person discharged from the organized 949
militia who is later charged with having fraudulently obtained ~~his~~ 950
the discharge is, subject to section 5924.43 of the Revised Code, 951
subject to trial by court-martial on that charge and is, after 952
apprehension, subject to this code while in the custody of the 953
military for that trial. Upon conviction of that charge ~~he the~~ 954
person is subject to trial by court-martial for all offenses under 955
this code committed before the fraudulent charge. 956

(B) No person who has deserted from the organized militia may 957
be relieved from amenability to the jurisdiction of this code by 958
virtue of a separation from any later period of service. 959

Sec. 5924.06. (A) The ~~governor, on the recommendation of the~~ 960
adjutant general, shall appoint an officer of the ~~organized~~ 961
~~militia~~ Ohio national guard as state judge advocate, ~~who. The~~ 962
officer shall be a member in good standing of the bar of ~~the~~ 963
~~supreme court of~~ this state and ~~shall have been a member of the~~ 964
~~bar of the state and a member of the organized militia for at~~ 965
least five years be eligible to be recognized as a colonel under 966
regulations prescribed by the national guard bureau. 967

(B) The adjutant general ~~may~~ shall appoint ~~as many assistant~~ 968

state judge advocates ~~as he shall deem necessary, which assistant~~ 969
~~state judge and legal officers on the recommendation of the state~~ 970
~~judge advocate. Judge advocates and legal officers~~ shall be 971
officers of the organized militia and members in good standing of 972
the bar of ~~the~~ this state. 973

(C) The state judge advocate or ~~his assistants~~ subordinate 974
judge advocates shall make frequent inspections in the field in 975
supervision of the administration of military justice. 976

(D) ~~The provisions of section 109.02 of the Revised Code~~ 977
~~shall not be a restriction upon the appointment and duties as~~ 978
~~provided in this section.~~ 979

~~(E)~~ Convening authorities shall at all times communicate 980
directly with their staff judge advocates or legal officers in 981
matters relating to the administration of military justice; ~~and~~ 982
~~the.~~ A staff judge advocate or legal officer of ~~any~~ a command is 983
entitled to communicate directly with ~~the~~ any staff judge advocate 984
or legal officer of a superior or subordinate command, or with the 985
state judge advocate. 986

~~(F)~~(E) No person who has acted as member, military judge, 987
trial counsel, assistant trial counsel, defense counsel, assistant 988
defense counsel, or investigating officer, or who has been a 989
witness for either the prosecution or defense, in any case may 990
later act as staff judge advocate or legal officer to any 991
reviewing authority upon the same case. 992

Sec. 5924.07. (A) Apprehension is the taking of a person into 993
custody. 994

(B) Any person authorized by this code, or by regulations 995
issued pursuant ~~thereto~~ to this code, to apprehend persons subject 996
to this code, any marshal of a court-martial appointed pursuant to 997
the provisions of this code, and any peace officer authorized to 998

do so by law may do so upon reasonable belief that an offense has 999
been committed and that the person apprehended committed it. 1000

(C) Commissioned officers, warrant officers, ~~petty officers,~~ 1001
and noncommissioned officers ~~have authority~~ may take reasonable 1002
action to quell quarrels, frays, and disorders among persons 1003
subject to this code and to apprehend persons subject to this code 1004
who take part therein. 1005

(D) A person subject to this code may be apprehended in the 1006
person's home, with the assistance of a local law enforcement 1007
agency, only upon probable cause to believe that the person is 1008
legally subject to apprehension and that the person is or will be 1009
present to be apprehended. 1010

Sec. 5924.08. ~~Any civil~~ A peace officer having authority to 1011
apprehend offenders under the laws of the United States, or of a 1012
state, territory, commonwealth, or possession, or the District of 1013
Columbia may summarily apprehend a deserter from the organized 1014
militia and deliver ~~him~~ the deserter into the custody of the 1015
organized militia. ~~If an offender is apprehended outside the~~ 1016
~~state, his return to the area must be in accordance with normal~~ 1017
~~extradition procedures, or reciprocal agreement.~~ 1018

Sec. 5924.09. (A) Arrest is the restraint of a person by an 1019
oral or written order, not imposed as a punishment for an offense, 1020
directing ~~him~~ the person to remain within certain specified 1021
limits. Confinement is the physical restraint of a person that is 1022
imposed by order of competent authority and deprives the person of 1023
freedom pending disposition of criminal charges. 1024

(B) An enlisted member may be ordered into arrest or 1025
confinement by any ~~commissioned~~ commanding officer by an order, 1026
oral or written, delivered in person or through other persons 1027
subject to this code or through any person authorized by this code 1028

to apprehend persons. A commanding officer may authorize warrant 1029
officers, ~~petty officers,~~ or noncommissioned officers to order 1030
enlisted members of ~~his~~ the commanding officer's command or 1031
enlisted members subject to ~~his~~ the commanding officer's authority 1032
into arrest or confinement. 1033

(C) A commissioned officer or a warrant officer may be 1034
ordered apprehended or into arrest or confinement only by a 1035
commanding officer to whose authority ~~he~~ the commissioned officer 1036
or warrant officer is subject, by an order, oral or written, 1037
delivered in person or by another commissioned officer. The 1038
authority to order such persons apprehended or into arrest or 1039
confinement may not be delegated. 1040

(D) No person may be ordered apprehended or into arrest or 1041
confinement except for probable cause. 1042

(E) Nothing in this section shall be construed to limit the 1043
authority of persons authorized to apprehend offenders to secure 1044
the custody of an alleged offender until proper authority may be 1045
notified. 1046

Sec. 5924.10. (A) Any person subject to this code charged 1047
with an offense under this code shall be ordered into arrest or 1048
confinement, as circumstances may require; but when charged only 1049
with an offense normally tried by a summary court-martial, such 1050
person shall not ordinarily be placed into confinement. When any 1051
person subject to this code is placed into arrest or confinement 1052
prior to trial, ~~immediate steps shall be taken to inform him~~ the 1053
person shall be informed within seventy-two hours of the specific 1054
wrong of which ~~he~~ the person is accused and ~~to try him or to~~ 1055
~~dismiss the charges and release him~~ of the person's rights under 1056
this code. 1057

(B) Confinement ~~other than in a guard house,~~ whether before, 1058
during, or after trial by a military court, shall be ~~executed,~~ to 1059

the maximum extent practicable, in civil jails or prisons 1060
designated by the governor or by such person as he may authorize 1061
to act like facilities. An order that an accused person be placed 1062
in pretrial confinement shall be reviewed by a military judge 1063
within seven days and if confirmed may be reviewed after that 1064
confirmation only on motion. 1065

Sec. 5924.11. (A) ~~No provost marshal, commander of a guard,~~ 1066
~~master at arms, warden~~ sheriff, keeper, or officer of a ~~city or~~ 1067
~~county jail or any other jail or prison designated under section~~ 1068
~~5924.10 of the Revised Code,~~ detention facility may refuse to 1069
receive or keep any prisoner committed to ~~his~~ the sheriff's, 1070
keeper's, or officer's charge, when the committing person 1071
furnishes a statement, signed by ~~him~~ the committing person, of the 1072
offense charged against the prisoner. 1073

(B) ~~Every commander of a guard, master at arms~~ A sheriff, 1074
~~warden,~~ keeper, or officer of a ~~city or county jail or of any~~ 1075
~~other jail or prison designated under section 5924.10 of the~~ 1076
~~Revised Code,~~ detention facility to whose charge a prisoner is 1077
committed, shall, within twenty-four hours after that commitment 1078
~~or as soon as he is relieved from guard,~~ report to the commanding 1079
officer of the prisoner the name of the prisoner, the offense 1080
charged against ~~him~~ the prisoner, and the name of the person who 1081
ordered or authorized the commitment. 1082

Sec. 5924.13. ~~Subject to section 5924.57 of the Revised Code,~~ 1083
~~no~~ No person, while being held for or after trial ~~or the result of~~ 1084
~~trial,~~ may be subjected to punishment or penalty other than arrest 1085
or confinement upon the charges pending against ~~him,~~ ~~nor shall~~ the 1086
person. The arrest or confinement imposed upon ~~him~~ the person 1087
shall not be any more rigorous than the circumstances require to 1088
insure ~~his~~ the person's presence, ~~but he.~~ The person may be 1089
subjected to minor punishment during that period for infractions 1090

of discipline, and may be required to perform such labor as may be 1091
necessary for the policing and sanitation of his living quarters 1092
and messing facilities and the area immediately adjacent thereto. 1093

1094

Sec. 5924.14. (A) Under such regulations as may be prescribed 1095
under this code, a person on ~~active~~ state active duty ~~subject to~~ 1096
~~this code~~ or duty under Title 32 of the United States Code who is 1097
accused of an offense against civil authority may be delivered, 1098
upon request, to the civil authority for ~~trial~~ trial. 1099

(B) When delivery under this section is made to any civil 1100
authority of a person undergoing sentence of a court-martial, the 1101
delivery, if followed by conviction in a civil tribunal, 1102
interrupts the execution of the sentence of the court-martial, and 1103
the offender after having answered to the civil authorities for 1104
~~his~~ the offender's offense shall, upon the request of competent 1105
military authority, be returned to military custody for the 1106
completion of ~~his~~ the offender's sentence. 1107

Sec. 5924.15. (A) Under such regulations as the ~~governor~~ 1108
adjutant general may prescribe, ~~and under such additional~~ 1109
~~regulations as may be prescribed by the adjutant general of Ohio,~~ 1110
limitations may be placed on the powers granted by this section 1111
with respect to the kind and amount of punishment authorized, the 1112
categories of commanding officers and warrant officers exercising 1113
command authorized to exercise those powers, the applicability of 1114
this section to an accused who demands trial by court-martial, and 1115
the kinds of courts-martial to which the case may be referred upon 1116
such a demand. However, except in the case of a member attached 1117
to, or embarked in a vessel, punishment may not be imposed upon 1118
~~any person subject to this code under this section~~ a member of the 1119
organized militia if ~~such person~~ the member has, before the 1120
imposition of ~~such~~ the punishment, demanded trial by court-martial 1121

in lieu of ~~such~~ the punishment. Under similar regulations, rules 1122
may be prescribed with respect to the suspension of punishments 1123
authorized ~~hereunder~~ under this section. If authorized by 1124
regulations prescribed under this section, the governor or a 1125
general officer or officer of flag rank in command may delegate 1126
the powers of the governor or general officer under this section 1127
to a principal assistant. In all proceedings, the accused shall be 1128
allowed a reasonable period of time, normally not exceeding 1129
forty-eight hours, to reply to the notification of intent to 1130
impose punishment under this section. 1131

(B) Subject to the foregoing division (A) of this section, 1132
any commanding officer, ~~and for the purposes of this section the~~ 1133
~~adjutant general of Ohio,~~ may, in addition to or in lieu of 1134
admonition or reprimand, impose one or more of the following 1135
~~disciplinary~~ punishments for minor offenses without the 1136
intervention of a court-martial: 1137

~~(A)(1)~~ Upon officers of the commanding officer's command, any 1138
of the following: 1139

~~(1)(a)~~ Restriction to certain specified limits, with or 1140
without suspension from duty, for not more than thirty ~~consecutive~~ 1141
days; 1142

~~(2)(b)~~ If imposed by the governor, the adjutant general, ~~the~~ 1143
~~commanding an officer of a force of the organized militia~~ 1144
exercising general court-martial jurisdiction, a general officer, 1145
~~or the commanding general of a division~~ flag officer, any of the 1146
following: 1147

~~(a)(i)~~ Arrest in quarters for not more than thirty 1148
~~consecutive~~ days; 1149

~~(b) Fine or forfeiture~~ (ii) Forfeiture of not more than 1150
one-half of one month's pay per month for two months, ~~or the sum a~~ 1151
fine of one not more than two hundred fifty dollars, whichever is 1152

greater;	1153
(e)(iii) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days;	1154 1155 1156
(d) Detention of not more than one half of one month's pay per month for three months, or the sum of two hundred twenty five dollars, whichever is greater.	1157 1158 1159
(B)(2) Upon other military personnel of the commanding officer's command, <u>any of the following:</u>	1160 1161
(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;	1162 1163 1164
(2)(a) Correctional custody for not more than seven consecutive days;	1165 1166
(3) Fine or forfeiture <u>(b) Forfeiture</u> of not more than seven days' pay, or the sum of twenty five dollars, whichever is greater <u>a fine of not more than one-quarter of one month's actual pay;</u>	1167 1168 1169
(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;	1170 1171 1172 1173
(5)(d) Extra duties, including fatigue or other duties, for not more than fourteen consecutive days <u>or for a total of thirty</u> <u>nonconsecutive days;</u>	1174 1175 1176
(6)(e) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;	1177 1178 1179
(7) Detention of not more than fourteen days' pay, or the sum of fifty dollars, whichever is greater;	1180 1181
(8)(f) If imposed by an officer of the grade of major or	1182

~~lieutenant commander, or above-,~~ any of the following: 1183

~~(a)(i)~~ The punishment authorized under division (B)~~(1)(2)(a)~~ 1184
of this section; 1185

~~(b)(ii)~~ Correctional custody for not more than thirty 1186
consecutive days; 1187

~~(c) Fine or forfeiture~~ (iii) Forfeiture of not more than 1188
one-half of one month's pay per month for two months, ~~or the sum~~ 1189
~~of fifty dollars, whichever is greater~~ a fine of not more than 1190
one-half of one month's actual pay for two months; 1191

~~(d)(iv)~~ Reduction to the lowest or any intermediate pay 1192
grade, if the grade from which demoted is within the promotion 1193
authority of the officer imposing the reduction or any officer 1194
subordinate to the one who imposes the reduction, but an enlisted 1195
member in pay grade above E-4 may not be reduced more than ~~two~~ one 1196
pay ~~grades~~ grade; 1197

~~(e)(v)~~ Extra duties, including fatigue or other duties, for 1198
not more than forty-five ~~consecutive~~ days, which need not be 1199
consecutive, and for not more than two hours per day; 1200

~~(f)(vi)~~ Restriction to certain specified limits, with or 1201
without suspension from duty, for not more than sixty ~~consecutive~~ 1202
days, which need not be consecutive; 1203

~~(g) Detention of not more than one half of one month's pay~~ 1204
~~per month for three months, or the sum of seventy five dollars,~~ 1205
~~whichever is greater.~~ 1206

~~Detention of pay shall be for a stated period of not more~~ 1207
~~than one year, but if the offender's term of service expires~~ 1208
~~earlier, the detention shall terminate upon that expiration. No~~ 1209
~~two or more of the punishments of arrest in quarters, confinement~~ 1210
~~on bread and water or diminished rations, correctional custody,~~ 1211
~~extra duties, and restriction may be combined to run consecutively~~ 1212

in the maximum amount imposable for each. Whenever any of those 1213
punishments are combined to run consecutively, there must be an 1214
apportionment. In addition, forfeiture of pay may not be combined 1215
with detention of pay without an apportionment. For the purposes 1216
of this section "correctional custody" is the physical restraint 1217
of a person during duty or nonduty hours and may include extra 1218
duties, fatigue duties, or hard labor. If practicable, 1219
correctional custody will not be served in immediate association 1220
with persons awaiting trial or held in confinement pursuant to 1221
trial by court martial or civilian court. 1222

(C) No two or more of the punishments of arrest in quarters, 1223
correctional custody, extra duties, and restriction may be 1224
combined to run consecutively in the maximum amount imposable for 1225
each. If any of those punishments are combined to run 1226
consecutively, there must be apportionment. For the purposes of 1227
this section, "correctional custody" means the physical restraint 1228
of a person during duty or nonduty hours and may include extra 1229
duties, fatigue duties, or hard labor. 1230

(D) An officer in charge may impose upon enlisted members 1231
assigned to the unit of which the officer is in charge ~~such~~ any of 1232
the punishments authorized under divisions ~~(B)(1)(A)(2)(a)~~ to 1233
~~(B)(7)(f)~~ of this section, ~~as~~ that the governor or adjutant 1234
general may specifically prescribe by regulation. 1235

~~(D)~~(E) The officer who imposes the punishment authorized in 1236
~~divisions (A) or~~ division (B) of this section, or the officer's 1237
successor in command, may, at any time, suspend probationally any 1238
part or amount of the unexecuted punishment imposed and may 1239
suspend probationally a reduction in grade or a forfeiture or fine 1240
imposed under ~~divisions (A) or~~ division (B) of this section, 1241
whether or not executed. In addition, the officer who imposed the 1242
punishment may, at any time, remit or mitigate any part or amount 1243
of the unexecuted punishment imposed and may set aside in whole or 1244

in part the punishment, whether executed or unexecuted, and 1245
restore all rights, privileges, and property affected. The officer 1246
who imposed the punishment may also mitigate reduction in grade to 1247
forfeiture ~~or detention~~ of pay or a fine. When mitigating: 1248

~~(1) Arrest~~ arrest in quarters to restriction: 1249

~~(2) Confinement on bread and water or diminished rations to~~ 1250
~~correctional custody;~~ 1251

~~(3) Correctional custody or confinement on bread and water or~~ 1252
~~diminished rations to extra duties or restriction, or both; or~~ 1253

~~(4) Extra~~ extra duties to restriction: 1254

~~the,~~ the mitigated punishment shall not be for a greater period 1255
than the punishment mitigated. ~~When mitigating forfeiture of pay~~ 1256
~~to detention of pay, the amount of the detention shall not be~~ 1257
~~greater than the amount of the forfeiture.~~ When mitigating 1258
reduction in grade to fine or forfeiture ~~or detention~~ of pay, the 1259
amount of the fine or forfeiture ~~or detention~~ shall not be greater 1260
than the amount that could have been imposed initially under this 1261
section by the officer who imposed the punishment mitigated. 1262

~~(E)~~(F) A person punished under this section who considers the 1263
punishment unjust or disproportionate to the offense may, through 1264
the proper channel, appeal to the next superior authority within 1265
seven calendar days. The appeal shall be promptly forwarded and 1266
decided, but the person punished may in the meantime be required 1267
to undergo the punishment adjudged. The superior authority may 1268
exercise the same powers with respect to the punishment imposed as 1269
may be exercised under division ~~(D)~~(E) of this section by the 1270
officer who imposed the punishment. Before acting on an appeal 1271
from a punishment of: 1272

~~(1) Arrest in quarters for more than seven days;~~ 1273

~~(2) Correctional custody for more than seven days;~~ 1274

(3) Forfeiture of more than seven days' pay;	1275
(4) Reduction of one or more pay grades from the fourth or a higher pay grade;	1276
(5) Extra duties for more than fourteen days;	1277
(6) Restriction for more than fourteen days; or	1278
(7) Detention of more than fourteen days' pay;	1279
<u>any of the following</u> , the authority who is to act on the appeal	1280
shall refer the case to a judge advocate <u>or legal officer</u> of the	1281
Ohio organized militia for consideration and advice, and may so	1282
<u>also</u> refer the case upon appeal from any punishment imposed under	1283
divisions (A) or <u>division</u> (B) of this section:	1284
<u>(1) Arrest in quarters for more than seven days;</u>	1285
<u>(2) Correctional custody for more than seven days;</u>	1286
<u>(3) Fine or forfeiture of more than seven days' pay;</u>	1287
<u>(4) Reduction of one or more pay grades from the fourth or a</u>	1288
<u>higher pay grade;</u>	1289
<u>(5) Extra duties for more than fourteen days.</u>	1290
(F) <u>(G)</u> The imposition and enforcement of disciplinary	1291
punishment under this section for any act or omission is not a bar	1292
to trial by court-martial for a serious crime or offense growing	1293
out of the same act or omission, and not properly punishable under	1294
this section, but the . The fact that a disciplinary punishment has	1295
been enforced may be shown by the accused upon trial, and, when so	1296
shown, shall be considered in determining the measure of	1297
punishment to be adjudged in the event of a finding of guilty.	1298
(G) <u>(H)</u> The governor or the adjutant general may, by	1299
regulation, prescribe the form of records to be kept of	1300
proceedings under this section and may also prescribe that certain	1301
categories of those proceedings shall be in writing.	1302
	1303

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

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

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

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

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

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

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

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

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

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

~~(B)(2) A military judge and not ~~less~~ fewer than three~~

members; ~~or~~ 1333

~~(C)(3) Only a military judge, if one has been detailed to the court, and the accused so requests in writing under the same conditions as those prescribed in division (B)(1)(b) of this section;~~ 1334
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~~(3) Summary courts martial, consisting before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.~~ 1338
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~~(D) A summary court-martial consists of one commissioned officer in the grade of captain or above.~~ 1343
1344

Sec. 5924.17. ~~Each force of the organized militia~~ The Ohio national guard has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by ~~one force~~ the Ohio national guard over personnel of another ~~force~~ element of the organized militia shall be in accordance with regulations prescribed by the ~~governor~~ adjutant general. 1345
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Sec. 5924.18. ~~(A)~~ Subject to section 5924.17 of the Revised Code, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under ~~such any~~ any limitations as that the governor may prescribe, adjudge any ~~punishment not forbidden by this code,~~ including the penalty of death when specifically authorized by this code. General courts martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. A general court martial of the kind specified in division ~~(B)(1)(b) of section 5924.16 of the Revised Code does not have jurisdiction to try any person for any offense for which the death~~ 1351
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~~penalty may be adjudged unless the case has been previously~~ 1363
~~referred to trial as a noncapital case of the following~~ 1364
~~punishments:~~ 1365

~~(1) A fine of not more than two thousand five hundred dollars~~ 1366
~~or confinement for not more than three hundred sixty-five days;~~ 1367

~~(2) Forfeiture of all pay and allowances;~~ 1368

~~(3) Reprimand;~~ 1369

~~(4) Dismissal and dishonorable discharge or a bad conduct~~ 1370
~~discharge;~~ 1371

~~(5) Reduction of a noncommissioned officer to the lowest or~~ 1372
~~any intermediate rank;~~ 1373

~~(6) Any combination of the foregoing punishments.~~ 1374

~~(B) A general court-martial may not adjudge dismissal or~~ 1375
~~dishonorable discharge unless a complete record of the proceedings~~ 1376
~~and testimony is made, counsel having the qualifications~~ 1377
~~prescribed under division (B) of section 5924.27 of the Revised~~ 1378
~~Code is detailed to represent the accused, and a military judge is~~ 1379
~~detailed to the trial.~~ 1380

Sec. 5924.19. Subject to section 5924.17 of the Revised Code, 1381
special courts-martial ~~shall~~ have jurisdiction to try persons 1382
subject to this code for any ~~non-capital~~ offense for which they 1383
may be punished under this code. A special court-martial may 1384
adjudge any punishment a general court-martial may adjudge, except 1385
~~death, dishonorable discharge, dismissal, confinement for that a~~ 1386
~~special court-martial may not impose a fine of more than six~~ 1387
~~months, hard labor without one thousand dollars, confinement for~~ 1388
more than ~~three months, forfeiture of pay exceeding two thirds pay~~ 1389
~~per month, or forfeiture of pay for more than six months one~~ 1390
~~hundred eighty days for a single offense, or dismissal or~~ 1391
~~dishonorable discharge. A bad-conduct discharge special~~ 1392

~~court-martial~~ may not ~~be adjudged~~ adjudge a bad-conduct discharge 1393
unless a complete record of the proceedings and testimony ~~has been~~ 1394
is made, counsel having the qualifications prescribed under 1395
division (B) of section 5924.27 of the Revised Code ~~was~~ is 1396
detailed to represent the accused, and a military judge ~~was~~ is 1397
detailed to the trial. ~~In any case in which a military judge was~~ 1398
~~not detailed to the trial, except when due to physical conditions~~ 1399
~~or military exigencies, the convening authority shall make a~~ 1400
~~written statement, to be appended to the record, stating the~~ 1401
~~reason or reasons a military judge could not be detailed.~~ 1402

Sec. 5924.20. (A) Subject to section 5924.17 of the Revised 1403
Code, summary courts-martial have jurisdiction to try persons 1404
subject to this code, ~~except officers and warrant officers,~~ for 1405
any offense made punishable by this code. 1406

(B) No person with respect to whom summary courts-martial 1407
have jurisdiction may be brought to trial before a summary 1408
court-martial if ~~he~~ the person objects ~~thereto~~ to being brought to 1409
trial before a summary court-martial. If objection to trial by 1410
summary court-martial is made by an accused, trial may be ordered 1411
by special or general court-martial, as may be appropriate. 1412

(C) Summary courts-martial may, ~~under such limitations as the~~ 1413
~~governor may prescribe,~~ adjudge punishment of a fine not forbidden 1414
~~by this code, except death, dismissal, dishonorable or bad conduct~~ 1415
~~discharge, exceeding five hundred dollars,~~ confinement for not 1416
more than ~~one month, hard labor without confinement for more than~~ 1417
~~forty five days, restriction to specified limits for more than two~~ 1418
~~months, or~~ thirty days, forfeiture of not more than two-thirds of 1419
one month's pay, and reduction to the lowest or any intermediate 1420
pay grade. For enlisted members in pay grade above E-4, summary 1421
courts-martial may not adjudge confinement or reduction except to 1422
the next inferior pay grade. 1423

Sec. 5924.21. The provisions of this code that confer 1424
jurisdiction on courts-martial do not deprive military 1425
commissions, provost courts, other military tribunals, or state or 1426
federal courts of concurrent jurisdiction with respect to 1427
offenders or offenses that by statute or by the law of war may be 1428
tried by military commissions, provost courts, other military 1429
tribunals, or state or federal courts. 1430

Sec. 5924.22. In the organized militia not in federal 1431
service, the governor, adjutant general, assistant adjutant 1432
general for army, or assistant adjutant general for air may 1433
convene general courts-martial ~~may be convened by the governor.~~ 1434

Sec. 5924.23. In the organized militia not in federal 1435
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1436
~~air base, auxiliary air base, or other place where troops are on~~ 1437
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1438
~~group, detached battalion, separate squadron, or other detached~~ 1439
~~command,~~ any commander authorized by regulation in the grade of 1440
colonel or a higher grade may convene special courts-martial. 1441
~~Special courts martial may also be convened by superior authority.~~ 1442
~~When any such officer is an accuser, the court shall be convened~~ 1443
~~by superior competent authority.~~ 1444

Sec. 5924.24. (A) In the organized militia not in federal 1445
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1446
~~air base, auxiliary air base, or other place where troops are on~~ 1447
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1448
~~group, detached battalion, detached squadron, detached company, or~~ 1449
~~other detachment,~~ any commander authorized by regulation in the 1450
grade of lieutenant colonel or a higher grade may convene a 1451
summary court-martial ~~consisting of one commissioned officer. The~~ 1452
~~proceedings shall be informal.~~ 1453

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

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

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

(C)(1) Any enlisted member of the organized militia in a duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the organized militia who may lawfully be brought before such courts for trial, ~~but he shall serve as a member of a court only~~ if, before the conclusion of a session called by the military judge ~~under division (A) of section 5924.39 of the Revised Code~~ or, in the absence of ~~such~~ a session called by the military judge, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial, the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies.

If ~~such~~ enough enlisted members cannot be obtained, the court may 1485
be assembled and trial held without them, but the convening 1486
authority shall make a detailed written statement, to be appended 1487
to the record, stating why they could not be obtained. 1488

(2) ~~In~~ As used in division (C) of this section, ~~the word~~ 1489
"unit" means any regularly organized body of the organized militia 1490
not larger than a company, a squadron, a division of the naval 1491
militia, or a body corresponding to one of them. 1492

(D)(1) ~~When~~ If it can be avoided, ~~no~~ a person subject to this 1493
code shall not be tried by a court-martial, any member of which is 1494
junior to ~~him~~ the person in rank or grade. 1495

(2) When convening a court-martial, the convening authority 1496
shall detail as members ~~thereof~~ such of the court-martial members 1497
as of the organized militia who, in his the convening authority's 1498
opinion, are best qualified for the duty by reason of age, 1499
education, training, experience, length of service, and judicial 1500
temperament. No member of the organized militia is eligible to 1501
serve as a member of a general or special court-martial ~~when he~~ if 1502
the member of the organized militia is the accuser or a witness 1503
for the prosecution or has acted as investigating officer or as 1504
counsel in the same case. ~~If within the command of the convening~~ 1505
~~authority there is present and not otherwise disqualified a~~ 1506
~~commissioned officer who is a member of the bar of the state and~~ 1507
~~of appropriate rank, the convening authority shall appoint him as~~ 1508
~~president of a special court martial. Although this requirement is~~ 1509
~~binding on the convening authority, failure to meet it in any case~~ 1510
~~does not divest a military court of jurisdiction.~~ 1511

Sec. 5924.26. (A) ~~The authority convening a~~ A military judge 1512
shall be detailed to each general court martial shall, and, 1513
~~subject to regulations promulgated by the governor, the authority~~ 1514
~~convening a~~ and special court-martial may, detail ~~a.~~ A military 1515

judge ~~to~~ shall preside over each open session of the court-martial 1516
to which the judge has been detailed. 1517

(B) A military judge shall be a commissioned officer of the 1518
organized militia who is a member in good standing of the bar of 1519
this state, ~~or a member of the bar of a federal court,~~ and who is 1520
certified to be qualified for ~~such~~ duty as a military judge by the 1521
state judge advocate. 1522

(C) The military judge of a general or special court-martial 1523
shall be designated by the state judge advocate ~~or his designee~~ 1524
for detail by the convening authority. Unless the court-martial 1525
was convened by the governor or the adjutant general, neither the 1526
convening authority nor ~~his~~ the convening authority's staff, other 1527
than the state judge advocate or deputy state judge advocate, 1528
shall prepare or review any report concerning the effectiveness, 1529
fitness, or efficiency of the military judge ~~so detailed which~~ 1530
~~relates to his~~ judge's performance of duty as a military judge. A 1531
~~commissioned officer who is certified as a military judge of a~~ 1532
~~general court martial may perform duties other than those relating~~ 1533
~~to his being a military judge of a general court martial when such~~ 1534
~~duties are assigned to him by or with the approval of the state~~ 1535
~~judge advocate or his designee.~~ 1536

(D) No person is eligible to act as a military judge in a 1537
case if ~~he~~ the person is the accuser, is a witness for the 1538
prosecution, has acted as investigating officer, or is a counsel 1539
in the same case. 1540

(E) The military judge of a court-martial may not consult 1541
with the members of the court, except in the presence of the 1542
accused, trial counsel, and defense counsel, nor may ~~he~~ the 1543
military judge vote with the members of the court. 1544

(F) A trial counsel, defense counsel, military judge, legal 1545
officer, summary court officer, or any other person from any one 1546

component of the organized militia certified by the state judge 1547
advocate to perform legal functions under this code may perform 1548
those functions, as needed, for any other component of the 1549
organized militia. 1550

~~Sec. 5924.27. (A) For each general and special court martial~~ 1551
~~the authority convening the court~~ The state judge advocate shall 1552
detail trial counsel ~~and,~~ defense counsel, and ~~such~~ assistants ~~as~~ 1553
~~he~~ that the state judge advocate considers appropriate. No person 1554
who has acted as investigating officer, military judge, or court 1555
member in any case may act later as trial counsel, assistant trial 1556
counsel, ~~or, unless expressly requested by the accused, as~~ defense 1557
counsel, ~~or~~ assistant defense counsel in the same case. No person 1558
who has acted for the prosecution may act later in the same case 1559
for the defense, nor may any person who has acted for the defense 1560
act later in the same case for the prosecution. 1561

(B) Trial counsel or defense counsel detailed for a general 1562
court-martial must be both of the following: 1563

(1) ~~Must be a person who is a~~ A member in good standing of 1564
the bar of the highest court of this state, ~~or a member of the bar~~ 1565
~~of a federal court, or a law specialist; and~~ 1566

(2) ~~Must be certified~~ Certified as competent to perform ~~such~~ 1567
the duties of trial counsel or defense counsel in a general 1568
court-martial by the state judge advocate. 1569

~~(C) In the case of a special court martial, the accused shall~~ 1570
~~be afforded the opportunity to be represented at the trial by~~ 1571
~~counsel having the qualifications prescribed by division (B) of~~ 1572
~~this section. If counsel having such qualifications cannot be~~ 1573
~~obtained because of physical conditions or military exigencies,~~ 1574
~~the court may be convened and the trial held, but the convening~~ 1575
~~authority shall make a detailed written statement explaining the~~ 1576
~~reasons, which shall be appended to the record.~~ 1577

Sec. 5924.28. Under such regulations as the ~~governor~~ adjutant 1578
general may prescribe, the convening authority of a general or 1579
special court-martial ~~or court of inquiry~~ shall detail or employ 1580
qualified court reporters, who shall record the proceedings of and 1581
testimony taken before that court. ~~Under like regulations the~~ 1582
~~convening authority of a military court, and~~ may detail or employ 1583
interpreters, who shall interpret for the court. 1584

Sec. 5924.29. (A) No member of a general or special 1585
court-martial shall be absent or excused after the court has been 1586
assembled for the trial of the accused except for physical 1587
disability, as a result of a challenge, or by order of the 1588
convening authority for good cause. 1589

(B) Whenever a general court-martial, other than a general 1590
court-martial composed of a military judge only, is reduced below 1591
five members, the trial may not proceed unless the convening 1592
authority details new members sufficient in number to provide not 1593
~~less~~ fewer than five members. When the new members have been 1594
sworn, the trial may proceed with the new members present after 1595
the recorded evidence previously introduced before the members of 1596
the court has been read to the court in the presence of the 1597
military judge, the accused, and counsel for both sides. 1598

(C) Whenever a special court-martial, other than a special 1599
court-martial composed of a military judge only, is reduced below 1600
three members, the trial may not proceed unless the convening 1601
authority details new members sufficient in number to provide not 1602
~~less~~ fewer than three members. When the new members have been 1603
sworn, the trial shall proceed with the new members present as if 1604
no evidence had previously been introduced at the trial, unless a 1605
verbatim record of the evidence previously introduced before the 1606
members of the court or a stipulation thereof is read to the court 1607
in the presence of the military judge, if any, the accused, and 1608

counsel for both sides. 1609

(D) If the military judge of a court-martial composed of a 1610
military judge only is unable to proceed with the trial because of 1611
physical disability, as a result of a challenge, or for other good 1612
cause, the trial shall proceed, ~~subject to any applicable~~ 1613
~~conditions of division (B)(1)(b) or division (B)(2)(c) of section~~ 1614
~~5924.16 of the Revised Code,~~ after the detail of a new military 1615
judge as if no evidence had previously been introduced, unless a 1616
verbatim record of the evidence previously introduced or a 1617
stipulation thereof is read in court in the presence of the new 1618
military judge, the accused, and counsel for both sides. 1619

Sec. 5924.30. (A) Charges and specifications shall be signed 1620
by a person subject to this code under oath before a ~~person~~ 1621
commissioned officer of the organized militia authorized ~~by this~~ 1622
~~code~~ to administer oaths and shall state both of the following: 1623

(1) That the signer has personal knowledge of, or has 1624
investigated, the matters set forth ~~therein~~ in the charges and 1625
specifications; and 1626

(2) That ~~they~~ those matters are true in fact to the best of 1627
~~his~~ the person's knowledge and belief. 1628

(B) Upon the preferring of charges, the proper authority 1629
shall take immediate steps to determine ~~what~~ the disposition that 1630
should be made ~~thereof~~ of the charges in the interest of justice 1631
and discipline, and the person accused shall be informed of the 1632
charges ~~against him~~ as soon as practicable. 1633

Sec. 5924.31. (A) No person subject to this code may compel 1634
any other person to incriminate ~~himself~~ the other person or to 1635
answer any question, the answer to which may tend to incriminate 1636
~~him~~ the other person. 1637

(B) No person subject to this code may interrogate, or 1638

request any statement from an accused or a person suspected of an 1639
offense, without first informing ~~him~~ the accused or person 1640
suspected of the nature of the accusation and advising ~~him~~ the 1641
accused or person suspected that ~~he~~ the accused or person 1642
suspected does not have to make any statement regarding the 1643
offense of which ~~he~~ the accused or person suspected is accused or 1644
suspected and that any statement made by ~~him~~ the accused or person 1645
suspected may be used as evidence against ~~him~~ the accused or 1646
person suspected in a trial by court-martial. 1647

(C) No person subject to this code may compel any other 1648
person to make a statement or produce evidence before any ~~military~~ 1649
~~tribunal~~ court-martial if the statement or evidence is not 1650
material to the issue and may tend to degrade ~~him~~ the other 1651
person. 1652

(D) No statement obtained from any person in violation of 1653
this section, or through the use of coercion, unlawful influence, 1654
or unlawful inducement may be received in evidence against ~~him~~ the 1655
person in a trial by court-martial. 1656

Sec. 5924.32. (A) No charge or specification may be referred 1657
to a general court-martial for trial until a thorough and 1658
impartial investigation of all the matters set forth ~~therein~~ in 1659
the charge or specification has been made. This investigation 1660
shall include inquiry as to the truth of the matter set forth in 1661
the charges, consideration of the form of charges, and a 1662
recommendation as to the disposition ~~which~~ that should be made of 1663
the case in the interest of justice and discipline. 1664

(B) The accused shall be advised of the charges against ~~him~~ 1665
the accused and of ~~his~~ the accused's right to be represented at 1666
that investigation by counsel. Upon ~~his~~ the accused's own request 1667
~~he,~~ the accused shall be represented by civilian counsel if 1668
provided by ~~him~~ the accused at the accused's own cost, or by 1669

military counsel of ~~his~~ the accused's own selection if such 1670
counsel is reasonably available, or by counsel detailed by the 1671
officer exercising general court-martial jurisdiction over the 1672
command. At that investigation full opportunity shall be given to 1673
the accused to cross-examine witnesses against ~~him~~ the accused if 1674
they are available and to present anything ~~he~~ the accused may 1675
desire in ~~his~~ the accused's own behalf, either in defense or 1676
mitigation, and the investigating officer shall examine reasonably 1677
available witnesses requested by the accused. If the charges are 1678
forwarded after the investigation, they shall be accompanied by a 1679
statement of the substance of the testimony taken on both sides, 1680
and a copy ~~thereof~~ of that statement shall be given to the 1681
accused. 1682

(C) If an investigation of the subject matter of an offense 1683
has been conducted before the accused is charged with the offense, 1684
and if the accused was present at the investigation and afforded 1685
the opportunities for representation, cross-examination, and 1686
presentation prescribed in division (B) of this section, no 1687
further investigation of that charge is necessary under this 1688
section unless it is demanded by the accused after ~~he~~ the accused 1689
is informed of the charge. A demand for further investigation 1690
entitles the accused to recall witnesses for further 1691
cross-examination and to offer any new evidence in ~~his~~ the 1692
accused's own behalf. 1693

(D) The requirements of this section are binding on all 1694
persons administering this code but failure to follow them does 1695
not divest a military court of jurisdiction. 1696

Sec. 5924.33. When a person is held for trial by general 1697
court-martial, the commanding officer shall, ~~within eight days~~ not 1698
later than the eighth day after the accused is ordered into arrest 1699
or confinement, ~~if practicable~~, forward the charges, together with 1700

the investigation and allied papers, to the ~~governor~~ general 1701
court-martial convening authority. If that is not practicable, ~~he~~ 1702
the commanding officer shall report in writing to the ~~governor~~ 1703
convening authority the reasons for delay. 1704

Sec. 5924.34. (A) Before directing the trial of any charge by 1706
general court-martial, the convening authority shall refer it to 1707
the ~~state~~ convening authority's staff judge advocate or legal 1708
officer for consideration and advice. The convening authority may 1709
not refer a charge to a general court-martial for trial unless ~~he~~ 1710
the convening authority has found that the charge alleges an 1711
offense under this code and is warranted by evidence indicated in 1712
the report of the investigation. 1713

(B) If the charges or specifications are not formally correct 1714
or do not conform to the substance of the evidence contained in 1715
the report of the investigating officer, formal corrections and 1716
such changes in the charges and specifications as are needed to 1717
make them conform to the evidence may be made. 1718

Sec. 5924.35. The trial counsel to whom court-martial charges 1719
are referred for trial shall cause to be served upon the accused a 1720
copy of the charges upon which trial is to be had. ~~In~~ Except in 1721
time of ~~peace~~ declared war, no person may, against ~~his~~ the 1722
person's objection, be brought to trial or be required to 1723
participate ~~by himself~~ alone or with counsel in a session called 1724
by the military judge ~~under division (A) of section 5924.39 of the~~ 1725
~~Revised Code~~, in a general or special court-martial case within a 1726
~~period of five days~~ twenty-four hours after the service of charges 1727
upon him, ~~or in a special court martial within a period of three~~ 1728
~~days after the service of the charges upon him~~ the person. 1729

Sec. 5924.36. The procedure, including modes of proof, in 1730
cases before military courts ~~and other military tribunals~~ may be 1731

prescribed by the ~~governor~~ adjutant general by regulations, ~~which~~ 1732
that shall, so far as he the adjutant general considers 1733
practicable, apply the principles of law and the rules of evidence 1734
generally recognized in the trial of criminal cases in the courts 1735
of ~~the~~ this state, but ~~which~~ that may not be contrary to or 1736
inconsistent with this code. 1737

Sec. 5924.37. (A) No authority convening a general, special, 1738
or summary court-martial, ~~nor any~~ other commanding officer, or 1739
officer serving on the staff ~~thereof~~, of a convening authority or 1740
other commanding officer may censure, reprimand, or admonish the 1741
court or any member, military judge, or counsel ~~thereof~~ of the 1742
court, with respect to the findings or sentence adjudged by the 1743
court, or with respect to any other exercise of its or ~~his~~ the 1744
member's, military judge's, or counsel's functions in the conduct 1745
of the proceeding. No person subject to this code may attempt to 1746
coerce or, by any unauthorized means, influence the action of the 1747
court-martial or any other military tribunal or any member ~~thereof~~ 1748
of the court-martial or military tribunal in reaching the findings 1749
or sentence in any case, or the action of any convening, 1750
approving, or reviewing authority with respect to ~~his~~ the 1751
authority's judicial acts. This division does not apply to: 1752

(1) General instructional or informational courses in 1753
military justice, if such courses are designed solely for the 1754
purpose of instructing members of a command in the substantive and 1755
procedural aspects of courts-martial; 1756

(2) Statements and instructions given in open court by the 1757
military judge, the president of a special court-martial, or 1758
counsel. 1759

(B) In the preparation of ~~an effectiveness~~, a fitness, or 1760
efficiency evaluation, or performance report, or any other report 1761
or document used in whole or in part for the purpose of 1762

determining whether a member of the organized militia is qualified 1763
to be advanced in grade, ~~or~~ in determining the assignment or 1764
transfer of a member of the organized militia, or in determining 1765
whether a member of the organized militia should be retained ~~in an~~ 1766
~~active status on duty~~, no person subject to this code may, ~~in~~ 1767
~~preparing any such report~~ do either of the following: 1768

(1) Consider or evaluate the performance of duty of ~~any such~~ 1769
the member as a member of a court-martial; 1770

(2) Give a less favorable rating or evaluation of any member 1771
of the organized militia because of the zeal with which ~~such the~~ 1772
member, as counsel, represented any accused before a 1773
court-martial. 1774

Sec. 5924.38. (A) The trial counsel of a general or special 1775
court-martial shall prosecute in the name of the state, and shall, 1776
under the direction of the court, prepare the record of the 1777
proceedings. 1778

(B) The accused has the right to be represented in ~~his the~~ 1779
accused's defense before a general or special court-martial by 1780
civilian counsel if provided by ~~him the~~ the accused at the accused's 1781
own cost, ~~or~~ by military counsel of ~~his the~~ the accused's own 1782
selection if reasonably available, or by ~~the~~ detailed military 1783
defense counsel ~~detailed under section 5924.27 of the Revised~~ 1784
~~Code~~. Should the accused have civilian counsel of ~~his the~~ 1785
accused's own selection, the defense counsel, and any assistant 1786
defense counsel, ~~if any~~, who were detailed, shall, if the accused 1787
so desires, act as ~~his the~~ the accused's associate counsel; otherwise 1788
they shall be excused by the military judge ~~or by the president of~~ 1789
~~a court martial without a military judge~~. 1790

(C) In every court-martial proceeding, the defense counsel 1791
may, in the event of conviction, forward for attachment to the 1792
record of proceedings a brief of such matters as ~~he~~ the defense 1793

counsel feels should be considered in behalf of the accused on 1794
review, including any objection to the contents of the record 1795
which ~~he~~ the defense counsel considers appropriate. 1796

(D) An assistant trial counsel of a ~~general~~ court-martial 1797
may, under the direction of the trial counsel or when ~~he~~ the 1798
assistant trial counsel is qualified to be a trial counsel ~~as~~ 1799
~~required by section 5924.27 of the Revised Code~~, perform any duty 1800
imposed by law, regulation, or the custom of the service upon the 1801
trial counsel ~~of the court. An assistant trial counsel of a~~ 1802
~~special court martial may perform any duty of the trial counsel.~~ 1803

(E) An assistant defense counsel of a general or special 1804
court-martial may, under the direction of the defense counsel or 1805
when ~~he~~ the assistant defense counsel is qualified to be the 1806
defense counsel ~~as required by section 5924.27 of the Revised~~ 1807
~~Code~~, perform any duty imposed by law, regulation, or the custom 1808
of the service upon counsel for the accused. 1809

Sec. 5924.39. (A) At any time after the service of charges 1810
~~which~~ that have been referred for trial to a court-martial 1811
composed of a military judge and members, the military judge may, 1812
subject to section 5924.35 of the Revised Code, call the court 1813
into session without the presence of the members for the following 1814
purposes: 1815

(1) Hearing and determining motions raising defenses or 1816
objections ~~which~~ that are capable of determination without trial 1817
of the issues raised by a plea of not guilty; 1818

(2) Hearing and ruling upon any matter ~~which~~ that may be 1819
ruled upon by the military judge under this code, whether or not 1820
the matter is appropriate for later consideration or decision by 1821
the members of the court; 1822

(3) If permitted by regulations prescribed by the governor, 1823

holding the arraignment and receiving the pleas of the accused; 1824

(4) Performing any other procedural function ~~which~~ that may 1825
be performed by the military judge under this code or under ~~rules~~ 1826
regulations prescribed pursuant to section 5924.36 of the Revised 1827
Code and ~~which~~ that does not require the presence of the members 1828
of the court. 1829

These proceedings shall be conducted in the presence of the 1830
accused, the defense counsel, and the trial counsel, and shall be 1831
made a part of the record. 1832

(B) When the members of a court-martial deliberate or vote, 1833
only the members may be present. All other proceedings, including 1834
any other consultation of the members of the court with counsel or 1835
the military judge, shall be made a part of the record and shall 1836
be in the presence of the accused, the defense counsel, the trial 1837
counsel, and, in cases in which a military judge has been detailed 1838
to the court, the military judge. 1839

Sec. 5924.41. (A) The military judge and members of a general 1840
or special court-martial may be challenged by the accused or the 1841
trial counsel for cause stated to the court. The military judge 1842
or, if none, the court, shall determine the relevancy and validity 1843
of challenges for cause, and may not receive a challenge to more 1844
than one person at a time. Challenges by the trial counsel shall 1845
ordinarily be presented and decided before those by the accused 1846
are offered. 1847

(B) Each accused and the trial counsel is entitled to one 1848
peremptory challenge, but the military judge may not be ~~challenged~~ 1849
challenged except for cause. 1850

(C) If the exercise of a peremptory challenge reduces the 1851
number of members of a court-martial below the minimum required 1852
under section 5924.16 of the Revised Code, any remaining 1853

peremptory challenges shall be exercised or waived before 1854
additional members are detailed. 1855

(D) Additional members detailed to a court-martial may be 1856
challenged for cause as provided in division (A) of this section. 1857
After challenges for cause against the additional members are 1858
presented and decided, each accused and trial counsel is entitled 1859
to one peremptory challenge against members not previously 1860
challenged peremptorily. 1861

Sec. 5924.42. (A) Before performing their respective duties, 1862
military judges, interpreters, members of general and special 1863
courts-martial, the trial counsel, the assistant trial counsel, 1864
the defense counsel, the assistant defense counsel, and reporters 1865
shall take an oath or affirmation to perform their duties 1866
faithfully. ~~The form of the oath or affirmation, the time and~~ 1867
~~place of the taking thereof, the manner of recording, and whether~~ 1868
~~the oath shall be taken for all cases in which these duties are to~~ 1869
~~be performed or for a particular case, shall be as prescribed in~~ 1870
~~regulations promulgated by the governor. These regulations may~~ 1871
~~provide that an oath or affirmation to faithfully perform duties~~ 1872
~~as a military judge, trial counsel, assistant trial counsel,~~ 1873
~~defense counsel, or assistant defense counsel may be taken at any~~ 1874
~~time by any judge advocate, law specialist, or other person~~ 1875
~~certified to be qualified or competent for the duty, and if such~~ 1876
~~oath is taken it need not again be taken at the time the judge~~ 1877
~~advocate, law specialist, or other person is detailed to that duty~~ 1878
in the presence of the accused and shall be substantially as 1879
follows: 1880

(1) For a member of the court: 1881

"You,, do swear (or affirm) that you will 1882
faithfully perform all the duties incumbent upon you as a member 1883
of this court; that you will faithfully and impartially try, 1884

according to the evidence, your conscience, and the laws and 1885
regulations provided for trials by courts-martial, the case of 1886
(the) (each) accused now before this court; and that if any doubt 1887
should arise not explained by the laws and regulations, then 1888
according to the best of your understanding and the customs of the 1889
service in like cases; that you will not divulge the findings or 1890
sentence in any case until they shall have been duly announced by 1891
the court; and that you will not disclose or discover the vote or 1892
opinion of any particular member of the court upon a challenge or 1893
upon the findings or sentence unless required to do so before a 1894
court of justice in due course of law. So help you God (or under 1895
penalty of perjury)." 1896

(2) For a military judge: 1897

"You,, do swear (or affirm) that you will 1898
faithfully and impartially perform, according to your conscience 1899
and the laws and regulations provided for trials by 1900
courts-martial, all the duties incumbent upon you as military 1901
judge of this court; that if any doubt should arise not explained 1902
by the laws and regulations, then according to the best of your 1903
understanding and the customs of the service in like cases; and 1904
that you will not divulge the findings or sentence in any case 1905
until they shall have been duly announced by the court. So help 1906
you God (or under penalty of perjury)." 1907

(3) For trial counsel and assistant trial counsel: 1908

"You,, do swear (or affirm) that you will 1909
faithfully perform the duties of trial counsel and will not 1910
divulge the findings or sentence of the court to any but the 1911
proper authority until they shall be duly disclosed. So help you 1912
God (or under penalty of perjury)." 1913

(4) For defense counsel and assistant defense counsel: 1914

"You,, do swear (or affirm) that you will 1915

faithfully perform the duties of defense counsel and will not 1916
divulge the findings or sentence of the court to any but the 1917
proper authority until they shall be duly disclosed. So help you 1918
God (or under penalty of perjury)." 1919

(5) For a reporter or interpreter: 1920

"You,, do swear (or affirm) that you will 1921
faithfully perform the duties of reporter (or interpreter) to this 1922
court. So help you God (or under penalty of perjury)." 1923

(B) Each witness before a ~~military court~~ court-martial shall 1924
be examined on oath or affirmation. The presiding officer shall 1925
administer an oath or affirmation in substantially the following 1926
form: 1927

"You,, do swear (or affirm) that the evidence you 1928
shall give in the case now in hearing shall be the truth, the 1929
whole truth, and nothing but the truth. So help you God (or under 1930
penalty of perjury)." 1931

Sec. 5924.43. (A) ~~A person charged with desertion or absence~~ 1932
~~without leave in time of war, or with aiding the enemy or with~~ 1933
~~mutiny, or with murder, may be tried and punished at any time~~ 1934
~~without limitation.~~ 1935

~~(B) Except as otherwise provided in this section, a person~~ 1936
~~charged with desertion in time of peace or any of the offenses~~ 1937
~~punishable under sections 5924.119 to 5924.132 of the Revised~~ 1938
~~Code, is not liable to be tried by court martial if the offense~~ 1939
~~was committed more than three years before the receipt of sworn~~ 1940
~~charges and specifications by an officer exercising summary~~ 1941
~~court martial jurisdiction over the command.~~ 1942

~~(C) Except as otherwise provided in this section, a person~~ 1943
~~charged with any an offense punishable under this code is not~~ 1944
~~liable to be tried by court-martial or punished under section~~ 1945

5924.15 of the Revised Code if the offense was committed more than 1946
~~two~~ four years before the receipt of sworn charges and 1947
specifications by an officer exercising ~~summary~~ court-martial 1948
jurisdiction over the command ~~or before the imposition of~~ 1949
~~punishment under section 5924.15 of the Revised Code.~~ 1950

~~(D)~~(B) Periods in which the accused was absent from ~~territory~~ 1951
~~in which the state has the authority to apprehend him, or is~~ in 1952
the custody of civil authorities, or in the hands of the enemy, 1953
shall be excluded in computing the period of limitation prescribed 1954
in this section. 1955

Sec. 5924.44. (A) No person may, ~~without his consent,~~ be 1956
tried a second time in any ~~military or civil court~~ court-martial 1957
of ~~the~~ this state for the same offense. 1958

(B) No proceeding in which an accused has been found guilty 1959
by a court-martial upon any charge or specification is a trial ~~in~~ 1960
~~the sense~~ for purposes of this section until the finding of guilty 1961
has become final after review of the case has been fully 1962
completed. 1963

(C) A proceeding ~~which~~ that, after the introduction of 1964
evidence but before a finding, is dismissed or terminated by the 1965
convening authority or on motion of the prosecution for ~~failure~~ 1966
want of available evidence or witnesses without any fault of the 1967
accused is a trial ~~in the sense~~ for purposes of this section. 1968

Sec. 5924.45. (A) ~~If an~~ An accused after arraignment ~~makes an~~ 1969
~~irregular pleading, or after a plea of guilty sets up matter~~ 1970
~~inconsistent with the plea, or if it appears that he has entered~~ 1971
~~the plea of guilty improvidently or through lack of understanding~~ 1972
~~of its meaning and effect, or if he fails or refuses to~~ may plead, 1973
~~a plea of not guilty shall be entered in the record, and the court~~ 1974
~~shall proceed as though he had pleaded not guilty.~~ 1975

~~(B) A plea of guilty by the accused may not be accepted to any charge or specification alleging an offense for which the death penalty may be adjudged. If a plea of guilty has been accepted by the military judge or by a court martial without a military judge, a finding of guilty, if permitted by regulations promulgated by the governor, shall be entered immediately without 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 2007
described in division (C)(3) of this section; 2008

(5) That, if the accused pleads guilty, the military judge 2009
will question the accused about the offenses to which the accused 2010
has pleaded guilty, and that, if the accused answers the questions 2011
under oath, on the record, and in the presence of counsel, the 2012
accused's answers may later be used against the accused in a 2013
prosecution for perjury or false statement. 2014

(D) The military judge shall not accept a plea of guilty 2015
without first addressing the accused personally and determining 2016
that the plea is voluntary and not the result of fear, threats, or 2017
promises. The military judge shall also inquire as to whether the 2018
accused's willingness to plead guilty results from prior 2019
discussions between the convening authority, a representative of 2020
the convening authority, or trial counsel and the accused or 2021
defense counsel. 2022

(E) The military judge shall not accept a plea of guilty 2023
without making an inquiry of the accused that satisfies the 2024
military judge that there is a factual basis for the plea. The 2025
accused shall be questioned under oath about the offenses charged. 2026

(F) When a negotiated plea of guilty or no contest to one or 2027
more offenses charged or to one or more other or lesser offenses 2028
is offered, the underlying agreement upon which the plea is based 2029
shall be stated on the record in open court. 2030

(G) If the court refuses to accept a plea of guilty or no 2031
contest, the court shall enter a plea of not guilty on behalf of 2032
the accused, and neither plea shall be admissible in evidence or 2033
be the subject of comment by the trial counsel or court. 2034

(H) The defense of not guilty by reason of insanity must be 2035
pleaded at the time of arraignment, except that the court for good 2036
cause shown shall permit a plea of not guilty by reason of 2037

insanity to be entered at any time before trial. 2038

(I) A motion to withdraw a plea of guilty or no contest may 2039
be made only before sentence is imposed, but to correct manifest 2040
injustice the court after sentence may set aside the judgment of 2041
conviction and permit the accused to withdraw the plea. 2042

(J) An accused who is found guilty after pleading guilty 2043
waives any objection, whether or not previously raised, relating 2044
to the factual issue of guilt of the offense to which the plea was 2045
made. 2046

Sec. 5924.46. (A) The trial counsel, the defense counsel, and 2047
the court-martial shall have equal opportunity to obtain witnesses 2048
and other evidence in accordance with such regulations as the 2049
~~governor~~ adjutant general may prescribe. 2050

~~(B) The president of a court martial or a summary court~~ 2051
~~officer may:~~ 2052

~~(1) Issue a warrant for the arrest of any accused person who,~~ 2053
~~having been served with a warrant and a copy of the charges,~~ 2054
~~disobeys a written order by the convening authority to appear~~ 2055
~~before the court;~~ 2056

~~(2) Issue subpoenas duces tecum and other subpoenas;~~ 2057

~~(3) Enforce by attachment the attendance of witnesses and the~~ 2058
~~production of books and papers; and~~ 2059

~~(4) Sentence for refusal to be sworn or to answer, as~~ 2060
~~provided in actions before civil courts of the state.~~ 2061

~~(C)~~ Process issued in court-martial cases to compel witnesses 2062
to appear and testify and to compel the production of other 2063
evidence shall be substantially similar to process that may be 2064
issued by the courts of this state in criminal cases and shall run 2065
to any part of the state. 2066

Sec. 5924.47. ~~(A)~~ Any person not subject to this code who~~+~~ 2067

~~(1) Has has been duly subpoenaed to appear as a witness or to 2068
produce books and records before a military court or before any 2069
military or civil officer designated to take a deposition to be 2070
read in evidence before ~~such~~ a military court~~+~~ 2071~~

~~(2) Has or has been duly paid or tendered the fees and 2072
mileage of a witness at the rates provided for under section 2073
119.094 of the Revised Code~~+~~ and 2074~~

~~(3) Willfully who willfully neglects or refuses to appear, or 2075
refuses to qualify as a witness or to testify or to produce any 2076
evidence ~~which~~ that the person may have been legally subpoenaed to 2077
produce; ~~is guilty of an offense against the state and,~~ may be 2078
punished for contempt in the ~~same~~ manner ~~as if committed before~~ 2079
~~civil courts of the state provided for in Chapter 2705. of the~~ 2080
Revised Code. 2081~~

Sec. 5924.48. A military court, in the manner provided for in 2082
Chapter 2705. of the Revised Code, may punish for contempt any 2083
person who ~~uses any menacing word, sign, or gesture in its 2084
presence, or who disturbs its proceedings by any riot or disorder. 2085
The punishment may not exceed confinement for thirty days or a 2086
fine of one hundred dollars, or both~~ is guilty of any act 2087
described in section 2705.02 of the Revised Code. 2088

Sec. 5924.49. ~~(A)~~ At any time after charges have been signed 2089
as provided in section 5924.30 of the Revised Code, any party may 2090
take oral or written depositions ~~unless the military judge or 2091
court martial without a military judge hearing the case or, if the 2092
case is not being heard, an authority competent to convene a 2093
court martial for the trial of those charges forbids it for good 2094
cause. If a deposition is to be taken before charges are referred 2095
for trial, such an authority may designate commissioned officers 2096~~

~~to represent the prosecution and the defense and may authorize
those officers to take the deposition of any witness.~~ 2097
2098

~~(B) The party at whose instance a deposition is to be taken
shall give to every other party reasonable written notice of the
time and place for taking the deposition.~~ 2099
2100
2101

~~(C) Depositions may be taken before and authenticated by any
military or civil officer authorized by the laws of the state or
by the laws of the place where the deposition is taken to
administer oaths.~~ 2102
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~~(D) A duly authenticated deposition, taken upon reasonable
notice to the other parties, so far as otherwise admissible under
the rules of evidence, may be read in evidence before any
court martial or in any proceeding before a court of inquiry, if
it appears:~~ 2106
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~~(1) That the witness resides or is beyond the state in which
the court martial or court of inquiry is ordered to sit, or beyond
the distance of one hundred miles from the place of trial or
hearing;~~ 2111
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~~(2) That the witness by reason of death, age, sickness,
bodily infirmity, imprisonment, military necessity, nonamenability
to process, or other reasonable cause, is unable or refused to
appear and testify in person at the place of trial or hearing;~~ 2115
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~~(3) That the present whereabouts of the witness is unknown;
or~~ 2119
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~~(4) That the deposition was taken in the physical presence of
the accused in the manner and for the purposes provided in the
Ohio Rules of Criminal Procedure.~~ 2121
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Sec. 5924.50. ~~(A) In any case not capital and not extending
to the dismissal of a commissioned officer, the sworn testimony,
contained in the duly authenticated record of proceedings of a~~ 2124
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~~court board of inquiry, officers~~ of a person whose oral testimony 2127
cannot be obtained, may, if otherwise admissible under the rules 2128
of evidence, be read in evidence by any party before a 2129
court-martial if the accused was a party before the ~~court board of~~ 2130
~~inquiry officers~~ and if the same issue was involved or if the 2131
accused consents to the introduction of such evidence, ~~and if the~~ 2132
~~accused was physically present when the testimony was taken.~~ 2133

(B) Such testimony may be read in evidence only by the 2134
defense in cases extending to the dismissal of a commissioned 2135
officer. 2136

(C) Such testimony may also be read in evidence before a 2137
court of inquiry or a ~~military board of officers.~~ 2138

Sec. 5924.501. (A) In an action under this code, the military 2139
judge, trial counsel, defense counsel, or civilian counsel may 2140
raise the issue of the accused's competence to stand trial. If the 2141
issue is raised before the trial has commenced, the court shall 2142
hold a hearing on the issue as provided in this section. If the 2143
issue is raised after the trial has commenced, the court shall 2144
hold a hearing on the issue only for good cause shown or on the 2145
court's own motion. 2146

(B) The court shall conduct the hearing required or 2147
authorized under division (A) of this section within thirty days 2148
after the issue is raised unless the accused has been referred for 2149
evaluation in which case the court shall conduct the hearing 2150
within ten days after the filing of the report of the evaluation. 2151
A hearing may be continued for good cause. 2152

(C) The accused shall be represented by counsel at the 2153
hearing conducted under division (B) of this section. 2154

(D) The trial counsel and defense counsel may submit evidence 2155
on the issue of the accused's competence to stand trial. A written 2156

report of the evaluation of the accused may be admitted into 2157
evidence at the hearing by stipulation, but, if either the 2158
government or defense objects to its admission, the report may be 2159
admitted under seal of court in camera to the military judge. 2160

(E) The court shall not find an accused incompetent to stand 2161
trial solely because the accused is receiving or has received 2162
treatment as a voluntary or involuntary mentally ill patient under 2163
Chapter 5122. of the Revised Code or because the accused is 2164
receiving or has received psychotropic drugs or other medication, 2165
even if the accused might become incompetent to stand trial 2166
without the drugs or medication. 2167

(F) An accused is presumed to be competent to stand trial. 2168
If, after a hearing, the court finds by a preponderance of the 2169
evidence that, because of the accused's present mental condition, 2170
the accused is incapable of understanding the nature and objective 2171
of the proceedings against the accused or of assisting in the 2172
accused's defense, the court shall find the accused incompetent to 2173
stand trial and shall enter an order authorized by section 2174
5924.503 of the Revised Code. 2175

Sec. 5924.502. (A) If the issue of an accused's competence to 2176
stand trial is raised or if an accused enters a plea of not guilty 2177
by reason of insanity, the court may order one or more evaluations 2178
of the accused's present mental condition or, in the case of a 2179
plea of not guilty by reason of insanity, of the accused's mental 2180
condition at the time of the offense charged. An examiner shall 2181
conduct the evaluation. 2182

(B) If the court orders more than one evaluation under 2183
division (A) of this section, the trial counsel and the defense 2184
counsel may recommend to the court an examiner whom each prefers 2185
to perform one of the evaluations. If an accused enters a plea of 2186
not guilty by reason of insanity and if the court does not 2187

designate an examiner recommended by the defense counsel, the 2188
court shall inform the accused that the accused may have 2189
independent expert evaluation and that it will be obtained for the 2190
accused at public expense. 2191

(C) If the court orders an evaluation under division (A) of 2192
this section, the accused shall be available at the times and 2193
places established by the examiners who are to conduct the 2194
evaluation. The court may order an accused who is not being held 2195
in pretrial confinement to submit to an evaluation under this 2196
section. If an accused who is not being held in pretrial 2197
confinement refuses to submit to a complete evaluation, the court 2198
may order the sheriff to take the accused into custody and deliver 2199
the accused to a center, program, or facility operated or 2200
certified by the department of mental health where the accused may 2201
be held for evaluation for a reasonable period of time not to 2202
exceed twenty days. 2203

(D) An accused who is being held in pretrial confinement may 2204
be evaluated at the accused's place of detention. Upon the request 2205
of the examiner, the court may order the sheriff to transport the 2206
accused to a program or facility operated or certified by the 2207
department of mental health, where the accused may be held for 2208
evaluation for a reasonable period of time not to exceed twenty 2209
days, and to return the accused to the place of detention after 2210
the evaluation. 2211

(E) If a court orders the evaluation to determine an 2212
accused's mental condition at the time of the offense charged, the 2213
court shall inform the examiner of the offense with which the 2214
accused is charged. 2215

(F) In conducting an evaluation of an accused's mental 2216
condition at the time of the offense charged, the examiner shall 2217
consider all relevant evidence. If the offense charged involves 2218
the use of force against another person, the relevant evidence to 2219

be considered includes, but is not limited to, any evidence that 2220
the accused suffered at the time of the commission of the offense 2221
from the "battered woman syndrome." 2222

(G) The examiner shall file a written report with the court 2223
within thirty days after entry of a court order for evaluation, 2224
and the court shall provide copies of the report to the trial 2225
counsel and defense counsel. The report shall include all of the 2226
following: 2227

(1) The examiner's findings; 2228

(2) The facts in reasonable detail on which the findings are 2229
based; 2230

(3) If the evaluation was ordered to determine the accused's 2231
competence to stand trial, all of the following findings or 2232
recommendations that are applicable: 2233

(a) Whether the accused is capable of understanding the 2234
nature and objective of the proceedings against the accused or of 2235
assisting in the accused's defense; 2236

(b) If the examiner's opinion is that the accused is 2237
incapable of understanding the nature and objective of the 2238
proceedings against the accused or of assisting in the accused's 2239
defense, whether the accused presently is mentally ill; 2240

(c) If the examiner's opinion is that the accused is 2241
incapable of understanding the nature and objective of the 2242
proceedings against the accused or of assisting in the accused's 2243
defense, the examiner's opinion as to the likelihood of the 2244
accused becoming capable of understanding the nature and objective 2245
of the proceedings against the accused and of assisting in the 2246
accused's defense within one year if the accused is provided with 2247
a course of treatment; 2248

(d) If the examiner's opinion is that the accused is 2249

incapable of understanding the nature and objective of the 2250
proceedings against the accused or of assisting in the accused's 2251
defense and that the accused presently is mentally ill, the 2252
examiner's recommendation as to the least restrictive placement or 2253
commitment alternative, consistent with the accused's treatment 2254
needs for restoration to competency and with the safety of the 2255
community; 2256

(e) If the accused is charged before a special or summary 2257
court-martial with an offense that is not a violation of section 2258
5924.120, 5924.127, or 5924.128 of the Revised Code and the 2259
examiner's opinion is that the accused is incapable of 2260
understanding the nature and objective of the proceedings against 2261
the accused or of assisting in the accused's defense and that the 2262
accused is presently mentally ill, the examiner's recommendation 2263
as to whether the accused is amenable to engagement in mental 2264
health treatment. 2265

(4) If the evaluation was ordered to determine the accused's 2266
mental condition at the time of the offense charged, the 2267
examiner's findings as to whether the accused at the time of the 2268
offense charged did not know, as a result of a severe mental 2269
disease or defect, the wrongfulness of the accused's acts charged. 2270

(H) An examiner appointed under divisions (A) and (B) of this 2271
section to evaluate an accused to determine the accused's 2272
competence to stand trial also may be appointed to evaluate an 2273
accused who has entered a plea of not guilty by reason of 2274
insanity, but an examiner of that nature shall prepare separate 2275
reports on the issue of competence to stand trial and the defense 2276
of not guilty by reason of insanity. 2277

(I) No statement that an accused makes in an evaluation or 2278
hearing under divisions (A) to (H) of this section relating to the 2279
accused's competence to stand trial or to the accused's mental 2280
condition at the time of the offense charged may be used against 2281

the accused on the issue of guilt in any criminal action or 2282
proceeding, but, in a criminal action or proceeding, the trial 2283
counsel or defense counsel may call as a witness any person who 2284
evaluated the accused or prepared a report pursuant to a referral 2285
under this section. Neither the appointment nor the testimony of 2286
an examiner appointed under this section precludes the trial 2287
counsel or defense counsel from calling other witnesses or 2288
presenting other evidence on competency or insanity issues. 2289

(J) Persons appointed as examiners under divisions (A) and 2290
(B) of this section or under division (H) of this section shall be 2291
paid a reasonable amount for their services and expenses, as 2292
certified by the court. 2293

Sec. 5924.503. (A) If the issue of an accused's competence to 2294
stand trial is raised and if the court, upon conducting the 2295
hearing provided for in section 5924.502 of the Revised Code, 2296
finds that the accused is competent to stand trial, the accused 2297
shall be proceeded against as provided by law. If the court finds 2298
the accused competent to stand trial and the accused is receiving 2299
psychotropic drugs or other medication, the court may authorize 2300
the continued administration of the drugs or medication or other 2301
appropriate treatment in order to maintain the accused's 2302
competence to stand trial unless the accused's attending physician 2303
advises the court against continuation of the drugs, other 2304
medication, or treatment. 2305

(B)(1)(a) If, after taking into consideration all relevant 2306
reports, information, and other evidence, the court finds that the 2307
accused is incompetent to stand trial and that there is a 2308
substantial probability that the accused will become competent to 2309
stand trial within one year if the accused is provided with a 2310
course of treatment, the court shall order the accused to undergo 2311
treatment. If the accused is being tried by a general 2312

court-martial and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the accused is incompetent to stand trial, but the court is unable at that time to determine whether there is a substantial probability that the accused will become competent to stand trial within one year if the accused is provided with a course of treatment, the court shall order continuing evaluation and treatment of the accused for a period not to exceed four months to determine whether there is a substantial probability that the accused will become competent to stand trial within one year if the accused is provided with a course of treatment.

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

In committing the accused to the department of mental health, 2345
the court shall consider the extent to which the person is a 2346
danger to the person and to others, the need for security, and the 2347
type of crime involved and, if the court finds that restrictions 2348
on the accused's freedom of movement are necessary, shall specify 2349
the least restrictive limitations on the person's freedom of 2350
movement determined to be necessary to protect public safety. In 2351
weighing these factors, the court shall give preference to 2352
protecting public safety. 2353

(c) If the accused is found incompetent to stand trial, if 2354
the chief clinical officer of the hospital, facility, or agency 2355
where the accused is placed, or the managing officer of the 2356
institution, the director of the facility, or the person to which 2357
the accused is committed for treatment or continuing evaluation 2358
and treatment under division (B)(1)(b) of this section determines 2359
that medication is necessary to restore the accused's competency 2360
to stand trial, and if the accused lacks the capacity to give 2361
informed consent or refuses medication, the chief clinical officer 2362
of the hospital, facility, or agency where the accused is placed 2363
or the managing officer of the institution, the director of the 2364
facility, or the person to which the accused is committed for 2365
treatment or continuing evaluation and treatment may petition the 2366
court for authorization for the involuntary administration of 2367
medication. The court shall hold a hearing on the petition within 2368
five days of the filing of the petition. Following the hearing, 2369
the court may authorize the involuntary administration of 2370
medication or may dismiss the petition. 2371

(d) If the accused is charged before a special or summary 2372
court-martial with an offense that is not a violation of section 2373
5924.120, 5924.127, or 5924.128 of the Revised Code, the trial 2374
counsel may hold the charges in abeyance while the accused engages 2375
in mental health treatment. 2376

(2) If the court finds that the accused is incompetent to stand trial and that, even if the accused is provided with a course of treatment, there is not a substantial probability that the accused will become competent to stand trial within one year, the court shall order the discharge of the accused, unless upon motion of the trial counsel or on its own motion, the court either seeks to retain jurisdiction over the accused pursuant to division (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. 2377
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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. 2393
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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: 2399
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(1) One year, if the accused is being tried by a general court-martial; 2403
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(2) Six months, if the accused is being tried before a special court-martial; 2405
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(3) Sixty days, if the accused is being tried before a 2407

summary court-martial. 2408

(D) Any accused who is committed pursuant to this section 2409
shall not voluntarily admit the accused or be voluntarily admitted 2410
to a hospital or institution pursuant to section 5122.02 or 2411
5122.15 of the Revised Code. 2412

(E) Except as otherwise provided in this division, an accused 2413
who is charged with an offense and is committed by the court under 2414
this section to the department of mental health with restrictions 2415
on the accused's freedom of movement shall not be granted 2416
unsupervised on-grounds movement, supervised off-grounds movement, 2417
or nonsecured status except in accordance with the court order. 2418
The court may grant an accused supervised off-grounds movement to 2419
obtain medical treatment or specialized habilitation treatment 2420
services if the person who supervises the treatment or the 2421
continuing evaluation and treatment of the accused ordered under 2422
division (B)(1)(a) of this section informs the court that the 2423
treatment or continuing evaluation and treatment cannot be 2424
provided at the hospital or facility where the accused is placed 2425
by the department of mental health. The chief clinical officer of 2426
the hospital or facility where the accused is placed by the 2427
department of mental health or the managing officer of the 2428
institution or director of the facility to which the accused is 2429
committed or a designee of any of those persons may grant an 2430
accused movement to a medical facility for an emergency medical 2431
situation with appropriate supervision to ensure the safety of the 2432
accused, staff, and community during that emergency medical 2433
situation. The chief clinical officer of the hospital or facility 2434
where the accused is placed by the department of mental health or 2435
the managing officer of the institution or director of the 2436
facility to which the accused is committed shall notify the court 2437
within twenty-four hours of the accused's movement to the medical 2438
facility for an emergency medical situation under this division. 2439

(F) The person who supervises the treatment or continuing evaluation and treatment of an accused ordered to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall file a written report with the court at the following times: 2440
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(1) Whenever the person believes the accused is capable of understanding the nature and objective of the proceedings against the accused and of assisting in the accused's defense; 2445
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(2) Fourteen days before expiration of the maximum time for treatment as specified in division (C) of this section and fourteen days before the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section; 2448
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(3) At a minimum, after each six months of treatment; 2453

(4) Whenever the person who supervises the treatment or continuing evaluation and treatment of an accused ordered under division (B)(1)(a) of this section believes that there is not a substantial probability that the accused will become capable of understanding the nature and objective of the proceedings against the accused or of assisting in the accused's defense even if the accused is provided with a course of treatment. 2454
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(G) A report under division (F) of this section shall contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to the accused's capability of understanding the nature and objective of the proceedings against the accused and of assisting in the accused's defense. If, in the examiner's opinion, the accused remains incapable of understanding the nature and objective of the proceedings against the accused and of assisting in the accused's defense and there is a substantial probability that the accused will become capable of understanding the nature and objective of 2461
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the proceedings against the accused and of assisting in the 2471
accused's defense if the accused is provided with a course of 2472
treatment, if in the examiner's opinion the accused remains 2473
mentally ill, and if the maximum time for treatment as specified 2474
in division (C) of this section has not expired, the report also 2475
shall contain the examiner's recommendation as to the least 2476
restrictive placement or commitment alternative that is consistent 2477
with the accused's treatment needs for restoration to competency 2478
and with the safety of the community. The court shall provide 2479
copies of the report to the trial counsel and defense counsel. 2480

(H) If an accused is committed pursuant to division (B)(1) of 2481
this section, within ten days after the treating physician of the 2482
accused or the examiner of the accused who is employed or retained 2483
by the treating facility advises that there is not a substantial 2484
probability that the accused will become capable of understanding 2485
the nature and objective of the proceedings against the accused or 2486
of assisting in the accused's defense even if the accused is 2487
provided with a course of treatment, within ten days after the 2488
expiration of the maximum time for treatment as specified in 2489
division (C) of this section, within ten days after the expiration 2490
of the maximum time for continuing evaluation and treatment as 2491
specified in division (B)(1)(a) of this section, within thirty 2492
days after an accused's request for a hearing that is made after 2493
six months of treatment, or within thirty days after being advised 2494
by the treating physician or examiner that the accused is 2495
competent to stand trial, whichever is the earliest, the court 2496
shall conduct another hearing to determine if the accused is 2497
competent to stand trial and shall do whichever of the following 2498
is applicable: 2499

(1) If the court finds that the accused is competent to stand 2500
trial, the accused shall be proceeded against as provided by law. 2501

(2) If the court finds that the accused is incompetent to 2502

stand trial, but that there is a substantial probability that the 2503
accused will become competent to stand trial if the accused is 2504
provided with a course of treatment, and the maximum time for 2505
treatment as specified in division (C) of this section has not 2506
expired, the court, after consideration of the examiner's 2507
recommendation, shall order that treatment be continued, may 2508
change least restrictive limitations on the accused's freedom of 2509
movement. 2510

(3) If the court finds that the accused is incompetent to 2511
stand trial, if the accused is being tried by a general 2512
court-martial, and if the court finds that there is not a 2513
substantial probability that the accused will become competent to 2514
stand trial even if the accused is provided with a course of 2515
treatment, or if the maximum time for treatment as specified in 2516
division (C) of this section has expired, further proceedings 2517
shall be as provided in sections 5924.504 to 5924.506 of the 2518
Revised Code. 2519

(4) If the court finds that the accused is incompetent to 2520
stand trial, if the accused is being tried before a special 2521
court-martial, and if the court finds that there is not a 2522
substantial probability that the accused will become competent to 2523
stand trial even if the accused is provided with a course of 2524
treatment, or if the maximum time for treatment as specified in 2525
division (C) of this section has expired, the court shall dismiss 2526
the charge against the accused. A dismissal under this division is 2527
not a bar to further prosecution based on the same conduct. The 2528
court shall discharge the accused unless the court or trial 2529
counsel files an affidavit in probate court for civil commitment 2530
pursuant to Chapter 5122. of the Revised Code. If an affidavit for 2531
civil commitment is filed, the court may detain the accused for 2532
ten days pending civil commitment. All of the following provisions 2533
apply to persons being tried by a special court-martial who are 2534

committed by the probate court subsequent to the court's or trial 2535
counsel's filing of an affidavit for civil commitment under 2536
authority of this division: 2537

(a) The chief clinical officer of the entity, hospital, or 2538
facility, the managing officer of the institution, or the person 2539
to which the accused is committed or admitted shall do all of the 2540
following: 2541

(i) Notify the trial counsel in writing of the discharge of 2542
the accused, send the notice at least ten days prior to the 2543
discharge unless the discharge is by the probate court and state 2544
in the notice the date on which the accused will be discharged; 2545

(ii) Notify the trial counsel in writing when the accused is 2546
absent without leave or is granted unsupervised, off-grounds 2547
movement and send this notice promptly after the discovery of the 2548
absence without leave or prior to the granting of the 2549
unsupervised, off-grounds movement, whichever is applicable; 2550

(iii) Notify the trial counsel in writing of the change of 2551
the accused's commitment or admission to voluntary status, send 2552
the notice promptly upon learning of the change to voluntary 2553
status, and state in the notice the date on which the accused was 2554
committed or admitted on a voluntary status. 2555

(b) The trial counsel shall promptly inform the convening 2556
authority of any notification received under division (H)(4)(a) of 2557
this section. Upon receiving notice that the accused will be 2558
granted unsupervised, off-grounds movement, the convening 2559
authority either shall refer the charges against the accused to an 2560
investigating officer again or promptly notify the court that the 2561
convening authority does not intend to refer the charges against 2562
the accused again. 2563

(I) If an accused is convicted of a crime and sentenced to 2564
confinement, the accused's sentence shall be reduced by the total 2565

number of days the accused is confined for evaluation to determine 2566
the accused's competence to stand trial or treatment under this 2567
section and sections 5924.502 and 5924.504 of the Revised Code or 2568
by the total number of days the accused is confined for evaluation 2569
to determine the accused's mental condition at the time of the 2570
offense charged. 2571

Sec. 5924.504. (A) If an accused being tried by a general 2572
court-martial is found incompetent to stand trial, after the 2573
expiration of the maximum time for treatment as specified in 2574
division (C) of section 5924.503 of the Revised Code or after the 2575
court finds that there is not a substantial probability that the 2576
accused will become competent to stand trial even if the accused 2577
is provided with a course of treatment, one of the following 2578
applies: 2579

(1) The court or the trial counsel may file an affidavit in 2580
probate court for civil commitment of the accused in the manner 2581
provided in Chapter 5122. of the Revised Code. If the court or 2582
trial counsel files an affidavit for civil commitment, the court 2583
may detain the accused for ten days pending civil commitment. If 2584
the probate court commits the accused subsequent to the court's or 2585
trial counsel's filing of an affidavit for civil commitment, the 2586
chief clinical officer of the entity, hospital, or facility, the 2587
managing officer of the institution, or the person to which the 2588
accused is committed or admitted shall send to the trial counsel 2589
the notices described in divisions (H)(4)(a)(i) to (iii) of 2590
section 5924.503 of the Revised Code within the periods of time 2591
and under the circumstances specified in those divisions. 2592

(2) On the motion of the trial counsel or on its own motion, 2593
the court may retain jurisdiction over the accused if at a hearing 2594
the court finds both of the following by clear and convincing 2595
evidence: 2596

(a) The accused committed the offense with which the accused 2597
is charged. 2598

(b) The accused is a mentally ill person subject to 2599
hospitalization by court order. 2600

(B) In making its determination under division (A)(2) of this 2601
section as to whether to retain jurisdiction over the accused, the 2602
court may consider all relevant evidence, including, but not 2603
limited to, any relevant psychiatric, psychological, or medical 2604
testimony or reports, the acts constituting the offense charged, 2605
and any history of the accused that is relevant to the accused's 2606
ability to conform to the law. 2607

(C) If the court conducts a hearing as described in division 2608
(A)(2) of this section and if the court does not make both 2609
findings described in divisions (A)(2)(a) and (b) of this section 2610
by clear and convincing evidence, the court shall dismiss the 2611
charges against the accused. Upon the dismissal, the court shall 2612
discharge the accused unless the court or trial counsel files an 2613
affidavit in probate court for civil commitment of the accused 2614
pursuant to Chapter 5122. of the Revised Code. If the court or 2615
trial counsel files an affidavit for civil commitment, the court 2616
may order that the accused be detained for up to ten days pending 2617
the civil commitment. If the probate court commits the accused 2618
subsequent to the court's or trial counsel's filing of an 2619
affidavit for civil commitment, the chief clinical officer of the 2620
entity, hospital, or facility, the managing officer of the 2621
institution, or the person to which the accused is committed or 2622
admitted shall send to the trial counsel the notices described in 2623
divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised 2624
Code within the periods of time and under the circumstances 2625
specified in those divisions. A dismissal of charges under this 2626
division is not a bar to further criminal proceedings based on the 2627
same conduct. 2628

(D)(1) If the court conducts a hearing as described in 2629
division (A)(2) of this section and if the court makes the 2630
findings described in divisions (A)(2)(a) and (b) of this section 2631
by clear and convincing evidence, the court shall commit the 2632
accused, if determined to require mental health treatment, to the 2633
department of mental health for treatment at a hospital, facility, 2634
or agency as determined clinically appropriate by the department 2635
of mental health. In committing the accused to the department of 2636
mental health, the court shall specify the least restrictive 2637
limitations on the accused's freedom of movement determined to be 2638
necessary to protect public safety. 2639

(2) If a court makes a commitment of an accused under 2640
division (D)(1) of this section, the trial counsel shall send to 2641
the hospital, facility, or agency where the accused is placed by 2642
the department of mental health or to the accused's place of 2643
commitment all reports of the accused's current mental condition 2644
and, except as otherwise provided in this division, any other 2645
relevant information, including, but not limited to, a transcript 2646
of the hearing held pursuant to division (A)(2) of this section, 2647
copies of relevant investigative reports, and copies of any prior 2648
arrest and conviction records that pertain to the accused and that 2649
the trial counsel possesses. The trial counsel shall send the 2650
reports of the accused's current mental condition in every case of 2651
commitment, and, unless the trial counsel determines that the 2652
release of any of the other relevant information to unauthorized 2653
persons would interfere with the effective prosecution of any 2654
person or would create a substantial risk of harm to any person, 2655
the trial counsel also shall send the other relevant information. 2656

(3) If a court makes a commitment under division (D)(1) of 2657
this section, all further proceedings shall be in accordance with 2658
Chapter 5122. of the Revised Code. 2659

Sec. 5924.505. For purposes of sections 5924.502 and 5924.506 2660
of the Revised Code, a person is "not guilty by reason of 2661
insanity" relative to a charge of an offense only as described in 2662
division (A)(14) of section 2901.01 of the Revised Code. Proof 2663
that a person's reason, at the time of the commission of an 2664
offense, was so impaired that the person did not have the ability 2665
to refrain from doing the person's act or acts, does not 2666
constitute a defense. 2667

Sec. 5924.506. (A) If an accused person is found not guilty 2668
by reason of insanity, the verdict shall state that finding, and 2669
the trial court shall conduct a full hearing to determine whether 2670
the person is a mentally ill person subject to hospitalization by 2671
court order. Prior to the hearing, if the military judge believes 2672
that there is probable cause that the person found not guilty by 2673
reason of insanity is a mentally ill person subject to 2674
hospitalization by court order, the military judge may issue a 2675
temporary order of detention for that person to remain in effect 2676
for ten court days or until the hearing, whichever occurs first. 2677

Any person detained pursuant to a temporary order of 2678
detention issued under this division shall be held in a suitable 2679
facility, taking into consideration the place and type of 2680
confinement prior to and during trial. 2681

(B) The court shall hold the hearing under division (A) of 2682
this section to determine whether the person found not guilty by 2683
reason of insanity is a mentally ill person subject to 2684
hospitalization by court order within ten court days after the 2685
finding of not guilty by reason of insanity. Failure to conduct 2686
the hearing within the ten-day period shall cause the immediate 2687
discharge of the respondent, unless the judge grants a continuance 2688
for not longer than ten court days for good cause shown or for any 2689
period of time upon motion of the respondent. 2690

(C) If a person is found not guilty by reason of insanity, 2691
the person has the right to attend a hearing conducted pursuant to 2692
this section. At the hearing, the court shall inform the person 2693
that the person has all of the following rights: 2694

(1) The right to be represented by defense counsel or to 2695
retain civilian counsel, if the person so chooses; 2696

(2) The right to have independent expert evaluation; 2697

(3) The right to subpoena witnesses and documents, to present 2698
evidence on the person's behalf, and to cross-examine witnesses 2699
against the person; 2700

(4) The right to testify in the person's own behalf and to 2701
not be compelled to testify; 2702

(5) The right to have copies of any relevant medical or 2703
mental health document in the custody of the state or of any place 2704
of commitment other than a document for which the court finds that 2705
the release to the person of information contained in the document 2706
would create a substantial risk of harm to any person. 2707

(D) The hearing under division (A) of this section shall be 2708
open to the public, and the court shall conduct the hearing in 2709
accordance with regulations prescribed by the adjutant general. 2710
The court shall make and maintain a full transcript and record of 2711
the hearing proceedings. The court may consider all relevant 2712
evidence, including, but not limited to, any relevant psychiatric, 2713
psychological, or medical testimony or reports, the acts 2714
constituting the offense in relation to which the person was found 2715
not guilty by reason of insanity, and any history of the person 2716
that is relevant to the person's ability to conform to the law. 2717

(E) Upon completion of the hearing under division (A) of this 2718
section, if the court finds there is not clear and convincing 2719
evidence that the person is a mentally ill person subject to 2720
hospitalization by court order, the court shall discharge the 2721

person, unless a detainer has been placed upon the person by the 2722
department of rehabilitation and correction, in which case the 2723
person shall be returned to that department. 2724

(F) If, at the hearing under division (A) of this section, 2725
the court finds by clear and convincing evidence that the person 2726
is a mentally ill person subject to hospitalization by court 2727
order, it shall commit the person to the department of mental 2728
health for placement in a hospital, facility, or agency as 2729
determined clinically appropriate by the department of mental 2730
health. Further proceedings shall be in accordance with Chapter 2731
5122. or 5123. of the Revised Code. In committing the accused to 2732
the department of mental health, the court shall specify the least 2733
restrictive limitations on the accused's freedom of movement 2734
determined to be necessary to protect public safety. 2735

(G) If a court makes a commitment of a person under division 2736
(F) of this section, the trial counsel shall send to the hospital, 2737
facility, or agency where the defendant is placed by the 2738
department of mental health or to the accused's place of 2739
commitment all reports of the person's current mental condition, 2740
and, except as otherwise provided in this division, any other 2741
relevant information, including, but not limited to, a transcript 2742
of the hearing held pursuant to division (A) of this section, 2743
copies of relevant investigative reports, and copies of any prior 2744
arrest and conviction records that pertain to the person and that 2745
the trial counsel possesses. The trial counsel shall send the 2746
reports of the person's current mental condition in every case of 2747
commitment, and, unless the trial counsel determines that the 2748
release of any of the other relevant information to unauthorized 2749
persons would interfere with the effective prosecution of any 2750
person or would create a substantial risk of harm to any person, 2751
the trial counsel also shall send the other relevant information. 2752

(H) A person who is committed pursuant to this section shall 2753

not voluntarily admit the person or be voluntarily admitted to a 2754
hospital or institution pursuant to sections 5122.02 and 5122.15 2755
of the Revised Code. 2756

Sec. 5924.51. (A) Voting by members of a general or special 2757
court-martial on the findings and on the sentence, and by members 2758
of a court-martial without a military judge upon questions of 2759
challenge, shall be by secret written ballot. The junior member of 2760
the court shall in each case count the votes. The count shall be 2761
checked by the president, who shall forthwith announce the result 2762
of the ballot to the members of the court. 2763

(B) The military judge and, except for questions of 2764
challenge, the president of a court-martial without a military 2765
judge shall rule upon all questions of law and all interlocutory 2766
questions arising during the proceedings. Any such ruling made by 2767
the military judge upon any question of law or any interlocutory 2768
question other than the factual issue of mental responsibility of 2769
the accused, or by the president of a special court-martial, 2770
without a military judge upon any question of law other than a 2771
motion for a finding of not guilty, is final and constitutes the 2772
ruling of the court. However, the military judge or the president 2773
of a court-martial without a military judge may change the ruling 2774
at any time during the trial. Unless the ruling is final, if any 2775
member objects thereto, the court shall be cleared and closed and 2776
the question decided by a voice vote as provided in section 2777
5924.52 of the Revised Code, beginning with the junior in rank. 2778

(C) Before a vote is taken on the findings, the military 2779
judge or the president of a court-martial without a military judge 2780
shall, in the presence of the accused and counsel, instruct the 2781
members of the court as to the elements of the offense and charge 2782
~~the court~~ them: 2783

(1) That the accused must be presumed to be innocent until 2784

his guilt is established by legal and competent evidence beyond 2785
reasonable doubt; 2786

(2) That in the case being considered, if there is a 2787
reasonable doubt as to the guilt of the accused, the doubt must be 2788
resolved in favor of the accused, and ~~he~~ the accused must be 2789
acquitted; 2790

(3) That, if there is a reasonable doubt as to the degree of 2791
guilt, the finding must be in a lower degree as to which there is 2792
no reasonable doubt; and 2793

(4) That the burden of proof to establish the guilt of the 2794
accused beyond reasonable doubt is upon the state. 2795

(D) Divisions (A), (B), and (C) of this section do not apply 2796
to a court-martial composed of a military judge only. The military 2797
judge of such a court-martial shall determine all questions of law 2798
and fact arising during the proceedings and, if the accused is 2799
convicted, adjudge an appropriate sentence. The military judge of 2800
such a court-martial shall make a general finding and shall in 2801
addition on request ~~find the facts specially~~ make specific 2802
findings of fact. If an opinion or memorandum of decision is 2803
filed, it will be sufficient if the findings of fact appear 2804
therein. 2805

Sec. 5924.52. (A) ~~(1) No person may be convicted of an offense 2806
for which the death penalty is made mandatory by law, except by 2807
the concurrence of all members of the court martial present at the 2808
time the vote is taken. 2809~~

~~(2) No person may be convicted of any other offense, except 2810
as provided in division (B) of section 5924.45 of the Revised Code 2811
or by the concurrence of two-thirds of the members of the 2812
court-martial present at the time the vote is taken. 2813~~

~~(B) (1) No person may be sentenced to suffer death, except by 2814~~

~~the concurrence of all members of the court martial present at the~~ 2815
~~time the vote is taken and for an offense in this chapter~~ 2816
~~expressly made punishable by death.~~ 2817

~~(2) No person may be sentenced to life imprisonment or to~~ 2818
~~confinement for more than ten years, except by the concurrence of~~ 2819
~~three fourths of the members present at the time the vote is~~ 2820
~~taken.~~ 2821

~~(3) All other sentences shall be determined by the~~ 2822
~~concurrence of two thirds of the members present at the time the~~ 2823
~~vote is taken.~~ 2824

~~(C)~~ All other questions to be decided by the members of a 2825
general or special court-martial shall be determined by a majority 2826
vote, but a determination to reconsider a finding of guilty or to 2827
reconsider a sentence, to decrease or lessen it, may be made by 2828
any lesser vote ~~which~~ that indicates that the reconsideration is 2829
not opposed by the number of votes required for that finding or 2830
sentence. A tie vote on a challenge disqualifies the member 2831
challenged. A tie vote on a motion for a finding of not guilty or 2832
on a motion relating to the question of the accused's sanity is a 2833
determination against the accused. A tie vote on any other 2834
question is a determination in favor of the accused. 2835

Sec. 5924.54. (A) Each general court-martial shall keep a 2836
separate record of the proceedings in each case brought before it, 2837
and the record shall be authenticated by the signature of the 2838
military judge. If the record cannot be authenticated by the 2839
military judge by reason of ~~his~~ death, disability, or absence, it 2840
shall be authenticated by the signature of the trial counsel or by 2841
that of a member if the trial counsel is unable to authenticate it 2842
by reason of ~~his~~ death, disability, or absence. In a court-martial 2843
consisting of only a military judge, the record shall be 2844
authenticated by the court reporter under the same conditions 2845

~~which that would impose such a duty on a member under this 2846
division if the proceedings have resulted in an acquittal of all 2847
charges and specifications or, if not affecting a general or flag 2848
officer, in a sentence not including discharge and not in excess 2849
of that which may otherwise be adjudged by a special 2850
court-martial. The record shall contain matters as may be 2851
prescribed by regulations of the governor. 2852~~

(B) Each special and summary court-martial shall keep a 2853
separate record of the proceedings in each case, ~~which and the 2854
record shall contain such matter and be authenticated in such the 2855
manner as may be required by regulations which the governor may 2856
prescribe~~ prescribed by the adjutant general. 2857

(C)(1) A complete record of the proceedings and testimony 2858
shall be prepared in the following cases: 2859

(a) Each case tried before a general court-martial in which 2860
the sentence adjudged includes a dismissal, a discharge, or any 2861
punishment that exceeds the punishment that may otherwise be 2862
adjudged by a special court-martial; 2863

(b) Each case tried before a special court-martial in which 2864
the sentence adjudged includes a bad-conduct discharge or 2865
confinement for more than six months. 2866

(2) In all other cases tried before a court-martial, the 2867
record shall contain any matters that are required by regulations 2868
of the adjutant general. A copy of the record of the proceedings 2869
of each general and special court-martial shall be given to the 2870
accused as soon as it is authenticated. ~~If a verbatim record of 2871
trial by general or special court-martial is not required under 2872
divisions (A) and (B) of this section, the accused may buy such a 2873
record under such regulations as the governor may prescribe.~~ 2874

Sec. 5924.56. The punishment ~~which~~ that a court-martial may 2875

direct for an offense may not exceed limits prescribed by ~~this~~ 2876
~~code or such lesser limits as the governor may prescribe~~ adjutant 2877
general for the offense. 2878

Sec. 5924.57. (A) ~~Whenever a sentence of a court martial as~~ 2879
~~lawfully adjudged and approved includes a forfeitures~~ (1) A 2880
forfeiture of pay or allowances ~~in addition to confinement not~~ 2881
~~suspended or deferred, the forfeiture may apply to pay or~~ 2882
~~allowances becoming due on or after the date the sentence is~~ 2883
~~approved by the convening authority. No forfeiture may extend to~~ 2884
~~any pay or allowances accrued before that date~~ or reduction in 2885
grade that is included in a sentence of a court-martial takes 2886
effect on the earlier of the date that is fourteen days after the 2887
date on which the sentence is adjudged or the date on which the 2888
sentence is approved by the convening authority. 2889

(2) On application of an accused, the convening authority may 2890
defer a forfeiture of pay or allowances or reduction in grade that 2891
would otherwise become effective on the date that is fourteen days 2892
after the date on which the sentence is adjudged until the date on 2893
which the sentence is approved by the convening authority. The 2894
convening authority may at any time rescind a deferment granted 2895
under this division. 2896

(3) A forfeiture of pay or allowances applies to pay or 2897
allowances accruing on and after the date on which the sentence 2898
takes effect. 2899

(B) Any period of confinement included in a sentence of a 2900
court-martial begins to run from the date the sentence is adjudged 2901
by the court-martial, but periods during which the sentence to 2902
confinement is suspended or deferred shall be excluded in 2903
computing the service of the term of confinement. ~~Regulations~~ 2904
~~prescribed by the governor may provide that sentences of~~ 2905
~~confinement may not be executed until approved by designated~~ 2906

~~officers.~~ 2907

(C) All other sentences of courts-martial are effective on 2908
the date ordered executed. 2909

(D)(1) On application by an accused who is under sentence to 2910
confinement that has not been ordered executed, the convening 2911
authority or, if the accused is no longer under ~~his~~ the convening 2912
authority's jurisdiction, the ~~governor,~~ officer exercising general 2913
court-martial jurisdiction over the command to which the accused 2914
is currently assigned may in ~~his~~ the officer's sole discretion 2915
defer service of the sentence to confinement. The deferment shall 2916
terminate when the sentence is ordered executed. The deferment may 2917
be rescinded at any time by the officer who granted it or, if the 2918
accused is no longer under ~~his~~ the officer's jurisdiction, by the 2919
~~governor~~ officer exercising general court-martial jurisdiction 2920
over the command to which the accused is currently assigned. 2921

(2) In any case in which a court-martial sentences a person 2922
described in division (D)(3) of this section to confinement, the 2923
convening authority may defer the service of the sentence to 2924
confinement, without the consent of that person, until after the 2925
person has been permanently released to the armed forces by a 2926
state or foreign country referred to in that division. 2927

(3) Division (D)(2) of this section applies to a person 2928
subject to this chapter who, while in the custody of a state or 2929
foreign country, is temporarily returned by that state or foreign 2930
country to the armed forces for trial by court-martial and after 2931
the court-martial is returned to that state or foreign country 2932
under the authority of a mutual agreement or treaty. 2933

(4) As used in division (D)(3) of this section, "state" 2934
includes the District of Columbia and any state, commonwealth, 2935
territory, or possession of the United States having a national 2936
guard. 2937

(E) In any case in which a sentence to confinement has been 2938
ordered executed but in which review of the case under section 2939
5924.64 of the Revised Code is pending, the adjutant general may 2940
defer further service of the sentence while the review is pending. 2941

Sec. 5924.58. (A) A Subject to regulations prescribed by the 2942
adjutant general, a sentence of confinement adjudged by a 2943
court-martial or other military court tribunal, whether or not the 2944
sentence includes discharge or dismissal, and whether or not the 2945
discharge or dismissal has been executed, may be carried into 2946
execution by confinement in any ~~place of confinement under the~~ 2947
~~control of any of the forces of the organized militia or in any~~ 2948
~~jail or prison designated for that purpose~~ jail or correctional 2949
facility in this state. Persons so confined ~~in a jail or prison~~ 2950
are subject to the same discipline and treatment as persons 2951
confined or committed to the jail or ~~prison~~ correctional facility 2952
by the courts of the state or of any political subdivision ~~thereof~~ 2953
of the state. 2954

~~(B) The omission of the words "hard labor" from any sentence~~ 2955
~~or punishment of a court martial adjudging confinement does not~~ 2956
~~deprive the authority executing that sentence or punishment of the~~ 2957
~~power to require hard labor as a part of the punishment.~~ 2958

~~(C) The keepers, officers, and wardens of city or county~~ 2959
~~jails and of other jails or prisons designated by the governor, or~~ 2960
~~by such person as he may authorize to act under section 5924.11 of~~ 2961
~~the Revised Code and of this code, shall receive persons ordered~~ 2962
~~into confinement before trial and persons committed to confinement~~ 2963
~~by a military court and shall confine them according to law. No~~ 2964
~~such keeper, officer, or warden may require payment of any fee or~~ 2965
~~charge~~ kind may be required for so ~~receiving or confining a person~~ 2966
housing a prisoner under this code. 2967

Sec. 5924.581. (A) Except as otherwise provided in 2968
regulations made by the adjutant general, a court-martial sentence 2969
of an enlisted member in a pay grade above E-1 that includes a 2970
dishonorable or bad-conduct discharge, confinement, or hard labor 2971
without confinement reduces the member to pay grade E-1, effective 2972
on the date the convening authority approves the sentence. 2973

(B) If the sentence of a member who is reduced in pay grade 2974
under division (A) of this section is set aside or disapproved, or 2975
as finally approved does not include a dishonorable or bad-conduct 2976
discharge, confinement, or hard labor without confinement, the 2977
rights and privileges of which the member was deprived because of 2978
the reduction in pay are restored, and the member shall be paid 2979
the pay and allowances that the member would have been paid for 2980
the period the reduction was in effect had the member not been 2981
reduced in pay. 2982

Sec. 5924.582. (A) A member who receives a court-martial 2983
sentence that includes confinement for more than six months or 2984
confinement for six months or less and a dishonorable or 2985
bad-conduct discharge or dismissal forfeits pay, or pay and 2986
allowances, during any period of confinement or parole. The 2987
forfeiture takes effect on the date determined under section 2988
5924.57 of the Revised Code and may be deferred as provided by 2989
that section. The pay and allowances forfeited as a result of a 2990
sentence imposed by a general court-martial shall be all pay and 2991
allowances due during any period of confinement or parole. The pay 2992
and allowances forfeited as a result of a sentence imposed by a 2993
special court-martial shall be two-thirds of all pay and 2994
allowances due during any period of confinement or parole. 2995

(B) If a member subject to forfeiture of pay or pay and 2996
allowances under division (A) of this section has dependents, the 2997
convening authority or other person acting under section 5924.60 2998

of the Revised Code may waive all or part of the forfeiture of pay 2999
and allowances for a period not exceeding six months. Any pay or 3000
allowances paid as a result of a waiver shall be paid, as the 3001
convening authority or other person taking action directs, to the 3002
dependents of the accused member. 3003

(C) If the sentence of a member who forfeits pay and 3004
allowances under division (A) of this section is set aside or 3005
disapproved or, as finally approved, does not provide for a 3006
punishment that includes confinement for more than six months or 3007
confinement for six months or less and a dishonorable or 3008
bad-conduct discharge or dismissal, the member shall be paid the 3009
pay and allowances that the member would have been paid for the 3010
period the forfeiture was in effect had the member's pay and 3011
allowances not been forfeited. 3012

Sec. 5924.59. (A) A finding or sentence of a court-martial 3013
may not be held incorrect on the ground of an error of law unless 3014
the error materially prejudices the substantial rights of the 3015
accused. 3016

(B) Any reviewing authority with the power to approve or 3017
affirm a finding of guilty may instead approve or affirm so much 3018
of the finding as includes a lesser included offense. 3019

Sec. 5924.60. ~~After a trial by (A) A court-martial, the~~ 3020
~~record shall be forwarded~~ report its findings and sentence to the 3021
convening authority, ~~as reviewing authority, and action thereon~~ 3022
~~may be taken by~~ after announcing the person who convened the 3023
court, a commissioned officer commanding for the time being, a 3024
~~successor in command, or by the governor~~ sentence. 3025

(B)(1) The accused may submit to the convening authority 3026
matters relating to the findings and sentence to the convening 3027
authority for its consideration. A submission shall be in writing. 3028

A submission shall be made within ten days after the accused has 3029
been given an authenticated record of trial and, if applicable, 3030
the recommendation of the staff judge advocate or legal officer 3031
under division (D) of this section or, in a summary court-martial 3032
case, within seven days after the sentence is announced. 3033

(2) The convening authority or other person taking action 3034
under this section, for good cause shown by the accused, may 3035
extend the period for submission of matters under division (B)(1) 3036
of this section for not more than twenty days. 3037

(3) In a summary court-martial case, the summary court 3038
officer shall promptly provide the accused with a copy of the 3039
record of trial for use in preparing a submission authorized by 3040
division (B)(1) of this section. 3041

(4) The accused may waive the right to make a submission 3042
under division (B)(1) of this section. A waiver shall be made in 3043
writing and may not be revoked. The time within which the accused 3044
may make a submission under this subsection expires upon the 3045
submission of a waiver to the convening authority. 3046

(C)(1) The authority under this section to act on the 3047
findings and sentence of a court-martial is a matter of command 3048
prerogative involving the sole discretion of the convening 3049
authority. Pursuant to regulations prescribed by the adjutant 3050
general, a commissioned officer commanding for the time being, a 3051
successor in command, or any person exercising general 3052
court-martial jurisdiction may act under this section in place of 3053
the convening authority. 3054

(2) The convening authority or another person authorized to 3055
act under this section may act on the sentence of a court-martial 3056
pursuant to division (B)(3) of this section. Subject to 3057
regulations prescribed by the adjutant general, the convening 3058
authority or other authorized person may act only after the 3059

accused submits matters under division (B) of this section or the 3060
time for submitting matters expires, whichever is earlier. If the 3061
accused makes a submission, the convening authority or other 3062
authorized person shall take the submission into consideration 3063
before acting. 3064

(3) The convening authority or other authorized person, in 3065
the convening authority's or other authorized person's sole 3066
discretion, may approve, disapprove, commute, or suspend the 3067
sentence of a court-martial in whole or in part. The convening 3068
authority or other authorized person acting on a sentence may but 3069
is not required to take action on the findings of the 3070
court-martial. A convening authority or other authorized person 3071
that chooses to act on the findings may dismiss any charge or 3072
specification by setting aside a finding of guilt with regard to 3073
that charge or specification or may change a finding of guilty 3074
with regard to a charge or specification to a finding of guilty to 3075
an offense that is a lesser included offense of the offense stated 3076
in the charge or specification. 3077

(D) Before acting under this section on any general 3078
court-martial case or on any special court-martial case that 3079
includes a bad-conduct discharge, the convening authority or other 3080
authorized person shall obtain and consider the written 3081
recommendation of the convening authority's or other authorized 3082
person's staff judge advocate or legal officer. The convening 3083
authority or other authorized person shall refer the record of 3084
trial to the staff judge advocate or legal officer. The staff 3085
judge advocate or legal officer shall use the record in the 3086
preparation of a recommendation. The recommendation shall include 3087
any matters that the adjutant general may require by regulation 3088
and shall be served on the accused. The accused may submit any 3089
matter in response under division (B) of this section. If in the 3090
accused's response, the accused does not object to one or more 3091

matters contained in the recommendation, the accused waives the 3092
right to object to those matters. 3093

(E)(1) The convening authority or other authorized person, in 3094
the convening authority's or other authorized person's sole 3095
discretion, may order a proceeding in revision or a rehearing. 3096

(2) The convening authority or other authorized person may 3097
order a proceeding in revision if there is an apparent error or 3098
omission in the record of a court-martial or if the record shows 3099
improper or inconsistent action by a court-martial with respect to 3100
the findings or sentence that can be rectified without material 3101
prejudice to the substantial rights of the accused. In a 3102
proceeding in revision, the convening authority or other 3103
authorized person may not do any of the following: 3104

(a) Reconsider a finding of not guilty of any specification 3105
or a ruling that amounts to a finding of not guilty; 3106

(b) Reconsider a finding of not guilty of any charge, unless 3107
there has been a finding of guilty under a specification laid 3108
under that charge that sufficiently alleges a violation of any 3109
provision of this chapter; 3110

(c) Increase the severity of the sentence. 3111

(3) The convening authority or other authorized person may 3112
order a rehearing if the convening authority or other authorized 3113
person disapproves the findings or sentence and states the reasons 3114
for disapproval of the findings or sentence. If the convening 3115
authority or other authorized person disapproves the findings or 3116
sentence and does not order a rehearing, the convening authority 3117
or other authorized person shall dismiss the charges. A convening 3118
authority or other authorized person may not order a rehearing as 3119
to the findings if the record does not contain sufficient evidence 3120
to support the findings. A convening authority or other authorized 3121
person may order a rehearing as to the sentence if the convening 3122

authority or other authorized person disapproves the sentence. 3123

Sec. 5924.61. (A) An accused may appeal a finding of guilty 3124
or the sentence of a court-martial to the court of military 3125
appeals. The court shall hear an appeal if the convening authority 3126
or other authorized person approved a sentence of dismissal of a 3127
commissioned officer, dishonorable or bad conduct discharge, or 3128
confinement for one year or more and if the appeal was timely 3129
filed. The court may hear any other appeals that the court, in its 3130
sole discretion, allows. 3131

(B) An accused who is found guilty may appeal under this 3132
section by filing a notice of appeal with the convening authority 3133
that ordered the court-martial within thirty calendar days after 3134
the convening authority serves a copy of the approved findings and 3135
sentence on the trial attorney of record for the accused or, if 3136
the accused waived the right to counsel, on the accused in 3137
accordance with regulations prescribed by the adjutant general. 3138
The notice of appeal shall state the name of the party taking the 3139
appeal, the findings, sentence, or parts of the findings or 3140
sentence appealed from, and the grounds for the appeal. Failure to 3141
file a notice of appeal in a timely manner constitutes a waiver of 3142
the right to appeal. 3143

(C) Upon receiving a notice of appeal, the convening 3144
authority shall serve a copy of the notice on the trial counsel 3145
and on the trial attorney of record for any codefendant or, if a 3146
codefendant waived the right to counsel, on the codefendant in 3147
accordance with regulations prescribed by the adjutant general. 3148
The convening authority shall note on each copy served the date on 3149
which the notice of appeal was filed. Failure of the convening 3150
authority to serve a copy of the notice of appeal does not affect 3151
the validity of the appeal. Service in accordance with division 3152
(C) of this section is sufficient notwithstanding the death of a 3153

party or a party's counsel. The convening authority shall note on 3154
its docket the names of the parties served, the dates on which 3155
they were served, and the method of service. 3156

(D) An accused may waive appellate review by filing with the 3157
convening authority, within ten days after the action under 3158
section 5924.60 of the Revised Code is served on the accused or on 3159
defense counsel, a written waiver signed by the accused and by 3160
defense counsel. The convening authority or other person taking 3161
such action, for good cause, may extend the period for filing by 3162
not more than thirty days. 3163

(E) An accused may voluntarily withdraw an appeal at any time 3164
by filing a notice of withdrawal with the convening authority. 3165

(F) A waiver of the right to appellate review or the 3166
withdrawal of an appeal bars any further review under this section 3167
or section 5924.69 of the Revised Code. 3168

Sec. 5924.62. (A) In a trial by court-martial in which a 3169
military judge presides and in which a punitive discharge may be 3170
adjudged, the state may appeal any of the following, except an 3171
order or ruling that is, or that amounts to, a finding of not 3172
guilty with respect to the charge or specification: 3173

(1) An order or ruling that terminates the proceedings with 3174
respect to a charge or specification; 3175

(2) An order or ruling that excludes evidence that is of 3176
substantial consequence to the determination of the material 3177
issues in the proceeding; 3178

(3) An order or ruling that directs the disclosure of 3179
classified information; 3180

(4) An order or ruling that imposes sanctions for 3181
nondisclosure of classified information; 3182

(5) A refusal by the military judge to issue a protective 3183

order sought by the state to prevent the disclosure of classified information; 3184
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(6) A refusal by the military judge to enforce a protective order that has previously been issued by appropriate authority to prevent the disclosure of classified information. 3186
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(B) The state may not appeal an order or ruling unless within seventy-two hours after the military judge serves the order or ruling the trial counsel files with the military judge a written notice of appeal from the order or ruling. The notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one that excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding. 3189
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(C) Appellate government counsel shall diligently prosecute an appeal under this section to the court of military appeals created by section 5924.66 of the Revised Code. 3197
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(D) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. 3200
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~~**Sec. 5924.63. (A) If the convening authority disapproves the findings and sentence of a court martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.**~~ 3205
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~~(B) Each rehearing ordered pursuant to section 5924.60 of the Revised Code or by the court of military appeals shall take place~~ 3212
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before a court-martial composed of members who were not members of 3214
the court-martial ~~which~~ that first heard the case. Upon a 3215
rehearing the accused may not be tried for any offense of which ~~he~~ 3216
the accused was found not guilty by the first court-martial, and 3217
no sentence in excess of or more severe than the original sentence 3218
may be ~~imposed~~, approved unless the sentence is based upon a 3219
finding of guilty of an offense not considered upon the merits in 3220
the original proceedings, or unless the sentence prescribed for 3221
the offense is mandatory. If the sentence approved after the first 3222
court-martial was in accordance with a pretrial agreement and the 3223
accused at the rehearing changes the accused's plea with respect 3224
to the charges or specifications upon which the pretrial agreement 3225
was based or otherwise does not comply with the pretrial 3226
agreement, the approved sentence as to those charges or 3227
specifications may include any punishment not in excess of the 3228
punishment lawfully adjudged at the first court-martial. 3229

Sec. 5924.64. (A) A judge advocate shall review pursuant to 3230
regulations prescribed by the adjutant general each case in which 3231
there has been a finding of guilty and in which no appeal is 3232
taken. A judge advocate may not review a case under this section 3233
if the judge advocate has acted in the same case as an accuser, 3234
investigating officer, member of the court, military judge, or 3235
counsel or has otherwise acted on behalf of the prosecution or 3236
defense. For each case reviewed under this section, the judge 3237
advocate shall issue written findings and recommendations that 3238
contain all of the following: 3239

(1) Conclusions as to whether the court had jurisdiction over 3240
the accused and the offense; 3241

(2) Conclusions as to whether the charge and specification 3242
stated an offense; 3243

(3) Conclusions as to whether the sentence was within the 3244

<u>limits prescribed by law;</u>	3245
<u>(4) A response to each allegation of error made in writing by the accused;</u>	3246
<u>(5) If the case is sent for action under division (B) of this section, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.</u>	3248
<u>(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:</u>	3252
<u>(1) The judge advocate who reviewed the case recommends corrective action.</u>	3258
<u>(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.</u>	3260
<u>(3) Regulations prescribed by the adjutant general require further review.</u>	3263
<u>(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:</u>	3265
<u>(1) Approve or disapprove the findings or sentence in whole or in part;</u>	3268
<u>(2) Remit, commute, or suspend the sentence in whole or in part;</u>	3270
<u>(3) Order a rehearing on the findings, the sentence, or both;</u>	3272
<u>(4) Dismiss the charges.</u>	3273

(D) If a rehearing is ordered but the convening authority finds that a rehearing is impracticable, the convening authority shall dismiss the charges. 3274
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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 least as favorable to the accused as that recommended by the judge advocate, the convening authority shall transmit the record of trial and action on that record to the state judge advocate for review. 3277
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(F) The judge advocate who under this section reviews a case conducted by a general court-martial shall be the state judge advocate. 3285
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Sec. 5924.65. If an accused files a notice of appeal, the convening authority shall transmit the record of trial and post-trial proceedings in the case to the state judge advocate for appropriate action. If the accused does not file a notice of appeal or files a notice of appeal and withdraws the appeal, then following completion of all post-trial review, the record of trial and related documents shall be transmitted and disposed of as the adjutant general may prescribe by regulation. 3288
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Sec. 5924.66. (A) There is hereby created the court of military appeals. The court is a court of record and has exclusive jurisdiction of all appeals from courts-martial convened pursuant to this code. The court shall sit in Franklin county. All hearings conducted by the court shall be public. 3296
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(B) The judges of the court of military appeals shall be military appellate judges appointed by the adjutant general. Each judge shall be a retired judge advocate officer who has previously 3301
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served in the rank of colonel or above in either the Ohio army 3304
national guard or the Ohio air national guard. The judges shall 3305
sit in panels of not less than three members. 3306

(C) The adjutant general may make rules governing practice 3307
and procedure in the court of military appeals. The Rules of 3308
Appellate Procedure apply in proceedings in the court to the 3309
extent that they are not inconsistent with this code or with rules 3310
made by the adjutant general under this division. 3311

Sec. 5924.67. A judge of the court of military appeals shall 3312
receive as compensation for each day of attendance on the business 3313
of the court an amount equal to the annual compensation of a judge 3314
of a court of appeals divided by the number of days in the 3315
calendar year. A judge who resides more than fifty miles from the 3316
location of the court also shall be reimbursed for the judge's 3317
actual and necessary expenses of traveling to and from the court 3318
to attend the business of the court. 3319

Sec. 5924.68. The court of military appeals may subpoena 3320
witnesses, require the production of evidence, and punish for 3321
contempt in the same manner and to the same extent as a common 3322
pleas court. 3323

Sec. 5924.69. Appeals from orders and judgments of the court 3324
of military appeals may be taken to the supreme court in the same 3325
manner and to the same extent as criminal appeals from orders and 3326
judgments of a court of appeals. 3327

Sec. 5924.70. (A) The state judge advocate shall detail one 3328
or more judge advocates as appellate government counsel and one or 3329
more judge advocates assigned to the United States army trial 3330
defense service or the United States air force area defense 3331
counsel as appellate defense counsel. Appellate counsel shall be 3332

members in good standing of the bar of this state and certified by 3333
the state judge advocate to be competent to act as appellate 3334
counsel. 3335

(B) Appellate government counsel shall represent the state in 3336
the court of military appeals. In a case arising under this code 3337
that is heard in the supreme court, appellate government counsel 3338
shall represent the state in the supreme court unless the attorney 3339
general elects to represent the state. 3340

(C) Appellate defense counsel shall represent the accused in 3341
the court of military appeals and the supreme court unless the 3342
accused elects to be represented by civilian counsel at the 3343
accused's own expense. 3344

(D) Appellate government and defense counsel shall perform 3345
any additional functions in connection with post-trial proceedings 3346
in court-martial cases that the state judge advocate directs. 3347

Sec. 5924.71. (A) If the sentence of a court-martial of a 3348
commissioned officer or cadet includes dismissal, that part of the 3349
sentence providing for dismissal may not be executed until it is 3350
approved by the adjutant general. The adjutant general may 3351
commute, remit, or suspend the sentence or any part of the 3352
sentence as the adjutant general sees fit. In time of war or 3353
national emergency, the adjutant general may commute a sentence of 3354
dismissal to reduction to any enlisted grade. A person so reduced 3355
may be required to serve for the duration of the war or emergency 3356
and for six months after the end of the war or emergency. 3357

(B)(1) If the sentence of a court-martial includes dismissal 3358
or dishonorable or bad-conduct discharge and the accused appeals 3359
to the court of military appeals, the dismissal or discharge part 3360
of the sentence may not be executed until the appellate process 3361
has been completed and, in case of dismissal, approval of the 3362
sentence by the adjutant general. The appellate process is 3363

completed when any of the following occurs: 3364

(a) The accused withdraws the appeal. 3365

(b) The court of military appeals renders a decision, and the 3366
time for filing a notice of appeal to the supreme court elapses 3367
without the accused having filed a notice of appeal. 3368

(c) The supreme court issues an order dismissing the appeal 3369
or entering judgment on the leave to appeal. 3370

(2) If the sentence of a court-martial includes dismissal or 3371
dishonorable or bad-conduct discharge and the accused fails to 3372
appeal to the court of military appeals, waives appellate review, 3373
or withdraws an appeal, the dismissal or discharge part of the 3374
sentence may not be executed until a judge advocate has reviewed 3375
the case and the convening authority has completed action in the 3376
review pursuant to section 5924.64 of the Revised Code. Any other 3377
part of a court-martial sentence may be ordered executed by the 3378
convening authority or other person acting on the case under 3379
section 5924.60 of the Revised Code. 3380

(C) The convening authority or other person taking action on 3381
a court-martial case under section 5924.60 of the Revised Code may 3382
suspend at any time the execution of any sentence or part of a 3383
sentence. 3384

Sec. 5924.72. (A) An officer having special court-martial 3385
jurisdiction over a person whose sentence has been suspended may 3386
recommend vacation of the suspension of an approved sentence or 3387
part of a sentence that was imposed by a special court-martial and 3388
includes a bad-conduct discharge or that was imposed by a general 3389
court-martial. 3390

(B) Before the vacation of vacating the suspension of a 3391
special court martial sentence which as approved includes a bad 3392
conduct discharge, or of any general court martial or part of a 3393

sentence under division (A) of this section, ~~the an~~ officer having 3394
special court-martial jurisdiction over ~~the probationer~~ a person 3395
whose sentence has been suspended shall hold a hearing on the 3396
alleged violation of ~~probation~~ the terms of suspension. The 3397
~~probationer shall~~ person has the right to be represented at the 3398
hearing by counsel ~~if he so desires~~. 3399

~~(B)~~(C) The record of the hearing and the recommendation of 3400
the officer having special court-martial jurisdiction shall be 3401
sent for action to the ~~governor in cases involving a~~ officer 3402
exercising general court-martial ~~sentence and to the commanding~~ 3403
~~officer of the force of the organized militia of which~~ 3404
jurisdiction over the ~~probationer is a member in all other cases~~ 3405
~~covered by division (A) of this section~~ person whose sentence has 3406
been suspended. If ~~the governor or commanding~~ that officer vacates 3407
the suspension, any unexecuted part of the sentence except a 3408
dismissal shall be executed, subject to applicable restrictions 3409
set forth in section 5924.71 of the Revised Code. A vacation of 3410
the suspension of a dismissal is not effective until it is 3411
approved by the adjutant general. 3412

~~(C)~~(D) The suspension of any other sentence may be vacated by 3413
any authority competent to convene, for the command in which the 3414
accused is serving or assigned, a court of the kind that imposed 3415
the sentence. 3416

Sec. 5924.73. At any time within two years after approval by 3417
the convening authority of a court-martial sentence, the accused 3418
may petition the ~~governor~~ adjutant general for a new trial on the 3419
ground of newly discovered evidence or fraud on the court-martial. 3420
The adjutant general shall act upon the petition unless the case 3421
is pending before the court of military appeals or the supreme 3422
court, in which case the adjutant general shall refer the petition 3423
to the court in which the appeal is pending. 3424

Sec. 5924.74. (A) ~~A~~ The adjutant general, the state judge 3425
advocate when authorized by the adjutant general, or a convening 3426
authority may remit or suspend any part or amount of the 3427
unexecuted part of any sentence, including all uncollected 3428
forfeitures, other than a sentence approved by the governor or a 3429
superior convening authority. 3430

(B) The ~~governor~~ adjutant general may, for good cause, 3431
substitute an administrative form of discharge for a discharge or 3432
dismissal executed in accordance with the sentence of a 3433
court-martial. 3434

Sec. 5924.75. (A) Under ~~such~~ any regulations ~~as~~ that the 3435
~~governor~~ adjutant general may prescribe, all rights, privileges, 3436
and property affected by an executed part of a court-martial 3437
sentence ~~which~~ that has been set aside or disapproved, except an 3438
executed dismissal or discharge, shall be restored unless a new 3439
trial or rehearing is ordered and ~~such~~ the executed part of the 3440
sentence is included in a sentence imposed upon the new trial or 3441
rehearing. 3442

(B) If a previously executed sentence of dishonorable or bad 3443
conduct discharge is not imposed on a new trial, the ~~governor~~ 3444
adjutant general shall substitute therefor a form of discharge 3445
authorized for administrative issuance unless the accused is to 3446
serve out the remainder of ~~his~~ the accused's enlistment. 3447

(C) If a previously executed sentence of dismissal is not 3448
imposed on a new trial, the ~~governor~~ adjutant general shall 3449
substitute therefor a form of discharge authorized for 3450
administrative issue, and the commissioned officer dismissed by 3451
that sentence may be reappointed by the ~~governor~~ adjutant general 3452
alone to such commissioned grade and with such rank as in the 3453
opinion of the ~~governor~~ adjutant general that former officer would 3454

have attained had ~~he~~ the former officer not been dismissed. The 3455
reappointment of such a former officer ~~may~~ shall be made if 3456
without regard to the existence of a position vacancy is available 3457
under applicable tables and shall affect the promotion status of 3458
organization other officers only to the extent directed by the 3459
adjutant general. All time between the dismissal and the 3460
reappointment shall be considered as service for all purposes 3461
including the right to pay and allowances. 3462

(D) Pursuant to regulations prescribed by the adjutant 3463
general, an accused who has been sentenced by a court-martial may 3464
be required to take leave pending completion of action under this 3465
code if the sentence, as approved under section 5924.60 of the 3466
Revised Code, includes an unsuspended dismissal or an unsuspended 3467
dishonorable or bad-conduct discharge. The accused may be required 3468
to begin leave on the date on which the sentence is approved or at 3469
any time after that date. Leave may be continued until the date on 3470
which action is completed or may be terminated at any earlier 3471
time. 3472

Sec. 5924.76. The appellate review of records of trial 3473
pursuant to this code, the proceedings, findings, and sentences of 3474
courts-martial as reviewed and approved, as required by reviewed, 3475
or affirmed pursuant to this code, and all dismissals and 3476
discharges carried into execution under sentences by 3477
courts-martial following ~~review and approval, as required by~~ 3478
review, or affirmation pursuant to this code, are final and 3479
conclusive. Orders publishing the proceedings of courts-martial 3480
and all action taken pursuant to those proceedings are binding 3481
upon all departments, courts, agencies, and officers of the state, 3482
subject only to action upon a petition for a new trial as provided 3483
in section 5924.73 of the Revised Code and to action by the 3484
adjutant general under section 5924.74 of this code the Revised 3485
Code. 3486

Sec. 5924.761. Pursuant to regulations prescribed by the 3487
adjutant general, an accused who has been sentenced by a 3488
court-martial may be required to take leave pending completion of 3489
action under sections 5924.59 to 5924.761 of the Revised Code if 3490
the sentence, as approved under section 5924.60 of the Revised 3491
Code, includes an unsuspended dismissal or an unsuspended 3492
dishonorable or bad-conduct discharge. The accused may be required 3493
to begin the leave on the date on which the sentence is approved 3494
under section 5924.60 of the Revised Code or at any time after 3495
that date, and the leave may be continued until the date on which 3496
action under sections 5924.59 to 5924.761 of the Revised Code is 3497
terminated or completed. 3498

Sec. 5924.77. Any person subject to this code is a principal 3499
~~who~~ if the person does either of the following: 3500

(A) Commits an offense punishable by this code, or aids, 3501
abets, counsels, commands, or procures its commission; 3502

(B) Causes an act to be done which if directly performed by 3503
~~him~~ the person would be punishable by this code. 3504

Sec. 5924.78. Any person subject to this code who, knowing 3505
that an offense punishable by this code has been committed, 3506
receives, comforts, or assists the offender in order to hinder or 3507
prevent ~~his~~ the offender's apprehension, trial, or punishment 3508
shall be punished as a court-martial may direct. 3509

Sec. 5924.82. (A) Any person subject to this code who 3510
solicits or advises another or others to desert in violation of 3511
section 5924.85 of the Revised Code and of this code or mutiny in 3512
violation of section 5924.94 of the Revised Code and of this code 3513
shall, if the offense solicited or advised is attempted or 3514
committed, be punished with the punishment provided for the 3515

commission of the offense, but, if the offense solicited or 3516
advised is not committed or attempted, ~~he~~ the person shall be 3517
punished as a court-martial may direct. 3518

(B) Any person subject to this code who solicits or advises 3519
another or others to commit an act of ~~misbehavior before the enemy~~ 3520
~~in violation of section 5924.99 of the Revised Code and of this~~ 3521
~~code or~~ sedition in violation of section 5924.94 of the Revised 3522
Code and of this code shall, if the offense solicited or advised 3523
is committed, be punished with the punishment provided for the 3524
commission of the offense, but, if the offense solicited or 3525
advised is not committed, ~~he~~ the person shall be punished as a 3526
court-martial may direct. 3527

Sec. 5924.83. Any person who does either of the following 3528
shall be punished as a court-martial may direct: 3529

(A) Procures ~~his~~ the person's own enlistment or appointment 3530
in the organized militia by knowingly false representation or 3531
deliberate concealment as to ~~his~~ the person's qualifications for 3532
that enlistment or appointment and receives pay or allowances 3533
thereunder; ~~or~~ 3534

(B) Procures ~~his~~ the person's own separation from the 3535
organized militia by knowingly false representation or deliberate 3536
concealment as to ~~his~~ the person's eligibility for that 3537
separation; 3538
~~shall be punished as a court martial may direct.~~ 3539

Sec. 5924.84. Any person subject to this code who effects an 3540
enlistment or appointment in or a separation from the organized 3541
militia of any person who is known to ~~him~~ the person to be 3542
ineligible for that enlistment, appointment, or separation because 3543
it is prohibited by law, regulation, or order shall be punished as 3544
a court-martial may direct. 3545

Sec. 5924.85. (A) Any member of the organized militia who 3546
does any of the following is guilty of desertion: 3547

(1) Without authority goes or remains absent from ~~his~~ the 3548
member's unit, organization, or place of duty with intent to 3549
remain away ~~therefrom~~ from the unit, organization, or place of 3550
duty permanently; 3551

(2) Quits ~~his~~ the member's unit, organization, or place of 3552
duty with intent to avoid hazardous duty or to shirk important 3553
service; ~~or~~ 3554

(3) Without being regularly separated from one of the forces 3555
of the organized militia enlists or accepts an appointment in the 3556
same or another one of the forces of the organized militia without 3557
fully disclosing the fact that ~~he~~ the member has not been 3558
regularly separated; 3559
~~is guilty of desertion~~ 3560

(4) Without being regularly separated from one of the forces 3561
of the organized militia enters any foreign armed services without 3562
the authorization of the United States. 3563

(B) Any commissioned officer of the organized militia who, 3564
after tender of ~~his~~ the commissioned officer's resignation and 3565
before notice of its acceptance, quits ~~his~~ the commissioned 3566
officer's post or proper duties without leave and with intent to 3567
remain away therefrom permanently is guilty of desertion. 3568

(C) Any person found guilty of desertion or attempt to desert 3569
~~shall be punished, if the offense is committed in time of war, by~~ 3570
~~death or such other punishment as a court martial may direct, but~~ 3571
~~if the desertion or attempt to desert occurs at any other time, by~~ 3572
~~such punishment, other than death, as a court-martial may direct.~~ 3573

Sec. 5924.86. Any person subject to this code who, without 3574

authority, does any of the following shall be punished as a 3575
court-martial may direct: 3576

(A) Fails to go to ~~his~~ the person's appointed place of duty 3577
at the time prescribed; 3578

(B) Goes from ~~his~~ the person's appointed place of duty; ~~or~~ 3579

(C) Absents ~~himself~~ self or remains absent from ~~his~~ the 3580
person's unit, organization, or place of duty at which ~~he~~ the 3581
person is required to be at the time prescribed; ~~shall be punished~~ 3582
~~as a court martial may direct.~~ 3583

Sec. 5924.87. Any person subject to this code who through 3584
neglect or design misses the movement of a ship, aircraft, or unit 3585
with which ~~he~~ the person is required in the course of duty to move 3586
shall be punished as a court-martial may direct. 3587

Sec. 5924.88. Any ~~person subject to this code~~ commissioned 3588
officer who uses contemptuous words against ~~the president,~~ the 3589
governor, or the legislature, ~~or the governor or legislature of~~ 3590
any this state, ~~territory, commonwealth, or possession wherein~~ 3591
~~that person may be serving,~~ shall be punished as a court-martial 3592
may direct. 3593

Sec. 5924.89. Any person subject to this code who behaves 3594
with disrespect toward ~~his~~ the person's superior commissioned 3595
officer shall be punished as a court-martial may direct. 3596

Sec. 5924.90. Any person subject to this code who does either 3597
of the following shall be punished as a court-martial may direct: 3598
3599

(A) Strikes ~~his~~ the person's superior commissioned officer or 3600
draws or lifts up any weapon or offers any violence against ~~him~~ 3601
the person's superior commissioned officer while ~~he~~ that officer 3602

is in the execution of ~~his office~~ official duties; ~~or~~ 3603

(B) Willfully disobeys a lawful command of ~~his~~ the person's 3604
superior commissioned officer; 3605

~~shall be punished as a court martial may direct.~~ 3606

Sec. 5924.91. Any warrant officer or enlisted member who does 3607
any of the following shall be punished as a court-martial may 3608
direct: 3609

(A) Strikes or assaults a warrant officer, or noncommissioned 3610
officer, ~~or petty officer,~~ while that officer is in the execution 3611
of ~~his office~~ official duties; 3612

(B) Willfully disobeys the lawful order of a warrant officer, 3613
or noncommissioned officer, ~~or petty officer;~~ ~~or~~ 3614

(C) Treats with contempt or is disrespectful in language or 3615
deportment toward a warrant officer, or noncommissioned officer, 3616
~~or petty officer,~~ while that officer is in the execution of ~~his~~ 3617
~~office;~~ 3618

~~shall be punished as a court martial may direct~~ official duties. 3619

Sec. 5924.92. Any person subject to this code who does any of 3620
the following shall be punished as a court-martial may direct: 3621

(A) Violates or fails to obey any lawful general order or 3622
regulation; 3623

(B) Having knowledge of any other lawful order issued by a 3624
member of the organized militia, ~~which it~~ that is ~~his~~ the person's 3625
duty to obey, fails to obey the order; ~~or~~ 3626

(C) Is derelict in the performance of ~~his~~ the person's 3627
duties; 3628

~~shall be punished as a court martial may direct.~~ 3629

Sec. 5924.93. Any person subject to this code who is guilty 3630
of cruelty toward, or oppression or maltreatment of, any other 3631
person subject to ~~his~~ the person's orders shall be punished as a 3632
court-martial may direct. 3633

Sec. 5924.94. (A)(1) Any person subject to this code who+ 3634
~~(1) With,~~ with intent to usurp or override lawful military 3635
authority, refuses, in concert with any other person, to obey 3636
orders or otherwise do ~~his~~ the person's duty or creates any 3637
violence or disturbance is guilty of mutiny+. 3638

(2) ~~With~~ Any person subject to this code who, with intent to 3639
cause the overthrow or destruction of lawful civil authority, 3640
creates, in concert with any other person, revolt, violence, or 3641
other disturbance against that authority is guilty of sedition+. 3642

(3) ~~Fails~~ Any person subject to this code who fails to do ~~his~~ 3643
the person's utmost to prevent and suppress a mutiny or sedition 3644
being committed in ~~his~~ the person's presence, or fails to take all 3645
reasonable means to inform ~~his~~ the person's superior commissioned 3646
officer or commanding officer of a mutiny or sedition ~~which he~~ 3647
that the person knows or has reason to believe is taking place, is 3648
guilty of a failure to suppress or report a mutiny or sedition. 3649

(B) A person who is found guilty of attempted mutiny, mutiny, 3650
sedition, or failure to suppress or report a mutiny or sedition 3651
shall be punished ~~by death or such other punishment~~ as a 3652
court-martial may direct. 3653

Sec. 5924.95. Any person subject to this code who resists 3654
apprehension ~~or,~~ fleees from apprehension, breaks arrest, or ~~who~~ 3655
escapes from ~~physical restraint lawfully imposed~~ custody or 3656
confinement shall be punished as a court-martial may direct. 3657

Sec. 5924.96. Any person subject to this code who, without 3658
proper authority, releases any prisoner committed to ~~his~~ the 3659
person's charge, or who through neglect or design suffers any ~~such~~ 3660
prisoner committed to the person's charge to escape, shall be 3661
punished as a court-martial may direct, whether or not the 3662
prisoner was committed in strict compliance with law. 3663

Sec. 5924.97. Any person subject to this code, who, except as 3664
provided by law ~~or regulation~~, apprehends, arrests, or confines 3665
any person shall be punished as a court-martial may direct. 3666

Sec. 5924.98. Any person subject to this code who: 3667

~~(A) Is~~ is responsible for unnecessary delay in the 3668
disposition of any case of a person accused of an offense under 3669
this code, or 3670

~~(B) Knowingly~~ who knowingly and intentionally fails to 3671
enforce or comply with any provision of this code regulating the 3672
proceedings before, during, or after trial of an accused, 3673
shall be punished as a court-martial may direct. 3674

Sec. 5924.103. (A) All persons subject to this code shall 3675
secure all ~~public~~ property taken from the enemy for the service of 3676
the United States, and this state and shall give notice and turn 3677
over to the proper authority without delay all captured or 3678
abandoned property in their possession, custody, or control. 3679

(B) Any person subject to this code who does any of the 3680
following shall be punished as a court-martial may direct: 3681

(1) Fails to carry out the duties prescribed in division (A) 3682
of this section; 3683

(2) Buys, sells, trades, or in any way deals in or disposes 3684
of captured or abandoned property, whereby ~~he~~ the person receives 3685

or expects any profit, benefit, or advantage to ~~himself~~ self or 3686
another directly or indirectly connected with ~~himself~~ self; ~~or~~ 3687

(3) Engages in looting or pillaging; 3688
~~shall be punished as a court martial may direct.~~ 3689

Sec. 5924.108. Any person subject to this code who, without 3690
proper authority, does any of the following with regard to any 3691
military property of the United States or of this state shall be 3692
punished as a court-martial may direct: 3693

(A) Sells or otherwise disposes of the property; 3694

(B) Willfully or through neglect damages, destroys, or loses 3695
the property; ~~or~~ 3696

(C) Willfully or through neglect suffers to be lost, damaged, 3697
destroyed, sold, or wrongfully disposed of; 3698
~~any military property of the United States or of the state, shall~~ 3699
~~be punished as a court martial may direct~~ the property. 3700

Sec. 5924.109. Any person subject to this code who, ~~while in~~ 3701
~~a duty status,~~ willfully or recklessly wastes, spoils, or 3702
otherwise willfully and wrongfully destroys or damages any 3703
property other than military property of the United States or of 3704
the state shall be punished as a court-martial may direct. 3705

Sec. 5924.111. ~~Any~~ (A) Subject to division (B) of this 3706
section, any person subject to this code who ~~operates~~ does any of 3707
the following shall be punished as a court-martial may direct: 3708

(1) Operates or physically controls any vehicle ~~while drunk,~~ 3709
~~or, aircraft, or vessel~~ in a reckless or wanton manner, ~~shall be~~ 3710
~~punished as a court martial may direct;~~ 3711

(2) Operates or physically controls any vehicle, aircraft, or 3712
vessel while under the influence of alcohol, a drug of abuse, or a 3713

combination of them; 3714

(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 the Revised Code; 3715
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(4) Operates or physically controls any vehicle, aircraft, or vessel while having in the person's whole blood, blood serum or plasma, or urine the concentrations of controlled substances or metabolites of a controlled substance set forth in division (A)(1)(j) of section 4511.19 of the Revised Code. 3720
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(B) If a military installation is located partially in this state and partially in one or more other states, the adjutant general may select the alcohol and controlled substance levels set forth in the impaired operating laws of one of the other states to apply on the installation in place of the levels set forth in division (A) of this section. 3725
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Sec. 5924.1121. (A) As used in this section, "prohibited substance" means any of the following: 3731
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(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, or marihuana or any compound or derivative of any of those substances; 3733
3734
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(2) Any substance not specified in division (A)(1) of this section that the adjutant general lists on a schedule of controlled substances or that is listed on a schedule established under section 202 of the Federal Controlled Substances Act, 21 U.S.C. 812, 84 Stat. 1247, as amended. 3737
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(B) A person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs 3742
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territory of the United States, exports from the United States, or 3744
introduces into an installation, vessel, vehicle, or aircraft used 3745
by or under the control of the armed forces of the United States 3746
or of the organized militia a prohibited substance shall be 3747
punished as a court-martial may direct. 3748

Sec. 5924.113. Any sentinel or lookout who is found drunk or 3749
sleeping on ~~his~~ the sentinel's or lookout's post, or leaves it 3750
before ~~he~~ the sentinel or lookout is regularly relieved, shall be 3751
punished, ~~if the offense is committed in time of war, by death or~~ 3752
~~such other punishment as a court martial may direct, but if the~~ 3753
~~offense is committed at any other time, by such punishment other~~ 3754
~~than death~~ as a court-martial may direct. 3755

Sec. 5924.115. Any person subject to this code who for the 3756
purpose of avoiding work, duty, or service in the organized 3757
militia does either of the following shall be punished as a 3758
court-martial may direct: 3759

(A) Feigns illness, physical disablement, mental lapse, or 3760
derangement; ~~or~~ 3761

(B) Intentionally inflicts self-injury; 3762
~~shall be punished as a court martial may direct.~~ 3763

Sec. 5924.120. (A) As used in this section: 3764

(1) "Affirmative defense" means any special defense that, 3765
although not denying that the accused committed the objective acts 3766
constituting the offense charged, denies, in whole or in part, 3767
criminal responsibility for those acts. 3768

(2) "Bodily harm" means any offensive touching of another, 3769
however slight, that does not result in grievous bodily harm. 3770

(3) "Consent" means words or overt acts indicating a freely 3771

given agreement to the sexual conduct at issue by a competent person. 3772
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(4) "Dangerous weapon or object" means any of the following: 3774

(a) Any firearm, whether loaded or not and whether operable or not; 3775
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(b) Any other weapon, device, instrument, material, or substance, whether animate or inanimate, that as used or intended to be used is known to be capable of producing death or grievous bodily harm; 3777
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(c) Any object fashioned or used in such a manner as to lead a person on whom the object is used or threatened to be used to reasonably believe under the circumstances that the object is capable of producing death or grievous bodily harm. 3781
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(5) "Force" means action to compel submission of another or to overcome or prevent another's resistance by either of the following: 3785
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(a) The use, display, or suggestion of possession of a dangerous weapon or object; 3788
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(b) Physical violence, strength, power, or restraint applied to another person sufficient to prevent the other person from avoiding or escaping sexual contact. 3790
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(6) "Grievous bodily harm" means serious bodily injury, including but not limited to fractured or dislocated bones, deep cuts, torn members of the body, and serious damage to internal organs. 3793
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(7) "Indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing or making a videotape, photograph, motion picture, 3797
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print, negative, slide, or other mechanically, electronically, or 3802
chemically reproduced visual material, without another person's 3803
consent and contrary to that other person's reasonable expectation 3804
of privacy, of either of the following: 3805

(a) That other person's genitalia, anus, or buttocks, or, if 3806
that other person is female, that person's areola or nipple; 3807

(b) That other person while that other person is engaged in a 3808
sexual act, sexual contact, or sodomy. 3809

(8) "Lesser degree of harm" means any of the following: 3810

(a) Physical injury to the person or property of a person 3811
other than the victim of the offense; 3812

(b) A threat to do any of the following: 3813

(i) Accuse any person of a crime; 3814

(ii) Expose a secret or publicize an asserted fact, whether 3815
true or false, tending to subject some person to hatred, contempt, 3816
or ridicule; 3817

(iii) Through the use or abuse of military position, rank, or 3818
authority, to affect or threaten to affect, either positively or 3819
negatively, the military career of some person. 3820

(9) "Mistake of fact as to consent" means a belief that is 3821
incorrect, as a result of ignorance or mistake, that a person 3822
engaging in sexual conduct consented to engage in that conduct, if 3823
both of the following apply: 3824

(a) The ignorance or mistake existed in the mind of the 3825
accused at the time the sexual conduct in issue occurred and was 3826
based on information or lack of information that would have 3827
indicated to a reasonable person that the other person consented; 3828

(b) The ignorance or mistake was not based on the accused's 3829
failure to discover facts that a reasonably careful person would 3830
have discovered under the same or similar circumstances. 3831

- (10) "Sexual act" means either of the following: 3832
- (a) Contact between the penis and the vulva, including any 3833
penetration, however slight; 3834
- (b) Anal intercourse, fellatio, and cunnilingus between 3835
persons, regardless of sex; 3836
- (c) The penetration, however slight, of the genital opening 3837
of another by a hand or finger or any object with an intent to 3838
abuse, humiliate, harass, or degrade any person or to arouse or 3839
gratify the sexual desire of any person. 3840
- (11) "Sexual contact" means the intentional touching, either 3841
directly or through clothing, of the genitalia, anus, groin, 3842
breast, inner thigh, or buttocks of another person with an intent 3843
to abuse, humiliate, or degrade any person or to arouse or gratify 3844
the sexual desire of any person. 3845
- (12) "Sexual conduct" means any act that is prohibited by 3846
this section. 3847
- (13)(a) For purposes of divisions (B) and (D) of this 3848
section, "threatening or placing that other person in fear" means 3849
making a communication or performing an action of sufficient 3850
consequence to cause that other person to reasonably fear that 3851
noncompliance will result in that person or another being 3852
subjected to death, grievous bodily harm, or kidnapping. 3853
- (b) For purposes of divisions (C) and (E) of this section, 3854
"threatening or placing that other person in fear" means making a 3855
communication or performing an action of sufficient consequence to 3856
cause a victim of the offense to reasonably fear that 3857
noncompliance will result in the victim or another being subjected 3858
to a lesser degree of harm than death, grievous bodily harm, or 3859
kidnapping. 3860
- (B) Any person subject to this chapter who causes another 3861

person of any age to engage in a sexual act by doing any of the 3862
following is guilty of rape and shall be punished as a 3863
court-martial may direct: 3864

(1) Using force against that other person; 3865

(2) Causing grievous bodily harm to any person; 3866

(3) Threatening or placing that other person in fear; 3867

(4) Rendering another person unconscious; 3868

(5) Administering to another person by force or threat of 3869
force, or without the knowledge or permission of that person, a 3870
drug, intoxicant, or other similar substance that substantially 3871
impairs the ability of that other person to appraise or control 3872
conduct. 3873

(C) Any person subject to this chapter who does either of the 3874
following is guilty of aggravated sexual assault and shall be 3875
punished as a court-martial may direct: 3876

(1) Causes another person of any age to engage in a sexual 3877
act by doing either of the following: 3878

(a) Threatening or placing that other person in fear; 3879

(b) Causing bodily harm. 3880

(2) Engages in a sexual act with another person of any age if 3881
that other person is substantially incapable of doing any of the 3882
following: 3883

(a) Appraising the nature of the sexual act; 3884

(b) Declining to participate in the sexual act; 3885

(c) Communicating unwillingness to engage in the sexual act. 3886

(D) Any person subject to this chapter who engages in sexual 3887
contact or causes sexual contact with or by another person by 3888
doing any of the following is guilty of aggravated sexual contact 3889
and shall be punished as a court-martial may direct: 3890

<u>(1) Using force against that other person;</u>	3891
<u>(2) Causing grievous bodily harm to any person;</u>	3892
<u>(3) Threatening or placing that other person in fear;</u>	3893
<u>(4) Rendering another person unconscious;</u>	3894
<u>(5) Administering to another person by force or threat of</u>	3895
<u>force, or without the knowledge or permission of that person, a</u>	3896
<u>drug, intoxicant, or other similar substance that substantially</u>	3897
<u>impairs the ability of that other person to appraise or control</u>	3898
<u>conduct.</u>	3899
<u>(E) Any person subject to this chapter who does either of the</u>	3900
<u>following is guilty of abusive sexual contact and shall be</u>	3901
<u>punished as a court-martial may direct:</u>	3902
<u>(1) Engages in or causes sexual contact with or by another</u>	3903
<u>person by doing either of the following:</u>	3904
<u>(a) Threatening or placing that other person in fear;</u>	3905
<u>(b) Causing bodily harm.</u>	3906
<u>(2) Engages in sexual contact with another person of any age</u>	3907
<u>if that other person is substantially incapable of doing any of</u>	3908
<u>the following:</u>	3909
<u>(a) Appraising the nature of the sexual contact;</u>	3910
<u>(b) Declining to participate in the sexual contact;</u>	3911
<u>(c) Communicating unwillingness to engage in the sexual</u>	3912
<u>contact.</u>	3913
<u>(F) Any person subject to this chapter who engages in</u>	3914
<u>indecent conduct is guilty of an indecent act and shall be</u>	3915
<u>punished as a court-martial may direct.</u>	3916
<u>(G) Any person subject to this chapter who, without legal</u>	3917
<u>justification or lawful authorization, engages in sexual contact</u>	3918
<u>with another person without that other person's permission is</u>	3919

guilty of wrongful sexual contact and shall be punished as a 3920
court-martial may direct. 3921

(H) Any person subject to this chapter who intentionally 3922
exposes, in an indecent manner, in any place where the conduct 3923
involved may reasonably be expected to be viewed by people other 3924
than members of the person's family or household, the person's 3925
genitalia, anus, buttock, or female areola or nipple is guilty of 3926
indecent exposure and shall be punished as a court-martial may 3927
direct. 3928

(I) In a prosecution under this section, in proving that the 3929
accused made a threat, it need not be proven that the accused 3930
actually intended to carry out the threat. 3931

(J)(1) In a prosecution under division (C)(2), (G), or (H) of 3932
this section, it is an affirmative defense that the accused and 3933
the other person, when they engaged in the sexual conduct were 3934
married to each other. 3935

(2) Division (J)(1) of this section does not apply if the 3936
accused's intent at the time of the sexual conduct is to abuse, 3937
humiliate, or degrade any person. 3938

(K)(1) Lack of permission is an element of the offense under 3939
division (G) of this section. Consent and mistake of fact as to 3940
consent are affirmative defenses only to the sexual conduct in 3941
issue in a prosecution under division (B), (C), (D), or (E) of 3942
this section. 3943

(2) The enumeration in this section of some affirmative 3944
defenses shall not be construed as excluding the existence of 3945
other affirmative defenses. 3946

(3) The accused has the burden of proving an affirmative 3947
defense by a preponderance of evidence. After the defense meets 3948
this burden, the prosecution has the burden of proving beyond a 3949
reasonable doubt that the affirmative defense did not exist. 3950

(L)(1) An expression of lack of consent through words or 3951
conduct means there is no consent. Lack of verbal or physical 3952
resistance or submission resulting from an accused's use of force, 3953
threat of force, or placing another person in fear does not 3954
constitute consent. A current or previous dating relationship by 3955
itself or the manner of dress of a person involved with the 3956
accused in the sexual conduct does not constitute consent. 3957

(2) A person cannot consent to sexual conduct if the person 3958
is substantially incapable of any of the following: 3959

(a) Appraising the nature of the sexual conduct due to mental 3960
impairment or unconsciousness resulting from consumption of 3961
alcohol, drugs, or a similar substance or any other cause or to 3962
mental disease or defect that renders the person unable to 3963
understand the nature of the sexual conduct; 3964

(b) Physically declining to participate in the sexual 3965
conduct; 3966

(c) Physically communicating unwillingness to engage in the 3967
sexual conduct. 3968

(M) An accused's state of intoxication, if any, at the time 3969
of an offense under this section occurs is not relevant to the 3970
existence of a mistake of fact as to consent. 3971

Sec. 5924.128. (A) Any person subject to this code who 3972
attempts or offers with unlawful force or violence to do bodily 3973
harm to another person, whether or not the attempt or offer is 3974
consummated, is guilty of assault and shall be punished as a 3975
court-martial may direct. 3976

(B) Any person subject to this code who does either of the 3977
following is guilty of aggravated assault and shall be punished as 3978
a court-martial may direct: 3979

(1) Commits an assault with a dangerous weapon or other means 3980

or force likely to produce death or grievous bodily harm; ~~or~~ 3981

(2) Commits an assault and intentionally inflicts grievous 3982

bodily harm with or without a weapon; 3983

~~is guilty of aggravated assault and shall be punished as a 3984~~

~~court-martial may direct.~~ 3985

Sec. 5924.131. Any person subject to this code who, in a 3986

judicial proceeding or in a course of justice conducted under this 3987

code, willfully and corruptly ~~gives, upon~~ does either of the 3988

following is guilty of perjury and shall be punished as a 3989

court-martial may direct: 3990

(A) Upon a lawful oath or in any form allowed by law to be 3991

substituted for an oath, gives any false testimony material to the 3992

issue or matter of inquiry ~~is guilty of perjury and shall be~~ 3993

~~punished as a court-martial may direct;~~ 3994

(B) In any declaration, certification, verification, or 3995

statement made under penalty of perjury subscribes any false 3996

statement material to the issue or matter of inquiry. 3997

Sec. 5924.132. Any person subject to this code who does any 3998

of the following shall be punished as a court-martial may direct: 3999

(A) ~~Who, knowing it~~ Knowing a claim to be false or fraudulent 4000

does either of the following: 4001

(1) Makes any claim against the United States, the state, or 4002

any officer ~~thereof~~ of the United States or the state; ~~or~~ 4003

(2) Presents to any person in the civil or military service 4004

~~thereof~~ of the United States or the state, for approval or 4005

payment, any claim against the United States, the state, or any 4006

officer ~~thereof~~ of the United States or the state; 4007

(B) ~~Who, for~~ For the purpose of obtaining the approval, 4008

allowance, or payment of any claim against the United States, the 4009

state, or any officer ~~thereof~~ of the United States or the state 4010
does any of the following: 4011

(1) Makes or uses any writing or other paper knowing it to 4012
contain any false or fraudulent statements; 4013

(2) Makes any oath to any fact or to any writing or other 4014
paper knowing the oath to be false; ~~or~~ 4015

(3) Forges or counterfeits any signature upon any writing or 4016
other paper, or uses any ~~such~~ forged or counterfeit signature 4017
knowing it to be forged or counterfeited; 4018

(C) ~~Who, having~~ Having charge, possession, custody, or 4019
control of any money, or other property of the United States or 4020
the state, furnished or intended for the armed forces of the 4021
United States or the organized militia or any force thereof, 4022
knowingly delivers to any person having authority to receive it, 4023
any amount thereof less than that for which ~~he~~ the person making 4024
the delivery receives a certificate or receipt; ~~or~~ 4025

(D) ~~Who, being~~ Being authorized to make or deliver any paper 4026
certifying the receipt of any property of the United States or the 4027
state, furnished or intended for the armed forces of the United 4028
States or the organized militia or any force thereof, makes or 4029
delivers to any person such writing without having full knowledge 4030
of the truth of the statements therein contained and with intent 4031
to defraud the United States or the state; 4032

~~shall, upon conviction, be punished as a court-martial may direct.~~ 4033

Sec. 5924.133. Any commissioned officer who is convicted of 4034
conduct unbecoming an officer and a lady or gentleman shall be 4035
punished as a court-martial may direct. 4036

Sec. 5924.146. No person may be tried or punished for any 4037
offense provided for in sections 5924.77 to 5924.134, ~~inclusive,~~ 4038

of the Revised Code and of this code, unless it was committed 4039
while ~~he~~ the person was in a military or national guard technician 4040
duty status. 4041

Section 2. That existing sections 124.23, 124.26, 3319.085, 4042
3737.881, 3781.10, 5321.04, 5903.10, 5903.11, 5911.07, 5923.12, 4043
5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 4044
5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 4045
5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 5924.25, 4046
5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 5924.32, 4047
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5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 5924.100, 5924.101, 4058
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5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 5924.147 of 4061
the Revised Code are hereby repealed. 4062