

**As Reported by the House Veterans Affairs Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. H. B. No. 405**

**Representative Rosenberger**

**Cosponsors: Representatives Johnson, Landis, Pillich, Bubb, Butler,**

**Milkovich, Yuko**

**—**

**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
5923.12, 5924.01, 5924.02, 5924.03, 5924.06,	3
5924.07, 5924.08, 5924.09, 5924.10, 5924.11,	4
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5924.90, 5924.91, 5924.92, 5924.93, 5924.94,	17
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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
5924.62, 5924.64, 5924.65, 5924.66, 5924.70,	28
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  
5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 5924.18, 57  
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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 schedule, years of absence on extended active duty in the armed services of the United States or the auxiliaries thereof shall not exceed four, and shall be counted as though school service had been performed during such time as required by the "Uniformed Services Employment and Reemployment Rights Act of 1994," 108 Stat. 3149, 38 U.S.C. 4303.~~

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

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

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

The fire marshal shall prescribe an examination designed to test the knowledge of applicants for certification as underground storage tank system installers in the installation, repair,



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 the installation, performance of major repairs on site to, abandonment of, and removal of underground storage tank systems;	307 308 309
(2) Establishing standards and procedures for certification of underground storage tank systems installers;	310 311
(3) Establishing standards and procedures for continuing education for certification renewal, <u>subject to the provisions of section 5903.12 of the Revised Code relating to active duty military service</u> ;	312 313 314 315
(4) Establishing standards and procedures for certification of training programs for installers;	316 317
(5) Establishing fees for applications for certifications under this section, the examinations prescribed under division (A) of this section, the issuance and renewal of certificates under divisions (A) and (B) of this section, and attendance at training programs conducted by the fire marshal under division (C) of this section. Fees received under this section shall be credited to the underground storage tank administration fund created in section 3737.02 of the Revised Code and shall be used to defray the costs of implementing, administering, and enforcing this section and the rules adopted thereunder, conducting training sessions, and facilitating prevention of releases.	318 319 320 321 322 323 324 325 326 327 328
(6) That are necessary or appropriate for the implementation, administration, and enforcement of this section.	329 330
(E) Nothing in this section or the rules adopted under it prohibits an owner or operator of an underground storage tank system from installing, making major repairs on site to, abandoning, or removing an underground storage tank system under the supervision of an installer certified under division (A) of this section who is a full-time or part-time employee of the owner or operator.	331 332 333 334 335 336 337

(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 county building departments and the personnel of those building departments, and persons and employees of individuals, firms, or corporations as described in division (E)(7) of this section to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections, pursuant to sections 3781.03, 3791.04, and 4104.43 of the Revised Code.

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

(3) The board shall not require a building department, its personnel, or any persons that it employs to be certified for residential building code enforcement if that building department does not enforce the state residential building code. The board shall specify, in rules adopted pursuant to Chapter 119. of the Revised Code, the requirements for certification for residential and nonresidential building code enforcement, which shall be consistent with this division. The requirements for residential and nonresidential certification may differ. Except as otherwise provided in this division, the requirements shall include, but are not limited to, the satisfactory completion of an initial examination and, to remain certified, the completion of a specified number of hours of continuing building code education within each three-year period following the date of certification which shall be not less than thirty hours. The rules shall provide that continuing education credits and certification issued by the council of American building officials, national model code organizations, and agencies or entities the board recognizes are acceptable for purposes of this division. The rules shall specify

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 to put and keep the premises in a fit and habitable condition; 620  
621
- (3) Keep all common areas of the premises in a safe and sanitary condition; 622  
623
- (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by ~~him~~ the landlord; 624  
625  
626  
627
- (5) When ~~he~~ the landlord is a party to any rental agreements that cover four or more dwelling units in the same structure, provide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal; 628  
629  
630  
631  
632
- (6) Supply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection; 633  
634  
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639
- (7) Not abuse the right of access conferred by division (B) of section 5321.05 of the Revised Code; 640  
641
- (8) Except in the case of emergency or if it is impracticable to do so, give the tenant reasonable notice of ~~his~~ the landlord's intent to enter and enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary. 642  
643  
644  
645  
646
- (9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises 647  
648  
649  
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 respect at all state governmental facilities;	743 744
(2) Give priority in referral to jobs to qualified veterans and other eligible persons;	745 746
(3) Give priority in referral to and enrollment in training programs to qualified veterans and other eligible persons;	747 748
(4) Give preferential treatment to special disabled veterans in the provision of all needed state services;	749 750
(5) Provide information and effective referral assistance to veterans and other eligible persons regarding needed benefits and services that may be obtained through other agencies.	751 752 753
(E) As used in this section:	754
(1) "Special disabled veteran" means a veteran who is entitled to, or who but for the receipt of military pay would be entitled to, compensation under any law administered by the department of veterans affairs for a disability rated at thirty per cent or more or a person who was discharged or released from active duty because of a service-connected disability.	755 756 757 758 759 760
(2) "Veteran of the Vietnam era" means an eligible veteran who served on active duty for a period of more than one hundred eighty days, any part of which occurred from August 5, 1964, through May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge or a person who was discharged or released from active duty for a service-connected disability if any part of the active duty was performed from August 5, 1964, through May 7, 1975.	761 762 763 764 765 766 767 768
(3) "Disabled veteran" means a veteran who is entitled to, or who but for the receipt of military retirement pay would be entitled to compensation, under any law administered by the department of veterans affairs and who is not a special disabled	769 770 771 772

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 791  
foreign government or power. 792

(c) The spouse of any person who has a total disability 793  
permanent in nature resulting from a service-connected disability 794  
or the spouse of a veteran who died while such a disability was in 795  
existence. 796

(6) "Veteran" means either of the following: 797

(a) Any person who was a member of the armed forces of the 798  
United States for a period of one hundred eighty days or more or a 799  
person who was discharged or released from active duty because of 800  
a service-connected disability; 801

(b) A person who served as a member of the United States 802

merchant marine and to whom either of the following applies: 803

(i) The person has an honorable report of separation from 804  
active duty military service, form DD214 or DD215. 805

(ii) The person served in the United States merchant marine 806  
between December 7, 1941, and December 31, 1946, and died on 807  
active duty while serving in a war zone during that period of 808  
service. 809

(7) "Armed forces of the United States" means the army, air 810  
force, navy, marine corps, coast guard, and any other military 811  
service branch that is designated by congress as a part of the 812  
armed forces of the United States. 813

(8) "Employment program" means a program which provides 814  
referral of individuals to employer job openings in the federal, 815  
state, or private sector. 816

(9) "Training program" means any program that upgrades the 817  
employability of qualified applicants. 818

(10) "Entitlement program" means any program that enlists 819  
specific criteria in determining eligibility, including but not 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 880  
office or military rank, that is established and designated as a 881  
grade by law or regulation. 882

(H) "Rank" means the order of precedence among members of the 883  
armed forces. 884

(I) "~~Active state~~ State active duty" means full-time duty in 885  
the active military service of the state under ~~an order a~~ 886  
proclamation of the governor issued pursuant to authority vested 887  
in ~~him~~ the governor by law, and while going to and returning from 888  
such duty. 889

(J) "Duty status other than ~~active state~~ active duty" means 890  
any other types of duty and while going to and returning from such 891  
duty. 892

(K) "Military court" means a court-martial, a court of 893

inquiry, or a provost court. 894

(L) "Military judge" means an official of a general or 895  
special court-martial who is a commissioned officer, who has been 896  
duly certified to be qualified for duty as a military judge by the 897  
state judge advocate, and who has been properly detailed in 898  
accordance with section 5924.26 of the Revised Code. 899

(M) "Law specialist" means a commissioned officer of the 900  
organized naval militia of the state designated for special duty. 901

(N) "Legal officer" means any commissioned officer of the 902  
organized naval militia of the state designated to perform legal 903  
duties for a command. 904

(O) "State judge advocate" means the commissioned officer 905  
responsible for supervising the administration of ~~the~~ military 906  
justice in the organized militia. 907

(P) "Accuser" means a person who reports an offense subject 908  
to trial by court-martial and who signs and swears to charges, any 909  
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 939  
guard dual-status technicians during their normal duty hours; 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  
of the following: 1138  
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

~~(c)(iii)~~ Restriction to certain specified limits, with or 1154  
without suspension from duty, for not more than sixty ~~consecutive~~ 1155  
days; 1156

~~(d) Detention of not more than one half of one month's pay~~ 1157  
~~per month for three months, or the sum of two hundred twenty five~~ 1158  
~~dollars, whichever is greater.~~ 1159

~~(B)(2)~~ Upon other military personnel of the commanding 1160  
officer's command, any of the following: 1161

~~(1) If imposed upon a person attached to or embarked in a~~ 1162  
~~vessel, confinement on bread and water or diminished rations for~~ 1163  
~~not more than three consecutive days;~~ 1164

~~(2)(a)~~ Correctional custody for not more than seven 1165  
~~consecutive~~ days; 1166

~~(3) Fine or forfeiture~~ (b) Forfeiture of not more than seven 1167  
days' pay, ~~or the sum of twenty five dollars, whichever is greater~~ 1168  
a fine of not more than one-quarter of one month's actual pay; 1169

~~(4)(c)~~ Reduction to the next inferior pay grade, if the grade 1170  
from which the service member demoted is within the promotion 1171  
authority of the officer imposing the reduction or any officer 1172  
subordinate to the one who imposes the reduction; 1173

~~(5)(d)~~ Extra duties, including fatigue or other duties, for 1174  
not more than fourteen consecutive days or for a total of thirty 1175  
nonconsecutive days; 1176

~~(6)(e)~~ Restriction to certain specified limits, with or 1177  
without suspension from duty, for not more than fourteen 1178  
~~consecutive~~ days; 1179

~~(7) Detention of not more than fourteen days' pay, or the sum~~ 1180  
~~of fifty dollars, whichever is greater;~~ 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 1276  
higher pay grade;~~ 1277

~~(5) Extra duties for more than fourteen days;~~ 1278

~~(6) Restriction for more than fourteen days; or~~ 1279

~~(7) Detention of more than fourteen days' pay;~~ 1280

any of the following, the authority who is to act on the appeal 1281  
shall refer the case to a judge advocate or legal officer of the 1282  
Ohio organized militia for consideration and advice, and may ~~se~~ 1283  
also refer the case upon appeal from any punishment imposed under 1284  
~~divisions (A) or~~ division (B) of this section: 1285

(1) Arrest in quarters for more than seven days; 1286

(2) Correctional custody for more than seven days; 1287

<u>(3) Fine or forfeiture of more than seven days' pay;</u>	1288
<u>(4) Reduction of one or more pay grades from the fourth or a higher pay grade;</u>	1289 1290
<u>(5) Extra duties for more than fourteen days.</u>	1291
<del>(F)</del> <u>(G)</u> The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; <del>but the.</del> <u>The</u> fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and, when so shown, shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.	1292 1293 1294 1295 1296 1297 1298 1299
<del>(G)</del> <u>(H)</u> The <del>governor or the</del> adjutant general may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.	1300 1301 1302 1303
<del>(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.</del>	1304 1305 1306
<u>(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.</u>	1307 1308 1309 1310
<b>Sec. 5924.16.</b> (A) In the organized militia <del>not in federal service,</del> there are general, special, and summary courts-martial <del>constituted like similar courts of the army and the air force.</del> They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those <del>courts.</del> <u>General and special courts-martial are courts of record with original jurisdiction.</u>	1311 1312 1313 1314 1315 1316 1317

(B) <del>The constitutions of the three kinds of courts martial</del>	1318
<del>are:</del>	1319
<del>(1) General courts martial, consisting</del> <u>A general</u>	1320
<u>court-martial consists of one of the following:</u>	1321
<del>(A)(1) A military judge and not less</del> <u>fewer</u> than five members;	1322
<del>or</del>	1323
<del>(B)(2) Only a military judge,</del> <u>if,</u> before the court is	1324
assembled, the accused, knowing the identity of the military judge	1325
and after consultation with defense counsel, requests in writing a	1326
court composed only of a military judge and the military judge	1327
approves;	1328
<del>(2) Special courts martial, consisting,</del>	1329
<u>(C) A special court-martial consists of one of the following:</u>	1330
<del>(A) not less than three</del> <u>(1) Three or more</u> members; <del>or</del>	1331
<del>(B)(2) A military judge and not less</del> <u>fewer</u> than three	1332
members; <del>or</del>	1333
<del>(C)(3) Only a military judge,</del> <u>if one has been detailed to the</u>	1334
<u>court,</u> and <del>the accused so requests in writing under the same</del>	1335
<u>conditions as those prescribed in division (B)(1)(b) of this</u>	1336
<u>section;</u>	1337
<del>(3) Summary courts martial, consisting</del> <u>before the court is</u>	1338
<u>assembled the accused, knowing the identity of the military judge</u>	1339
<u>and after consultation with defense counsel, requests in writing a</u>	1340
<u>court composed only of a military judge and the military judge</u>	1341
<u>approves.</u>	1342
<u>(D) A summary court-martial consists of one commissioned</u>	1343
<u>officer in the grade of captain or above.</u>	1344
<b>Sec. 5924.17.</b> <del>Each force of the organized militia</del> <u>The Ohio</u>	1345
<u>national guard</u> has court-martial jurisdiction over all persons	1346

subject to this code. The exercise of jurisdiction by ~~one force~~ 1347  
the Ohio national guard over personnel of another ~~force~~ element of 1348  
the organized militia shall be in accordance with regulations 1349  
prescribed by the ~~governor~~ adjutant general. 1350

**Sec. 5924.18.** (A) Subject to section 5924.17 of the Revised 1351  
Code, general courts-martial have jurisdiction to try persons 1352  
subject to this code for any offense made punishable by this code 1353  
and may, under ~~such~~ any limitations ~~as that~~ the governor may 1354  
prescribe, adjudge any ~~punishment not forbidden by this code,~~ 1355  
~~including the penalty of death when specifically authorized by~~ 1356  
~~this code. General courts martial also have jurisdiction to try~~ 1357  
~~any person who by the law of war is subject to trial by a military~~ 1358  
~~tribunal and may adjudge any punishment permitted by the law of~~ 1359  
~~war. A general court martial of the kind specified in division~~ 1360  
~~(B)(1)(b) of section 5924.16 of the Revised Code does not have~~ 1361  
~~jurisdiction to try any person for any offense for which the death~~ 1362  
~~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,  
group, detached battalion, separate squadron, or other detached  
command, any commander authorized by regulation in the grade of  
colonel or a higher grade may convene special courts-martial.  
Special courts martial may also be convened by superior authority.  
When any such officer is an accuser, the court shall be convened  
by superior competent authority.~~

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

~~(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. 1468

(C)(1) Any enlisted member of the organized militia in a duty 1469  
status who is not a member of the same unit as the accused is 1470  
eligible to serve on general and special courts-martial for the 1471  
trial of any enlisted member of the organized militia who may 1472  
lawfully be brought before such courts for trial, ~~but he shall~~ 1473  
~~serve as a member of a court only~~ if, before the conclusion of a 1474  
session called by the military judge ~~under division (A) of section~~ 1475  
~~5924.39 of the Revised Code~~ or, in the absence of ~~such~~ a session 1476  
called by the military judge, before the court is assembled for 1477  
the trial of the accused, the accused personally has requested in 1478  
writing that enlisted members serve on it. After such a request, 1479  
the accused may not be tried by a general or special 1480  
court-martial, the membership of which does not include enlisted 1481  
members in a number comprising at least one-third of the total 1482  
membership of the court, unless eligible members cannot be 1483  
obtained on account of physical conditions or military exigencies. 1484  
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 court-martial must be both of the following:

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

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

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

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

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

(B) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below

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 accused at the accused's 1781  
own cost, ~~or~~ by military counsel of ~~his~~ 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 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 shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God (or under penalty of perjury)."

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

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

~~(C) Except as otherwise provided in this section, a person charged with any an offense punishable under this code is not liable to be tried by court-martial or punished under section 5924.15 of the Revised Code if the offense was committed more than ~~two~~ four years before the receipt of sworn charges and specifications by an officer exercising ~~summary~~ court-martial jurisdiction over the command ~~or before the imposition of punishment under section 5924.15 of the Revised Code.~~~~

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

~~Sec. 5924.44. (A) No person may, ~~without his consent,~~ be tried a second time in any ~~military or civil court~~ court-martial~~



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~~ 1976  
~~any charge or specification alleging an offense for which the~~ 1977  
~~death penalty may be adjudged. If a plea of guilty has been~~ 1978  
~~accepted by the military judge or by a court martial without a~~ 1979  
~~military judge, a finding of guilty, if permitted by regulations~~ 1980  
~~promulgated by the governor, shall be entered immediately without~~ 1981  
~~vote and shall constitute the finding of the court. If the plea of~~ 1982  
~~guilty is withdrawn prior to announcement of the sentence, the~~ 1983  
~~proceedings shall continue as though the accused had pleaded,~~ not 1984  
guilty by reason of insanity, guilty, or, with the consent of the 1985  
court, no contest. A plea of not guilty by reason of insanity 1986  
shall be made in writing by either the accused or the accused's 1987  
attorney. All other pleas may be made orally. The pleas of not 1988

<u>guilty and not guilty by reason of insanity may be joined.</u>	1989
<u>(B) If an accused refuses to plead, the court shall enter a plea of not guilty on behalf of the accused.</u>	1990
	1991
<u>(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:</u>	1992
	1993
	1994
<u>(1) The nature of the offense to which the plea is offered and the maximum possible penalty provided by law;</u>	1995
	1996
<u>(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;</u>	1997
	1998
	1999
<u>(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.</u>	2000
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<u>(4) That if the accused pleads guilty, there will not be a trial of any kind as to those offenses to which the accused has so pleaded and that by pleading guilty the accused waives the rights described in division (C)(3) of this section;</u>	2005
	2006
	2007
	2008
<u>(5) That, if the accused pleads guilty, the military judge will question the accused about the offenses to which the accused has pleaded guilty, and that, if the accused answers the questions under oath, on the record, and in the presence of counsel, the accused's answers may later be used against the accused in a prosecution for perjury or false statement.</u>	2009
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<u>(D) The military judge shall not accept a plea of guilty without first addressing the accused personally and determining that the plea is voluntary and not the result of fear, threats, or promises. The military judge shall also inquire as to whether the</u>	2015
	2016
	2017
	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,  
disobeys a written order by the convening authority to appear 2054  
before the court;~~ 2055  
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~~ 2097  
~~those officers to take the deposition of any witness.~~ 2098

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

~~(C) Depositions may be taken before and authenticated by any~~ 2102  
~~military or civil officer authorized by the laws of the state or~~ 2103  
~~by the laws of the place where the deposition is taken to~~ 2104  
~~administer oaths.~~ 2105

~~(D) A duly authenticated deposition, taken upon reasonable~~ 2106  
~~notice to the other parties, so far as otherwise admissible under~~ 2107

~~the rules of evidence, may be read in evidence before any~~ 2108  
~~court martial or in any proceeding before a court of inquiry, if~~ 2109  
~~it appears:~~ 2110

~~(1) That the witness resides or is beyond the state in which~~ 2111  
~~the court martial or court of inquiry is ordered to sit, or beyond~~ 2112  
~~the distance of one hundred miles from the place of trial or~~ 2113  
~~hearing:~~ 2114

~~(2) That the witness by reason of death, age, sickness,~~ 2115  
~~bodily infirmity, imprisonment, military necessity, nonamenability~~ 2116  
~~to process, or other reasonable cause, is unable or refused to~~ 2117  
~~appear and testify in person at the place of trial or hearing:~~ 2118

~~(3) That the present whereabouts of the witness is unknown:~~ 2119  
~~or~~ 2120

~~(4) That the deposition was taken in the physical presence of~~ 2121  
~~the accused in the manner and for the purposes provided in the~~ 2122  
~~Ohio Rules of Criminal Procedure.~~ 2123

**Sec. 5924.50.** (A) ~~In any case not capital and not extending~~ 2124  
~~to the dismissal of a commissioned officer, the sworn testimony,~~ 2125  
contained in the duly authenticated record of proceedings of a 2126  
~~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

<u>based;</u>	2230
<u>(3) If the evaluation was ordered to determine the accused's</u>	2231
<u>competence to stand trial, all of the following findings or</u>	2232
<u>recommendations that are applicable:</u>	2233
<u>(a) Whether the accused is capable of understanding the</u>	2234
<u>nature and objective of the proceedings against the accused or of</u>	2235
<u>assisting in the accused's defense;</u>	2236
<u>(b) If the examiner's opinion is that the accused is</u>	2237
<u>incapable of understanding the nature and objective of the</u>	2238
<u>proceedings against the accused or of assisting in the accused's</u>	2239
<u>defense, whether the accused presently is mentally ill;</u>	2240
<u>(c) If the examiner's opinion is that the accused is</u>	2241
<u>incapable of understanding the nature and objective of the</u>	2242
<u>proceedings against the accused or of assisting in the accused's</u>	2243
<u>defense, the examiner's opinion as to the likelihood of the</u>	2244
<u>accused becoming capable of understanding the nature and objective</u>	2245
<u>of the proceedings against the accused and of assisting in the</u>	2246
<u>accused's defense within one year if the accused is provided with</u>	2247
<u>a course of treatment;</u>	2248
<u>(d) If the examiner's opinion is that the accused is</u>	2249
<u>incapable of understanding the nature and objective of the</u>	2250
<u>proceedings against the accused or of assisting in the accused's</u>	2251
<u>defense and that the accused presently is mentally ill, the</u>	2252
<u>examiner's recommendation as to the least restrictive placement or</u>	2253
<u>commitment alternative, consistent with the accused's treatment</u>	2254
<u>needs for restoration to competency and with the safety of the</u>	2255
<u>community;</u>	2256
<u>(e) If the accused is charged before a special or summary</u>	2257
<u>court-martial with an offense that is not a violation of section</u>	2258
<u>5924.120, 5924.127, or 5924.128 of the Revised Code and the</u>	2259
<u>examiner's opinion is that the accused is incapable of</u>	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 stand trial is raised and if the court, upon conducting the hearing provided for in section 5924.502 of the Revised Code, finds that the accused is competent to stand trial, the accused shall be proceeded against as provided by law. If the court finds the accused competent to stand trial and the accused is receiving psychotropic drugs or other medication, the court may authorize the continued administration of the drugs or medication or other appropriate treatment in order to maintain the accused's competence to stand trial unless the accused's attending physician advises the court against continuation of the drugs, other medication, or treatment. 2294  
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(B)(1)(a) If, after taking into consideration all relevant reports, information, and other evidence, the court finds that the accused is incompetent to stand trial and that 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 the accused to undergo treatment. If the accused is being tried by a general 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. 2306  
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(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, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and, if the court finds that restrictions on the accused's freedom of movement are necessary, shall specify the least restrictive limitations on the person's freedom of movement determined to be necessary to protect public safety. In weighing these factors, the court shall give preference to protecting public safety.

(c) If the accused is found incompetent to stand trial, if the chief clinical officer of the hospital, facility, or agency

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 2377  
stand trial and that, even if the accused is provided with a 2378  
course of treatment, there is not a substantial probability that 2379  
the accused will become competent to stand trial within one year, 2380  
the court shall order the discharge of the accused, unless upon 2381  
motion of the trial counsel or on its own motion, the court either 2382  
seeks to retain jurisdiction over the accused pursuant to division 2383  
(A)(2) of section 5924.504 of the Revised Code or files an 2384  
affidavit in the probate court for the civil commitment of the 2385  
accused pursuant to Chapter 5122. of the Revised Code alleging 2386  
that the accused is a mentally ill person subject to 2387

hospitalization by court order. If an affidavit is filed in the 2388  
probate court, the trial court shall send to the probate court 2389  
copies of all written reports of the accused's mental condition 2390  
that were prepared pursuant to section 5924.502 of the Revised 2391  
Code. 2392

The trial court may issue the temporary order of detention 2393  
that a probate court may issue under section 5122.11 of the 2394  
Revised Code, to remain in effect until the probable cause or 2395  
initial hearing in the probate court. Further proceedings in the 2396  
probate court are civil proceedings governed by Chapter 5122. of 2397  
the Revised Code. 2398

(C) No accused shall be required to undergo treatment, 2399  
including any continuing evaluation and treatment, under division 2400  
(B)(1) of this section for longer than whichever of the following 2401  
periods is applicable: 2402

(1) One year, if the accused is being tried by a general 2403  
court-martial; 2404

(2) Six months, if the accused is being tried before a 2405  
special court-martial; 2406

(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 2440  
evaluation and treatment of an accused ordered to undergo 2441  
treatment or continuing evaluation and treatment under division 2442  
(B)(1)(a) of this section shall file a written report with the 2443  
court at the following times: 2444

(1) Whenever the person believes the accused is capable of 2445  
understanding the nature and objective of the proceedings against 2446  
the accused and of assisting in the accused's defense; 2447

(2) Fourteen days before expiration of the maximum time for 2448  
treatment as specified in division (C) of this section and 2449  
fourteen days before the expiration of the maximum time for 2450



continuing evaluation and treatment as specified in division 2451  
(B)(1)(a) of this section; 2452

(3) At a minimum, after each six months of treatment; 2453

(4) Whenever the person who supervises the treatment or 2454  
continuing evaluation and treatment of an accused ordered under 2455  
division (B)(1)(a) of this section believes that there is not a 2456  
substantial probability that the accused will become capable of 2457  
understanding the nature and objective of the proceedings against 2458  
the accused or of assisting in the accused's defense even if the 2459  
accused is provided with a course of treatment. 2460

(G) A report under division (F) of this section shall contain 2461  
the examiner's findings, the facts in reasonable detail on which 2462  
the findings are based, and the examiner's opinion as to the 2463  
accused's capability of understanding the nature and objective of 2464  
the proceedings against the accused and of assisting in the 2465  
accused's defense. If, in the examiner's opinion, the accused 2466  
remains incapable of understanding the nature and objective of the 2467  
proceedings against the accused and of assisting in the accused's 2468  
defense and there is a substantial probability that the accused 2469  
will become capable of understanding the nature and objective of 2470  
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 mental health document in the custody of the state or of any place of commitment other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person. 2703  
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(D) The hearing under division (A) of this section shall be open to the public, and the court shall conduct the hearing in accordance with regulations prescribed by the adjutant general. The court shall make and maintain a full transcript and record of the hearing proceedings. The court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law. 2708  
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(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, the court shall discharge the person, unless a detainer has been placed upon the person by the department of rehabilitation and correction, in which case the person shall be returned to that department. 2718  
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(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, it shall commit the person to the department of mental health for placement in a hospital, facility, or agency as determined clinically appropriate by the department of mental health. Further proceedings shall be in accordance with Chapter 5122. or 5123. of the Revised Code. In committing the accused to the department of mental health, the court shall specify the least restrictive limitations on the accused's freedom of movement 2725  
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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 shall be prepared in the following cases: 2858  
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(a) Each case tried before a general court-martial in which the sentence adjudged includes a dismissal, a discharge, or any punishment that exceeds the punishment that may otherwise be adjudged by a special court-martial; 2860  
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(b) Each case tried before a special court-martial in which the sentence adjudged includes a bad-conduct discharge or confinement for more than six months. 2864  
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(2) In all other cases tried before a court-martial, the record shall contain any matters that are required by regulations of the adjutant general. A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. ~~If a verbatim record of trial by general or special court martial is not required under divisions (A) and (B) of this section, the accused may buy such a record under such regulations as the governor may prescribe.~~ 2867  
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**Sec. 5924.56.** The punishment ~~which~~ that a court-martial may direct for an offense may not exceed limits prescribed by ~~this code or such lesser limits as the governor may prescribe~~ adjutant general for the offense. 2875  
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**Sec. 5924.57.** (A) ~~Whenever a sentence of a court martial as lawfully adjudged and approved includes a forfeitures~~ (1) A forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of the date that is fourteen days after the 2879  
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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 military judge presides and in which a punitive discharge may be adjudged, the state may appeal any of the following, except an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification:

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

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

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

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

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

(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.

(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.

(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. 3199

(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 before a court-martial composed of members who were not members of the court-martial which that first heard the case. Upon a rehearing the accused may not be tried for any offense of which he the accused was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, approved unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes the accused's plea with respect to the charges or specifications upon which the pretrial agreement was based or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of the punishment lawfully adjudged at the first court-martial. 3212  
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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  
limits prescribed by law; 3245

(4) A response to each allegation of error made in writing by 3246  
the accused; 3247

(5) If the case is sent for action under division (B) of this 3248  
section, a recommendation as to the appropriate action to be taken 3249  
and an opinion as to whether corrective action is required as a 3250  
matter of law. 3251

(B) The record of trial and related documents in each case 3252  
reviewed under division (A) of this section shall be sent for 3253  
further action under division (C) of this section to the person 3254  
exercising general court-martial jurisdiction over the accused at 3255  
the time the court was convened or that person's successor in 3256  
command if any of the following applies: 3257

(1) The judge advocate who reviewed the case recommends 3258  
corrective action. 3259

<u>(2) The sentence approved under division (C) of section</u>	3260
<u>5924.60 of the Revised Code includes dismissal, a bad-conduct or</u>	3261
<u>dishonorable discharge, or confinement for more than six months.</u>	3262
<u>(3) Regulations prescribed by the adjutant general require</u>	3263
<u>further review.</u>	3264
<u>(C) The person to whom the record of trial and related</u>	3265
<u>documents are sent under division (B) of this section may do any</u>	3266
<u>of the following:</u>	3267
<u>(1) Approve or disapprove the findings or sentence in whole</u>	3268
<u>or in part;</u>	3269
<u>(2) Remit, commute, or suspend the sentence in whole or in</u>	3270
<u>part;</u>	3271
<u>(3) Order a rehearing on the findings, the sentence, or both;</u>	3272
<u>(4) Dismiss the charges.</u>	3273
<u>(D) If a rehearing is ordered but the convening authority</u>	3274
<u>finds that a rehearing is impracticable, the convening authority</u>	3275
<u>shall dismiss the charges.</u>	3276
<u>(E) If the opinion of the judge advocate who reviews a case</u>	3277
<u>under division (A) of this section finds that corrective action is</u>	3278
<u>required as a matter of law and the person required to take action</u>	3279
<u>under division (B) of this section does not take action that is at</u>	3280
<u>least as favorable to the accused as that recommended by the judge</u>	3281
<u>advocate, the convening authority shall transmit the record of</u>	3282
<u>trial and action on that record to the state judge advocate for</u>	3283
<u>review.</u>	3284
<u>(F) The judge advocate who under this section reviews a case</u>	3285
<u>conducted by a general court-martial shall be the state judge</u>	3286
<u>advocate.</u>	3287
<u>Sec. 5924.65. If an accused files a notice of appeal, the</u>	3288

convening authority shall transmit the record of trial and 3289  
post-trial proceedings in the case to the state judge advocate for 3290  
appropriate action. If the accused does not file a notice of 3291  
appeal or files a notice of appeal and withdraws the appeal, then 3292  
following completion of all post-trial review, the record of trial 3293  
and related documents shall be transmitted and disposed of as the 3294  
adjutant general may prescribe by regulation. 3295

**Sec. 5924.66.** (A) There is hereby created the court of 3296  
military appeals. The court is a court of record and has exclusive 3297  
jurisdiction of all appeals from courts-martial convened pursuant 3298  
to this code. The court shall sit in Franklin county. All hearings 3299  
conducted by the court shall be public. 3300

(B) The judges of the court of military appeals shall be 3301  
military appellate judges appointed by the adjutant general. Each 3302  
judge shall be a retired judge advocate officer who has previously 3303  
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 witnesses, require the production of evidence, and punish for contempt in the same manner and to the same extent as a common pleas court. 3320  
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Sec. 5924.69. Appeals from orders and judgments of the court of military appeals may be taken to the supreme court in the same manner and to the same extent as criminal appeals from orders and judgments of a court of appeals. 3324  
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Sec. 5924.70. (A) The state judge advocate shall detail one or more judge advocates as appellate government counsel and one or more judge advocates assigned to the United States army trial defense service or the United States air force area defense counsel as appellate defense counsel. Appellate counsel shall be members in good standing of the bar of this state and certified by the state judge advocate to be competent to act as appellate counsel. 3328  
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(B) Appellate government counsel shall represent the state in the court of military appeals. In a case arising under this code that is heard in the supreme court, appellate government counsel shall represent the state in the supreme court unless the attorney general elects to represent the state. 3336  
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(C) Appellate defense counsel shall represent the accused in the court of military appeals and the supreme court unless the accused elects to be represented by civilian counsel at the accused's own expense. 3341  
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(D) Appellate government and defense counsel shall perform any additional functions in connection with post-trial proceedings in court-martial cases that the state judge advocate directs. 3345  
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Sec. 5924.71. (A) If the sentence of a court-martial of a commissioned officer or cadet includes dismissal, that part of the sentence providing for dismissal may not be executed until it is approved by the adjutant general. The adjutant general may commute, remit, or suspend the sentence or any part of the sentence as the adjutant general sees fit. In time of war or national emergency, the adjutant general may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and for six months after the end of the war or emergency.

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

(a) The accused withdraws the appeal.

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

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

(2) If the sentence of a court-martial includes dismissal or dishonorable or bad-conduct discharge and the accused fails to appeal to the court of military appeals, waives appellate review, or withdraws an appeal, the dismissal or discharge part of the sentence may not be executed until a judge advocate has reviewed the case and the convening authority has completed action in the review pursuant to section 5924.64 of the Revised Code. Any other part of a court-martial sentence may be ordered executed by the

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 officer who uses contemptuous words against ~~the president,~~ the governor, or the legislature, ~~or the governor or legislature of any this state, territory, commonwealth, or possession wherein that person may be serving,~~ shall be punished as a court-martial may direct.

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

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

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

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

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

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

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

(C) Treats with contempt or is disrespectful in language or

department 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; 1. 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; 1. 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, flees 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 3715  
vessel while having in the person's whole blood, blood serum or 3716  
plasma, breath, or urine the minimum concentrations of alcohol set 3717  
forth in divisions (A)(1)(b) to (A)(1)(i) of section 4511.19 of 3718  
the Revised Code; 3719

(4) Operates or physically controls any vehicle, aircraft, or 3720  
vessel while having in the person's whole blood, blood serum or 3721  
plasma, or urine the concentrations of controlled substances or 3722  
metabolites of a controlled substance set forth in division 3723  
(A)(1)(j) of section 4511.19 of the Revised Code. 3724

(B) If a military installation is located partially in this 3725  
state and partially in one or more other states, the adjutant 3726  
general may select the alcohol and controlled substance levels set 3727  
forth in the impaired operating laws of one of the other states to 3728  
apply on the installation in place of the levels set forth in 3729

division (A) of this section. 3730

**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  
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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 territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or of the organized militia a prohibited substance shall be punished as a court-martial may direct. 3742  
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**Sec. 5924.113.** Any sentinel or lookout who is found drunk or sleeping on ~~his~~ the sentinel's or lookout's post, or leaves it before ~~he~~ the sentinel or lookout is regularly relieved, shall be punished, ~~if the offense is committed in time of war, by death or such other punishment as a court martial may direct, but if the offense is committed at any other time, by such punishment other than death~~ as a court-martial may direct. 3749  
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**Sec. 5924.115.** Any person subject to this code who for the purpose of avoiding work, duty, or service in the organized militia does either of the following shall be punished as a 3756  
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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 3772  
person. 3773

(4) "Dangerous weapon or object" means any of the following: 3774

(a) Any firearm, whether loaded or not and whether operable 3775  
or not; 3776

(b) Any other weapon, device, instrument, material, or 3777  
substance, whether animate or inanimate, that as used or intended 3778  
to be used is known to be capable of producing death or grievous 3779  
bodily harm; 3780

(c) Any object fashioned or used in such a manner as to lead 3781  
a person on whom the object is used or threatened to be used to 3782  
reasonably believe under the circumstances that the object is 3783  
capable of producing death or grievous bodily harm. 3784

(5) "Force" means action to compel submission of another or 3785  
to overcome or prevent another's resistance by either of the 3786  
following: 3787

<u>(a) The use, display, or suggestion of possession of a dangerous weapon or object;</u>	3788 3789
<u>(b) Physical violence, strength, power, or restraint applied to another person sufficient to prevent the other person from avoiding or escaping sexual contact.</u>	3790 3791 3792
<u>(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.</u>	3793 3794 3795 3796
<u>(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, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent and contrary to that other person's reasonable expectation of privacy, of either of the following:</u>	3797 3798 3799 3800 3801 3802 3803 3804 3805
<u>(a) That other person's genitalia, anus, or buttocks, or, if that other person is female, that person's areola or nipple;</u>	3806 3807
<u>(b) That other person while that other person is engaged in a sexual act, sexual contact, or sodomy.</u>	3808 3809
<u>(8) "Lesser degree of harm" means any of the following:</u>	3810
<u>(a) Physical injury to the person or property of a person other than the victim of the offense;</u>	3811 3812
<u>(b) A threat to do any of the following:</u>	3813
<u>(i) Accuse any person of a crime;</u>	3814
<u>(ii) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule;</u>	3815 3816 3817

(iii) Through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person. 3818  
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(9) "Mistake of fact as to consent" means a belief that is incorrect, as a result of ignorance or mistake, that a person engaging in sexual conduct consented to engage in that conduct, if both of the following apply: 3821  
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(a) The ignorance or mistake existed in the mind of the accused at the time the sexual conduct in issue occurred and was based on information or lack of information that would have indicated to a reasonable person that the other person consented; 3825  
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(b) The ignorance or mistake was not based on the accused's failure to discover facts that a reasonably careful person would have discovered under the same or similar circumstances. 3829  
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(10) "Sexual act" means either of the following: 3832

(a) Contact between the penis and the vulva, including any penetration, however slight; 3833  
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(b) Anal intercourse, fellatio, and cunnilingus between persons, regardless of sex; 3835  
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(c) The penetration, however slight, of the genital opening of another by a hand or finger or any object with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. 3837  
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(11) "Sexual contact" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person. 3841  
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(12) "Sexual conduct" means any act that is prohibited by this section. 3846  
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(13)(a) For purposes of divisions (B) and (D) of this section, "threatening or placing that other person in fear" means making a communication or performing an action of sufficient consequence to cause that other person to reasonably fear that noncompliance will result in that person or another being subjected to death, grievous bodily harm, or kidnapping.

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

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

(1) Using force against that other person;

(2) Causing grievous bodily harm to any person;

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

(4) Rendering another person unconscious;

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

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

(1) Causes another person of any age to engage in a sexual

<u>act by doing either of the following:</u>	3878
<u>(a) Threatening or placing that other person in fear;</u>	3879
<u>(b) Causing bodily harm.</u>	3880
<u>(2) Engages in a sexual act with another person of any age if</u>	3881
<u>that other person is substantially incapable of doing any of the</u>	3882
<u>following:</u>	3883
<u>(a) Appraising the nature of the sexual act;</u>	3884
<u>(b) Declining to participate in the sexual act;</u>	3885
<u>(c) Communicating unwillingness to engage in the sexual act.</u>	3886
<u>(D) Any person subject to this chapter who engages in sexual</u>	3887
<u>contact or causes sexual contact with or by another person by</u>	3888
<u>doing any of the following is guilty of aggravated sexual contact</u>	3889
<u>and shall be punished as a court-martial may direct:</u>	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 if that other person is substantially incapable of doing any of the following:</u>	3907 3908 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 contact.</u>	3912 3913
<u>(F) Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.</u>	3914 3915 3916
<u>(G) Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.</u>	3917 3918 3919 3920 3921
<u>(H) Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the person's family or household, the person's genitalia, anus, buttock, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.</u>	3922 3923 3924 3925 3926 3927 3928
<u>(I) In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.</u>	3929 3930 3931
<u>(J)(1) In a prosecution under division (C)(2), (G), or (H) of this section, it is an affirmative defense that the accused and the other person, when they engaged in the sexual conduct were married to each other.</u>	3932 3933 3934 3935

(2) Division (J)(1) of this section does not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person. 3936  
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(K)(1) Lack of permission is an element of the offense under division (G) of this section. Consent and mistake of fact as to consent are affirmative defenses only to the sexual conduct in issue in a prosecution under division (B), (C), (D), or (E) of this section. 3939  
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(2) The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of other affirmative defenses. 3944  
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(3) The accused has the burden of proving an affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution has the burden of proving beyond a reasonable doubt that the affirmative defense did not exist. 3947  
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(L)(1) An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from an accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of a person involved with the accused in the sexual conduct does not constitute consent. 3951  
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(2) A person cannot consent to sexual conduct if the person is substantially incapable of any of the following: 3958  
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(a) Appraising the nature of the sexual conduct due to mental impairment or unconsciousness resulting from consumption of alcohol, drugs, or a similar substance or any other cause or to mental disease or defect that renders the person unable to understand the nature of the sexual conduct; 3960  
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(b) Physically declining to participate in the sexual conduct; 3965  
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(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  
5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 5924.39, 4048  
5924.41, 5924.42, 5924.43, 5924.44, 5924.45, 5924.46, 5924.47, 4049  
5924.48, 5924.49, 5924.50, 5924.51, 5924.52, 5924.54, 5924.56, 4050  
5924.57, 5924.58, 5924.59, 5924.60, 5924.63, 5924.72, 5924.73, 4051  
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5924.84, 5924.85, 5924.86, 5924.87, 5924.88, 5924.89, 5924.90, 4053  
5924.91, 5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 4054  
5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 4055

5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 5924.146 and 4056  
sections 5924.04, 5924.12, 5924.21, 5924.61, 5924.62, 5924.64, 4057  
5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 5924.100, 5924.101, 4058  
5924.102, 5924.104, 5924.105, 5924.106, 5924.110, 5924.114, 4059  
5924.118, 5924.119, 5924.120, 5924.122, 5924.1231, 5924.124, 4060  
5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 5924.147 of 4061  
the Revised Code are hereby repealed. 4062