

AN ACT

To amend sections 124.23, 124.26, 149.01, 317.24, 3319.085, 3333.31, 3737.881, 3781.10, 5321.04, 5902.02, 5903.10, 5903.11, 5911.07, 5923.12, 5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 5924.25, 5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 5924.32, 5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 5924.39, 5924.41, 5924.42, 5924.43, 5924.44, 5924.45, 5924.46, 5924.47, 5924.48, 5924.49, 5924.50, 5924.51, 5924.52, 5924.54, 5924.56, 5924.57, 5924.58, 5924.59, 5924.60, 5924.63, 5924.72, 5924.73, 5924.74, 5924.75, 5924.76, 5924.77, 5924.78, 5924.82, 5924.83, 5924.84, 5924.85, 5924.86, 5924.87, 5924.88, 5924.89, 5924.90, 5924.91, 5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 5924.146, to enact new sections 5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 5924.66, 5924.70, 5924.71, and 5924.120 and sections 4743.04, 5924.501, 5924.502, 5924.503, 5924.504, 5924.505, 5924.506, 5924.581, 5924.582, 5924.67, 5924.68, 5924.69, 5924.761, and 5924.1121, and to repeal sections 5924.04, 5924.12, 5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 5924.100, 5924.101, 5924.102, 5924.104, 5924.105, 5924.106, 5924.110, 5924.114, 5924.118, 5924.119, 5924.120, 5924.122, 5924.1231,

5924.124, 5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 5924.147 of the Revised Code to change the law regarding a County Recorder's release of a veteran's record of discharge, to modify the duties of the Director of Veterans Services with respect to publishing information about Veterans Services offices, to modify the composition of the Veterans Advisory Committee, to grant in-state tuition for nonresident spouses and dependents of veterans who served on active duty and are deceased, to allow extra credit to military veterans and reserve component members on state civil service examinations, to provide for the reemployment of nonteaching school employees following military service in accordance with federal law, to extend the period of time within which persons serving in the Ohio National Guard may meet continuing education requirements for occupational licenses and renew their licenses, to require that workers' compensation claims of members of the organized militia be determined in accordance with applicable line of duty regulations, to require landlords to observe the rights of tenants who are service members under federal law, to modify the order of priority in which veterans may participate in job training programs, to permit but not require the use of armories by patriotic and national organizations, to update references in the Revised Code to federal statutes relating to the National Guard, to conform the Ohio Code of Military Justice to the United States Code of Military Justice, and to make other changes to the Ohio Code of Military Justice.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 124.23, 124.26, 149.01, 317.24, 3319.085, 3333.31, 3737.881, 3781.10, 5321.04, 5902.02, 5903.10, 5903.11, 5911.07, 5923.12, 5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 5924.25, 5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 5924.32, 5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 5924.39, 5924.41, 5924.42, 5924.43, 5924.44, 5924.45, 5924.46, 5924.47, 5924.48, 5924.49, 5924.50, 5924.51, 5924.52, 5924.54, 5924.56, 5924.57, 5924.58, 5924.59, 5924.60, 5924.63, 5924.72, 5924.73, 5924.74, 5924.75, 5924.76, 5924.77, 5924.78, 5924.82, 5924.83, 5924.84, 5924.85, 5924.86, 5924.87, 5924.88, 5924.89, 5924.90, 5924.91, 5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 5924.146 be amended and new sections 5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 5924.66, 5924.70, 5924.71, and 5924.120 and sections 4743.04, 5924.501, 5924.502, 5924.503, 5924.504, 5924.505, 5924.506, 5924.581, 5924.582, 5924.67, 5924.68, 5924.69, 5924.761, and 5924.1121 of the Revised Code be enacted to read as follows:

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

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

(C)(1) Any person who has completed service in the uniformed services, who has been honorably discharged from the uniformed services or transferred to the reserve with evidence of satisfactory service, and who is a resident of this state and any member of ~~the national guard~~ or a reserve component of the armed forces of the United States, including the Ohio national guard, who has completed more than one hundred eighty days of active duty service pursuant to an executive order of the president of the United States or an act of the congress of the United States may file with the director a certificate of service or honorable discharge, and, upon this filing,

the person shall receive additional credit of twenty per cent of the person's total grade given in the examination in which the person receives a passing grade. A person who receives an additional credit under division (C)(1) of this section shall not receive an additional credit under division (C)(2) of this section.

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

(3) As used in this division, "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.A. 4303.

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

(E) Except as otherwise provided in sections 124.01 to 124.64 of the Revised Code, when a position in the classified service of the state is to be filled, an examination shall be administered. The director of administrative services shall have control of all examinations administered for positions in the service of the state and all other examinations the director administers as provided in section 124.07 of the Revised Code, except as otherwise provided in sections 124.01 to 124.64 of the Revised Code. The director shall, by rule adopted under Chapter 119. of the Revised Code, prescribe the notification method that is to be used by an appointing authority to notify the director that a position in the classified service of the state is to be filled. In addition to the positions described in section 124.30 of the Revised Code, the director may, with sufficient justification from the appointing authority, allow the appointing authority to fill the position by noncompetitive examination. The director shall establish, by rule adopted under Chapter 119. of the Revised Code, standards that the director shall use to determine

what serves as sufficient justification from an appointing authority to fill a position by noncompetitive examination.

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

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

Sec. 124.26. From the returns of the examinations, the director of administrative services or the director's designee shall prepare an eligible list of the persons whose general average standing upon examinations for the class or position is not less than the minimum fixed by the rules of the director, and who are otherwise eligible. Those persons shall take rank upon the eligible list as candidates in the order of their relative excellence as determined by the examination without reference to priority of the time of examination. If two or more applicants receive the same mark in an open competitive examination, priority in the time of filing the application with the director or the director's designee shall determine the order in which their names shall be placed on the eligible list, except that applicants eligible for the veteran's or the reserve component member's preference under section 124.23 of the Revised Code shall receive priority in rank on the eligible list over nonveterans and nonmembers of the reserve component on the list with a rating equal to that of the veteran or reserve component member. Ties among veterans or among reserve component members shall be decided by priority of filing the application. A tie between a veteran and a reserve component member shall be decided in favor of the veteran.

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

Sec. 149.01. Each elective state officer, the adjutant general, the adult parole authority, the department of agriculture, the director of administrative services, the public utilities commission, the superintendent of insurance, the superintendent of financial institutions, the superintendent of purchases and printing, ~~the state commissioner of soldiers' claims~~, the fire marshal, the industrial commission, the administrator of workers' compensation, the state department of transportation, the department of health, the state medical board, the state dental board, the board of embalmers and funeral directors, the Ohio commission for the blind, the accountancy board of Ohio, the state council of uniform state laws, the board of commissioners of the sinking fund, the department of taxation, the board of tax appeals, the division of liquor control, the director of state armories, the trustees of the Ohio state university, and every private or quasi-public institution, association, board, or corporation receiving state money for its use and purpose shall make annually, at the end of each fiscal year, in quadruplicate, a report of the transactions and proceedings of that office or department for that fiscal year, excepting receipts and disbursements unless otherwise specifically required by law. The report shall contain a summary of the official acts of the officer, board, council, commission, institution, association, or corporation and any suggestions and recommendations that are proper. On the first day of August of each year, one of the reports shall be filed with the governor, one with the secretary of state, and one with the state library, and one shall be kept on file in the office of the officer, board, council, commission, institution, association, or corporation.

Sec. 317.24. (A) As used in this section:

(1) "Authorized party" means any of the following:

(a) The person who is the subject of the record of discharge;

(b) A county veterans service officer, or an who is certified by the department of veterans services;

(c) An attorney-in-fact, agent, or other representative of the person who is the subject of the record of discharge, if authorized to inspect or copy the record of discharge by that person in a power of attorney or other document;

~~(e)~~(d) A person authorized, for good cause shown, by a court of record to inspect or copy the record of discharge;

~~(d)~~(e) If the person who is the subject of the record of discharge is deceased, the executor or administrator, or an heir, legatee, or devisee, of the person's estate or a funeral director who is to perform the funeral for the deceased person.

(2) "Separation code" or "separation program number" means the coded number or numbers used to specify the reasons for a person's separation

from active duty, as contained in one of the following:

(a) Regarding a separation code, as contained in line 23 or 26 of a veteran's discharge paper, United States department of defense form DD-214;

(b) Regarding a separation program number, as contained in line 9(c) or line 11(c) of a veteran's discharge paper, under prior versions of United States department of defense form DD-214.

(3) "Service-related document" means any United States department of defense form DD-215 or DD-220, or any National Guard Bureau form NGB-22 or NGB-22A.

(B)(1) Upon request of any discharged member of the armed forces of the United States and presentation of the member's discharge, the county recorder shall record the discharge in a book to be furnished by the board of county commissioners for that purpose. There shall be no fee for the recording. The record of discharge, or a certified copy of the record, shall be received in evidence in all cases where the original discharge would be received.

(2)(a) A discharge recorded under division (B)(1) or (D) of this section is not a public record under section 149.43 of the Revised Code for a period of seventy-five years after the date of the recording. During that period, the county recorder's office shall make the record of discharge available only to an authorized party or to a person other than an authorized party as provided by division (B)(2)(b) of this section. Except as provided in section 317.27 of the Revised Code, the authorized party shall pay the reasonable costs of copying the record of discharge.

(b) A person other than an authorized party may request to view or receive a copy of a discharge record recorded under division (B)(1) or (D) of this section. Upon such a person's request, the county recorder's office shall provide a copy of the discharged record to the person that shall be redacted to contain only the name, rank, date of birth, date of discharge, and type of discharge of the person who is the subject of the discharge record. Except as provided in section 317.27 of the Revised Code, a person other than an authorized party shall pay the reasonable costs of copying the record of discharge.

(3) A county veterans service officer, who is an authorized party, may request to receive, from a county recorder's office, a record of discharge if the veterans service officer has a need for access to the record of discharge for the purpose of supporting a veteran's claim for benefits, and the county recorder's office shall make the record available to the county veterans service officer.

(C) Upon application by a person whose discharge has been recorded pursuant to this section, the county recorder shall, without fee, expunge the person's record of discharge, expunge the person's separation program number or separation code from the person's record of discharge and from any of the person's other service-related documents that have been recorded, or expunge the person's social security number from the person's record of discharge and from any of the person's other service-related documents that have been recorded. The application shall be in the following form:

"APPLICATION FOR EXPUNGEMENT
OF DISCHARGE RECORD OR OTHER INFORMATION

I, (Name of Applicant), the undersigned, hereby request the County Recorder of the County of (Name of County), state of Ohio, to expunge my (Insert Record of Discharge, Separation Program Number or Separation Code from my Record of Discharge and other service-related documents, or Social Security Number from my Record of Discharge and other service-related documents).

Dated this day of,

.....
(Signature of Applicant)

Sworn to and subscribed before me by (Name of Applicant) on
.....,

.....
Notary Public

My commission expires,"

(D) Upon the request of any person who served during World War I or World War II as a member of any armed force of the government of Poland or Czechoslovakia and participated while so serving in armed conflict with an enemy of the United States and who has been a citizen of the United States for at least ten years, and the presentation of the person's discharge, the county recorder shall record the person's discharge in a book to be furnished by the board of county commissioners for that purpose. No fee shall be charged for the recording. The record, or a certified copy of it, shall be received in evidence in all cases where the original would be received.

Sec. 3319.085. Any nonteaching school employee who, ~~subsequent to September 1, 1962, has left, or leaves, the employ of a board of education for the purpose of entering on extended active duty in the armed services of the United States or the auxiliaries thereof, and within eight weeks enters such service performs service in the uniformed services or service under section 5923.12 of the Revised Code and who has returned, or returns, from such that service with an honorable a discharge under honorable conditions~~

~~or certificate of~~ is released from service under section 5923.12 of the Revised Code shall be re-employed by the board of education of the district in which he the nonteaching school employee held such the nonteaching school employee position, under the same type of contract as that which he last held in such district, if such nonteaching school employee applies, within ninety days after such discharge, to such board of education for re-employment. Upon such application, such nonteaching school employee shall be re-employed at the first of the next school semester, if such application is made not less than thirty days prior to the first of such next school semester, in which case such nonteaching school employee shall be re-employed the first of the following school semester, unless the board of education waives the requirement for such thirty day period.

~~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~~ the district in which ~~such the~~ 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. 3333.31. (A) For state subsidy and tuition surcharge purposes, status as a resident of Ohio shall be defined by the chancellor of the Ohio board of regents by rule promulgated pursuant to Chapter 119. of the Revised Code. No adjudication as to the status of any person under such rule, however, shall be required to be made pursuant to Chapter 119. of the Revised Code. The term "resident" for these purposes shall not be equated with the definition of that term as it is employed elsewhere under the laws of this state and other states, and shall not carry with it any of the legal connotations appurtenant thereto. Rather, except as provided in divisions (B) and (D) of this section, for such purposes, the rule promulgated under this section shall have the objective of excluding from treatment as residents those who are present in the state primarily for the purpose of attending a

state-supported or state-assisted institution of higher education, and may prescribe presumptive rules, rebuttable or conclusive, as to such purpose based upon the source or sources of support of the student, residence prior to first enrollment, evidence of intention to remain in the state after completion of studies, or such other factors as the chancellor deems relevant.

(B) The rules of the chancellor for determining student residency shall grant residency status to a veteran and to the veteran's spouse and any dependent of the veteran, if both of the following conditions are met:

(1) The veteran either:

(a) Served one or more years on active military duty and was honorably discharged or received a medical discharge that was related to the military service;

(b) Was killed while serving on active military duty or has been declared to be missing in action or a prisoner of war.

(2) If the veteran seeks residency status for tuition surcharge purposes, the veteran has established domicile in this state as of the first day of a term of enrollment in an institution of higher education. If the spouse or a dependent of the veteran seeks residency status for tuition surcharge purposes, the veteran and the spouse or dependent seeking residency status have established domicile in this state as of the first day of a term of enrollment in an institution of higher education, except that if the veteran was killed while serving on active military duty ~~or~~ has been declared to be missing in action or a prisoner of war, or is deceased after discharge, only the spouse or dependent seeking residency status shall be required to have established domicile in accordance with this division.

(C) The rules of the chancellor for determining student residency shall not deny residency status to a student who is either a dependent child of a parent, or the spouse of a person who, as of the first day of a term of enrollment in an institution of higher education, has accepted full-time employment and established domicile in this state for reasons other than gaining the benefit of favorable tuition rates.

Documentation of full-time employment and domicile shall include both of the following documents:

(1) A sworn statement from the employer or the employer's representative on the letterhead of the employer or the employer's representative certifying that the parent or spouse of the student is employed full-time in Ohio;

(2) A copy of the lease under which the parent or spouse is the lessee and occupant of rented residential property in the state, a copy of the closing statement on residential real property of which the parent or spouse is the

owner and occupant in this state or, if the parent or spouse is not the lessee or owner of the residence in which the parent or spouse has established domicile, a letter from the owner of the residence certifying that the parent or spouse resides at that residence.

Residency officers may also evaluate, in accordance with the chancellor's rule, requests for immediate residency status from dependent students whose parents are not living and whose domicile follows that of a legal guardian who has accepted full-time employment and established domicile in the state for reasons other than gaining the benefit of favorable tuition rates.

(D)(1) The rules of the chancellor for determining student residency shall grant residency status to a person who, while a resident of this state for state subsidy and tuition surcharge purposes, graduated from a high school in this state or completed the final year of instruction at home as authorized under section 3321.04 of the Revised Code, if the person enrolls in an institution of higher education and establishes domicile in this state, regardless of the student's residence prior to that enrollment.

(2) The rules of the chancellor for determining student residency shall not grant residency status to an alien if the alien is not also an immigrant or a nonimmigrant.

(E) As used in this section:

(1) "Dependent," "domicile," "institution of higher education," and "residency officer" have the meanings ascribed in the chancellor's rules adopted under this section.

(2) "Alien" means a person who is not a United States citizen or a United States national.

(3) "Immigrant" means an alien who has been granted the right by the United States bureau of citizenship and immigration services to reside permanently in the United States and to work without restrictions in the United States.

(4) "Nonimmigrant" means an alien who has been granted the right by the United States bureau of citizenship and immigration services to reside temporarily in the United States.

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 also test the applicants' knowledge and understanding of the requirements and standards established in rules adopted under sections 3737.88 and 3737.882 of the Revised Code pertaining to the installation, repair, abandonment, and removal of those systems.

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

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

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

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

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

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

(B) The fire marshal shall certify persons who sponsor training programs for underground storage tank system installers who meet the criteria for certification established in rules adopted by the fire marshal under division (D)(4) of this section and pay the certificate fee established in rules adopted under division (D)(5) of this section. Any person who wishes to obtain certification to sponsor such a training program shall apply to the fire marshal on a form prescribed by ~~him~~ the fire marshal. Training program certificates issued under this division shall expire annually. Upon submission of a certification renewal application form prescribed by the fire

marshal and payment of the application and certification renewal fees established in rules adopted under division (D)(5) of this section, the fire marshal shall issue a training program renewal certificate to the applicant.

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

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

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

(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;

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

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

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

(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.

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

(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.

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

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

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

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

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

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

(3) The rules adopted pursuant to this section are complete, lawful

alternatives to any requirements specified for buildings or industrialized units in any section of the Revised Code. Except as otherwise provided in division (I) of this section, the board shall, on its own motion or on application made under sections 3781.12 and 3781.13 of the Revised Code, formulate, propose, adopt, modify, amend, or repeal the rules to the extent necessary or desirable to effectuate the purposes of sections 3781.06 to 3781.18 of the Revised Code.

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

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

(D) The board shall recommend rules, codes, and standards to help carry out the purposes of section 3781.06 of the Revised Code and to help secure uniformity of state administrative rulings and local legislation and

administrative action to the bureau of workers' compensation, the director of commerce, any other department, officer, board, or commission of the state, and to legislative authorities and building departments of counties, townships, and municipal corporations, and shall recommend that they audit those recommended rules, codes, and standards by any appropriate action that they are allowed pursuant to law or the constitution.

(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 5903.12 of the Revised Code relating to active duty military service and are compatible, to the extent possible, with requirements the council of American building officials and national model code organizations establish.

(4) The board shall establish and collect a certification and renewal fee for building department personnel, and persons and employees of persons,

firms, or corporations as described in this section, who are certified pursuant to this division.

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

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

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

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

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

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

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

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

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

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

(c) The names, addresses, and qualifications of persons, firms, or corporations contracting to furnish work or services pursuant to division (E)(7)(b) of this section;

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

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

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

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

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

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

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

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

and 4104.43 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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;

(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;

(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;

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

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

(9) Promptly commence an action under Chapter 1923. of the Revised Code, after complying with division (C) of section 5321.17 of the Revised Code, to remove a tenant from particular residential premises, if the tenant fails to vacate the premises within three days after the giving of the notice required by that division and if the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant

previously has or presently is engaged in a violation as described in division (A)(6)(a)(i) of section 1923.02 of the Revised Code, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be a violation as described in that division. Such actual knowledge or reasonable cause to believe shall be determined in accordance with that division.

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

(B) If the landlord makes an entry in violation of division (A)(8) of this section, makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages resulting from the entry or demands, obtain injunctive relief to prevent the recurrence of the conduct, and obtain a judgment for reasonable attorney's fees, or may terminate the rental agreement.

Sec. 5902.02. The duties of the director of veterans services shall include the following:

(A) Furnishing the veterans service commissions of all counties of the state copies of the state laws, rules, and legislation relating to the operation of the commissions and their offices;

(B) Upon application, assisting the general public in obtaining records of vital statistics pertaining to veterans or their dependents;

(C) Adopting rules pursuant to Chapter 119. of the Revised Code pertaining to minimum qualifications for hiring, certifying, and accrediting county veterans service officers, pertaining to their required duties, and pertaining to revocation of the certification of county veterans service officers;

(D) Adopting rules pursuant to Chapter 119. of the Revised Code for the education, training, certification, and duties of veterans service commissioners and for the revocation of the certification of a veterans service commissioner;

(E) Developing and monitoring programs and agreements enhancing employment and training for veterans in single or multiple county areas;

(F) Developing and monitoring programs and agreements to enable county veterans service commissions to address homelessness, indigency, and other veteran-related issues individually or jointly;

(G) Developing and monitoring programs and agreements to enable state agencies, individually or jointly, that provide services to veterans, including the veterans' homes operated under Chapter 5907. of the Revised

Code and the director of job and family services, to address homelessness, indigency, employment, and other veteran-related issues;

(H) Establishing and providing statistical reporting formats and procedures for county veterans service commissions;

(I) Publishing ~~annually, promulgating change notices for, and distributing~~ electronically a listing of county veterans service ~~officers, offices and~~ county veterans service commissioners, ~~state directors of veterans affairs, and national and state service officers of accredited veterans organizations and their state headquarters.~~ The listing shall include the expiration dates of commission members' terms of office and the organizations they represent; the names, addresses, and telephone numbers of county veterans service ~~officers and state directors of veterans affairs offices;~~ and the addresses and telephone numbers of the Ohio offices and headquarters of state and national veterans service organizations.

(J) Establishing a veterans advisory committee to advise and assist the department of veterans services in its duties. Members shall include a member of the national guard association of the United States who is a resident of this state, a member of the military officers association of America who is a resident of this state, a state representative of congressionally chartered veterans organizations referred to in section 5901.02 of the Revised Code, a representative of any other congressionally chartered state veterans organization that has at least one veterans service commissioner in the state, three representatives of the Ohio state association of county veterans service commissioners, who shall have a combined vote of one, three representatives of the state association of county veterans service officers, who shall have a combined vote of one, one representative of the county commissioners association of Ohio, who shall be a county commissioner not from the same county as any of the other county representatives, a representative of the advisory committee on women veterans, a representative of a labor organization, and a representative of the office of the attorney general. The department of veterans services shall submit to the advisory committee proposed rules for the committee's operation. The committee may review and revise these proposed rules prior to submitting them to the joint committee on agency rule review.

(K) Adopting, with the advice and assistance of the veterans advisory committee, policy and procedural guidelines that the veterans service commissions shall adhere to in the development and implementation of rules, policies, procedures, and guidelines for the administration of Chapter 5901. of the Revised Code. The department of veterans services shall adopt no guidelines or rules regulating the purposes, scope, duration, or amounts

of financial assistance provided to applicants pursuant to sections 5901.01 to 5901.15 of the Revised Code. The director of veterans services may obtain opinions from the office of the attorney general regarding rules, policies, procedures, and guidelines of the veterans service commissions and may enforce compliance with Chapter 5901. of the Revised Code.

(L) Receiving copies of form DD214 filed in accordance with the director's guidelines adopted under division (L) of this section from members of veterans service commissions appointed under section 5901.02 and from county veterans service officers employed under section 5901.07 of the Revised Code;

(M) Developing and maintaining and improving a resource, such as a telephone answering point or a web site, by means of which veterans and their dependents, through a single portal, can access multiple sources of information and interaction with regard to the rights of, and the benefits available to, veterans and their dependents. The director of veterans services may enter into agreements with state and federal agencies, with agencies of political subdivisions, with state and local instrumentalities, and with private entities as necessary to make the resource as complete as is possible.

(N) Planning, organizing, advertising, and conducting outreach efforts, such as conferences and fairs, at which veterans and their dependents may meet, learn about the organization and operation of the department of veterans services and of veterans service commissions, and obtain information about the rights of, and the benefits and services available to, veterans and their dependents;

(O) Advertising, in print, on radio and television, and otherwise, the rights of, and the benefits and services available to, veterans and their dependents;

(P) Developing and advocating improved benefits and services for, and improved delivery of benefits and services to, veterans and their dependents;

(Q) Searching for, identifying, and reviewing statutory and administrative policies that relate to veterans and their dependents and reporting to the general assembly statutory and administrative policies that should be consolidated in whole or in part within the organization of the department of veterans services to unify funding, delivery, and accounting of statutory and administrative policy expressions that relate particularly to veterans and their dependents;

(R) Encouraging veterans service commissions to innovate and otherwise to improve efficiency in delivering benefits and services to veterans and their dependents and to report successful innovations and efficiencies to the director of veterans services;

(S) Publishing and encouraging adoption of successful innovations and efficiencies veterans service commissions have achieved in delivering benefits and services to veterans and their dependents;

(T) Establishing advisory committees, in addition to the veterans advisory committee established under division (K) of this section, on veterans issues;

(U) Developing and maintaining a relationship with the United States department of veterans affairs, seeking optimal federal benefits and services for Ohio veterans and their dependents, and encouraging veterans service commissions to maximize the federal benefits and services to which veterans and their dependents are entitled;

(V) Developing and maintaining relationships with the several veterans organizations, encouraging the organizations in their efforts at assisting veterans and their dependents, and advocating for adequate state subsidization of the organizations;

(W) Requiring the several veterans organizations that receive funding from the state annually to report to the director of veterans services and prescribing the form and content of the report;

(X) Investigating complaints against county veterans services commissioners and county veterans service officers if the director reasonably believes the investigation to be appropriate and necessary;

(Y) Taking any other actions required by this chapter.

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

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

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

state.

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

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

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

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

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

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

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

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

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

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

(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.

(E) As used in this section:

(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.

(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.

(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 veteran.

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

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

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

(b) The spouse of any member of the armed forces serving on active duty who at the time of the spouse's application for assistance under any

program described in division (A) of this section is listed pursuant to the "Act of September 6, 1966," 80 Stat. 629, 37 U.S.C.A. 556, and the regulations issued pursuant thereto, as having been in one or more of the following categories for a total of ninety or more days:

- (i) Missing in action;
- (ii) Captured in line of duty by a hostile force;
- (iii) Forcibly detained or interned in line of duty by a foreign government or power.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) "Commanding officer" includes only commissioned or warrant

officers in command of a unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

act prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5924.06. (A) ~~The governor, on the recommendation of the adjutant general;~~ shall appoint an officer of the ~~organized militia~~ Ohio national guard as state judge advocate, ~~who~~. The officer shall be a member in good standing of the bar of ~~the supreme court~~ of this state and ~~shall have been a~~

~~member of the bar of the state and a member of the organized militia for at least five years~~ be eligible to be recognized as a colonel under regulations prescribed by the national guard bureau.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Confinement ~~other than in a guard house~~, whether before, during, or

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

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

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

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

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

(B) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities

for ~~his~~ the offender's offense shall, upon the request of competent military authority, be returned to military custody for the completion of ~~his~~ the offender's sentence.

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

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

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

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

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

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

~~(b)~~ (ii) ~~Fine or forfeiture~~ Forfeiture of not more than one-half of one month's pay per month for two months; ~~or the sum a fine of one not more~~

than two hundred fifty dollars, whichever is greater;

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

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

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

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

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

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

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

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

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

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

~~(8)(f)~~ If imposed by an officer of the grade of major ~~or lieutenant commander~~, or above, any of the following:

~~(a)(i)~~ The punishment authorized under division (B)~~(4)(2)(a)~~ of this section;

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

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

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

~~(e)(v)~~ Extra duties, including fatigue or other duties, for not more than

forty-five consecutive days, which need not be consecutive, and for not more than two hours per day;

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

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

Detention of pay shall be for a stated period of not more than one year, but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this section "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court martial or civilian court.

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

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

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

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

(1) ~~Arrest~~ arrest in quarters to restriction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Correctional custody for more than seven days;

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

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

(5) Extra duties for more than fourteen days.

~~(F)(G)~~ 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; ~~but the~~. The 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.

~~(G)(H)~~ The ~~governor or the~~ 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.

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

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

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

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

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

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

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

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

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

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

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

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

~~(3) Summary courts martial, consisting before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves.~~

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

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

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

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

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

~~(3) Reprimand;~~

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

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

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

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

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

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

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

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

Sec. 5924.21. The provisions of this code that confer jurisdiction on

courts-martial do not deprive military commissions, provost courts, other military tribunals, or state or federal courts of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, other military tribunals, or state or federal courts.

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

Sec. 5924.23. 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, 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.

(C)(1) Any enlisted member of the organized militia in a duty status who is not a member of the same unit as the accused is eligible to serve on

general and special courts-martial for the trial of any enlisted member of the organized militia who may lawfully be brought before such courts for trial; ~~but he shall serve as a member of a court only~~ if, before the conclusion of a session called by the military judge ~~under division (A) of section 5924.39 of the Revised Code~~ or, in the absence of ~~such~~ a session called by the military judge, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial; the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If ~~such~~ enough enlisted members cannot be obtained, the court may be assembled and trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

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

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

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

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

session of the court-martial to which the judge has been detailed.

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

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

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

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

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

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

(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 authority details new members sufficient in number to provide not ~~less~~ fewer than five members. When the new members have been sworn, the trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

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

presence of the military judge, if any, the accused, and counsel for both sides.

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

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

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

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

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

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

(B) No person subject to this code may interrogate, or request any statement from an accused or a person suspected of an offense, without first informing ~~him~~ the accused or person suspected of the nature of the accusation and advising ~~him~~ the accused or person suspected that ~~he~~ the accused or person suspected does not have to make any statement regarding the offense of which ~~he~~ the accused or person suspected is accused or suspected and that any statement made by ~~him~~ the accused or person suspected may be used as evidence against ~~him~~ the accused or person suspected in a trial by court-martial.

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

(D) No statement obtained from any person in violation of this section,

or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against ~~him~~ the person in a trial by court-martial.

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

(B) The accused shall be advised of the charges against ~~him~~ the accused and of ~~his~~ the accused's right to be represented at that investigation by counsel. Upon ~~his~~ the accused's own request ~~he~~, the accused shall be represented by civilian counsel if provided by ~~him~~ the accused at the accused's own cost, or by military counsel of ~~his~~ the accused's own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against ~~him~~ the accused if they are available and to present anything ~~he~~ the accused may desire in ~~his~~ the accused's own behalf, either in defense or mitigation, and the investigating officer shall examine reasonably available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides, and a copy ~~thereof~~ of that statement shall be given to the accused.

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

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

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

forward the charges, together with the investigation and allied papers, to the ~~governor~~ general court-martial convening authority. If that is not practicable, ~~he~~ the commanding officer shall report in writing to the ~~governor~~ convening authority the reasons for delay.

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

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

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

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

Sec. 5924.37. (A) No authority convening a general, special, or summary court-martial, ~~nor any~~ other commanding officer, or officer serving on the staff ~~thereof~~, of a convening authority or other commanding officer may censure, reprimand, or admonish the court or any member, military judge, or counsel ~~thereof~~ of the court, with respect to the findings or sentence adjudged by the court; or with respect to any other exercise of its or ~~his~~ the member's, military judge's, or counsel's functions in the conduct of

the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member ~~thereof~~ of the court-martial or military tribunal in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to ~~his~~ the authority's judicial acts. This division does not apply to:

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

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

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

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

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

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

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

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

behalf of the accused on review, including any objection to the contents of the record which ~~he~~ the defense counsel considers appropriate.

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

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

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

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

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

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

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

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

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

Sec. 5924.41. (A) The military judge and members of a general or

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

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

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

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

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

(1) For a member of the court:

"You,, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise

not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God (or under penalty of perjury)."

(2) For a military judge:

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

(3) For trial counsel and assistant trial counsel:

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

(4) For defense counsel and assistant defense counsel:

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

(5) For a reporter or interpreter:

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

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

"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.

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

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

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

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

~~without vote and shall constitute the finding of the court. If the plea of guilty is withdrawn prior to announcement of the sentence, the proceedings shall continue as though the accused had pleaded, not guilty by reason of insanity, guilty, or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the accused or the accused's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined.~~

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

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

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

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

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

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

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

(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 accused's willingness to plead guilty results from prior discussions between the convening authority, a representative of the convening authority, or trial counsel and the accused or defense counsel.

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

the offenses charged.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) Has~~ has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil

officer designated to take a deposition to be read in evidence before ~~such~~ a military court;

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

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

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

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

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

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

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

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

~~(2) That the witness by reason of death, age, sickness, bodily infirmity,~~

~~imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refused to appear and testify in person at the place of trial or hearing;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) An accused who is being held in pretrial confinement may be evaluated at the accused's place of detention. Upon the request of the examiner, the court may order the sheriff to transport the accused to a program or facility operated or certified by the department of mental health.

where the accused may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the accused to the place of detention after the evaluation.

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

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

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

(1) The examiner's findings;

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

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

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

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

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

(d) If the examiner's opinion is that the accused is incapable of understanding the nature and objective of the proceedings against the accused or of assisting in the accused's defense and that the accused presently is mentally ill, the examiner's recommendation as to the least restrictive placement or commitment alternative, consistent with the

accused's treatment needs for restoration to competency and with the safety of the community:

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

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

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

(I) No statement that an accused makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the accused's competence to stand trial or to the accused's mental condition at the time of the offense charged may be used against the accused on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the trial counsel or defense counsel may call as a witness any person who evaluated the accused or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the trial counsel or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

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

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.

(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.

(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 institution, the director of the facility, or the person to which the accused is committed for treatment or continuing evaluation and treatment under division (B)(1)(b) of this section determines that medication is necessary to restore the accused's competency to stand trial, and if the accused lacks the capacity to give informed consent or refuses medication, the chief clinical officer of the hospital, facility, or agency where the accused is placed or the managing officer of the institution, the director of the facility, or the person to which the accused is committed for treatment or continuing evaluation and treatment may petition the court for authorization for the involuntary administration of medication. The court shall hold a hearing on the petition within five days of the filing of the petition. Following the hearing, the court may authorize the involuntary administration of medication or may dismiss the petition.

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

(2) If the court finds that the accused is incompetent to stand trial and that, even if the accused is provided with a course of treatment, there is not a substantial probability that the accused will become competent to stand trial within one year, the court shall order the discharge of the accused, unless upon motion of the trial counsel or on its own motion, the court either seeks to retain jurisdiction over the accused pursuant to division (A)(2) of section 5924.504 of the Revised Code or files an affidavit in the probate court for the civil commitment of the accused pursuant to Chapter 5122. of the Revised Code alleging that the accused is a mentally ill person subject to hospitalization by court order. If an affidavit is filed in the probate court, the trial court shall send to the probate court copies of all written reports of the accused's mental condition that were prepared pursuant to section 5924.502 of the Revised Code.

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

5122. of the Revised Code.

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

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

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

(3) Sixty days, if the accused is being tried before a summary court-martial.

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

(E) Except as otherwise provided in this division, an accused who is charged with an offense and is committed by the court under this section to the department of mental health with restrictions on the accused's freedom of movement shall not be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status except in accordance with the court order. The court may grant an accused supervised off-grounds movement to obtain medical treatment or specialized habilitation treatment services if the person who supervises the treatment or the continuing evaluation and treatment of the accused ordered under division (B)(1)(a) of this section informs the court that the treatment or continuing evaluation and treatment cannot be provided at the hospital or facility where the accused is placed by the department of mental health. The chief clinical officer of the hospital or facility where the accused is placed by the department of mental health or the managing officer of the institution or director of the facility to which the accused is committed or a designee of any of those persons may grant an accused movement to a medical facility for an emergency medical situation with appropriate supervision to ensure the safety of the accused, staff, and community during that emergency medical situation. The chief clinical officer of the hospital or facility where the accused is placed by the department of mental health or the managing officer of the institution or director of the facility to which the accused is committed shall notify the court within twenty-four hours of the accused's movement to the medical facility for an emergency medical situation under this division.

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

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

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

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

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

(G) A report under division (F) of this section shall contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to the accused's capability of understanding the nature and objective of the proceedings against the accused and of assisting in the accused's defense. If, in the examiner's opinion, the accused remains incapable of understanding the nature and objective of the proceedings against the accused and of assisting in the accused's defense and there is a substantial probability that the accused will become capable of understanding the nature and objective of the proceedings against the accused and of assisting in the accused's defense if the accused is provided with a course of treatment, if in the examiner's opinion the accused remains mentally ill, and if the maximum time for treatment as specified in division (C) of this section has not expired, the report also shall contain the examiner's recommendation as to the least restrictive placement or commitment alternative that is consistent with the accused's treatment needs for restoration to competency and with the safety of the community. The court shall provide copies of the report to the trial counsel and defense counsel.

(H) If an accused is committed pursuant to division (B)(1) of this section, within ten days after the treating physician of the accused or the examiner of the accused who is employed or retained by the treating facility advises that there is not a substantial probability that the accused will become capable of understanding the nature and objective of the proceedings against the accused or of assisting in the accused's defense even if the accused is provided with a course of treatment, within ten days after the expiration of the maximum time for treatment as specified in division

(C) of this section, within ten days after the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, within thirty days after an accused's request for a hearing that is made after six months of treatment, or within thirty days after being advised by the treating physician or examiner that the accused is competent to stand trial, whichever is the earliest, the court shall conduct another hearing to determine if the accused is competent to stand trial and shall do whichever of the following is applicable:

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

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

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

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

(a) The chief clinical officer of the entity, hospital, or facility, the

managing officer of the institution, or the person to which the accused is committed or admitted shall do all of the following:

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

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

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

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

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

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

(1) The court or the trial counsel may file an affidavit in probate court for civil commitment of the accused in the manner provided in Chapter 5122. of the Revised Code. If the court or trial counsel files an affidavit for civil commitment, the court may detain the accused for ten days pending civil commitment. If the probate court commits the accused subsequent to

the court's or trial counsel's filing of an affidavit for civil commitment, the chief clinical officer of the entity, hospital, or facility, the managing officer of the institution, or the person to which the accused is committed or admitted shall send to the trial counsel the notices described in divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised Code within the periods of time and under the circumstances specified in those divisions.

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

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

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

(B) In making its determination under division (A)(2) of this section as to whether to retain jurisdiction over the accused, 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 charged, and any history of the accused that is relevant to the accused's ability to conform to the law.

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

(D)(1) If the court conducts a hearing as described in division (A)(2) of this section and if the court makes the findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall commit the accused, if determined to require mental health treatment,

to the department of mental health for treatment at a hospital, facility, or agency as determined clinically appropriate by the department of mental health. 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 determined to be necessary to protect public safety.

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

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

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

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

Any person detained pursuant to a temporary order of detention issued

under this division shall be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

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

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

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

(2) The right to have independent expert evaluation;

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

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

(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.

(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.

(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.

(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 determined to be necessary to protect public safety.

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

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

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

(B) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental

responsibility of the accused, or by the president of a special court-martial, without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 5924.52 of the Revised Code, beginning with the junior in rank.

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

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

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

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

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

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

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

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

~~(B)(1) No person may be sentenced to suffer death, except by the concurrence of all members of the court-martial present at the time the vote~~

~~is taken and for an offense in this chapter expressly made punishable by death.~~

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

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

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

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

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

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

(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:

(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.

(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.

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.

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 date on which the sentence is adjudged or the date on which the sentence is approved by the convening authority.

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

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

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

(C) All other sentences of courts-martial are effective on the date

ordered executed.

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

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

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

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

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

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

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

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

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

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

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

(B) If a member subject to forfeiture of pay or pay and allowances under division (A) of this section has dependents, the convening authority or other person acting under section 5924.60 of the Revised Code may waive all or

part of the forfeiture of pay and allowances for a period not exceeding six months. Any pay or allowances paid as a result of a waiver shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused member.

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

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

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

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

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

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

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

(4) The accused may waive the right to make a submission under division (B)(1) of this section. A waiver shall be made in writing and may not be revoked. The time within which the accused may make a submission

under this subsection expires upon the submission of a waiver to the convening authority.

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

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

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

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

recommendation, the accused waives the right to object to those matters.

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

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

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

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

(c) Increase the severity of the sentence.

(3) The convening authority or other authorized person may order a rehearing if the convening authority or other authorized person disapproves the findings or sentence and states the reasons for disapproval of the findings or sentence. If the convening authority or other authorized person disapproves the findings or sentence and does not order a rehearing, the convening authority or other authorized person shall dismiss the charges. A convening authority or other authorized person may not order a rehearing as to the findings if the record does not contain sufficient evidence to support the findings. A convening authority or other authorized person may order a rehearing as to the sentence if the convening authority or other authorized person disapproves the sentence.

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

(B) An accused who is found guilty may appeal under this section by filing a notice of appeal with the convening authority that ordered the court-martial within thirty calendar days after the convening authority serves a copy of the approved findings and sentence on the trial attorney of record for the accused or, if the accused waived the right to counsel, on the accused

in accordance with regulations prescribed by the adjutant general. The notice of appeal shall state the name of the party taking the appeal, the findings, sentence, or parts of the findings or sentence appealed from, and the grounds for the appeal. Failure to file a notice of appeal in a timely manner constitutes a waiver of the right to appeal.

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

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

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

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

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.

(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.

~~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.~~

~~(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.

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

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

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

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

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

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

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

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

(2) The sentence approved under division (C) of section 5924.60 of the Revised Code includes dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months.

(3) Regulations prescribed by the adjutant general require further review.

(C) The person to whom the record of trial and related documents are sent under division (B) of this section may do any of the following:

(1) Approve or disapprove the findings or sentence in whole or in part;

(2) Remit, commute, or suspend the sentence in whole or in part;

(3) Order a rehearing on the findings, the sentence, or both;

(4) Dismiss the charges.

(D) If a rehearing is ordered but the convening authority finds that a rehearing is impracticable, the convening authority shall dismiss the charges.

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

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

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

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

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

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

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

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.

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.

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.

(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.

(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.

(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.

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 section 5924.60 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

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

shall be considered as service for all purposes including the right to pay and allowances.

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

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

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

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

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

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

Sec. 5924.78. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or

assists the offender in order to hinder or prevent ~~his~~ the offender's apprehension, trial, or punishment shall be punished as a court-martial may direct.

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

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

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

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

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

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

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

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

(2) Quits ~~his~~ the member's unit, organization, or place of duty with

intent to avoid hazardous duty or to shirk important service; ~~or~~

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

~~is guilty of desertion~~

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

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

(C) Any person found guilty of desertion or attempt to desert 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 desertion or attempt to desert occurs at any other time, by such punishment, other than death,~~ as a court-martial may direct.

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

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

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

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

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

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;
~~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 deportment toward a warrant officer; or noncommissioned officer; ~~or petty officer~~, while that officer is in the execution of ~~his office~~;
~~shall be punished as a court-martial may direct~~ official duties.

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

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

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

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

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

Sec. 5924.94. (A)(1) Any person subject to this code who:

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

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

(3) ~~Fails~~ Any person subject to this code who fails to do his the person's utmost to prevent and suppress a mutiny or sedition being committed in ~~his~~

~~the person's~~ presence, or fails to take all reasonable means to inform ~~his~~ the person's superior commissioned officer or commanding officer of a mutiny or sedition ~~which he~~ that the person knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Sells or otherwise disposes of the property;

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

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

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

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

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

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

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

(3) Operates or physically controls any vehicle, aircraft, or vessel while having in the person's whole blood, blood serum or plasma, breath, or urine the minimum concentrations of alcohol set forth in divisions (A)(1)(b) to (A)(1)(i) of section 4511.19 of the Revised Code;

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

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

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

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

(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.

(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.

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.

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 court-martial may direct:

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(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:

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

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

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

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

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

(i) Accuse any person of a crime;

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

(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.

(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:

(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;

(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.

(10) "Sexual act" means either of the following:

(a) Contact between the penis and the vulva, including any penetration, however slight;

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

(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.

(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.

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

(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 act by doing either of the following:

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

(b) Causing bodily harm.

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

(a) Appraising the nature of the sexual act;

(b) Declining to participate in the sexual act;

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

(D) Any person subject to this chapter who engages in sexual contact or causes sexual contact with or by another person by doing any of the following is guilty of aggravated sexual contact 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.

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

(1) Engages in or causes sexual contact with or by another person by doing either of the following:

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

(b) Causing bodily harm.

(2) Engages in sexual contact with another person of any age if that other person is substantially incapable of doing any of the following:

(a) Appraising the nature of the sexual contact;

(b) Declining to participate in the sexual contact;

(c) Communicating unwillingness to engage in the sexual contact.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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

(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.

(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.

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

(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;

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

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

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

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

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

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

(2) Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;
~~is guilty of aggravated assault and shall be punished as a court-martial may direct.~~

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

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

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

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

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

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

(2) Presents to any person in the civil or military service thereof of the United States or the state, for approval or payment, any claim against the

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

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

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

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

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

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

(D) ~~Who, being~~ Being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; ~~shall, upon conviction, be punished as a court-martial may direct.~~

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

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

SECTION 2. That existing sections 124.23, 124.26, 149.01, 317.24, 3319.085, 3333.31, 3737.881, 3781.10, 5321.04, 5902.02, 5903.10, 5903.11, 5911.07, 5923.12, 5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 5924.25, 5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 5924.32, 5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 5924.39, 5924.41, 5924.42, 5924.43,

5924.44, 5924.45, 5924.46, 5924.47, 5924.48, 5924.49, 5924.50, 5924.51, 5924.52, 5924.54, 5924.56, 5924.57, 5924.58, 5924.59, 5924.60, 5924.63, 5924.72, 5924.73, 5924.74, 5924.75, 5924.76, 5924.77, 5924.78, 5924.82, 5924.83, 5924.84, 5924.85, 5924.86, 5924.87, 5924.88, 5924.89, 5924.90, 5924.91, 5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 5924.146 and sections 5924.04, 5924.12, 5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 5924.100, 5924.101, 5924.102, 5924.104, 5924.105, 5924.106, 5924.110, 5924.114, 5924.118, 5924.119, 5924.120, 5924.122, 5924.1231, 5924.124, 5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 5924.147 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 490

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____