

As Introduced

129th General Assembly
Regular Session
2011-2012

S. B. No. 288

Senator LaRose

Cosponsors: Senators Seitz, Patton

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A B I L L

To amend sections 124.23, 124.26, 3319.085, 3737.881, 1
3781.10, 4123.022, 5321.04, 5903.10, 5903.11, 2
5911.07, 5923.12, 5924.01, 5924.02, 5924.03, 3
5924.06, 5924.07, 5924.08, 5924.09, 5924.10, 4
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5924.94, 5924.95, 5924.96, 5924.97, 5924.98, 18
5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 19
5924.115, 5924.128, 5924.131, 5924.132, 5924.133, 20
and 5924.146, to enact new sections 5924.21, 21
5924.61, 5924.62, 5924.64, 5924.65, 5924.66, 22
5924.70, 5924.71, and 5924.120 and sections 23

4743.04, 5924.501, 5924.502, 5924.503, 5924.504, 24
5924.505, 5924.506, 5924.581, 5924.582, 5924.67, 25
5924.68, 5924.69, 5924.761, and 5924.1121, and to 26
repeal sections 5924.04, 5924.12, 5924.21, 27
5924.61, 5924.62, 5924.64, 5924.65, 5924.66, 28
5924.70, 5924.71, 5924.99, 5924.100, 5924.101, 29
5924.102, 5924.104, 5924.105, 5924.106, 5924.110, 30
5924.114, 5924.118, 5924.119, 5924.120, 5924.122, 31
5924.1231, 5924.124, 5924.125, 5924.126, 5924.129, 32
5924.130, 5924.145, and 5924.147 of the Revised 33
Code to allow extra credit to military veterans 34
and reserve component members on state civil 35
service examinations, to provide for the 36
reemployment of nonteaching school employees 37
following military service in accordance with 38
federal law, to extend the period of time within 39
which persons serving in the Ohio National Guard 40
may meet continuing education requirements for 41
occupational licenses and renew their licenses, to 42
require that workers' compensation claims of 43
members of the organized militia be determined in 44
accordance with applicable line of duty 45
regulations, to require landlords to observe the 46
rights of tenants who are service members under 47
federal law, to recognize former members of the 48
Ohio National Guard as veterans with regard to 49
burial and related rights, to modify the order of 50
priority in which veterans may participate in job 51
training programs, to permit but not require the 52
use of armories by patriotic and national 53
organizations, to update references in the Revised 54
Code to federal statutes relating to the National 55
Guard, to conform the Ohio Code of Military 56

Justice to the United States Code of Military	57
Justice, and to make other changes to the Ohio	58
Code of Military Justice.	59

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

Section 1. That sections 124.23, 124.26, 3319.085, 3737.881, 60
3781.10, 4123.022, 5321.04, 5903.10, 5903.11, 5911.07, 5923.12, 61
5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 62
5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 63
5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 5924.25, 64
5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 5924.32, 65
5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 5924.39, 66
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5924.91, 5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 72
5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 73
5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 5924.146 be 74
amended and new sections 5924.21, 5924.61, 5924.62, 5924.64, 75
5924.65, 5924.66, 5924.70, 5924.71, and 5924.120 and sections 76
4743.04, 5924.501, 5924.502, 5924.503, 5924.504, 5924.505, 77
5924.506, 5924.581, 5924.582, 5924.67, 5924.68, 5924.69, 5924.761, 78
and 5924.1121 of the Revised Code be enacted to read as follows: 79

Sec. 124.23. (A) All applicants for positions and places in 80
the classified service shall be subject to examination, except for 81
applicants for positions as professional or certified service and 82
paraprofessional employees of county boards of developmental 83
disabilities, who shall be hired in the manner provided in section 84
124.241 of the Revised Code. 85

(B) Any examination administered under this section shall be 86
public and be open to all citizens of the United States and those 87
persons who have legally declared their intentions of becoming 88
United States citizens. For examinations administered for 89
positions in the service of the state, the director of 90
administrative services or the director's designee may determine 91
certain limitations as to citizenship, age, experience, education, 92
health, habit, and moral character. 93

(C)(1) Any person who has completed service in the uniformed 94
services, who has been honorably discharged from the uniformed 95
services or transferred to the reserve with evidence of 96
satisfactory service, and who is a resident of this state and any 97
member of ~~the national guard~~ or a reserve component of the armed 98
forces of the United States, including the Ohio national guard, 99
who has completed more than one hundred eighty days of active duty 100
service pursuant to an executive order of the president of the 101
United States or an act of the congress of the United States may 102
file with the director a certificate of service or honorable 103
discharge, and, upon this filing, the person shall receive 104
additional credit of twenty per cent of the person's total grade 105
given in the examination in which the person receives a passing 106
grade. 107

(2) A member in good standing of a reserve component of the 108
armed forces of the United States, including the Ohio national 109
guard, who successfully completes the member's initial entry-level 110
training shall receive a credit of fifteen per cent of the 111
person's total grade given in the examination in which the person 112
receives a passing grade. 113

(3) As used in this division, "service in the uniformed 114
services" and "uniformed services" have the same meanings as in 115
the "Uniformed Services Employment and Reemployment Rights Act of 116
1994," 108 Stat. 3149, 38 U.S.C.A. 4303. 117

(D) An examination may include an evaluation of such factors 118
as education, training, capacity, knowledge, manual dexterity, and 119
physical or psychological fitness. An examination shall consist of 120
one or more tests in any combination. Tests may be written, oral, 121
physical, demonstration of skill, or an evaluation of training and 122
experiences and shall be designed to fairly test the relative 123
capacity of the persons examined to discharge the particular 124
duties of the position for which appointment is sought. Tests may 125
include structured interviews, assessment centers, work 126
simulations, examinations of knowledge, skills, and abilities, and 127
any other acceptable testing methods. If minimum or maximum 128
requirements are established for any examination, they shall be 129
specified in the examination announcement. 130

(E) Except as otherwise provided in sections 124.01 to 124.64 131
of the Revised Code, when a position in the classified service of 132
the state is to be filled, an examination shall be administered. 133
The director of administrative services shall have control of all 134
examinations administered for positions in the service of the 135
state and all other examinations the director administers as 136
provided in section 124.07 of the Revised Code, except as 137
otherwise provided in sections 124.01 to 124.64 of the Revised 138
Code. The director shall, by rule adopted under Chapter 119. of 139
the Revised Code, prescribe the notification method that is to be 140
used by an appointing authority to notify the director that a 141
position in the classified service of the state is to be filled. 142
In addition to the positions described in section 124.30 of the 143
Revised Code, the director may, with sufficient justification from 144
the appointing authority, allow the appointing authority to fill 145
the position by noncompetitive examination. The director shall 146
establish, by rule adopted under Chapter 119. of the Revised Code, 147
standards that the director shall use to determine what serves as 148
sufficient justification from an appointing authority to fill a 149
position by noncompetitive examination. 150

(F) No questions in any examination shall relate to political 151
or religious opinions or affiliations. No credit for seniority, 152
efficiency, or any other reason shall be added to an applicant's 153
examination grade unless the applicant achieves at least the 154
minimum passing grade on the examination without counting that 155
extra credit. 156

(G) Except as otherwise provided in sections 124.01 to 124.64 157
of the Revised Code, the director of administrative services or 158
the director's designee shall give reasonable notice of the time, 159
place, and general scope of every competitive examination for 160
appointment that the director or the director's designee 161
administers for positions in the classified service of the state. 162
The director or the director's designee shall post notices via 163
electronic media of every examination to be conducted for 164
positions in the classified civil service of the state. The 165
electronic notice shall be posted on the director's internet site 166
on the world wide web for a minimum of one week preceding any 167
examination involved. 168

Sec. 124.26. From the returns of the examinations, the 169
director of administrative services or the director's designee 170
shall prepare an eligible list of the persons whose general 171
average standing upon examinations for the class or position is 172
not less than the minimum fixed by the rules of the director, and 173
who are otherwise eligible. Those persons shall take rank upon the 174
eligible list as candidates in the order of their relative 175
excellence as determined by the examination without reference to 176
priority of the time of examination. If two or more applicants 177
receive the same mark in an open competitive examination, priority 178
in the time of filing the application with the director or the 179
director's designee shall determine the order in which their names 180
shall be placed on the eligible list, except that applicants 181
eligible for the veteran's or the reserve component member's 182

preference under section 124.23 of the Revised Code shall receive 183
priority in rank on the eligible list over nonveterans and 184
nonmembers of the reserve component on the list with a rating 185
equal to that of the veteran or reserve component member. Ties 186
among veterans or among reserve component members shall be decided 187
by priority of filing the application. A tie between a veteran and 188
a reserve component member shall be decided in favor of the 189
veteran. 190

- An eligible list expires upon the filling or closing of the 191
position. An expired eligible list may be used to fill a position 192
of the same classification within the same appointing authority 193
for which the list was created. But, in no event shall an expired 194
list be used more than one year past its expiration date. 195

Sec. 3319.085. Any nonteaching school employee who, 196
~~subsequent to September 1, 1962, has left, or leaves, the employ~~ 197
~~of a board of education for the purpose of entering on extended~~ 198
~~active duty in the armed services of the United States or the~~ 199
~~auxiliaries thereof, and within eight weeks enters such service~~ 200
performs service in the uniformed services or service under 201
section 5923.12 of the Revised Code and who has returned, or 202
returns, from ~~such~~ that service with ~~an honorable~~ a discharge 203
under honorable conditions or ~~certificate of~~ is released from 204
service under section 5923.12 of the Revised Code shall be 205
re-employed by the board of education of the district in which ~~he~~ 206
the nonteaching school employee held ~~such~~ the nonteaching school 207
employee position, ~~under the same type of contract as that which~~ 208
~~he last held in such district, if such nonteaching school employee~~ 209
~~applies, within ninety days after such discharge, to such board of~~ 210
~~education for re-employment. Upon such application, such~~ 211
~~nonteaching school employee shall be re-employed at the first of~~ 212
~~the next school semester, if such application is made not less~~ 213
~~than thirty days prior to the first of such next school semester,~~ 214

~~in which case such nonteaching school employee shall be 215
re-employed the first of the following school semester, unless the 216
board of education waives the requirement for such thirty day 217
period. 218~~

~~For the purposes of seniority and placement on the salary 219
schedule, years of absence on extended active duty in the armed 220
services of the United States or the auxiliaries thereof shall not 221
exceed four, and shall be counted as though school service had 222
been performed during such time as required by the "Uniformed 223
Services Employment and Reemployment Rights Act of 1994," 108 224
Stat. 3149, 38 U.S.C. 4303. 225~~

~~The board of education of ~~this~~ the district in which ~~such~~ the 226
nonteaching school employee was employed and is re-employed under 227
this section may suspend the contract of the nonteaching school 228
employee whose services become unnecessary by reason of the return 229
of a nonteaching school employee from service in the ~~armed 230
uniformed services ~~or auxiliaries thereof.~~ 231~~~~

~~As used in this section, "service in the uniformed services" 232
and "uniformed services" have the same meanings as in the 233
"Uniformed Services Employment and Reemployment Rights Act of 234
1994," 108 Stat. 3149, 38 U.S.C. 4303. 235~~

Sec. 3737.881. (A) The fire marshal shall certify underground 236
storage tank systems installers who meet the standards for 237
certification established in rules adopted under division (D)(1) 238
of this section, pass the certification examination required by 239
this division, and pay the certificate fee established in rules 240
adopted under division (D)(5) of this section. Any individual who 241
wishes to obtain certification as an installer shall apply to the 242
fire marshal on a form prescribed by the fire marshal. The 243
application shall be accompanied by the application and 244
examination fees established in rules adopted under division 245

(D)(5) of this section. 246

The fire marshal shall prescribe an examination designed to 247
test the knowledge of applicants for certification as underground 248
storage tank system installers in the installation, repair, 249
abandonment, and removal of those systems. The examination shall 250
also test the applicants' knowledge and understanding of the 251
requirements and standards established in rules adopted under 252
sections 3737.88 and 3737.882 of the Revised Code pertaining to 253
the installation, repair, abandonment, and removal of those 254
systems. 255

Installer certifications issued under this division shall be 256
renewed annually, upon submission of a certification renewal form 257
prescribed by the fire marshal, provision of proof of successful 258
completion of continuing education requirements, and payment of 259
the certification renewal fee established in rules adopted under 260
division (D)(5) of this section. In addition, the fire marshal may 261
from time to time prescribe an examination for certification 262
renewal and may require applicants to pass the examination and pay 263
the fee established for it in rules adopted under division (D)(5) 264
of this section. 265

The fire marshal may, in accordance with Chapter 119. of the 266
Revised Code, deny, suspend, revoke, or refuse to renew an 267
installer's certification or renewal thereof ~~if he finds~~ after 268
finding that any of the following applies: 269

(1) The applicant for certification or certificate holder 270
fails to meet the standards for certification or renewal thereof 271
under this section and rules adopted under it; 272

(2) The certification was obtained through fraud or 273
misrepresentation; 274

(3) The certificate holder recklessly caused or permitted a 275
person under ~~his~~ the certificate holder's supervision to install, 276

perform major repairs on site to, abandon, or remove an 277
underground storage tank system in violation of the performance 278
standards set forth in rules adopted under section 3737.88 or 279
3737.882 of the Revised Code. 280

As used in division (A)(3) of this section, "recklessly" has 281
the same meaning as in section 2901.22 of the Revised Code. 282

(B) The fire marshal shall certify persons who sponsor 283
training programs for underground storage tank system installers 284
who meet the criteria for certification established in rules 285
adopted by the fire marshal under division (D)(4) of this section 286
and pay the certificate fee established in rules adopted under 287
division (D)(5) of this section. Any person who wishes to obtain 288
certification to sponsor such a training program shall apply to 289
the fire marshal on a form prescribed by ~~him~~ the fire marshal. 290
Training program certificates issued under this division shall 291
expire annually. Upon submission of a certification renewal 292
application form prescribed by the fire marshal and payment of the 293
application and certification renewal fees established in rules 294
adopted under division (D)(5) of this section, the fire marshal 295
shall issue a training program renewal certificate to the 296
applicant. 297

The fire marshal may, in accordance with Chapter 119. of the 298
Revised Code, deny an application for, suspend, or revoke a 299
training program certificate or renewal ~~thereof if he finds or~~ 300
renewal of a training program certificate after finding that the 301
training program does not or will not meet the standards for 302
certification established in rules adopted under division (D)(4) 303
of this section. 304

(C) The fire marshal may conduct or cause to be conducted 305
training programs for underground storage tank systems installers 306
as ~~he~~ the fire marshal considers to be necessary or appropriate. 307
The fire marshal is not subject to division (B) of this section 308

with respect to training programs conducted by employees of the 309
office of the fire marshal. 310

(D) The fire marshal shall adopt, and may amend and rescind, 311
rules doing all of the following: 312

(1) Defining the activities that constitute supervision over 313
the installation, performance of major repairs on site to, 314
abandonment of, and removal of underground storage tank systems; 315

(2) Establishing standards and procedures for certification 316
of underground storage tank systems installers; 317

(3) Establishing standards and procedures for continuing 318
education for certification renewal, subject to the provisions of 319
section 5903.12 of the Revised Code relating to active duty 320
military service; 321

(4) Establishing standards and procedures for certification 322
of training programs for installers; 323

(5) Establishing fees for applications for certifications 324
under this section, the examinations prescribed under division (A) 325
of this section, the issuance and renewal of certificates under 326
divisions (A) and (B) of this section, and attendance at training 327
programs conducted by the fire marshal under division (C) of this 328
section. Fees received under this section shall be credited to the 329
underground storage tank administration fund created in section 330
3737.02 of the Revised Code and shall be used to defray the costs 331
of implementing, administering, and enforcing this section and the 332
rules adopted thereunder, conducting training sessions, and 333
facilitating prevention of releases. 334

(6) That are necessary or appropriate for the implementation, 335
administration, and enforcement of this section. 336

(E) Nothing in this section or the rules adopted under it 337
prohibits an owner or operator of an underground storage tank 338

system from installing, making major repairs on site to, 339
abandoning, or removing an underground storage tank system under 340
the supervision of an installer certified under division (A) of 341
this section who is a full-time or part-time employee of the owner 342
or operator. 343

(F) On and after ~~the date one hundred eighty days after the~~ 344
~~effective date of this section~~ January 7, 1990, no person shall do 345
any of the following: 346

(1) Install, make major repairs on site to, abandon, or 347
remove an underground storage tank system unless the activity is 348
performed under the supervision of a qualified individual who 349
holds a valid installer certificate issued under division (A) of 350
this section; 351

(2) Act in the capacity of providing supervision for the 352
installation of, performance of major repairs on site to, 353
abandonment of, or removal of an underground storage tank system 354
unless the person holds a valid installer certificate issued under 355
division (A) of this section; 356

(3) Except as provided in division (C) of this section, 357
sponsor a training program for underground storage tank systems 358
installers unless the person holds a valid training program 359
certificate issued under division (B) of this section. 360

Sec. 3781.10. (A)(1) The board of building standards shall 361
formulate and adopt rules governing the erection, construction, 362
repair, alteration, and maintenance of all buildings or classes of 363
buildings specified in section 3781.06 of the Revised Code, 364
including land area incidental to those buildings, the 365
construction of industrialized units, the installation of 366
equipment, and the standards or requirements for materials used in 367
connection with those buildings. The board shall incorporate those 368
rules into separate residential and nonresidential building codes. 369

The standards shall relate to the conservation of energy and the 370
safety and sanitation of those buildings. 371

(2) The rules governing nonresidential buildings are the 372
lawful minimum requirements specified for those buildings and 373
industrialized units, except that no rule other than as provided 374
in division (C) of section 3781.108 of the Revised Code that 375
specifies a higher requirement than is imposed by any section of 376
the Revised Code is enforceable. The rules governing residential 377
buildings are uniform requirements for residential buildings in 378
any area with a building department certified to enforce the state 379
residential building code. In no case shall any local code or 380
regulation differ from the state residential building code unless 381
that code or regulation addresses subject matter not addressed by 382
the state residential building code or is adopted pursuant to 383
section 3781.01 of the Revised Code. 384

(3) The rules adopted pursuant to this section are complete, 385
lawful alternatives to any requirements specified for buildings or 386
industrialized units in any section of the Revised Code. Except as 387
otherwise provided in division (I) of this section, the board 388
shall, on its own motion or on application made under sections 389
3781.12 and 3781.13 of the Revised Code, formulate, propose, 390
adopt, modify, amend, or repeal the rules to the extent necessary 391
or desirable to effectuate the purposes of sections 3781.06 to 392
3781.18 of the Revised Code. 393

(B) The board shall report to the general assembly proposals 394
for amendments to existing statutes relating to the purposes 395
declared in section 3781.06 of the Revised Code that public health 396
and safety and the development of the arts require and shall 397
recommend any additional legislation to assist in carrying out 398
fully, in statutory form, the purposes declared in that section. 399
The board shall prepare and submit to the general assembly a 400
summary report of the number, nature, and disposition of the 401

petitions filed under sections 3781.13 and 3781.14 of the Revised Code. 402
403

(C) On its own motion or on application made under sections 404
3781.12 and 3781.13 of the Revised Code, and after thorough 405
testing and evaluation, the board shall determine by rule that any 406
particular fixture, device, material, process of manufacture, 407
manufactured unit or component, method of manufacture, system, or 408
method of construction complies with performance standards adopted 409
pursuant to section 3781.11 of the Revised Code. The board shall 410
make its determination with regard to adaptability for safe and 411
sanitary erection, use, or construction, to that described in any 412
section of the Revised Code, wherever the use of a fixture, 413
device, material, method of manufacture, system, or method of 414
construction described in that section of the Revised Code is 415
permitted by law. The board shall amend or annul any rule or issue 416
an authorization for the use of a new material or manufactured 417
unit on any like application. No department, officer, board, or 418
commission of the state other than the board of building standards 419
or the board of building appeals shall permit the use of any 420
fixture, device, material, method of manufacture, newly designed 421
product, system, or method of construction at variance with what 422
is described in any rule the board of building standards adopts or 423
issues or that is authorized by any section of the Revised Code. 424
Nothing in this section shall be construed as requiring approval, 425
by rule, of plans for an industrialized unit that conforms with 426
the rules the board of building standards adopts pursuant to 427
section 3781.11 of the Revised Code. 428

(D) The board shall recommend rules, codes, and standards to 429
help carry out the purposes of section 3781.06 of the Revised Code 430
and to help secure uniformity of state administrative rulings and 431
local legislation and administrative action to the bureau of 432
workers' compensation, the director of commerce, any other 433

department, officer, board, or commission of the state, and to 434
legislative authorities and building departments of counties, 435
townships, and municipal corporations, and shall recommend that 436
they audit those recommended rules, codes, and standards by any 437
appropriate action that they are allowed pursuant to law or the 438
constitution. 439

(E)(1) The board shall certify municipal, township, and 440
county building departments and the personnel of those building 441
departments, and persons and employees of individuals, firms, or 442
corporations as described in division (E)(7) of this section to 443
exercise enforcement authority, to accept and approve plans and 444
specifications, and to make inspections, pursuant to sections 445
3781.03, 3791.04, and 4104.43 of the Revised Code. 446

(2) The board shall certify departments, personnel, and 447
persons to enforce the state residential building code, to enforce 448
the nonresidential building code, or to enforce both the 449
residential and the nonresidential building codes. Any department, 450
personnel, or person may enforce only the type of building code 451
for which certified. 452

(3) The board shall not require a building department, its 453
personnel, or any persons that it employs to be certified for 454
residential building code enforcement if that building department 455
does not enforce the state residential building code. The board 456
shall specify, in rules adopted pursuant to Chapter 119. of the 457
Revised Code, the requirements for certification for residential 458
and nonresidential building code enforcement, which shall be 459
consistent with this division. The requirements for residential 460
and nonresidential certification may differ. Except as otherwise 461
provided in this division, the requirements shall include, but are 462
not limited to, the satisfactory completion of an initial 463
examination and, to remain certified, the completion of a 464
specified number of hours of continuing building code education 465

within each three-year period following the date of certification 466
which shall be not less than thirty hours. The rules shall provide 467
that continuing education credits and certification issued by the 468
council of American building officials, national model code 469
organizations, and agencies or entities the board recognizes are 470
acceptable for purposes of this division. The rules shall specify 471
requirements that are consistent with the provisions of section 472
5903.12 of the Revised Code relating to active duty military 473
service and are compatible, to the extent possible, with 474
requirements the council of American building officials and 475
national model code organizations establish. 476

(4) The board shall establish and collect a certification and 477
renewal fee for building department personnel, and persons and 478
employees of persons, firms, or corporations as described in this 479
section, who are certified pursuant to this division. 480

(5) Any individual certified pursuant to this division shall 481
complete the number of hours of continuing building code education 482
that the board requires or, for failure to do so, forfeit 483
certification. 484

(6) This division does not require or authorize the board to 485
certify personnel of municipal, township, and county building 486
departments, and persons and employees of persons, firms, or 487
corporations as described in this section, whose responsibilities 488
do not include the exercise of enforcement authority, the approval 489
of plans and specifications, or making inspections under the state 490
residential and nonresidential building codes. 491

(7) Enforcement authority for approval of plans and 492
specifications and enforcement authority for inspections may be 493
exercised, and plans and specifications may be approved and 494
inspections may be made on behalf of a municipal corporation, 495
township, or county, by any of the following who the board of 496
building standards certifies: 497

(a) Officers or employees of the municipal corporation, township, or county;	498 499
(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;	500 501 502
(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.	503 504 505 506
(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.	507 508 509 510 511
(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:	512 513 514 515
(a) Whether the certification is requested for residential or nonresidential buildings, or both;	516 517
(b) The number and qualifications of the staff composing the building department;	518 519
(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;	520 521 522
(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;	523 524 525 526
(e) The proposed budget for the operation of the building	527

department. 528

(10) The board of building standards shall adopt rules 529
governing all of the following: 530

(a) The certification of building department personnel and 531
persons and employees of persons, firms, or corporations 532
exercising authority pursuant to division (E)(7) of this section. 533
The rules shall disqualify any employee of the department or 534
person who contracts for services with the department from 535
performing services for the department when that employee or 536
person would have to pass upon, inspect, or otherwise exercise 537
authority over any labor, material, or equipment the employee or 538
person furnishes for the construction, alteration, or maintenance 539
of a building or the preparation of working drawings or 540
specifications for work within the jurisdictional area of the 541
department. The department shall provide other similarly qualified 542
personnel to enforce the residential and nonresidential building 543
codes as they pertain to that work. 544

(b) The minimum services to be provided by a certified 545
building department. 546

(11) The board of building standards may revoke or suspend 547
certification to enforce the residential and nonresidential 548
building codes, on petition to the board by any person affected by 549
that enforcement or approval of plans, or by the board on its own 550
motion. Hearings shall be held and appeals permitted on any 551
proceedings for certification or revocation or suspension of 552
certification in the same manner as provided in section 3781.101 553
of the Revised Code for other proceedings of the board of building 554
standards. 555

(12) Upon certification, and until that authority is revoked, 556
any county or township building department shall enforce the 557
residential and nonresidential building codes for which it is 558

certified without regard to limitation upon the authority of 559
boards of county commissioners under Chapter 307. of the Revised 560
Code or boards of township trustees under Chapter 505. of the 561
Revised Code. 562

(F) In addition to hearings sections 3781.06 to 3781.18 and 563
3791.04 of the Revised Code require, the board of building 564
standards shall make investigations and tests, and require from 565
other state departments, officers, boards, and commissions 566
information the board considers necessary or desirable to assist 567
it in the discharge of any duty or the exercise of any power 568
mentioned in this section or in sections 3781.06 to 3781.18, 569
3791.04, and 4104.43 of the Revised Code. 570

(G) The board shall adopt rules and establish reasonable fees 571
for the review of all applications submitted where the applicant 572
applies for authority to use a new material, assembly, or product 573
of a manufacturing process. The fee shall bear some reasonable 574
relationship to the cost of the review or testing of the 575
materials, assembly, or products and for the notification of 576
approval or disapproval as provided in section 3781.12 of the 577
Revised Code. 578

(H) The residential construction advisory committee shall 579
provide the board with a proposal for a state residential building 580
code that the committee recommends pursuant to division (D)(1) of 581
section 4740.14 of the Revised Code. Upon receiving a 582
recommendation from the committee that is acceptable to the board, 583
the board shall adopt rules establishing that code as the state 584
residential building code. 585

(I)(1) The committee may provide the board with proposed 586
rules to update or amend the state residential building code that 587
the committee recommends pursuant to division (E) of section 588
4740.14 of the Revised Code. 589

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

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

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

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

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

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

active duty military service. 620

(C) A department, agency, or office of this state or of any 621
political subdivision of this state that issues a license or 622
certificate to practice a trade or profession may, pursuant to 623
rules adopted by the department, agency, or office, issue a 624
temporary license or certificate to practice the trade or 625
profession to a person whose spouse is on active military duty in 626
this state. 627

Sec. 5321.04. (A) A landlord who is a party to a rental 628
agreement shall do all of the following: 629

(1) Comply with the requirements of all applicable building, 630
housing, health, and safety codes that materially affect health 631
and safety; 632

(2) Make all repairs and do whatever is reasonably necessary 633
to put and keep the premises in a fit and habitable condition; 634

(3) Keep all common areas of the premises in a safe and 635
sanitary condition; 636

(4) Maintain in good and safe working order and condition all 637
electrical, plumbing, sanitary, heating, ventilating, and air 638
conditioning fixtures and appliances, and elevators, supplied or 639
required to be supplied by ~~him~~ the landlord; 640

(5) When ~~he~~ the landlord is a party to any rental agreements 641
that cover four or more dwelling units in the same structure, 642
provide and maintain appropriate receptacles for the removal of 643
ashes, garbage, rubbish, and other waste incidental to the 644
occupancy of a dwelling unit, and arrange for their removal; 645

(6) Supply running water, reasonable amounts of hot water, 646
and reasonable heat at all times, except where the building that 647
includes the dwelling unit is not required by law to be equipped 648
for that purpose, or the dwelling unit is so constructed that heat 649

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 681
have the effect of harassing the tenant, the tenant may recover 682
actual damages resulting from the entry or demands, obtain 683
injunctive relief to prevent the recurrence of the conduct, and 684
obtain a judgment for reasonable attorney's fees, or may terminate 685
the rental agreement. 686

Sec. 5903.10. ~~Any (A) A~~ holder of an expired license or 687
certificate from this state or any political subdivision or agency 688
of the state to practice a trade or profession, ~~whose license or~~ 689
~~certificate was not renewed because of the holder's service in the~~ 690
~~armed forces of the United States, or in the national guard or in~~ 691
~~a reserve component, shall, upon presentation of satisfactory~~ 692
~~evidence of honorable discharge or separation under honorable~~ 693
~~conditions therefrom within six months of such discharge or~~ 694
~~separation,~~ be granted a renewal of ~~said~~ the license or 695
certificate by the issuing board or authority at the usual cost 696
without penalty and without re-examination if not otherwise 697
disqualified because of mental or physical disability and if 698
either of the following applies: 699

(1) The license or certificate was not renewed because of the 700
holder's service in the armed forces of the United States or a 701
reserve component of the armed forces of the United States, 702
including the Ohio national guard. 703

(2) The license or certificate was not renewed because the 704
holder's spouse served in the armed forces of the United States or 705
a reserved component of the armed forces of the United States, 706
including the Ohio national guard, and the service resulted in the 707
holder's absence from this state. 708

(B) A renewal shall not be granted under division (A) of this 709
section unless the holder or the holder's spouse, whichever is 710
applicable, has presented satisfactory evidence of the service 711

member's discharge under honorable conditions or release under 712
honorable conditions from active duty or national guard duty 713
within six months after the discharge or release. 714

Sec. 5903.11. (A) Any federally funded employment and 715
training program administered by any state agency including, but 716
not limited to, the "~~Job Training Partnership~~ Workforce Investment 717
Act of 1998," ~~96 112 Stat. 1322 (1982)~~ 936, codified in scattered 718
sections of 29 U.S.C.A. 1501, as amended, shall include a veteran 719
priority system to provide maximum employment and training 720
opportunities to veterans and ~~other~~ eligible persons within each 721
targeted group as established by federal law and state and federal 722
policy in the service area. Disabled veterans, veterans of the 723
Vietnam era, other veterans, and ~~other~~ eligible persons shall 724
receive preference over nonveterans within each targeted group in 725
the provision of employment and training services available 726
through these programs as required by this section. 727

(B) Each state agency shall refer qualified applicants to job 728
openings and training opportunities in programs described in 729
division (A) of this section in the following order of priority: 730

- (1) Special disabled veterans; 731
- (2) Veterans of the Vietnam era; 732
- (3) Disabled veterans; 733
- (4) All other veterans; 734
- (5) Other eligible persons; 735
- (6) Nonveterans. 736

(C) Each state agency providing employment and training 737
services to veterans and ~~other~~ eligible persons under programs 738
described in division (A) of this section shall submit an annual 739
written report to the speaker of the house of representatives and 740
the president of the senate on the services that it provides to 741

veterans and ~~other~~ eligible persons. Each such agency shall report 742
separately on all entitlement programs, employment or training 743
programs, and any other programs that it provides to each class of 744
persons described in divisions (B)(1) to (6) of this section. Each 745
such agency shall also report on action taken to ensure compliance 746
with statutory requirements. Compliance and reporting procedures 747
shall be in accordance with the reporting procedures then in 748
effect for all employment and training programs described in 749
division (A) of this section, with the addition of veterans as a 750
separate reporting module. 751

(D) All state agencies that administer federally funded 752
employment and training programs described in division (A) of this 753
section for veterans and ~~other~~ eligible persons shall do all of 754
the following: 755

(1) Ensure that veterans are treated with courtesy and 756
respect at all state governmental facilities; 757

(2) Give priority in referral to jobs to qualified veterans 758
and other eligible persons; 759

(3) Give priority in referral to and enrollment in training 760
programs to qualified veterans and other eligible persons; 761

(4) Give preferential treatment to special disabled veterans 762
in the provision of all needed state services; 763

(5) Provide information and effective referral assistance to 764
veterans and other eligible persons regarding needed benefits and 765
services that may be obtained through other agencies. 766

(E) As used in this section: 767

(1) "Special disabled veteran" means a veteran who is 768
entitled to, or who but for the receipt of military pay would be 769
entitled to, compensation under any law administered by the 770
department of veterans affairs for a disability rated at thirty 771

per cent or more or a person who was discharged or released from 772
active duty because of a service-connected disability. 773

(2) "Veteran of the Vietnam era" means an eligible veteran 774
who served on active duty for a period of more than one hundred 775
eighty days, any part of which occurred from August 5, 1964, 776
through May 7, 1975, and was discharged or released therefrom with 777
other than a dishonorable discharge or a person who was discharged 778
or released from active duty for a service-connected disability if 779
any part of the active duty was performed from August 5, 1964, 780
through May 7, 1975. 781

(3) "Disabled veteran" means a veteran who is entitled to, or 782
who but for the receipt of military retirement pay would be 783
entitled to compensation, under any law administered by the 784
department of veterans affairs and who is not a special disabled 785
veteran. 786

(4) "Eligible veteran" means a person who served on active 787
duty for more than one hundred eighty days and was discharged or 788
released from active duty with other than a dishonorable discharge 789
or a person who was discharged or released from active duty 790
because of a service-connected disability. 791

(5) "Other eligible person" means one of the following: 792

(a) The spouse of any person who died of a service-connected 793
disability; 794

(b) The spouse of any member of the armed forces serving on 795
active duty who at the time of the spouse's application for 796
assistance under any program described in division (A) of this 797
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 799
thereto, as having been in one or more of the following categories 800
for a total of ninety or more days: 801

(i) Missing in action; 802

(ii) Captured in line of duty by a hostile force;	803
(iii) Forcibly detained or interned in line of duty by a foreign government or power.	804 805
(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.	806 807 808 809
(6) "Veteran" means either of the following:	810
(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;	811 812 813 814
(b) A person who served as a member of the United States merchant marine and to whom either of the following applies:	815 816
(i) The person has an honorable report of separation from active duty military service, form DD214 or DD215.	817 818
(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.	819 820 821 822
(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.	823 824 825 826
(8) "Employment program" means a program which provides referral of individuals to employer job openings in the federal, state, or private sector.	827 828 829
(9) "Training program" means any program that upgrades the employability of qualified applicants.	830 831
(10) "Entitlement program" means any program that enlists	832

specific criteria in determining eligibility, including but not 833
limited to the existence in special segments of the general 834
population of specific financial needs. 835

(11) "Targeted group" means a group of persons designated by 836
federal law or regulations or by state law to receive special 837
assistance under an employment and training program described in 838
division (A) of this section. 839

(12) "United States merchant marine" includes the United 840
States army transport service and the United States naval 841
transport service. 842

Sec. 5911.07. The armories erected by the state are for the 843
use of the organized militia; but in each armory there ~~shall~~ may 844
be provided and maintained, except as provided in this section, a 845
suitable room including heating, lighting, and janitor services, 846
for the free use of ~~the~~ patriotic and national organizations ~~known~~ 847
~~as the women's relief corps, sons of veterans, sons of veterans'~~ 848
~~auxiliary, daughters of veterans, united Spanish war veterans,~~ 849
~~auxiliary united Spanish war veterans, veterans of foreign wars of~~ 850
~~the United States, veteran organizations of World War I and World~~ 851
~~War II, army and navy union of the United States, and honorably~~ 852
~~retired officers of the Ohio national guard, Ohio military~~ 853
~~reserve, and Ohio naval militia~~ chartered under part B of subtitle 854
II of Title 36 of the United States Code, unless such rooms are 855
already provided by the erection of a county memorial building or 856
otherwise by the state, or by the county, township, or municipal 857
corporation. This section does not require a separate room to be 858
maintained for each organization. The room provided in this 859
section may be used for military training when not in actual use 860
by one of the aforementioned organizations. This section applies only 861
during the time that such armory is being used by ~~an active~~ 862
~~military organization or~~ a unit of the organized militia. 863

Sec. 5923.12. When ordered to state active duty by the 864
governor, for which duty federal basic pay and allowances are not 865
authorized, members of the organized militia of Ohio shall receive 866
the same pay and allowances for each day's service as is provided 867
for commissioned officers, warrant officers, noncommissioned 868
officers, and enlisted personnel of like grade and longevity in 869
the armed forces of the United States, together with the necessary 870
transportation, housing, and subsistence allowances as prescribed 871
by the United States department of defense pay manual, or an 872
amount not less than seventy-five dollars per day as base pay for 873
each day's duty performed, whichever is greater. 874

When ordered by the governor to perform training or duty 875
under this section or section 5919.29 of the Revised Code, members 876
of the Ohio national guard shall have the protections afforded to 877
persons on federal active duty by "~~The Soldiers and Sailors~~ 878
~~Servicemembers~~ Civil Relief Act of 1940," 54 117 Stat. 1178 2835, 879
50 App. U.S.C.A. App. 501-548 and 560-591. 880

Sec. 5924.01. As used in Chapter 5924. of the Revised Code 881
unless the context otherwise requires: 882

(A) "Organized militia" means the Ohio national guard, the 883
Ohio naval militia, and the Ohio military reserve. 884

(B) "Officer" means commissioned or warrant officer. 885

(C) "Commissioned officer" includes a commissioned warrant 886
officer. 887

(D) "Commanding officer" includes only commissioned or 888
warrant officers in command of a unit. 889

(E) "Superior commissioned officer" means a commissioned 890
officer superior in rank or command. 891

(F) "Enlisted member" means a person in an enlisted grade. 892

(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 923
by another, ~~and~~ or any other person who has an interest other than 924
an official interest in the prosecution of the accused. 925

(Q) "Military" refers to any or all of the armed forces. 926

(R) "Convening authority" includes, in addition to the person 927
who convened the court, a commissioned officer commanding for the 928
time being, or a successor in command. 929

(S) "May" is used in a permissive sense. The words "no person 930
may" mean that no person is required, authorized, or 931
permitted to do the act prescribed. 932

(T) "Shall" is used in an imperative sense. 933

(U) "Code" means the Ohio code of military justice, as set 934
forth in Chapter 5924. of the Revised Code. 935

(V) "Trial counsel" means the prosecuting attorney in a 936
general or special court-martial. 937

(W) "Detention facility" means any place that is owned or 938
operated by a municipal corporation, by a county, or by one or 939
more municipal corporations, counties, or both and that is used 940
for the confinement of persons charged with or convicted of any 941
crime in this state or another state or under the laws of the 942
United States. 943

(X) "Examiner" has the same meaning as in division (A)(2)(a) 944
of section 2945.37 of the Revised Code. 945

(Y) "Nonsecured status," "unsupervised, off-grounds 946
movement," "trial visit," "conditional release," and "licensed 947
clinical psychologist" have the same meanings as in section 948
2945.37 of the Revised Code. 949

Sec. 5924.02. The following persons who are not in federal 950
service are subject to this code: 951

(A) Members of the organized militia, including Ohio national guard dual-status technicians during their normal duty hours; 952
953

(B) Persons who have been placed on the state ~~reserve list or~~ 954
~~the state~~ retired list pursuant to section 5913.07 or 5919.13 of 955
the Revised Code; 956

(C) All other persons lawfully ordered to duty in ~~or with~~ the 957
organized militia, from the dates they are required by the terms 958
of the order or other directive to obey the ~~same order or~~ 959
directive, including any time during which they are going to or 960
returning from duty in the organized militia. 961

Sec. 5924.03. (A) Each person discharged from the organized 962
militia who is later charged with having fraudulently obtained ~~his~~ 963
the discharge is, subject to section 5924.43 of the Revised Code, 964
subject to trial by court-martial on that charge and is, after 965
apprehension, subject to this code while in the custody of the 966
military for that trial. Upon conviction of that charge ~~he the~~ 967
person is subject to trial by court-martial for all offenses under 968
this code committed before the fraudulent charge. 969

(B) No person who has deserted from the organized militia may 970
be relieved from amenability to the jurisdiction of this code by 971
virtue of a separation from any later period of service. 972

Sec. 5924.06. (A) The ~~governor, on the recommendation of the~~ 973
adjutant general, shall appoint an officer of the ~~organized~~ 974
~~militia~~ Ohio national guard as state judge advocate, ~~who. The~~ 975
officer shall be a member in good standing of the bar of ~~the~~ 976
~~supreme court~~ of this state and ~~shall have been a member of the~~ 977
~~bar of the state and a member of the organized militia for at~~ 978
least five years be eligible to be recognized as a colonel under 979
regulations prescribed by the national guard bureau. 980

(B) The adjutant general ~~may~~ shall appoint ~~as many assistant~~ 981

state judge advocates ~~as he shall deem necessary, which assistant~~ 982
~~state judge and legal officers on the recommendation of the state~~ 983
judge advocate. Judge advocates and legal officers shall be 984
officers of the organized militia and members in good standing of 985
the bar of ~~the~~ this state. 986

(C) The state judge advocate or ~~his assistants~~ subordinate 987
judge advocates shall make frequent inspections in the field in 988
supervision of the administration of military justice. 989

(D) ~~The provisions of section 109.02 of the Revised Code~~ 990
~~shall not be a restriction upon the appointment and duties as~~ 991
~~provided in this section.~~ 992

~~(E)~~ Convening authorities shall at all times communicate 993
directly with their staff judge advocates or legal officers in 994
matters relating to the administration of military justice; ~~and~~ 995
~~the.~~ A staff judge advocate or legal officer of ~~any~~ a command is 996
entitled to communicate directly with ~~the~~ any staff judge advocate 997
or legal officer of a superior or subordinate command, or with the 998
state judge advocate. 999

~~(F)~~(E) No person who has acted as member, military judge, 1000
trial counsel, assistant trial counsel, defense counsel, assistant 1001
defense counsel, or investigating officer, or who has been a 1002
witness for either the prosecution or defense, in any case may 1003
later act as staff judge advocate or legal officer to any 1004
reviewing authority upon the same case. 1005

Sec. 5924.07. (A) Apprehension is the taking of a person into 1006
custody. 1007

(B) Any person authorized by this code, or by regulations 1008
issued pursuant ~~thereto~~ to this code, to apprehend persons subject 1009
to this code, any marshal of a court-martial appointed pursuant to 1010
the provisions of this code, and any peace officer authorized to 1011

do so by law may do so upon reasonable belief that an offense has 1012
been committed and that the person apprehended committed it. 1013

(C) Commissioned officers, warrant officers, ~~petty officers,~~ 1014
and noncommissioned officers ~~have authority~~ may take reasonable 1015
action to quell quarrels, frays, and disorders among persons 1016
subject to this code and to apprehend persons subject to this code 1017
who take part therein. 1018

(D) A person subject to this code may be apprehended in the 1019
person's home, with the assistance of a local law enforcement 1020
agency, only upon probable cause to believe that the person is 1021
legally subject to apprehension and that the person is or will be 1022
present to be apprehended. 1023

Sec. 5924.08. ~~Any civil~~ A peace officer having authority to 1024
apprehend offenders under the laws of the United States, or of a 1025
state, territory, commonwealth, or possession, or the District of 1026
Columbia may summarily apprehend a deserter from the organized 1027
militia and deliver ~~him~~ the deserter into the custody of the 1028
organized militia. ~~If an offender is apprehended outside the~~ 1029
~~state, his return to the area must be in accordance with normal~~ 1030
~~extradition procedures, or reciprocal agreement.~~ 1031

Sec. 5924.09. (A) Arrest is the restraint of a person by an 1032
oral or written order, not imposed as a punishment for an offense, 1033
directing ~~him~~ the person to remain within certain specified 1034
limits. Confinement is the physical restraint of a person that is 1035
imposed by order of competent authority and deprives the person of 1036
freedom pending disposition of criminal charges. 1037

(B) An enlisted member may be ordered into arrest or 1038
confinement by any ~~commissioned~~ commanding officer by an order, 1039
oral or written, delivered in person or through other persons 1040
subject to this code or through any person authorized by this code 1041

to apprehend persons. A commanding officer may authorize warrant 1042
officers, ~~petty officers,~~ or noncommissioned officers to order 1043
enlisted members of ~~his~~ the commanding officer's command or 1044
enlisted members subject to ~~his~~ the commanding officer's authority 1045
into arrest or confinement. 1046

(C) A commissioned officer or a warrant officer may be 1047
ordered apprehended or into arrest or confinement only by a 1048
commanding officer to whose authority ~~he~~ the commissioned officer 1049
or warrant officer is subject, by an order, oral or written, 1050
delivered in person or by another commissioned officer. The 1051
authority to order such persons apprehended or into arrest or 1052
confinement may not be delegated. 1053

(D) No person may be ordered apprehended or into arrest or 1054
confinement except for probable cause. 1055

(E) Nothing in this section shall be construed to limit the 1056
authority of persons authorized to apprehend offenders to secure 1057
the custody of an alleged offender until proper authority may be 1058
notified. 1059

Sec. 5924.10. (A) Any person subject to this code charged 1060
with an offense under this code shall be ordered into arrest or 1061
confinement, as circumstances may require; but when charged only 1062
with an offense normally tried by a summary court-martial, such 1063
person shall not ordinarily be placed into confinement. When any 1064
person subject to this code is placed into arrest or confinement 1065
prior to trial, ~~immediate steps shall be taken to inform him~~ the 1066
person shall be informed within seventy-two hours of the specific 1067
wrong of which ~~he~~ the person is accused and ~~to try him or to~~ 1068
~~dismiss the charges and release him~~ of the person's rights under 1069
this code. 1070

(B) Confinement ~~other than in a guard house,~~ whether before, 1071
during, or after trial by a military court, shall be ~~executed,~~ to 1072

~~the maximum extent practicable, in civil jails or prisons~~ 1073
~~designated by the governor or by such person as he may authorize~~ 1074
~~to act like facilities. An order that an accused person be placed~~ 1075
~~in pretrial confinement shall be reviewed by a military judge~~ 1076
~~within seven days and if confirmed may be reviewed after that~~ 1077
~~confirmation only on motion.~~ 1078

Sec. 5924.11. (A) ~~No provost marshal, commander of a guard,~~ 1079
~~master at arms, warden sheriff, keeper, or officer of a city or~~ 1080
~~county jail or any other jail or prison designated under section~~ 1081
~~5924.10 of the Revised Code, detention facility may refuse to~~ 1082
~~either of the following:~~ 1083

(1) ~~Refuse to receive or keep any prisoner committed to his~~ 1084
~~the sheriff's, keeper's, or officer's charge, when the committing~~ 1085
~~person furnishes a statement, signed by him the committing person,~~ 1086
~~of the offense charged against the prisoner;~~ 1087

(2) ~~Demand payment of any kind for housing prisoners under~~ 1088
~~this code.~~ 1089

(B) ~~Every commander of a guard, master at arms A sheriff,~~ 1090
~~warden, keeper, or officer of a city or county jail or of any~~ 1091
~~other jail or prison designated under section 5924.10 of the~~ 1092
~~Revised Code, detention facility to whose charge a prisoner is~~ 1093
~~committed, shall, within twenty-four hours after that commitment~~ 1094
~~or as soon as he is relieved from guard, report to the commanding~~ 1095
~~officer of the prisoner the name of the prisoner, the offense~~ 1096
~~charged against him the prisoner, and the name of the person who~~ 1097
~~ordered or authorized the commitment.~~ 1098

Sec. 5924.13. ~~Subject to section 5924.57 of the Revised Code,~~ 1099
~~no No person, while being held for or after trial or the result of~~ 1100
~~trial, may be subjected to punishment or penalty other than arrest~~ 1101
~~or confinement upon the charges pending against him, nor shall the~~ 1102

~~person. The arrest or confinement imposed upon him~~ the person 1103
~~shall not~~ be any more rigorous than the circumstances require to 1104
insure ~~his~~ the person's presence, ~~but he.~~ The person may be 1105
subjected to minor punishment during that period for infractions 1106
of discipline, ~~and may be required to perform such labor as may be~~ 1107
~~necessary for the policing and sanitation of his living quarters~~ 1108
~~and messing facilities and the area immediately adjacent thereto.~~ 1109
1110

Sec. 5924.14. (A) Under such regulations as may be prescribed 1111
under this code, a person on ~~active~~ state active duty ~~subject to~~ 1112
~~this code or duty under Title 32 of the United States Code~~ who is 1113
accused of an offense against civil authority may be delivered, 1114
upon request, to the civil authority for ~~trial~~ trial. 1115

(B) When delivery under this section is made to any civil 1116
authority of a person undergoing sentence of a court-martial, the 1117
delivery, if followed by conviction in a civil tribunal, 1118
interrupts the execution of the sentence of the court-martial, and 1119
the offender after having answered to the civil authorities for 1120
~~his~~ the offender's offense shall, upon the request of competent 1121
military authority, be returned to military custody for the 1122
completion of ~~his~~ the offender's sentence. 1123

Sec. 5924.15. (A) Under such regulations as the ~~governor~~ 1124
adjutant general may prescribe, ~~and under such additional~~ 1125
~~regulations as may be prescribed by the adjutant general of Ohio,~~ 1126
limitations may be placed on the powers granted by this section 1127
with respect to the kind and amount of punishment authorized, the 1128
categories of commanding officers and warrant officers exercising 1129
command authorized to exercise those powers, the applicability of 1130
this section to an accused who demands trial by court-martial, and 1131
the kinds of courts-martial to which the case may be referred upon 1132
such a demand. However, except in the case of a member attached 1133

to, or embarked in a vessel, punishment may not be imposed upon 1134
~~any person subject to this code under this section~~ a member of the 1135
organized militia if ~~such person~~ the member has, before the 1136
imposition of ~~such~~ the punishment, demanded trial by court-martial 1137
in lieu of ~~such~~ the punishment. Under similar regulations, rules 1138
may be prescribed with respect to the suspension of punishments 1139
authorized ~~hereunder~~ under this section. If authorized by 1140
regulations prescribed under this section, the governor or a 1141
general officer or officer of flag rank in command may delegate 1142
the powers of the governor or general officer under this section 1143
to a principal assistant. In all proceedings, the accused shall be 1144
allowed a reasonable period of time, normally not exceeding 1145
forty-eight hours, to reply to the notification of intent to 1146
impose punishment under this section. 1147

(B) Subject to ~~the foregoing~~ division (A) of this section, 1148
any commanding officer, ~~and for the purposes of this section the~~ 1149
~~adjutant general of Ohio,~~ may, in addition to or in lieu of 1150
admonition or reprimand, impose one or more of the following 1151
~~disciplinary~~ punishments for minor offenses without the 1152
intervention of a court-martial: 1153

~~(A)(1)~~ Upon officers of the commanding officer's command, any 1154
of the following: 1155

~~(1)(a)~~ Restriction to certain specified limits, with or 1156
without suspension from duty, for not more than thirty ~~consecutive~~ 1157
days; 1158

~~(2)(b)~~ If imposed by the governor, the adjutant general, ~~the~~ 1159
~~commanding an officer of a force of the organized militia~~ 1160
exercising general court-martial jurisdiction, a general officer, 1161
~~or the commanding general of a division~~ flag officer, any of the 1162
following: 1163

~~(a)(i)~~ Arrest in quarters for not more than thirty 1164

consecutive days; 1165

~~(b) Fine or forfeiture (ii) Forfeiture~~ of not more than 1166
one-half of one month's pay per month for two months, ~~or the sum a~~ 1167
fine of one not more than two hundred fifty dollars, ~~whichever is~~ 1168
greater; 1169

~~(c)(iii)~~ Restriction to certain specified limits, with or 1170
without suspension from duty, for not more than sixty ~~consecutive~~ 1171
days; 1172

~~(d) Detention of not more than one half of one month's pay~~ 1173
~~per month for three months, or the sum of two hundred twenty five~~ 1174
~~dollars, whichever is greater.~~ 1175

~~(B)(2)~~ Upon other military personnel of the commanding 1176
officer's command, any of the following: 1177

~~(1) If imposed upon a person attached to or embarked in a~~ 1178
~~vessel, confinement on bread and water or diminished rations for~~ 1179
~~not more than three consecutive days;~~ 1180

~~(2)(a)~~ Correctional custody in a detention facility in the 1181
offender's county of residence for not more than seven ~~consecutive~~ 1182
days; 1183

~~(3) Fine or forfeiture (b) Forfeiture~~ of not more than seven 1184
days' pay, ~~or the sum of twenty five dollars, whichever is greater~~ 1185
a fine of not more than one-quarter of one month's actual pay; 1186

~~(4)(c)~~ Reduction to the next inferior pay grade, if the grade 1187
from which the service member demoted is within the promotion 1188
authority of the officer imposing the reduction or any officer 1189
subordinate to the one who imposes the reduction; 1190

~~(5)(d)~~ Extra duties, including fatigue or other duties, for 1191
not more than fourteen consecutive days or for a total of thirty 1192
nonconsecutive days; 1193

~~(6)(e)~~ Restriction to certain specified limits, with or 1194

without suspension from duty, for not more than fourteen
consecutive days; 1195
1196

~~(7) Detention of not more than fourteen days' pay, or the sum
of fifty dollars, whichever is greater;~~ 1197
1198

~~(8)(f)~~ If imposed by an officer of the grade of major or
lieutenant commander, or above, any of the following: 1199
1200

~~(a)(i)~~ The punishment authorized under division (B)~~(1)(2)(a)~~
of this section; 1201
1202

~~(b)(ii)~~ Correctional custody in a detention facility in the
offender's county of residence for not more than thirty
consecutive days; 1203
1204
1205

~~(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; 1206
1207
1208
1209

~~(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; 1210
1211
1212
1213
1214
1215

~~(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; 1216
1217
1218

~~(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; 1219
1220
1221

~~(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.~~ 1222
1223
1224

~~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. Correctional custody shall to the maximum extent practicable be served in a detention facility in the offender's county of residence.

(D) An officer in charge may impose upon enlisted members assigned to the unit of which the officer is in charge ~~such~~ 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) The officer who imposes the punishment authorized in

~~divisions (A) or~~ division (B) of this section, or the officer's 1257
successor in command, may, at any time, suspend probationally any 1258
part or amount of the unexecuted punishment imposed and may 1259
suspend probationally a reduction in grade or a forfeiture or fine 1260
imposed under ~~divisions (A) or~~ division (B) of this section, 1261
whether or not executed. In addition, the officer who imposed the 1262
punishment may, at any time, remit or mitigate any part or amount 1263
of the unexecuted punishment imposed and may set aside in whole or 1264
in part the punishment, whether executed or unexecuted, and 1265
restore all rights, privileges, and property affected. The officer 1266
who imposed the punishment may also mitigate reduction in grade to 1267
forfeiture ~~or detention~~ of pay or a fine. When mitigating+ 1268

~~(1) Arrest~~ arrest in quarters to restriction+ 1269

~~(2) Confinement on bread and water or diminished rations to~~ 1270
~~correctional custody;~~ 1271

~~(3) Correctional custody or confinement on bread and water or~~ 1272
~~diminished rations to extra duties or restriction, or both; or~~ 1273

~~(4) Extra~~ extra duties to restriction+ 1274

~~the,~~ the mitigated punishment shall not be for a greater period 1275
than the punishment mitigated. ~~When mitigating forfeiture of pay~~ 1276
~~to detention of pay, the amount of the detention shall not be~~ 1277
~~greater than the amount of the forfeiture.~~ When mitigating 1278
reduction in grade to fine or forfeiture ~~or detention~~ of pay, the 1279
amount of the fine or forfeiture ~~or detention~~ shall not be greater 1280
than the amount that could have been imposed initially under this 1281
section by the officer who imposed the punishment mitigated. 1282

~~(E)~~(F) A person punished under this section who considers the 1283
punishment unjust or disproportionate to the offense may, through 1284
the proper channel, appeal to the next superior authority within 1285
seven calendar days. The appeal shall be promptly forwarded and 1286
decided, but the person punished may in the meantime be required 1287

to undergo the punishment adjudged. The superior authority may 1288
exercise the same powers with respect to the punishment imposed as 1289
may be exercised under division ~~(D)~~(E) of this section by the 1290
officer who imposed the punishment. Before acting on an appeal 1291
from a punishment of: 1292

~~(1) Arrest in quarters for more than seven days;~~ 1293

~~(2) Correctional custody for more than seven days;~~ 1294

~~(3) Forfeiture of more than seven days' pay;~~ 1295

~~(4) Reduction of one or more pay grades from the fourth or a 1296
higher pay grade;~~ 1297

~~(5) Extra duties for more than fourteen days;~~ 1298

~~(6) Restriction for more than fourteen days; or~~ 1299

~~(7) Detention of more than fourteen days' pay;~~ 1300

any of the following, the authority who is to act on the appeal 1301
shall refer the case to a judge advocate or legal officer of the 1302
Ohio organized militia for consideration and advice, and may ~~so~~ 1303
also refer the case upon appeal from any punishment imposed under 1304
~~divisions (A) or~~ division (B) of this section: 1305

(1) Arrest in quarters for more than seven days; 1306

(2) Correctional custody for more than seven days; 1307

(3) Fine or forfeiture of more than seven days' pay; 1308

(4) Reduction of one or more pay grades from the fourth or a 1309
higher pay grade; 1310

(5) Extra duties for more than fourteen days. 1311

~~(F)~~(G) The imposition and enforcement of ~~disciplinary~~ 1312
punishment under this section for any act or omission is not a bar 1313
to trial by court-martial for a serious crime or offense growing 1314
out of the same act or omission, and not properly punishable under 1315
this section; ~~but the~~. The fact that a ~~disciplinary~~ punishment has 1316

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. 1347
1348

~~(2) Special courts martial, consisting,~~ 1349

(C) A special court-martial consists of one of the following: 1350

~~(A) not less than three (1) Three or more~~ members; ~~or~~ 1351

~~(B)(2) A military judge and not less~~ fewer than three
members; ~~or~~ 1352
1353

~~(C)(3) Only a military judge, if one has been detailed to the~~ 1354
~~court, and the accused so requests in writing under the same~~ 1355
~~conditions as those prescribed in division (B)(1)(b) of this~~ 1356
~~section;~~ 1357

~~(3) Summary courts martial, consisting before the court is~~ 1358
~~assembled the accused, knowing the identity of the military judge~~ 1359
~~and after consultation with defense counsel, requests in writing a~~ 1360
~~court composed only of a military judge and the military judge~~ 1361
~~approves.~~ 1362

(D) A summary court-martial consists of one commissioned 1363
officer in the grade of captain or above. 1364

Sec. 5924.17. ~~Each force of the organized militia~~ The Ohio 1365
national guard has court-martial jurisdiction over all persons 1366
subject to this code. The exercise of jurisdiction by ~~one force~~ 1367
the Ohio national guard over personnel of another ~~force~~ element of 1368
the organized militia shall be in accordance with regulations 1369
prescribed by the ~~governor~~ adjutant general. 1370

Sec. 5924.18. (A) Subject to section 5924.17 of the Revised 1371
Code, general courts-martial have jurisdiction to try persons 1372
subject to this code for any offense made punishable by this code 1373
and may, under ~~such~~ any limitations ~~as that~~ the governor may 1374
prescribe, adjudge any ~~punishment not forbidden by this code,~~ 1375

~~including the penalty of death when specifically authorized by~~ 1376
~~this code. General courts martial also have jurisdiction to try~~ 1377
~~any person who by the law of war is subject to trial by a military~~ 1378
~~tribunal and may adjudge any punishment permitted by the law of~~ 1379
~~war. A general court martial of the kind specified in division~~ 1380
~~(B)(1)(b) of section 5924.16 of the Revised Code does not have~~ 1381
~~jurisdiction to try any person for any offense for which the death~~ 1382
~~penalty may be adjudged unless the case has been previously~~ 1383
~~referred to trial as a noncapital case of the following~~ 1384
~~punishments:~~ 1385

(1) A fine of not more than two thousand five hundred dollars 1386
or confinement for not more than three hundred sixty-five days; 1387

(2) Forfeiture of all pay and allowances; 1388

(3) Reprimand; 1389

(4) Dismissal and dishonorable discharge or a bad conduct 1390
discharge; 1391

(5) Reduction of a noncommissioned officer to the lowest or 1392
any intermediate rank; 1393

(6) Any combination of the foregoing punishments. 1394

(B) A general court-martial may not adjudge dismissal or 1395
dishonorable discharge unless a complete record of the proceedings 1396
and testimony is made, counsel having the qualifications 1397
prescribed under division (B) of section 5924.27 of the Revised 1398
Code is detailed to represent the accused, and a military judge is 1399
detailed to the trial. 1400

Sec. 5924.19. Subject to section 5924.17 of the Revised Code, 1401
special courts-martial ~~shall~~ have jurisdiction to try persons 1402
subject to this code for any ~~non-capital~~ offense for which they 1403
may be punished under this code. A special court-martial may 1404
adjudge any punishment a general court-martial may adjudge, except 1405

~~death, dishonorable discharge, dismissal, confinement for that a~~ 1406
~~special court-martial may not impose a fine of more than six~~ 1407
~~months, hard labor without one thousand dollars, confinement for~~ 1408
more than ~~three months, forfeiture of pay exceeding two thirds pay~~ 1409
per month, ~~or forfeiture of pay for more than six months~~ one 1410
hundred eighty days for a single offense, or dismissal or 1411
dishonorable discharge. A ~~bad-conduct discharge special~~ 1412
court-martial may not ~~be adjudged~~ adjudge a bad-conduct discharge 1413
unless a complete record of the proceedings and testimony ~~has been~~ 1414
is made, counsel having the qualifications prescribed under 1415
division (B) of section 5924.27 of the Revised Code ~~was~~ is 1416
detailed to represent the accused, and a military judge ~~was~~ is 1417
detailed to the trial. ~~In any case in which a military judge was~~ 1418
~~not detailed to the trial, except when due to physical conditions~~ 1419
~~or military exigencies, the convening authority shall make a~~ 1420
~~written statement, to be appended to the record, stating the~~ 1421
~~reason or reasons a military judge could not be detailed.~~ 1422

Sec. 5924.20. (A) Subject to section 5924.17 of the Revised 1423
Code, summary courts-martial have jurisdiction to try persons 1424
subject to this code, ~~except officers and warrant officers,~~ for 1425
any offense made punishable by this code. 1426

(B) No person with respect to whom summary courts-martial 1427
have jurisdiction may be brought to trial before a summary 1428
court-martial if ~~he~~ the person objects ~~thereto~~ to being brought to 1429
trial before a summary court-martial. If objection to trial by 1430
summary court-martial is made by an accused, trial may be ordered 1431
by special or general court-martial, as may be appropriate. 1432

(C) Summary courts-martial may, ~~under such limitations as the~~ 1433
~~governor may prescribe,~~ adjudge punishment of a fine not ~~forbidden~~ 1434
by this code, ~~except death, dismissal, dishonorable or bad conduct~~ 1435
~~discharge, exceeding five hundred dollars, confinement for~~ not 1436

~~more than one month, hard labor without confinement for more than~~ 1437
~~forty five days, restriction to specified limits for more than two~~ 1438
~~months, or thirty days, forfeiture of not more than two-thirds of~~ 1439
~~one month's pay, and reduction to the lowest or any intermediate~~ 1440
~~pay grade. For enlisted members in pay grade above E-4, summary~~ 1441
~~courts-martial may not adjudge confinement or reduction except to~~ 1442
~~the next inferior pay grade.~~ 1443

Sec. 5924.21. The provisions of this code that confer 1444
jurisdiction on courts-martial do not deprive military 1445
commissions, provost courts, other military tribunals, or state or 1446
federal courts of concurrent jurisdiction with respect to 1447
offenders or offenses that by statute or by the law of war may be 1448
tried by military commissions, provost courts, other military 1449
tribunals, or state or federal courts. 1450

Sec. 5924.22. In the organized militia not in federal 1451
service, the governor, adjutant general, assistant adjutant 1452
general for army, or assistant adjutant general for air may 1453
convene general courts-martial may be convened by the governor. 1454

Sec. 5924.23. In the organized militia not in federal 1455
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1456
~~air base, auxiliary air base, or other place where troops are on~~ 1457
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1458
~~group, detached battalion, separate squadron, or other detached~~ 1459
~~command, any commander authorized by regulation in the grade of~~ 1460
~~colonel or a higher grade may convene special courts-martial.~~ 1461
~~Special courts martial may also be convened by superior authority.~~ 1462
~~When any such officer is an accuser, the court shall be convened~~ 1463
~~by superior competent authority.~~ 1464

Sec. 5924.24. (A) In the organized militia not in federal 1465

service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1466
~~air base, auxiliary air base, or other place where troops are on~~ 1467
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1468
~~group, detached battalion, detached squadron, detached company, or~~ 1469
~~other detachment, any commander authorized by regulation in the~~ 1470
~~grade of lieutenant colonel or a higher grade may convene a~~ 1471
~~summary court-martial consisting of one commissioned officer. The~~ 1472
~~proceedings shall be informal.~~ 1473

~~(B) When only one commissioned officer is present with a~~ 1474
~~command or detachment he shall be the summary court martial of~~ 1475
~~that command or detachment and shall hear and determine all~~ 1476
~~summary court martial cases brought before him. Summary~~ 1477
~~courts martial may, however, be convened in any case by superior~~ 1478
~~competent authority when considered desirable by him.~~ 1479

Sec. 5924.25. (A) Any commissioned officer ~~of or on~~ in a duty 1480
~~with the organized militia status~~ is eligible to serve on all 1481
courts-martial for the trial of any person who may lawfully be 1482
brought before such courts for ~~trial~~ trial. 1483

(B) Any warrant officer ~~of or on~~ in a duty with the organized 1484
~~militia status~~ is eligible to serve on general and special 1485
courts-martial for the trial of any person, other than a 1486
commissioned officer, who may lawfully be brought before such 1487
courts for ~~trial~~ trial. 1488

(C)(1) Any enlisted member of the organized militia in a duty 1489
status who is not a member of the same unit as the accused is 1490
eligible to serve on general and special courts-martial for the 1491
trial of any enlisted member of the organized militia who may 1492
lawfully be brought before such courts for trial, ~~but he shall~~ 1493
~~serve as a member of a court only~~ if, before the conclusion of a 1494
session called by the military judge ~~under division (A) of section~~ 1495
~~5924.39 of the Revised Code~~ or, in the absence of such a session 1496

called by the military judge, before the court is assembled for 1497
the trial of the accused, the accused personally has requested in 1498
writing that enlisted members serve on it. After such a request, 1499
the accused may not be tried by a general or special 1500
court-martial, the membership of which does not include enlisted 1501
members in a number comprising at least one-third of the total 1502
membership of the court, unless eligible members cannot be 1503
obtained on account of physical conditions or military exigencies. 1504
If ~~such~~ enough enlisted members cannot be obtained, the court may 1505
be assembled and trial held without them, but the convening 1506
authority shall make a detailed written statement, to be appended 1507
to the record, stating why they could not be obtained. 1508

(2) ~~In~~ As used in division (C) of this section, ~~the word~~ 1509
"unit" means any regularly organized body of the organized militia 1510
not larger than a company, a squadron, a division of the naval 1511
militia, or a body corresponding to one of them. 1512

(D)(1) ~~When~~ If it can be avoided, ~~no~~ a person subject to this 1513
code shall not be tried by a court-martial, any member of which is 1514
junior to ~~him~~ the person in rank or grade. 1515

(2) When convening a court-martial, the convening authority 1516
shall detail as members ~~thereof~~ such of the court-martial members 1517
~~as of the organized militia who~~, in ~~his~~ the convening authority's 1518
opinion, are best qualified for the duty by reason of age, 1519
education, training, experience, length of service, and judicial 1520
temperament. No member of the organized militia is eligible to 1521
serve as a member of a general or special court-martial ~~when he~~ if 1522
the member of the organized militia is the accuser or a witness 1523
for the prosecution or has acted as investigating officer or as 1524
counsel in the same case. ~~If within the command of the convening~~ 1525
~~authority there is present and not otherwise disqualified a~~ 1526
~~commissioned officer who is a member of the bar of the state and~~ 1527
~~of appropriate rank, the convening authority shall appoint him as~~ 1528

~~president of a special court martial. Although this requirement is 1529
binding on the convening authority, failure to meet it in any case 1530
does not divest a military court of jurisdiction. 1531~~

Sec. 5924.26. (A) ~~The authority convening a A military judge 1532
shall be detailed to each general court martial shall, and, 1533
subject to regulations promulgated by the governor, the authority 1534
convening a and special court-martial may, detail a. A military 1535
judge to shall preside over each open session of the court-martial 1536
to which the judge has been detailed. 1537~~

(B) A military judge shall be a commissioned officer of the 1538
organized militia who is a member in good standing of the bar of 1539
this state, ~~or a member of the bar of a federal court,~~ and who is 1540
certified to be qualified for ~~such~~ duty as a military judge by the 1541
state judge advocate. 1542

(C) The military judge of a general or special court-martial 1543
shall be designated by the state judge advocate ~~or his designee~~ 1544
for detail by the convening authority. Unless the court-martial 1545
was convened by the governor or the adjutant general, neither the 1546
convening authority nor ~~his~~ the convening authority's staff, other 1547
than the state judge advocate or deputy state judge advocate, 1548
shall prepare or review any report concerning the effectiveness, 1549
fitness, or efficiency of the military judge ~~so detailed which~~ 1550
~~relates to his~~ judge's performance of duty as a military judge. A 1551
~~commissioned officer who is certified as a military judge of a~~ 1552
~~general court martial may perform duties other than those relating~~ 1553
~~to his being a military judge of a general court martial when such~~ 1554
~~duties are assigned to him by or with the approval of the state~~ 1555
~~judge advocate or his designee. 1556~~

(D) No person is eligible to act as a military judge in a 1557
case if ~~he~~ the person is the accuser, is a witness for the 1558
prosecution, has acted as investigating officer, or is a counsel 1559

in the same case. 1560

(E) The military judge of a court-martial may not consult 1561
with the members of the court, except in the presence of the 1562
accused, trial counsel, and defense counsel, nor may ~~he~~ the 1563
military judge vote with the members of the court. 1564

(F) A trial counsel, defense counsel, military judge, legal 1565
officer, summary court officer, or any other person from any one 1566
component of the organized militia certified by the state judge 1567
advocate to perform legal functions under this code may perform 1568
those functions, as needed, for any other component of the 1569
organized militia. 1570

Sec. 5924.27. (A) ~~For each general and special court martial 1571
the authority convening the court~~ The state judge advocate shall 1572
detail trial counsel ~~and,~~ defense counsel, and ~~such~~ assistants ~~as~~ 1573
~~he~~ that the state judge advocate considers appropriate. No person 1574
who has acted as investigating officer, military judge, or court 1575
member in any case may act later as trial counsel, assistant trial 1576
counsel, ~~or, unless expressly requested by the accused, as~~ defense 1577
counsel, ~~or~~ assistant defense counsel in the same case. No person 1578
who has acted for the prosecution may act later in the same case 1579
for the defense, nor may any person who has acted for the defense 1580
act later in the same case for the prosecution. 1581

(B) Trial counsel or defense counsel detailed for a general 1582
court-martial must be both of the following: 1583

(1) ~~Must be a person who is a~~ A member in good standing of 1584
the bar of ~~the highest court of this state, or a member of the bar 1585
of a federal court, or a law specialist; and~~ 1586

(2) ~~Must be certified~~ Certified as competent to perform ~~such 1587
the~~ duties of trial counsel or defense counsel in a general 1588
court-martial by the state judge advocate. 1589

~~(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 1620
three members, the trial may not proceed unless the convening 1621
authority details new members sufficient in number to provide not 1622
~~less~~ fewer than three members. When the new members have been 1623
sworn, the trial shall proceed with the new members present as if 1624
no evidence had previously been introduced at the trial, unless a 1625
verbatim record of the evidence previously introduced before the 1626
members of the court or a stipulation thereof is read to the court 1627
in the presence of the military judge, if any, the accused, and 1628
counsel for both sides. 1629

(D) If the military judge of a court-martial composed of a 1630
military judge only is unable to proceed with the trial because of 1631
physical disability, as a result of a challenge, or for other good 1632
cause, the trial shall proceed, ~~subject to any applicable~~ 1633
~~conditions of division (B)(1)(b) or division (B)(2)(c) of section~~ 1634
~~5924.16 of the Revised Code,~~ after the detail of a new military 1635
judge as if no evidence had previously been introduced, unless a 1636
verbatim record of the evidence previously introduced or a 1637
stipulation thereof is read in court in the presence of the new 1638
military judge, the accused, and counsel for both sides. 1639

Sec. 5924.30. (A) Charges and specifications shall be signed 1640
by a person subject to this code under oath before a ~~person~~ 1641
commissioned officer of the organized militia authorized ~~by this~~ 1642
~~code~~ to administer oaths and shall state both of the following: 1643

(1) That the signer has personal knowledge of, or has 1644
investigated, the matters set forth ~~therein~~ in the charges and 1645
specifications; and 1646

(2) That ~~they~~ those matters are true in fact to the best of 1647
~~his~~ the person's knowledge and belief. 1648

(B) Upon the preferring of charges, the proper authority 1649
shall take immediate steps to determine ~~what~~ the disposition that 1650

should be made ~~thereof~~ of the charges in the interest of justice 1651
and discipline, and the person accused shall be informed of the 1652
charges ~~against him~~ as soon as practicable. 1653

Sec. 5924.31. (A) No person subject to this code may compel 1654
any other person to incriminate ~~himself~~ the other person or to 1655
answer any question, the answer to which may tend to incriminate 1656
~~him~~ the other person. 1657

(B) No person subject to this code may interrogate, or 1658
request any statement from an accused or a person suspected of an 1659
offense, without first informing ~~him~~ the accused or person 1660
suspected of the nature of the accusation and advising ~~him~~ the 1661
accused or person suspected that ~~he~~ the accused or person 1662
suspected does not have to make any statement regarding the 1663
offense of which ~~he~~ the accused or person suspected is accused or 1664
suspected and that any statement made by ~~him~~ the accused or person 1665
suspected may be used as evidence against ~~him~~ the accused or 1666
person suspected in a trial by court-martial. 1667

(C) No person subject to this code may compel any other 1668
person to make a statement or produce evidence before any ~~military~~ 1669
~~tribunal~~ court-martial if the statement or evidence is not 1670
material to the issue and may tend to degrade ~~him~~ the other 1671
person. 1672

(D) No statement obtained from any person in violation of 1673
this section, or through the use of coercion, unlawful influence, 1674
or unlawful inducement may be received in evidence against ~~him~~ the 1675
person in a trial by court-martial. 1676

Sec. 5924.32. (A) No charge or specification may be referred 1677
to a general court-martial for trial until a thorough and 1678
impartial investigation of all the matters set forth ~~therein~~ in 1679
the charge or specification has been made. This investigation 1680

shall include inquiry as to the truth of the matter set forth in 1681
the charges, consideration of the form of charges, and a 1682
recommendation as to the disposition ~~which~~ that should be made of 1683
the case in the interest of justice and discipline. 1684

(B) The accused shall be advised of the charges against ~~him~~ 1685
the accused and of ~~his~~ the accused's right to be represented at 1686
that investigation by counsel. Upon ~~his~~ the accused's own request 1687
~~he,~~ the accused shall be represented by civilian counsel if 1688
provided by ~~him~~ the accused at the accused's own cost, or by 1689
military counsel of ~~his~~ the accused's own selection if such 1690
counsel is reasonably available, or by counsel detailed by the 1691
officer exercising general court-martial jurisdiction over the 1692
command. At that investigation full opportunity shall be given to 1693
the accused to cross-examine witnesses against ~~him~~ the accused if 1694
they are available and to present anything ~~he~~ the accused may 1695
desire in ~~his~~ the accused's own behalf, either in defense or 1696
mitigation, and the investigating officer shall examine reasonably 1697
available witnesses requested by the accused. If the charges are 1698
forwarded after the investigation, they shall be accompanied by a 1699
statement of the substance of the testimony taken on both sides, 1700
and a copy ~~thereof~~ of that statement shall be given to the 1701
accused. 1702

(C) If an investigation of the subject matter of an offense 1703
has been conducted before the accused is charged with the offense, 1704
and if the accused was present at the investigation and afforded 1705
the opportunities for representation, cross-examination, and 1706
presentation prescribed in division (B) of this section, no 1707
further investigation of that charge is necessary under this 1708
section unless it is demanded by the accused after ~~he~~ the accused 1709
is informed of the charge. A demand for further investigation 1710
entitles the accused to recall witnesses for further 1711
cross-examination and to offer any new evidence in ~~his~~ the 1712

accused's own behalf. 1713

(D) The requirements of this section are binding on all 1714
persons administering this code but failure to follow them does 1715
not divest a military court of jurisdiction. 1716

Sec. 5924.33. When a person is held for trial by general 1717
court-martial, the commanding officer shall, ~~within eight days~~ not 1718
later than the eighth day after the accused is ordered into arrest 1719
or confinement, ~~if practicable,~~ forward the charges, together with 1720
the investigation and allied papers, to the ~~governor~~ general 1721
court-martial convening authority. If that is not practicable, ~~he~~ 1722
the commanding officer shall report in writing to the ~~governor~~ 1723
convening authority the reasons for delay. 1724

Sec. 5924.34. (A) Before directing the trial of any charge by 1726
general court-martial, the convening authority shall refer it to 1727
the ~~state~~ convening authority's staff judge advocate or legal 1728
officer for consideration and advice. The convening authority may 1729
not refer a charge to a general court-martial for trial unless ~~he~~ 1730
the convening authority has found that the charge alleges an 1731
offense under this code and is warranted by evidence indicated in 1732
the report of the investigation. 1733

(B) If the charges or specifications are not formally correct 1734
or do not conform to the substance of the evidence contained in 1735
the report of the investigating officer, formal corrections and 1736
such changes in the charges and specifications as are needed to 1737
make them conform to the evidence may be made. 1738

Sec. 5924.35. The trial counsel to whom court-martial charges 1739
are referred for trial shall cause to be served upon the accused a 1740
copy of the charges upon which trial is to be had. ~~In~~ Except in 1741
time of ~~peace~~ declared war, no person may, against ~~his~~ the 1742
person's objection, be brought to trial or be required to 1743

participate ~~by himself~~ alone or with counsel in a session called 1744
by the military judge ~~under division (A) of section 5924.39 of the~~ 1745
~~Revised Code,~~ in a general or special court-martial case within a 1746
~~period of five days~~ twenty-four hours after the service of charges 1747
upon him, ~~or in a special court martial within a period of three~~ 1748
~~days after the service of the charges upon him~~ the person. 1749

Sec. 5924.36. The procedure, including modes of proof, in 1750
cases before military courts ~~and other military tribunals~~ may be 1751
prescribed by the ~~governor~~ adjutant general by regulations, ~~which~~ 1752
that shall, so far as ~~he~~ the adjutant general considers 1753
practicable, apply the principles of law and the rules of evidence 1754
generally recognized in the trial of criminal cases in the courts 1755
of ~~the~~ this state, but ~~which~~ that may not be contrary to or 1756
inconsistent with this code. 1757

Sec. 5924.37. (A) No authority convening a general, special, 1758
or summary court-martial, ~~nor any~~ other commanding officer, or 1759
officer serving on the staff ~~thereof,~~ of a convening authority or 1760
other commanding officer may censure, reprimand, or admonish the 1761
court or any member, military judge, or counsel ~~thereof~~ of the 1762
court, with respect to the findings or sentence adjudged by the 1763
court, ~~or with respect to any other exercise of its or~~ his the 1764
member's, military judge's, or counsel's functions in the conduct 1765
of the proceeding. No person subject to this code may attempt to 1766
coerce or, by any unauthorized means, influence the action of the 1767
court-martial or any other military tribunal or any member ~~thereof~~ 1768
of the court-martial or military tribunal in reaching the findings 1769
or sentence in any case, or the action of any convening, 1770
approving, or reviewing authority with respect to ~~his~~ the 1771
authority's judicial acts. This division does not apply to: 1772

(1) General instructional or informational courses in 1773
military justice, if such courses are designed solely for the 1774

purpose of instructing members of a command in the substantive and 1775
procedural aspects of courts-martial; 1776

(2) Statements and instructions given in open court by the 1777
military judge, the president of a special court-martial, or 1778
counsel. 1779

(B) In the preparation of ~~an effectiveness~~, a fitness, ~~or~~ 1780
~~efficiency evaluation, or performance~~ report, or any other report 1781
or document used in whole or in part for the purpose of 1782
determining whether a member of the organized militia is qualified 1783
to be advanced in grade, ~~or~~ in determining the assignment or 1784
transfer of a member of the organized militia, or in determining 1785
whether a member of the organized militia should be retained ~~in an~~ 1786
~~active status~~ on duty, no person subject to this code may, ~~in~~ 1787
~~preparing any such report~~ do either of the following: 1788

(1) Consider or evaluate the performance of duty of ~~any such~~ 1789
the member as a member of a court-martial; 1790

(2) Give a less favorable rating or evaluation of any member 1791
of the organized militia because of the zeal with which ~~such the~~ 1792
member, as counsel, represented any accused before a 1793
court-martial. 1794

Sec. 5924.38. (A) The trial counsel of a general or special 1795
court-martial shall prosecute in the name of the state, and shall, 1796
under the direction of the court, prepare the record of the 1797
proceedings. 1798

(B) The accused has the right to be represented in ~~his~~ the 1799
accused's defense before a general or special court-martial by 1800
civilian counsel if provided by ~~him~~ the accused at the accused's 1801
own cost, ~~or~~ by military counsel of ~~his~~ the accused's own 1802
selection if reasonably available, or by ~~the~~ detailed military 1803
defense counsel ~~detailed under section 5924.27 of the Revised~~ 1804

Code. Should the accused have civilian counsel of ~~his~~ the 1805
accused's own selection, the defense counsel, and any assistant 1806
defense counsel, ~~if any,~~ who were detailed, shall, if the accused 1807
so desires, act as ~~his~~ the accused's associate counsel; otherwise 1808
they shall be excused by the military judge ~~or by the president of~~ 1809
~~a court-martial without a military judge.~~ 1810

(C) In every court-martial proceeding, the defense counsel 1811
may, in the event of conviction, forward for attachment to the 1812
record of proceedings a brief of such matters as ~~he~~ the defense 1813
counsel feels should be considered in behalf of the accused on 1814
review, including any objection to the contents of the record 1815
which ~~he~~ the defense counsel considers appropriate. 1816

(D) An assistant trial counsel of a ~~general~~ court-martial 1817
may, under the direction of the trial counsel or when ~~he~~ the 1818
assistant trial counsel is qualified to be a trial counsel ~~as~~ 1819
~~required by section 5924.27 of the Revised Code,~~ perform any duty 1820
imposed by law, regulation, or the custom of the service upon the 1821
trial counsel ~~of the court. An assistant trial counsel of a~~ 1822
~~special court-martial may perform any duty of the trial counsel.~~ 1823

(E) An assistant defense counsel of a general or special 1824
court-martial may, under the direction of the defense counsel or 1825
when ~~he~~ the assistant defense counsel is qualified to be the 1826
defense counsel ~~as required by section 5924.27 of the Revised~~ 1827
~~Code,~~ perform any duty imposed by law, regulation, or the custom 1828
of the service upon counsel for the accused. 1829

Sec. 5924.39. (A) At any time after the service of charges 1830
~~which that~~ have been referred for trial to a court-martial 1831
composed of a military judge and members, the military judge may, 1832
subject to section 5924.35 of the Revised Code, call the court 1833
into session without the presence of the members for the following 1834
purposes: 1835

(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 1866
are offered. 1867

(B) Each accused and the trial counsel is entitled to one 1868
peremptory challenge, but the military judge may not be ~~challenged~~ 1869
challenged except for cause. 1870

(C) If the exercise of a peremptory challenge reduces the 1871
number of members of a court-martial below the minimum required 1872
under section 5924.16 of the Revised Code, any remaining 1873
peremptory challenges shall be exercised or waived before 1874
additional members are detailed. 1875

(D) Additional members detailed to a court-martial may be 1876
challenged for cause as provided in division (A) of this section. 1877
After challenges for cause against the additional members are 1878
presented and decided, each accused and trial counsel is entitled 1879
to one peremptory challenge against members not previously 1880
challenged peremptorily. 1881

Sec. 5924.42. (A) Before performing their respective duties, 1882
military judges, interpreters, members of general and special 1883
courts-martial, the trial counsel, the assistant trial counsel, 1884
the defense counsel, the assistant defense counsel, and reporters 1885
shall take an oath or affirmation to perform their duties 1886
faithfully. ~~The form of the oath or affirmation, the time and~~ 1887
~~place of the taking thereof, the manner of recording, and whether~~ 1888
~~the oath shall be taken for all cases in which these duties are to~~ 1889
~~be performed or for a particular case, shall be as prescribed in~~ 1890
~~regulations promulgated by the governor. These regulations may~~ 1891
~~provide that an oath or affirmation to faithfully perform duties~~ 1892
~~as a military judge, trial counsel, assistant trial counsel,~~ 1893
~~defense counsel, or assistant defense counsel may be taken at any~~ 1894
~~time by any judge advocate, law specialist, or other person~~ 1895
~~certified to be qualified or competent for the duty, and if such~~ 1896

~~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:~~ 1897
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1900

(1) For a member of the court: 1901

"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)." 1902
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(2) For a military judge: 1917

"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)." 1918
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(3) For trial counsel and assistant trial counsel: 1928

"You,, do swear (or affirm) that you will 1929
faithfully perform the duties of trial counsel and will not 1930
divulge the findings or sentence of the court to any but the 1931
proper authority until they shall be duly disclosed. So help you 1932
God (or under penalty of perjury)." 1933

(4) For defense counsel and assistant defense counsel: 1934

"You,, do swear (or affirm) that you will 1935
faithfully perform the duties of defense counsel and will not 1936
divulge the findings or sentence of the court to any but the 1937
proper authority until they shall be duly disclosed. So help you 1938
God (or under penalty of perjury)." 1939

(5) For a reporter or interpreter: 1940

"You,, do swear (or affirm) that you will 1941
faithfully perform the duties of reporter (or interpreter) to this 1942
court. So help you God (or under penalty of perjury)." 1943

(B) Each witness before a ~~military court~~ court-marital shall 1944
be examined on oath or affirmation. The presiding officer shall 1945
administer an oath or affirmation in substantially the following 1946
form: 1947

"You,, do swear (or affirm) that the evidence you 1948
shall give in the case now in hearing shall be the truth, the 1949
whole truth, and nothing but the truth. So help you God (or under 1950
penalty of perjury)." 1951

Sec. 5924.43. (A) ~~A person charged with desertion or absence~~ 1952
~~without leave in time of war, or with aiding the enemy or with~~ 1953
~~mutiny, or with murder, may be tried and punished at any time~~ 1954
~~without limitation.~~ 1955

~~(B) Except as otherwise provided in this section, a person~~ 1956
~~charged with desertion in time of peace or any of the offenses~~ 1957

~~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. 2051
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(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. 2055
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(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. 2059
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(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. 2063
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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. 2067
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~~(B) The president of a court martial or a summary court officer may:~~ 2071
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~~(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;~~ 2073
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~~(2) Issue subpoenas duces tecum and other subpoenas;~~ 2077

~~(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and~~ 2078
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~~(4) Sentence for refusal to be sworn or to answer, as~~ 2080

~~provided in actions before civil courts of the state.~~ 2081

~~(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.~~ 2082
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Sec. 5924.47. ~~(A) Any person not subject to this code who:~~ 2087

~~(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:~~ 2088
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~~(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 2092
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~~(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.~~ 2095
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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.~~ 2102
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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. 2106
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Sec. 5924.49. ~~(A) At any time after charges have been signed~~ 2109

as provided in section 5924.30 of the Revised Code, any party may 2110
take oral or written depositions ~~unless the military judge or~~ 2111
~~court martial without a military judge hearing the case or, if the~~ 2112
~~case is not being heard, an authority competent to convene a~~ 2113
~~court martial for the trial of those charges forbids it for good~~ 2114
~~cause. If a deposition is to be taken before charges are referred~~ 2115
~~for trial, such an authority may designate commissioned officers~~ 2116
~~to represent the prosecution and the defense and may authorize~~ 2117
~~those officers to take the deposition of any witness.~~ 2118

~~(B) The party at whose instance a deposition is to be taken~~ 2119
~~shall give to every other party reasonable written notice of the~~ 2120
~~time and place for taking the deposition.~~ 2121

~~(C) Depositions may be taken before and authenticated by any~~ 2122
~~military or civil officer authorized by the laws of the state or~~ 2123
~~by the laws of the place where the deposition is taken to~~ 2124
~~administer oaths.~~ 2125

~~(D) A duly authenticated deposition, taken upon reasonable~~ 2126
~~notice to the other parties, so far as otherwise admissible under~~ 2127
~~the rules of evidence, may be read in evidence before any~~ 2128
~~court martial or in any proceeding before a court of inquiry, if~~ 2129
~~it appears:~~ 2130

~~(1) That the witness resides or is beyond the state in which~~ 2131
~~the court martial or court of inquiry is ordered to sit, or beyond~~ 2132
~~the distance of one hundred miles from the place of trial or~~ 2133
~~hearing;~~ 2134

~~(2) That the witness by reason of death, age, sickness,~~ 2135
~~bodily infirmity, imprisonment, military necessity, nonamenability~~ 2136
~~to process, or other reasonable cause, is unable or refused to~~ 2137
~~appear and testify in person at the place of trial or hearing;~~ 2138

~~(3) That the present whereabouts of the witness is unknown;~~ 2139
~~or~~ 2140

~~(4) That the deposition was taken in the physical presence of~~ 2141
~~the accused in the manner and for the purposes provided in the~~ 2142
~~Ohio Rules of Criminal Procedure.~~ 2143

Sec. 5924.50. (A) In any case ~~not capital and not extending~~ 2144
~~to the dismissal of a commissioned officer,~~ the sworn testimony, 2145
contained in the duly authenticated record of proceedings of a 2146
~~court board of inquiry,~~ officers of a person whose oral testimony 2147
cannot be obtained, may, if otherwise admissible under the rules 2148
of evidence, be read in evidence by any party before a 2149
court-martial if the accused was a party before the ~~court board of~~ 2150
~~inquiry officers~~ and if the same issue was involved or if the 2151
accused consents to the introduction of such evidence, ~~and if the~~ 2152
~~accused was physically present when the testimony was taken.~~ 2153

(B) Such testimony may be read in evidence only by the 2154
defense in cases extending to the dismissal of a commissioned 2155
officer. 2156

(C) Such testimony may also be read in evidence before a 2157
court of inquiry or a ~~military~~ board of officers. 2158

Sec. 5924.501. (A) In an action under this code, the military 2159
judge, trial counsel, defense counsel, or civilian counsel may 2160
raise the issue of the accused's competence to stand trial. If the 2161
issue is raised before the trial has commenced, the court shall 2162
hold a hearing on the issue as provided in this section. If the 2163
issue is raised after the trial has commenced, the court shall 2164
hold a hearing on the issue only for good cause shown or on the 2165
court's own motion. 2166

(B) The court shall conduct the hearing required or 2167
authorized under division (A) of this section within thirty days 2168
after the issue is raised unless the accused has been referred for 2169
evaluation in which case the court shall conduct the hearing 2170

within ten days after the filing of the report of the evaluation. 2171

A hearing may be continued for good cause. 2172

(C) The accused shall be represented by counsel at the 2173

hearing conducted under division (B) of this section. 2174

(D) The trial counsel and defense counsel may submit evidence 2175

on the issue of the accused's competence to stand trial. A written 2176

report of the evaluation of the accused may be admitted into 2177

evidence at the hearing by stipulation, but, if either the 2178

government or defense objects to its admission, the report may be 2179

admitted under seal of court in camera to the military judge. 2180

(E) The court shall not find an accused incompetent to stand 2181

trial solely because the accused is receiving or has received 2182

treatment as a voluntary or involuntary mentally ill patient under 2183

Chapter 5122. of the Revised Code or because the accused is 2184

receiving or has received psychotropic drugs or other medication, 2185

even if the accused might become incompetent to stand trial 2186

without the drugs or medication. 2187

(F) An accused is presumed to be competent to stand trial. 2188

If, after a hearing, the court finds by a preponderance of the 2189

evidence that, because of the accused's present mental condition, 2190

the accused is incapable of understanding the nature and objective 2191

of the proceedings against the accused or of assisting in the 2192

accused's defense, the court shall find the accused incompetent to 2193

stand trial and shall enter an order authorized by section 2194

5924.503 of the Revised Code. 2195

Sec. 5924.502. (A) If the issue of an accused's competence to 2196

stand trial is raised or if an accused enters a plea of not guilty 2197

by reason of insanity, the court may order one or more evaluations 2198

of the accused's present mental condition or, in the case of a 2199

plea of not guilty by reason of insanity, of the accused's mental 2200

condition at the time of the offense charged. An examiner shall 2201

conduct the evaluation. 2202

(B) If the court orders more than one evaluation under 2203
division (A) of this section, the trial counsel and the defense 2204
counsel may recommend to the court an examiner whom each prefers 2205
to perform one of the evaluations. If an accused enters a plea of 2206
not guilty by reason of insanity and if the court does not 2207
designate an examiner recommended by the defense counsel, the 2208
court shall inform the accused that the accused may have 2209
independent expert evaluation and that it will be obtained for the 2210
accused at public expense. 2211

(C) If the court orders an evaluation under division (A) of 2212
this section, the accused shall be available at the times and 2213
places established by the examiners who are to conduct the 2214
evaluation. The court may order an accused who is not being held 2215
in pretrial confinement to submit to an evaluation under this 2216
section. If an accused who is not being held in pretrial 2217
confinement refuses to submit to a complete evaluation, the court 2218
may order the sheriff to take the accused into custody and deliver 2219
the accused to a center, program, or facility operated or 2220
certified by the department of mental health where the accused may 2221
be held for evaluation for a reasonable period of time not to 2222
exceed twenty days. 2223

(D) An accused who is being held in pretrial confinement may 2224
be evaluated at the accused's place of detention. Upon the request 2225
of the examiner, the court may order the sheriff to transport the 2226
accused to a program or facility operated or certified by the 2227
department of mental health, where the accused may be held for 2228
evaluation for a reasonable period of time not to exceed twenty 2229
days, and to return the accused to the place of detention after 2230
the evaluation. 2231

(E) If a court orders the evaluation to determine an 2232
accused's mental condition at the time of the offense charged, the 2233

court shall inform the examiner of the offense with which the 2234
accused is charged. 2235

(F) In conducting an evaluation of an accused's mental 2236
condition at the time of the offense charged, the examiner shall 2237
consider all relevant evidence. If the offense charged involves 2238
the use of force against another person, the relevant evidence to 2239
be considered includes, but is not limited to, any evidence that 2240
the accused suffered at the time of the commission of the offense 2241
from the "battered woman syndrome." 2242

(G) The examiner shall file a written report with the court 2243
within thirty days after entry of a court order for evaluation, 2244
and the court shall provide copies of the report to the trial 2245
counsel and defense counsel. The report shall include all of the 2246
following: 2247

(1) The examiner's findings; 2248

(2) The facts in reasonable detail on which the findings are 2249
based; 2250

(3) If the evaluation was ordered to determine the accused's 2251
competence to stand trial, all of the following findings or 2252
recommendations that are applicable: 2253

(a) Whether the accused is capable of understanding the 2254
nature and objective of the proceedings against the accused or of 2255
assisting in the accused's defense; 2256

(b) If the examiner's opinion is that the accused is 2257
incapable of understanding the nature and objective of the 2258
proceedings against the accused or of assisting in the accused's 2259
defense, whether the accused presently is mentally ill; 2260

(c) If the examiner's opinion is that the accused is 2261
incapable of understanding the nature and objective of the 2262
proceedings against the accused or of assisting in the accused's 2263

defense, the examiner's opinion as to the likelihood of the 2264
accused becoming capable of understanding the nature and objective 2265
of the proceedings against the accused and of assisting in the 2266
accused's defense within one year if the accused is provided with 2267
a course of treatment; 2268

(d) If the examiner's opinion is that the accused is 2269
incapable of understanding the nature and objective of the 2270
proceedings against the accused or of assisting in the accused's 2271
defense and that the accused presently is mentally ill, the 2272
examiner's recommendation as to the least restrictive placement or 2273
commitment alternative, consistent with the accused's treatment 2274
needs for restoration to competency and with the safety of the 2275
community; 2276

(e) If the accused is charged before a special or summary 2277
court-martial with an offense that is not a violation of section 2278
5924.120, 5924.127, or 5924.128 of the Revised Code and the 2279
examiner's opinion is that the accused is incapable of 2280
understanding the nature and objective of the proceedings against 2281
the accused or of assisting in the accused's defense and that the 2282
accused is presently mentally ill, the examiner's recommendation 2283
as to whether the accused is amenable to engagement in mental 2284
health treatment. 2285

(4) If the evaluation was ordered to determine the accused's 2286
mental condition at the time of the offense charged, the 2287
examiner's findings as to whether the accused at the time of the 2288
offense charged did not know, as a result of a severe mental 2289
disease or defect, the wrongfulness of the accused's acts charged. 2290

(H) An examiner appointed under divisions (A) and (B) of this 2291
section to evaluate an accused to determine the accused's 2292
competence to stand trial also may be appointed to evaluate an 2293
accused who has entered a plea of not guilty by reason of 2294
insanity, but an examiner of that nature shall prepare separate 2295

reports on the issue of competence to stand trial and the defense 2296
of not guilty by reason of insanity. 2297

(I) No statement that an accused makes in an evaluation or 2298
hearing under divisions (A) to (H) of this section relating to the 2299
accused's competence to stand trial or to the accused's mental 2300
condition at the time of the offense charged may be used against 2301
the accused on the issue of guilt in any criminal action or 2302
proceeding, but, in a criminal action or proceeding, the trial 2303
counsel or defense counsel may call as a witness any person who 2304
evaluated the accused or prepared a report pursuant to a referral 2305
under this section. Neither the appointment nor the testimony of 2306
an examiner appointed under this section precludes the trial 2307
counsel or defense counsel from calling other witnesses or 2308
presenting other evidence on competency or insanity issues. 2309

(J) Persons appointed as examiners under divisions (A) and 2310
(B) of this section or under division (H) of this section shall be 2311
paid a reasonable amount for their services and expenses, as 2312
certified by the court. 2313

Sec. 5924.503. (A) If the issue of an accused's competence to 2314
stand trial is raised and if the court, upon conducting the 2315
hearing provided for in section 5924.502 of the Revised Code, 2316
finds that the accused is competent to stand trial, the accused 2317
shall be proceeded against as provided by law. If the court finds 2318
the accused competent to stand trial and the accused is receiving 2319
psychotropic drugs or other medication, the court may authorize 2320
the continued administration of the drugs or medication or other 2321
appropriate treatment in order to maintain the accused's 2322
competence to stand trial unless the accused's attending physician 2323
advises the court against continuation of the drugs, other 2324
medication, or treatment. 2325

(B)(1)(a) If, after taking into consideration all relevant 2326

reports, information, and other evidence, the court finds that the 2327
accused is incompetent to stand trial and that there is a 2328
substantial probability that the accused will become competent to 2329
stand trial within one year if the accused is provided with a 2330
course of treatment, the court shall order the accused to undergo 2331
treatment. If the accused is being tried by a general 2332
court-martial and if, after taking into consideration all relevant 2333
reports, information, and other evidence, the court finds that the 2334
accused is incompetent to stand trial, but the court is unable at 2335
that time to determine whether there is a substantial probability 2336
that the accused will become competent to stand trial within one 2337
year if the accused is provided with a course of treatment, the 2338
court shall order continuing evaluation and treatment of the 2339
accused for a period not to exceed four months to determine 2340
whether there is a substantial probability that the accused will 2341
become competent to stand trial within one year if the accused is 2342
provided with a course of treatment. 2343

(b) The court order for the accused to undergo treatment or 2344
continuing evaluation and treatment under division (B)(1)(a) of 2345
this section shall specify that the accused, if determined to 2346
require mental health treatment or continuing evaluation and 2347
treatment, shall be committed to the department of mental health 2348
for treatment or continuing evaluation and treatment at a 2349
hospital, facility, or agency determined to be clinically 2350
appropriate by the department of mental health. The order may 2351
restrict the accused's freedom of movement as the court considers 2352
necessary. The trial counsel in the accused's case shall send to 2353
the chief clinical officer of the hospital, facility, or agency 2354
where the accused is placed by the department of mental health or 2355
to the managing officer of the institution, the director of the 2356
facility, or the person to which the accused is committed copies 2357
of relevant investigative reports and other background information 2358
that pertains to the accused and is available to the trial counsel 2359

unless the trial counsel determines that the release of any of the 2360
information in the investigative reports or any of the other 2361
background information to unauthorized persons would interfere 2362
with the effective prosecution of any person or would create a 2363
substantial risk of harm to any person. 2364

In committing the accused to the department of mental health, 2365
the court shall consider the extent to which the person is a 2366
danger to the person and to others, the need for security, and the 2367
type of crime involved and, if the court finds that restrictions 2368
on the accused's freedom of movement are necessary, shall specify 2369
the least restrictive limitations on the person's freedom of 2370
movement determined to be necessary to protect public safety. In 2371
weighing these factors, the court shall give preference to 2372
protecting public safety. 2373

(c) If the accused is found incompetent to stand trial, if 2374
the chief clinical officer of the hospital, facility, or agency 2375
where the accused is placed, or the managing officer of the 2376
institution, the director of the facility, or the person to which 2377
the accused is committed for treatment or continuing evaluation 2378
and treatment under division (B)(1)(b) of this section determines 2379
that medication is necessary to restore the accused's competency 2380
to stand trial, and if the accused lacks the capacity to give 2381
informed consent or refuses medication, the chief clinical officer 2382
of the hospital, facility, or agency where the accused is placed 2383
or the managing officer of the institution, the director of the 2384
facility, or the person to which the accused is committed for 2385
treatment or continuing evaluation and treatment may petition the 2386
court for authorization for the involuntary administration of 2387
medication. The court shall hold a hearing on the petition within 2388
five days of the filing of the petition. Following the hearing, 2389
the court may authorize the involuntary administration of 2390
medication or may dismiss the petition. 2391

(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. 2392
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(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. 2397
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The trial court may issue the temporary order of detention that a probate court may issue under section 5122.11 of the Revised Code, to remain in effect until the probable cause or initial hearing in the probate court. Further proceedings in the probate court are civil proceedings governed by Chapter 5122. of the Revised Code. 2413
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(C) No accused shall be required to undergo treatment, including any continuing evaluation and treatment, under division (B)(1) of this section for longer than whichever of the following periods is applicable: 2419
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(1) One year, if the accused is being tried by a general 2423

court-martial; 2424

(2) Six months, if the accused is being tried before a 2425
special court-martial; 2426

(3) Sixty days, if the accused is being tried before a 2427
summary court-martial. 2428

(D) Any accused who is committed pursuant to this section 2429
shall not voluntarily admit the accused or be voluntarily admitted 2430
to a hospital or institution pursuant to section 5122.02 or 2431
5122.15 of the Revised Code. 2432

(E) Except as otherwise provided in this division, an accused 2433
who is charged with an offense and is committed by the court under 2434
this section to the department of mental health with restrictions 2435
on the accused's freedom of movement shall not be granted 2436
unsupervised on-grounds movement, supervised off-grounds movement, 2437
or nonsecured status except in accordance with the court order. 2438
The court may grant an accused supervised off-grounds movement to 2439
obtain medical treatment or specialized habilitation treatment 2440
services if the person who supervises the treatment or the 2441
continuing evaluation and treatment of the accused ordered under 2442
division (B)(1)(a) of this section informs the court that the 2443
treatment or continuing evaluation and treatment cannot be 2444
provided at the hospital or facility where the accused is placed 2445
by the department of mental health. The chief clinical officer of 2446
the hospital or facility where the accused is placed by the 2447
department of mental health or the managing officer of the 2448
institution or director of the facility to which the accused is 2449
committed or a designee of any of those persons may grant an 2450
accused movement to a medical facility for an emergency medical 2451
situation with appropriate supervision to ensure the safety of the 2452
accused, staff, and community during that emergency medical 2453
situation. The chief clinical officer of the hospital or facility 2454
where the accused is placed by the department of mental health or 2455

the managing officer of the institution or director of the 2456
facility to which the accused is committed shall notify the court 2457
within twenty-four hours of the accused's movement to the medical 2458
facility for an emergency medical situation under this division. 2459

(F) The person who supervises the treatment or continuing 2460
evaluation and treatment of an accused ordered to undergo 2461
treatment or continuing evaluation and treatment under division 2462
(B)(1)(a) of this section shall file a written report with the 2463
court at the following times: 2464

(1) Whenever the person believes the accused is capable of 2465
understanding the nature and objective of the proceedings against 2466
the accused and of assisting in the accused's defense; 2467

(2) Fourteen days before expiration of the maximum time for 2468
treatment as specified in division (C) of this section and 2469
fourteen days before the expiration of the maximum time for 2470
continuing evaluation and treatment as specified in division 2471
(B)(1)(a) of this section; 2472

(3) At a minimum, after each six months of treatment; 2473

(4) Whenever the person who supervises the treatment or 2474
continuing evaluation and treatment of an accused ordered under 2475
division (B)(1)(a) of this section believes that there is not a 2476
substantial probability that the accused will become capable of 2477
understanding the nature and objective of the proceedings against 2478
the accused or of assisting in the accused's defense even if the 2479
accused is provided with a course of treatment. 2480

(G) A report under division (F) of this section shall contain 2481
the examiner's findings, the facts in reasonable detail on which 2482
the findings are based, and the examiner's opinion as to the 2483
accused's capability of understanding the nature and objective of 2484
the proceedings against the accused and of assisting in the 2485
accused's defense. If, in the examiner's opinion, the accused 2486

remains incapable of understanding the nature and objective of the 2487
proceedings against the accused and of assisting in the accused's 2488
defense and there is a substantial probability that the accused 2489
will become capable of understanding the nature and objective of 2490
the proceedings against the accused and of assisting in the 2491
accused's defense if the accused is provided with a course of 2492
treatment, if in the examiner's opinion the accused remains 2493
mentally ill, and if the maximum time for treatment as specified 2494
in division (C) of this section has not expired, the report also 2495
shall contain the examiner's recommendation as to the least 2496
restrictive placement or commitment alternative that is consistent 2497
with the accused's treatment needs for restoration to competency 2498
and with the safety of the community. The court shall provide 2499
copies of the report to the trial counsel and defense counsel. 2500

(H) If an accused is committed pursuant to division (B)(1) of 2501
this section, within ten days after the treating physician of the 2502
accused or the examiner of the accused who is employed or retained 2503
by the treating facility advises that there is not a substantial 2504
probability that the accused will become capable of understanding 2505
the nature and objective of the proceedings against the accused or 2506
of assisting in the accused's defense even if the accused is 2507
provided with a course of treatment, within ten days after the 2508
expiration of the maximum time for treatment as specified in 2509
division (C) of this section, within ten days after the expiration 2510
of the maximum time for continuing evaluation and treatment as 2511
specified in division (B)(1)(a) of this section, within thirty 2512
days after an accused's request for a hearing that is made after 2513
six months of treatment, or within thirty days after being advised 2514
by the treating physician or examiner that the accused is 2515
competent to stand trial, whichever is the earliest, the court 2516
shall conduct another hearing to determine if the accused is 2517
competent to stand trial and shall do whichever of the following 2518
is applicable: 2519

(1) If the court finds that the accused is competent to stand trial, the accused shall be proceeded against as provided by law. 2520
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(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. 2522
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(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. 2531
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(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 2540
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civil commitment is filed, the court may detain the accused for 2552
ten days pending civil commitment. All of the following provisions 2553
apply to persons being tried by a special court-martial who are 2554
committed by the probate court subsequent to the court's or trial 2555
counsel's filing of an affidavit for civil commitment under 2556
authority of this division: 2557

(a) The chief clinical officer of the entity, hospital, or 2558
facility, the managing officer of the institution, or the person 2559
to which the accused is committed or admitted shall do all of the 2560
following: 2561

(i) Notify the trial counsel in writing of the discharge of 2562
the accused, send the notice at least ten days prior to the 2563
discharge unless the discharge is by the probate court and state 2564
in the notice the date on which the accused will be discharged; 2565

(ii) Notify the trial counsel in writing when the accused is 2566
absent without leave or is granted unsupervised, off-grounds 2567
movement and send this notice promptly after the discovery of the 2568
absence without leave or prior to the granting of the 2569
unsupervised, off-grounds movement, whichever is applicable; 2570

(iii) Notify the trial counsel in writing of the change of 2571
the accused's commitment or admission to voluntary status, send 2572
the notice promptly upon learning of the change to voluntary 2573
status, and state in the notice the date on which the accused was 2574
committed or admitted on a voluntary status. 2575

(b) The trial counsel shall promptly inform the convening 2576
authority of any notification received under division (H)(4)(a) of 2577
this section. Upon receiving notice that the accused will be 2578
granted unsupervised, off-grounds movement, the convening 2579
authority either shall refer the charges against the accused to an 2580
investigating officer again or promptly notify the court that the 2581
convening authority does not intend to refer the charges against 2582

the accused again. 2583

(I) If an accused is convicted of a crime and sentenced to 2584
confinement, the accused's sentence shall be reduced by the total 2585
number of days the accused is confined for evaluation to determine 2586
the accused's competence to stand trial or treatment under this 2587
section and sections 5924.502 and 5924.504 of the Revised Code or 2588
by the total number of days the accused is confined for evaluation 2589
to determine the accused's mental condition at the time of the 2590
offense charged. 2591

Sec. 5924.504. (A) If an accused being tried by a general 2592
court-martial is found incompetent to stand trial, after the 2593
expiration of the maximum time for treatment as specified in 2594
division (C) of section 5924.503 of the Revised Code or after the 2595
court finds that there is not a substantial probability that the 2596
accused will become competent to stand trial even if the accused 2597
is provided with a course of treatment, one of the following 2598
applies: 2599

(1) The court or the trial counsel may file an affidavit in 2600
probate court for civil commitment of the accused in the manner 2601
provided in Chapter 5122. of the Revised Code. If the court or 2602
trial counsel files an affidavit for civil commitment, the court 2603
may detain the accused for ten days pending civil commitment. If 2604
the probate court commits the accused subsequent to the court's or 2605
trial counsel's filing of an affidavit for civil commitment, the 2606
chief clinical officer of the entity, hospital, or facility, the 2607
managing officer of the institution, or the person to which the 2608
accused is committed or admitted shall send to the trial counsel 2609
the notices described in divisions (H)(4)(a)(i) to (iii) of 2610
section 5924.503 of the Revised Code within the periods of time 2611
and under the circumstances specified in those divisions. 2612

(2) On the motion of the trial counsel or on its own motion, 2613

the court may retain jurisdiction over the accused if at a hearing 2614
the court finds both of the following by clear and convincing 2615
evidence: 2616

(a) The accused committed the offense with which the accused 2617
is charged. 2618

(b) The accused is a mentally ill person subject to 2619
hospitalization by court order. 2620

(B) In making its determination under division (A)(2) of this 2621
section as to whether to retain jurisdiction over the accused, the 2622
court may consider all relevant evidence, including, but not 2623
limited to, any relevant psychiatric, psychological, or medical 2624
testimony or reports, the acts constituting the offense charged, 2625
and any history of the accused that is relevant to the accused's 2626
ability to conform to the law. 2627

(C) If the court conducts a hearing as described in division 2628
(A)(2) of this section and if the court does not make both 2629
findings described in divisions (A)(2)(a) and (b) of this section 2630
by clear and convincing evidence, the court shall dismiss the 2631
charges against the accused. Upon the dismissal, the court shall 2632
discharge the accused unless the court or trial counsel files an 2633
affidavit in probate court for civil commitment of the accused 2634
pursuant to Chapter 5122. of the Revised Code. If the court or 2635
trial counsel files an affidavit for civil commitment, the court 2636
may order that the accused be detained for up to ten days pending 2637
the civil commitment. If the probate court commits the accused 2638
subsequent to the court's or trial counsel's filing of an 2639
affidavit for civil commitment, the chief clinical officer of the 2640
entity, hospital, or facility, the managing officer of the 2641
institution, or the person to which the accused is committed or 2642
admitted shall send to the trial counsel the notices described in 2643
divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised 2644
Code within the periods of time and under the circumstances 2645

specified in those divisions. A dismissal of charges under this 2646
division is not a bar to further criminal proceedings based on the 2647
same conduct. 2648

(D)(1) If the court conducts a hearing as described in 2649
division (A)(2) of this section and if the court makes the 2650
findings described in divisions (A)(2)(a) and (b) of this section 2651
by clear and convincing evidence, the court shall commit the 2652
accused, if determined to require mental health treatment, to the 2653
department of mental health for treatment at a hospital, facility, 2654
or agency as determined clinically appropriate by the department 2655
of mental health. In committing the accused to the department of 2656
mental health, the court shall specify the least restrictive 2657
limitations on the accused's freedom of movement determined to be 2658
necessary to protect public safety. 2659

(2) If a court makes a commitment of an accused under 2660
division (D)(1) of this section, the trial counsel shall send to 2661
the hospital, facility, or agency where the accused is placed by 2662
the department of mental health or to the accused's place of 2663
commitment all reports of the accused's current mental condition 2664
and, except as otherwise provided in this division, any other 2665
relevant information, including, but not limited to, a transcript 2666
of the hearing held pursuant to division (A)(2) of this section, 2667
copies of relevant investigative reports, and copies of any prior 2668
arrest and conviction records that pertain to the accused and that 2669
the trial counsel possesses. The trial counsel shall send the 2670
reports of the accused's current mental condition in every case of 2671
commitment, and, unless the trial counsel determines that the 2672
release of any of the other relevant information to unauthorized 2673
persons would interfere with the effective prosecution of any 2674
person or would create a substantial risk of harm to any person, 2675
the trial counsel also shall send the other relevant information. 2676

(3) If a court makes a commitment under division (D)(1) of 2677

this section, all further proceedings shall be in accordance with 2678
Chapter 5122. of the Revised Code. 2679

Sec. 5924.505. For purposes of sections 5924.502 and 5924.506 2680
of the Revised Code, a person is "not guilty by reason of 2681
insanity" relative to a charge of an offense only as described in 2682
division (A)(14) of section 2901.01 of the Revised Code. Proof 2683
that a person's reason, at the time of the commission of an 2684
offense, was so impaired that the person did not have the ability 2685
to refrain from doing the person's act or acts, does not 2686
constitute a defense. 2687

Sec. 5924.506. (A) If an accused person is found not guilty 2688
by reason of insanity, the verdict shall state that finding, and 2689
the trial court shall conduct a full hearing to determine whether 2690
the person is a mentally ill person subject to hospitalization by 2691
court order. Prior to the hearing, if the military judge believes 2692
that there is probable cause that the person found not guilty by 2693
reason of insanity is a mentally ill person subject to 2694
hospitalization by court order, the military judge may issue a 2695
temporary order of detention for that person to remain in effect 2696
for ten court days or until the hearing, whichever occurs first. 2697

Any person detained pursuant to a temporary order of 2698
detention issued under this division shall be held in a suitable 2699
facility, taking into consideration the place and type of 2700
confinement prior to and during trial. 2701

(B) The court shall hold the hearing under division (A) of 2702
this section to determine whether the person found not guilty by 2703
reason of insanity is a mentally ill person subject to 2704
hospitalization by court order within ten court days after the 2705
finding of not guilty by reason of insanity. Failure to conduct 2706
the hearing within the ten-day period shall cause the immediate 2707

discharge of the respondent, unless the judge grants a continuance 2708
for not longer than ten court days for good cause shown or for any 2709
period of time upon motion of the respondent. 2710

(C) If a person is found not guilty by reason of insanity, 2711
the person has the right to attend a hearing conducted pursuant to 2712
this section. At the hearing, the court shall inform the person 2713
that the person has all of the following rights: 2714

(1) The right to be represented by defense counsel or to 2715
retain civilian counsel, if the person so chooses; 2716

(2) The right to have independent expert evaluation; 2717

(3) The right to subpoena witnesses and documents, to present 2718
evidence on the person's behalf, and to cross-examine witnesses 2719
against the person; 2720

(4) The right to testify in the person's own behalf and to 2721
not be compelled to testify; 2722

(5) The right to have copies of any relevant medical or 2723
mental health document in the custody of the state or of any place 2724
of commitment other than a document for which the court finds that 2725
the release to the person of information contained in the document 2726
would create a substantial risk of harm to any person. 2727

(D) The hearing under division (A) of this section shall be 2728
open to the public, and the court shall conduct the hearing in 2729
accordance with regulations prescribed by the adjutant general. 2730
The court shall make and maintain a full transcript and record of 2731
the hearing proceedings. The court may consider all relevant 2732
evidence, including, but not limited to, any relevant psychiatric, 2733
psychological, or medical testimony or reports, the acts 2734
constituting the offense in relation to which the person was found 2735
not guilty by reason of insanity, and any history of the person 2736
that is relevant to the person's ability to conform to the law. 2737

(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. 2738
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(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, it shall commit the person to the department of mental health for placement in a hospital, facility, or agency as determined clinically appropriate by the department of mental health. Further proceedings shall be in accordance with Chapter 5122. or 5123. of the Revised Code. In committing the accused to the department of mental health, the court shall specify the least restrictive limitations on the accused's freedom of movement determined to be necessary to protect public safety. 2745
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(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 2756
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persons would interfere with the effective prosecution of any 2770
person or would create a substantial risk of harm to any person, 2771
the trial counsel also shall send the other relevant information. 2772

(H) A person who is committed pursuant to this section shall 2773
not voluntarily admit the person or be voluntarily admitted to a 2774
hospital or institution pursuant to sections 5122.02 and 5122.15 2775
of the Revised Code. 2776

Sec. 5924.51. (A) Voting by members of a general or special 2777
court-martial on the findings and on the sentence, and by members 2778
of a court-martial without a military judge upon questions of 2779
challenge, shall be by secret written ballot. The junior member of 2780
the court shall in each case count the votes. The count shall be 2781
checked by the president, who shall forthwith announce the result 2782
of the ballot to the members of the court. 2783

(B) The military judge and, except for questions of 2784
challenge, the president of a court-martial without a military 2785
judge shall rule upon all questions of law and all interlocutory 2786
questions arising during the proceedings. Any such ruling made by 2787
the military judge upon any question of law or any interlocutory 2788
question other than the factual issue of mental responsibility of 2789
the accused, or by the president of a special court-martial, 2790
without a military judge upon any question of law other than a 2791
motion for a finding of not guilty, is final and constitutes the 2792
ruling of the court. However, the military judge or the president 2793
of a court-martial without a military judge may change the ruling 2794
at any time during the trial. Unless the ruling is final, if any 2795
member objects thereto, the court shall be cleared and closed and 2796
the question decided by a voice vote as provided in section 2797
5924.52 of the Revised Code, beginning with the junior in rank. 2798

(C) Before a vote is taken on the findings, the military 2799
judge or the president of a court-martial without a military judge 2800

shall, in the presence of the accused and counsel, instruct the 2801
members of the court as to the elements of the offense and charge 2802
~~the court~~ them: 2803

(1) That the accused must be presumed to be innocent until 2804
~~his~~ guilt is established by legal and competent evidence beyond 2805
reasonable doubt; 2806

(2) That in the case being considered, if there is a 2807
reasonable doubt as to the guilt of the accused, the doubt must be 2808
resolved in favor of the accused, and ~~he~~ the accused must be 2809
acquitted; 2810

(3) That, if there is a reasonable doubt as to the degree of 2811
guilt, the finding must be in a lower degree as to which there is 2812
no reasonable doubt; and 2813

(4) That the burden of proof to establish the guilt of the 2814
accused beyond reasonable doubt is upon the state. 2815

(D) Divisions (A), (B), and (C) of this section do not apply 2816
to a court-martial composed of a military judge only. The military 2817
judge of such a court-martial shall determine all questions of law 2818
and fact arising during the proceedings and, if the accused is 2819
convicted, adjudge an appropriate sentence. The military judge of 2820
such a court-martial shall make a general finding and shall in 2821
addition on request ~~find the facts specially~~ make specific 2822
findings of fact. If an opinion or memorandum of decision is 2823
filed, it will be sufficient if the findings of fact appear 2824
therein. 2825

Sec. 5924.52. (A) ~~(1) No person may be convicted of an offense 2826
for which the death penalty is made mandatory by law, except by 2827
the concurrence of all members of the court martial present at the 2828
time the vote is taken. 2829~~

~~(2)~~ No person may be convicted of any ~~other~~ offense, except 2830

~~as provided in division (B) of section 5924.45 of the Revised Code 2831
or by the concurrence of two-thirds of the members of the 2832
court-martial present at the time the vote is taken. 2833~~

~~(B)(1) No person may be sentenced to suffer death, except by 2834
the concurrence of all members of the court martial present at the 2835
time the vote is taken and for an offense in this chapter 2836
expressly made punishable by death. 2837~~

~~(2) No person may be sentenced to life imprisonment or to 2838
confinement for more than ten years, except by the concurrence of 2839
three-fourths of the members present at the time the vote is 2840
taken. 2841~~

~~(3) All other sentences shall be determined by the 2842
concurrence of two-thirds of the members present at the time the 2843
vote is taken. 2844~~

~~(C) All other questions to be decided by the members of a 2845
general or special court-martial shall be determined by a majority 2846
vote, but a determination to reconsider a finding of guilty or to 2847
reconsider a sentence, to decrease or lessen it, may be made by 2848
any lesser vote ~~which~~ that indicates that the reconsideration is 2849
not opposed by the number of votes required for that finding or 2850
sentence. A tie vote on a challenge disqualifies the member 2851
challenged. A tie vote on a motion for a finding of not guilty or 2852
on a motion relating to the question of the accused's sanity is a 2853
determination against the accused. A tie vote on any other 2854
question is a determination in favor of the accused. 2855~~

Sec. 5924.54. (A) Each general court-martial shall keep a 2856
separate record of the proceedings in each case brought before it, 2857
and the record shall be authenticated by the signature of the 2858
military judge. If the record cannot be authenticated by the 2859
military judge by reason of ~~his~~ death, disability, or absence, it 2860
shall be authenticated by the signature of the trial counsel or by 2861

that of a member if the trial counsel is unable to authenticate it 2862
by reason of ~~his~~ death, disability, or absence. In a court-martial 2863
consisting of only a military judge, the record shall be 2864
authenticated by the court reporter under the same conditions 2865
~~which that~~ would impose such a duty on a member under this 2866
division ~~if the proceedings have resulted in an acquittal of all~~ 2867
~~charges and specifications or, if not affecting a general or flag~~ 2868
~~officer, in a sentence not including discharge and not in excess~~ 2869
~~of that which may otherwise be adjudged by a special~~ 2870
~~court martial. The record shall contain matters as may be~~ 2871
~~prescribed by regulations of the governor.~~ 2872

(B) Each special and summary court-martial shall keep a 2873
separate record of the proceedings in each case, ~~which and the~~ 2874
record shall ~~contain such matter and~~ be authenticated in ~~such the~~ 2875
manner ~~as may be~~ required by regulations ~~which the governor may~~ 2876
~~prescribe~~ prescribed by the adjutant general. 2877

(C)(1) A complete record of the proceedings and testimony 2878
shall be prepared in the following cases: 2879

(a) Each case tried before a general court-martial in which 2880
the sentence adjudged includes a dismissal, a discharge, or any 2881
punishment that exceeds the punishment that may otherwise be 2882
adjudged by a special court-martial; 2883

(b) Each case tried before a special court-martial in which 2884
the sentence adjudged includes a bad-conduct discharge or 2885
confinement for more than six months. 2886

(2) In all other cases tried before a court-martial, the 2887
record shall contain any matters that are required by regulations 2888
of the adjutant general. A copy of the record of the proceedings 2889
of each general and special court-martial shall be given to the 2890
accused as soon as it is authenticated. ~~If a verbatim record of~~ 2891
~~trial by general or special court martial is not required under~~ 2892

~~divisions (A) and (B) of this section, the accused may buy such a~~ 2893
~~record under such regulations as the governor may prescribe.~~ 2894

Sec. 5924.56. The punishment ~~which~~ that a court-martial may 2895
direct for an offense may not exceed limits prescribed by ~~this~~ 2896
~~code or such lesser limits as the governor may prescribe~~ adjutant 2897
general for the offense. 2898

Sec. 5924.57. (A) ~~Whenever a sentence of a court-martial as~~ 2899
~~lawfully adjudged and approved includes a forfeitures~~ (1) A 2900
forfeiture of pay or allowances ~~in addition to confinement not~~ 2901
~~suspended or deferred, the forfeiture may apply to pay or~~ 2902
~~allowances becoming due on or after the date the sentence is~~ 2903
~~approved by the convening authority. No forfeiture may extend to~~ 2904
~~any pay or allowances accrued before that date~~ or reduction in 2905
grade that is included in a sentence of a court-martial takes 2906
effect on the earlier of the date that is fourteen days after the 2907
date on which the sentence is adjudged or the date on which the 2908
sentence is approved by the convening authority. 2909

(2) On application of an accused, the convening authority may 2910
defer a forfeiture of pay or allowances or reduction in grade that 2911
would otherwise become effective on the date that is fourteen days 2912
after the date on which the sentence is adjudged until the date on 2913
which the sentence is approved by the convening authority. The 2914
convening authority may at any time rescind a deferment granted 2915
under this division. 2916

(3) A forfeiture of pay or allowances applies to pay or 2917
allowances accruing on and after the date on which the sentence 2918
takes effect. 2919

(B) Any period of confinement included in a sentence of a 2920
court-martial begins to run from the date the sentence is adjudged 2921
by the court-martial, but periods during which the sentence to 2922

confinement is suspended or deferred shall be excluded in 2923
computing the service of the term of confinement. Regulations 2924
~~prescribed by the governor may provide that sentences of~~ 2925
~~confinement may not be executed until approved by designated~~ 2926
~~officers.~~ 2927

(C) All other sentences of courts-martial are effective on 2928
the date ordered executed. 2929

(D)(1) On application by an accused who is under sentence to 2930
confinement that has not been ordered executed, the convening 2931
authority or, if the accused is no longer under ~~his~~ the convening 2932
authority's jurisdiction, the ~~governor,~~ officer exercising general 2933
court-martial jurisdiction over the command to which the accused 2934
is currently assigned may in ~~his~~ the officer's sole discretion 2935
defer service of the sentence to confinement. The deferment shall 2936
terminate when the sentence is ordered executed. The deferment may 2937
be rescinded at any time by the officer who granted it or, if the 2938
accused is no longer under ~~his~~ the officer's jurisdiction, by the 2939
~~governor~~ officer exercising general court-martial jurisdiction 2940
over the command to which the accused is currently assigned. 2941

(2) In any case in which a court-martial sentences a person 2942
described in division (D)(3) of this section to confinement, the 2943
convening authority may defer the service of the sentence to 2944
confinement, without the consent of that person, until after the 2945
person has been permanently released to the armed forces by a 2946
state or foreign country referred to in that division. 2947

(3) Division (D)(2) of this section applies to a person 2948
subject to this chapter who, while in the custody of a state or 2949
foreign country, is temporarily returned by that state or foreign 2950
country to the armed forces for trial by court-martial and after 2951
the court-martial is returned to that state or foreign country 2952
under the authority of a mutual agreement or treaty. 2953

(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. 2954
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(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. 2958
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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. 2962
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~~(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.~~ 2975
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~~(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~~ 2979
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~~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.~~ 2985
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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. 2988
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(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. 2994
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Sec. 5924.582. (A) A member who receives a court-martial sentence that includes confinement for more than six months or confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal forfeits pay, or pay and allowances, during any period of confinement or parole. The forfeiture takes effect on the date determined under section 5924.57 of the Revised Code and may be deferred as provided by that section. The pay and allowances forfeited as a result of a sentence imposed by a general court-martial shall be all pay and allowances due during any period of confinement or parole. The pay and allowances forfeited as a result of a sentence imposed by a special court-martial shall be two-thirds of all pay and allowances due during any period of confinement or parole. 3003
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(B) If a member subject to forfeiture of pay or pay and allowances under division (A) of this section has dependents, the convening authority or other person acting under section 5924.60 of the Revised Code may waive all or part of the forfeiture of pay and allowances for a period not exceeding six months. Any pay or allowances paid as a result of a waiver shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused member. 3016
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(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. 3024
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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. 3033
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(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. 3037
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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. 3040
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(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. 3046
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(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. 3054
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(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. 3058
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(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. 3062
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(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. 3067
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(2) The convening authority or another person authorized to act under this section may act on the sentence of a court-martial 3075
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pursuant to division (B)(3) of this section. Subject to 3077
regulations prescribed by the adjutant general, the convening 3078
authority or other authorized person may act only after the 3079
accused submits matters under division (B) of this section or the 3080
time for submitting matters expires, whichever is earlier. If the 3081
accused makes a submission, the convening authority or other 3082
authorized person shall take the submission into consideration 3083
before acting. 3084

(3) The convening authority or other authorized person, in 3085
the convening authority's or other authorized person's sole 3086
discretion, may approve, disapprove, commute, or suspend the 3087
sentence of a court-martial in whole or in part. The convening 3088
authority or other authorized person acting on a sentence may but 3089
is not required to take action on the findings of the 3090
court-martial. A convening authority or other authorized person 3091
that chooses to act on the findings may dismiss any charge or 3092
specification by setting aside a finding of guilt with regard to 3093
that charge or specification or may change a finding of guilty 3094
with regard to a charge or specification to a finding of guilty to 3095
an offense that is a lesser included offense of the offense stated 3096
in the charge or specification. 3097

(D) Before acting under this section on any general 3098
court-martial case or on any special court-martial case that 3099
includes a bad-conduct discharge, the convening authority or other 3100
authorized person shall obtain and consider the written 3101
recommendation of the convening authority's or other authorized 3102
person's staff judge advocate or legal officer. The convening 3103
authority or other authorized person shall refer the record of 3104
trial to the staff judge advocate or legal officer. The staff 3105
judge advocate or legal officer shall use the record in the 3106
preparation of a recommendation. The recommendation shall include 3107
any matters that the adjutant general may require by regulation 3108

and shall be served on the accused. The accused may submit any 3109
matter in response under division (B) of this section. If in the 3110
accused's response, the accused does not object to one or more 3111
matters contained in the recommendation, the accused waives the 3112
right to object to those matters. 3113

(E)(1) The convening authority or other authorized person, in 3114
the convening authority's or other authorized person's sole 3115
discretion, may order a proceeding in revision or a rehearing. 3116

(2) The convening authority or other authorized person may 3117
order a proceeding in revision if there is an apparent error or 3118
omission in the record of a court-martial or if the record shows 3119
improper or inconsistent action by a court-martial with respect to 3120
the findings or sentence that can be rectified without material 3121
prejudice to the substantial rights of the accused. In a 3122
proceeding in revision, the convening authority or other 3123
authorized person may not do any of the following: 3124

(a) Reconsider a finding of not guilty of any specification 3125
or a ruling that amounts to a finding of not guilty; 3126

(b) Reconsider a finding of not guilty of any charge, unless 3127
there has been a finding of guilty under a specification laid 3128
under that charge that sufficiently alleges a violation of any 3129
provision of this chapter; 3130

(c) Increase the severity of the sentence. 3131

(3) The convening authority or other authorized person may 3132
order a rehearing if the convening authority or other authorized 3133
person disapproves the findings or sentence and states the reasons 3134
for disapproval of the findings or sentence. If the convening 3135
authority or other authorized person disapproves the findings or 3136
sentence and does not order a rehearing, the convening authority 3137
or other authorized person shall dismiss the charges. A convening 3138
authority or other authorized person may not order a rehearing as 3139

to the findings if the record does not contain sufficient evidence 3140
to support the findings. A convening authority or other authorized 3141
person may order a rehearing as to the sentence if the convening 3142
authority or other authorized person disapproves the sentence. 3143

Sec. 5924.61. (A) An accused may appeal a finding of guilty 3144
or the sentence of a court-martial to the court of military 3145
appeals. The court shall hear an appeal if the convening authority 3146
or other authorized person approved a sentence of dismissal of a 3147
commissioned officer, dishonorable or bad conduct discharge, or 3148
confinement for one year or more and if the appeal was timely 3149
filed. The court may hear any other appeals that the court, in its 3150
sole discretion, allows. 3151

(B) An accused who is found guilty may appeal under this 3152
section by filing a notice of appeal with the convening authority 3153
that ordered the court-martial within thirty calendar days after 3154
the convening authority serves a copy of the approved findings and 3155
sentence on the trial attorney of record for the accused or, if 3156
the accused waived the right to counsel, on the accused in 3157
accordance with regulations prescribed by the adjutant general. 3158
The notice of appeal shall state the name of the party taking the 3159
appeal, the findings, sentence, or parts of the findings or 3160
sentence appealed from, and the grounds for the appeal. Failure to 3161
file a notice of appeal in a timely manner constitutes a waiver of 3162
the right to appeal. 3163

(C) Upon receiving a notice of appeal, the convening 3164
authority shall serve a copy of the notice on the trial counsel 3165
and on the trial attorney of record for any codefendant or, if a 3166
codefendant waived the right to counsel, on the codefendant in 3167
accordance with regulations prescribed by the adjutant general. 3168
The convening authority shall note on each copy served the date on 3169
which the notice of appeal was filed. Failure of the convening 3170

authority to serve a copy of the notice of appeal does not affect 3171
the validity of the appeal. Service in accordance with division 3172
(C) of this section is sufficient notwithstanding the death of a 3173
party or a party's counsel. The convening authority shall note on 3174
its docket the names of the parties served, the dates on which 3175
they were served, and the method of service. 3176

(D) An accused may waive appellate review by filing with the 3177
convening authority, within ten days after the action under 3178
section 5924.60 of the Revised Code is served on the accused or on 3179
defense counsel, a written waiver signed by the accused and by 3180
defense counsel. The convening authority or other person taking 3181
such action, for good cause, may extend the period for filing by 3182
not more than thirty days. 3183

(E) An accused may voluntarily withdraw an appeal at any time 3184
by filing a notice of withdrawal with the convening authority. 3185

(F) A waiver of the right to appellate review or the 3186
withdrawal of an appeal bars any further review under this section 3187
or section 5924.69 of the Revised Code. 3188

Sec. 5924.62. (A) In a trial by court-martial in which a 3189
military judge presides and in which a punitive discharge may be 3190
adjudged, the state may appeal any of the following, except an 3191
order or ruling that is, or that amounts to, a finding of not 3192
guilty with respect to the charge or specification: 3193

(1) An order or ruling that terminates the proceedings with 3194
respect to a charge or specification; 3195

(2) An order or ruling that excludes evidence that is of 3196
substantial consequence to the determination of the material 3197
issues in the proceeding; 3198

(3) An order or ruling that directs the disclosure of 3199
classified information; 3200

(4) An order or ruling that imposes sanctions for nondisclosure of classified information; 3201
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(5) A refusal by the military judge to issue a protective order sought by the state to prevent the disclosure of classified information; 3203
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(6) A refusal by the military judge to enforce a protective order that has previously been issued by appropriate authority to prevent the disclosure of classified information. 3206
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(B) The state may not appeal an order or ruling unless within seventy-two hours after the military judge serves the order or ruling the trial counsel files with the military judge a written notice of appeal from the order or ruling. The notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one that excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding. 3209
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(C) Appellate government counsel shall diligently prosecute an appeal under this section to the court of military appeals created by section 5924.66 of the Revised Code. 3217
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(D) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit. 3220
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~~**Sec. 5924.63. (A) If the convening authority disapproves the findings and sentence of a court martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the**~~ 3225
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~~charges.~~ 3231

(B) Each rehearing ordered pursuant to section 5924.60 of the 3232
Revised Code or by the court of military appeals shall take place 3233
before a court-martial composed of members who were not members of 3234
the court-martial ~~which~~ that first heard the case. Upon a 3235
rehearing the accused may not be tried for any offense of which ~~he~~ 3236
the accused was found not guilty by the first court-martial, and 3237
no sentence in excess of or more severe than the original sentence 3238
may be ~~imposed,~~ approved unless the sentence is based upon a 3239
finding of guilty of an offense not considered upon the merits in 3240
the original proceedings, or unless the sentence prescribed for 3241
the offense is mandatory. If the sentence approved after the first 3242
court-martial was in accordance with a pretrial agreement and the 3243
accused at the rehearing changes the accused's plea with respect 3244
to the charges or specifications upon which the pretrial agreement 3245
was based or otherwise does not comply with the pretrial 3246
agreement, the approved sentence as to those charges or 3247
specifications may include any punishment not in excess of the 3248
punishment lawfully adjudged at the first court-martial. 3249

Sec. 5924.64. (A) A judge advocate shall review pursuant to 3250
regulations prescribed by the adjutant general each case in which 3251
there has been a finding of guilty and in which no appeal is 3252
taken. A judge advocate may not review a case under this section 3253
if the judge advocate has acted in the same case as an accuser, 3254
investigating officer, member of the court, military judge, or 3255
counsel or has otherwise acted on behalf of the prosecution or 3256
defense. For each case reviewed under this section, the judge 3257
advocate shall issue written findings and recommendations that 3258
contain all of the following: 3259

(1) Conclusions as to whether the court had jurisdiction over 3260
the accused and the offense; 3261

<u>(2) Conclusions as to whether the charge and specification stated an offense;</u>	3262
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<u>(3) Conclusions as to whether the sentence was within the limits prescribed by law;</u>	3264
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<u>(4) A response to each allegation of error made in writing by the accused;</u>	3266
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<u>(5) If the case is sent for action under division (B) of this section, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.</u>	3268
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<u>(B) The record of trial and related documents in each case reviewed under division (A) of this section shall be sent for further action under division (C) of this section to the person exercising general court-martial jurisdiction over the accused at the time the court was convened or that person's successor in command if any of the following applies:</u>	3272
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<u>(1) The judge advocate who reviewed the case recommends corrective action.</u>	3278
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<u>(2) The sentence approved under division (C) of section 5924.60 of the Revised Code includes dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months.</u>	3280
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<u>(3) Regulations prescribed by the adjutant general require further review.</u>	3283
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<u>(C) The person to whom the record of trial and related documents are sent under division (B) of this section may do any of the following:</u>	3285
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<u>(1) Approve or disapprove the findings or sentence in whole or in part;</u>	3288
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<u>(2) Remit, commute, or suspend the sentence in whole or in part;</u>	3290
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<u>(3) Order a rehearing on the findings, the sentence, or both;</u>	3292
<u>(4) Dismiss the charges.</u>	3293
<u>(D) If a rehearing is ordered but the convening authority finds that a rehearing is impracticable, the convening authority shall dismiss the charges.</u>	3294 3295 3296
<u>(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.</u>	3297 3298 3299 3300 3301 3302 3303 3304
<u>(F) The judge advocate who under this section reviews a case conducted by a general court-martial shall be the state judge advocate.</u>	3305 3306 3307
<u>Sec. 5924.65.</u> <u>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.</u>	3308 3309 3310 3311 3312 3313 3314 3315
<u>Sec. 5924.66.</u> <u>(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.</u>	3316 3317 3318 3319 3320
<u>(B) The judges of the court of military appeals shall be</u>	3321

military appellate judges appointed by the adjutant general. Each 3322
judge shall be a retired judge advocate officer who has previously 3323
served in the rank of colonel or above in either the Ohio army 3324
national guard or the Ohio air national guard. The judges shall 3325
sit in panels of not less than three members. 3326

(C) The adjutant general may make rules governing practice 3327
and procedure in the court of military appeals. The Rules of 3328
Appellate Procedure apply in proceedings in the court to the 3329
extent that they are not inconsistent with this code or with rules 3330
made by the adjutant general under this division. 3331

Sec. 5924.67. A judge of the court of military appeals shall 3332
receive as compensation for each day of attendance on the business 3333
of the court an amount equal to the annual compensation of a judge 3334
of a court of appeals divided by the number of days in the 3335
calendar year. A judge who does not reside in Franklin county 3336
shall be reimbursed for the judge's actual and necessary expenses 3337
of traveling to and from Franklin county to attend the business of 3338
the court. 3339

Sec. 5924.68. The court of military appeals may subpoena 3340
witnesses, require the production of evidence, and punish for 3341
contempt in the same manner and to the same extent as a common 3342
pleas court. 3343

Sec. 5924.69. Appeals from orders and judgments of the court 3344
of military appeals may be taken to the supreme court in the same 3345
manner and to the same extent as criminal appeals from orders and 3346
judgments of a court of appeals. 3347

Sec. 5924.70. (A) The state judge advocate shall detail one 3348
or more judge advocates as appellate government counsel and one or 3349
more judge advocates assigned to the United States army trial 3350

defense service or the United States air force area defense 3351
counsel as appellate defense counsel. Appellate counsel shall be 3352
members in good standing of the bar of this state and certified by 3353
the state judge advocate to be competent to act as appellate 3354
counsel. 3355

(B) Appellate government counsel shall represent the state in 3356
the court of military appeals. In a case arising under this code 3357
that is heard in the supreme court, appellate government counsel 3358
shall represent the state in the supreme court unless the attorney 3359
general elects to represent the state. 3360

(C) Appellate defense counsel shall represent the accused in 3361
the court of military appeals and the supreme court unless the 3362
accused elects to be represented by civilian counsel at the 3363
accused's own expense. 3364

(D) Appellate government and defense counsel shall perform 3365
any additional functions in connection with post-trial proceedings 3366
in court-martial cases that the state judge advocate directs. 3367

Sec. 5924.71. (A) If the sentence of a court-martial of a 3368
commissioned officer or cadet includes dismissal, that part of the 3369
sentence providing for dismissal may not be executed until it is 3370
approved by the adjutant general. The adjutant general may 3371
commute, remit, or suspend the sentence or any part of the 3372
sentence as the adjutant general sees fit. In time of war or 3373
national emergency, the adjutant general may commute a sentence of 3374
dismissal to reduction to any enlisted grade. A person so reduced 3375
may be required to serve for the duration of the war or emergency 3376
and for six months after the end of the war or emergency. 3377

(B)(1) If the sentence of a court-martial includes dismissal 3378
or dishonorable or bad-conduct discharge and the accused appeals 3379
to the court of military appeals, the dismissal or discharge part 3380
of the sentence may not be executed until the appellate process 3381

has been completed and, in case of dismissal, approval of the 3382
sentence by the adjutant general. The appellate process is 3383
completed when any of the following occurs: 3384

(a) The accused withdraws the appeal. 3385

(b) The court of military appeals renders a decision, and the 3386
time for filing a notice of appeal to the supreme court elapses 3387
without the accused having filed a notice of appeal. 3388

(c) The supreme court issues an order dismissing the appeal 3389
or entering judgment on the leave to appeal. 3390

(2) If the sentence of a court-martial includes dismissal or 3391
dishonorable or bad-conduct discharge and the accused fails to 3392
appeal to the court of military appeals, waives appellate review, 3393
or withdraws an appeal, the dismissal or discharge part of the 3394
sentence may not be executed until a judge advocate has reviewed 3395
the case and the convening authority has completed action in the 3396
review pursuant to section 5924.64 of the Revised Code. Any other 3397
part of a court-martial sentence may be ordered executed by the 3398
convening authority or other person acting on the case under 3399
section 5924.60 of the Revised Code. 3400

(C) The convening authority or other person taking action on 3401
a court-martial case under section 5924.60 of the Revised Code may 3402
suspend at any time the execution of any sentence or part of a 3403
sentence. 3404

Sec. 5924.72. (A) An officer having special court-martial 3405
jurisdiction over a person whose sentence has been suspended may 3406
recommend vacation of the suspension of an approved sentence or 3407
part of a sentence that was imposed by a special court-martial and 3408
includes a bad-conduct discharge or that was imposed by a general 3409
court-martial. 3410

(B) Before the vacation of vacating the suspension of a 3411

~~special court-martial sentence which as approved includes a bad~~ 3412
~~conduct discharge, or of any general court-martial or part of a~~ 3413
~~sentence under division (A) of this section, the an~~ officer having 3414
special court-martial jurisdiction over ~~the probationer~~ a person 3415
whose sentence has been suspended shall hold a hearing on the 3416
alleged violation of ~~probation~~ the terms of suspension. The 3417
~~probationer shall~~ person has the right to be represented at the 3418
hearing by counsel ~~if he so desires~~. 3419

~~(B)(C)~~ The record of the hearing and the recommendation of 3420
the officer having special court-martial jurisdiction shall be 3421
sent for action to the ~~governor in cases involving a~~ officer 3422
exercising general court-martial ~~sentence and to the commanding~~ 3423
~~officer of the force of the organized militia of which~~ 3424
jurisdiction over the probationer is a member in all other cases 3425
~~covered by division (A) of this section~~ person whose sentence has 3426
been suspended. If ~~the governor or commanding~~ that officer vacates 3427
the suspension, any unexecuted part of the sentence except a 3428
dismissal shall be executed, subject to applicable restrictions 3429
set forth in section 5924.71 of the Revised Code. A vacation of 3430
the suspension of a dismissal is not effective until it is 3431
approved by the adjutant general. 3432

~~(C)(D)~~ The suspension of any other sentence may be vacated by 3433
any authority competent to convene, for the command in which the 3434
accused is serving or assigned, a court of the kind that imposed 3435
the sentence. 3436

Sec. 5924.73. At any time within two years after approval by 3437
the convening authority of a court-martial sentence, the accused 3438
may petition the ~~governor~~ adjutant general for a new trial on the 3439
ground of newly discovered evidence or fraud on the court-martial. 3440
The adjutant general shall act upon the petition unless the case 3441
is pending before the court of military appeals or the supreme 3442

court, in which case the adjutant general shall refer the petition 3443
to the court in which the appeal is pending. 3444

Sec. 5924.74. (A) ~~A~~ The adjutant general, the state judge 3445
advocate when authorized by the adjutant general, or a convening 3446
authority may remit or suspend any part or amount of the 3447
unexecuted part of any sentence, including all uncollected 3448
forfeitures, other than a sentence approved by the governor or a 3449
superior convening authority. 3450

(B) The ~~governor~~ adjutant general may, for good cause, 3451
substitute an administrative form of discharge for a discharge or 3452
dismissal executed in accordance with the sentence of a 3453
court-martial. 3454

Sec. 5924.75. (A) Under ~~such~~ any regulations ~~as~~ that the 3455
~~governor~~ adjutant general may prescribe, all rights, privileges, 3456
and property affected by an executed part of a court-martial 3457
sentence ~~which~~ that has been set aside or disapproved, except an 3458
executed dismissal or discharge, shall be restored unless a new 3459
trial or rehearing is ordered and ~~such~~ the executed part of the 3460
sentence is included in a sentence imposed upon the new trial or 3461
rehearing. 3462

(B) If a previously executed sentence of dishonorable or bad 3463
conduct discharge is not imposed on a new trial, the ~~governor~~ 3464
adjutant general shall substitute therefor a form of discharge 3465
authorized for administrative issuance unless the accused is to 3466
serve out the remainder of ~~his~~ the accused's enlistment. 3467

(C) If a previously executed sentence of dismissal is not 3468
imposed on a new trial, the ~~governor~~ adjutant general shall 3469
substitute therefor a form of discharge authorized for 3470
administrative issue, and the commissioned officer dismissed by 3471
that sentence may be reappointed by the ~~governor~~ adjutant general 3472

alone to such commissioned grade and with such rank as in the 3473
opinion of the ~~governor~~ adjutant general that former officer would 3474
have attained had ~~he~~ the former officer not been dismissed. The 3475
reappointment of such a former officer ~~may~~ shall be made ~~if~~ 3476
~~without regard to the existence of a position vacancy is available~~ 3477
~~under applicable tables and shall affect the promotion status of~~ 3478
~~organization other officers only to the extent directed by the~~ 3479
adjutant general. All time between the dismissal and the 3480
reappointment shall be considered as service for all purposes 3481
including the right to pay and allowances. 3482

(D) Pursuant to regulations prescribed by the adjutant 3483
general, an accused who has been sentenced by a court-martial may 3484
be required to take leave pending completion of action under this 3485
code if the sentence, as approved under section 5924.60 of the 3486
Revised Code, includes an unsuspended dismissal or an unsuspended 3487
dishonorable or bad-conduct discharge. The accused may be required 3488
to begin leave on the date on which the sentence is approved or at 3489
any time after that date. Leave may be continued until the date on 3490
which action is completed or may be terminated at any earlier 3491
time. 3492

Sec. 5924.76. The appellate review of records of trial 3493
pursuant to this code, the proceedings, findings, and sentences of 3494
courts-martial as ~~reviewed and approved, as required by reviewed,~~ 3495
or affirmed pursuant to this code, and all dismissals and 3496
discharges carried into execution under sentences by 3497
courts-martial following ~~review and approval, as required by~~ 3498
review, or affirmation pursuant to this code, are final and 3499
conclusive. Orders publishing the proceedings of courts-martial 3500
and all action taken pursuant to those proceedings are binding 3501
upon all departments, courts, agencies, and officers of the state, 3502
subject only to action upon a petition for a new trial as provided 3503
in section 5924.73 of the Revised Code and to action by the 3504

adjutant general under section 5924.74 of this code the Revised 3505
Code. 3506

Sec. 5924.761. Pursuant to regulations prescribed by the 3507
adjutant general, an accused who has been sentenced by a 3508
court-martial may be required to take leave pending completion of 3509
action under sections 5924.59 to 5924.761 of the Revised Code if 3510
the sentence, as approved under section 5924.60 of the Revised 3511
Code, includes an unsuspended dismissal or an unsuspended 3512
dishonorable or bad-conduct discharge. The accused may be required 3513
to begin the leave on the date on which the sentence is approved 3514
under section 5924.60 of the Revised Code or at any time after 3515
that date, and the leave may be continued until the date on which 3516
action under sections 5924.59 to 5924.761 of the Revised Code is 3517
terminated or completed. 3518

Sec. 5924.77. Any person subject to this code is a principal 3519
who if the person does either of the following: 3520

(A) Commits an offense punishable by this code, or aids, 3521
abets, counsels, commands, or procures its commission; 3522

(B) Causes an act to be done which if directly performed by 3523
~~him~~ the person would be punishable by this code. 3524

Sec. 5924.78. Any person subject to this code who, knowing 3525
that an offense punishable by this code has been committed, 3526
receives, comforts, or assists the offender in order to hinder or 3527
prevent ~~his~~ the offender's apprehension, trial, or punishment 3528
shall be punished as a court-martial may direct. 3529

Sec. 5924.82. (A) Any person subject to this code who 3530
solicits or advises another or others to desert in violation of 3531
section 5924.85 of the Revised Code and of this code or mutiny in 3532
violation of section 5924.94 of the Revised Code and of this code 3533

shall, if the offense solicited or advised is attempted or 3534
committed, be punished with the punishment provided for the 3535
commission of the offense, but, if the offense solicited or 3536
advised is not committed or attempted, ~~he~~ the person shall be 3537
punished as a court-martial may direct. 3538

(B) Any person subject to this code who solicits or advises 3539
another or others to commit an act of ~~misbehavior before the enemy~~ 3540
~~in violation of section 5924.99 of the Revised Code and of this~~ 3541
~~code or~~ sedition in violation of section 5924.94 of the Revised 3542
Code and of this code shall, if the offense solicited or advised 3543
is committed, be punished with the punishment provided for the 3544
commission of the offense, but, if the offense solicited or 3545
advised is not committed, ~~he~~ the person shall be punished as a 3546
court-martial may direct. 3547

Sec. 5924.83. Any person who does either of the following 3548
shall be punished as a court-martial may direct: 3549

(A) Procures ~~his~~ the person's own enlistment or appointment 3550
in the organized militia by knowingly false representation or 3551
deliberate concealment as to ~~his~~ the person's qualifications for 3552
that enlistment or appointment and receives pay or allowances 3553
thereunder; ~~or~~ 3554

(B) Procures ~~his~~ the person's own separation from the 3555
organized militia by knowingly false representation or deliberate 3556
concealment as to ~~his~~ the person's eligibility for that 3557
separation; 3558

~~shall be punished as a court martial may direct.~~ 3559

Sec. 5924.84. Any person subject to this code who effects an 3560
enlistment or appointment in or a separation from the organized 3561
militia of any person who is known to ~~him~~ the person to be 3562
ineligible for that enlistment, appointment, or separation because 3563

it is prohibited by law, regulation, or order shall be punished as 3564
a court-martial may direct. 3565

Sec. 5924.85. (A) Any member of the organized militia who 3566
does any of the following is guilty of desertion: 3567

(1) Without authority goes or remains absent from ~~his~~ the 3568
member's unit, organization, or place of duty with intent to 3569
remain away ~~therefrom~~ from the unit, organization, or place of 3570
duty permanently; 3571

(2) Quits ~~his~~ the member's unit, organization, or place of 3572
duty with intent to avoid hazardous duty or to shirk important 3573
service; ~~or~~ 3574

(3) Without being regularly separated from one of the forces 3575
of the organized militia enlists or accepts an appointment in the 3576
same or another one of the forces of the organized militia without 3577
fully disclosing the fact that ~~he~~ the member has not been 3578
regularly separated; 3579
~~is guilty of desertion~~ 3580

(4) Without being regularly separated from one of the forces 3581
of the organized militia enters any foreign armed services without 3582
the authorization of the United States. 3583

(B) Any commissioned officer of the organized militia who, 3584
after tender of ~~his~~ the commissioned officer's resignation and 3585
before notice of its acceptance, quits ~~his~~ the commissioned 3586
officer's post or proper duties without leave and with intent to 3587
remain away therefrom permanently is guilty of desertion. 3588

(C) Any person found guilty of desertion or attempt to desert 3589
~~shall be punished, if the offense is committed in time of war, by~~ 3590
~~death or such other punishment as a court martial may direct, but~~ 3591
~~if the desertion or attempt to desert occurs at any other time, by~~ 3592
~~such punishment, other than death, as a court-martial may direct.~~ 3593

Sec. 5924.86. Any person subject to this code who, without 3594
authority, does any of the following shall be punished as a 3595
court-martial may direct: 3596

(A) Fails to go to ~~his~~ the person's appointed place of duty 3597
at the time prescribed; 3598

(B) Goes from ~~his~~ the person's appointed place of duty; ~~or~~ 3599

(C) Absents ~~himself~~ self or remains absent from ~~his~~ the 3600
person's unit, organization, or place of duty at which ~~he~~ the 3601
person is required to be at the time prescribed; ~~shall be punished~~ 3602
~~as a court martial may direct.~~ 3603

Sec. 5924.87. Any person subject to this code who through 3604
neglect or design misses the movement of a ship, aircraft, or unit 3605
with which ~~he~~ the person is required in the course of duty to move 3606
shall be punished as a court-martial may direct. 3607

Sec. 5924.88. Any ~~person subject to this code~~ commissioned 3608
officer who uses contemptuous words against ~~the president,~~ the 3609
governor, or the legislature, ~~or the governor or legislature~~ of 3610
any this state, ~~territory, commonwealth, or possession wherein~~ 3611
~~that person may be serving,~~ shall be punished as a court-martial 3612
may direct. 3613

Sec. 5924.89. Any person subject to this code who behaves 3614
with disrespect toward ~~his~~ the person's superior commissioned 3615
officer shall be punished as a court-martial may direct. 3616

Sec. 5924.90. Any person subject to this code who does either 3617
of the following shall be punished as a court-martial may direct: 3618

(A) Strikes ~~his~~ the person's superior commissioned officer or 3620

draws or lifts up any weapon or offers any violence against ~~him~~ 3621
the person's superior commissioned officer while he ~~that officer~~ 3622
is in the execution of ~~his office~~ official duties; ~~or~~ 3623

(B) Willfully disobeys a lawful command of ~~his~~ the person's 3624
superior commissioned officer; 3625
~~shall be punished as a court martial may direct.~~ 3626

Sec. 5924.91. Any warrant officer or enlisted member who does 3627
any of the following shall be punished as a court-martial may 3628
direct: 3629

(A) Strikes or assaults a warrant officer, or noncommissioned 3630
officer, ~~or petty officer,~~ while that officer is in the execution 3631
of ~~his office~~ official duties; 3632

(B) Willfully disobeys the lawful order of a warrant officer, 3633
or noncommissioned officer, ~~or petty officer;~~ ~~or~~ 3634

(C) Treats with contempt or is disrespectful in language or 3635
deportment toward a warrant officer, or noncommissioned officer, 3636
~~or petty officer,~~ while that officer is in the execution of ~~his~~ 3637
~~office;~~ 3638
~~shall be punished as a court martial may direct~~ official duties. 3639

Sec. 5924.92. Any person subject to this code who does any of 3640
the following shall be punished as a court-martial may direct: 3641

(A) Violates or fails to obey any lawful general order or 3642
regulation; 3643

(B) Having knowledge of any other lawful order issued by a 3644
member of the organized militia, ~~which it~~ that is ~~his~~ the person's 3645
duty to obey, fails to obey the order; ~~or~~ 3646

(C) Is derelict in the performance of ~~his~~ the person's 3647
duties; 3648

shall be punished as a court martial may direct. 3649

Sec. 5924.93. Any person subject to this code who is guilty 3650
of cruelty toward, or oppression or maltreatment of, any other 3651
person subject to ~~his~~ the person's orders shall be punished as a 3652
court-martial may direct. 3653

Sec. 5924.94. (A) (1) Any person subject to this code who ~~+~~ 3654
~~(1) With, with~~ intent to usurp or override lawful military 3655
authority, ~~+~~ refuses, in concert with any other person, to obey 3656
orders or otherwise do ~~his~~ the person's duty or creates any 3657
violence or disturbance is guilty of mutiny ~~+~~. 3658

(2) ~~With~~ Any person subject to this code who, with intent to 3659
cause the overthrow or destruction of lawful civil authority, 3660
creates, in concert with any other person, revolt, violence, or 3661
other disturbance against that authority is guilty of sedition ~~+~~. 3662

(3) ~~Fails~~ Any person subject to this code who fails to do ~~his~~ 3663
the person's utmost to prevent and suppress a mutiny or sedition 3664
being committed in ~~his~~ the person's presence, or fails to take all 3665
reasonable means to inform ~~his~~ the person's superior commissioned 3666
officer or commanding officer of a mutiny or sedition ~~which he~~ 3667
that the person knows or has reason to believe is taking place, is 3668
guilty of a failure to suppress or report a mutiny or sedition. 3669

(B) A person who is found guilty of attempted mutiny, mutiny, 3670
sedition, or failure to suppress or report a mutiny or sedition 3671
shall be punished ~~by death or such other punishment~~ as a 3672
court-martial may direct. 3673

Sec. 5924.95. Any person subject to this code who resists 3674
apprehension ~~or, flees from apprehension,~~ breaks arrest, ~~or who~~ 3675
escapes from ~~physical restraint lawfully imposed~~ custody or 3676
confinement shall be punished as a court-martial may direct. 3677

Sec. 5924.96. Any person subject to this code who, without 3678
proper authority, releases any prisoner committed to ~~his~~ the 3679
person's charge, or who through neglect or design suffers any ~~such~~ 3680
prisoner committed to the person's charge to escape, shall be 3681
punished as a court-martial may direct, whether or not the 3682
prisoner was committed in strict compliance with law. 3683

Sec. 5924.97. Any person subject to this code, who, except as 3684
provided by law ~~or regulation~~, apprehends, arrests, or confines 3685
any person shall be punished as a court-martial may direct. 3686

Sec. 5924.98. Any person subject to this code who: 3687

~~(A) Is~~ is responsible for unnecessary delay in the 3688
disposition of any case of a person accused of an offense under 3689
this code, or 3690

~~(B) Knowingly~~ who knowingly and intentionally fails to 3691
enforce or comply with any provision of this code regulating the 3692
proceedings before, during, or after trial of an accused, 3693
shall be punished as a court-martial may direct. 3694

Sec. 5924.103. (A) All persons subject to this code shall 3695
secure all ~~public~~ property taken from the enemy for the service of 3696
the United States, and this state and shall give notice and turn 3697
over to the proper authority without delay all captured or 3698
abandoned property in their possession, custody, or control. 3699

(B) Any person subject to this code who does any of the 3700
following shall be punished as a court-martial may direct: 3701

(1) Fails to carry out the duties prescribed in division (A) 3702
of this section; 3703

(2) Buys, sells, trades, or in any way deals in or disposes 3704
of captured or abandoned property, whereby ~~he~~ the person receives 3705

or expects any profit, benefit, or advantage to ~~himself~~ self or 3706
another directly or indirectly connected with ~~himself~~ self; ~~or~~ 3707

(3) Engages in looting or pillaging; 3708

~~shall be punished as a court martial may direct.~~ 3709

Sec. 5924.108. Any person subject to this code who, without 3710
proper authority, does any of the following with regard to any 3711
military property of the United States or of this state shall be 3712
punished as a court-martial may direct: 3713

(A) Sells or otherwise disposes of the property; 3714

(B) Willfully or through neglect damages, destroys, or loses 3715
the property; ~~or~~ 3716

(C) Willfully or through neglect suffers to be lost, damaged, 3717
destroyed, sold, or wrongfully disposed of; 3718

~~any military property of the United States or of the state, shall~~ 3719
~~be punished as a court martial may direct~~ the property. 3720

Sec. 5924.109. Any person subject to this code who, ~~while in~~ 3721
~~a duty status,~~ willfully or recklessly wastes, spoils, or 3722
otherwise willfully and wrongfully destroys or damages any 3723
property other than military property of the United States or of 3724
the state shall be punished as a court-martial may direct. 3725

Sec. 5924.111. ~~Any~~ (A) Subject to division (B) of this 3726
section, any person subject to this code who ~~operates~~ does any of 3727
the following shall be punished as a court-martial may direct: 3728

(1) Operates or physically controls any vehicle ~~while drunk,~~ 3729
~~or, aircraft, or vessel~~ in a reckless or wanton manner, ~~shall be~~ 3730
~~punished as a court martial may direct;~~ 3731

(2) Operates or physically controls any vehicle, aircraft, or 3732
vessel while under the influence of alcohol, a drug of abuse, or a 3733

combination of them; 3734

(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; 3735
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(4) Operates or physically controls any vehicle, aircraft, or vessel while having in the person's whole blood, blood serum or plasma, or urine the concentrations of controlled substances or metabolites of a controlled substance set forth in division (A)(1)(j) of section 4511.19 of the Revised Code. 3740
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(B) If a military installation is located partially in this state and partially in one or more other states, the adjutant general may select the alcohol and controlled substance levels set forth in the impaired operating laws of one of the other states to apply on the installation in place of the levels set forth in division (A) of this section. 3745
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Sec. 5924.1121. (A) As used in this section, "prohibited substance" means any of the following: 3751
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(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, or marihuana or any compound or derivative of any of those substances; 3753
3754
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(2) Any substance not specified in division (A)(1) of this section that the adjutant general lists on a schedule of controlled substances or that is listed on a schedule established under section 202 of the Federal Controlled Substances Act, 21 U.S.C. 812, 84 Stat. 1247, as amended. 3757
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(B) A person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs 3762
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territory of the United States, exports from the United States, or 3764
introduces into an installation, vessel, vehicle, or aircraft used 3765
by or under the control of the armed forces of the United States 3766
or of the organized militia a prohibited substance shall be 3767
punished as a court-martial may direct. 3768

Sec. 5924.113. Any sentinel or lookout who is found drunk or 3769
sleeping on ~~his~~ the sentinel's or lookout's post, or leaves it 3770
before ~~he~~ the sentinel or lookout is regularly relieved, shall be 3771
punished, ~~if the offense is committed in time of war, by death or~~ 3772
~~such other punishment as a court martial may direct, but if the~~ 3773
~~offense is committed at any other time, by such punishment other~~ 3774
~~than death~~ as a court-martial may direct. 3775

Sec. 5924.115. Any person subject to this code who for the 3776
purpose of avoiding work, duty, or service in the organized 3777
militia does either of the following shall be punished as a 3778
court-martial may direct: 3779

(A) Feigns illness, physical disablement, mental lapse, or 3780
derangement; ~~or~~ 3781

(B) Intentionally inflicts self-injury; 3782
~~shall be punished as a court martial may direct.~~ 3783

Sec. 5924.120. (A) As used in this section: 3784

(1) "Affirmative defense" means any special defense that, 3785
although not denying that the accused committed the objective acts 3786
constituting the offense charged, denies, in whole or in part, 3787
criminal responsibility for those acts. 3788

(2) "Bodily harm" means any offensive touching of another, 3789
however slight, that does not result in grievous bodily harm. 3790

(3) "Consent" means words or overt acts indicating a freely 3791

given agreement to the sexual conduct at issue by a competent person. 3792
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(4) "Dangerous weapon or object" means any of the following: 3794

(a) Any firearm, whether loaded or not and whether operable or not; 3795
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(b) Any other weapon, device, instrument, material, or substance, whether animate or inanimate, that as used or intended to be used is known to be capable of producing death or grievous bodily harm; 3797
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(c) Any object fashioned or used in such a manner as to lead a person on whom the object is used or threatened to be used to reasonably believe under the circumstances that the object is capable of producing death or grievous bodily harm. 3801
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(5) "Force" means action to compel submission of another or to overcome or prevent another's resistance by either of the following: 3805
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(a) The use, display, or suggestion of possession of a dangerous weapon or object; 3808
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(b) Physical violence, strength, power, or restraint applied to another person sufficient to prevent the other person from avoiding or escaping sexual contact. 3810
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(6) "Grievous bodily harm" means serious bodily injury, including but not limited to fractured or dislocated bones, deep cuts, torn members of the body, and serious damage to internal organs. 3813
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(7) "Indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing or making a videotape, photograph, motion picture, 3817
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print, negative, slide, or other mechanically, electronically, or 3822
chemically reproduced visual material, without another person's 3823
consent and contrary to that other person's reasonable expectation 3824
of privacy, of either of the following: 3825

(a) That other person's genitalia, anus, or buttocks, or, if 3826
that other person is female, that person's areola or nipple; 3827

(b) That other person while that other person is engaged in a 3828
sexual act, sexual contact, or sodomy. 3829

(8) "Lesser degree of harm" means any of the following: 3830

(a) Physical injury to the person or property of a person 3831
other than the victim of the offense; 3832

(b) A threat to do any of the following: 3833

(i) Accuse any person of a crime; 3834

(ii) Expose a secret or publicize an asserted fact, whether 3835
true or false, tending to subject some person to hatred, contempt, 3836
or ridicule; 3837

(iii) Through the use or abuse of military position, rank, or 3838
authority, to affect or threaten to affect, either positively or 3839
negatively, the military career of some person. 3840

(9) "Mistake of fact as to consent" means a belief that is 3841
incorrect, as a result of ignorance or mistake, that a person 3842
engaging in sexual conduct consented to engage in that conduct, if 3843
both of the following apply: 3844

(a) The ignorance or mistake existed in the mind of the 3845
accused at the time the sexual conduct in issue occurred and was 3846
based on information or lack of information that would have 3847
indicated to a reasonable person that the other person consented; 3848

(b) The ignorance or mistake was not based on the accused's 3849
failure to discover facts that a reasonably careful person would 3850
have discovered under the same or similar circumstances. 3851

(10) "Sexual act" means either of the following: 3852

(a) Contact between the penis and the vulva, including any 3853
penetration, however slight; 3854

(b) Anal intercourse, fellatio, and cunnilingus between 3855
persons, regardless of sex; 3856

(c) The penetration, however slight, of the genital opening 3857
of another by a hand or finger or any object with an intent to 3858
abuse, humiliate, harass, or degrade any person or to arouse or 3859
gratify the sexual desire of any person. 3860

(11) "Sexual contact" means the intentional touching, either 3861
directly or through clothing, of the genitalia, anus, groin, 3862
breast, inner thigh, or buttocks of another person with an intent 3863
to abuse, humiliate, or degrade any person or to arouse or gratify 3864
the sexual desire of any person. 3865

(12) "Sexual conduct" means any act that is prohibited by 3866
this section. 3867

(13)(a) For purposes of divisions (B) and (D) of this 3868
section, "threatening or placing that other person in fear" means 3869
making a communication or performing an action of sufficient 3870
consequence to cause that other person to reasonably fear that 3871
noncompliance will result in that person or another being 3872
subjected to death, grievous bodily harm, or kidnapping. 3873

(b) For purposes of divisions (C) and (E) of this section, 3874
"threatening or placing that other person in fear" means making a 3875
communication or performing an action of sufficient consequence to 3876
cause a victim of the offense to reasonably fear that 3877
noncompliance will result in the victim or another being subjected 3878
to a lesser degree of harm than death, grievous bodily harm, or 3879
kidnapping. 3880

(B) Any person subject to this chapter who causes another 3881

person of any age to engage in a sexual act by doing any of the 3882
following is guilty of rape and shall be punished as a 3883
court-martial may direct: 3884

(1) Using force against that other person; 3885

(2) Causing grievous bodily harm to any person; 3886

(3) Threatening or placing that other person in fear; 3887

(4) Rendering another person unconscious; 3888

(5) Administering to another person by force or threat of 3889
force, or without the knowledge or permission of that person, a 3890
drug, intoxicant, or other similar substance that substantially 3891
impairs the ability of that other person to appraise or control 3892
conduct. 3893

(C) Any person subject to this chapter who does either of the 3894
following is guilty of aggravated sexual assault and shall be 3895
punished as a court-martial may direct: 3896

(1) Causes another person of any age to engage in a sexual 3897
act by doing either of the following: 3898

(a) Threatening or placing that other person in fear; 3899

(b) Causing bodily harm. 3900

(2) Engages in a sexual act with another person of any age if 3901
that other person is substantially incapable of doing any of the 3902
following: 3903

(a) Appraising the nature of the sexual act; 3904

(b) Declining to participate in the sexual act; 3905

(c) Communicating unwillingness to engage in the sexual act. 3906

(D) Any person subject to this chapter who engages in sexual 3907
contact or causes sexual contact with or by another person by 3908
doing any of the following is guilty of aggravated sexual contact 3909
and shall be punished as a court-martial may direct: 3910

<u>(1) Using force against that other person;</u>	3911
<u>(2) Causing grievous bodily harm to any person;</u>	3912
<u>(3) Threatening or placing that other person in fear;</u>	3913
<u>(4) Rendering another person unconscious;</u>	3914
<u>(5) Administering to another person by force or threat of</u>	3915
<u>force, or without the knowledge or permission of that person, a</u>	3916
<u>drug, intoxicant, or other similar substance that substantially</u>	3917
<u>impairs the ability of that other person to appraise or control</u>	3918
<u>conduct.</u>	3919
<u>(E) Any person subject to this chapter who does either of the</u>	3920
<u>following is guilty of abusive sexual contact and shall be</u>	3921
<u>punished as a court-martial may direct:</u>	3922
<u>(1) Engages in or causes sexual contact with or by another</u>	3923
<u>person by doing either of the following:</u>	3924
<u>(a) Threatening or placing that other person in fear;</u>	3925
<u>(b) Causing bodily harm.</u>	3926
<u>(2) Engages in sexual contact with another person of any age</u>	3927
<u>if that other person is substantially incapable of doing any of</u>	3928
<u>the following:</u>	3929
<u>(a) Appraising the nature of the sexual contact;</u>	3930
<u>(b) Declining to participate in the sexual contact;</u>	3931
<u>(c) Communicating unwillingness to engage in the sexual</u>	3932
<u>contact.</u>	3933
<u>(F) Any person subject to this chapter who engages in</u>	3934
<u>indecent conduct is guilty of an indecent act and shall be</u>	3935
<u>punished as a court-martial may direct.</u>	3936
<u>(G) Any person subject to this chapter who, without legal</u>	3937
<u>justification or lawful authorization, engages in sexual contact</u>	3938
<u>with another person without that other person's permission is</u>	3939

guilty of wrongful sexual contact and shall be punished as a 3940
court-martial may direct. 3941

(H) Any person subject to this chapter who intentionally 3942
exposes, in an indecent manner, in any place where the conduct 3943
involved may reasonably be expected to be viewed by people other 3944
than members of the person's family or household, the person's 3945
genitalia, anus, buttock, or female areola or nipple is guilty of 3946
indecent exposure and shall be punished as a court-martial may 3947
direct. 3948

(I) In a prosecution under this section, in proving that the 3949
accused made a threat, it need not be proven that the accused 3950
actually intended to carry out the threat. 3951

(J)(1) In a prosecution under division (C)(2), (G), or (H) of 3952
this section, it is an affirmative defense that the accused and 3953
the other person, when they engaged in the sexual conduct were 3954
married to each other. 3955

(2) Division (J)(1) of this section does not apply if the 3956
accused's intent at the time of the sexual conduct is to abuse, 3957
humiliate, or degrade any person. 3958

(K)(1) Lack of permission is an element of the offense under 3959
division (G) of this section. Consent and mistake of fact as to 3960
consent are affirmative defenses only to the sexual conduct in 3961
issue in a prosecution under division (B), (C), (D), or (E) of 3962
this section. 3963

(2) The enumeration in this section of some affirmative 3964
defenses shall not be construed as excluding the existence of 3965
other affirmative defenses. 3966

(3) The accused has the burden of proving an affirmative 3967
defense by a preponderance of evidence. After the defense meets 3968
this burden, the prosecution has the burden of proving beyond a 3969
reasonable doubt that the affirmative defense did not exist. 3970

(L)(1) An expression of lack of consent through words or 3971
conduct means there is no consent. Lack of verbal or physical 3972
resistance or submission resulting from an accused's use of force, 3973
threat of force, or placing another person in fear does not 3974
constitute consent. A current or previous dating relationship by 3975
itself or the manner of dress of a person involved with the 3976
accused in the sexual conduct does not constitute consent. 3977

(2) A person cannot consent to sexual conduct if the person 3978
is substantially incapable of any of the following: 3979

(a) Appraising the nature of the sexual conduct due to mental 3980
impairment or unconsciousness resulting from consumption of 3981
alcohol, drugs, or a similar substance or any other cause or to 3982
mental disease or defect that renders the person unable to 3983
understand the nature of the sexual conduct; 3984

(b) Physically declining to participate in the sexual 3985
conduct; 3986

(c) Physically communicating unwillingness to engage in the 3987
sexual conduct. 3988

(M) An accused's state of intoxication, if any, at the time 3989
of an offense under this section occurs is not relevant to the 3990
existence of a mistake of fact as to consent. 3991

Sec. 5924.128. (A) Any person subject to this code who 3992
attempts or offers with unlawful force or violence to do bodily 3993
harm to another person, whether or not the attempt or offer is 3994
consummated, is guilty of assault and shall be punished as a 3995
court-martial may direct. 3996

(B) Any person subject to this code who does either of the 3997
following is guilty of aggravated assault and shall be punished as 3998
a court-martial may direct: 3999

(1) Commits an assault with a dangerous weapon or other means 4000

or force likely to produce death or grievous bodily harm; ~~or~~ 4001

(2) Commits an assault and intentionally inflicts grievous 4002

bodily harm with or without a weapon; 4003

~~is guilty of aggravated assault and shall be punished as a~~ 4004

~~court-martial may direct.~~ 4005

Sec. 5924.131. Any person subject to this code who, in a 4006

judicial proceeding or in a course of justice conducted under this 4007

code, willfully and corruptly ~~gives, upon~~ does either of the 4008

following is guilty of perjury and shall be punished as a 4009

court-martial may direct: 4010

(A) Upon a lawful oath or in any form allowed by law to be 4011

substituted for an oath, gives any false testimony material to the 4012

issue or matter of inquiry ~~is guilty of perjury and shall be~~ 4013

~~punished as a court-martial may direct;~~ 4014

(B) In any declaration, certification, verification, or 4015

statement made under penalty of perjury subscribes any false 4016

statement material to the issue or matter of inquiry. 4017

Sec. 5924.132. Any person subject to this code who does any 4018

of the following shall be punished as a court-martial may direct: 4019

(A) ~~Who, knowing it~~ Knowing a claim to be false or fraudulent 4020

does either of the following: 4021

(1) Makes any claim against the United States, the state, or 4022

any officer ~~thereof~~ of the United States or the state; ~~or~~ 4023

(2) Presents to any person in the civil or military service 4024

~~thereof~~ of the United States or the state, for approval or 4025

payment, any claim against the United States, the state, or any 4026

officer ~~thereof~~ of the United States or the state; 4027

(B) ~~Who, for~~ For the purpose of obtaining the approval, 4028

allowance, or payment of any claim against the United States, the 4029

state, or any officer ~~thereof~~ of the United States or the state 4030
does any of the following: 4031

(1) Makes or uses any writing or other paper knowing it to 4032
contain any false or fraudulent statements; 4033

(2) Makes any oath to any fact or to any writing or other 4034
paper knowing the oath to be false; ~~or~~ 4035

(3) Forges or counterfeits any signature upon any writing or 4036
other paper, or uses any ~~such~~ forged or counterfeit signature 4037
knowing it to be forged or counterfeited; 4038

(C) ~~Who, having~~ Having charge, possession, custody, or 4039
control of any money, or other property of the United States or 4040
the state, furnished or intended for the armed forces of the 4041
United States or the organized militia or any force thereof, 4042
knowingly delivers to any person having authority to receive it, 4043
any amount thereof less than that for which ~~he~~ the person making 4044
the delivery receives a certificate or receipt; ~~or~~ 4045

(D) ~~Who, being~~ Being authorized to make or deliver any paper 4046
certifying the receipt of any property of the United States or the 4047
state, furnished or intended for the armed forces of the United 4048
States or the organized militia or any force thereof, makes or 4049
delivers to any person such writing without having full knowledge 4050
of the truth of the statements therein contained and with intent 4051
to defraud the United States or the state; 4052

~~shall, upon conviction, be punished as a court-martial may direct.~~ 4053

Sec. 5924.133. Any commissioned officer who is convicted of 4054
conduct unbecoming an officer and a lady or gentleman shall be 4055
punished as a court-martial may direct. 4056

Sec. 5924.146. No person may be tried or punished for any 4057
offense provided for in sections 5924.77 to 5924.134, ~~inclusive,~~ 4058

of the Revised Code and of this code, unless it was committed 4059
while ~~he~~ the person was in a military or national guard technician 4060
duty status. 4061

Section 2. That existing sections 124.23, 124.26, 3319.085, 4062
3737.881, 3781.10, 4123.022, 5321.04, 5903.10, 5903.11, 5911.07, 4063
5923.12, 5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 4064
5924.09, 5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 4065
5924.17, 5924.18, 5924.19, 5924.20, 5924.22, 5924.23, 5924.24, 4066
5924.25, 5924.26, 5924.27, 5924.28, 5924.29, 5924.30, 5924.31, 4067
5924.32, 5924.33, 5924.34, 5924.35, 5924.36, 5924.37, 5924.38, 4068
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5924.97, 5924.98, 5924.103, 5924.108, 5924.109, 5924.111, 4075
5924.113, 5924.115, 5924.128, 5924.131, 5924.132, 5924.133, and 4076
5924.146 and sections 5924.04, 5924.12, 5924.21, 5924.61, 5924.62, 4077
5924.64, 5924.65, 5924.66, 5924.70, 5924.71, 5924.99, 5924.100, 4078
5924.101, 5924.102, 5924.104, 5924.105, 5924.106, 5924.110, 4079
5924.114, 5924.118, 5924.119, 5924.120, 5924.122, 5924.1231, 4080
5924.124, 5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 4081
5924.147 of the Revised Code are hereby repealed. 4082