

# As Passed by the Senate

**129th General Assembly**

**Regular Session**

**2011-2012**

**Am. S. B. No. 288**

**Senator LaRose**

**Cosponsors: Senators Seitz, Patton, Balderson, Cafaro, Coley, Eklund,  
Faber, Hite, Hughes, Lehner, Manning, Obhof, Peterson, Sawyer, Skindell,  
Widener**

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## **A B I L L**

To amend sections 124.23, 124.26, 3319.085, 3737.881,	1
3781.10, 5321.04, 5903.10, 5903.11, 5911.07,	2
5923.12, 5924.01, 5924.02, 5924.03, 5924.06,	3
5924.07, 5924.08, 5924.09, 5924.10, 5924.11,	4
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5924.108, 5924.109, 5924.111, 5924.113, 5924.115,	19
5924.128, 5924.131, 5924.132, 5924.133, and	20
5924.146, to enact new sections 5924.21, 5924.61,	21

5924.62, 5924.64, 5924.65, 5924.66, 5924.70, 22  
5924.71, and 5924.120 and sections 4743.04, 23  
5924.501, 5924.502, 5924.503, 5924.504, 5924.505, 24  
5924.506, 5924.581, 5924.582, 5924.67, 5924.68, 25  
5924.69, 5924.761, and 5924.1121, and to repeal 26  
sections 5924.04, 5924.12, 5924.21, 5924.61, 27  
5924.62, 5924.64, 5924.65, 5924.66, 5924.70, 28  
5924.71, 5924.99, 5924.100, 5924.101, 5924.102, 29  
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5924.118, 5924.119, 5924.120, 5924.122, 5924.1231, 31  
5924.124, 5924.125, 5924.126, 5924.129, 5924.130, 32  
5924.145, and 5924.147 of the Revised Code to 33  
allow extra credit to military veterans and 34  
reserve component members on state civil service 35  
examinations, to provide for the reemployment of 36  
nonteaching school employees following military 37  
service in accordance with federal law, to extend 38  
the period of time within which persons serving in 39  
the Ohio National Guard may meet continuing 40  
education requirements for occupational licenses 41  
and renew their licenses, to require that workers' 42  
compensation claims of members of the organized 43  
militia be determined in accordance with 44  
applicable line of duty regulations, to require 45  
landlords to observe the rights of tenants who are 46  
service members under federal law, to modify the 47  
order of priority in which veterans may 48  
participate in job training programs, to permit 49  
but not require the use of armories by patriotic 50  
and national organizations, to update references 51  
in the Revised Code to federal statutes relating 52  
to the National Guard, to conform the Ohio Code of 53  
Military Justice to the United States Code of 54

Military Justice, and to make other changes to the 55  
Ohio Code of Military Justice. 56

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

**Section 1.** That sections 124.23, 124.26, 3319.085, 3737.881, 57  
3781.10, 5321.04, 5903.10, 5903.11, 5911.07, 5923.12, 5924.01, 58  
5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 5924.10, 59  
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5924.85, 5924.86, 5924.87, 5924.88, 5924.89, 5924.90, 5924.91, 68  
5924.92, 5924.93, 5924.94, 5924.95, 5924.96, 5924.97, 5924.98, 69  
5924.103, 5924.108, 5924.109, 5924.111, 5924.113, 5924.115, 70  
5924.128, 5924.131, 5924.132, 5924.133, and 5924.146 be amended 71  
and new sections 5924.21, 5924.61, 5924.62, 5924.64, 5924.65, 72  
5924.66, 5924.70, 5924.71, and 5924.120 and sections 4743.04, 73  
5924.501, 5924.502, 5924.503, 5924.504, 5924.505, 5924.506, 74  
5924.581, 5924.582, 5924.67, 5924.68, 5924.69, 5924.761, and 75  
5924.1121 of the Revised Code be enacted to read as follows: 76

**Sec. 124.23.** (A) All applicants for positions and places in 77  
the classified service shall be subject to examination, except for 78  
applicants for positions as professional or certified service and 79  
paraprofessional employees of county boards of developmental 80  
disabilities, who shall be hired in the manner provided in section 81  
124.241 of the Revised Code. 82

(B) Any examination administered under this section shall be 83

public and be open to all citizens of the United States and those 84  
persons who have legally declared their intentions of becoming 85  
United States citizens. For examinations administered for 86  
positions in the service of the state, the director of 87  
administrative services or the director's designee may determine 88  
certain limitations as to citizenship, age, experience, education, 89  
health, habit, and moral character. 90

(C)(1) Any person who has completed service in the uniformed 91  
services, who has been honorably discharged from the uniformed 92  
services or transferred to the reserve with evidence of 93  
satisfactory service, and who is a resident of this state and any 94  
member of ~~the national guard~~ or a reserve component of the armed 95  
forces of the United States, including the Ohio national guard, 96  
who has completed more than one hundred eighty days of active duty 97  
service pursuant to an executive order of the president of the 98  
United States or an act of the congress of the United States may 99  
file with the director a certificate of service or honorable 100  
discharge, and, upon this filing, the person shall receive 101  
additional credit of twenty per cent of the person's total grade 102  
given in the examination in which the person receives a passing 103  
grade. 104

(2) A member in good standing of a reserve component of the 105  
armed forces of the United States, including the Ohio national 106  
guard, who successfully completes the member's initial entry-level 107  
training shall receive a credit of fifteen per cent of the 108  
person's total grade given in the examination in which the person 109  
receives a passing grade. 110

(3) As used in this division, "service in the uniformed 111  
services" and "uniformed services" have the same meanings as in 112  
the "Uniformed Services Employment and Reemployment Rights Act of 113  
1994," 108 Stat. 3149, 38 U.S.C.A. 4303. 114

(D) An examination may include an evaluation of such factors 115

as education, training, capacity, knowledge, manual dexterity, and 116  
physical or psychological fitness. An examination shall consist of 117  
one or more tests in any combination. Tests may be written, oral, 118  
physical, demonstration of skill, or an evaluation of training and 119  
experiences and shall be designed to fairly test the relative 120  
capacity of the persons examined to discharge the particular 121  
duties of the position for which appointment is sought. Tests may 122  
include structured interviews, assessment centers, work 123  
simulations, examinations of knowledge, skills, and abilities, and 124  
any other acceptable testing methods. If minimum or maximum 125  
requirements are established for any examination, they shall be 126  
specified in the examination announcement. 127

(E) Except as otherwise provided in sections 124.01 to 124.64 128  
of the Revised Code, when a position in the classified service of 129  
the state is to be filled, an examination shall be administered. 130  
The director of administrative services shall have control of all 131  
examinations administered for positions in the service of the 132  
state and all other examinations the director administers as 133  
provided in section 124.07 of the Revised Code, except as 134  
otherwise provided in sections 124.01 to 124.64 of the Revised 135  
Code. The director shall, by rule adopted under Chapter 119. of 136  
the Revised Code, prescribe the notification method that is to be 137  
used by an appointing authority to notify the director that a 138  
position in the classified service of the state is to be filled. 139  
In addition to the positions described in section 124.30 of the 140  
Revised Code, the director may, with sufficient justification from 141  
the appointing authority, allow the appointing authority to fill 142  
the position by noncompetitive examination. The director shall 143  
establish, by rule adopted under Chapter 119. of the Revised Code, 144  
standards that the director shall use to determine what serves as 145  
sufficient justification from an appointing authority to fill a 146  
position by noncompetitive examination. 147

(F) No questions in any examination shall relate to political 148  
or religious opinions or affiliations. No credit for seniority, 149  
efficiency, or any other reason shall be added to an applicant's 150  
examination grade unless the applicant achieves at least the 151  
minimum passing grade on the examination without counting that 152  
extra credit. 153

(G) Except as otherwise provided in sections 124.01 to 124.64 154  
of the Revised Code, the director of administrative services or 155  
the director's designee shall give reasonable notice of the time, 156  
place, and general scope of every competitive examination for 157  
appointment that the director or the director's designee 158  
administers for positions in the classified service of the state. 159  
The director or the director's designee shall post notices via 160  
electronic media of every examination to be conducted for 161  
positions in the classified civil service of the state. The 162  
electronic notice shall be posted on the director's internet site 163  
on the world wide web for a minimum of one week preceding any 164  
examination involved. 165

**Sec. 124.26.** From the returns of the examinations, the 166  
director of administrative services or the director's designee 167  
shall prepare an eligible list of the persons whose general 168  
average standing upon examinations for the class or position is 169  
not less than the minimum fixed by the rules of the director, and 170  
who are otherwise eligible. Those persons shall take rank upon the 171  
eligible list as candidates in the order of their relative 172  
excellence as determined by the examination without reference to 173  
priority of the time of examination. If two or more applicants 174  
receive the same mark in an open competitive examination, priority 175  
in the time of filing the application with the director or the 176  
director's designee shall determine the order in which their names 177  
shall be placed on the eligible list, except that applicants 178  
eligible for the veteran's or the reserve component member's 179

preference under section 124.23 of the Revised Code shall receive 180  
priority in rank on the eligible list over nonveterans and 181  
nonmembers of the reserve component on the list with a rating 182  
equal to that of the veteran or reserve component member. Ties 183  
among veterans or among reserve component members shall be decided 184  
by priority of filing the application. A tie between a veteran and 185  
a reserve component member shall be decided in favor of the 186  
veteran. 187

÷ An eligible list expires upon the filling or closing of the 188  
position. An expired eligible list may be used to fill a position 189  
of the same classification within the same appointing authority 190  
for which the list was created. But, in no event shall an expired 191  
list be used more than one year past its expiration date. 192

**Sec. 3319.085.** Any nonteaching school employee who, 193  
~~subsequent to September 1, 1962, has left, or leaves, the employ~~ 194  
~~of a board of education for the purpose of entering on extended~~ 195  
~~active duty in the armed services of the United States or the~~ 196  
~~auxiliaries thereof, and within eight weeks enters such service~~ 197  
performs service in the uniformed services or service under 198  
section 5923.12 of the Revised Code and who has returned, or 199  
returns, from ~~such~~ that service with ~~an honorable~~ a discharge 200  
under honorable conditions or ~~certificate of~~ is released from 201  
service under section 5923.12 of the Revised Code shall be 202  
re-employed by the board of education of the district in which ~~he~~ 203  
the nonteaching school employee held ~~such~~ the nonteaching school 204  
employee position, ~~under the same type of contract as that which~~ 205  
~~he last held in such district, if such nonteaching school employee~~ 206  
~~applies, within ninety days after such discharge, to such board of~~ 207  
~~education for re-employment. Upon such application, such~~ 208  
~~nonteaching school employee shall be re-employed at the first of~~ 209  
~~the next school semester, if such application is made not less~~ 210  
~~than thirty days prior to the first of such next school semester,~~ 211

~~in which case such nonteaching school employee shall be~~ 212  
~~re-employed the first of the following school semester, unless the~~ 213  
~~board of education waives the requirement for such thirty day~~ 214  
~~period.~~ 215

~~For the purposes of seniority and placement on the salary~~ 216  
~~schedule, years of absence on extended active duty in the armed~~ 217  
~~services of the United States or the auxiliaries thereof shall not~~ 218  
~~exceed four, and shall be counted as though school service had~~ 219  
~~been performed during such time as required by the "Uniformed~~ 220  
~~Services Employment and Reemployment Rights Act of 1994," 108~~ 221  
~~Stat. 3149, 38 U.S.C. 4303.~~ 222

The board of education of ~~this~~ the district in which ~~such~~ the 223  
nonteaching school employee was employed and is re-employed under 224  
this section may suspend the contract of the nonteaching school 225  
employee whose services become unnecessary by reason of the return 226  
of a nonteaching school employee from service in the ~~armed~~ 227  
uniformed services ~~or auxiliaries thereof.~~ 228

As used in this section, "service in the uniformed services" 229  
and "uniformed services" have the same meanings as in the 230  
"Uniformed Services Employment and Reemployment Rights Act of 231  
1994," 108 Stat. 3149, 38 U.S.C. 4303. 232

**Sec. 3737.881.** (A) The fire marshal shall certify underground 233  
storage tank systems installers who meet the standards for 234  
certification established in rules adopted under division (D)(1) 235  
of this section, pass the certification examination required by 236  
this division, and pay the certificate fee established in rules 237  
adopted under division (D)(5) of this section. Any individual who 238  
wishes to obtain certification as an installer shall apply to the 239  
fire marshal on a form prescribed by the fire marshal. The 240  
application shall be accompanied by the application and 241  
examination fees established in rules adopted under division 242



(D)(5) of this section. 243

The fire marshal shall prescribe an examination designed to 244  
test the knowledge of applicants for certification as underground 245  
storage tank system installers in the installation, repair, 246  
abandonment, and removal of those systems. The examination shall 247  
also test the applicants' knowledge and understanding of the 248  
requirements and standards established in rules adopted under 249  
sections 3737.88 and 3737.882 of the Revised Code pertaining to 250  
the installation, repair, abandonment, and removal of those 251  
systems. 252

Installer certifications issued under this division shall be 253  
renewed annually, upon submission of a certification renewal form 254  
prescribed by the fire marshal, provision of proof of successful 255  
completion of continuing education requirements, and payment of 256  
the certification renewal fee established in rules adopted under 257  
division (D)(5) of this section. In addition, the fire marshal may 258  
from time to time prescribe an examination for certification 259  
renewal and may require applicants to pass the examination and pay 260  
the fee established for it in rules adopted under division (D)(5) 261  
of this section. 262

The fire marshal may, in accordance with Chapter 119. of the 263  
Revised Code, deny, suspend, revoke, or refuse to renew an 264  
installer's certification or renewal thereof ~~if he finds~~ after 265  
finding that any of the following applies: 266

(1) The applicant for certification or certificate holder 267  
fails to meet the standards for certification or renewal thereof 268  
under this section and rules adopted under it; 269

(2) The certification was obtained through fraud or 270  
misrepresentation; 271

(3) The certificate holder recklessly caused or permitted a 272  
person under ~~his~~ the certificate holder's supervision to install, 273

perform major repairs on site to, abandon, or remove an 274  
underground storage tank system in violation of the performance 275  
standards set forth in rules adopted under section 3737.88 or 276  
3737.882 of the Revised Code. 277

As used in division (A)(3) of this section, "recklessly" has 278  
the same meaning as in section 2901.22 of the Revised Code. 279

(B) The fire marshal shall certify persons who sponsor 280  
training programs for underground storage tank system installers 281  
who meet the criteria for certification established in rules 282  
adopted by the fire marshal under division (D)(4) of this section 283  
and pay the certificate fee established in rules adopted under 284  
division (D)(5) of this section. Any person who wishes to obtain 285  
certification to sponsor such a training program shall apply to 286  
the fire marshal on a form prescribed by ~~him~~ the fire marshal. 287  
Training program certificates issued under this division shall 288  
expire annually. Upon submission of a certification renewal 289  
application form prescribed by the fire marshal and payment of the 290  
application and certification renewal fees established in rules 291  
adopted under division (D)(5) of this section, the fire marshal 292  
shall issue a training program renewal certificate to the 293  
applicant. 294

The fire marshal may, in accordance with Chapter 119. of the 295  
Revised Code, deny an application for, suspend, or revoke a 296  
training program certificate or renewal ~~thereof if he finds or~~ 297  
renewal of a training program certificate after finding that the 298  
training program does not or will not meet the standards for 299  
certification established in rules adopted under division (D)(4) 300  
of this section. 301

(C) The fire marshal may conduct or cause to be conducted 302  
training programs for underground storage tank systems installers 303  
as ~~he~~ the fire marshal considers to be necessary or appropriate. 304  
The fire marshal is not subject to division (B) of this section 305

with respect to training programs conducted by employees of the 306  
office of the fire marshal. 307

(D) The fire marshal shall adopt, and may amend and rescind, 308  
rules doing all of the following: 309

(1) Defining the activities that constitute supervision over 310  
the installation, performance of major repairs on site to, 311  
abandonment of, and removal of underground storage tank systems; 312

(2) Establishing standards and procedures for certification 313  
of underground storage tank systems installers; 314

(3) Establishing standards and procedures for continuing 315  
education for certification renewal, subject to the provisions of 316  
section 5903.12 of the Revised Code relating to active duty 317  
military service; 318

(4) Establishing standards and procedures for certification 319  
of training programs for installers; 320

(5) Establishing fees for applications for certifications 321  
under this section, the examinations prescribed under division (A) 322  
of this section, the issuance and renewal of certificates under 323  
divisions (A) and (B) of this section, and attendance at training 324  
programs conducted by the fire marshal under division (C) of this 325  
section. Fees received under this section shall be credited to the 326  
underground storage tank administration fund created in section 327  
3737.02 of the Revised Code and shall be used to defray the costs 328  
of implementing, administering, and enforcing this section and the 329  
rules adopted thereunder, conducting training sessions, and 330  
facilitating prevention of releases. 331

(6) That are necessary or appropriate for the implementation, 332  
administration, and enforcement of this section. 333

(E) Nothing in this section or the rules adopted under it 334  
prohibits an owner or operator of an underground storage tank 335

system from installing, making major repairs on site to, 336  
abandoning, or removing an underground storage tank system under 337  
the supervision of an installer certified under division (A) of 338  
this section who is a full-time or part-time employee of the owner 339  
or operator. 340

(F) On and after ~~the date one hundred eighty days after the~~ 341  
~~effective date of this section~~ January 7, 1990, no person shall do 342  
any of the following: 343

(1) Install, make major repairs on site to, abandon, or 344  
remove an underground storage tank system unless the activity is 345  
performed under the supervision of a qualified individual who 346  
holds a valid installer certificate issued under division (A) of 347  
this section; 348

(2) Act in the capacity of providing supervision for the 349  
installation of, performance of major repairs on site to, 350  
abandonment of, or removal of an underground storage tank system 351  
unless the person holds a valid installer certificate issued under 352  
division (A) of this section; 353

(3) Except as provided in division (C) of this section, 354  
sponsor a training program for underground storage tank systems 355  
installers unless the person holds a valid training program 356  
certificate issued under division (B) of this section. 357

**Sec. 3781.10.** (A)(1) The board of building standards shall 358  
formulate and adopt rules governing the erection, construction, 359  
repair, alteration, and maintenance of all buildings or classes of 360  
buildings specified in section 3781.06 of the Revised Code, 361  
including land area incidental to those buildings, the 362  
construction of industrialized units, the installation of 363  
equipment, and the standards or requirements for materials used in 364  
connection with those buildings. The board shall incorporate those 365  
rules into separate residential and nonresidential building codes. 366

The standards shall relate to the conservation of energy and the 367  
safety and sanitation of those buildings. 368

(2) The rules governing nonresidential buildings are the 369  
lawful minimum requirements specified for those buildings and 370  
industrialized units, except that no rule other than as provided 371  
in division (C) of section 3781.108 of the Revised Code that 372  
specifies a higher requirement than is imposed by any section of 373  
the Revised Code is enforceable. The rules governing residential 374  
buildings are uniform requirements for residential buildings in 375  
any area with a building department certified to enforce the state 376  
residential building code. In no case shall any local code or 377  
regulation differ from the state residential building code unless 378  
that code or regulation addresses subject matter not addressed by 379  
the state residential building code or is adopted pursuant to 380  
section 3781.01 of the Revised Code. 381

(3) The rules adopted pursuant to this section are complete, 382  
lawful alternatives to any requirements specified for buildings or 383  
industrialized units in any section of the Revised Code. Except as 384  
otherwise provided in division (I) of this section, the board 385  
shall, on its own motion or on application made under sections 386  
3781.12 and 3781.13 of the Revised Code, formulate, propose, 387  
adopt, modify, amend, or repeal the rules to the extent necessary 388  
or desirable to effectuate the purposes of sections 3781.06 to 389  
3781.18 of the Revised Code. 390

(B) The board shall report to the general assembly proposals 391  
for amendments to existing statutes relating to the purposes 392  
declared in section 3781.06 of the Revised Code that public health 393  
and safety and the development of the arts require and shall 394  
recommend any additional legislation to assist in carrying out 395  
fully, in statutory form, the purposes declared in that section. 396  
The board shall prepare and submit to the general assembly a 397  
summary report of the number, nature, and disposition of the 398

petitions filed under sections 3781.13 and 3781.14 of the Revised 399  
Code. 400

(C) On its own motion or on application made under sections 401  
3781.12 and 3781.13 of the Revised Code, and after thorough 402  
testing and evaluation, the board shall determine by rule that any 403  
particular fixture, device, material, process of manufacture, 404  
manufactured unit or component, method of manufacture, system, or 405  
method of construction complies with performance standards adopted 406  
pursuant to section 3781.11 of the Revised Code. The board shall 407  
make its determination with regard to adaptability for safe and 408  
sanitary erection, use, or construction, to that described in any 409  
section of the Revised Code, wherever the use of a fixture, 410  
device, material, method of manufacture, system, or method of 411  
construction described in that section of the Revised Code is 412  
permitted by law. The board shall amend or annul any rule or issue 413  
an authorization for the use of a new material or manufactured 414  
unit on any like application. No department, officer, board, or 415  
commission of the state other than the board of building standards 416  
or the board of building appeals shall permit the use of any 417  
fixture, device, material, method of manufacture, newly designed 418  
product, system, or method of construction at variance with what 419  
is described in any rule the board of building standards adopts or 420  
issues or that is authorized by any section of the Revised Code. 421  
Nothing in this section shall be construed as requiring approval, 422  
by rule, of plans for an industrialized unit that conforms with 423  
the rules the board of building standards adopts pursuant to 424  
section 3781.11 of the Revised Code. 425

(D) The board shall recommend rules, codes, and standards to 426  
help carry out the purposes of section 3781.06 of the Revised Code 427  
and to help secure uniformity of state administrative rulings and 428  
local legislation and administrative action to the bureau of 429  
workers' compensation, the director of commerce, any other 430

department, officer, board, or commission of the state, and to 431  
legislative authorities and building departments of counties, 432  
townships, and municipal corporations, and shall recommend that 433  
they audit those recommended rules, codes, and standards by any 434  
appropriate action that they are allowed pursuant to law or the 435  
constitution. 436

(E)(1) The board shall certify municipal, township, and 437  
county building departments and the personnel of those building 438  
departments, and persons and employees of individuals, firms, or 439  
corporations as described in division (E)(7) of this section to 440  
exercise enforcement authority, to accept and approve plans and 441  
specifications, and to make inspections, pursuant to sections 442  
3781.03, 3791.04, and 4104.43 of the Revised Code. 443

(2) The board shall certify departments, personnel, and 444  
persons to enforce the state residential building code, to enforce 445  
the nonresidential building code, or to enforce both the 446  
residential and the nonresidential building codes. Any department, 447  
personnel, or person may enforce only the type of building code 448  
for which certified. 449

(3) The board shall not require a building department, its 450  
personnel, or any persons that it employs to be certified for 451  
residential building code enforcement if that building department 452  
does not enforce the state residential building code. The board 453  
shall specify, in rules adopted pursuant to Chapter 119. of the 454  
Revised Code, the requirements for certification for residential 455  
and nonresidential building code enforcement, which shall be 456  
consistent with this division. The requirements for residential 457  
and nonresidential certification may differ. Except as otherwise 458  
provided in this division, the requirements shall include, but are 459  
not limited to, the satisfactory completion of an initial 460  
examination and, to remain certified, the completion of a 461  
specified number of hours of continuing building code education 462

within each three-year period following the date of certification 463  
which shall be not less than thirty hours. The rules shall provide 464  
that continuing education credits and certification issued by the 465  
council of American building officials, national model code 466  
organizations, and agencies or entities the board recognizes are 467  
acceptable for purposes of this division. The rules shall specify 468  
requirements that are consistent with the provisions of section 469  
5903.12 of the Revised Code relating to active duty military 470  
service and are compatible, to the extent possible, with 471  
requirements the council of American building officials and 472  
national model code organizations establish. 473

(4) The board shall establish and collect a certification and 474  
renewal fee for building department personnel, and persons and 475  
employees of persons, firms, or corporations as described in this 476  
section, who are certified pursuant to this division. 477

(5) Any individual certified pursuant to this division shall 478  
complete the number of hours of continuing building code education 479  
that the board requires or, for failure to do so, forfeit 480  
certification. 481

(6) This division does not require or authorize the board to 482  
certify personnel of municipal, township, and county building 483  
departments, and persons and employees of persons, firms, or 484  
corporations as described in this section, whose responsibilities 485  
do not include the exercise of enforcement authority, the approval 486  
of plans and specifications, or making inspections under the state 487  
residential and nonresidential building codes. 488

(7) Enforcement authority for approval of plans and 489  
specifications and enforcement authority for inspections may be 490  
exercised, and plans and specifications may be approved and 491  
inspections may be made on behalf of a municipal corporation, 492  
township, or county, by any of the following who the board of 493  
building standards certifies: 494



(a) Officers or employees of the municipal corporation,	495
township, or county;	496
(b) Persons, or employees of persons, firms, or corporations,	497
pursuant to a contract to furnish architectural, engineering, or	498
other services to the municipal corporation, township, or county;	499
(c) Officers or employees of, and persons under contract	500
with, a municipal corporation, township, county, health district,	501
or other political subdivision, pursuant to a contract to furnish	502
architectural, engineering, or other services.	503
(8) Municipal, township, and county building departments have	504
jurisdiction within the meaning of sections 3781.03, 3791.04, and	505
4104.43 of the Revised Code, only with respect to the types of	506
buildings and subject matters for which they are certified under	507
this section.	508
(9) Certification shall be granted upon application by the	509
municipal corporation, the board of township trustees, or the	510
board of county commissioners and approval of that application by	511
the board of building standards. The application shall set forth:	512
(a) Whether the certification is requested for residential or	513
nonresidential buildings, or both;	514
(b) The number and qualifications of the staff composing the	515
building department;	516
(c) The names, addresses, and qualifications of persons,	517
firms, or corporations contracting to furnish work or services	518
pursuant to division (E)(7)(b) of this section;	519
(d) The names of any other municipal corporation, township,	520
county, health district, or political subdivision under contract	521
to furnish work or services pursuant to division (E)(7) of this	522
section;	523
(e) The proposed budget for the operation of the building	524

department. 525

(10) The board of building standards shall adopt rules 526  
governing all of the following: 527

(a) The certification of building department personnel and 528  
persons and employees of persons, firms, or corporations 529  
exercising authority pursuant to division (E)(7) of this section. 530  
The rules shall disqualify any employee of the department or 531  
person who contracts for services with the department from 532  
performing services for the department when that employee or 533  
person would have to pass upon, inspect, or otherwise exercise 534  
authority over any labor, material, or equipment the employee or 535  
person furnishes for the construction, alteration, or maintenance 536  
of a building or the preparation of working drawings or 537  
specifications for work within the jurisdictional area of the 538  
department. The department shall provide other similarly qualified 539  
personnel to enforce the residential and nonresidential building 540  
codes as they pertain to that work. 541

(b) The minimum services to be provided by a certified 542  
building department. 543

(11) The board of building standards may revoke or suspend 544  
certification to enforce the residential and nonresidential 545  
building codes, on petition to the board by any person affected by 546  
that enforcement or approval of plans, or by the board on its own 547  
motion. Hearings shall be held and appeals permitted on any 548  
proceedings for certification or revocation or suspension of 549  
certification in the same manner as provided in section 3781.101 550  
of the Revised Code for other proceedings of the board of building 551  
standards. 552

(12) Upon certification, and until that authority is revoked, 553  
any county or township building department shall enforce the 554  
residential and nonresidential building codes for which it is 555

certified without regard to limitation upon the authority of 556  
boards of county commissioners under Chapter 307. of the Revised 557  
Code or boards of township trustees under Chapter 505. of the 558  
Revised Code. 559

(F) In addition to hearings sections 3781.06 to 3781.18 and 560  
3791.04 of the Revised Code require, the board of building 561  
standards shall make investigations and tests, and require from 562  
other state departments, officers, boards, and commissions 563  
information the board considers necessary or desirable to assist 564  
it in the discharge of any duty or the exercise of any power 565  
mentioned in this section or in sections 3781.06 to 3781.18, 566  
3791.04, and 4104.43 of the Revised Code. 567

(G) The board shall adopt rules and establish reasonable fees 568  
for the review of all applications submitted where the applicant 569  
applies for authority to use a new material, assembly, or product 570  
of a manufacturing process. The fee shall bear some reasonable 571  
relationship to the cost of the review or testing of the 572  
materials, assembly, or products and for the notification of 573  
approval or disapproval as provided in section 3781.12 of the 574  
Revised Code. 575

(H) The residential construction advisory committee shall 576  
provide the board with a proposal for a state residential building 577  
code that the committee recommends pursuant to division (D)(1) of 578  
section 4740.14 of the Revised Code. Upon receiving a 579  
recommendation from the committee that is acceptable to the board, 580  
the board shall adopt rules establishing that code as the state 581  
residential building code. 582

(I)(1) The committee may provide the board with proposed 583  
rules to update or amend the state residential building code that 584  
the committee recommends pursuant to division (E) of section 585  
4740.14 of the Revised Code. 586

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

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

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

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

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

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

Sec. 5321.04. (A) A landlord who is a party to a rental 618  
agreement shall do all of the following: 619

(1) Comply with the requirements of all applicable building, 620  
housing, health, and safety codes that materially affect health 621  
and safety; 622

(2) Make all repairs and do whatever is reasonably necessary 623  
to put and keep the premises in a fit and habitable condition; 624

(3) Keep all common areas of the premises in a safe and 625  
sanitary condition; 626

(4) Maintain in good and safe working order and condition all 627  
electrical, plumbing, sanitary, heating, ventilating, and air 628  
conditioning fixtures and appliances, and elevators, supplied or 629  
required to be supplied by ~~him~~ the landlord; 630

(5) When ~~he~~ the landlord is a party to any rental agreements 631  
that cover four or more dwelling units in the same structure, 632  
provide and maintain appropriate receptacles for the removal of 633  
ashes, garbage, rubbish, and other waste incidental to the 634  
occupancy of a dwelling unit, and arrange for their removal; 635

(6) Supply running water, reasonable amounts of hot water, 636  
and reasonable heat at all times, except where the building that 637  
includes the dwelling unit is not required by law to be equipped 638  
for that purpose, or the dwelling unit is so constructed that heat 639  
or hot water is generated by an installation within the exclusive 640  
control of the tenant and supplied by a direct public utility 641  
connection; 642

(7) Not abuse the right of access conferred by division (B) 643  
of section 5321.05 of the Revised Code; 644

(8) Except in the case of emergency or if it is impracticable 645  
to do so, give the tenant reasonable notice of ~~his~~ the landlord's 646  
intent to enter and enter only at reasonable times. Twenty-four 647

hours is presumed to be a reasonable notice in the absence of 648  
evidence to the contrary. 649

(9) Promptly commence an action under Chapter 1923. of the 650  
Revised Code, after complying with division (C) of section 5321.17 651  
of the Revised Code, to remove a tenant from particular 652  
residential premises, if the tenant fails to vacate the premises 653  
within three days after the giving of the notice required by that 654  
division and if the landlord has actual knowledge of or has 655  
reasonable cause to believe that the tenant, any person in the 656  
tenant's household, or any person on the premises with the consent 657  
of the tenant previously has or presently is engaged in a 658  
violation as described in division (A)(6)(a)(i) of section 1923.02 659  
of the Revised Code, whether or not the tenant or other person has 660  
been charged with, has pleaded guilty to or been convicted of, or 661  
has been determined to be a delinquent child for an act that, if 662  
committed by an adult, would be a violation as described in that 663  
division. Such actual knowledge or reasonable cause to believe 664  
shall be determined in accordance with that division. 665

(10) Comply with the rights of tenants under the 666  
Servicemembers Civil Relief Act, 117 Stat. 2835, 50 U.S.C. App. 667  
501. 668

(B) If the landlord makes an entry in violation of division 669  
(A)(8) of this section, makes a lawful entry in an unreasonable 670  
manner, or makes repeated demands for entry otherwise lawful that 671  
have the effect of harassing the tenant, the tenant may recover 672  
actual damages resulting from the entry or demands, obtain 673  
injunctive relief to prevent the recurrence of the conduct, and 674  
obtain a judgment for reasonable attorney's fees, or may terminate 675  
the rental agreement. 676

**Sec. 5903.10.** ~~Any~~ (A) A holder of an expired license or 677  
certificate from this state or any political subdivision or agency 678

of the state to practice a trade or profession, ~~whose license or~~ 679  
~~certificate was not renewed because of the holder's service in the~~ 680  
~~armed forces of the United States, or in the national guard or in~~ 681  
~~a reserve component,~~ shall, ~~upon presentation of satisfactory~~ 682  
~~evidence of honorable discharge or separation under honorable~~ 683  
~~conditions therefrom within six months of such discharge or~~ 684  
~~separation,~~ be granted a renewal of ~~said~~ the license or 685  
certificate by the issuing board or authority at the usual cost 686  
without penalty and without re-examination if not otherwise 687  
disqualified because of mental or physical disability and if 688  
either of the following applies: 689

(1) The license or certificate was not renewed because of the 690  
holder's service in the armed forces of the United States or a 691  
reserve component of the armed forces of the United States, 692  
including the Ohio national guard. 693

(2) The license or certificate was not renewed because the 694  
holder's spouse served in the armed forces of the United States or 695  
a reserved component of the armed forces of the United States, 696  
including the Ohio national guard, and the service resulted in the 697  
holder's absence from this state. 698

(B) A renewal shall not be granted under division (A) of this 699  
section unless the holder or the holder's spouse, whichever is 700  
applicable, has presented satisfactory evidence of the service 701  
member's discharge under honorable conditions or release under 702  
honorable conditions from active duty or national guard duty 703  
within six months after the discharge or release. 704

**Sec. 5903.11.** (A) Any federally funded employment and 705  
training program administered by any state agency including, but 706  
not limited to, the "~~Job Training Partnership Workforce Investment~~ 707  
~~Act of 1998,~~" ~~96 112 Stat. 1322 (1982)~~ 936, codified in scattered 708  
sections of 29 U.S.C.A. ~~1501,~~ as amended, shall include a veteran 709

priority system to provide maximum employment and training 710  
opportunities to veterans and ~~other~~ eligible persons within each 711  
targeted group as established by federal law and state and federal 712  
policy in the service area. Disabled veterans, veterans of the 713  
Vietnam era, other veterans, and ~~other~~ eligible persons shall 714  
receive preference over nonveterans within each targeted group in 715  
the provision of employment and training services available 716  
through these programs as required by this section. 717

(B) Each state agency shall refer qualified applicants to job 718  
openings and training opportunities in programs described in 719  
division (A) of this section in the following order of priority: 720

- (1) Special disabled veterans; 721
- (2) Veterans of the Vietnam era; 722
- (3) Disabled veterans; 723
- (4) All other veterans; 724
- (5) Other eligible persons; 725
- (6) Nonveterans. 726

(C) Each state agency providing employment and training 727  
services to veterans and ~~other~~ eligible persons under programs 728  
described in division (A) of this section shall submit an annual 729  
written report to the speaker of the house of representatives and 730  
the president of the senate on the services that it provides to 731  
veterans and ~~other~~ eligible persons. Each such agency shall report 732  
separately on all entitlement programs, employment or training 733  
programs, and any other programs that it provides to each class of 734  
persons described in divisions (B)(1) to (6) of this section. Each 735  
such agency shall also report on action taken to ensure compliance 736  
with statutory requirements. Compliance and reporting procedures 737  
shall be in accordance with the reporting procedures then in 738  
effect for all employment and training programs described in 739



division (A) of this section, with the addition of veterans as a 740  
separate reporting module. 741

(D) All state agencies that administer federally funded 742  
employment and training programs described in division (A) of this 743  
section for veterans and ~~other~~ eligible persons shall do all of 744  
the following: 745

(1) Ensure that veterans are treated with courtesy and 746  
respect at all state governmental facilities; 747

(2) Give priority in referral to jobs to qualified veterans 748  
and other eligible persons; 749

(3) Give priority in referral to and enrollment in training 750  
programs to qualified veterans and other eligible persons; 751

(4) Give preferential treatment to special disabled veterans 752  
in the provision of all needed state services; 753

(5) Provide information and effective referral assistance to 754  
veterans and other eligible persons regarding needed benefits and 755  
services that may be obtained through other agencies. 756

(E) As used in this section: 757

(1) "Special disabled veteran" means a veteran who is 758  
entitled to, or who but for the receipt of military pay would be 759  
entitled to, compensation under any law administered by the 760  
department of veterans affairs for a disability rated at thirty 761  
per cent or more or a person who was discharged or released from 762  
active duty because of a service-connected disability. 763

(2) "Veteran of the Vietnam era" means an eligible veteran 764  
who served on active duty for a period of more than one hundred 765  
eighty days, any part of which occurred from August 5, 1964, 766  
through May 7, 1975, and was discharged or released therefrom with 767  
other than a dishonorable discharge or a person who was discharged 768  
or released from active duty for a service-connected disability if 769

any part of the active duty was performed from August 5, 1964, 770  
through May 7, 1975. 771

(3) "Disabled veteran" means a veteran who is entitled to, or 772  
who but for the receipt of military retirement pay would be 773  
entitled to compensation, under any law administered by the 774  
department of veterans affairs and who is not a special disabled 775  
veteran. 776

(4) "Eligible veteran" means a person who served on active 777  
duty for more than one hundred eighty days and was discharged or 778  
released from active duty with other than a dishonorable discharge 779  
or a person who was discharged or released from active duty 780  
because of a service-connected disability. 781

(5) "Other eligible person" means one of the following: 782

(a) The spouse of any person who died of a service-connected 783  
disability; 784

(b) The spouse of any member of the armed forces serving on 785  
active duty who at the time of the spouse's application for 786  
assistance under any program described in division (A) of this 787  
section is listed pursuant to the "Act of September 6, 1966," 80 788  
Stat. 629, 37 U.S.C.A. 556, and the regulations issued pursuant 789  
thereto, as having been in one or more of the following categories 790  
for a total of ninety or more days: 791

(i) Missing in action; 792

(ii) Captured in line of duty by a hostile force; 793

(iii) Forcibly detained or interned in line of duty by a 794  
foreign government or power. 795

(c) The spouse of any person who has a total disability 796  
permanent in nature resulting from a service-connected disability 797  
or the spouse of a veteran who died while such a disability was in 798  
existence. 799

- (6) "Veteran" means either of the following: 800
- (a) Any person who was a member of the armed forces of the 801  
United States for a period of one hundred eighty days or more or a 802  
person who was discharged or released from active duty because of 803  
a service-connected disability; 804
- (b) A person who served as a member of the United States 805  
merchant marine and to whom either of the following applies: 806
- (i) The person has an honorable report of separation from 807  
active duty military service, form DD214 or DD215. 808
- (ii) The person served in the United States merchant marine 809  
between December 7, 1941, and December 31, 1946, and died on 810  
active duty while serving in a war zone during that period of 811  
service. 812
- (7) "Armed forces of the United States" means the army, air 813  
force, navy, marine corps, coast guard, and any other military 814  
service branch that is designated by congress as a part of the 815  
armed forces of the United States. 816
- (8) "Employment program" means a program which provides 817  
referral of individuals to employer job openings in the federal, 818  
state, or private sector. 819
- (9) "Training program" means any program that upgrades the 820  
employability of qualified applicants. 821
- (10) "Entitlement program" means any program that enlists 822  
specific criteria in determining eligibility, including but not 823  
limited to the existence in special segments of the general 824  
population of specific financial needs. 825
- (11) "Targeted group" means a group of persons designated by 826  
federal law or regulations or by state law to receive special 827  
assistance under an employment and training program described in 828  
division (A) of this section. 829

(12) "United States merchant marine" includes the United 830  
States army transport service and the United States naval 831  
transport service. 832

**Sec. 5911.07.** The armories erected by the state are for the 833  
use of the organized militia; but in each armory there ~~shall~~ may 834  
be provided and maintained, except as provided in this section, a 835  
suitable room including heating, lighting, and janitor services, 836  
for the free use of ~~the patriotic and national~~ organizations ~~known~~ 837  
~~as the women's relief corps, sons of veterans, sons of veterans'~~ 838  
~~auxiliary, daughters of veterans, united Spanish war veterans,~~ 839  
~~auxiliary united Spanish war veterans, veterans of foreign wars of~~ 840  
~~the United States, veteran organizations of World War I and World~~ 841  
~~War II, army and navy union of the United States, and honorably~~ 842  
~~retired officers of the Ohio national guard, Ohio military~~ 843  
~~reserve, and Ohio naval militia~~ chartered under part B of subtitle 844  
II of Title 36 of the United States Code, unless such rooms are 845  
already provided by the erection of a county memorial building or 846  
otherwise by the state, or by the county, township, or municipal 847  
corporation. This section does not require a separate room to be 848  
maintained for each organization. The room provided in this 849  
section may be used for military training when not in actual use 850  
by one of the aforementioned organizations. This section applies only 851  
during the time that such armory is being used by ~~an active~~ 852  
~~military organization or a~~ unit of the organized militia. 853

**Sec. 5923.12.** When ordered to state active duty by the 854  
governor, for which duty federal basic pay and allowances are not 855  
authorized, members of the organized militia of Ohio shall receive 856  
the same pay and allowances for each day's service as is provided 857  
for commissioned officers, warrant officers, noncommissioned 858  
officers, and enlisted personnel of like grade and longevity in 859  
the armed forces of the United States, together with the necessary 860

transportation, housing, and subsistence allowances as prescribed 861  
by the United States department of defense pay manual, or an 862  
amount not less than seventy-five dollars per day as base pay for 863  
each day's duty performed, whichever is greater. 864

When ordered by the governor to perform training or duty 865  
under this section or section 5919.29 of the Revised Code, members 866  
of the Ohio national guard shall have the protections afforded to 867  
persons on federal active duty by "~~The Soldiers and Sailors~~ 868  
Servicemembers Civil Relief Act ~~of 1940,~~" 54 117 Stat. ~~1178~~ 2835, 869  
50 ~~App.~~ U.S.C.A. App. ~~501-548 and 560-591.~~ 870

**Sec. 5924.01.** As used in Chapter 5924. of the Revised Code 871  
unless the context otherwise requires: 872

(A) "Organized militia" means the Ohio national guard, the 873  
Ohio naval militia, and the Ohio military reserve. 874

(B) "Officer" means commissioned or warrant officer. 875

(C) "Commissioned officer" includes a commissioned warrant 876  
officer. 877

(D) "Commanding officer" includes only commissioned or 878  
warrant officers in command of a unit. 879

(E) "Superior commissioned officer" means a commissioned 880  
officer superior in rank or command. 881

(F) "Enlisted member" means a person in an enlisted grade. 882

(G) "Grade" means a step or degree, in a graduated scale of 883  
office or military rank, that is established and designated as a 884  
grade by law or regulation. 885

(H) "Rank" means the order of precedence among members of the 886  
armed forces. 887

(I) "~~Active-state~~ State active duty" means full-time duty in 888  
the active military service of the state under ~~an order a~~ 889

proclamation of the governor issued pursuant to authority vested 890  
in ~~him~~ the governor by law, and while going to and returning from 891  
such duty. 892

(J) "Duty status other than ~~active~~ state active duty" means 893  
any other types of duty and while going to and returning from such 894  
duty. 895

(K) "Military court" means a court-martial, a court of 896  
inquiry, or a provost court. 897

(L) "Military judge" means an official of a general or 898  
special court-martial who is a commissioned officer, who has been 899  
duly certified to be qualified for duty as a military judge by the 900  
state judge advocate, and who has been properly detailed in 901  
accordance with section 5924.26 of the Revised Code. 902

(M) "Law specialist" means a commissioned officer of the 903  
organized naval militia of the state designated for special duty. 904

(N) "Legal officer" means any commissioned officer of the 905  
organized naval militia of the state designated to perform legal 906  
duties for a command. 907

(O) "State judge advocate" means the commissioned officer 908  
responsible for supervising the administration of ~~the~~ military 909  
justice in the organized militia. 910

(P) "Accuser" means a person who reports an offense subject 911  
to trial by court-martial and who signs and swears to charges, any 912  
person who directs that charges nominally be signed and sworn to 913  
by another, ~~and~~ or any other person who has an interest other than 914  
an official interest in the prosecution of the accused. 915

(Q) "Military" refers to any or all of the armed forces. 916

(R) "Convening authority" includes, in addition to the person 917  
who convened the court, a commissioned officer commanding for the 918  
time being, or a successor in command. 919

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

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

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

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

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

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

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

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

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

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

(C) All other persons lawfully ordered to duty in ~~or with~~ the  
organized militia, from the dates they are required by the terms

of the order or other directive to obey the ~~same order or~~ 949  
directive, including any time during which they are going to or 950  
returning from duty in the organized militia. 951

**Sec. 5924.03.** (A) Each person discharged from the organized 952  
militia who is later charged with having fraudulently obtained ~~his~~ 953  
the discharge is, subject to section 5924.43 of the Revised Code, 954  
subject to trial by court-martial on that charge and is, after 955  
apprehension, subject to this code while in the custody of the 956  
military for that trial. Upon conviction of that charge ~~he~~ the 957  
person is subject to trial by court-martial for all offenses under 958  
this code committed before the fraudulent charge. 959

(B) No person who has deserted from the organized militia may 960  
be relieved from amenability to the jurisdiction of this code by 961  
virtue of a separation from any later period of service. 962

**Sec. 5924.06.** (A) The ~~governor, on the recommendation of the~~ 963  
adjutant general, shall appoint an officer of the ~~organized~~ 964  
~~militia~~ Ohio national guard as state judge advocate, ~~who.~~ The 965  
officer shall be a member in good standing of the bar of ~~the~~ 966  
~~supreme court of this state and shall have been a member of the~~ 967  
~~bar of the state and a member of the organized militia for at~~ 968  
~~least five years~~ be eligible to be recognized as a colonel under 969  
regulations prescribed by the national guard bureau. 970

(B) The adjutant general ~~may~~ shall appoint ~~as many assistant~~ 971  
~~state judge advocates as he shall deem necessary, which assistant~~ 972  
~~state judge~~ and legal officers on the recommendation of the state 973  
judge advocate. Judge advocates and legal officers shall be 974  
officers of the organized militia and members in good standing of 975  
the bar of ~~the~~ this state. 976

(C) The state judge advocate or ~~his assistants~~ subordinate 977  
judge advocates shall make frequent inspections in the field in 978



supervision of the administration of military justice. 979

(D) ~~The provisions of section 109.02 of the Revised Code~~ 980  
~~shall not be a restriction upon the appointment and duties as~~ 981  
~~provided in this section.~~ 982

~~(E)~~ Convening authorities shall at all times communicate 983  
directly with their staff judge advocates or legal officers in 984  
matters relating to the administration of military justice; ~~and~~ 985  
~~the.~~ A staff judge advocate or legal officer of ~~any~~ a command is 986  
entitled to communicate directly with ~~the~~ any staff judge advocate 987  
or legal officer of a superior or subordinate command, or with the 988  
state judge advocate. 989

~~(F)~~(E) No person who has acted as member, military judge, 990  
trial counsel, assistant trial counsel, defense counsel, assistant 991  
defense counsel, or investigating officer, or who has been a 992  
witness for either the prosecution or defense, in any case may 993  
later act as staff judge advocate or legal officer to any 994  
reviewing authority upon the same case. 995

**Sec. 5924.07.** (A) Apprehension is the taking of a person into 996  
custody. 997

(B) Any person authorized by this code, or by regulations 998  
issued pursuant ~~thereto~~ to this code, to apprehend persons subject 999  
to this code, any marshal of a court-martial appointed pursuant to 1000  
the provisions of this code, and any peace officer authorized to 1001  
do so by law may do so upon reasonable belief that an offense has 1002  
been committed and that the person apprehended committed it. 1003

(C) Commissioned officers, warrant officers, ~~petty officers,~~ 1004  
and noncommissioned officers ~~have authority~~ may take reasonable 1005  
action to quell quarrels, frays, and disorders among persons 1006  
subject to this code and to apprehend persons subject to this code 1007  
who take part therein. 1008

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

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

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

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

(C) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a

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

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

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

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

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

**Sec. 5924.11.** (A) ~~No provost marshal, commander of a guard,~~ 1069  
~~master at arms, warden~~ sheriff, keeper, or officer of a ~~city or~~ 1070  
~~county jail or any other jail or prison designated under section~~ 1071  
~~5924.10 of the Revised Code,~~ detention facility may refuse to 1072  
receive or keep any prisoner committed to ~~his~~ the sheriff's, 1073  
keeper's, or officer's charge, when the committing person 1074  
furnishes a statement, signed by ~~him~~ the committing person, of the 1075  
offense charged against the prisoner. 1076

(B) ~~Every commander of a guard, master at arms~~ A sheriff, 1077  
~~warden,~~ keeper, or officer of a ~~city or county jail or of any~~ 1078  
~~other jail or prison designated under section 5924.10 of the~~ 1079  
~~Revised Code,~~ detention facility to whose charge a prisoner is 1080  
committed, shall, within twenty-four hours after that commitment 1081  
~~or as soon as he is relieved from guard,~~ report to the commanding 1082  
officer of the prisoner the name of the prisoner, the offense 1083  
charged against ~~him~~ the prisoner, and the name of the person who 1084  
ordered or authorized the commitment. 1085

**Sec. 5924.13.** ~~Subject to section 5924.57 of the Revised Code,~~ 1086  
~~no~~ No person, while being held for or after trial ~~or the result of~~ 1087  
~~trial,~~ may be subjected to punishment or penalty other than arrest 1088  
or confinement upon the charges pending against ~~him,~~ ~~nor shall~~ the 1089  
person. The arrest or confinement imposed upon ~~him~~ the person 1090  
shall not be any more rigorous than the circumstances require to 1091  
insure ~~his~~ the person's presence, ~~but he.~~ The person may be 1092  
subjected to minor punishment during that period for infractions 1093  
of discipline, ~~and may be required to perform such labor as may be~~ 1094  
~~necessary for the policing and sanitation of his living quarters~~ 1095  
~~and messing facilities and the area immediately adjacent thereto.~~ 1096  
1097

**Sec. 5924.14.** (A) Under such regulations as may be prescribed 1098

under this code, a person on ~~active~~ state active duty ~~subject to~~ 1099  
~~this code or duty under Title 32 of the United States Code~~ who is 1100  
accused of an offense against civil authority may be delivered, 1101  
upon request, to the civil authority for ~~trial~~ trial. 1102

(B) When delivery under this section is made to any civil 1103  
authority of a person undergoing sentence of a court-martial, the 1104  
delivery, if followed by conviction in a civil tribunal, 1105  
interrupts the execution of the sentence of the court-martial, and 1106  
the offender after having answered to the civil authorities for 1107  
~~his~~ the offender's offense shall, upon the request of competent 1108  
military authority, be returned to military custody for the 1109  
completion of ~~his~~ the offender's sentence. 1110

**Sec. 5924.15.** (A) Under such regulations as the ~~governor~~ 1111  
adjutant general may prescribe, ~~and under such additional~~ 1112  
~~regulations as may be prescribed by the adjutant general of Ohio,~~ 1113  
limitations may be placed on the powers granted by this section 1114  
with respect to the kind and amount of punishment authorized, the 1115  
categories of commanding officers and warrant officers exercising 1116  
command authorized to exercise those powers, the applicability of 1117  
this section to an accused who demands trial by court-martial, and 1118  
the kinds of courts-martial to which the case may be referred upon 1119  
such a demand. However, except in the case of a member attached 1120  
to, or embarked in a vessel, punishment may not be imposed upon 1121  
~~any person subject to this code under this section~~ a member of the 1122  
organized militia if ~~such person~~ the member has, before the 1123  
imposition of ~~such~~ the punishment, demanded trial by court-martial 1124  
in lieu of ~~such~~ the punishment. Under similar regulations, rules 1125  
may be prescribed with respect to the suspension of punishments 1126  
authorized ~~hereunder~~ under this section. If authorized by 1127  
regulations prescribed under this section, the governor or a 1128  
general officer or officer of flag rank in command may delegate 1129  
the powers of the governor or general officer under this section 1130

to a principal assistant. In all proceedings, the accused shall be 1131  
allowed a reasonable period of time, normally not exceeding 1132  
forty-eight hours, to reply to the notification of intent to 1133  
impose punishment under this section. 1134

(B) Subject to the foregoing division (A) of this section, 1135  
any commanding officer, and for the purposes of this section the 1136  
adjutant general of Ohio, may, in addition to or in lieu of 1137  
admonition or reprimand, impose one or more of the following 1138  
disciplinary punishments for minor offenses without the 1139  
intervention of a court-martial: 1140

(A)(1) Upon officers of the commanding officer's command, any 1141  
of the following: 1142

(1)(a) Restriction to certain specified limits, with or 1143  
without suspension from duty, for not more than thirty ~~consecutive~~ 1144  
days; 1145

(2)(b) If imposed by the governor, the adjutant general, the 1146  
commanding an officer of a force of the organized militia 1147  
exercising general court-martial jurisdiction, a general officer, 1148  
or the commanding general of a division flag officer, any of the 1149  
following: 1150

(a)(i) Arrest in quarters for not more than thirty 1151  
consecutive days; 1152

(b) Fine or forfeiture (ii) Forfeiture of not more than 1153  
one-half of one month's pay per month for two months, or the sum a 1154  
fine of one not more than two hundred fifty dollars, whichever is 1155  
greater; 1156

(c)(iii) Restriction to certain specified limits, with or 1157  
without suspension from duty, for not more than sixty ~~consecutive~~ 1158  
days; 1159

(d) Detention of not more than one-half of one month's pay 1160

~~per month for three months, or the sum of two hundred twenty five~~ 1161  
~~dollars, whichever is greater.~~ 1162

~~(B)(2)~~ Upon other military personnel of the commanding 1163  
officer's command, any of the following: 1164

~~(1) If imposed upon a person attached to or embarked in a~~ 1165  
~~vessel, confinement on bread and water or diminished rations for~~ 1166  
~~not more than three consecutive days;~~ 1167

~~(2)(a)~~ Correctional custody for not more than seven 1168  
consecutive days; 1169

~~(3) Fine or forfeiture (b) Forfeiture~~ of not more than seven 1170  
days' pay, ~~or the sum of twenty five dollars, whichever is greater~~ 1171  
a fine of not more than one-quarter of one month's actual pay; 1172

~~(4)(c)~~ Reduction to the next inferior pay grade, if the grade 1173  
from which the service member demoted is within the promotion 1174  
authority of the officer imposing the reduction or any officer 1175  
subordinate to the one who imposes the reduction; 1176

~~(5)(d)~~ Extra duties, including fatigue or other duties, for 1177  
not more than fourteen consecutive days or for a total of thirty 1178  
nonconsecutive days; 1179

~~(6)(e)~~ Restriction to certain specified limits, with or 1180  
without suspension from duty, for not more than fourteen 1181  
consecutive days; 1182

~~(7) Detention of not more than fourteen days' pay, or the sum~~ 1183  
~~of fifty dollars, whichever is greater;~~ 1184

~~(8)(f)~~ If imposed by an officer of the grade of major ~~or~~ 1185  
lieutenant commander, or above, any of the following: 1186

~~(a)(i)~~ The punishment authorized under division (B)~~(1)(2)(a)~~ 1187  
of this section; 1188

~~(b)(ii)~~ Correctional custody for not more than thirty 1189  
consecutive days; 1190

~~(c) Fine or forfeiture (iii) Forfeiture~~ of not more than 1191  
one-half of one month's pay per month for two months, ~~or the sum~~ 1192  
~~of fifty dollars, whichever is greater~~ a fine of not more than 1193  
one-half of one month's actual pay for two months; 1194

~~(d)(iv)~~ Reduction to the lowest or any intermediate pay 1195  
grade, if the grade from which demoted is within the promotion 1196  
authority of the officer imposing the reduction or any officer 1197  
subordinate to the one who imposes the reduction, but an enlisted 1198  
member in pay grade above E-4 may not be reduced more than ~~two~~ one 1199  
pay ~~grades~~ grade; 1200

~~(e)(v)~~ Extra duties, including fatigue or other duties, for 1201  
not more than forty-five ~~consecutive~~ days, which need not be 1202  
consecutive, and for not more than two hours per day; 1203

~~(f)(vi)~~ Restriction to certain specified limits, with or 1204  
without suspension from duty, for not more than sixty ~~consecutive~~ 1205  
days, which need not be consecutive; 1206

~~(g)~~ Detention of not more than one half of one month's pay 1207  
per month for three months, or the sum of seventy five dollars, 1208  
~~whichever is greater.~~ 1209

~~Detention of pay shall be for a stated period of not more~~ 1210  
~~than one year, but if the offender's term of service expires~~ 1211  
~~earlier, the detention shall terminate upon that expiration. No~~ 1212  
~~two or more of the punishments of arrest in quarters, confinement~~ 1213  
~~on bread and water or diminished rations, correctional custody,~~ 1214  
~~extra duties, and restriction may be combined to run consecutively~~ 1215  
~~in the maximum amount imposable for each. Whenever any of those~~ 1216  
~~punishments are combined to run consecutively, there must be an~~ 1217  
~~apportionment. In addition, forfeiture of pay may not be combined~~ 1218  
~~with detention of pay without an apportionment. For the purposes~~ 1219  
~~of this section "correctional custody" is the physical restraint~~ 1220  
~~of a person during duty or nonduty hours and may include extra~~ 1221



duties, fatigue duties, or hard labor. If practicable, 1222  
~~correctional custody will not be served in immediate association~~ 1223  
~~with persons awaiting trial or held in confinement pursuant to~~ 1224  
~~trial by court martial or civilian court.~~ 1225

(C) No two or more of the punishments of arrest in quarters, 1226  
correctional custody, extra duties, and restriction may be 1227  
combined to run consecutively in the maximum amount imposable for 1228  
each. If any of those punishments are combined to run 1229  
consecutively, there must be apportionment. For the purposes of 1230  
this section, "correctional custody" means the physical restraint 1231  
of a person during duty or nonduty hours and may include extra 1232  
duties, fatigue duties, or hard labor. 1233

(D) An officer in charge may impose upon enlisted members 1234  
assigned to the unit of which the officer is in charge ~~such~~ any of 1235  
the punishments authorized under divisions ~~(B)(1)~~ (A)(2)(a) to 1236  
~~(B)(7)(f)~~ of this section, ~~as~~ that the governor or adjutant 1237  
general may specifically prescribe by regulation. 1238

~~(D)~~ (E) The officer who imposes the punishment authorized in 1239  
~~divisions (A) or division~~ (B) of this section, or the officer's 1240  
successor in command, may, at any time, suspend probationally any 1241  
part or amount of the unexecuted punishment imposed and may 1242  
suspend probationally a reduction in grade or a forfeiture or fine 1243  
imposed under ~~divisions (A) or division~~ (B) of this section, 1244  
whether or not executed. In addition, the officer who imposed the 1245  
punishment may, at any time, remit or mitigate any part or amount 1246  
of the unexecuted punishment imposed and may set aside in whole or 1247  
in part the punishment, whether executed or unexecuted, and 1248  
restore all rights, privileges, and property affected. The officer 1249  
who imposed the punishment may also mitigate reduction in grade to 1250  
forfeiture ~~or detention~~ of pay or a fine. When mitigating: 1251

~~(1) Arrest~~ arrest in quarters to restriction: 1252

~~(2) Confinement on bread and water or diminished rations to~~ 1253  
~~correctional custody;~~ 1254

~~(3) Correctional custody or confinement on bread and water or~~ 1255  
~~diminished rations to extra duties or restriction, or both; or~~ 1256

~~(4) Extra extra duties to restriction;~~ 1257

the, the mitigated punishment shall not be for a greater period 1258  
than the punishment mitigated. ~~When mitigating forfeiture of pay~~ 1259  
~~to detention of pay, the amount of the detention shall not be~~ 1260  
~~greater than the amount of the forfeiture.~~ When mitigating 1261  
reduction in grade to fine or forfeiture ~~or detention~~ of pay, the 1262  
amount of the fine or forfeiture ~~or detention~~ shall not be greater 1263  
than the amount that could have been imposed initially under this 1264  
section by the officer who imposed the punishment mitigated. 1265

~~(E)~~ (F) A person punished under this section who considers the 1266  
punishment unjust or disproportionate to the offense may, through 1267  
the proper channel, appeal to the next superior authority within 1268  
seven calendar days. The appeal shall be promptly forwarded and 1269  
decided, but the person punished may in the meantime be required 1270  
to undergo the punishment adjudged. The superior authority may 1271  
exercise the same powers with respect to the punishment imposed as 1272  
may be exercised under division ~~(D)~~ (E) of this section by the 1273  
officer who imposed the punishment. Before acting on an appeal 1274  
from a punishment of: 1275

~~(1) Arrest in quarters for more than seven days;~~ 1276

~~(2) Correctional custody for more than seven days;~~ 1277

~~(3) Forfeiture of more than seven days' pay;~~ 1278

~~(4) Reduction of one or more pay grades from the fourth or a~~ 1279  
~~higher pay grade;~~ 1280

~~(5) Extra duties for more than fourteen days;~~ 1281

~~(6) Restriction for more than fourteen days; or~~ 1282

~~(7) Detention of more than fourteen days' pay;~~ 1283

any of the following, the authority who is to act on the appeal 1284  
shall refer the case to a judge advocate or legal officer of the 1285  
Ohio organized militia for consideration and advice, and may ~~so~~ 1286  
also refer the case upon appeal from any punishment imposed under 1287  
~~divisions (A) or~~ division (B) of this section: 1288

(1) Arrest in quarters for more than seven days; 1289

(2) Correctional custody for more than seven days; 1290

(3) Fine or forfeiture of more than seven days' pay; 1291

(4) Reduction of one or more pay grades from the fourth or a 1292  
higher pay grade; 1293

(5) Extra duties for more than fourteen days. 1294

~~(F)~~(G) The imposition and enforcement of ~~disciplinary~~ 1295  
punishment under this section for any act or omission is not a bar 1296  
to trial by court-martial for a serious crime or offense growing 1297  
out of the same act or omission, and not properly punishable under 1298  
this section; ~~but the.~~ The fact that a ~~disciplinary~~ punishment has 1299  
been enforced may be shown by the accused upon trial, and, when so 1300  
shown, shall be considered in determining the measure of 1301  
punishment to be adjudged in the event of a finding of guilty. 1302

~~(G)~~(H) The ~~governor or the~~ adjutant general may, by 1303  
regulation, prescribe the form of records to be kept of 1304  
proceedings under this section and may also prescribe that certain 1305  
categories of those proceedings shall be in writing. 1306

~~(H) The punishments imposed pursuant to this section, except~~ 1307  
~~fine and forfeiture of pay, shall not extend beyond the~~ 1308  
~~termination of the duty status of the individual punished.~~ 1309

(I) A commanding officer may delegate authority to make a 1310  
reduction in pay grade under division (B)(2)(c) of this section to 1311  
the commanding officer's executive officer, deputy commander, vice 1312

commander, or principal assistant. 1313

**Sec. 5924.16.** (A) In the organized militia ~~not in federal~~ 1314  
~~service,~~ there are general, special, and summary courts-martial 1315  
~~constituted like similar courts of the army and the air force.~~ 1316  
~~They have the jurisdiction and powers, except as to punishments,~~ 1317  
~~and shall follow the forms and procedures provided for those~~ 1318  
~~courts.~~ General and special courts-martial are courts of record 1319  
with original jurisdiction. 1320

(B) ~~The constitutions of the three kinds of courts martial~~ 1321  
~~are:~~ 1322

~~(1) General courts martial, consisting~~ A general 1323  
court-martial consists of one of the following: 1324

~~(A)(1)~~ A military judge and not ~~less~~ fewer than five members; 1325  
~~or~~ 1326

~~(B)(2)~~ Only a military judge, ~~if,~~ before the court is 1327  
assembled, the accused, knowing the identity of the military judge 1328  
and after consultation with defense counsel, requests in writing a 1329  
court composed only of a military judge and the military judge 1330  
approves; 1331

~~(2) Special courts martial, consisting,~~ 1332

(C) A special court-martial consists of one of the following: 1333

~~(A) not less than three~~ (1) Three or more members; ~~or~~ 1334

~~(B)(2)~~ A military judge and not ~~less~~ fewer than three 1335  
members; ~~or~~ 1336

~~(C)(3)~~ Only a military judge, ~~if one has been detailed to the~~ 1337  
~~court, and the accused so requests in writing under the same~~ 1338  
~~conditions as those prescribed in division (B)(1)(b) of this~~ 1339  
~~section;~~ 1340

~~(3) Summary courts martial, consisting~~ before the court is 1341

assembled the accused, knowing the identity of the military judge 1342  
and after consultation with defense counsel, requests in writing a 1343  
court composed only of a military judge and the military judge 1344  
approves. 1345

(D) A summary court-martial consists of one commissioned 1346  
officer in the grade of captain or above. 1347

**Sec. 5924.17.** ~~Each force of the organized militia~~ The Ohio 1348  
national guard has court-martial jurisdiction over all persons 1349  
subject to this code. The exercise of jurisdiction by ~~one force~~ 1350  
the Ohio national guard over personnel of another ~~force~~ element of 1351  
the organized militia shall be in accordance with regulations 1352  
prescribed by the ~~governor~~ adjutant general. 1353

**Sec. 5924.18.** (A) Subject to section 5924.17 of the Revised 1354  
Code, general courts-martial have jurisdiction to try persons 1355  
subject to this code for any offense made punishable by this code 1356  
and may, under ~~such~~ any limitations ~~as~~ that the governor may 1357  
prescribe, adjudge any ~~punishment not forbidden by this code,~~ 1358  
~~including the penalty of death when specifically authorized by~~ 1359  
~~this code. General courts martial also have jurisdiction to try~~ 1360  
~~any person who by the law of war is subject to trial by a military~~ 1361  
~~tribunal and may adjudge any punishment permitted by the law of~~ 1362  
~~war. A general court martial of the kind specified in division~~ 1363  
~~(B)(1)(b) of section 5924.16 of the Revised Code does not have~~ 1364  
~~jurisdiction to try any person for any offense for which the death~~ 1365  
~~penalty may be adjudged unless the case has been previously~~ 1366  
~~referred to trial as a noncapital case~~ of the following 1367  
punishments: 1368

(1) A fine of not more than two thousand five hundred dollars 1369  
or confinement for not more than three hundred sixty-five days; 1370

(2) Forfeiture of all pay and allowances; 1371

<u>(3) Reprimand;</u>	1372
<u>(4) Dismissal and dishonorable discharge or a bad conduct discharge;</u>	1373 1374
<u>(5) Reduction of a noncommissioned officer to the lowest or any intermediate rank;</u>	1375 1376
<u>(6) Any combination of the foregoing punishments.</u>	1377
<u>(B) A general court-martial may not adjudge dismissal or dishonorable discharge unless a complete record of the proceedings and testimony is made, counsel having the qualifications prescribed under division (B) of section 5924.27 of the Revised Code is detailed to represent the accused, and a military judge is detailed to the trial.</u>	1378 1379 1380 1381 1382 1383
<b>Sec. 5924.19.</b> Subject to section 5924.17 of the Revised Code, special courts-martial <del>shall</del> have jurisdiction to try persons subject to this code for any <del>non-capital</del> offense for which they may be punished under this code. A special court-martial may adjudge any punishment a general court-martial may adjudge, except death, <del>dishonorable discharge, dismissal, confinement for that a</del> special court-martial may not impose a fine of more than <del>six</del> months, <del>hard labor without one thousand dollars,</del> confinement for more than <del>three months, forfeiture of pay exceeding two thirds pay per month, or forfeiture of pay for more than six months</del> <u>one hundred eighty days for a single offense, or dismissal or dishonorable discharge.</u> A <del>bad-conduct discharge special court-martial</del> may not <del>be adjudged</del> <u>adjudge a bad-conduct discharge</u> unless a complete record of the proceedings and testimony <del>has been</del> <u>is</u> made, counsel having the qualifications prescribed under division (B) of section 5924.27 of the Revised Code <del>was</del> <u>is</u> detailed to represent the accused, and a military judge <del>was</del> <u>is</u> detailed to the trial. <del>In any case in which a military judge was not detailed to the trial, except when due to physical conditions</del>	1384 1385 1386 1387 1388 1389 1390 1391 1392 1393 1394 1395 1396 1397 1398 1399 1400 1401 1402

~~or military exigencies, the convening authority shall make a~~ 1403  
~~written statement, to be appended to the record, stating the~~ 1404  
~~reason or reasons a military judge could not be detailed.~~ 1405

**Sec. 5924.20.** (A) Subject to section 5924.17 of the Revised 1406  
Code, summary courts-martial have jurisdiction to try persons 1407  
subject to this code, ~~except officers and warrant officers,~~ for 1408  
any offense made punishable by this code. 1409

(B) No person with respect to whom summary courts-martial 1410  
have jurisdiction may be brought to trial before a summary 1411  
court-martial if he the person objects thereto to being brought to 1412  
trial before a summary court-martial. If objection to trial by 1413  
summary court-martial is made by an accused, trial may be ordered 1414  
by special or general court-martial, as may be appropriate. 1415

(C) Summary courts-martial may, ~~under such limitations as the~~ 1416  
~~governor may prescribe,~~ adjudge punishment of a fine not forbidden 1417  
~~by this code, except death, dismissal, dishonorable or bad conduct~~ 1418  
~~discharge,~~ exceeding five hundred dollars, confinement for not 1419  
more than ~~one month, hard labor without confinement for more than~~ 1420  
~~forty five days, restriction to specified limits for more than two~~ 1421  
~~months, or thirty days,~~ forfeiture of not more than two-thirds of 1422  
one month's pay, and reduction to the lowest or any intermediate 1423  
pay grade. For enlisted members in pay grade above E-4, summary 1424  
courts-martial may not adjudge confinement or reduction except to 1425  
the next inferior pay grade. 1426

**Sec. 5924.21.** The provisions of this code that confer 1427  
jurisdiction on courts-martial do not deprive military 1428  
commissions, provost courts, other military tribunals, or state or 1429  
federal courts of concurrent jurisdiction with respect to 1430  
offenders or offenses that by statute or by the law of war may be 1431  
tried by military commissions, provost courts, other military 1432

tribunals, or state or federal courts. 1433

**Sec. 5924.22.** In the organized militia not in federal 1434  
service, the governor, adjutant general, assistant adjutant 1435  
general for army, or assistant adjutant general for air may 1436  
convene general courts-martial ~~may be convened by the governor.~~ 1437

**Sec. 5924.23.** In the organized militia not in federal 1438  
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1439  
~~air base, auxiliary air base, or other place where troops are on~~ 1440  
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1441  
~~group, detached battalion, separate squadron, or other detached~~ 1442  
~~command,~~ any commander authorized by regulation in the grade of 1443  
colonel or a higher grade may convene special courts-martial. 1444  
~~Special courts martial may also be convened by superior authority.~~ 1445  
~~When any such officer is an accuser, the court shall be convened~~ 1446  
~~by superior competent authority.~~ 1447

**Sec. 5924.24.** (A) In the organized militia not in federal 1448  
service, ~~the commanding officer of a garrison, fort, post, camp,~~ 1449  
~~air base, auxiliary air base, or other place where troops are on~~ 1450  
~~duty, or of a division, brigade, regiment, battle group, wing,~~ 1451  
~~group, detached battalion, detached squadron, detached company, or~~ 1452  
~~other detachment,~~ any commander authorized by regulation in the 1453  
grade of lieutenant colonel or a higher grade may convene a 1454  
summary court-martial ~~consisting of one commissioned officer. The~~ 1455  
~~proceedings shall be informal.~~ 1456

~~(B) When only one commissioned officer is present with a~~ 1457  
~~command or detachment he shall be the summary court martial of~~ 1458  
~~that command or detachment and shall hear and determine all~~ 1459  
~~summary court martial cases brought before him. Summary~~ 1460  
~~courts martial may, however, be convened in any case by superior~~ 1461  
~~competent authority when considered desirable by him.~~ 1462



Sec. 5924.25. (A) Any commissioned officer ~~of or on~~ in a duty 1463  
~~with the organized militia status~~ is eligible to serve on all 1464  
courts-martial for the trial of any person who may lawfully be 1465  
brought before such courts for ~~trial~~ trial. 1466

(B) Any warrant officer ~~of or on~~ in a duty ~~with the organized~~ 1467  
~~militia status~~ is eligible to serve on general and special 1468  
courts-martial for the trial of any person, other than a 1469  
commissioned officer, who may lawfully be brought before such 1470  
courts for ~~trial~~ trial. 1471

(C)(1) Any enlisted member of the organized militia in a duty 1472  
status who is not a member of the same unit as the accused is 1473  
eligible to serve on general and special courts-martial for the 1474  
trial of any enlisted member of the organized militia who may 1475  
lawfully be brought before such courts for trial, ~~but he shall~~ 1476  
~~serve as a member of a court only~~ if, before the conclusion of a 1477  
session called by the military judge ~~under division (A) of section~~ 1478  
~~5924.39 of the Revised Code~~ or, in the absence of ~~such~~ a session 1479  
called by the military judge, before the court is assembled for 1480  
the trial of the accused, the accused personally has requested in 1481  
writing that enlisted members serve on it. After such a request, 1482  
the accused may not be tried by a general or special 1483  
court-martial, the membership of which does not include enlisted 1484  
members in a number comprising at least one-third of the total 1485  
membership of the court, unless eligible members cannot be 1486  
obtained on account of physical conditions or military exigencies. 1487  
If ~~such~~ enough enlisted members cannot be obtained, the court may 1488  
be assembled and trial held without them, but the convening 1489  
authority shall make a detailed written statement, to be appended 1490  
to the record, stating why they could not be obtained. 1491

(2) ~~In~~ As used in division (C) of this section, ~~the word~~ 1492  
"unit" means any regularly organized body of the organized militia 1493

not larger than a company, a squadron, a division of the naval 1494  
militia, or a body corresponding to one of them. 1495

(D)(1) ~~When~~ If it can be avoided, ~~no~~ a person subject to this 1496  
code shall not be tried by a court-martial, any member of which is 1497  
junior to ~~him~~ the person in rank or grade. 1498

(2) When convening a court-martial, the convening authority 1499  
shall detail as members ~~thereof such of the court-martial~~ members 1500  
~~as of the organized militia who, in his the convening authority's~~ 1501  
opinion, are best qualified for the duty by reason of age, 1502  
education, training, experience, length of service, and judicial 1503  
temperament. No member of the organized militia is eligible to 1504  
serve as a member of a general or special court-martial ~~when he if~~ 1505  
the member of the organized militia is the accuser or a witness 1506  
for the prosecution or has acted as investigating officer or as 1507  
counsel in the same case. ~~If within the command of the convening~~ 1508  
~~authority there is present and not otherwise disqualified a~~ 1509  
~~commissioned officer who is a member of the bar of the state and~~ 1510  
~~of appropriate rank, the convening authority shall appoint him as~~ 1511  
~~president of a special court martial. Although this requirement is~~ 1512  
~~binding on the convening authority, failure to meet it in any case~~ 1513  
~~does not divest a military court of jurisdiction.~~ 1514

**Sec. 5924.26.** (A) ~~The authority convening a~~ A military judge 1515  
~~shall be detailed to each general court martial shall, and,~~ 1516  
~~subject to regulations promulgated by the governor, the authority~~ 1517  
~~convening a and special court-martial may, detail a.~~ A military 1518  
~~judge to~~ shall preside over each open session of the court-martial 1519  
to which the judge has been detailed. 1520

(B) A military judge shall be a commissioned officer of the 1521  
organized militia who is a member in good standing of the bar of 1522  
this state, ~~or a member of the bar of a federal court,~~ and who is 1523  
certified to be qualified for ~~such~~ duty as a military judge by the 1524

state judge advocate. 1525

(C) The military judge of a general or special court-martial 1526  
shall be designated by the state judge advocate ~~or his designee~~ 1527  
for detail by the convening authority. Unless the court-martial 1528  
was convened by the governor or the adjutant general, neither the 1529  
convening authority nor ~~his~~ the convening authority's staff, other 1530  
than the state judge advocate or deputy state judge advocate, 1531  
shall prepare or review any report concerning the effectiveness, 1532  
fitness, or efficiency of the military judge ~~so detailed which~~ 1533  
~~relates to his~~ judge's performance of duty as a military judge. A 1534  
~~commissioned officer who is certified as a military judge of a~~ 1535  
~~general court-martial may perform duties other than those relating~~ 1536  
~~to his being a military judge of a general court martial when such~~ 1537  
~~duties are assigned to him by or with the approval of the state~~ 1538  
~~judge advocate or his designee.~~ 1539

(D) No person is eligible to act as a military judge in a 1540  
case if ~~he~~ the person is the accuser, is a witness for the 1541  
prosecution, has acted as investigating officer, or is a counsel 1542  
in the same case. 1543

(E) The military judge of a court-martial may not consult 1544  
with the members of the court, except in the presence of the 1545  
accused, trial counsel, and defense counsel, nor may ~~he~~ the 1546  
military judge vote with the members of the court. 1547

(F) A trial counsel, defense counsel, military judge, legal 1548  
officer, summary court officer, or any other person from any one 1549  
component of the organized militia certified by the state judge 1550  
advocate to perform legal functions under this code may perform 1551  
those functions, as needed, for any other component of the 1552  
organized militia. 1553

**Sec. 5924.27.** (A) ~~For each general and special court martial~~ 1554  
~~the authority convening the court~~ The state judge advocate shall 1555

detail trial counsel ~~and~~, defense counsel, and ~~such~~ assistants ~~as~~ 1556  
~~he~~ that the state judge advocate considers appropriate. No person 1557  
who has acted as investigating officer, military judge, or court 1558  
member in any case may act later as trial counsel, assistant trial 1559  
counsel, ~~or, unless expressly requested by the accused, as~~ defense 1560  
counsel, ~~or~~ assistant defense counsel in the same case. No person 1561  
who has acted for the prosecution may act later in the same case 1562  
for the defense, nor may any person who has acted for the defense 1563  
act later in the same case for the prosecution. 1564

(B) Trial counsel or defense counsel detailed for a general 1565  
court-martial must be both of the following: 1566

(1) ~~Must be a person who is a~~ A member in good standing of 1567  
the bar of ~~the highest court of this state, or a member of the bar~~ 1568  
~~of a federal court, or a law specialist; and~~ 1569

(2) ~~Must be certified~~ Certified as competent to perform ~~such~~ 1570  
the duties of trial counsel or defense counsel in a general 1571  
court-martial by the state judge advocate. 1572

~~(C) In the case of a special court martial, the accused shall~~ 1573  
~~be afforded the opportunity to be represented at the trial by~~ 1574  
~~counsel having the qualifications prescribed by division (B) of~~ 1575  
~~this section. If counsel having such qualifications cannot be~~ 1576  
~~obtained because of physical conditions or military exigencies,~~ 1577  
~~the court may be convened and the trial held, but the convening~~ 1578  
~~authority shall make a detailed written statement explaining the~~ 1579  
~~reasons, which shall be appended to the record.~~ 1580

**Sec. 5924.28.** Under such regulations as the ~~governor~~ adjutant 1581  
general may prescribe, the convening authority of a general or 1582  
special court-martial ~~or court of inquiry~~ shall detail or employ 1583  
qualified court reporters, who shall record the proceedings of and 1584  
testimony taken before that court. ~~Under like regulations the~~ 1585  
~~convening authority of a military court, and~~ may detail or employ 1586

interpreters, who shall interpret for the court. 1587

**Sec. 5924.29.** (A) No member of a general or special 1588  
court-martial shall be absent or excused after the court has been 1589  
assembled for the trial of the accused except for physical 1590  
disability, as a result of a challenge, or by order of the 1591  
convening authority for good cause. 1592

(B) Whenever a general court-martial, other than a general 1593  
court-martial composed of a military judge only, is reduced below 1594  
five members, the trial may not proceed unless the convening 1595  
authority details new members sufficient in number to provide not 1596  
~~less~~ fewer than five members. When the new members have been 1597  
sworn, the trial may proceed with the new members present after 1598  
the recorded evidence previously introduced before the members of 1599  
the court has been read to the court in the presence of the 1600  
military judge, the accused, and counsel for both sides. 1601

(C) Whenever a special court-martial, other than a special 1602  
court-martial composed of a military judge only, is reduced below 1603  
three members, the trial may not proceed unless the convening 1604  
authority details new members sufficient in number to provide not 1605  
~~less~~ fewer than three members. When the new members have been 1606  
sworn, the trial shall proceed with the new members present as if 1607  
no evidence had previously been introduced at the trial, unless a 1608  
verbatim record of the evidence previously introduced before the 1609  
members of the court or a stipulation thereof is read to the court 1610  
in the presence of the military judge, if any, the accused, and 1611  
counsel for both sides. 1612

(D) If the military judge of a court-martial composed of a 1613  
military judge only is unable to proceed with the trial because of 1614  
physical disability, as a result of a challenge, or for other good 1615  
cause, the trial shall proceed, ~~subject to any applicable~~ 1616  
~~conditions of division (B)(1)(b) or division (B)(2)(c) of section~~ 1617

~~5924.16 of the Revised Code~~, after the detail of a new military 1618  
judge as if no evidence had previously been introduced, unless a 1619  
verbatim record of the evidence previously introduced or a 1620  
stipulation thereof is read in court in the presence of the new 1621  
military judge, the accused, and counsel for both sides. 1622

**Sec. 5924.30.** (A) Charges and specifications shall be signed 1623  
by a person subject to this code under oath before a ~~person~~ 1624  
commissioned officer of the organized militia authorized ~~by this~~ 1625  
~~code~~ to administer oaths and shall state both of the following: 1626

(1) That the signer has personal knowledge of, or has 1627  
investigated, the matters set forth ~~therein~~ in the charges and 1628  
specifications; ~~and~~ 1629

(2) That ~~they~~ those matters are true in fact to the best of 1630  
~~his~~ the person's knowledge and belief. 1631

(B) Upon the preferring of charges, the proper authority 1632  
shall take immediate steps to determine ~~what~~ the disposition that 1633  
should be made ~~thereof~~ of the charges in the interest of justice 1634  
and discipline, and the person accused shall be informed of the 1635  
charges ~~against him~~ as soon as practicable. 1636

**Sec. 5924.31.** (A) No person subject to this code may compel 1637  
any other person to incriminate ~~himself~~ the other person or to 1638  
answer any question, the answer to which may tend to incriminate 1639  
~~him~~ the other person. 1640

(B) No person subject to this code may interrogate, or 1641  
request any statement from an accused or a person suspected of an 1642  
offense, without first informing ~~him~~ the accused or person 1643  
suspected of the nature of the accusation and advising ~~him~~ the 1644  
accused or person suspected that ~~he~~ the accused or person 1645  
suspected does not have to make any statement regarding the 1646  
offense of which ~~he~~ the accused or person suspected is accused or 1647

suspected and that any statement made by ~~him~~ the accused or person 1648  
suspected may be used as evidence against ~~him~~ the accused or 1649  
person suspected in a trial by court-martial. 1650

(C) No person subject to this code may compel any other 1651  
person to make a statement or produce evidence before any ~~military~~ 1652  
~~tribunal~~ court-martial if the statement or evidence is not 1653  
material to the issue and may tend to degrade ~~him~~ the other 1654  
person. 1655

(D) No statement obtained from any person in violation of 1656  
this section, or through the use of coercion, unlawful influence, 1657  
or unlawful inducement may be received in evidence against ~~him~~ the 1658  
person in a trial by court-martial. 1659

**Sec. 5924.32.** (A) No charge or specification may be referred 1660  
to a general court-martial for trial until a thorough and 1661  
impartial investigation of all the matters set forth ~~therein in~~ 1662  
the charge or specification has been made. This investigation 1663  
shall include inquiry as to the truth of the matter set forth in 1664  
the charges, consideration of the form of charges, and a 1665  
recommendation as to the disposition ~~which~~ that should be made of 1666  
the case in the interest of justice and discipline. 1667

(B) The accused shall be advised of the charges against ~~him~~ 1668  
the accused and of ~~his~~ the accused's right to be represented at 1669  
that investigation by counsel. Upon ~~his~~ the accused's own request 1670  
~~he, the accused~~ shall be represented by civilian counsel if 1671  
provided by ~~him~~ the accused at the accused's own cost, or by 1672  
military counsel of ~~his~~ the accused's own selection if such 1673  
counsel is reasonably available, or by counsel detailed by the 1674  
officer exercising general court-martial jurisdiction over the 1675  
command. At that investigation full opportunity shall be given to 1676  
the accused to cross-examine witnesses against ~~him~~ the accused if 1677  
they are available and to present anything ~~he~~ the accused may 1678

desire in ~~his~~ the accused's own behalf, either in defense or 1679  
mitigation, and the investigating officer shall examine reasonably 1680  
available witnesses requested by the accused. If the charges are 1681  
forwarded after the investigation, they shall be accompanied by a 1682  
statement of the substance of the testimony taken on both sides, 1683  
and a copy ~~thereof~~ of that statement shall be given to the 1684  
accused. 1685

(C) If an investigation of the subject matter of an offense 1686  
has been conducted before the accused is charged with the offense, 1687  
and if the accused was present at the investigation and afforded 1688  
the opportunities for representation, cross-examination, and 1689  
presentation prescribed in division (B) of this section, no 1690  
further investigation of that charge is necessary under this 1691  
section unless it is demanded by the accused after ~~he~~ the accused 1692  
is informed of the charge. A demand for further investigation 1693  
entitles the accused to recall witnesses for further 1694  
cross-examination and to offer any new evidence in ~~his~~ the 1695  
accused's own behalf. 1696

(D) The requirements of this section are binding on all 1697  
persons administering this code but failure to follow them does 1698  
not divest a military court of jurisdiction. 1699

**Sec. 5924.33.** When a person is held for trial by general 1700  
court-martial, the commanding officer shall, ~~within eight days not~~ 1701  
later than the eighth day after the accused is ordered into arrest 1702  
or confinement, ~~if practicable,~~ forward the charges, together with 1703  
the investigation and allied papers, to the ~~governor~~ general 1704  
court-martial convening authority. If that is not practicable, ~~he~~ 1705  
the commanding officer shall report in writing to the ~~governor~~ 1706  
convening authority the reasons for delay. 1707

**Sec. 5924.34.** (A) Before directing the trial of any charge by 1709



general court-martial, the convening authority shall refer it to 1710  
the ~~state~~ convening authority's staff judge advocate or legal 1711  
officer for consideration and advice. The convening authority may 1712  
not refer a charge to a general court-martial for trial unless ~~he~~ 1713  
the convening authority has found that the charge alleges an 1714  
offense under this code and is warranted by evidence indicated in 1715  
the report of the investigation. 1716

(B) If the charges or specifications are not formally correct 1717  
or do not conform to the substance of the evidence contained in 1718  
the report of the investigating officer, formal corrections and 1719  
such changes in the charges and specifications as are needed to 1720  
make them conform to the evidence may be made. 1721

**Sec. 5924.35.** The trial counsel to whom court-martial charges 1722  
are referred for trial shall cause to be served upon the accused a 1723  
copy of the charges upon which trial is to be had. ~~In~~ Except in 1724  
time of ~~peace~~ declared war, no person may, against ~~his~~ the 1725  
person's objection, be brought to trial or be required to 1726  
participate ~~by himself~~ alone or with counsel in a session called 1727  
by the military judge ~~under division (A) of section 5924.39 of the~~ 1728  
~~Revised Code~~, in a general or special court-martial case within ~~a~~ 1729  
~~period of five days~~ twenty-four hours after the service of charges 1730  
upon him, ~~or in a special court-martial within a period of three~~ 1731  
~~days after the service of the charges upon him~~ the person. 1732

**Sec. 5924.36.** The procedure, including modes of proof, in 1733  
cases before military courts ~~and other military tribunals~~ may be 1734  
prescribed by the ~~governor~~ adjutant general by regulations, ~~which~~ 1735  
that shall, so far as ~~he~~ the adjutant general considers 1736  
practicable, apply the principles of law and the rules of evidence 1737  
generally recognized in the trial of criminal cases in the courts 1738  
of ~~the~~ this state, but ~~which~~ that may not be contrary to or 1739  
inconsistent with this code. 1740

Sec. 5924.37. (A) No authority convening a general, special, 1741  
or summary court-martial, ~~nor any~~ other commanding officer, or 1742  
officer serving on the staff ~~thereof~~, of a convening authority or 1743  
other commanding officer may censure, reprimand, or admonish the 1744  
court or any member, military judge, or counsel ~~thereof~~ of the 1745  
court, with respect to the findings or sentence adjudged by the 1746  
court, or with respect to any other exercise of its or ~~his~~ the 1747  
member's, military judge's, or counsel's functions in the conduct 1748  
of the proceeding. No person subject to this code may attempt to 1749  
coerce or, by any unauthorized means, influence the action of the 1750  
court-martial or any other military tribunal or any member ~~thereof~~ 1751  
of the court-martial or military tribunal in reaching the findings 1752  
or sentence in any case, or the action of any convening, 1753  
approving, or reviewing authority with respect to ~~his~~ the 1754  
authority's judicial acts. This division does not apply to: 1755

(1) General instructional or informational courses in 1756  
military justice, if such courses are designed solely for the 1757  
purpose of instructing members of a command in the substantive and 1758  
procedural aspects of courts-martial; 1759

(2) Statements and instructions given in open court by the 1760  
military judge, the president of a special court-martial, or 1761  
counsel. 1762

(B) In the preparation of ~~an effectiveness, a fitness, or~~ 1763  
~~efficiency~~ evaluation, or performance report, or any other report 1764  
or document used in whole or in part for the purpose of 1765  
determining whether a member of the organized militia is qualified 1766  
to be advanced in grade, ~~or~~ in determining the assignment or 1767  
transfer of a member of the organized militia, or in determining 1768  
whether a member of the organized militia should be retained ~~in an~~ 1769  
~~active status~~ on duty, no person subject to this code may, ~~in~~ 1770  
~~preparing any such report~~ do either of the following: 1771

(1) Consider or evaluate the performance of duty of ~~any such~~ 1772  
the member as a member of a court-martial; 1773

(2) Give a less favorable rating or evaluation of any member 1774  
of the organized militia because of the zeal with which ~~such the~~ 1775  
member, as counsel, represented any accused before a 1776  
court-martial. 1777

**Sec. 5924.38.** (A) The trial counsel of a general or special 1778  
court-martial shall prosecute in the name of the state, and shall, 1779  
under the direction of the court, prepare the record of the 1780  
proceedings. 1781

(B) The accused has the right to be represented in ~~his the~~ 1782  
accused's defense before a general or special court-martial by 1783  
civilian counsel if provided by ~~him~~ the accused at the accused's 1784  
own cost, ~~or~~ by military counsel of ~~his the accused's~~ own 1785  
selection if reasonably available, or by ~~the~~ detailed military 1786  
defense counsel ~~detailed under section 5924.27 of the Revised~~ 1787  
~~Code~~. Should the accused have civilian counsel of ~~his the~~ 1788  
accused's own selection, the defense counsel, and any assistant 1789  
defense counsel, ~~if any~~, who were detailed, shall, if the accused 1790  
so desires, act as ~~his the accused's~~ associate counsel; otherwise 1791  
they shall be excused by the military judge ~~or by the president of~~ 1792  
~~a court-martial without a military judge.~~ 1793

(C) In every court-martial proceeding, the defense counsel 1794  
may, in the event of conviction, forward for attachment to the 1795  
record of proceedings a brief of such matters as ~~he the defense~~ 1796  
counsel feels should be considered in behalf of the accused on 1797  
review, including any objection to the contents of the record 1798  
which ~~he the defense counsel~~ considers appropriate. 1799

(D) An assistant trial counsel of a ~~general~~ court-martial 1800  
may, under the direction of the trial counsel or when ~~he the~~ 1801  
assistant trial counsel is qualified to be a trial counsel ~~as~~ 1802

~~required by section 5924.27 of the Revised Code, perform any duty~~ 1803  
~~imposed by law, regulation, or the custom of the service upon the~~ 1804  
~~trial counsel of the court. An assistant trial counsel of a~~ 1805  
~~special court-martial may perform any duty of the trial counsel.~~ 1806

(E) An assistant defense counsel of a general or special 1807  
court-martial may, under the direction of the defense counsel or 1808  
when ~~he~~ the assistant defense counsel is qualified to be the 1809  
defense counsel ~~as required by section 5924.27 of the Revised~~ 1810  
~~Code,~~ perform any duty imposed by law, regulation, or the custom 1811  
of the service upon counsel for the accused. 1812

**Sec. 5924.39.** (A) At any time after the service of charges 1813  
~~which~~ that have been referred for trial to a court-martial 1814  
composed of a military judge and members, the military judge may, 1815  
subject to section 5924.35 of the Revised Code, call the court 1816  
into session without the presence of the members for the following 1817  
purposes: 1818

(1) Hearing and determining motions raising defenses or 1819  
objections ~~which~~ that are capable of determination without trial 1820  
of the issues raised by a plea of not guilty; 1821

(2) Hearing and ruling upon any matter ~~which~~ that may be 1822  
ruled upon by the military judge under this code, whether or not 1823  
the matter is appropriate for later consideration or decision by 1824  
the members of the court; 1825

(3) If permitted by regulations prescribed by the governor, 1826  
holding the arraignment and receiving the pleas of the accused; 1827

(4) Performing any other procedural function ~~which~~ that may 1828  
be performed by the military judge under this code or under ~~rules~~ 1829  
regulations prescribed pursuant to section 5924.36 of the Revised 1830  
Code and ~~which~~ that does not require the presence of the members 1831  
of the court. 1832

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

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

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

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

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

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

challenged peremptorily.

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

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(1) For a member of the court:

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"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

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the court; and that you will not disclose or discover the vote or 1895  
opinion of any particular member of the court upon a challenge or 1896  
upon the findings or sentence unless required to do so before a 1897  
court of justice in due course of law. So help you God (or under 1898  
penalty of perjury)." 1899

(2) For a military judge: 1900

"You, ....., do swear (or affirm) that you will 1901  
faithfully and impartially perform, according to your conscience 1902  
and the laws and regulations provided for trials by 1903  
courts-martial, all the duties incumbent upon you as military 1904  
judge of this court; that if any doubt should arise not explained 1905  
by the laws and regulations, then according to the best of your 1906  
understanding and the customs of the service in like cases; and 1907  
that you will not divulge the findings or sentence in any case 1908  
until they shall have been duly announced by the court. So help 1909  
you God (or under penalty of perjury)." 1910

(3) For trial counsel and assistant trial counsel: 1911

"You, ....., do swear (or affirm) that you will 1912  
faithfully perform the duties of trial counsel and will not 1913  
divulge the findings or sentence of the court to any but the 1914  
proper authority until they shall be duly disclosed. So help you 1915  
God (or under penalty of perjury)." 1916

(4) For defense counsel and assistant defense counsel: 1917

"You, ....., do swear (or affirm) that you will 1918  
faithfully perform the duties of defense counsel and will not 1919  
divulge the findings or sentence of the court to any but the 1920  
proper authority until they shall be duly disclosed. So help you 1921  
God (or under penalty of perjury)." 1922

(5) For a reporter or interpreter: 1923

"You, ....., do swear (or affirm) that you will 1924

faithfully perform the duties of reporter (or interpreter) to this 1925  
court. So help you God (or under penalty of perjury)." 1926

(B) Each witness before a ~~military court~~ court-martial shall 1927  
be examined on oath or affirmation. The presiding officer shall 1928  
administer an oath or affirmation in substantially the following 1929  
form: 1930

"You, ....., do swear (or affirm) that the evidence you 1931  
shall give in the case now in hearing shall be the truth, the 1932  
whole truth, and nothing but the truth. So help you God (or under 1933  
penalty of perjury)." 1934

**Sec. 5924.43.** (A) A ~~person charged with desertion or absence~~ 1935  
~~without leave in time of war, or with aiding the enemy or with~~ 1936  
~~mutiny, or with murder, may be tried and punished at any time~~ 1937  
~~without limitation.~~ 1938

~~(B) Except as otherwise provided in this section, a person~~ 1939  
~~charged with desertion in time of peace or any of the offenses~~ 1940  
~~punishable under sections 5924.119 to 5924.132 of the Revised~~ 1941  
~~Code, is not liable to be tried by court martial if the offense~~ 1942  
~~was committed more than three years before the receipt of sworn~~ 1943  
~~charges and specifications by an officer exercising summary~~ 1944  
~~court martial jurisdiction over the command.~~ 1945

~~(C) Except as otherwise provided in this section, a person~~ 1946  
~~charged with any~~ an offense punishable under this code is not 1947  
liable to be tried by court-martial or punished under section 1948  
5924.15 of the Revised Code if the offense was committed more than 1949  
~~two~~ four years before the receipt of sworn charges and 1950  
specifications by an officer exercising ~~summary~~ court-martial 1951  
jurisdiction over the command ~~or before the imposition of~~ 1952  
~~punishment under section 5924.15 of the Revised Code.~~ 1953

~~(D)~~ (B) Periods in which the accused was absent from ~~territory~~ 1954



~~in which the state has the authority to apprehend him, or is~~ 1955  
~~the custody of civil authorities, or in the hands of the enemy,~~ 1956  
~~shall be excluded in computing the period of limitation prescribed~~ 1957  
~~in this section.~~ 1958

**Sec. 5924.44.** (A) No person may, ~~without his consent,~~ be 1959  
tried a second time in any ~~military or civil court~~ court-martial 1960  
of ~~the~~ this state for the same offense. 1961

(B) No proceeding in which an accused has been found guilty 1962  
by a court-martial upon any charge or specification is a trial ~~in~~ 1963  
~~the sense for purposes~~ of this section until the finding of guilty 1964  
has become final after review of the case has been fully 1965  
completed. 1966

(C) A proceeding ~~which~~ that, after the introduction of 1967  
evidence but before a finding, is dismissed or terminated by the 1968  
convening authority or on motion of the prosecution for ~~failure~~ 1969  
want of available evidence or witnesses without any fault of the 1970  
accused is a trial ~~in the sense for purposes~~ of this section. 1971

**Sec. 5924.45.** (A) ~~If an~~ An accused after arraignment ~~makes an~~ 1972  
~~irregular pleading, or after a plea of guilty sets up matter~~ 1973  
~~inconsistent with the plea, or if it appears that he has entered~~ 1974  
~~the plea of guilty improvidently or through lack of understanding~~ 1975  
~~of its meaning and effect, or if he fails or refuses to~~ may plead, 1976  
a plea of not guilty shall be entered in the record, and the court 1977  
shall proceed as though he had pleaded not guilty. 1978

~~(B) A plea of guilty by the accused may not be accepted to~~ 1979  
~~any charge or specification alleging an offense for which the~~ 1980  
~~death penalty may be adjudged. If a plea of guilty has been~~ 1981  
~~accepted by the military judge or by a court martial without a~~ 1982  
~~military judge, a finding of guilty, if permitted by regulations~~ 1983  
~~promulgated by the governor, shall be entered immediately without~~ 1984

~~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.~~

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

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(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:

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

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(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;

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(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.

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(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;

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(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

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accused's answers may later be used against the accused in a 2016  
prosecution for perjury or false statement. 2017

(D) The military judge shall not accept a plea of guilty 2018  
without first addressing the accused personally and determining 2019  
that the plea is voluntary and not the result of fear, threats, or 2020  
promises. The military judge shall also inquire as to whether the 2021  
accused's willingness to plead guilty results from prior 2022  
discussions between the convening authority, a representative of 2023  
the convening authority, or trial counsel and the accused or 2024  
defense counsel. 2025

(E) The military judge shall not accept a plea of guilty 2026  
without making an inquiry of the accused that satisfies the 2027  
military judge that there is a factual basis for the plea. The 2028  
accused shall be questioned under oath about the offenses charged. 2029

(F) When a negotiated plea of guilty or no contest to one or 2030  
more offenses charged or to one or more other or lesser offenses 2031  
is offered, the underlying agreement upon which the plea is based 2032  
shall be stated on the record in open court. 2033

(G) If the court refuses to accept a plea of guilty or no 2034  
contest, the court shall enter a plea of not guilty on behalf of 2035  
the accused, and neither plea shall be admissible in evidence or 2036  
be the subject of comment by the trial counsel or court. 2037

(H) The defense of not guilty by reason of insanity must be 2038  
pleaded at the time of arraignment, except that the court for good 2039  
cause shown shall permit a plea of not guilty by reason of 2040  
insanity to be entered at any time before trial. 2041

(I) A motion to withdraw a plea of guilty or no contest may 2042  
be made only before sentence is imposed, but to correct manifest 2043  
injustice the court after sentence may set aside the judgment of 2044  
conviction and permit the accused to withdraw the plea. 2045

(J) An accused who is found guilty after pleading guilty 2046

waives any objection, whether or not previously raised, relating 2047  
to the factual issue of guilt of the offense to which the plea was 2048  
made. 2049

**Sec. 5924.46.** (A) The trial counsel, the defense counsel, and 2050  
the court-martial shall have equal opportunity to obtain witnesses 2051  
and other evidence in accordance with such regulations as the 2052  
~~governor~~ adjutant general may prescribe. 2053

(B) ~~The president of a court martial or a summary court~~ 2054  
~~officer may:~~ 2055

~~(1) Issue a warrant for the arrest of any accused person who,~~ 2056  
~~having been served with a warrant and a copy of the charges,~~ 2057  
~~disobeys a written order by the convening authority to appear~~ 2058  
~~before the court;~~ 2059

~~(2) Issue subpoenas duces tecum and other subpoenas;~~ 2060

~~(3) Enforce by attachment the attendance of witnesses and the~~ 2061  
~~production of books and papers; and~~ 2062

~~(4) Sentence for refusal to be sworn or to answer, as~~ 2063  
~~provided in actions before civil courts of the state.~~ 2064

~~(C)~~ Process issued in court-martial cases to compel witnesses 2065  
to appear and testify and to compel the production of other 2066  
evidence shall be substantially similar to process that may be 2067  
issued by the courts of this state in criminal cases and shall run 2068  
to any part of the state. 2069

**Sec. 5924.47.** ~~(A)~~ Any person not subject to this code who: 2070

~~(1) Has~~ has been duly subpoenaed to appear as a witness or to 2071  
produce books and records before a military court or before any 2072  
military or civil officer designated to take a deposition to be 2073  
read in evidence before ~~such~~ a military court: 2074

~~(2) Has~~ or has been duly paid or tendered the fees and 2075

mileage of a witness at the rates provided for under section 2076  
119.094 of the Revised Code<sup>+</sup> and 2077

~~(3) Willfully~~ who willfully neglects or refuses to appear, or 2078  
refuses to qualify as a witness or to testify or to produce any 2079  
evidence ~~which~~ that the person may have been legally subpoenaed to 2080  
produce; ~~is guilty of an offense against the state and,~~ may be 2081  
punished for contempt in the ~~same~~ manner ~~as if committed before~~ 2082  
~~civil courts of the state~~ provided for in Chapter 2705. of the 2083  
Revised Code. 2084

**Sec. 5924.48.** A military court, in the manner provided for in 2085  
Chapter 2705. of the Revised Code, may punish for contempt any 2086  
person who ~~uses any menacing word, sign, or gesture in its~~ 2087  
~~presence, or who disturbs its proceedings by any riot or disorder.~~ 2088  
~~The punishment may not exceed confinement for thirty days or a~~ 2089  
~~fine of one hundred dollars, or both~~ is guilty of any act 2090  
described in section 2705.02 of the Revised Code. 2091

**Sec. 5924.49.** ~~(A)~~ At any time after charges have been signed 2092  
as provided in section 5924.30 of the Revised Code, any party may 2093  
take oral or written depositions ~~unless the military judge or~~ 2094  
~~court martial without a military judge hearing the case or, if the~~ 2095  
~~case is not being heard, an authority competent to convene a~~ 2096  
~~court martial for the trial of those charges forbids it for good~~ 2097  
~~cause. If a deposition is to be taken before charges are referred~~ 2098  
~~for trial, such an authority may designate commissioned officers~~ 2099  
~~to represent the prosecution and the defense and may authorize~~ 2100  
~~those officers to take the deposition of any witness.~~ 2101

~~(B) The party at whose instance a deposition is to be taken~~ 2102  
~~shall give to every other party reasonable written notice of the~~ 2103  
~~time and place for taking the deposition.~~ 2104

~~(C) Depositions may be taken before and authenticated by any~~ 2105

~~military or civil officer authorized by the laws of the state or~~ 2106  
~~by the laws of the place where the deposition is taken to~~ 2107  
~~administer oaths.~~ 2108

~~(D) A duly authenticated deposition, taken upon reasonable~~ 2109  
~~notice to the other parties, so far as otherwise admissible under~~ 2110  
~~the rules of evidence, may be read in evidence before any~~ 2111  
~~court martial or in any proceeding before a court of inquiry, if~~ 2112  
~~it appears:~~ 2113

~~(1) That the witness resides or is beyond the state in which~~ 2114  
~~the court martial or court of inquiry is ordered to sit, or beyond~~ 2115  
~~the distance of one hundred miles from the place of trial or~~ 2116  
~~hearing;~~ 2117

~~(2) That the witness by reason of death, age, sickness,~~ 2118  
~~bodily infirmity, imprisonment, military necessity, nonamenability~~ 2119  
~~to process, or other reasonable cause, is unable or refused to~~ 2120  
~~appear and testify in person at the place of trial or hearing;~~ 2121

~~(3) That the present whereabouts of the witness is unknown;~~ 2122  
~~or~~ 2123

~~(4) That the deposition was taken in the physical presence of~~ 2124  
~~the accused in the manner and for the purposes provided in the~~ 2125  
~~Ohio Rules of Criminal Procedure.~~ 2126

**Sec. 5924.50.** (A) In any case ~~not capital and not extending~~ 2127  
~~to the dismissal of a commissioned officer,~~ the sworn testimony, 2128  
contained in the duly authenticated record of proceedings of a 2129  
~~court board of inquiry,~~ officers of a person whose oral testimony 2130  
cannot be obtained, may, if otherwise admissible under the rules 2131  
of evidence, be read in evidence by any party before a 2132  
court-martial if the accused was a party before the ~~court board of~~ 2133  
~~inquiry~~ officers and if the same issue was involved or if the 2134  
accused consents to the introduction of such evidence, ~~and if the~~ 2135

~~accused was physically present when the testimony was taken.~~ 2136

(B) Such testimony may be read in evidence only by the 2137  
defense in cases extending to the dismissal of a commissioned 2138  
officer. 2139

(C) Such testimony may also be read in evidence before a 2140  
court of inquiry or a ~~military~~ board of officers. 2141

Sec. 5924.501. (A) In an action under this code, the military 2142  
judge, trial counsel, defense counsel, or civilian counsel may 2143  
raise the issue of the accused's competence to stand trial. If the 2144  
issue is raised before the trial has commenced, the court shall 2145  
hold a hearing on the issue as provided in this section. If the 2146  
issue is raised after the trial has commenced, the court shall 2147  
hold a hearing on the issue only for good cause shown or on the 2148  
court's own motion. 2149

(B) The court shall conduct the hearing required or 2150  
authorized under division (A) of this section within thirty days 2151  
after the issue is raised unless the accused has been referred for 2152  
evaluation in which case the court shall conduct the hearing 2153  
within ten days after the filing of the report of the evaluation. 2154  
A hearing may be continued for good cause. 2155

(C) The accused shall be represented by counsel at the 2156  
hearing conducted under division (B) of this section. 2157

(D) The trial counsel and defense counsel may submit evidence 2158  
on the issue of the accused's competence to stand trial. A written 2159  
report of the evaluation of the accused may be admitted into 2160  
evidence at the hearing by stipulation, but, if either the 2161  
government or defense objects to its admission, the report may be 2162  
admitted under seal of court in camera to the military judge. 2163

(E) The court shall not find an accused incompetent to stand 2164  
trial solely because the accused is receiving or has received 2165

treatment as a voluntary or involuntary mentally ill patient under 2166  
Chapter 5122. of the Revised Code or because the accused is 2167  
receiving or has received psychotropic drugs or other medication, 2168  
even if the accused might become incompetent to stand trial 2169  
without the drugs or medication. 2170

(F) An accused is presumed to be competent to stand trial. 2171  
If, after a hearing, the court finds by a preponderance of the 2172  
evidence that, because of the accused's present mental condition, 2173  
the accused is incapable of understanding the nature and objective 2174  
of the proceedings against the accused or of assisting in the 2175  
accused's defense, the court shall find the accused incompetent to 2176  
stand trial and shall enter an order authorized by section 2177  
5924.503 of the Revised Code. 2178

**Sec. 5924.502.** (A) If the issue of an accused's competence to 2179  
stand trial is raised or if an accused enters a plea of not guilty 2180  
by reason of insanity, the court may order one or more evaluations 2181  
of the accused's present mental condition or, in the case of a 2182  
plea of not guilty by reason of insanity, of the accused's mental 2183  
condition at the time of the offense charged. An examiner shall 2184  
conduct the evaluation. 2185

(B) If the court orders more than one evaluation under 2186  
division (A) of this section, the trial counsel and the defense 2187  
counsel may recommend to the court an examiner whom each prefers 2188  
to perform one of the evaluations. If an accused enters a plea of 2189  
not guilty by reason of insanity and if the court does not 2190  
designate an examiner recommended by the defense counsel, the 2191  
court shall inform the accused that the accused may have 2192  
independent expert evaluation and that it will be obtained for the 2193  
accused at public expense. 2194

(C) If the court orders an evaluation under division (A) of 2195  
this section, the accused shall be available at the times and 2196



places established by the examiners who are to conduct the 2197  
evaluation. The court may order an accused who is not being held 2198  
in pretrial confinement to submit to an evaluation under this 2199  
section. If an accused who is not being held in pretrial 2200  
confinement refuses to submit to a complete evaluation, the court 2201  
may order the sheriff to take the accused into custody and deliver 2202  
the accused to a center, program, or facility operated or 2203  
certified by the department of mental health where the accused may 2204  
be held for evaluation for a reasonable period of time not to 2205  
exceed twenty days. 2206

(D) An accused who is being held in pretrial confinement may 2207  
be evaluated at the accused's place of detention. Upon the request 2208  
of the examiner, the court may order the sheriff to transport the 2209  
accused to a program or facility operated or certified by the 2210  
department of mental health, where the accused may be held for 2211  
evaluation for a reasonable period of time not to exceed twenty 2212  
days, and to return the accused to the place of detention after 2213  
the evaluation. 2214

(E) If a court orders the evaluation to determine an 2215  
accused's mental condition at the time of the offense charged, the 2216  
court shall inform the examiner of the offense with which the 2217  
accused is charged. 2218

(F) In conducting an evaluation of an accused's mental 2219  
condition at the time of the offense charged, the examiner shall 2220  
consider all relevant evidence. If the offense charged involves 2221  
the use of force against another person, the relevant evidence to 2222  
be considered includes, but is not limited to, any evidence that 2223  
the accused suffered at the time of the commission of the offense 2224  
from the "battered woman syndrome." 2225

(G) The examiner shall file a written report with the court 2226  
within thirty days after entry of a court order for evaluation, 2227  
and the court shall provide copies of the report to the trial 2228

counsel and defense counsel. The report shall include all of the 2229  
following: 2230

(1) The examiner's findings; 2231

(2) The facts in reasonable detail on which the findings are 2232  
based; 2233

(3) If the evaluation was ordered to determine the accused's 2234  
competence to stand trial, all of the following findings or 2235  
recommendations that are applicable: 2236

(a) Whether the accused is capable of understanding the 2237  
nature and objective of the proceedings against the accused or of 2238  
assisting in the accused's defense; 2239

(b) If the examiner's opinion is that the accused is 2240  
incapable of understanding the nature and objective of the 2241  
proceedings against the accused or of assisting in the accused's 2242  
defense, whether the accused presently is mentally ill; 2243

(c) If the examiner's opinion is that the accused is 2244  
incapable of understanding the nature and objective of the 2245  
proceedings against the accused or of assisting in the accused's 2246  
defense, the examiner's opinion as to the likelihood of the 2247  
accused becoming capable of understanding the nature and objective 2248  
of the proceedings against the accused and of assisting in the 2249  
accused's defense within one year if the accused is provided with 2250  
a course of treatment; 2251

(d) If the examiner's opinion is that the accused is 2252  
incapable of understanding the nature and objective of the 2253  
proceedings against the accused or of assisting in the accused's 2254  
defense and that the accused presently is mentally ill, the 2255  
examiner's recommendation as to the least restrictive placement or 2256  
commitment alternative, consistent with the accused's treatment 2257  
needs for restoration to competency and with the safety of the 2258  
community; 2259

(e) If the accused is charged before a special or summary 2260  
court-martial with an offense that is not a violation of section 2261  
5924.120, 5924.127, or 5924.128 of the Revised Code and the 2262  
examiner's opinion is that the accused is incapable of 2263  
understanding the nature and objective of the proceedings against 2264  
the accused or of assisting in the accused's defense and that the 2265  
accused is presently mentally ill, the examiner's recommendation 2266  
as to whether the accused is amenable to engagement in mental 2267  
health treatment. 2268

(4) If the evaluation was ordered to determine the accused's 2269  
mental condition at the time of the offense charged, the 2270  
examiner's findings as to whether the accused at the time of the 2271  
offense charged did not know, as a result of a severe mental 2272  
disease or defect, the wrongfulness of the accused's acts charged. 2273

(H) An examiner appointed under divisions (A) and (B) of this 2274  
section to evaluate an accused to determine the accused's 2275  
competence to stand trial also may be appointed to evaluate an 2276  
accused who has entered a plea of not guilty by reason of 2277  
insanity, but an examiner of that nature shall prepare separate 2278  
reports on the issue of competence to stand trial and the defense 2279  
of not guilty by reason of insanity. 2280

(I) No statement that an accused makes in an evaluation or 2281  
hearing under divisions (A) to (H) of this section relating to the 2282  
accused's competence to stand trial or to the accused's mental 2283  
condition at the time of the offense charged may be used against 2284  
the accused on the issue of guilt in any criminal action or 2285  
proceeding, but, in a criminal action or proceeding, the trial 2286  
counsel or defense counsel may call as a witness any person who 2287  
evaluated the accused or prepared a report pursuant to a referral 2288  
under this section. Neither the appointment nor the testimony of 2289  
an examiner appointed under this section precludes the trial 2290  
counsel or defense counsel from calling other witnesses or 2291

presenting other evidence on competency or insanity issues. 2292

(J) Persons appointed as examiners under divisions (A) and 2293  
(B) of this section or under division (H) of this section shall be 2294  
paid a reasonable amount for their services and expenses, as 2295  
certified by the court. 2296

**Sec. 5924.503.** (A) If the issue of an accused's competence to 2297  
stand trial is raised and if the court, upon conducting the 2298  
hearing provided for in section 5924.502 of the Revised Code, 2299  
finds that the accused is competent to stand trial, the accused 2300  
shall be proceeded against as provided by law. If the court finds 2301  
the accused competent to stand trial and the accused is receiving 2302  
psychotropic drugs or other medication, the court may authorize 2303  
the continued administration of the drugs or medication or other 2304  
appropriate treatment in order to maintain the accused's 2305  
competence to stand trial unless the accused's attending physician 2306  
advises the court against continuation of the drugs, other 2307  
medication, or treatment. 2308

(B)(1)(a) If, after taking into consideration all relevant 2309  
reports, information, and other evidence, the court finds that the 2310  
accused is incompetent to stand trial and that there is a 2311  
substantial probability that the accused will become competent to 2312  
stand trial within one year if the accused is provided with a 2313  
course of treatment, the court shall order the accused to undergo 2314  
treatment. If the accused is being tried by a general 2315  
court-martial and if, after taking into consideration all relevant 2316  
reports, information, and other evidence, the court finds that the 2317  
accused is incompetent to stand trial, but the court is unable at 2318  
that time to determine whether there is a substantial probability 2319  
that the accused will become competent to stand trial within one 2320  
year if the accused is provided with a course of treatment, the 2321  
court shall order continuing evaluation and treatment of the 2322

accused for a period not to exceed four months to determine 2323  
whether there is a substantial probability that the accused will 2324  
become competent to stand trial within one year if the accused is 2325  
provided with a course of treatment. 2326

(b) The court order for the accused to undergo treatment or 2327  
continuing evaluation and treatment under division (B)(1)(a) of 2328  
this section shall specify that the accused, if determined to 2329  
require mental health treatment or continuing evaluation and 2330  
treatment, shall be committed to the department of mental health 2331  
for treatment or continuing evaluation and treatment at a 2332  
hospital, facility, or agency determined to be clinically 2333  
appropriate by the department of mental health. The order may 2334  
restrict the accused's freedom of movement as the court considers 2335  
necessary. The trial counsel in the accused's case shall send to 2336  
the chief clinical officer of the hospital, facility, or agency 2337  
where the accused is placed by the department of mental health or 2338  
to the managing officer of the institution, the director of the 2339  
facility, or the person to which the accused is committed copies 2340  
of relevant investigative reports and other background information 2341  
that pertains to the accused and is available to the trial counsel 2342  
unless the trial counsel determines that the release of any of the 2343  
information in the investigative reports or any of the other 2344  
background information to unauthorized persons would interfere 2345  
with the effective prosecution of any person or would create a 2346  
substantial risk of harm to any person. 2347

In committing the accused to the department of mental health, 2348  
the court shall consider the extent to which the person is a 2349  
danger to the person and to others, the need for security, and the 2350  
type of crime involved and, if the court finds that restrictions 2351  
on the accused's freedom of movement are necessary, shall specify 2352  
the least restrictive limitations on the person's freedom of 2353  
movement determined to be necessary to protect public safety. In 2354

weighing these factors, the court shall give preference to 2355  
protecting public safety. 2356

(c) If the accused is found incompetent to stand trial, if 2357  
the chief clinical officer of the hospital, facility, or agency 2358  
where the accused is placed, or the managing officer of the 2359  
institution, the director of the facility, or the person to which 2360  
the accused is committed for treatment or continuing evaluation 2361  
and treatment under division (B)(1)(b) of this section determines 2362  
that medication is necessary to restore the accused's competency 2363  
to stand trial, and if the accused lacks the capacity to give 2364  
informed consent or refuses medication, the chief clinical officer 2365  
of the hospital, facility, or agency where the accused is placed 2366  
or the managing officer of the institution, the director of the 2367  
facility, or the person to which the accused is committed for 2368  
treatment or continuing evaluation and treatment may petition the 2369  
court for authorization for the involuntary administration of 2370  
medication. The court shall hold a hearing on the petition within 2371  
five days of the filing of the petition. Following the hearing, 2372  
the court may authorize the involuntary administration of 2373  
medication or may dismiss the petition. 2374

(d) If the accused is charged before a special or summary 2375  
court-martial with an offense that is not a violation of section 2376  
5924.120, 5924.127, or 5924.128 of the Revised Code, the trial 2377  
counsel may hold the charges in abeyance while the accused engages 2378  
in mental health treatment. 2379

(2) If the court finds that the accused is incompetent to 2380  
stand trial and that, even if the accused is provided with a 2381  
course of treatment, there is not a substantial probability that 2382  
the accused will become competent to stand trial within one year, 2383  
the court shall order the discharge of the accused, unless upon 2384  
motion of the trial counsel or on its own motion, the court either 2385  
seeks to retain jurisdiction over the accused pursuant to division 2386

(A)(2) of section 5924.504 of the Revised Code or files an 2387  
affidavit in the probate court for the civil commitment of the 2388  
accused pursuant to Chapter 5122. of the Revised Code alleging 2389  
that the accused is a mentally ill person subject to 2390  
hospitalization by court order. If an affidavit is filed in the 2391  
probate court, the trial court shall send to the probate court 2392  
copies of all written reports of the accused's mental condition 2393  
that were prepared pursuant to section 5924.502 of the Revised 2394  
Code. 2395

The trial court may issue the temporary order of detention 2396  
that a probate court may issue under section 5122.11 of the 2397  
Revised Code, to remain in effect until the probable cause or 2398  
initial hearing in the probate court. Further proceedings in the 2399  
probate court are civil proceedings governed by Chapter 5122. of 2400  
the Revised Code. 2401

(C) No accused shall be required to undergo treatment, 2402  
including any continuing evaluation and treatment, under division 2403  
(B)(1) of this section for longer than whichever of the following 2404  
periods is applicable: 2405

(1) One year, if the accused is being tried by a general 2406  
court-martial; 2407

(2) Six months, if the accused is being tried before a 2408  
special court-martial; 2409

(3) Sixty days, if the accused is being tried before a 2410  
summary court-martial. 2411

(D) Any accused who is committed pursuant to this section 2412  
shall not voluntarily admit the accused or be voluntarily admitted 2413  
to a hospital or institution pursuant to section 5122.02 or 2414  
5122.15 of the Revised Code. 2415

(E) Except as otherwise provided in this division, an accused 2416  
who is charged with an offense and is committed by the court under 2417

this section to the department of mental health with restrictions 2418  
on the accused's freedom of movement shall not be granted 2419  
unsupervised on-grounds movement, supervised off-grounds movement, 2420  
or nonsecured status except in accordance with the court order. 2421  
The court may grant an accused supervised off-grounds movement to 2422  
obtain medical treatment or specialized habilitation treatment 2423  
services if the person who supervises the treatment or the 2424  
continuing evaluation and treatment of the accused ordered under 2425  
division (B)(1)(a) of this section informs the court that the 2426  
treatment or continuing evaluation and treatment cannot be 2427  
provided at the hospital or facility where the accused is placed 2428  
by the department of mental health. The chief clinical officer of 2429  
the hospital or facility where the accused is placed by the 2430  
department of mental health or the managing officer of the 2431  
institution or director of the facility to which the accused is 2432  
committed or a designee of any of those persons may grant an 2433  
accused movement to a medical facility for an emergency medical 2434  
situation with appropriate supervision to ensure the safety of the 2435  
accused, staff, and community during that emergency medical 2436  
situation. The chief clinical officer of the hospital or facility 2437  
where the accused is placed by the department of mental health or 2438  
the managing officer of the institution or director of the 2439  
facility to which the accused is committed shall notify the court 2440  
within twenty-four hours of the accused's movement to the medical 2441  
facility for an emergency medical situation under this division. 2442

(F) The person who supervises the treatment or continuing 2443  
evaluation and treatment of an accused ordered to undergo 2444  
treatment or continuing evaluation and treatment under division 2445  
(B)(1)(a) of this section shall file a written report with the 2446  
court at the following times: 2447

(1) Whenever the person believes the accused is capable of 2448  
understanding the nature and objective of the proceedings against 2449



the accused and of assisting in the accused's defense; 2450

(2) Fourteen days before expiration of the maximum time for 2451  
treatment as specified in division (C) of this section and 2452  
fourteen days before the expiration of the maximum time for 2453  
continuing evaluation and treatment as specified in division 2454  
(B)(1)(a) of this section; 2455

(3) At a minimum, after each six months of treatment; 2456

(4) Whenever the person who supervises the treatment or 2457  
continuing evaluation and treatment of an accused ordered under 2458  
division (B)(1)(a) of this section believes that there is not a 2459  
substantial probability that the accused will become capable of 2460  
understanding the nature and objective of the proceedings against 2461  
the accused or of assisting in the accused's defense even if the 2462  
accused is provided with a course of treatment. 2463

(G) A report under division (F) of this section shall contain 2464  
the examiner's findings, the facts in reasonable detail on which 2465  
the findings are based, and the examiner's opinion as to the 2466  
accused's capability of understanding the nature and objective of 2467  
the proceedings against the accused and of assisting in the 2468  
accused's defense. If, in the examiner's opinion, the accused 2469  
remains incapable of understanding the nature and objective of the 2470  
proceedings against the accused and of assisting in the accused's 2471  
defense and there is a substantial probability that the accused 2472  
will become capable of understanding the nature and objective of 2473  
the proceedings against the accused and of assisting in the 2474  
accused's defense if the accused is provided with a course of 2475  
treatment, if in the examiner's opinion the accused remains 2476  
mentally ill, and if the maximum time for treatment as specified 2477  
in division (C) of this section has not expired, the report also 2478  
shall contain the examiner's recommendation as to the least 2479  
restrictive placement or commitment alternative that is consistent 2480  
with the accused's treatment needs for restoration to competency 2481

and with the safety of the community. The court shall provide 2482  
copies of the report to the trial counsel and defense counsel. 2483

(H) If an accused is committed pursuant to division (B)(1) of 2484  
this section, within ten days after the treating physician of the 2485  
accused or the examiner of the accused who is employed or retained 2486  
by the treating facility advises that there is not a substantial 2487  
probability that the accused will become capable of understanding 2488  
the nature and objective of the proceedings against the accused or 2489  
of assisting in the accused's defense even if the accused is 2490  
provided with a course of treatment, within ten days after the 2491  
expiration of the maximum time for treatment as specified in 2492  
division (C) of this section, within ten days after the expiration 2493  
of the maximum time for continuing evaluation and treatment as 2494  
specified in division (B)(1)(a) of this section, within thirty 2495  
days after an accused's request for a hearing that is made after 2496  
six months of treatment, or within thirty days after being advised 2497  
by the treating physician or examiner that the accused is 2498  
competent to stand trial, whichever is the earliest, the court 2499  
shall conduct another hearing to determine if the accused is 2500  
competent to stand trial and shall do whichever of the following 2501  
is applicable: 2502

(1) If the court finds that the accused is competent to stand 2503  
trial, the accused shall be proceeded against as provided by law. 2504

(2) If the court finds that the accused is incompetent to 2505  
stand trial, but that there is a substantial probability that the 2506  
accused will become competent to stand trial if the accused is 2507  
provided with a course of treatment, and the maximum time for 2508  
treatment as specified in division (C) of this section has not 2509  
expired, the court, after consideration of the examiner's 2510  
recommendation, shall order that treatment be continued, may 2511  
change least restrictive limitations on the accused's freedom of 2512  
movement. 2513

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

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

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

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

the accused, send the notice at least ten days prior to the 2546  
discharge unless the discharge is by the probate court and state 2547  
in the notice the date on which the accused will be discharged; 2548

(ii) Notify the trial counsel in writing when the accused is 2549  
absent without leave or is granted unsupervised, off-grounds 2550  
movement and send this notice promptly after the discovery of the 2551  
absence without leave or prior to the granting of the 2552  
unsupervised, off-grounds movement, whichever is applicable; 2553

(iii) Notify the trial counsel in writing of the change of 2554  
the accused's commitment or admission to voluntary status, send 2555  
the notice promptly upon learning of the change to voluntary 2556  
status, and state in the notice the date on which the accused was 2557  
committed or admitted on a voluntary status. 2558

(b) The trial counsel shall promptly inform the convening 2559  
authority of any notification received under division (H)(4)(a) of 2560  
this section. Upon receiving notice that the accused will be 2561  
granted unsupervised, off-grounds movement, the convening 2562  
authority either shall refer the charges against the accused to an 2563  
investigating officer again or promptly notify the court that the 2564  
convening authority does not intend to refer the charges against 2565  
the accused again. 2566

(I) If an accused is convicted of a crime and sentenced to 2567  
confinement, the accused's sentence shall be reduced by the total 2568  
number of days the accused is confined for evaluation to determine 2569  
the accused's competence to stand trial or treatment under this 2570  
section and sections 5924.502 and 5924.504 of the Revised Code or 2571  
by the total number of days the accused is confined for evaluation 2572  
to determine the accused's mental condition at the time of the 2573  
offense charged. 2574

**Sec. 5924.504.** (A) If an accused being tried by a general 2575  
court-martial is found incompetent to stand trial, after the 2576

expiration of the maximum time for treatment as specified in 2577  
division (C) of section 5924.503 of the Revised Code or after the 2578  
court finds that there is not a substantial probability that the 2579  
accused will become competent to stand trial even if the accused 2580  
is provided with a course of treatment, one of the following 2581  
applies: 2582

(1) The court or the trial counsel may file an affidavit in 2583  
probate court for civil commitment of the accused in the manner 2584  
provided in Chapter 5122. of the Revised Code. If the court or 2585  
trial counsel files an affidavit for civil commitment, the court 2586  
may detain the accused for ten days pending civil commitment. If 2587  
the probate court commits the accused subsequent to the court's or 2588  
trial counsel's filing of an affidavit for civil commitment, the 2589  
chief clinical officer of the entity, hospital, or facility, the 2590  
managing officer of the institution, or the person to which the 2591  
accused is committed or admitted shall send to the trial counsel 2592  
the notices described in divisions (H)(4)(a)(i) to (iii) of 2593  
section 5924.503 of the Revised Code within the periods of time 2594  
and under the circumstances specified in those divisions. 2595

(2) On the motion of the trial counsel or on its own motion, 2596  
the court may retain jurisdiction over the accused if at a hearing 2597  
the court finds both of the following by clear and convincing 2598  
evidence: 2599

(a) The accused committed the offense with which the accused 2600  
is charged. 2601

(b) The accused is a mentally ill person subject to 2602  
hospitalization by court order. 2603

(B) In making its determination under division (A)(2) of this 2604  
section as to whether to retain jurisdiction over the accused, the 2605  
court may consider all relevant evidence, including, but not 2606  
limited to, any relevant psychiatric, psychological, or medical 2607

testimony or reports, the acts constituting the offense charged, 2608  
and any history of the accused that is relevant to the accused's 2609  
ability to conform to the law. 2610

(C) If the court conducts a hearing as described in division 2611  
(A)(2) of this section and if the court does not make both 2612  
findings described in divisions (A)(2)(a) and (b) of this section 2613  
by clear and convincing evidence, the court shall dismiss the 2614  
charges against the accused. Upon the dismissal, the court shall 2615  
discharge the accused unless the court or trial counsel files an 2616  
affidavit in probate court for civil commitment of the accused 2617  
pursuant to Chapter 5122. of the Revised Code. If the court or 2618  
trial counsel files an affidavit for civil commitment, the court 2619  
may order that the accused be detained for up to ten days pending 2620  
the civil commitment. If the probate court commits the accused 2621  
subsequent to the court's or trial counsel's filing of an 2622  
affidavit for civil commitment, the chief clinical officer of the 2623  
entity, hospital, or facility, the managing officer of the 2624  
institution, or the person to which the accused is committed or 2625  
admitted shall send to the trial counsel the notices described in 2626  
divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised 2627  
Code within the periods of time and under the circumstances 2628  
specified in those divisions. A dismissal of charges under this 2629  
division is not a bar to further criminal proceedings based on the 2630  
same conduct. 2631

(D)(1) If the court conducts a hearing as described in 2632  
division (A)(2) of this section and if the court makes the 2633  
findings described in divisions (A)(2)(a) and (b) of this section 2634  
by clear and convincing evidence, the court shall commit the 2635  
accused, if determined to require mental health treatment, to the 2636  
department of mental health for treatment at a hospital, facility, 2637  
or agency as determined clinically appropriate by the department 2638  
of mental health. In committing the accused to the department of 2639

mental health, the court shall specify the least restrictive 2640  
limitations on the accused's freedom of movement determined to be 2641  
necessary to protect public safety. 2642

(2) If a court makes a commitment of an accused under 2643  
division (D)(1) of this section, the trial counsel shall send to 2644  
the hospital, facility, or agency where the accused is placed by 2645  
the department of mental health or to the accused's place of 2646  
commitment all reports of the accused's current mental condition 2647  
and, except as otherwise provided in this division, any other 2648  
relevant information, including, but not limited to, a transcript 2649  
of the hearing held pursuant to division (A)(2) of this section, 2650  
copies of relevant investigative reports, and copies of any prior 2651  
arrest and conviction records that pertain to the accused and that 2652  
the trial counsel possesses. The trial counsel shall send the 2653  
reports of the accused's current mental condition in every case of 2654  
commitment, and, unless the trial counsel determines that the 2655  
release of any of the other relevant information to unauthorized 2656  
persons would interfere with the effective prosecution of any 2657  
person or would create a substantial risk of harm to any person, 2658  
the trial counsel also shall send the other relevant information. 2659

(3) If a court makes a commitment under division (D)(1) of 2660  
this section, all further proceedings shall be in accordance with 2661  
Chapter 5122. of the Revised Code. 2662

**Sec. 5924.505.** For purposes of sections 5924.502 and 5924.506 2663  
of the Revised Code, a person is "not guilty by reason of 2664  
insanity" relative to a charge of an offense only as described in 2665  
division (A)(14) of section 2901.01 of the Revised Code. Proof 2666  
that a person's reason, at the time of the commission of an 2667  
offense, was so impaired that the person did not have the ability 2668  
to refrain from doing the person's act or acts, does not 2669  
constitute a defense. 2670

Sec. 5924.506. (A) If an accused person is found not guilty 2671  
by reason of insanity, the verdict shall state that finding, and 2672  
the trial court shall conduct a full hearing to determine whether 2673  
the person is a mentally ill person subject to hospitalization by 2674  
court order. Prior to the hearing, if the military judge believes 2675  
that there is probable cause that the person found not guilty by 2676  
reason of insanity is a mentally ill person subject to 2677  
hospitalization by court order, the military judge may issue a 2678  
temporary order of detention for that person to remain in effect 2679  
for ten court days or until the hearing, whichever occurs first. 2680

Any person detained pursuant to a temporary order of 2681  
detention issued under this division shall be held in a suitable 2682  
facility, taking into consideration the place and type of 2683  
confinement prior to and during trial. 2684

(B) The court shall hold the hearing under division (A) of 2685  
this section to determine whether the person found not guilty by 2686  
reason of insanity is a mentally ill person subject to 2687  
hospitalization by court order within ten court days after the 2688  
finding of not guilty by reason of insanity. Failure to conduct 2689  
the hearing within the ten-day period shall cause the immediate 2690  
discharge of the respondent, unless the judge grants a continuance 2691  
for not longer than ten court days for good cause shown or for any 2692  
period of time upon motion of the respondent. 2693

(C) If a person is found not guilty by reason of insanity, 2694  
the person has the right to attend a hearing conducted pursuant to 2695  
this section. At the hearing, the court shall inform the person 2696  
that the person has all of the following rights: 2697

(1) The right to be represented by defense counsel or to 2698  
retain civilian counsel, if the person so chooses; 2699

(2) The right to have independent expert evaluation; 2700



(3) The right to subpoena witnesses and documents, to present 2701  
evidence on the person's behalf, and to cross-examine witnesses 2702  
against the person; 2703

(4) The right to testify in the person's own behalf and to 2704  
not be compelled to testify; 2705

(5) The right to have copies of any relevant medical or 2706  
mental health document in the custody of the state or of any place 2707  
of commitment other than a document for which the court finds that 2708  
the release to the person of information contained in the document 2709  
would create a substantial risk of harm to any person. 2710

(D) The hearing under division (A) of this section shall be 2711  
open to the public, and the court shall conduct the hearing in 2712  
accordance with regulations prescribed by the adjutant general. 2713  
The court shall make and maintain a full transcript and record of 2714  
the hearing proceedings. The court may consider all relevant 2715  
evidence, including, but not limited to, any relevant psychiatric, 2716  
psychological, or medical testimony or reports, the acts 2717  
constituting the offense in relation to which the person was found 2718  
not guilty by reason of insanity, and any history of the person 2719  
that is relevant to the person's ability to conform to the law. 2720

(E) Upon completion of the hearing under division (A) of this 2721  
section, if the court finds there is not clear and convincing 2722  
evidence that the person is a mentally ill person subject to 2723  
hospitalization by court order, the court shall discharge the 2724  
person, unless a detainer has been placed upon the person by the 2725  
department of rehabilitation and correction, in which case the 2726  
person shall be returned to that department. 2727

(F) If, at the hearing under division (A) of this section, 2728  
the court finds by clear and convincing evidence that the person 2729  
is a mentally ill person subject to hospitalization by court 2730  
order, it shall commit the person to the department of mental 2731

health for placement in a hospital, facility, or agency as 2732  
determined clinically appropriate by the department of mental 2733  
health. Further proceedings shall be in accordance with Chapter 2734  
5122. or 5123. of the Revised Code. In committing the accused to 2735  
the department of mental health, the court shall specify the least 2736  
restrictive limitations on the accused's freedom of movement 2737  
determined to be necessary to protect public safety. 2738

(G) If a court makes a commitment of a person under division 2739  
(F) of this section, the trial counsel shall send to the hospital, 2740  
facility, or agency where the defendant is placed by the 2741  
department of mental health or to the accused's place of 2742  
commitment all reports of the person's current mental condition, 2743  
and, except as otherwise provided in this division, any other 2744  
relevant information, including, but not limited to, a transcript 2745  
of the hearing held pursuant to division (A) of this section, 2746  
copies of relevant investigative reports, and copies of any prior 2747  
arrest and conviction records that pertain to the person and that 2748  
the trial counsel possesses. The trial counsel shall send the 2749  
reports of the person's current mental condition in every case of 2750  
commitment, and, unless the trial counsel determines that the 2751  
release of any of the other relevant information to unauthorized 2752  
persons would interfere with the effective prosecution of any 2753  
person or would create a substantial risk of harm to any person, 2754  
the trial counsel also shall send the other relevant information. 2755

(H) A person who is committed pursuant to this section shall 2756  
not voluntarily admit the person or be voluntarily admitted to a 2757  
hospital or institution pursuant to sections 5122.02 and 5122.15 2758  
of the Revised Code. 2759

**Sec. 5924.51.** (A) Voting by members of a general or special 2760  
court-martial on the findings and on the sentence, and by members 2761  
of a court-martial without a military judge upon questions of 2762

challenge, shall be by secret written ballot. The junior member of 2763  
the court shall in each case count the votes. The count shall be 2764  
checked by the president, who shall forthwith announce the result 2765  
of the ballot to the members of the court. 2766

(B) The military judge and, except for questions of 2767  
challenge, the president of a court-martial without a military 2768  
judge shall rule upon all questions of law and all interlocutory 2769  
questions arising during the proceedings. Any such ruling made by 2770  
the military judge upon any question of law or any interlocutory 2771  
question other than the factual issue of mental responsibility of 2772  
the accused, or by the president of a special court-martial, 2773  
without a military judge upon any question of law other than a 2774  
motion for a finding of not guilty, is final and constitutes the 2775  
ruling of the court. However, the military judge or the president 2776  
of a court-martial without a military judge may change the ruling 2777  
at any time during the trial. Unless the ruling is final, if any 2778  
member objects thereto, the court shall be cleared and closed and 2779  
the question decided by a voice vote as provided in section 2780  
5924.52 of the Revised Code, beginning with the junior in rank. 2781

(C) Before a vote is taken on the findings, the military 2782  
judge or the president of a court-martial without a military judge 2783  
shall, in the presence of the accused and counsel, instruct the 2784  
members of the court as to the elements of the offense and charge 2785  
~~the court~~ them: 2786

(1) That the accused must be presumed to be innocent until 2787  
~~his~~ guilt is established by legal and competent evidence beyond 2788  
reasonable doubt; 2789

(2) That in the case being considered, if there is a 2790  
reasonable doubt as to the guilt of the accused, the doubt must be 2791  
resolved in favor of the accused, and ~~he~~ the accused must be 2792  
acquitted; 2793

(3) That, if there is a reasonable doubt as to the degree of 2794  
guilt, the finding must be in a lower degree as to which there is 2795  
no reasonable doubt; and 2796

(4) That the burden of proof to establish the guilt of the 2797  
accused beyond reasonable doubt is upon the state. 2798

(D) Divisions (A), (B), and (C) of this section do not apply 2799  
to a court-martial composed of a military judge only. The military 2800  
judge of such a court-martial shall determine all questions of law 2801  
and fact arising during the proceedings and, if the accused is 2802  
convicted, adjudge an appropriate sentence. The military judge of 2803  
such a court-martial shall make a general finding and shall in 2804  
addition on request ~~find the facts specially~~ make specific 2805  
findings of fact. If an opinion or memorandum of decision is 2806  
filed, it will be sufficient if the findings of fact appear 2807  
therein. 2808

**Sec. 5924.52.** (A)~~(1) No person may be convicted of an offense~~ 2809  
~~for which the death penalty is made mandatory by law, except by~~ 2810  
~~the concurrence of all members of the court martial present at the~~ 2811  
~~time the vote is taken.~~ 2812

~~(2) No person may be convicted of any other offense, except~~ 2813  
~~as provided in division (B) of section 5924.45 of the Revised Code~~ 2814  
~~or by the concurrence of two-thirds of the members of the~~ 2815  
~~court-martial present at the time the vote is taken.~~ 2816

~~(B)(1) No person may be sentenced to suffer death, except by~~ 2817  
~~the concurrence of all members of the court martial present at the~~ 2818  
~~time the vote is taken and for an offense in this chapter~~ 2819  
~~expressly made punishable by death.~~ 2820

~~(2) No person may be sentenced to life imprisonment or to~~ 2821  
~~confinement for more than ten years, except by the concurrence of~~ 2822  
~~three-fourths of the members present at the time the vote is~~ 2823

~~taken.~~ 2824

~~(3) All other sentences shall be determined by the 2825~~  
~~concurrence of two thirds of the members present at the time the 2826~~  
~~vote is taken.~~ 2827

~~(C)~~ All other questions to be decided by the members of a 2828  
general or special court-martial shall be determined by a majority 2829  
vote, but a determination to reconsider a finding of guilty or to 2830  
reconsider a sentence, to decrease or lessen it, may be made by 2831  
any lesser vote ~~which~~ that indicates that the reconsideration is 2832  
not opposed by the number of votes required for that finding or 2833  
sentence. A tie vote on a challenge disqualifies the member 2834  
challenged. A tie vote on a motion for a finding of not guilty or 2835  
on a motion relating to the question of the accused's sanity is a 2836  
determination against the accused. A tie vote on any other 2837  
question is a determination in favor of the accused. 2838

**Sec. 5924.54.** (A) Each general court-martial shall keep a 2839  
separate record of the proceedings in each case brought before it, 2840  
and the record shall be authenticated by the signature of the 2841  
military judge. If the record cannot be authenticated by the 2842  
military judge by reason of ~~his~~ death, disability, or absence, it 2843  
shall be authenticated by the signature of the trial counsel or by 2844  
that of a member if the trial counsel is unable to authenticate it 2845  
by reason of ~~his~~ death, disability, or absence. In a court-martial 2846  
consisting of only a military judge, the record shall be 2847  
authenticated by the court reporter under the same conditions 2848  
~~which~~ that would impose such a duty on a member under this 2849  
division ~~if the proceedings have resulted in an acquittal of all~~ 2850  
~~charges and specifications or, if not affecting a general or flag~~ 2851  
~~officer, in a sentence not including discharge and not in excess~~ 2852  
~~of that which may otherwise be adjudged by a special~~ 2853  
~~court martial. The record shall contain matters as may be~~ 2854

~~prescribed by regulations of the governor.~~

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

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

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

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

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

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

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**Sec. 5924.57.** (A) ~~Whenever a sentence of a court martial as  
lawfully adjudged and approved includes a forfeitures~~ (1) A  
forfeiture of pay or allowances ~~in addition to confinement not~~

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~~suspended or deferred, the forfeiture may apply to pay or~~ 2885  
~~allowances becoming due on or after the date the sentence is~~ 2886  
~~approved by the convening authority. No forfeiture may extend to~~ 2887  
~~any pay or allowances accrued before that date or reduction in~~ 2888  
~~grade that is included in a sentence of a court-martial takes~~ 2889  
~~effect on the earlier of the date that is fourteen days after the~~ 2890  
~~date on which the sentence is adjudged or the date on which the~~ 2891  
~~sentence is approved by the convening authority.~~ 2892

(2) On application of an accused, the convening authority may 2893  
defer a forfeiture of pay or allowances or reduction in grade that 2894  
would otherwise become effective on the date that is fourteen days 2895  
after the date on which the sentence is adjudged until the date on 2896  
which the sentence is approved by the convening authority. The 2897  
convening authority may at any time rescind a deferment granted 2898  
under this division. 2899

(3) A forfeiture of pay or allowances applies to pay or 2900  
allowances accruing on and after the date on which the sentence 2901  
takes effect. 2902

(B) Any period of confinement included in a sentence of a 2903  
court-martial begins to run from the date the sentence is adjudged 2904  
by the court-martial, but periods during which the sentence to 2905  
confinement is suspended or deferred shall be excluded in 2906  
computing the service of the term of confinement. ~~Regulations~~ 2907  
~~prescribed by the governor may provide that sentences of~~ 2908  
~~confinement may not be executed until approved by designated~~ 2909  
~~officers.~~ 2910

(C) All other sentences of courts-martial are effective on 2911  
the date ordered executed. 2912

(D)(1) On application by an accused who is under sentence to 2913  
confinement that has not been ordered executed, the convening 2914  
authority or, if the accused is no longer under ~~his~~ the convening 2915

authority's jurisdiction, the ~~governor~~, officer exercising general 2916  
court-martial jurisdiction over the command to which the accused 2917  
is currently assigned may in ~~his~~ the officer's sole discretion 2918  
defer service of the sentence to confinement. The deferment shall 2919  
terminate when the sentence is ordered executed. The deferment may 2920  
be rescinded at any time by the officer who granted it or, if the 2921  
accused is no longer under ~~his~~ the officer's jurisdiction, by the 2922  
~~governor~~ officer exercising general court-martial jurisdiction 2923  
over the command to which the accused is currently assigned. 2924

(2) In any case in which a court-martial sentences a person 2925  
described in division (D)(3) of this section to confinement, the 2926  
convening authority may defer the service of the sentence to 2927  
confinement, without the consent of that person, until after the 2928  
person has been permanently released to the armed forces by a 2929  
state or foreign country referred to in that division. 2930

(3) Division (D)(2) of this section applies to a person 2931  
subject to this chapter who, while in the custody of a state or 2932  
foreign country, is temporarily returned by that state or foreign 2933  
country to the armed forces for trial by court-martial and after 2934  
the court-martial is returned to that state or foreign country 2935  
under the authority of a mutual agreement or treaty. 2936

(4) As used in division (D)(3) of this section, "state" 2937  
includes the District of Columbia and any state, commonwealth, 2938  
territory, or possession of the United States having a national 2939  
guard. 2940

(E) In any case in which a sentence to confinement has been 2941  
ordered executed but in which review of the case under section 2942  
5924.64 of the Revised Code is pending, the adjutant general may 2943  
defer further service of the sentence while the review is pending. 2944

**Sec. 5924.58.** (A) A Subject to regulations prescribed by the 2945  
adjutant general, a sentence of confinement adjudged by a 2946



~~court-martial or other military court tribunal~~, whether or not the 2947  
sentence includes discharge or dismissal, and whether or not the 2948  
discharge or dismissal has been executed, may be carried into 2949  
execution by confinement in any ~~place of confinement under the~~ 2950  
~~control of any of the forces of the organized militia or in any~~ 2951  
~~jail or prison designated for that purpose~~ jail or correctional 2952  
facility in this state. Persons so confined ~~in a jail or prison~~ 2953  
are subject to the same discipline and treatment as persons 2954  
confined or committed to the jail or ~~prison~~ correctional facility 2955  
by the courts of the state or of any political subdivision ~~thereof~~ 2956  
of the state. 2957

(B) ~~The omission of the words "hard labor" from any sentence~~ 2958  
~~or punishment of a court martial adjudging confinement does not~~ 2959  
~~deprive the authority executing that sentence or punishment of the~~ 2960  
~~power to require hard labor as a part of the punishment.~~ 2961

~~(C) The keepers, officers, and wardens of city or county~~ 2962  
~~jails and of other jails or prisons designated by the governor, or~~ 2963  
~~by such person as he may authorize to act under section 5924.11 of~~ 2964  
~~the Revised Code and of this code, shall receive persons ordered~~ 2965  
~~into confinement before trial and persons committed to confinement~~ 2966  
~~by a military court and shall confine them according to law. No~~ 2967  
~~such keeper, officer, or warden may require payment of any fee or~~ 2968  
~~charge~~ kind may be required for so receiving or confining a person 2969  
housing a prisoner under this code. 2970

**Sec. 5924.581.** (A) Except as otherwise provided in 2971  
regulations made by the adjutant general, a court-martial sentence 2972  
of an enlisted member in a pay grade above E-1 that includes a 2973  
dishonorable or bad-conduct discharge, confinement, or hard labor 2974  
without confinement reduces the member to pay grade E-1, effective 2975  
on the date the convening authority approves the sentence. 2976

(B) If the sentence of a member who is reduced in pay grade 2977

under division (A) of this section is set aside or disapproved, or 2978  
as finally approved does not include a dishonorable or bad-conduct 2979  
discharge, confinement, or hard labor without confinement, the 2980  
rights and privileges of which the member was deprived because of 2981  
the reduction in pay are restored, and the member shall be paid 2982  
the pay and allowances that the member would have been paid for 2983  
the period the reduction was in effect had the member not been 2984  
reduced in pay. 2985

**Sec. 5924.582.** (A) A member who receives a court-martial 2986  
sentence that includes confinement for more than six months or 2987  
confinement for six months or less and a dishonorable or 2988  
bad-conduct discharge or dismissal forfeits pay, or pay and 2989  
allowances, during any period of confinement or parole. The 2990  
forfeiture takes effect on the date determined under section 2991  
5924.57 of the Revised Code and may be deferred as provided by 2992  
that section. The pay and allowances forfeited as a result of a 2993  
sentence imposed by a general court-martial shall be all pay and 2994  
allowances due during any period of confinement or parole. The pay 2995  
and allowances forfeited as a result of a sentence imposed by a 2996  
special court-martial shall be two-thirds of all pay and 2997  
allowances due during any period of confinement or parole. 2998

(B) If a member subject to forfeiture of pay or pay and 2999  
allowances under division (A) of this section has dependents, the 3000  
convening authority or other person acting under section 5924.60 3001  
of the Revised Code may waive all or part of the forfeiture of pay 3002  
and allowances for a period not exceeding six months. Any pay or 3003  
allowances paid as a result of a waiver shall be paid, as the 3004  
convening authority or other person taking action directs, to the 3005  
dependents of the accused member. 3006

(C) If the sentence of a member who forfeits pay and 3007  
allowances under division (A) of this section is set aside or 3008

disapproved or, as finally approved, does not provide for a 3009  
punishment that includes confinement for more than six months or 3010  
confinement for six months or less and a dishonorable or 3011  
bad-conduct discharge or dismissal, the member shall be paid the 3012  
pay and allowances that the member would have been paid for the 3013  
period the forfeiture was in effect had the member's pay and 3014  
allowances not been forfeited. 3015

**Sec. 5924.59.** (A) A finding or sentence of a court-martial 3016  
may not be held incorrect on the ground of an error of law unless 3017  
the error materially prejudices the substantial rights of the 3018  
accused. 3019

(B) Any reviewing authority with the power to approve or 3020  
affirm a finding of guilty may instead approve or affirm so much 3021  
of the finding as includes a lesser included offense. 3022

**Sec. 5924.60.** ~~After a trial by (A) A court-martial, the~~ 3023  
~~record shall be forwarded~~ report its findings and sentence to the 3024  
~~convening authority, as reviewing authority, and action thereon~~ 3025  
~~may be taken by~~ after announcing the person who convened the 3026  
court, a commissioned officer commanding for the time being, a 3027  
successor in command, or by the governor sentence. 3028

(B)(1) The accused may submit to the convening authority 3029  
matters relating to the findings and sentence to the convening 3030  
authority for its consideration. A submission shall be in writing. 3031  
A submission shall be made within ten days after the accused has 3032  
been given an authenticated record of trial and, if applicable, 3033  
the recommendation of the staff judge advocate or legal officer 3034  
under division (D) of this section or, in a summary court-martial 3035  
case, within seven days after the sentence is announced. 3036

(2) The convening authority or other person taking action 3037  
under this section, for good cause shown by the accused, may 3038

extend the period for submission of matters under division (B)(1) 3039  
of this section for not more than twenty days. 3040

(3) In a summary court-martial case, the summary court 3041  
officer shall promptly provide the accused with a copy of the 3042  
record of trial for use in preparing a submission authorized by 3043  
division (B)(1) of this section. 3044

(4) The accused may waive the right to make a submission 3045  
under division (B)(1) of this section. A waiver shall be made in 3046  
writing and may not be revoked. The time within which the accused 3047  
may make a submission under this subsection expires upon the 3048  
submission of a waiver to the convening authority. 3049

(C)(1) The authority under this section to act on the 3050  
findings and sentence of a court-martial is a matter of command 3051  
prerogative involving the sole discretion of the convening 3052  
authority. Pursuant to regulations prescribed by the adjutant 3053  
general, a commissioned officer commanding for the time being, a 3054  
successor in command, or any person exercising general 3055  
court-martial jurisdiction may act under this section in place of 3056  
the convening authority. 3057

(2) The convening authority or another person authorized to 3058  
act under this section may act on the sentence of a court-martial 3059  
pursuant to division (B)(3) of this section. Subject to 3060  
regulations prescribed by the adjutant general, the convening 3061  
authority or other authorized person may act only after the 3062  
accused submits matters under division (B) of this section or the 3063  
time for submitting matters expires, whichever is earlier. If the 3064  
accused makes a submission, the convening authority or other 3065  
authorized person shall take the submission into consideration 3066  
before acting. 3067

(3) The convening authority or other authorized person, in 3068  
the convening authority's or other authorized person's sole 3069

discretion, may approve, disapprove, commute, or suspend the 3070  
sentence of a court-martial in whole or in part. The convening 3071  
authority or other authorized person acting on a sentence may but 3072  
is not required to take action on the findings of the 3073  
court-martial. A convening authority or other authorized person 3074  
that chooses to act on the findings may dismiss any charge or 3075  
specification by setting aside a finding of guilt with regard to 3076  
that charge or specification or may change a finding of guilty 3077  
with regard to a charge or specification to a finding of guilty to 3078  
an offense that is a lesser included offense of the offense stated 3079  
in the charge or specification. 3080

(D) Before acting under this section on any general 3081  
court-martial case or on any special court-martial case that 3082  
includes a bad-conduct discharge, the convening authority or other 3083  
authorized person shall obtain and consider the written 3084  
recommendation of the convening authority's or other authorized 3085  
person's staff judge advocate or legal officer. The convening 3086  
authority or other authorized person shall refer the record of 3087  
trial to the staff judge advocate or legal officer. The staff 3088  
judge advocate or legal officer shall use the record in the 3089  
preparation of a recommendation. The recommendation shall include 3090  
any matters that the adjutant general may require by regulation 3091  
and shall be served on the accused. The accused may submit any 3092  
matter in response under division (B) of this section. If in the 3093  
accused's response, the accused does not object to one or more 3094  
matters contained in the recommendation, the accused waives the 3095  
right to object to those matters. 3096

(E)(1) The convening authority or other authorized person, in 3097  
the convening authority's or other authorized person's sole 3098  
discretion, may order a proceeding in revision or a rehearing. 3099

(2) The convening authority or other authorized person may 3100  
order a proceeding in revision if there is an apparent error or 3101

omission in the record of a court-martial or if the record shows 3102  
improper or inconsistent action by a court-martial with respect to 3103  
the findings or sentence that can be rectified without material 3104  
prejudice to the substantial rights of the accused. In a 3105  
proceeding in revision, the convening authority or other 3106  
authorized person may not do any of the following: 3107

(a) Reconsider a finding of not guilty of any specification 3108  
or a ruling that amounts to a finding of not guilty; 3109

(b) Reconsider a finding of not guilty of any charge, unless 3110  
there has been a finding of guilty under a specification laid 3111  
under that charge that sufficiently alleges a violation of any 3112  
provision of this chapter; 3113

(c) Increase the severity of the sentence. 3114

(3) The convening authority or other authorized person may 3115  
order a rehearing if the convening authority or other authorized 3116  
person disapproves the findings or sentence and states the reasons 3117  
for disapproval of the findings or sentence. If the convening 3118  
authority or other authorized person disapproves the findings or 3119  
sentence and does not order a rehearing, the convening authority 3120  
or other authorized person shall dismiss the charges. A convening 3121  
authority or other authorized person may not order a rehearing as 3122  
to the findings if the record does not contain sufficient evidence 3123  
to support the findings. A convening authority or other authorized 3124  
person may order a rehearing as to the sentence if the convening 3125  
authority or other authorized person disapproves the sentence. 3126

**Sec. 5924.61. (A) An accused may appeal a finding of guilty** 3127  
**or the sentence of a court-martial to the court of military** 3128  
**appeals. The court shall hear an appeal if the convening authority** 3129  
**or other authorized person approved a sentence of dismissal of a** 3130  
**commissioned officer, dishonorable or bad conduct discharge, or** 3131  
**confinement for one year or more and if the appeal was timely** 3132

filed. The court may hear any other appeals that the court, in its  
sole discretion, allows.

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

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

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

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such action, for good cause, may extend the period for filing by 3165  
not more than thirty days. 3166

(E) An accused may voluntarily withdraw an appeal at any time 3167  
by filing a notice of withdrawal with the convening authority. 3168

(F) A waiver of the right to appellate review or the 3169  
withdrawal of an appeal bars any further review under this section 3170  
or section 5924.69 of the Revised Code. 3171

**Sec. 5924.62.** (A) In a trial by court-martial in which a 3172  
military judge presides and in which a punitive discharge may be 3173  
adjudged, the state may appeal any of the following, except an 3174  
order or ruling that is, or that amounts to, a finding of not 3175  
guilty with respect to the charge or specification: 3176

(1) An order or ruling that terminates the proceedings with 3177  
respect to a charge or specification; 3178

(2) An order or ruling that excludes evidence that is of 3179  
substantial consequence to the determination of the material 3180  
issues in the proceeding; 3181

(3) An order or ruling that directs the disclosure of 3182  
classified information; 3183

(4) An order or ruling that imposes sanctions for 3184  
nondisclosure of classified information; 3185

(5) A refusal by the military judge to issue a protective 3186  
order sought by the state to prevent the disclosure of classified 3187  
information; 3188

(6) A refusal by the military judge to enforce a protective 3189  
order that has previously been issued by appropriate authority to 3190  
prevent the disclosure of classified information. 3191

(B) The state may not appeal an order or ruling unless within 3192  
seventy-two hours after the military judge serves the order or 3193



ruling the trial counsel files with the military judge a written 3194  
notice of appeal from the order or ruling. The notice shall 3195  
include a certification by the trial counsel that the appeal is 3196  
not taken for the purpose of delay and, if the order or ruling 3197  
appealed is one that excludes evidence, that the evidence excluded 3198  
is substantial proof of a fact material in the proceeding. 3199

(C) Appellate government counsel shall diligently prosecute 3200  
an appeal under this section to the court of military appeals 3201  
created by section 5924.66 of the Revised Code. 3202

(D) Any period of delay resulting from an appeal under this 3203  
section shall be excluded in deciding any issue regarding denial 3204  
of a speedy trial unless an appropriate authority determines that 3205  
the appeal was filed solely for the purpose of delay with the 3206  
knowledge that it was totally frivolous and without merit. 3207

**Sec. 5924.63.** ~~(A) If the convening authority disapproves the~~ 3208  
~~findings and sentence of a court martial he may, except where~~ 3209  
~~there is lack of sufficient evidence in the record to support the~~ 3210  
~~findings, order a rehearing. In such a case he shall state the~~ 3211  
~~reasons for disapproval. If he disapproves the findings and~~ 3212  
~~sentence and does not order a rehearing, he shall dismiss the~~ 3213  
~~charges.~~ 3214

~~(B)~~ Each rehearing ordered pursuant to section 5924.60 of the 3215  
Revised Code or by the court of military appeals shall take place 3216  
before a court-martial composed of members who were not members of 3217  
the court-martial ~~which~~ that first heard the case. Upon a 3218  
rehearing the accused may not be tried for any offense of which ~~he~~ 3219  
the accused was found not guilty by the first court-martial, and 3220  
no sentence in excess of or more severe than the original sentence 3221  
may be ~~imposed~~, approved unless the sentence is based upon a 3222  
finding of guilty of an offense not considered upon the merits in 3223  
the original proceedings, or unless the sentence prescribed for 3224

the offense is mandatory. If the sentence approved after the first 3225  
court-martial was in accordance with a pretrial agreement and the 3226  
accused at the rehearing changes the accused's plea with respect 3227  
to the charges or specifications upon which the pretrial agreement 3228  
was based or otherwise does not comply with the pretrial 3229  
agreement, the approved sentence as to those charges or 3230  
specifications may include any punishment not in excess of the 3231  
punishment lawfully adjudged at the first court-martial. 3232

**Sec. 5924.64.** (A) A judge advocate shall review pursuant to 3233  
regulations prescribed by the adjutant general each case in which 3234  
there has been a finding of guilty and in which no appeal is 3235  
taken. A judge advocate may not review a case under this section 3236  
if the judge advocate has acted in the same case as an accuser, 3237  
investigating officer, member of the court, military judge, or 3238  
counsel or has otherwise acted on behalf of the prosecution or 3239  
defense. For each case reviewed under this section, the judge 3240  
advocate shall issue written findings and recommendations that 3241  
contain all of the following: 3242

(1) Conclusions as to whether the court had jurisdiction over 3243  
the accused and the offense; 3244

(2) Conclusions as to whether the charge and specification 3245  
stated an offense; 3246

(3) Conclusions as to whether the sentence was within the 3247  
limits prescribed by law; 3248

(4) A response to each allegation of error made in writing by 3249  
the accused; 3250

(5) If the case is sent for action under division (B) of this 3251  
section, a recommendation as to the appropriate action to be taken 3252  
and an opinion as to whether corrective action is required as a 3253  
matter of law. 3254

(B) The record of trial and related documents in each case 3255  
reviewed under division (A) of this section shall be sent for 3256  
further action under division (C) of this section to the person 3257  
exercising general court-martial jurisdiction over the accused at 3258  
the time the court was convened or that person's successor in 3259  
command if any of the following applies: 3260

(1) The judge advocate who reviewed the case recommends 3261  
corrective action. 3262

(2) The sentence approved under division (C) of section 3263  
5924.60 of the Revised Code includes dismissal, a bad-conduct or 3264  
dishonorable discharge, or confinement for more than six months. 3265

(3) Regulations prescribed by the adjutant general require 3266  
further review. 3267

(C) The person to whom the record of trial and related 3268  
documents are sent under division (B) of this section may do any 3269  
of the following: 3270

(1) Approve or disapprove the findings or sentence in whole 3271  
or in part; 3272

(2) Remit, commute, or suspend the sentence in whole or in 3273  
part; 3274

(3) Order a rehearing on the findings, the sentence, or both; 3275

(4) Dismiss the charges. 3276

(D) If a rehearing is ordered but the convening authority 3277  
finds that a rehearing is impracticable, the convening authority 3278  
shall dismiss the charges. 3279

(E) If the opinion of the judge advocate who reviews a case 3280  
under division (A) of this section finds that corrective action is 3281  
required as a matter of law and the person required to take action 3282  
under division (B) of this section does not take action that is at 3283  
least as favorable to the accused as that recommended by the judge 3284

advocate, the convening authority shall transmit the record of 3285  
trial and action on that record to the state judge advocate for 3286  
review. 3287

(F) The judge advocate who under this section reviews a case 3288  
conducted by a general court-martial shall be the state judge 3289  
advocate. 3290

**Sec. 5924.65.** If an accused files a notice of appeal, the 3291  
convening authority shall transmit the record of trial and 3292  
post-trial proceedings in the case to the state judge advocate for 3293  
appropriate action. If the accused does not file a notice of 3294  
appeal or files a notice of appeal and withdraws the appeal, then 3295  
following completion of all post-trial review, the record of trial 3296  
and related documents shall be transmitted and disposed of as the 3297  
adjutant general may prescribe by regulation. 3298

**Sec. 5924.66.** (A) There is hereby created the court of 3299  
military appeals. The court is a court of record and has exclusive 3300  
jurisdiction of all appeals from courts-martial convened pursuant 3301  
to this code. The court shall sit in Franklin county. All hearings 3302  
conducted by the court shall be public. 3303

(B) The judges of the court of military appeals shall be 3304  
military appellate judges appointed by the adjutant general. Each 3305  
judge shall be a retired judge advocate officer who has previously 3306  
served in the rank of colonel or above in either the Ohio army 3307  
national guard or the Ohio air national guard. The judges shall 3308  
sit in panels of not less than three members. 3309

(C) The adjutant general may make rules governing practice 3310  
and procedure in the court of military appeals. The Rules of 3311  
Appellate Procedure apply in proceedings in the court to the 3312  
extent that they are not inconsistent with this code or with rules 3313  
made by the adjutant general under this division. 3314

Sec. 5924.67. A judge of the court of military appeals shall 3315  
receive as compensation for each day of attendance on the business 3316  
of the court an amount equal to the annual compensation of a judge 3317  
of a court of appeals divided by the number of days in the 3318  
calendar year. A judge who resides more than fifty miles from the 3319  
location of the court also shall be reimbursed for the judge's 3320  
actual and necessary expenses of traveling to and from the court 3321  
to attend the business of the court. 3322

Sec. 5924.68. The court of military appeals may subpoena 3323  
witnesses, require the production of evidence, and punish for 3324  
contempt in the same manner and to the same extent as a common 3325  
pleas court. 3326

Sec. 5924.69. Appeals from orders and judgments of the court 3327  
of military appeals may be taken to the supreme court in the same 3328  
manner and to the same extent as criminal appeals from orders and 3329  
judgments of a court of appeals. 3330

Sec. 5924.70. (A) The state judge advocate shall detail one 3331  
or more judge advocates as appellate government counsel and one or 3332  
more judge advocates assigned to the United States army trial 3333  
defense service or the United States air force area defense 3334  
counsel as appellate defense counsel. Appellate counsel shall be 3335  
members in good standing of the bar of this state and certified by 3336  
the state judge advocate to be competent to act as appellate 3337  
counsel. 3338

(B) Appellate government counsel shall represent the state in 3339  
the court of military appeals. In a case arising under this code 3340  
that is heard in the supreme court, appellate government counsel 3341  
shall represent the state in the supreme court unless the attorney 3342  
general elects to represent the state. 3343

(C) Appellate defense counsel shall represent the accused in 3344  
the court of military appeals and the supreme court unless the 3345  
accused elects to be represented by civilian counsel at the 3346  
accused's own expense. 3347

(D) Appellate government and defense counsel shall perform 3348  
any additional functions in connection with post-trial proceedings 3349  
in court-martial cases that the state judge advocate directs. 3350

**Sec. 5924.71.** (A) If the sentence of a court-martial of a 3351  
commissioned officer or cadet includes dismissal, that part of the 3352  
sentence providing for dismissal may not be executed until it is 3353  
approved by the adjutant general. The adjutant general may 3354  
commute, remit, or suspend the sentence or any part of the 3355  
sentence as the adjutant general sees fit. In time of war or 3356  
national emergency, the adjutant general may commute a sentence of 3357  
dismissal to reduction to any enlisted grade. A person so reduced 3358  
may be required to serve for the duration of the war or emergency 3359  
and for six months after the end of the war or emergency. 3360

(B)(1) If the sentence of a court-martial includes dismissal 3361  
or dishonorable or bad-conduct discharge and the accused appeals 3362  
to the court of military appeals, the dismissal or discharge part 3363  
of the sentence may not be executed until the appellate process 3364  
has been completed and, in case of dismissal, approval of the 3365  
sentence by the adjutant general. The appellate process is 3366  
completed when any of the following occurs: 3367

(a) The accused withdraws the appeal. 3368

(b) The court of military appeals renders a decision, and the 3369  
time for filing a notice of appeal to the supreme court elapses 3370  
without the accused having filed a notice of appeal. 3371

(c) The supreme court issues an order dismissing the appeal 3372  
or entering judgment on the leave to appeal. 3373

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

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

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

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

(B)(C) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be

sent for action to the ~~governor in cases involving a~~ officer 3405  
exercising general court-martial ~~sentence and to the commanding~~ 3406  
~~officer of the force of the organized militia of which~~ 3407  
jurisdiction over the ~~probationer is a member in all other cases~~ 3408  
~~covered by division (A) of this section~~ person whose sentence has 3409  
been suspended. If the ~~governor or commanding~~ that officer vacates 3410  
the suspension, any unexecuted part of the sentence except a 3411  
dismissal shall be executed, subject to applicable restrictions 3412  
set forth in section 5924.71 of the Revised Code. A vacation of 3413  
the suspension of a dismissal is not effective until it is 3414  
approved by the adjutant general. 3415

~~(C)~~(D) The suspension of any other sentence may be vacated by 3416  
any authority competent to convene, for the command in which the 3417  
accused is serving or assigned, a court of the kind that imposed 3418  
the sentence. 3419

**Sec. 5924.73.** At any time within two years after approval by 3420  
the convening authority of a court-martial sentence, the accused 3421  
may petition the ~~governor~~ adjutant general for a new trial on the 3422  
ground of newly discovered evidence or fraud on the court-~~martial~~. 3423  
The adjutant general shall act upon the petition unless the case 3424  
is pending before the court of military appeals or the supreme 3425  
court, in which case the adjutant general shall refer the petition 3426  
to the court in which the appeal is pending. 3427

**Sec. 5924.74.** (A) A The adjutant general, the state judge 3428  
advocate when authorized by the adjutant general, or a convening 3429  
authority may remit or suspend any part or amount of the 3430  
unexecuted part of any sentence, including all uncollected 3431  
forfeitures, other than a sentence approved by the governor or a 3432  
superior convening authority. 3433

(B) The ~~governor~~ adjutant general may, for good cause, 3434



substitute an administrative form of discharge for a discharge or 3435  
dismissal executed in accordance with the sentence of a 3436  
court-martial. 3437

**Sec. 5924.75.** (A) Under ~~such~~ any regulations ~~as that~~ the 3438  
~~governor~~ adjutant general may prescribe, all rights, privileges, 3439  
and property affected by an executed part of a court-martial 3440  
sentence ~~which that~~ has been set aside or disapproved, except an 3441  
executed dismissal or discharge, shall be restored unless a new 3442  
trial or rehearing is ordered and ~~such the~~ executed part of the 3443  
sentence is included in a sentence imposed upon the new trial or 3444  
rehearing. 3445

(B) If a previously executed sentence of dishonorable or bad 3446  
conduct discharge is not imposed on a new trial, the ~~governor~~ 3447  
adjutant general shall substitute therefor a form of discharge 3448  
authorized for administrative issuance unless the accused is to 3449  
serve out the remainder of ~~his~~ the accused's enlistment. 3450

(C) If a previously executed sentence of dismissal is not 3451  
imposed on a new trial, the ~~governor~~ adjutant general shall 3452  
substitute therefor a form of discharge authorized for 3453  
administrative issue, and the commissioned officer dismissed by 3454  
that sentence may be reappointed by the ~~governor~~ adjutant general 3455  
alone to such commissioned grade and with such rank as in the 3456  
opinion of the ~~governor~~ adjutant general that former officer would 3457  
have attained had ~~he~~ the former officer not been dismissed. The 3458  
reappointment of such a former officer ~~may~~ shall be made ~~if~~ 3459  
without regard to the existence of a position vacancy is available 3460  
under applicable tables and shall affect the promotion status of 3461  
organization other officers only to the extent directed by the 3462  
adjutant general. All time between the dismissal and the 3463  
reappointment shall be considered as service for all purposes 3464  
including the right to pay and allowances. 3465

(D) Pursuant to regulations prescribed by the adjutant 3466  
general, an accused who has been sentenced by a court-martial may 3467  
be required to take leave pending completion of action under this 3468  
code if the sentence, as approved under section 5924.60 of the 3469  
Revised Code, includes an unsuspended dismissal or an unsuspended 3470  
dishonorable or bad-conduct discharge. The accused may be required 3471  
to begin leave on the date on which the sentence is approved or at 3472  
any time after that date. Leave may be continued until the date on 3473  
which action is completed or may be terminated at any earlier 3474  
time. 3475

**Sec. 5924.76.** The appellate review of records of trial 3476  
pursuant to this code, the proceedings, findings, and sentences of 3477  
courts-martial as ~~reviewed and approved, as required by~~ reviewed, 3478  
or affirmed pursuant to this code, and all dismissals and 3479  
discharges carried into execution under sentences by 3480  
courts-martial following ~~review and~~ approval, ~~as required by~~ 3481  
review, or affirmation pursuant to this code, are final and 3482  
conclusive. Orders publishing the proceedings of courts-martial 3483  
and all action taken pursuant to those proceedings are binding 3484  
upon all departments, courts, agencies, and officers of the state, 3485  
subject only to action upon a petition for a new trial as provided 3486  
in section 5924.73 of the Revised Code and to action by the 3487  
adjutant general under section 5924.74 of ~~this code~~ the Revised 3488  
Code. 3489

**Sec. 5924.761.** Pursuant to regulations prescribed by the 3490  
adjutant general, an accused who has been sentenced by a 3491  
court-martial may be required to take leave pending completion of 3492  
action under sections 5924.59 to 5924.761 of the Revised Code if 3493  
the sentence, as approved under section 5924.60 of the Revised 3494  
Code, includes an unsuspended dismissal or an unsuspended 3495  
dishonorable or bad-conduct discharge. The accused may be required 3496

to begin the leave on the date on which the sentence is approved 3497  
under section 5924.60 of the Revised Code or at any time after 3498  
that date, and the leave may be continued until the date on which 3499  
action under sections 5924.59 to 5924.761 of the Revised Code is 3500  
terminated or completed. 3501

**Sec. 5924.77.** Any person subject to this code is a principal 3502  
~~who~~ if the person does either of the following: 3503

(A) Commits an offense punishable by this code, or aids, 3504  
abets, counsels, commands, or procures its commission; 3505

(B) Causes an act to be done which if directly performed by 3506  
~~him~~ the person would be punishable by this code. 3507

**Sec. 5924.78.** Any person subject to this code who, knowing 3508  
that an offense punishable by this code has been committed, 3509  
receives, comforts, or assists the offender in order to hinder or 3510  
prevent ~~his~~ the offender's apprehension, trial, or punishment 3511  
shall be punished as a court-martial may direct. 3512

**Sec. 5924.82.** (A) Any person subject to this code who 3513  
solicits or advises another or others to desert in violation of 3514  
section 5924.85 of the Revised Code and of this code or mutiny in 3515  
violation of section 5924.94 of the Revised Code and of this code 3516  
shall, if the offense solicited or advised is attempted or 3517  
committed, be punished with the punishment provided for the 3518  
commission of the offense, but, if the offense solicited or 3519  
advised is not committed or attempted, ~~he~~ the person shall be 3520  
punished as a court-martial may direct. 3521

(B) Any person subject to this code who solicits or advises 3522  
another or others to commit an act of ~~misbehavior before the enemy~~ 3523  
~~in violation of section 5924.99 of the Revised Code and of this~~ 3524  
~~code or~~ sedition in violation of section 5924.94 of the Revised 3525

Code and of this code shall, if the offense solicited or advised 3526  
is committed, be punished with the punishment provided for the 3527  
commission of the offense, but, if the offense solicited or 3528  
advised is not committed, ~~he~~ the person shall be punished as a 3529  
court-martial may direct. 3530

**Sec. 5924.83.** Any person who does either of the following 3531  
shall be punished as a court-martial may direct: 3532

(A) Procures ~~his~~ the person's own enlistment or appointment 3533  
in the organized militia by knowingly false representation or 3534  
deliberate concealment as to ~~his~~ the person's qualifications for 3535  
that enlistment or appointment and receives pay or allowances 3536  
thereunder; ~~or~~ 3537

(B) Procures ~~his~~ the person's own separation from the 3538  
organized militia by knowingly false representation or deliberate 3539  
concealment as to ~~his~~ the person's eligibility for that 3540  
separation; 3541  
~~shall be punished as a court-martial may direct.~~ 3542

**Sec. 5924.84.** Any person subject to this code who effects an 3543  
enlistment or appointment in or a separation from the organized 3544  
militia of any person who is known to ~~him~~ the person to be 3545  
ineligible for that enlistment, appointment, or separation because 3546  
it is prohibited by law, regulation, or order shall be punished as 3547  
a court-martial may direct. 3548

**Sec. 5924.85.** (A) Any member of the organized militia who 3549  
does any of the following is guilty of desertion: 3550

(1) Without authority goes or remains absent from ~~his~~ the 3551  
member's unit, organization, or place of duty with intent to 3552  
remain away ~~therefrom~~ from the unit, organization, or place of 3553  
duty permanently; 3554

(2) Quits ~~his~~ the member's unit, organization, or place of 3555  
duty with intent to avoid hazardous duty or to shirk important 3556  
service; ~~or~~ 3557

(3) Without being regularly separated from one of the forces 3558  
of the organized militia enlists or accepts an appointment in the 3559  
same or another one of the forces of the organized militia without 3560  
fully disclosing the fact that ~~he~~ the member has not been 3561  
regularly separated; 3562  
~~is guilty of desertion~~ 3563

(4) Without being regularly separated from one of the forces 3564  
of the organized militia enters any foreign armed services without 3565  
the authorization of the United States. 3566

(B) Any commissioned officer of the organized militia who, 3567  
after tender of ~~his~~ the commissioned officer's resignation and 3568  
before notice of its acceptance, quits ~~his~~ the commissioned 3569  
officer's post or proper duties without leave and with intent to 3570  
remain away therefrom permanently is guilty of desertion. 3571

(C) Any person found guilty of desertion or attempt to desert 3572  
shall be punished, ~~if the offense is committed in time of war, by~~ 3573  
~~death or such other punishment as a court martial may direct, but~~ 3574  
~~if the desertion or attempt to desert occurs at any other time, by~~ 3575  
~~such punishment, other than death,~~ as a court-martial may direct. 3576

**Sec. 5924.86.** Any person subject to this code who, without 3577  
authority, does any of the following shall be punished as a 3578  
court-martial may direct: 3579

(A) Fails to go to ~~his~~ the person's appointed place of duty 3580  
at the time prescribed; 3581

(B) Goes from ~~his~~ the person's appointed place of duty; ~~or~~ 3582

(C) Absents ~~himself~~ self or remains absent from ~~his~~ the 3583  
person's unit, organization, or place of duty at which ~~he~~ the 3584

person is required to be at the time prescribed; ~~shall be punished~~ 3585  
~~as a court martial may direct.~~ 3586

**Sec. 5924.87.** Any person subject to this code who through 3587  
neglect or design misses the movement of a ship, aircraft, or unit 3588  
with which ~~he~~ the person is required in the course of duty to move 3589  
shall be punished as a court-martial may direct. 3590

**Sec. 5924.88.** Any ~~person subject to this code~~ commissioned 3591  
officer who uses contemptuous words against ~~the president,~~ the 3592  
governor, ~~or the legislature, or the governor or legislature of~~ 3593  
any this state, ~~territory, commonwealth, or possession wherein~~ 3594  
~~that person may be serving,~~ shall be punished as a court-martial 3595  
may direct. 3596

**Sec. 5924.89.** Any person subject to this code who behaves 3597  
with disrespect toward ~~his~~ the person's superior commissioned 3598  
officer shall be punished as a court-martial may direct. 3599

**Sec. 5924.90.** Any person subject to this code who does either 3600  
of the following shall be punished as a court-martial may direct: 3601  
3602

(A) Strikes ~~his~~ the person's superior commissioned officer or 3603  
draws or lifts up any weapon or offers any violence against ~~him~~ 3604  
the person's superior commissioned officer while ~~he~~ that officer 3605  
is in the execution of ~~his office~~ official duties; ~~or~~ 3606

(B) Willfully disobeys a lawful command of ~~his~~ the person's 3607  
superior commissioned officer; 3608  
~~shall be punished as a court martial may direct.~~ 3609

**Sec. 5924.91.** Any warrant officer or enlisted member who does 3610  
any of the following shall be punished as a court-martial may 3611

direct: 3612

(A) Strikes or assaults a warrant officer, or noncommissioned 3613  
officer, ~~or petty officer~~, while that officer is in the execution 3614  
of ~~his office~~ official duties; 3615

(B) Willfully disobeys the lawful order of a warrant officer, 3616  
or noncommissioned officer, ~~or petty officer~~; ~~or~~ 3617

(C) Treats with contempt or is disrespectful in language or 3618  
deportment toward a warrant officer, or noncommissioned officer, 3619  
~~or petty officer~~, while that officer is in the execution of ~~his~~ 3620  
~~office~~; 3621

~~shall be punished as a court-martial may direct~~ official duties. 3622

**Sec. 5924.92.** Any person subject to this code who does any of 3623  
the following shall be punished as a court-martial may direct: 3624

(A) Violates or fails to obey any lawful general order or 3625  
regulation; 3626

(B) Having knowledge of any other lawful order issued by a 3627  
member of the organized militia, ~~which it~~ that is ~~his~~ the person's 3628  
duty to obey, fails to obey the order; ~~or~~ 3629

(C) Is derelict in the performance of ~~his~~ the person's 3630  
duties; 3631

~~shall be punished as a court-martial may direct.~~ 3632

**Sec. 5924.93.** Any person subject to this code who is guilty 3633  
of cruelty toward, or oppression or maltreatment of, any other 3634  
person subject to ~~his~~ the person's orders shall be punished as a 3635  
court-martial may direct. 3636

**Sec. 5924.94.** (A)(1) Any person subject to this code who: 3637

~~(1) With,~~ with intent to usurp or override lawful military 3638

authority, refuses, in concert with any other person, to obey 3639  
orders or otherwise do ~~his~~ the person's duty or creates any 3640  
violence or disturbance is guilty of mutiny~~7~~. 3641

(2) ~~With~~ Any person subject to this code who, with intent to 3642  
cause the overthrow or destruction of lawful civil authority, 3643  
creates, in concert with any other person, revolt, violence, or 3644  
other disturbance against that authority is guilty of sedition~~7~~. 3645

(3) ~~Fails~~ Any person subject to this code who fails to do ~~his~~ 3646  
the person's utmost to prevent and suppress a mutiny or sedition 3647  
being committed in ~~his~~ the person's presence, or fails to take all 3648  
reasonable means to inform ~~his~~ the person's superior commissioned 3649  
officer or commanding officer of a mutiny or sedition ~~which he~~ 3650  
that the person knows or has reason to believe is taking place, is 3651  
guilty of a failure to suppress or report a mutiny or sedition. 3652

(B) A person who is found guilty of attempted mutiny, mutiny, 3653  
sedition, or failure to suppress or report a mutiny or sedition 3654  
shall be punished ~~by death or such other punishment~~ as a 3655  
court-martial may direct. 3656

**Sec. 5924.95.** Any person subject to this code who resists 3657  
apprehension ~~or, flees from apprehension,~~ breaks arrest, ~~or who~~ 3658  
escapes from ~~physical restraint lawfully imposed~~ custody or 3659  
confinement shall be punished as a court-martial may direct. 3660

**Sec. 5924.96.** Any person subject to this code who, without 3661  
proper authority, releases any prisoner committed to ~~his~~ the 3662  
person's charge~~7~~ or who through neglect or design suffers any ~~such~~ 3663  
prisoner committed to the person's charge to escape~~7~~ shall be 3664  
punished as a court-martial may direct, whether or not the 3665  
prisoner was committed in strict compliance with law. 3666

**Sec. 5924.97.** Any person subject to this code~~7~~ who, except as 3667



provided by law ~~or regulation~~, apprehends, arrests, or confines 3668  
any person shall be punished as a court-martial may direct. 3669

**Sec. 5924.98.** Any person subject to this code who~~+~~ 3670

~~(A) Is~~ is responsible for unnecessary delay in the 3671  
disposition of any case of a person accused of an offense under 3672  
this code~~+~~ or 3673

~~(B) Knowingly~~ who knowingly and intentionally fails to 3674  
enforce or comply with any provision of this code regulating the 3675  
proceedings before, during, or after trial of an accused~~+~~ 3676  
shall be punished as a court-martial may direct. 3677

**Sec. 5924.103.** (A) All persons subject to this code shall 3678  
secure all ~~public~~ property taken from the enemy for the service of 3679  
the United States~~+~~ and this state and shall give notice and turn 3680  
over to the proper authority without delay all captured or 3681  
abandoned property in their possession, custody, or control. 3682

(B) Any person subject to this code who does any of the 3683  
following shall be punished as a court-martial may direct: 3684

(1) Fails to carry out the duties prescribed in division (A) 3685  
of this section; 3686

(2) Buys, sells, trades, or in any way deals in or disposes 3687  
of captured or abandoned property, whereby ~~he~~ the person receives 3688  
or expects any profit, benefit, or advantage to ~~himself~~ self or 3689  
another directly or indirectly connected with ~~himself~~ self; ~~or~~ 3690

(3) Engages in looting or pillaging~~+~~ 3691  
~~shall be punished as a court-martial may direct.~~ 3692

**Sec. 5924.108.** Any person subject to this code who, without 3693  
proper authority, does any of the following with regard to any 3694  
military property of the United States or of this state shall be 3695

punished as a court-martial may direct: 3696

(A) Sells or otherwise disposes of the property; 3697

(B) Willfully or through neglect damages, destroys, or loses 3698  
the property; ~~or~~ 3699

(C) Willfully or through neglect suffers to be lost, damaged, 3700  
destroyed, sold, or wrongfully disposed of; 3701

~~any military property of the United States or of the state, shall~~ 3702  
~~be punished as a court martial may direct~~ the property. 3703

**Sec. 5924.109.** Any person subject to this code who, ~~while in~~ 3704  
~~a duty status,~~ willfully or recklessly wastes, spoils, or 3705  
otherwise willfully and wrongfully destroys or damages any 3706  
property other than military property of the United States or of 3707  
the state shall be punished as a court-martial may direct. 3708

**Sec. 5924.111.** ~~Any~~ (A) Subject to division (B) of this 3709  
section, any person subject to this code who ~~operates~~ does any of 3710  
the following shall be punished as a court-martial may direct: 3711

(1) Operates or physically controls any vehicle ~~while drunk,~~ 3712  
~~or, aircraft, or vessel~~ in a reckless or wanton manner, ~~shall be~~ 3713  
~~punished as a court martial may direct;~~ 3714

(2) Operates or physically controls any vehicle, aircraft, or 3715  
vessel while under the influence of alcohol, a drug of abuse, or a 3716  
combination of them; 3717

(3) Operates or physically controls any vehicle, aircraft, or 3718  
vessel while having in the person's whole blood, blood serum or 3719  
plasma, breath, or urine the minimum concentrations of alcohol set 3720  
forth in divisions (A)(1)(b) to (A)(1)(i) of section 4511.19 of 3721  
the Revised Code; 3722

(4) Operates or physically controls any vehicle, aircraft, or 3723  
vessel while having in the person's whole blood, blood serum or 3724

plasma, or urine the concentrations of controlled substances or 3725  
metabolites of a controlled substance set forth in division 3726  
(A)(1)(j) of section 4511.19 of the Revised Code. 3727

(B) If a military installation is located partially in this 3728  
state and partially in one or more other states, the adjutant 3729  
general may select the alcohol and controlled substance levels set 3730  
forth in the impaired operating laws of one of the other states to 3731  
apply on the installation in place of the levels set forth in 3732  
division (A) of this section. 3733

**Sec. 5924.1121.** (A) As used in this section, "prohibited 3734  
substance" means any of the following: 3735

(1) Opium, heroin, cocaine, amphetamine, lysergic acid 3736  
diethylamide, methamphetamine, phencyclidine, barbituric acid, or 3737  
marihuana or any compound or derivative of any of those 3738  
substances; 3739

(2) Any substance not specified in division (A)(1) of this 3740  
section that the adjutant general lists on a schedule of 3741  
controlled substances or that is listed on a schedule established 3742  
under section 202 of the Federal Controlled Substances Act, 21 3743  
U.S.C. 812, 84 Stat. 1247, as amended. 3744

(B) A person subject to this code who wrongfully uses, 3745  
possesses, manufactures, distributes, imports into the customs 3746  
territory of the United States, exports from the United States, or 3747  
introduces into an installation, vessel, vehicle, or aircraft used 3748  
by or under the control of the armed forces of the United States 3749  
or of the organized militia a prohibited substance shall be 3750  
punished as a court-martial may direct. 3751

**Sec. 5924.113.** Any sentinel or lookout who is found drunk or 3752  
sleeping on his the sentinel's or lookout's post, or leaves it 3753  
before he the sentinel or lookout is regularly relieved, shall be 3754

~~punished, if the offense is committed in time of war, by death or~~ 3755  
~~such other punishment as a court martial may direct, but if the~~ 3756  
~~offense is committed at any other time, by such punishment other~~ 3757  
~~than death~~ as a court-martial may direct. 3758

**Sec. 5924.115.** Any person subject to this code who for the 3759  
purpose of avoiding work, duty, or service in the organized 3760  
militia does either of the following shall be punished as a 3761  
court-martial may direct: 3762

(A) Feigns illness, physical disablement, mental lapse, or 3763  
derangement; ~~or~~ 3764

(B) Intentionally inflicts self-injury; 3765  
~~shall be punished as a court martial may direct.~~ 3766

**Sec. 5924.120.** (A) As used in this section: 3767

(1) "Affirmative defense" means any special defense that, 3768  
although not denying that the accused committed the objective acts 3769  
constituting the offense charged, denies, in whole or in part, 3770  
criminal responsibility for those acts. 3771

(2) "Bodily harm" means any offensive touching of another, 3772  
however slight, that does not result in grievous bodily harm. 3773

(3) "Consent" means words or overt acts indicating a freely 3774  
given agreement to the sexual conduct at issue by a competent 3775  
person. 3776

(4) "Dangerous weapon or object" means any of the following: 3777

(a) Any firearm, whether loaded or not and whether operable 3778  
or not; 3779

(b) Any other weapon, device, instrument, material, or 3780  
substance, whether animate or inanimate, that as used or intended 3781  
to be used is known to be capable of producing death or grievous 3782

bodily harm; 3783

(c) Any object fashioned or used in such a manner as to lead 3784  
a person on whom the object is used or threatened to be used to 3785  
reasonably believe under the circumstances that the object is 3786  
capable of producing death or grievous bodily harm. 3787

(5) "Force" means action to compel submission of another or 3788  
to overcome or prevent another's resistance by either of the 3789  
following: 3790

(a) The use, display, or suggestion of possession of a 3791  
dangerous weapon or object; 3792

(b) Physical violence, strength, power, or restraint applied 3793  
to another person sufficient to prevent the other person from 3794  
avoiding or escaping sexual contact. 3795

(6) "Grievous bodily harm" means serious bodily injury, 3796  
including but not limited to fractured or dislocated bones, deep 3797  
cuts, torn members of the body, and serious damage to internal 3798  
organs. 3799

(7) "Indecent conduct" means that form of immorality relating 3800  
to sexual impurity that is grossly vulgar, obscene, and repugnant 3801  
to common propriety and tends to excite sexual desire or deprave 3802  
morals with respect to sexual relations. Indecent conduct includes 3803  
observing or making a videotape, photograph, motion picture, 3804  
print, negative, slide, or other mechanically, electronically, or 3805  
chemically reproduced visual material, without another person's 3806  
consent and contrary to that other person's reasonable expectation 3807  
of privacy, of either of the following: 3808

(a) That other person's genitalia, anus, or buttocks, or, if 3809  
that other person is female, that person's areola or nipple; 3810

(b) That other person while that other person is engaged in a 3811  
sexual act, sexual contact, or sodomy. 3812

<u>(8) "Lesser degree of harm" means any of the following:</u>	3813
<u>(a) Physical injury to the person or property of a person</u>	3814
<u>other than the victim of the offense;</u>	3815
<u>(b) A threat to do any of the following:</u>	3816
<u>(i) Accuse any person of a crime;</u>	3817
<u>(ii) Expose a secret or publicize an asserted fact, whether</u>	3818
<u>true or false, tending to subject some person to hatred, contempt,</u>	3819
<u>or ridicule;</u>	3820
<u>(iii) Through the use or abuse of military position, rank, or</u>	3821
<u>authority, to affect or threaten to affect, either positively or</u>	3822
<u>negatively, the military career of some person.</u>	3823
<u>(9) "Mistake of fact as to consent" means a belief that is</u>	3824
<u>incorrect, as a result of ignorance or mistake, that a person</u>	3825
<u>engaging in sexual conduct consented to engage in that conduct, if</u>	3826
<u>both of the following apply:</u>	3827
<u>(a) The ignorance or mistake existed in the mind of the</u>	3828
<u>accused at the time the sexual conduct in issue occurred and was</u>	3829
<u>based on information or lack of information that would have</u>	3830
<u>indicated to a reasonable person that the other person consented;</u>	3831
<u>(b) The ignorance or mistake was not based on the accused's</u>	3832
<u>failure to discover facts that a reasonably careful person would</u>	3833
<u>have discovered under the same or similar circumstances.</u>	3834
<u>(10) "Sexual act" means either of the following:</u>	3835
<u>(a) Contact between the penis and the vulva, including any</u>	3836
<u>penetration, however slight;</u>	3837
<u>(b) Anal intercourse, fellatio, and cunnilingus between</u>	3838
<u>persons, regardless of sex;</u>	3839
<u>(c) The penetration, however slight, of the genital opening</u>	3840
<u>of another by a hand or finger or any object with an intent to</u>	3841

abuse, humiliate, harass, or degrade any person or to arouse or 3842  
gratify the sexual desire of any person. 3843

(11) "Sexual contact" means the intentional touching, either 3844  
directly or through clothing, of the genitalia, anus, groin, 3845  
breast, inner thigh, or buttocks of another person with an intent 3846  
to abuse, humiliate, or degrade any person or to arouse or gratify 3847  
the sexual desire of any person. 3848

(12) "Sexual conduct" means any act that is prohibited by 3849  
this section. 3850

(13)(a) For purposes of divisions (B) and (D) of this 3851  
section, "threatening or placing that other person in fear" means 3852  
making a communication or performing an action of sufficient 3853  
consequence to cause that other person to reasonably fear that 3854  
noncompliance will result in that person or another being 3855  
subjected to death, grievous bodily harm, or kidnapping. 3856

(b) For purposes of divisions (C) and (E) of this section, 3857  
"threatening or placing that other person in fear" means making a 3858  
communication or performing an action of sufficient consequence to 3859  
cause a victim of the offense to reasonably fear that 3860  
noncompliance will result in the victim or another being subjected 3861  
to a lesser degree of harm than death, grievous bodily harm, or 3862  
kidnapping. 3863

(B) Any person subject to this chapter who causes another 3864  
person of any age to engage in a sexual act by doing any of the 3865  
following is guilty of rape and shall be punished as a 3866  
court-martial may direct: 3867

(1) Using force against that other person; 3868

(2) Causing grievous bodily harm to any person; 3869

(3) Threatening or placing that other person in fear; 3870

(4) Rendering another person unconscious; 3871

(5) Administering to another person by force or threat of 3872  
force, or without the knowledge or permission of that person, a 3873  
drug, intoxicant, or other similar substance that substantially 3874  
impairs the ability of that other person to appraise or control 3875  
conduct. 3876

(C) Any person subject to this chapter who does either of the 3877  
following is guilty of aggravated sexual assault and shall be 3878  
punished as a court-martial may direct: 3879

(1) Causes another person of any age to engage in a sexual 3880  
act by doing either of the following: 3881

(a) Threatening or placing that other person in fear; 3882

(b) Causing bodily harm. 3883

(2) Engages in a sexual act with another person of any age if 3884  
that other person is substantially incapable of doing any of the 3885  
following: 3886

(a) Appraising the nature of the sexual act; 3887

(b) Declining to participate in the sexual act; 3888

(c) Communicating unwillingness to engage in the sexual act. 3889

(D) Any person subject to this chapter who engages in sexual 3890  
contact or causes sexual contact with or by another person by 3891  
doing any of the following is guilty of aggravated sexual contact 3892  
and shall be punished as a court-martial may direct: 3893

(1) Using force against that other person; 3894

(2) Causing grievous bodily harm to any person; 3895

(3) Threatening or placing that other person in fear; 3896

(4) Rendering another person unconscious; 3897

(5) Administering to another person by force or threat of 3898  
force, or without the knowledge or permission of that person, a 3899  
drug, intoxicant, or other similar substance that substantially 3900



impairs the ability of that other person to appraise or control 3901  
conduct. 3902

(E) Any person subject to this chapter who does either of the 3903  
following is guilty of abusive sexual contact and shall be 3904  
punished as a court-martial may direct: 3905

(1) Engages in or causes sexual contact with or by another 3906  
person by doing either of the following: 3907

(a) Threatening or placing that other person in fear; 3908

(b) Causing bodily harm. 3909

(2) Engages in sexual contact with another person of any age 3910  
if that other person is substantially incapable of doing any of 3911  
the following: 3912

(a) Appraising the nature of the sexual contact; 3913

(b) Declining to participate in the sexual contact; 3914

(c) Communicating unwillingness to engage in the sexual 3915  
contact. 3916

(F) Any person subject to this chapter who engages in 3917  
indecent conduct is guilty of an indecent act and shall be 3918  
punished as a court-martial may direct. 3919

(G) Any person subject to this chapter who, without legal 3920  
justification or lawful authorization, engages in sexual contact 3921  
with another person without that other person's permission is 3922  
guilty of wrongful sexual contact and shall be punished as a 3923  
court-martial may direct. 3924

(H) Any person subject to this chapter who intentionally 3925  
exposes, in an indecent manner, in any place where the conduct 3926  
involved may reasonably be expected to be viewed by people other 3927  
than members of the person's family or household, the person's 3928  
genitalia, anus, buttock, or female areola or nipple is guilty of 3929  
indecent exposure and shall be punished as a court-martial may 3930

direct. 3931

(I) In a prosecution under this section, in proving that the 3932  
accused made a threat, it need not be proven that the accused 3933  
actually intended to carry out the threat. 3934

(J)(1) In a prosecution under division (C)(2), (G), or (H) of 3935  
this section, it is an affirmative defense that the accused and 3936  
the other person, when they engaged in the sexual conduct were 3937  
married to each other. 3938

(2) Division (J)(1) of this section does not apply if the 3939  
accused's intent at the time of the sexual conduct is to abuse, 3940  
humiliate, or degrade any person. 3941

(K)(1) Lack of permission is an element of the offense under 3942  
division (G) of this section. Consent and mistake of fact as to 3943  
consent are affirmative defenses only to the sexual conduct in 3944  
issue in a prosecution under division (B), (C), (D), or (E) of 3945  
this section. 3946

(2) The enumeration in this section of some affirmative 3947  
defenses shall not be construed as excluding the existence of 3948  
other affirmative defenses. 3949

(3) The accused has the burden of proving an affirmative 3950  
defense by a preponderance of evidence. After the defense meets 3951  
this burden, the prosecution has the burden of proving beyond a 3952  
reasonable doubt that the affirmative defense did not exist. 3953

(L)(1) An expression of lack of consent through words or 3954  
conduct means there is no consent. Lack of verbal or physical 3955  
resistance or submission resulting from an accused's use of force, 3956  
threat of force, or placing another person in fear does not 3957  
constitute consent. A current or previous dating relationship by 3958  
itself or the manner of dress of a person involved with the 3959  
accused in the sexual conduct does not constitute consent. 3960

(2) A person cannot consent to sexual conduct if the person 3961  
is substantially incapable of any of the following: 3962

(a) Appraising the nature of the sexual conduct due to mental 3963  
impairment or unconsciousness resulting from consumption of 3964  
alcohol, drugs, or a similar substance or any other cause or to 3965  
mental disease or defect that renders the person unable to 3966  
understand the nature of the sexual conduct; 3967

(b) Physically declining to participate in the sexual 3968  
conduct; 3969

(c) Physically communicating unwillingness to engage in the 3970  
sexual conduct. 3971

(M) An accused's state of intoxication, if any, at the time 3972  
of an offense under this section occurs is not relevant to the 3973  
existence of a mistake of fact as to consent. 3974

**Sec. 5924.128.** (A) Any person subject to this code who 3975  
attempts or offers with unlawful force or violence to do bodily 3976  
harm to another person, whether or not the attempt or offer is 3977  
consummated, is guilty of assault and shall be punished as a 3978  
court-martial may direct. 3979

(B) Any person subject to this code who does either of the 3980  
following is guilty of aggravated assault and shall be punished as 3981  
a court-martial may direct: 3982

(1) Commits an assault with a dangerous weapon or other means 3983  
or force likely to produce death or grievous bodily harm; ~~or~~ 3984

(2) Commits an assault and intentionally inflicts grievous 3985  
bodily harm with or without a weapon; 3986  
~~is guilty of aggravated assault and shall be punished as a~~ 3987  
~~court-martial may direct.~~ 3988

**Sec. 5924.131.** Any person subject to this code who, in a 3989

judicial proceeding or in a course of justice conducted under this 3990  
code, willfully and corruptly ~~gives, upon~~ does either of the 3991  
following is guilty of perjury and shall be punished as a 3992  
court-martial may direct: 3993

(A) Upon a lawful oath or in any form allowed by law to be 3994  
substituted for an oath, gives any false testimony material to the 3995  
issue or matter of inquiry ~~is guilty of perjury and shall be~~ 3996  
~~punished as a court martial may direct;~~ 3997

(B) In any declaration, certification, verification, or 3998  
statement made under penalty of perjury subscribes any false 3999  
statement material to the issue or matter of inquiry. 4000

**Sec. 5924.132.** Any person subject to this code who does any 4001  
of the following shall be punished as a court-martial may direct: 4002

(A) ~~Who, knowing it~~ Knowing a claim to be false or fraudulent 4003  
does either of the following: 4004

(1) Makes any claim against the United States, the state, or 4005  
any officer ~~thereof~~ of the United States or the state; ~~or~~ 4006

(2) Presents to any person in the civil or military service 4007  
~~thereof~~ of the United States or the state, for approval or 4008  
payment, any claim against the United States, the state, or any 4009  
officer ~~thereof~~ of the United States or the state; 4010

(B) ~~Who, for~~ For the purpose of obtaining the approval, 4011  
allowance, or payment of any claim against the United States, the 4012  
state, or any officer ~~thereof~~ of the United States or the state 4013  
does any of the following: 4014

(1) Makes or uses any writing or other paper knowing it to 4015  
contain any false or fraudulent statements; 4016

(2) Makes any oath to any fact or to any writing or other 4017  
paper knowing the oath to be false; ~~or~~ 4018

(3) Forges or counterfeits any signature upon any writing or 4019  
other paper, or uses any ~~such~~ forged or counterfeit signature 4020  
knowing it to be forged or counterfeited; 4021

(C) ~~Who, having~~ Having charge, possession, custody, or 4022  
control of any money, or other property of the United States or 4023  
the state, furnished or intended for the armed forces of the 4024  
United States or the organized militia or any force thereof, 4025  
knowingly delivers to any person having authority to receive it, 4026  
any amount thereof less than that for which ~~he~~ the person making 4027  
the delivery receives a certificate or receipt; ~~or~~ 4028

(D) ~~Who, being~~ Being authorized to make or deliver any paper 4029  
certifying the receipt of any property of the United States or the 4030  
state, furnished or intended for the armed forces of the United 4031  
States or the organized militia or any force thereof, makes or 4032  
delivers to any person such writing without having full knowledge 4033  
of the truth of the statements therein contained and with intent 4034  
to defraud the United States or the state; 4035  
~~shall, upon conviction, be punished as a court-martial may direct.~~ 4036

**Sec. 5924.133.** Any commissioned officer who is convicted of 4037  
conduct unbecoming an officer and a lady or gentleman shall be 4038  
punished as a court-martial may direct. 4039

**Sec. 5924.146.** No person may be tried or punished for any 4040  
offense provided for in sections 5924.77 to 5924.134, ~~inclusive,~~ 4041  
of the Revised Code and of this code, unless it was committed 4042  
while ~~he~~ the person was in a military or national guard technician 4043  
duty status. 4044

**Section 2.** That existing sections 124.23, 124.26, 3319.085, 4045  
3737.881, 3781.10, 5321.04, 5903.10, 5903.11, 5911.07, 5923.12, 4046  
5924.01, 5924.02, 5924.03, 5924.06, 5924.07, 5924.08, 5924.09, 4047  
5924.10, 5924.11, 5924.13, 5924.14, 5924.15, 5924.16, 5924.17, 4048

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5924.125, 5924.126, 5924.129, 5924.130, 5924.145, and 5924.147 of	4064
the Revised Code are hereby repealed.	4065