

HAWAII ADMINISTRATIVE RULES

TITLE 7 DEPARTMENT OF DEFENSE

SUBTITLE 1 MILITARY JUSTICE

CHAPTER 2 NONJUDICIAL PUNISHMENT

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§7-2-1 General provisions.

Under section 124A-21, HRS, a commanding officer may impose non-judicial punishment upon military personnel of the commanding officer's command for minor offenses. The commanding officer shall distinguish non-judicial punishment from non-punitive disciplinary measures which may include but shall not be limited to:

- (1) Adverse conduct and efficiency ratings;
- (2) Admonitions or reprimands; or
- (3) Reductions for inefficiency.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-2 Offenses punishable under section 124A-21, HRS.

(a) The individual shall have committed an offense in violation of chapter 124A, HRS, or chapter 7-9.

(b) The Offense committed shall also be of a minor nature, as "judicial" methods of dealing with criminal activity (for example, arrest and imprisonment) are not available in non-judicial punishment. The nature of the offense and the circumstances surrounding its commission are among the factors which shall be considered in determining whether or not the offense is minor in nature. Generally, the term "minor" includes misconduct not involving any greater degree of criminality than is involved in the average offense tried by a summary court-martial.

(c) Due regard shall be given to the personal history of the offender in determining whether to use the provisions of section.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-3 Persons who may be punished.

A commanding officer may impose non-judicial punishment only upon members of the state military

forces:

- (1) Of the commanding officer's command (including any personnel attached to the commanding officer's command); and
- (2) Who are on state active duty, duty status other than state active duty, or while under lawful orders to be in either duty status.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-4 Who may impose non-judicial punishment.

(a) Non-judicial punishment may be imposed by any commanding officer, unless a superior commanding officer has restricted or withheld the authority to impose punishment on certain categories of military personnel or offenses. For example, general officers in command may reserve to themselves the authority to impose non-judicial punishment on officers within their command.

(b) A detachment commander shall be an officer in charge as mentioned in section 124A-21(c), HRS, and shall have the same authority as the commanding officer to impose non-judicial punishment upon members of the officer's detachment.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-5 Authorized punishments.

(a) The non-judicial punishments that a commanding officer may impose shall be as set forth in the exhibit entitled "[Annex 1](#)" dated 1 November 1984, located at the end of this subtitle, which is made a part of this section. As indicated in the exhibit, a field grade commanding officer may impose a more severe non-judicial punishment than a company grade or warrant officer in command.

(b) If the company grade or warrant officer in command does not believe that the officer's punishment authority is adequate in light of the offense, the officer may forward the case to the officer's field grade commanding officer and request the field grade commanding officer to exercise punishment authority under section 124A-21, HRS.

(c) A sample document for transmitting a case for action by a superior commanding officer is set forth in the exhibit entitled "[Annex 2](#)" dated 1 November 1984, located at the end of this sub-title, which is made a part of this section.

(d) A superior officer shall not:

- (1) Direct that a subordinate commanding officer take action under section 124A-21, HRS; or
- (2) Dictate to a subordinate commanding officer the type or amount of punishment to be

administered under section 124A-21, HRS.

(e) A superior commanding officer may refer a disciplinary matter to a subordinate commanding officer for appropriate action. In such a case, the subordinate commanding officer may take any action specified in [section 7-4-6](#). Additionally, the subordinate commanding officer may initiate court-martial action unless otherwise prohibited by this subtitle.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-6 Procedure generally.

(a) Before taking action to impose non-judicial punishment, a commanding officer shall determine that:

- (1) The member's duty status is one to which chapter 124A, HRS applies, as indicated in sections 124A-1 and 124A-2, HRS;
- (2) The alleged misconduct actually took place;
- (3) The misconduct was an offense under chapter 124A, HRS;
- (4) The accused member committed the offense; and
- (5) Non-judicial punishment is appropriate to the offense in view of the severity of the offense and the member's past record.

(b) The requirements set forth in subsection (a) shall be addressed promptly through investigation. Promptness in investigating a report of an offense is critical to the member's rights in the event trial by court-martial is conducted.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-7 Elements of offenses.

The commanding officer shall consult the paragraph entitled "Proof" found under the appropriate punitive article in Chapter XXVIII of the Manual for Courts-Martial, United States, as it existed on 1 July 1984, to determine whether an offense has been committed. A table cross-referencing the punitive articles of chapter 124A, HRS to the punitive articles in Chapter XXVIII, Manual for Courts-Martial, United States is set forth in the exhibit entitled "[Annex 2A](#)" dated 1 November 1984, located at the end of this subtitle, which is made a part of this section.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-8 Evidence required.

Although no formal rules of evidence or standards of proof apply to any phase of non-judicial punishment proceedings, the commanding officer shall recognize that the suspected offender is entitled to demand trial by court-martial at which proof beyond a reasonable doubt by competent evidence is a prerequisite to punishment. Accordingly, the commanding officer shall consider whether proof beyond a reasonable doubt by competent evidence would be obtainable before initiating non-judicial punishment. If competent evidence which would provide proof beyond a reasonable doubt does not exist, non-judicial punishment shall not be warranted.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-9 Notification.

(a) The first stage of a proceeding to impose non-judicial punishment is the commanding officer's notification to the individual concerned. The elements of this step shall be as set forth on AGHI Form SJAG 1, a copy of which is set forth on the exhibit entitled "[Annex 3](#)" dated 1 November 1984, located at the end of this subtitle, which is made a part of this section.

(b) The notification portion of the proceeding shall contain the elements set forth in sections [7-2-10](#) to [7-2-13](#).

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-10 Statement of the offense.

The commanding officer shall inform the member that the commanding officer intends to impose non-judicial punishment, and shall give the member a brief description of the offense or offenses that the commanding officer believes the member has committed.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-11 Right to demand trial by court-martial.

The commanding officer shall inform the member that the member has the right to demand court-martial in lieu of the non-judicial punishment action.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-12 Statement of maximum punishment.

The commanding officer shall inform the member, of the maximum punishment authorized if non-judicial punishment is imposed, and the maximum punishment that could be imposed by each type of court-martial.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-13 Right to remain silent.

The commanding officer shall inform the member that the member has a right to remain silent and that anything the member says can and will be used against the member in the non-judicial punishment action or any subsequent action.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-14 Member's election of rights; time to reply.

The member shall elect whether to submit to the non-judicial punishment proceedings or to demand trial by court-martial. The member shall make this election on AGHI Form SJAG 1a, a copy of which is set forth on the exhibit entitled "[Annex 5](#)" dated 1 November 1984, located at the end of this subtitle, which is made a part of this section.

The member shall have three duty days to reply to the notification of intent to impose non-judicial punishment, unless this period is waived. The member may submit written justification for a longer period of time and the commanding officer may extend the time in a proper case. A duty day is a calendar day during which the member is scheduled to perform duty.

Examples:

- (1) The unit's monthly drill dates are 2 and 3 June and 2 and 3 July. If the notification is given on 2 June, the reply may be required on 2 July;
- (2) The unit drills on 2 and 3 June and begins its fifteen days annual training on 2 July. If the notification is given on 3 June, the reply may be required on 3 July.

The duty day during which the notification is heard may be included in computing the three day period. If the member fails to reply within the time allowed, the proceedings may be continued; or terminated and court-martial action initiated.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-15 Demand for trial by court-martial.

If the member demands trial by court-martial, the non-judicial punishment action shall be terminated. The commanding officer shall then decide whether to initiate court-martial action.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-16 Waiver of court-martial.

(a) If the member waives court-martial and does not submit matters in the member's own behalf, the commanding officer may immediately proceed to impose punishment.

(b) If the member waives court-martial but does submit matters in defense, extenuation, or mitigation, orally or in writing, the commanding officer shall consider these matters. If the commanding officer determines that there is insufficient evidence to support the allegations against the member, or that there is some other valid reason for not punishing the member, the non-judicial punishment proceeding shall be terminated and all records concerning the proceeding shall be destroyed.

(c) If, after considering submitted matters, the commanding officer is convinced that the member is guilty of the offense or offenses charged, and that non-judicial punishment is appropriate, the commanding officer shall impose punishment.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-17 Conduct of proceedings.

Non-judicial punishment proceedings shall be conducted personally by the commanding officer in the presence of the member concerned. If the member fails or refuses to report for the proceedings, court-martial charges may be preferred. The exhibit entitled "[Annex 6](#)" dated 1 November 1984, located at the end of this subtitle, may be referred to as a guide for conducting non-judicial punishment proceedings.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-18 Imposition of punishment; maximum punishments.

(a) The maximum punishment authorized in non-judicial punishment proceedings shall be as provided in the exhibit entitled "[Annex 1](#)" dated 1 November 1984, located at the end of this subtitle, which is made

a part of this section.

(b) A commanding officer shall not administer punishment for misconduct that has been previously punished by non-judicial punishment or court-martial. Action by a commanding officer taken on an appeal shall not be considered to be "administering punishment" within the meaning of this section. A member who has been charged in a civil court shall not be subject to non-judicial punishment or court-martial action for the same act or acts over which the civil court has exercised its criminal jurisdiction. The commanding officer shall be aware of certain limitations on punishment. The maximum punishment shall be admonition or reprimand and one of the other punishments set forth in [Annex 1](#).

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-19 Imposition of punishment; informing the offender.

The commanding officer imposing the punishment shall personally announce the punishment to the offender. At this time, the commanding officer shall explain the offender's right to appeal and the procedures to do so. If a fine is imposed, the commanding officer shall set the time by which the fine shall be paid. The maximum period for paying the fine shall be not more than ten calendar days after imposition, unless the commanding officer determines that extraordinary circumstances require a longer period in the interests of justice.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-20 Fines.

If a fine is imposed and paid as a result of non-judicial punishment action, the person receiving the money shall pay it to the director of finance, State of Hawaii, within thirty days of the receipt of the money. The exhibit entitled "[Annex 7](#)" dated 1 November 1984, located at the end of this subtitle, contains a sample letter of transmittal of a non-judicial punishment fine. If a fine is imposed and not paid when due, court-martial proceedings under the original charges may be instituted as if no non-judicial punishment action has occurred.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-21 Responsibilities after imposition.

(a) A commanding officer imposing non-judicial punishment may suspend, mitigate, remit, or set aside that punishment if the commanding officer finds the action is warranted by the circumstances of the case. This power gives the commanding officer an effective means of rehabilitating the offender which is often

more valuable than the power to punish. Examples of indorsements to be used in connection with the powers stated in this section are set forth in the exhibit entitled "[Annex 8](#)", dated 1 November 1984, located at the end of this subtitle, which is made a part of this section.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-22 Suspension.

(a) When punishment is suspended, held in abeyance, or not put into effect for a specified period of time, a probationary period results during which the member is permitted to demonstrate good conduct and efficiency, and provide the member with an incentive to stay out of trouble. The unexecuted portion of any non-judicial punishment may be suspended for a reasonable time not to exceed six months, or until the offender's expiration of present term of service (ETS) day, whichever is earlier.

(b) No favorable personnel actions may be taken during the period of suspension. If, during the period of suspension, the member commits further actions of misconduct, the suspension may be vacated (terminated) and the original punishment put into effect. Unless the suspension is sooner vacated, suspended portions of the punishment shall be remitted, without further action, upon the termination of the period of suspension.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-23 Mitigation.

The severity of the punishment called for by the offense may be reduced by mitigating circumstances. Mitigation may be appropriate when the member has demonstrated by a previous record of good conduct and efficiency that the member merits a decrease in punishment.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-24 Remission.

Remission is the cancellation of the unserved portion of the punishment. This action may be taken by the commanding officer when appropriate.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-25 Setting aside.

The commander may "set aside" non-judicial punishment when it is clear that an injustice has occurred, in which case all rights and privileges shall be returned to the member. This type of action would be necessary in a case where the receipt of previously unknown information convinces the commanding officer that the member is not guilty of an offense for which punishment has been imposed. If the non-judicial punishment action is set aside, all records of the proceeding shall be destroyed.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-26 Disposition of AGHI forms SJAG 1 and 1a.

Copies of written statements or other documentary evidence pertaining to the case which has been considered by the commanding officer imposing the non-judicial punishment or the commanding officer on appeal shall be attached to the [AGHI form SJAG 1](#). The [AGHI form SJAG 1a](#) which has been completed by the member shall also be attached to it. Copies of the package may be made for distribution.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-27 Distribution of forms.

(a) The original copy of the forms in [section 7-2-26](#) shall be sent to the unit of assignment for filing in the military personnel records of the member, which shall be maintained in the same manner and for the same period as non-judicial punishment actions under the Uniform Code of Military Justice as it existed on 1 January 1984. If the case is appealed, this set of forms shall be forwarded with the appeal.

(b) Copies of the forms shall be distributed as follows:

- (1) First copy to the member concerned;
- (2) Second copy to the commanding officer for the commanding officer's use;
- (3) Third copy to the designated staff judge advocate or legal officer.

(c) If the action is set aside on appeal, all local records concerning the proceedings shall be destroyed.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-28 Right of appeal.

Every member who receives non-judicial punishment shall have the right to appeal. This right does not conflict with the member's "consent" to the non-judicial punishment proceedings. The member's consent is merely a waiver of the right to demand trial by court-martial and not an admission of guilt. Upon appeal, the next superior commanding officer may set aside the non-judicial punishment action or may approve or reduce, but not increase, the punishment imposed by the member's commanding officer. Appeals shall be handled promptly.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-29 Election to appeal.

The commanding officer who imposes non-judicial punishment shall advise the member of the right to appeal (see [Annex 6](#), Part III). The commanding officer shall direct the member to state whether the member is appealing at that time, and to record the decision in Part II of the [AGHI Form SJAG 1a](#). If the member fails to appeal at the time the member is advised of the right to appeal, the member may not appeal, unless the commanding officer allows additional time not to exceed three duty days, for the member to decide. If the selection to appeal is made at that time, the commanding officer may require the member to undergo the punishment imposed or may defer the punishment pending the outcome of the appeal.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-30 Submission of appeal.

Materials relied on in support of an appeal shall be submitted in writing to the commanding officer who imposed non-judicial punishment within a reasonable time after the imposition of punishment. These materials, for example, may be written statements dealing with the offense or with the inappropriateness of the punishment.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-31 Forwarding the appeal.

The commanding officer who initially imposed the non-judicial punishment may rebut in writing any statement furnished by the member, and shall transmit the file to the next superior commanding officer for action on the appeal.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-32 Action by reviewing authority.

(a) The commanding officer receiving the appeal shall refer the appeal to the designated judge advocate for consideration and advice. The commanding officer shall then consider the advice received, all matters submitted by the member and, if warranted, may set aside the action, modify the punishment, or affirm the non-judicial punishment action.

(b) If the commanding officer sets aside the non-judicial punishment action, the commanding officer shall return the appeal to the commanding officer who imposed punishment together with the decision. Upon receipt of that decision, the commanding officer who imposed punishment shall destroy all local records of the proceeding.

(c) If the commanding officer affirms the action, whether or not the punishment is modified, the commanding officer shall return the appeal together with the decision and appropriate instructions.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-33 Announcement of results.

A commanding officer may announce at unit formations and through other appropriate means the final disposition of any case involving the non-judicial punishment of members of the commanding officer's command, including action taken on a previously imposed non-judicial punishment. Any announcement of non-judicial punishment actions (including termination by reason of innocence) is discretionary with the officer who initiated the proceedings. The impact on unit morale and the impairment to job or leadership effectiveness of the individual concerned shall be considered when deciding whether to announce the disposition.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-34 Vacating suspensions.

The suspension of imposition of non-judicial punishment may be vacated by any commanding officer or officer in charge competent to impose upon the offender concerned, punishment of the kind and amount involved in the vacation of suspension. Although formal proceedings shall not be necessary to vacate a suspension of non-judicial punishment, the offender shall be given a meaningful opportunity to rebut or explain the information upon which the proposed vacation is based.

[Eff: FEB 11 1985] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-21)

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§7-2-27 Distribution of Forms.

(a) The original copy of the forms in [section 7-2-26](#) shall be sent to the unit of assignment for filing in the military personnel records of the member, which shall be maintained in the same manner and for the same period as nonjudicial punishment actions under the Uniform Code of Military Justice as it existed on 1 July 1988. If the case is appealed, this set of forms shall be forwarded with the appeal.

[Eff: FEB 11 1985; **am APR 27 1989**] (Auth: HRS §§124A-21, 124A-171) (Imp: HRS §124A-171)

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