

HAWAII ADMINISTRATIVE RULES

TITLE 7 DEPARTMENT OF DEFENSE

SUBTITLE 1 MILITARY JUSTICE

CHAPTER 3 THE COURTS-MARTIAL SYSTEM

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§7-3-1 Objective of the system.

The impartial application of chapter 124A, HRS, and the courts-martial system to all law violators is intended to achieve justice. The principles of law recognized in criminal cases in the courts of the State of Hawaii shall be used by the state military forces in the administration of military justice. The objective of chapter 124A, HRS and the court-martial system it establishes is to create a system of prohibitions, penalties, and correctional measures to deal with conduct that threatens good order, discipline, and safety in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §§124A-31, 124A-61)

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§7-3-2 The courts-martial system.

(a) Chapters 7-3 to 7-7 deal with general, special and summary courts-martial. The maximum punishments which may be imposed by courts-martial shall be as provided in the exhibit entitled "[Annex 9](#)" dated 1 November 1984, located at the end of this subtitle, which is made a part of this section. An accused person shall not be tried by summary court-martial over the accused's objection unless the

accused has been permitted to refuse punishment under section 124A-21, HRS. [Section 7-5-3](#) sets out the convening authority's options if the accused refuses trial by summary court-martial.

(b) The procedures for establishing and conducting summary, special, and general courts-martial (including making necessary modifications to the charge sheet) may be substantially those used by the federal military services.

(c) A law officer shall be detailed for a general court-martial as provided in section 124A-45, HRS, and the appointment of the president of a special court-martial shall be subject to the requirements of section 124A-44(f), HRS.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: §§124A-21, 124A-31, 124A-44, 124A-45, 124A-61)

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§7-3-3 Conviction as criminal conviction.

Any court-martial conviction shall constitute a state court criminal conviction.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: None)

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§7-3-4 Reviews.

Upon conclusion of a court-martial, the authenticated record of trial shall be prepared and forwarded by the trial counsel to the convening authority. Upon receipt by the convening authority, the convening authority shall refer it to the designated staff judge advocate, legal officer, or law specialist for a written review. Upon receipt of that review, the convening authority shall take appropriate action. Other review requirements shall be as provided in section 124A-97, HRS.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §§124A-79, 124A-92, 124A-93, 124A-96, 124A-97)

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§7-3-5 Recognizing criminal conduct.

An act for which the law provides a penalty is an "offense". In the state military forces, chapter 124A, HRS, and chapter 7-9 set out the types of conduct for which a member may legally be punished. Any question as to whether specific conduct constitutes a violation of the penal provisions of chapter 124A, HRS shall be resolved by contacting the office of the appropriate staff judge advocate, as a member's conduct may be substandard or personally offensive without being an offense.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-111)

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§7-3-6 Presumption of innocence.

In all court-martial proceedings every person shall be presumed innocent until proven guilty.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: None)

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§7-3-7 Self-incrimination and right to counsel.

Rights against self incrimination shall be, as provided in section 124A-52, HRS. Any member suspected of having committed an offense of which the member's commanding officer is contemplating court-martial proceedings shall have the right to consult with a lawyer.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §§124A-52, 124A-53)

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§7-3-8 Appointment of legal personnel.

At a special or general court-martial the trial counsel represents the State of Hawaii and the defense counsel represents the accused. Before the special or general court-martial is detailed, the convening authority shall contact the office of the designated staff judge advocate for a list of personnel available for detail as law officer (for general court-martial only), trial counsel, and defense counsel. The convening authority shall appoint a law officer, trial counsel, defense counsel, and alternates as necessary from the list.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-46)

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§7-3-9 Sources of information.

A commanding officer may receive information from many sources that an offense has allegedly been committed by a member under the command of the commanding officer. For example:

- (1) The commanding officer may witness an alleged offense;
 - (2) Someone within the unit may report an alleged offense;
 - (3) A report of investigation may bring the alleged offense to the commanding officer's attention;
- or
- (4) A higher headquarters may forward a report for action.

When a superior commanding officer asks that an allegation be investigated and the disposition reported, the request shall not be construed or interpreted as a directive to take disciplinary action. This section shall be read in conjunction with [section 7-3-10\(c\)](#).

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: None)

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§7-3-10 Command responsibilities.

- (a) Regardless of how the commanding officer learns of an alleged offense, the commanding officer shall insure that the matter is promptly and adequately investigated so that the commanding officer will have sufficient information to make an intelligent and appropriate disposition of the allegation.
- (b) Once the preliminary investigation is completed, the commanding officer shall decide to:
- (1) Take no action;
 - (2) Take or recommend administrative action;
 - (3) Initiate or recommend nonjudicial punishment under section 124A-21, HRS; or
 - (4) Initiate court-martial action against the accused.
- (c) No person may order or instruct any commanding officer or other person to initiate nonjudicial punishment or court-martial action under chapter 124A, HRS. A commanding officer's decision to take no action in a specific case shall not bar any higher commanding officer from taking action the commanding officer believes to be appropriate. Imposition and enforcement of non-judicial punishment shall bar later trial by court-martial for the same acts or omissions except as provided in section 124A-21(e), HRS. A fine under section 124A-21, HRS constitutes "enforcement of nonjudicial punishment" only if it is paid when due.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §§124A-52, 124A-53)

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