

# HAWAII ADMINISTRATIVE RULES

## TITLE 7 DEPARTMENT OF DEFENSE

### SUBTITLE 1 MILITARY JUSTICE

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#### CHAPTER 5 PRE-TRIAL CONFINEMENT AND OTHER PRE-TRIAL ACTIONS

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#### **§7-5-1 Apprehension; pre-trial confinement**

(a) Any commanding officer may order military police of the state military force concerned to apprehend any member of the commanding officer's command who the commanding officer has probable cause to believe has committed an offense under chapter 124A, HRS, or chapter 7-9.

(b) Upon apprehension of the suspected offender, the person executing the apprehension shall deliver the suspected offender to the commanding officer who ordered the apprehension.

(c) The commanding officer shall then, determine the appropriate level of restraint, if any. Restraint includes but shall not be limited to:

- (1) Restriction to a specific area;
- (2) Arrest in quarters; or
- (3) Pre-trial confinement.

When apprehended only for charges normally tried by a summary court-martial the suspected offender shall not ordinarily be placed in pre-trial confinement.

(d) Where a suspected offender has been apprehended only for an offense normally tried by a summary court-martial, the suspect shall be charged not later than forty-eight hours after the imposition of any pre-trial restraint.

(e) The commanding officer shall take all steps required under section 124A-14 to insure that any suspected offender is not subject to unnecessary pre-trial restraint.

(f) Pre-trial confinement shall be in facilities designated by section 7-6-7.

[Eff: FEB 11 1985] (Auth: HRS §§124A-11, 124A-171) (Imp: HRS §124A-13, 124A-14)

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### **§7-5-2 Convening authority's role in setting up the trial.**

- (a) The convening authority shall provide suitable space for the conduct of the court-martial and provide such administrative support as may be required.
- (b) The convening authority shall notify the accused and, if the accused is represented, the defense counsel of the time, date, and place of trial. The exhibit entitled "[Annex 18](#)" dated 1 November 1984, located at the end of this subtitle contains a sample "Notice of Trial Setting". The notice shall be delivered in person or by certified mail, return receipt requested delivered to addressee only. If mailed, the notice shall be sent in a postage and fees paid envelope and deposited in an office of the United States Postal Service. Delivery to the accused, mailed to the latest available address as shown on the records of the units, shall be presumed seven days following date of deposit.
- (c) Not less than twenty calendar days (or such shorter time as the convening authority may establish) prior to the court-martial, the trial counsel and defense counsel shall provide the convening authority with a list of military and civilian personnel each desires to call as witnesses. The list shall include the name, home address and phone number, business address and phone number, and military unit (where applicable).
- (d) The convening authority through trial counsel shall take the necessary action to attempt to insure that all military personnel are available to participate in the proceedings. The summary court officer or president of the court-martial may issue subpoenas and letters of explanation to secure the presence of persons not subject to military orders. Examples of subpoenas and letters are shown in the exhibits entitled "[Annex 15](#)", "[Annex 16](#)", and "[Annex 17](#)", all dated 1 November 1984, located at the end of this subtitle.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-71, 124A-72)

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### **§7-5-3 Action if accused objects to trial by summary court-martial.**

The accused has no right to object to a summary court-martial if the accused has been permitted and has elected to refuse nonjudicial punishment; provided in all other cases, if the accused does not consent to trial by summary court-martial, the convening authority may:

- (1) Dismiss the charges;
- (2) Convene a special or general court-martial, if the convening authority is a proper convening authority;
- (3) Refer the case through military channels to a proper convening authority; or
- (4) Take any other action not prohibited by law.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-35)

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