

# HAWAII ADMINISTRATIVE RULES

## TITLE 7 DEPARTMENT OF DEFENSE

### SUBTITLE 1 MILITARY JUSTICE

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## CHAPTER 6 CONVENING AUTHORITY'S POST-TRIAL ACTIONS

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### **§7-6-1 Deferral of sentences to confinement.**

All sentences to confinement shall be executed on the date the sentence is adjudged unless the convicted person requests in writing deferral of any sentence to confinement and the convening authority approves the request in writing. If deferral is granted, the sentence to confinement shall begin to run on the date of final action by the convening authority on any sentence of confinement.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-83, 124A-171) (Imp: HRS §124A-83)

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### **§7-6-2 Convening authority's action.**

- (a) The record of trial and review shall be forwarded to the convening authority for action.
- (b) The convening authority may approve all or part of the adjudged sentence or disapprove the findings

and sentence; provided in general courts-martial, the convening authority shall refer the record to the designated staff judge advocate pursuant to section 124A-93, HRS.

(c) If the convening authority approves any part of the adjudged sentence which has not been executed, the convening authority may:

- (1) Order the approved sentence into execution; or
- (2) Suspend execution of the sentence as provided in [section 7-6-3](#).

(d) If the convening authority disapproves the findings and sentence of a court-martial, the convening authority may order a rehearing, except where there is a lack of evidence of guilt in the record to support the findings. When the convening authority disapproves the findings and sentence, the reasons for disapproval shall be stated. If the convening authority disapproves the findings and sentence and does not order a rehearing, the charges shall be dismissed.

(e) If a member is sentenced to confinement as a result of two or more courts-martial, the convening authority may order the periods of confinement into execution consecutively or concurrently as the convening authority deems appropriate. "Consecutively" means that the punishment starts after the other has been served. "Concurrently" means that the punishment shall be served at the same time. Fines shall be due in the aggregate sum imposed and approved. [Section 7-6-8](#) shall also apply.

(f) Upon ordering the punishment into execution, the convening authority shall complete that portion of the charge sheet designated "To Be Filled in By Convening Authority".

(g) The convening authority shall cause the remaining portion of the charge sheet to be completed by the appropriate officer.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §§124A-91, 124A-93, 124A-94, 124A-95, 124A-96, 124A-97,)

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### **§7-6-3 Suspension of sentences; generally**

At any time prior to adjournment of the court-martial, an accused may file with the court a written application of suspension of sentence, AGHI Form SJAG 3, an example of which is contained in the exhibit entitled "[Annex 19](#)" dated 1 November 1984, located at the end of this subtitle. The presiding officer of any court-martial shall inform the accused of the right to file the application and give the accused an opportunity to do so.

The form shall be filed in all cases in which the accused is seeking suspension of sentence, whether or not a pre-trial agreement with the convening authority has been entered into.

The convening authority may suspend the execution of any approved sentence whether or not the application has been filed. If the convening authority suspends the sentence, the permissible terms and conditions of the suspension shall include those stated on the application for suspension of sentence.

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#### **§7-6-4 Partial suspension of sentence.**

The convening authority may suspend any part or amount of any sentence which has not previously been paid or served. For example, an accused against whom a court-martial sentence of ten days confinement has been adjudged may be ordered confined for three days and the remaining seven days suspended; or, an accused against whom a court-martial sentence of a \$25 fine has been adjudged may be ordered to pay \$10 and payment of the remaining \$15 suspended.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-91)

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#### **§7-6-5 Length of suspension term.**

A court-martial sentence may be suspended by the convening authority for a reasonable period of time. The period of suspension shall not exceed twelve months from the date of the convening authority's action, unless a longer period of suspension is required, in the sole and unreviewable discretion of the convening authority, to maintain good order and discipline. In no event shall the period of suspension extend beyond the expiration of the accused's present term of service, unless the accused consents thereto in writing.

[Eff: FEB 11 1985] (Auth: HRS §§124A-61, 124A-171) (Imp: HRS §124A-91)

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#### **§7-6-6 Reserved.**

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#### **§7-6-7 Execution of confinement.**

(a) Sentences of confinement adjudged by military courts may be executed only in military guardhouses under the control of the state military forces or in civil jails designated for that purpose by the adjutant general or the state judge advocate. Trial counsel shall seek the designation in advance of any court-martial if confinement in a place other than as provided in subsection (b) is contemplated. The designation may be made orally and confirmed in writing.

(b) Unless specifically otherwise designated, the place of confinement shall be the state correctional facility within the county where the court-martial is held that is usually used to incarcerate offenders who

are found guilty of criminal offenses punishable by a maximum term of imprisonment for one year or less.

[Eff: FEB 11 1985] (Auth: HRS §§124A-15, 124A-84, 124A-171) (Imp: HRS §124A-15, 124A-84)

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### **§7-6-8 Mittimus when issued by a presiding officer.**

Unless the sentence of confinement has been deferred, as provided in [section 7-6-1](#), the presiding officer of a court-martial shall issue a mittimus (order to confinement), as set forth in AGHI Form SJAG 4, following the imposition of a sentence to confinement. An example of AGHI Form SJAG 4 is contained in the exhibit entitled "[Annex 20](#)" dated 1 November 1984, located at the end of this subtitle.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-84)

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### **§7-6-9 Mittimus when issued by convening authority.**

(a) If the convening authority approves any portion of a court-martial sentence that includes confinement and does not suspend that confinement, the convening authority shall issue the mittimus if confinement has been deferred as provided in [section 7-6-1](#). The convening authority shall have the sole discretion to allow the convicted person to serve a sentence to confinement on any basis other than "straight-time" (for example, by allowing service on weekends or participation in a work-release program). If the convening authority desires to authorize other than "straight-time" service of the sentence, the convening authority shall make the appropriate arrangements with the confinement authorities prior to issuing the mittimus. Any such arrangements shall be set out in that portion of the mittimus following the words "Convening Authority's Special Instructions to Jailer".

(b) Upon being informed of the convening authority's imposition of confinement, the defense counsel shall advise the convicted person to voluntarily surrender to the authority designated in the mittimus to begin service of the sentence of confinement. If the convicted person fails to surrender voluntarily at the time and place designated in the mittimus, the convening authority may order civilian law enforcement authorities or the military police of the state military force concerned to apprehend the convicted person and deliver the convicted person to the place of confinement designated in the mittimus.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-84)

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### **§7-6-10 Disposition of fines.**

When a fine is paid, the person receiving the money shall cause the money to be paid within thirty days of receipt to the director of finance through a letter of transmittal to the credit of the state general fund. The sample letter of transmittal in [Annex 7](#) shall be suitably modified.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-168)

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### **§7-6-11 Publication of results.**

Upon completion of the review, the convening authority shall publish orders setting forth the results of the trial. The exhibit entitled "[Annex 21](#)" dated 1 November 1984, located at the end of this subtitle, contains a sample "Promulgating Order". Appropriate United States military service regulations may be consulted to adapt this sample to fit each case.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-104)

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### **§7-6-12 Distribution and filing of charge sheet.**

When the convening authority has completed all actions under [section 7-6-2](#), the original charge sheet with all exhibits attached shall be filed in the military personnel record of the accused as the record of trial. A record of trial of a summary court shall be authenticated by the signature of the summary court officer. The convening authority shall forward a complete copy of the record of trial to the accused and each counsel for the accused, and to the office of the appropriate staff judge advocate.

[Eff: FEB 11 1985] (Auth: HRS §124A-79) (Imp: HRS §124A-79)

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### **§7-6-13 Vacating suspensions.**

(a) If at any time during the period of suspension the convening authority receives information that the probationer may have violated any of the terms of that suspension, the convening authority, after consultation with the appropriate judge advocate, may begin procedures to consider whether the suspension shall be vacated.

(b) The convening authority may initiate the procedure by written notification to the probationer, delivered in person or by certified mail, return receipt requested, delivery restricted to addressee only, in a postage and fees paid envelope deposited in an office of the United States Postal Service, addressed to the probationer at the latest available address shown on the records of the unit. If the probationer refuses to accept personal delivery, or the notice by mail is returned undelivered, the convening authority may proceed summarily. Notice sent by mail as provided in this subsection shall be presumed to be personally

delivered to the probationer seven days following date of deposit. The form notification shown in the exhibit entitled "[Annex 22](#)" dated 1 November 1984, located at the end of this subtitle may be preprinted on unit stationery by convening authorities, or may be tailored to fit each case.

(c) If the probationer requests additional time to consult with counsel prior to responding, the convening authority may grant a reasonable amount of additional time so that the probationer may have the opportunity to prepare and present a meaningful response to the allegations of violation of terms of suspension.

(d) The convening authority may utilize any administrative procedure to insure that all facts of the matter are available prior to making the decision as to whether to vacate the suspension. In addition, the convening authority may appoint a court of inquiry under section 124A-161, HRS, or may detail a law officer to conduct a hearing into the matter. In any case where a special court-martial sentence, as approved, includes a bad conduct discharge, or of any general court-martial sentence, the special court-martial convening authority of the probationer shall hold a hearing on the alleged violation of probation. The record of hearing and the recommendation of the special court-martial convening authority shall be sent to the governor in cases involving general court-martial sentence and to the commanding officer of the force of the military force of which the probationer is a member in case of a special court-martial sentence which includes a bad conduct discharge.

(e) The governor, the commanding officer of the force of the state military force of which the probationer is a member, or the convening authority, as the case may be, shall determine what disposition to make of the alleged violation of suspension. Any of the following actions may be taken:

- (1) Continue the accused on suspension;
- (2) Vacate the suspension, remit any part or amount of the unexecuted part of the sentence, and order the remainder of the sentence into execution; or
- (3) Vacate the suspension and order the unexecuted portion of the sentence into execution.

In addition, the authority considering vacation of a suspension may initiate action for court-martial charges or nonjudicial punishment for the act constituting the alleged violation of suspension, if the act also constitutes a violation of chapter 124A, HRS.

(f) If the authority considering vacation of a suspension vacates the suspension, an appropriate order shall be published. An example of an order is contained in the exhibit entitled "[Annex 23](#)" dated 1 November 1984, located at the end of this subtitle. If confinement is ordered executed, a mittimus shall also be issued.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-100)

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