

## HAWAII ADMINISTRATIVE RULES

### TITLE 7 DEPARTMENT OF DEFENSE

#### SUBTITLE 1 MILITARY JUSTICE

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#### CHAPTER 9 GENERAL ARTICLE

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**§7-9-1 General article; generally.**

(a) Section 124A-155, HRS, makes punishable all acts not specifically prescribed in any other section of chapter 124A, HRS, when they amount to the disorders or neglects to the prejudice of good order and discipline in the state military forces as specified and defined in this chapter. If conduct of this nature is specifically made punishable by another section of chapter 124A, HRS, it shall be charged as a violation of that section. If the conduct is not specifically made punishable by another section of chapter 124A, HRS, it shall be charged as a violation of section 124A-155, HRS, and this chapter. The specifications alleging a violation of section 124A-155, HRS, need not expressly allege that the conduct was a disorder or neglect to the prejudice of good order and discipline in the state military forces. Under a specification alleging a violation of section 124A-155, HRS, a finding of guilty may properly be returned if the court-martial is convinced beyond a reasonable doubt that the acts of the accused constituted a disorder or neglect to the prejudice of good order and discipline in the state military forces.

(b) The disorders and neglects punishable under section 124A-155, HRS, include those acts or omissions to the prejudice and good order and discipline not specifically mentioned in other sections. "To the prejudice of good order and discipline" include only acts directly prejudicial to good order and discipline and not acts which are prejudicial only in a remote or indirect sense. Almost any irregular or improper act on the part of a member of the state military forces could be regarded as prejudicial in some indirect or remote sense. Section 124A-155, HRS, shall not apply to those distant effects, and shall be confined to cases in which the prejudice is reasonably direct and palpable.

(c) Instances of prejudicial disorder and neglects in the case of officers may include:

- (1) Rendering the person's self unfit for duty by excessive use of intoxicants or drugs;
- (2) Drunkenness; or
- (3) Allowing a member of the officer's command to go on duty knowing the member to be drunk.

(d) Instances of prejudicial disorders and neglects in the case of enlisted persons may include:

- (1) Appearing in improper uniform;
- (2) Wrongfully abusive use of military vehicles;
- (3) Careless discharge of firearms; or
- (4) Impersonating an officer.

(e) A breach of a custom of the service may result in a violation of section 124A-155, HRS. In its legal sense the word "custom" imports something more than a method of procedure or a mode of conduct or behavior which is merely of frequent or unusual occurrence. Custom arises out of long established practices which by common consent have attained the force of law in the military or other community

affected by them. There can be no such thing as a custom that is contrary to existing law or rule. A custom which has not been adopted by existing statute or rule ceases to exist when its observance has been long abandoned. Many customs of the service are now set forth in regulations of the various armed forces. Violations of these customs shall be charged under section 124A-127, HRS.

(f) The proof required for conviction of an offense under section 124A-155, HRS, depend upon the nature of the misconduct charged. One element of proof common to every case tried under section 124A-155, HRS, is that the conduct of the accused, under the circumstances, was to the prejudice of good order and discipline in the state military forces. This element is common to all of the offenses charged under section 124A-155, HRS, and shall be included in instructions as to the elements of these offenses, in addition to their specific elements.

(g) In addition to the acts or omissions proscribed in this chapter, a person subject to chapter 124A, HRS shall be punished as a court-martial direct for acts of omissions which are, under the circumstances, prejudicial of good order and discipline in the state military forces.

(h) The conduct specified in this chapter constitute a violation of section 124A-155, HRS, if it is under the circumstances prejudicial of good order and discipline in the armed forces and shall be punishable as a court-martial may direct. This listing of specific acts of conduct is not exclusive and is not intznded to limit the application of section 124A-155, HRS, to other disorders and neglects to the prejudice of good order and discipline in the state military forces. The failure to follow a model specification shall not constitute grounds for dismissal of a charge.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-2 Indecent assault.**

(a) A model specification of the offense of indecent assault shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_ on or about \_\_\_\_\_ 19\_\_, commit an indecent assault upon \_\_\_\_\_, with intent to gratify (his) (her) (lust) (sexual desires)."

(b) The elements of the offense of indecent assault shall be as follows:

- (1) That, at the time and place alleged the accused attempted to do, offered to do, or did bodily harm to another;
- (2) That the accused did so in the alleged manner;
- (3) That the acts were done with unlawful force or violence;
- (4) That the alleged victim was a human being and not the spouse of the accused;
- (5) That the act or acts of the accused amounted to taking of indecent, lewd, or lascivious liberties with the person of the alleged victim;
- (6) That the accused's acts were done without the consent of the alleged victim and against the victim's will;

- (7) That the acts were done with the intent to gratify the lust or sexual desires of the accused;
- (8) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

- (1) An "attempt to do bodily harm" means an overt act which amounts to more than mere preparation and is done with apparent present ability to do bodily harm to another. Physical injury or offensive touching is not required.
- (2) An "offer to do bodily harm" means an intentional act or failure to act which foreseeably causes another to reasonably believe that force will immediately be applied to his or her person. There shall be an apparent present ability to bring about bodily harm. Physical injury or offensive touching is not required.
- (3) An act of force or violence is unlawful if done without legal justification or excuse and without the lawful consent of the victim.
- (4) An assault in which bodily harm is inflicted is a battery. A "battery" is an unlawful and intentional application of force or violence to another. The act must be done without legal justification or excuse and without the lawful consent of the victim. "Bodily harm" means any physical injury to or offensive touching of another person, however slight.
- (5) An indecent, lewd, and lascivious act means that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene and repugnant to common propriety, but tends to excite, lust and deprave the morals with respect to sexual relations.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-3 Bribery and graft; asking, accepting, or receiving.**

(a) A model specification of the offense of bribery and graft (asking, accepting, or receiving) shall be as follows:

"In that \_\_\_\_\_, being at the time (a contracting officer for \_\_\_\_\_) (the personnel officer of \_\_\_\_\_) (\_\_\_\_\_), did, (at) (on board), on or about \_\_\_\_\_ 19\_\_, wrongfully and unlawfully (ask) (accept) (receive) from \_\_\_\_\_ (a contracting company engaged in \_\_\_\_\_) (\_\_\_\_\_), [with intent to have the accused's (decision) (action) influenced with respect to] [as compensation for (in recognition of) services (rendered) (to be rendered) (rendered and to be rendered) by the accused the said \_\_\_\_\_ in relation to] an official matter in which the State of Hawaii was and is interested, to wit: (the purchasing of military supplies from \_\_\_\_\_) (the transfer of \_\_\_\_\_ to duty with \_\_\_\_\_) (\_\_\_\_\_)."

(b) The elements of the offense of bribery and graft (asking, accepting, or receiving) shall be as follows:

- (1) That, at the time and place alleged, the accused wrongfully and unlawfully asked, accepted or

received the sum of money or other property, of any value from the person or organization alleged;

(2) That, at that time, the accused occupied an official position or had official duties as alleged;

(3) That the accused asked, accepted or received this sum of money or other property:

(A) With intent to have the accused's decision or action influenced with respect to; or

(B) As compensation for or in recognition of services rendered, to be rendered or rendered and to be rendered by him or her in relation to, the matter alleged;

(4) That the matter alleged was an official matter in which the State of Hawaii was and is interested; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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#### **§7-9-4 Bribery and graft promising, offering, or giving.**

(a) A model specification of the offense of bribery and graft (promising, offering, or giving), shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully and unlawfully (promise) (offer) (give) to \_\_\_\_\_ (his/her commanding officer) (the claims officer of \_\_\_\_\_) (\_\_\_\_\_), (the sum of \$ \_\_\_\_\_) (\_\_\_\_\_, of a value of (about) \$ \_\_\_\_\_) (\_\_\_\_\_) with the intent to influence the (decision) (action) of the said \_\_\_\_\_ with respect to] [(as compensation for) (in recognition of) services (rendered) (to be rendered) (rendered and to be rendered) by the said \_\_\_\_\_ in relation to] an official matter in which the State of Hawaii was and is interested, to wit: (the granting of leave to \_\_\_\_\_) (the processing of a claim against the State of Hawaii in favor of \_\_\_\_\_) (\_\_\_\_\_)."

(b) Elements of the offense of bribery and graft (promising, offering, or giving), shall be as follows:

(1) That, at the time and place alleged, the accused wrongfully and unlawfully promised, offered, or gave a sum of money or other property of any value to (state the person alleged);

(2) That, at that time, the person alleged occupied an official position or had official duties;

(3) That this sum of money or property was promised, offered, or given:

(A) With the intent to influence the decision, action of the person alleged with respect to, or

(B) As compensation for or in recognition of services rendered, to be rendered, or rendered and to be rendered by the person alleged in relation to the manner alleged;

(4) That the matter alleged was an official matter in which the State of Hawaii was and is interested; and

(5) That, under the circumstances, the conduct of the accused was to the prejudice of good order

and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-5 Correctional custody, escape from.**

(a) A model specification for the offense of correctional custody, escape from, shall be as follows:

"In that \_\_\_\_\_, while duly undergoing the punishment of correctional custody, did (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_, 19\_\_, escape from correctional custody."

(b) The elements of the offense of correctional custody, escape from, shall be as follows:

- (1) That the accused was duly placed in correctional custody at the place alleged;
- (2) That, while in the correctional custody, the accused was under physical restraint imposed;
- (3) That the accused knew of this correctional custody and the limits of the physical restraint imposed;
- (4) That, at the time and place alleged the accused freed the accused's self from the physical restraint of this correctional custody before the accused had been released by proper authority; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section, "correctional custody" means physical restraint of a person during duty or nonduty hours, or both imposed as a non-judicial punishment under section 124A-21,

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-6 Correctional custody; breach of restraint during.**

(a) A model specification for the offense of correctional custody (breach of restraint during) Shall be as follows:

"In that \_\_\_\_\_, while duly undergoing the punishment of correctional custody, did, (at) (on board) \_\_\_\_\_ on or about \_\_\_\_\_ 19\_\_, breach the restraint imposed thereunder by \_\_\_\_\_."

(b) The elements of the offense of correctional custody (breach of restraint during) shall be as follows:

- (1) That the accused was duly placed in correctional custody at the place of correctional custody;
- (2) That, while in correctional custody, the accused was duly restrained by proper authority to the limits alleged;
- (3) That the accused knew of this correctional custody and the limits of the restraint;
- (4) That, at the time and place alleged, the accused went beyond the limits of the restraint before

the accused had been released from the correctional custody (relieved of the restraint) by the proper authority;

(5) That the accused did so by the manner alleged;

(6) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section, "correctional custody" means the physical restraint of a person during duty or nonduty hours, (or both), imposed as a non-judicial punishment under section 124A-21, HRS.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-7 Disorderly, drunkenness, in command, quarters, etc., under service discrediting circumstances.**

(a) A model specification for the offense of disorderly, drunkenness, in command, quarters, etc., under service discrediting circumstances shall be as follows:

"In that \_\_\_\_\_ was, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, (drunk) (disorderly) (drunk and disorderly) [in (command quarters) (station) (camp) (\_\_\_\_\_)] [on board ship] [in uniform in a public place, to wit: \_\_\_\_\_] [\_\_\_\_\_]."

(b) The elements of the offense of disorderly, drunkenness, in command, quarters, etc., under service discrediting circumstances shall be as follows:

(1) That, at the time and place alleged, the accused was drunk, disorderly or both:

(A) In command quarters, station, camp; or other military facility;

(B) On board ship, or aircraft; or,

(C) In uniform in a public place or in a public place under military control;

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

"Drunkenness" means any intoxication which is sufficient sensibly to impair the rational and full exercise of the mental or physical faculties;

"Disorderly" means any disturbance of a quarrelsome, combative, or turbulent nature;

"Public place" means a place frequented by the public, or some of the public, or as a place open to public view. It does not have to be a place open to everyone.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-8 Disorderly, drunkenness; incapacitating oneself for performance of duties through prior indulgence in intoxicating liquors.**

(a) A model specification of the offense of disorderly, drunkenness; incapacitating oneself for performance of duties through prior indulgence in intoxicating liquors shall be as follows:

"In that \_\_\_\_\_ was, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, as a result of the previous indulgence in intoxicating liquor (drugs), incapacitated for the proper performance of his/her duties, to wit: \_\_\_\_\_."

(b) The elements of the offense of disorderly, drunkenness; incapacitating oneself for performance of duties through prior indulgence in intoxicating liquors shall be as follows:

- (1) That the accused had certain duties to perform, as alleged;
- (2) That, at the time and place alleged, the accused was incapacitated for the proper performance of those duties;
- (3) That the incapacitation was the result of previous indulgence in intoxicating liquor or drugs, or both;
- (4) That the accused knew or should reasonably have known prior to the time of the accused's incapacitation that the accused had those duties to perform; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-9 Drugs; wrongful possession.**

(a) A model specification of the offense of drugs, wrongful possession shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully have in his/her possession \_\_\_\_\_ ounces more or less, of a (detrimental drug) (harmful drug) (a dangerous drug) to wit: \_\_\_\_\_."

(b) The elements of the offense of drugs wrongful possession of shall be as follows:

- (1) That, at the time and place alleged, the accused had in the accused's possession any amount of a detrimental drug, a harmful drug, or a dangerous drug as defined by chapter 712, HRS;
- (2) That the possession by the accused was wrongful; and
- (3) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-10 Drugs; wrongful use or distribution.**

(a) A model specification of the offense of drugs; wrongful use or distribution shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully (use) (transfer) (sell) a (detrimental) (harmful drug) (dangerous drug), to wit: \_\_\_\_\_."

(b) The elements of the offense of drugs; wrongful use, or distribution, shall be as follows:

- (1) That, at the time and place alleged, the accused used or distributed a detrimental drug, a harmful drug, or dangerous drug as defined in chapter 712, HRS;
- (2) That the use or distribution by the accused was wrongful; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section, the term "to distribute" shall be as defined in section 712-1240, HRS.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-11 Drugs; wrongful introduction into military unit, etc.**

(a) A model specification of the offense of drugs; wrongful introduction into military unit, etc. shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully introduce \_\_\_\_\_ ounces, more or less, of a (detrimental drug) (harmful drug) (dangerous drug) into a military (unit) (base) (station) (post) (ship) (aircraft) (\_\_\_\_\_), to wit: \_\_\_\_\_, for the purpose of (possession) (use) (distribution) (\_\_\_\_\_)."

(b) The elements of the offense of drugs; wrongful introduction into military unit, etc. shall be as follows:

- (1) That, at the time and place alleged, the accused introduced any amount of a detrimental drug, a harmful drug, or dangerous drug as defined in chapter 712, HRS;
- (2) That the introduction by the accused was for the purpose of possession, use, distribution; or other illegal purpose.
- (3) That the introduction was wrongful; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section, the term "introduce" means to bring into a military unit, base, station, post,

ship, aircraft, or any other area, operation, or activity under military control.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-12 Wrongful making, altering, counterfeiting, tampering with a pass.**

(a) A model specification for the offense of wrongful making, altering, counterfeiting, tampering with a pass shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully and falsely (make) (forge) (alter by \_\_\_\_\_) (counterfeit) (tamper with by \_\_\_\_\_) (a certain instrument purporting to be) (a) (an) (another's) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (\_\_\_\_\_) in word and figure as follows: \_\_\_\_\_, [he/she then said \_\_\_\_\_, then well knowing the same to be (false) (unauthorized) (\_\_\_\_\_)."

(b) The elements of the offense of wrongful making, altering, counterfeiting, tampering with a pass shall be as follows:

- (1) That, at the time and place alleged, the accused wrongfully and falsely made, altered, counterfeited, or tampered with a certain instrument purporting to be official permit, discharge certificate, identification card, or other official military document; and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-13 Wrongful sale, gift, loan, etc., of false or unauthorized pass.**

(a) A model specification for the offense of wrongful sale, gift, loan, etc., of false or unauthorized pass shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully or falsely [(sell to \_\_\_\_\_)] [(give to \_\_\_\_\_)] [(loaned to \_\_\_\_\_)] [(dispose of by \_\_\_\_\_)] [(a certain instrument purporting to be) (a) (an) (another's) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (\_\_\_\_\_) in words and figures as follows: \_\_\_\_\_, [he/she, then said \_\_\_\_\_, then well knowing the same to be (false) (unauthorized) (\_\_\_\_\_)."

(b) The elements of the offense of wrongful sale, gift, loan, etc., of false or unauthorized pass shall be as follows:

- (1) That, at the time and place alleged, the accused wrongfully sold, gave, loaned, disposed of or transferred by any means to another person a certain instrument purporting to be an official pass, permit, discharge certificate, identification card, or other official military document;
- (2) That the pass, permit, discharge certificate, identification card, or other official military document was false or unauthorized;
- (3) That the accused knew that the pass, permit, discharge certificate, identification card, or other official military document was false or unauthorized; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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#### **§7-9-14 Wrongful use or possession of valid pass, etc.**

(a) A model specification of the offense of wrongful use or possession of valid pass, etc. shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully [(use) (have in his/her possession)] [with intent to (defraud) (deceive)] (a) (an) (another's) (naval) (military) (official) (pass) (permit) (discharge certificate) (identification card) (\_\_\_\_\_) in words and figures as follows: \_\_\_\_\_, [he/she, then said \_\_\_\_\_, then well knowing the same to be unauthorized (\_\_\_\_\_)]."

(b) The elements of the offense of wrongful use or possession of valid pass, etc. shall be as follows:

- (1) That, at the time and place alleged, the accused wrongfully used or possessed an official pass, permit, discharge certificate, identification card, order, or other official military document;
- (2) That the accused knew that the accused's use or possession of the official military document was unauthorized;
- (3) That the accused used or possessed the instrument with an intent to defraud or deceive; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

"Intent to defraud" means an intent to obtain an article or thing of value through a misrepresentation and to apply it to one's own use and benefit or the use and benefit of another either temporarily or permanently;

"Intent to deceive" means an intent to mislead, to cheat, to trick another, or to cause another to believe as true that which is false.

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**§7-9-15 False swearing.**

(a) A model specification for the offense of false swearing shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, [(in affidavit) (in \_\_\_\_\_)] wrongfully and unlawfully (make) (subscribe) under lawful (oath) (affirmation) a false statement in substance as follows: \_\_\_\_\_, which statement he/she did not then believe to be true."

(b) The elements of the offense of false swearing shall be as follows:

- (1) That, at the time and place alleged, the accused took an oath or made an affirmation;
- (2) That the oath or affirmation was administered to the accused in a matter in which an oath or affirmation was required or authorized by law;
- (3) That the oath or affirmation was administered by a person having authority to do so;
- (4) That upon such oath or affirmation the accused willfully made or subscribed a statement;
- (5) That the statement was false;
- (6) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

"Oath" means a formal pledge, coupled with an appeal to a Supreme Being, that the truth will be stated;

"Affirmation" means a solemn and formal pledge, binding upon a person's own conscience that the truth will be stated;

"Subscribe" means to write one's own name on a document for the purpose of adopting its words as one's own expressions.

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**§7-9-16 Firearm, discharging; through carelessness.**

(a) A model specification for the offense of firearm, discharging; through carelessness shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, through carelessness, discharge a (service rifle) (\_\_\_\_\_ ) in the (squadron) (tent) (barracks) (\_\_\_\_\_ compartment) (\_\_\_\_\_ ) of \_\_\_\_\_."

(b) The elements of the offense of firearm, discharging; through carelessness shall be as follows:

- (1) That, at the time and place alleged, the accused discharged a firearm;
- (2) That the discharge was caused by the carelessness of the accused; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section, "carelessness" means negligence. It means the absence of ordinary care. It is an act or failure to act on the part of a person who is under a duty to use due care which demonstrates a lack of care which a reasonably careful person would have used under the same or similar circumstances.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-17 Discharging; willfully, under such circumstances as to endanger life.**

(a) A model specification for the offense of firearm, discharging; willfully, under such circumstances as to endanger life shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully and willfully discharge a firearm. to wit: \_\_\_\_\_ . (in the mess hall of) (under such circumstances as to endanger human life)."

(b) The elements of the offense of firearm, discharging; willfully, under such circumstances as to endanger life shall be as follows:

- (1) That, at the time and place alleged, the accused discharged a firearm;
- (2) That the discharge was willful and wrongful;
- (3) That the discharge was under circumstances such as to endanger human life; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the military forces.

(c) As used in this section:

An act is done "willfully" if done intentionally or on purpose;

"Under circumstances such as to endanger human life," means that there must be a reasonable possibility of harm to human beings. Proof that human life was actually endangered is not required.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-18 Impersonating a commissioned, warrant, noncommissioned, or petty officer, or an agent or official.**

(a) A model specification of the offense of impersonating a commissioned warrant, noncommissioned, or petty officer, or an agent or official shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully, willfully, and unlawfully impersonate [a (commissioned officer) (warrant officer) (noncommissioned officer) (petty officer) (agent of superior authority) of the (Army) (Navy) (Marine Corps) (Air Force) (Coast Guard)] [an official of the government of \_\_\_\_\_] by [publicly wearing the uniform and insignia of rank of a (lieutenant of the \_\_\_\_\_) (\_\_\_\_\_) or showing the credentials of \_\_\_\_\_] [\_\_\_\_\_]."

(b) The elements of the offense of impersonating a commissioned officer, warrant, non-commissioned, or petty officer, or an agent or official shall be as follows:

(1) That, at the time and place alleged, the accused impersonated a commissioned, warrant, noncommissioned, or petty officer, or agent of superior authority of the state military forces or any of the armed forces of the United States by publicly wearing the uniform and insignia of the rank of a commissioned, warrant, noncommissioned or petty officer or agent of superior authority of the state military forces or any of the armed forces of the United States or showing credentials of that person.

(2) That this impersonation was wrongful, wilful, and unlawful;

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section, the term "impersonate" means to assume or act the person or role of another.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-19 Indecent exposure.**

(a) A model specification of the offense of indecent exposure Shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, while (at a barracks window) (\_\_\_\_\_) willfully and wrongfully expose in an indecent manner to public view his/her \_\_\_\_\_."

(b) The elements of the offense of indecent exposure shall be as follows:

(1) That, at the time and place alleged, the accused, while exposed any part of the accused's body to public view in an indecent manner;

(2) That the exposure was wilful and wrongful; and

(3) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

"Indecent" means a form of exhibition of a person's private parts which instinctive modesty, human decency, or common propriety require should be customarily kept covered in the presence of others at that particular time and place. An exposure becomes "indecent" when it occurs at a time and place that a person reasonably knows or should know the person's act will be open to the observation of another or others;

"Willfully" means an intentional exposure to public view. The exposure must be done with the intent to be observed by one or more members of the public.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-20 Obstructing justice.**

(a) A model specification of the offense of obstructing justice shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully and unlawfully endeavor to [impede (a trial by court-martial) (an investigation) (\_\_\_\_\_)] [influence the actions of (a member of the court-martial) (the military judge of the court-martial) (a trial counsel of the court-martial) (a defense counsel of the court-martial) (an officer responsible for making a recommendation concerning disposition of charges) (an officer responsible for taking action with respect to the findings and sentence of the court-martial) (\_\_\_\_\_)] [(influence) (alter) the testimony, \_\_\_\_\_ of a witness before (a court-martial) (an investigating officer) (\_\_\_\_\_)] in the case of said \_\_\_\_\_ by [(promising) (offering) (giving) to the said \_\_\_\_\_, a threat to \_\_\_\_\_ (if) (unless) he, the said \_\_\_\_\_ would [(vote to acquit the said \_\_\_\_\_ (\_\_\_\_\_)) (recommend dismissal of the charges against the said \_\_\_\_\_) (disapprove the findings and sentence in the case of \_\_\_\_\_ and order the charges dismissed)] [(wrongfully refuse to testify) (testify falsely concerning \_\_\_\_\_) (\_\_\_\_\_)] [(at such trial) (before such investigating officer)] [\_\_\_\_\_]."

(b) The elements of the offense of obstructing justice shall be as follows:

- (1) That, at the time and place alleged, the accused wrongfully and unlawfully tried to obstruct justice;
- (2) That the accused did so in the case of another against whom the accused had reason to believe there were criminal proceedings pending;
- (3) That the accused did so by in the manner alleged;
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-21 Perjury, statutory.**

(a) A model specification of the offense of perjury, statutory shall be as follows:

"In that \_\_\_\_\_, having taken a lawful oath [in a proceeding before (a board of officers) (a court of inquiry) concerning \_\_\_\_\_] [upon the making of an affidavit as to \_\_\_\_\_] [\_\_\_\_\_], a case in which a law of the United States authorized an oath to be administered, that [he/she, then said \_\_\_\_\_, would (testify) (declare) (depose) (certify) truly] [a written (declaration) (deposition) (certificate) subscribed by him/her was true], did \_\_\_\_\_, (at) (on board) , on or about \_\_\_\_\_ 19\_\_, willfully and contrary to such oath (state) (subscribe) a material matter, to wit: \_\_\_\_\_, which matter he/she did not then believe to be true."

(b) The elements of the offense of perjury, statutory shall be as follows:

- (1) That, at the time and place alleged, the accused took an oath or made an affirmation;
- (2) That the oath or affirmation was administered to the accused in a matter in which an oath or affirmation was required or authorized by law;
- (3) That the oath or affirmation was administered by a person having authority to do so;
- (4) That upon that oath or affirmation the accused wilfully made or subscribed a statement;
- (5) That the statement was material;
- (6) That the statement was false;
- (7) That the accused did not then believe the statement to be true; and
- (8) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-22 Perjury, subornation.**

(a) A model specification of the offense of perjury, subornation shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, procure \_\_\_\_\_ to commit perjury by inducing him or her, the said \_\_\_\_\_, to take a lawful (oath) (affirmation) in a (trial by \_\_\_\_\_ court-martial of \_\_\_\_\_) (trial by a court of competent jurisdiction, to wit: \_\_\_\_\_ of \_\_\_\_\_) (deposition for use in a trial by \_\_\_\_\_ of \_\_\_\_\_) (\_\_\_\_\_ that he/she, then said \_\_\_\_\_, would (testify) (depose) (\_\_\_\_\_ willfully, corruptly, and contrary to such (oath) (affirmation) in substance that \_\_\_\_\_,

which (testimony) (deposition) (\_\_\_\_\_) was upon a material matter and which the said \_\_\_\_\_ did not then believe to be true."

(b) The elements of the offense of perjury, subornation shall be as follows:

- (1) That at the time and place alleged the accused induced and procured to take an oath or affirmation in a judicial proceeding and to testify or depose upon that oath or affirmation;
- (2) That the oath or affirmation was administered to the other person in a matter in which an oath or affirmation was required or authorized by law;
- (3) That the oath or affirmation was administered by a person having authority to do so;
- (4) That upon that oath or affirmation the other person wilfully made or subscribed a statement;
- (5) That the statement was material;
- (6) That the statement was false;
- (7) That the accused and the other person did not then believe that statement to be true; and
- (8) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-23 Public record, altering, concealing, removing, mutilating, obliterating, or destroying.**

(a) A model specification of the offense of public record, altering, concealing, removing, mutilating, obliterating, or destroying shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, willfully and unlawfully [(alter) (conceal) (remove) (mutilate) (obliterate) (destroy)] [appropriate with intent to (alter) (conceal) (remove) (mutilate) (obliterate) (destroy) (steal)] a public record, to wit: \_\_\_\_\_, [the (descriptive list) (rough deck log) (quarter-master's note book) of \_\_\_\_\_] [\_\_\_\_\_]."

(b) The elements of the offense of public record, altering, concealing, removing, mutilating, obliterating, or destroying shall be as follows:

- (1) That, at the time and place alleged, the accused altered, concealed, removed, mutilated, obliterated, destroyed, or appropriated with the intent to alter, conceal, remove, mutilate, obliterate, destroy, or steal a public record;
- (2) That the acts done to the public record was wilful and unlawful; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

"Willfully" means intentionally or on purpose;

"Appropriate" means to take;

"Intent to steal" means an intent to permanently deprive another person of the use and benefit of

property.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-24 Refusing, wrongfully, to testify.**

(a) A model specification for the offense of refusing, wrongfully, to testify shall be as follows:

"In that \_\_\_\_\_, being in the presence of (a) (an) [(general) (special; court-martial) [duly appointed board of officers] [officer taking a deposition] [\_\_\_\_\_ of which \_\_\_\_\_ was (military judge) (president), (\_\_\_\_\_), (and having been directed by the said \_\_\_\_\_ to answer the following questions put to him/her as a witness, " \_\_\_\_\_ " did, (at) (on board) on or about \_\_\_\_\_ 19\_\_, wrongfully refuse (to qualify as a witness) (to answer said questions)."

(b) The elements of the offense of refusing, wrongfully, to testify shall be as follows:

(1) That the accused was in the presence of:

- (A) A general or special court-martial;
- (B) A duly appointed board of officers;
- (C) An officer conducting an investigation under chapter 124A, HRS;
- (D) An officer taking a deposition; or
- (E) Other proceeding where testimony may be compelled;

(2) That the presiding official:

- (A) Directed the accused to qualify as a witness; or
- (B) Directed the accused, after the witness had qualified as a witness, to answer questions as a witness;

(3) That, at the time and place alleged, the accused refused to qualify as a witness or answer the questions;

(4) That the refusal was wrongful; and

(5) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-25 Restriction, breaking.**

(a) A model specification of the offense of restriction, breaking, shall be as follows:

"In that \_\_\_\_\_, having been duly restricted to the limits of \_\_\_\_\_, did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, break said restriction."

(b) The elements of the offense of restriction, breaking shall be as follows:

- (1) That the accused was duly restricted by proper authority to certain limits;
- (2) That the accused knew of the accused's restriction and the limits thereof;
- (3) That, at the time and place alleged, the accused went beyond the limits of the restriction before the accused had been set free by proper authority; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

### **§7-9-26 Sentinel, lookout, offenses against or by (disrespect to).**

(a) A model specification of the offense of sentinel, lookout, offenses against or by (disrespect to) shall be as follows:

"In that \_\_\_\_\_, (a prisoner), did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, [wrongfully use the following (threatening) (insulting) (threatening and insulting) language, " \_\_\_\_\_ " or words to that effect, to] [wrongfully behave in (a) (an) insubordinate) (disrespectful) (insubordinate and disrespectful) manner toward \_\_\_\_\_, by \_\_\_\_\_], (a sentinel) (lookout) in the execution of his/her duty).

(b) The elements of the offense of sentinel lookouts, offenses against or by (disrespect to) shall be as follows:

- (1) That another person was a sentinel or lookout at the time and place alleged;
- (2) That the accused was a prisoner or knew that this other person was a sentinel or lookout;
- (3) That, at the time and place alleged, the accused used threatening, or insulting, language or behavior;
- (4) That the use of the language or behavior was wrongful;
- (5) That the language or behavior was directed toward and within sight or hearing of the sentinel or lookout alleged;
- (6) That the sentinel or lookout alleged was at the time in the execution of duties as a sentinel or lookout; and
- (7) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section:

"Threatening" means a clear present determination or intent to injure the person, property or reputation of another presently or in the future;

"Insubordinate" means an intentional defiance of authority.

"Disrespectful" means behavior which detracts from the respect due to the authority of a sentinel or lookout.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-27 Sentinel, lookout, offenses against or by (loitering).**

(a) A model specification for the offense of sentinel, lookout, offenses against or by (loitering) shall be as follows:

"In that \_\_\_\_\_, while posted as a (sentinel) (lookout), did (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, (loiter) (wrongfully sit down) on his post."

(b) The elements of the offense of sentinel, lookout, offenses against or by (loitering) shall be as follows:

- (1) That the accused was posted as a sentinel or lookout;
- (2) That, at the time and place alleged and while posted as a sentinel or lookout, the accused, without authorization or excuse, loitered, or wrongfully sat down on the accused's post; and
- (3) That, under the circumstance, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section "loiter" means to stand around, to move about slowly, to linger, or to lag behind when that conduct is in violation of known instructions or accompanied by a failure to give complete attention to duty.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-28 Stolen property, knowingly receiving, buying, concealing.**

(a) A model specification for the offense of stolen property, knowingly receiving, buying, concealing shall be as follows:

"In that \_\_\_\_\_, did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, unlawfully (receive) (buy) (conceal) \_\_\_\_\_, of a value of (about) \$\_\_\_\_\_, the property of \_\_\_\_\_, which property, as he/she, they said \_\_\_\_\_, then well knew, had been stolen."

(b) The elements of the offense of stolen property, knowingly receiving, buying, concealing shall be as follows:

- (1) That, at the time and place alleged, the accused unlawfully received, bought or concealed property;

- (2) That the property alleged, was of some value;
- (3) That the property belonged to another;
- (4) That the property had been stolen by some person other than the accused;
- (5) That, at the time the accused received, bought, or concealed the property, the accused then knew it was stolen; and
- (6) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-29 Threat, communicating.**

(a) A model specification for the offense of threat, communicating shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, wrongfully communicate \_\_\_\_\_ to a threat to (injure \_\_\_\_\_ by \_\_\_\_\_) (accused \_\_\_\_\_ of having committed the offense of \_\_\_\_\_) (\_\_\_\_\_)."

(b) The elements of the offense of threat, communicating shall be as follows:

- (1) That, at the time and place alleged, the accused communicated a threat;
- (2) That the communication was made known to another;
- (3) That the language used by the accused under the circumstances amounted to a clear and present determination or intent to injure the person, property, or reputation of another presently or in the future;
- (4) That the communication was wrongful, and without justification or excuse; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-30 Unclean accouterment, arms, or uniform.**

(a) A model specification of the offense of unclean accouterment, arms, or uniform shall be as follows:

"In that \_\_\_\_\_ did, (at) (on board) \_\_\_\_\_, on or about \_\_\_\_\_ 19\_\_, found with an unclean (rifle) (uniform) (\_\_\_\_\_), he/she being at fault in failing to maintain such property in a clean condition."

(b) The elements of the offense of unclean accoutrement, arms, or uniform shall be as follows:

- (1) That, at the time and place alleged, the accused was found with an unclean rifle, uniform, or other accouterment;
- (2) That the accused had a duty to maintain the rifle, uniform, or other accouterment in a clean condition;
- (3) That the accused was at fault in failing to maintain the rifle, uniform, or other accouterment in a clean condition; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-31 Uniform, unclean, improper, appearing in.**

(a) A model specification for the offense of uniform, unclean, improper, appearing in shall be as follows:

"In that \_\_\_\_\_ did, on or about \_\_\_\_\_ 19\_\_, wrongfully appear (at) (on board) \_\_\_\_\_, (without his/her \_\_\_\_\_) (in an unclean \_\_\_\_\_) (with an unclean \_\_\_\_\_) (\_\_\_\_\_)."

(b) The elements of the offense of uniform, unclean, improper, appearing in shall be as follows:

- (1) That, at the time and place alleged, accused appeared without a proper uniform, in an unclean uniform, or with an unclean item of uniform; and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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### **§7-9-32 Unlawful entry.**

(a) A model specification of the offense of unlawful entry shall be as follows:

"In that \_\_\_\_\_ did, on or about \_\_\_\_\_ 19\_\_, unlawfully enter the dwelling house, garage, warehouse, tent, vegetable garden, orchard, stateroom, (\_\_\_\_\_) of \_\_\_\_\_."

(b) The elements of the offense of unlawful entry shall be as follows:

- (1) That, at the time and place alleged, the accused entered upon the premises of another;
- (2) That the entry was unlawful; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

(c) As used in this section "unlawfully enter" means to enter without the consent of any person authorized to consent to entry or without other lawful authority.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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**§7-9-33 Wearing unauthorized insignia, decoration, badge, ribbon or lapel button.**

(a) A model specification of the offense of wearing unauthorized insignia, decoration, badge ribbon, or lapel button shall be as follows:

"In that \_\_\_\_\_ did, on or about \_\_\_\_\_ 19\_\_, wrongfully and without authority wear upon his/her (uniform) (civilian clothing) [the insignia of grade of a (master sergeant of \_\_\_\_\_) (chief gunner's mate of \_\_\_\_\_)] [the Combat Infantryman Badge] [the Distinguished Service Cross] [the ribbon representing the Silver Star] [the label button representing the Legion of Merit] [\_\_\_\_\_]."

(b) The elements of the offense of wearing unauthorized insignia, decoration, badge ribbon, or lapel button shall be as follows:

- (1) That, at the time and place alleged the accused wore upon the accused's uniform or civilian clothing an insignia, badge, or decoration;
- (2) That the wearing was wrongful and without authority; and
- (3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the state military forces.

[Eff: FEB 11 1985] (Auth: HRS §§124A-155, 124A-171) (Imp: HRS §124A-155)

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