

HAWAII ADMINISTRATIVE RULES

TITLE 7 DEPARTMENT OF DEFENSE

SUBTITLE 1 MILITARY JUSTICE

CHAPTER 1 GENERAL PROVISIONS

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§7-1-1 General guidance.

(a) Military justice is not and shall not be used as a substitute for military leadership. Providing military leadership remains the responsibility of all officers and noncommissioned officers of the state military forces. Guidance and counseling shall be given to any member of the state military forces by the member's chain of command at the first sign of a disciplinary problem. The commanding officer of each unit shall establish informal procedures to deal with disciplinary problems.

(b) If the use of informal procedures fails to resolve the member's disciplinary problem, the Hawaii Code of Military Justice, (cited in this subtitle as chapter 124A, Hawaii Revised Statutes, or "HRS") may be used.

(c) If punishment must be administered, then consideration shall first be given to the use of nonjudicial punishment. The commanding officer shall administer nonjudicial punishment fairly, taking into account the facts and circumstances of each case. Repeat offenses may be considered as being more severe, and the degree of punishment may be increased. If informal procedures and nonjudicial punishment fail to resolve the member's disciplinary problem, or if the member's offense is serious, court-martial action may be taken to punish offenses of chapter 124A, HRS, or chapter 7-9.

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

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§7-1-2 Rules of procedure and evidence.

(a) The procedures in courts-martial cases, including modes of proof and rules of evidence, to the extent applicable and not governed by chapter 124A, HRS, and this subtitle, shall be the same as those in:

- (1) The Hawaii rules of penal procedure (for procedure);
- (2) The Hawaii rules of evidence, chapter 626, HRS (for evidence); and
- (3) The Hawaii rules of penal procedure and the rules of the supreme court of the State of Hawaii (for judicial appellate procedure).

(b) In addition to this subtitle, the Manual for Courts-Martial, United States, as it existed on 1 July 1984, may be used as a procedural guide in military justice actions by the state military forces. If any part of the Manual for Courts-Martial, United States, is in conflict with state law or this subtitle, the state law or this subtitle shall govern. If any part of the Manual for Courts-Martial, United States, has been declared invalid by a court of military review, the United States Court of Military Appeals, or any other federal court, the court decision, if final, may be followed as a procedural guide unless the interpretation conflicts with the state law or this subtitle, in which case the state law and this subtitle shall govern.

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

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§7-1-3 Forms.

Notwithstanding any other statement in this subtitle with reference to specific United States Department of Defense, or United States Army or United States Air Force forms, the forms in the exhibits in this subtitle may be used interchangeably by the various services of the state military forces in the administration of military justice. Failure to use the forms prescribed in this subtitle or those found in United States Army or Air Force directives shall not constitute jurisdictional error or in any way invalidate the proceeding. If United States Department of Defense, Army, or Air Force forms are used, care shall be taken to modify those forms where necessary to comply with chapter 124A, HRS. All references to the "Uniform Code of Military Justice" or "Manual for Courts-Martial, United States" shall be deleted, and appropriate references to chapter 124A, HRS, this subtitle, or both, shall be substituted. Reference to an "article" of chapter 124A, HRS (rather than to a "section") shall be deemed to refer to the appropriate "section". Forms in this subtitle may be reproduced as necessary.

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

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§7-1-4 Appointment of judge advocates and legal officers.

Upon recommendation of the state judge advocate, the adjutant general may appoint officers of the state

military forces as judge advocates and legal officers.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-6)

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§7-1-5 Certification of trial and defense counsel and law officers.

The state judge advocate shall certify officers of the state military forces who are competent and qualified for duty, as trial and defense counsel, and law officers.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §§124A-45, 124A-46)

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§7-1-6 Definitions.

All words and phrases in this subtitle shall have the same meaning as used in chapter 124A, HRS.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §124A-1)

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§7-1-7 Delegation of authority.

Pursuant to the authority vested in the governor, and under section 124A-171(a), HRS, the governor of Hawaii has delegated all authority vested in the governor under chapter 124A, HRS, except the authority given to the governor by sections 124A-36 and 124A-41, to the adjutant general. The governor has further authorized the adjutant general to subdelegate the authority that has been delegated to the adjutant general.

A copy of the formal delegation of authority is included in the exhibit entitled "Executive Order", dated November 23, 1984, located at the end of this subtitle.

[Eff: FEB 11 1985] (Auth: HRS §124A-171) (Imp: HRS §§124A-36, 124A-171)

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§7-1-8 Rights during investigations.

Any person suspected or accused of any offense under chapter 124A, HRS, or chapter 7-9, shall have the right to remain silent, and the right to counsel during any investigation. DA Form 3881, a copy of which is set forth in the exhibit entitled "[Annex 4](#)", and AF Form 1168, a copy of which is set forth in the

exhibit entitled "Annex 4B", both dated 1 October 1988, and located at the end of this subtitle, may be used as guides by investigating officers; provided appropriate modifications shall be made in accordance with [section 7-1-3](#).

[Eff: FEB 11 1985; am APR 27 1989] (Auth: HRS §124A-171) (Imp: HRS §124A-53)

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Amendments to Chapter 7-1

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[Eff: FEB 11 1985; am APR 27 1989] (Auth: HRS §124A-171) (Imp: HRS §124A-53)

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