

Military, civilian courts can convict for same DWI offense

By Mathew B. Tully - Special to the Times

I've been getting calls and e-mails lately from service members asking about alcohol- and drug-related offenses.

Many of these questions relate to driving while under the influence of either alcohol or drugs, including marijuana. The number one question is whether a service member can be punished by both a civilian court and the military for a DWI offense.

In very basic terms, the answer is often yes. In certain services, such as the Navy, it is not uncommon to impose nonjudicial punishment, known as an Article 15, even before the civilian court finds the service member guilty of the accused offense.

I know many barracks lawyers claim that "double jeopardy" prevents double punishment, and in general terms that's true. But the reason why most lawyers go to law school for three years after their regular four years of college is that the law is often riddled with exceptions to general terms.

I could write extensively about double jeopardy and how it does not apply to military personnel in many instances, but generally speaking, it does not apply in matters involving different jurisdictions, such as civilian and military courts.

Another common issue that I'm asked about is the court-martial aspects of DWI. I'm seeing more DWIs that in years past might have been resolved through nonjudicial punishment instead of going to court-martial.

The primary reason for a court-martial in DWI situations, in my opinion, is that the offense was committed by a service member on a military installation and there are other factors so egregious (somebody was injured, the blood-alcohol content was so high or the accused had many prior misconduct allegations) that the command feels strong punishment is necessary to maintain good order and discipline in the member's unit.

Article 111 of the Uniform Code of Military Justice specifically addresses the crime of drunken driving and driving while impaired by drugs. In the cases of driving while impaired by drugs, the Article 111 charge is often accompanied with an Article 112(a) charge, unlawful use or possession of illegal drugs.

Unlike many state laws that have very detailed procedures on how to establish drunk or impaired driving, in my opinion the broad wording of the UCMJ article makes it easier to get an Article 111 conviction than it is to get a DWI conviction in many civilian courts.

For military justice purposes, in general terms, intoxication is the presence in the blood of any amount of alcohol sufficient to impair the rational exercise of the mental and physical requirements for operating the vehicle.

The results of chemical tests showing the presence of alcohol in the blood will be considered along with other evidence of intoxication, such as the observations of law enforcement officers and the manner in which the accused was driving.

This is generally different than the civilian criminal justice standard, which places almost insurmountable weight on the blood or breath test in determining whether DWI was committed. Before you drink and drive on a military installation, think about how easy it is for the military justice system to prove you should not have been driving.

The journey to a court-martial is often a very long, albeit fast, road to travel and not one to take without an attorney. If you drank or used drugs and chose to drive, and now find yourself headed to a court-martial, you need to work with your defense counsel to figure out how to defend yourself and/or mitigate your potential punishment.

A court-martial, even for DWI, is not something to be taken lightly. And remember that while your buddy may have served at your side in a combat zone, his legal advice should not override that of your lawyer(s).

The information in this column is provided for informational purposes only and is not intended to constitute legal advice. Readers are encouraged to seek the advice of an attorney or other professional when an opinion is needed.

Mathew B. Tully, Esq. is a field artillery officer in the New York National Guard and a veteran of Operation Iraqi Freedom. He is also the founding partner of Tully Rinckey PLLC, a law firm in Albany, N.Y. E-mail your legal questions to <mailto:askthelawyer@militarytimes.com>.