

INFORMATION PAPER

Subj: TRAFFIC SAFETY

1. Purpose: To examine what tools currently exist for Marine Corps leadership to promote traffic safety for Marines.

2. Controlling Regulations:

- a. 32 C.F.R. 634: Motor Vehicle Traffic Supervision
- b. DODI 6055.4: DoD Traffic Safety Program
- c. MCO 5110.1D: Motor Vehicle Traffic Supervision (aka "Quad Service Order" AR 190-5, AFI 31-218(I) and OPNAV 11200.5D)
- d. MCO 5100.19E: Marine Corps Traffic Safety Program(DRIVESAFE)
- e. DODI 5525.4: Enforcement of the State Traffic Laws on DoD Installations
- f. MCB CLNC Order P5560.2M: Motor Vehicle and Traffic Regulations
- g. AFI 31-204: Air Force Motor Vehicle Traffic Supervision
- h. MCO P1400.32D: Enlisted Promotions Manual

3. Current Status: The following outlines the status of the controlling laws/regulations for military traffic safety.

a. DUI/Reckless Driving: Both DUI and reckless driving are punishable under Article 111, UCMJ whether the act occurs on or off base, or in a foreign country. The UCMJ has world-wide jurisdiction.

(1) In CONUS, nothing prevents a commander from initiating NJP proceedings or other disciplinary action against a Marine prior to adjudication by civilian authorities. However, in any such case, commanders are encouraged to consult with their staff judge advocate and coordinate with local law enforcement/district attorneys to ensure that military action will not frustrate or impede the civilian prosecution.

(2) In OCONUS, the applicable SOFA agreement may prevent UCMJ action until jurisdiction is relinquished by the host nation.

(3) Exercise of disciplinary authority after civilian adjudication is possible but requires appropriate permissions pursuant to JAGMAN 0124. This is not double jeopardy.

b. Seatbelts: All applicable DoD and Service regulations (including references (a-g)) require that all military service members and Reserve Component members on active duty must wear seatbelts while riding in a POV or GOV on or off the installation. However, only the Marine Corps, in reference (d), makes a failure to wear a seatbelt in any location, on or off base, punitive. None of the other Service

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regulations provide punitive consequences for a failure to wear a seatbelt.

c. Cell phone use: Reference (a) was recently modified to prohibit cell phone use without a hands free device on board military installations. This prohibition was previously incorporated by the Marine Corps into reference (d) in 2003; however, it is not punitive. Likewise, none of the other Services make prohibited cell phone use punitive.

d. Motorcycle Personal Protection Equipment (PPE): All applicable DoD and Service regulations (including references (a-g)) require that all military Service members and Reserve Component members on active duty must wear PPE. However, only the Marine Corps, in reference (d), makes a failure to wear PPE, on or off base, punitive. None of the other Service regulations provide punitive consequences for a failure to wear PPE.

e. Other violations: Pursuant to references (a) and (c), installation commanders may issue additional traffic regulations. One example is reference (f) issued by Camp Lejeune. On base violations of this reference are punitive.

4. Legal Issues Surrounding Off Base Traffic Violations:

a. Reference (c) provides that "In areas not under military control, civil authorities enforce traffic laws." This is reflective of the general idea that an installation commander's authorities are limited to the confines of the installation, and that traffic enforcement off base is a state responsibility.

b. References (a) and (c) each include the following language: "Only administrative actions (reprimand, assessment of points, loss of on-post driving privileges, or other actions) will be initiated against Service members for off-post violations of the installation traffic code." One could argue that this language renders the Marine Corps' punitive provisions regarding off base seatbelt and PPE use legally unenforceable. However, JA believes that the better argument is that the Marine Corps' seatbelt/PPE provisions are not part of an installation traffic code, but rather are entirely safety based. There is indisputable evidence that seatbelts save lives as does PPE use by motorcycle riders. There have been no reported challenges to the lawfulness of these punitive provisions. Attempts to extend the punitive consequences to more typical off base traffic offenses, such as speeding etc., dilutes the safety argument, and would likely be less persuasive to a military judge evaluating the lawfulness of the order.

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5. Violations of State Criminal Traffic Laws:

a. On base violations: In States in which traffic law violations are State criminal offenses, on base violations of these laws by civilian or military members may generally be charged under the Federal Assimilated Crimes Act. However, for military members, reliance on State law is unnecessary where the installation traffic code has punitive provisions.

b. Off base violations: As articulated in paragraph 3a above, if the off base offense is DUI/reckless driving, a member may be charged under Article 111, UCMJ. Otherwise, there is no legal authority to take UCMJ action for State violations. However, reference (a) and (c) provide that installation commanders may assess traffic points based upon off base State violations.

6. Self-reporting of Traffic Violations: With the exception of reporting a traffic accident in which there has been property damage or injury (which applies to all Services), no Service has any form of self-reporting requirements for off base traffic arrests or citations. No evidence could be found to support previous assertions that the Air Force has a self-reporting requirement. Any self-reporting requirement that could lead to punitive action raises significant self-incrimination issues.

7. Partnerships with Civilian Authorities:

a. Pursuant to reference (c) the Air Force and the Army are required to establish a system to exchange information with civilian authorities to enhance the chain of command's visibility of a soldier's and airman's off base traffic violations. This exchange provides a mechanism to allow for assessment of points for off base violations. The mandatory nature of this requirement is not imposed on the Marine Corps.

b. PP&O (PS) is exploring options to establish MOUs with local law enforcement for better to enhance information sharing. There is a plan at MCAS Miramar and MCAS Beaufort to begin monitoring local traffic violations to detect Marine offenders. This plan has not yet been implemented.

8. Involvement of Unit Commanders:

a. Reference (c) vests in the installation commander, or his designee, the responsibility to administer the traffic supervision programs and assess points towards a member's driving privileges. Only the installation commander, or his designee, may assess points or revoke a member's driving privileges. However, nothing prevents a unit commander from conducting NJP or referring a case to a court-martial for a violation of the UCMJ. For instance, unit commanders may NJP their Marines for violations of a punitive base traffic order

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and also refer the violation to the base magistrate for assessment of points.

b. No evidence could be found to support previous assertions that USAF unit commanders are adjudicating traffic violations and assessing points. However, the robust information sharing programs/data bases the Air Force has with local authorities provides the local commander substantially more visibility over traffic related offenses than Marine commanders enjoy.

9. Transfer of Records: Pursuant to reference (c), law enforcement officers on one installation are supposed to transfer the driving record of members to the gaining installation. In other words, traffic points are supposed to transfer with the member.

10. Summary of Current Tools for Commanders:

a. Tools for on base violations:

(1) NJP/Court-Martial for violations of Article 111, UCMJ (DUI/Reckless driving);

(2) NJP/Court-Martial for violations of State criminal traffic laws on base under the Federal Assimilative Crimes Act;

(3) NJP/Court-Martial for violation of Article 92, UCMJ (orders violations) for punitive sections of DRIVESAFE order or applicable Base Orders;

(4) Referral to base magistrate for assessment of points towards a member's on base driving privileges;

(5) Page 11 counseling entries;

(6) Promotion Restrictions: (reference (h) applies)

(a) 12 months for military or civilian DUI conviction;

(b) 6 months for conviction by civil authorities (foreign or domestic), for an offense which is considered a misdemeanor, other than minor traffic violations, in the civil jurisdiction. This restriction will apply to any traffic violation that is considered a misdemeanor and is punishable by law, i.e. reckless driving;

(c) 3 months for NJP.

(7) Processing for administrative separation based upon misconduct.

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b. Tools for off base violations:

(1) NJP/Court-Martial for violations of Article 111, UCMJ (DUI/Reckless driving);

(2) NJP/Court-Martial for violation of Article 92, UCMJ (orders violations) for punitive sections of the DRIVESAFE order (seatbelts/PPE).

(3) Referral to base magistrate for assessment of points towards a member's on base driving privileges;

(4) Page 11 counseling entries;

(5) Promotion Restrictions: (same as 11a(6) above for on base violations)

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