



## **BUI AND DOUBLE JEOPARDY**

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Often during boarding's involving boating under the influence (BUI), mariners are turned over to local law enforcement authorities and subsequently prosecuted under state law for intoxicated operation of a vessel. Hearing Officers routinely hear from these mariners because they have also received a notice of civil penalty action from a Coast Guard Hearing Officer for BUI under Title 46 United States Code (U.S.C.) Section 2302(c). In their responses, the mariners claim the civil penalty action constitutes "double jeopardy" because they are being prosecuted by the state for the same incident.

The Fifth Amendment of the U. S. Constitution prohibits that a person be put twice in "jeopardy of life and limb" for the same offense. Double jeopardy is a concept that applies to criminal proceedings. Where the conduct violates the laws of the nation and an individual state, a person may be "prosecuted" and punished at both the national and state level. This is because the laws are considered different because they arise from separate sovereigns.

The Coast Guard enforces federal regulations by imposing civil penalties (described in Title 33, Code of Federal Regulations, Part 1.07), This process is an informal, administrative process governed by basic due process standards found in administrative law. This process is separate and distinct from state judicial proceedings. Where there is an overlap of jurisdiction between federal, state and local law enforcement agencies, each agency may proceed with enforcement actions within the bounds of their jurisdiction and authority. Mariners who receive a civil penalty notice for BUI from a Hearing Officer are not being "tried" for a "crime" and as such there is no jeopardy of life or limb. Additionally the civil penalty action arises from violation of federal law separate and apart from any state prosecution for the same conduct under state law. As such, the

Coast Guard civil penalty action does not create double jeopardy for the mariner.

Additionally, Hearing Officers often receive responses from mariners demanding that the Hearing Officer dismiss the violation and civil penalty action because their case was dismissed in state civil court or they were found guilty in state civil court and have already paid a significant fine. Hearing Officers are not bound by the findings of state proceedings in determining whether a violation of federal regulations did or did not occur. Hearing Officers may however, consider penalties and punishment imposed by a state as factors in mitigation.