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turn) horizontal gaze nystagmus tests as sanctioned by the National Highway Traffic and Safety Administration, and screening breath-testing devices to conduct field sobriety tests.

§ 634.37 Voluntary breath and bodily fluid testing based on implied consent.

(a) Implied consent policy is explained in § 634.8.

(b) Tests may be administered only if the following conditions are met:

(1) The person was lawfully stopped while driving, operating, or in actual physical control of a motor vehicle on the installation.

(2) Reasonable suspicion exists to believe that the person was driving under the influence of alcohol or drugs.

(3) A request was made to the person to consent to the tests combined with a warning that failure to voluntarily submit to or complete a chemical test of bodily fluids or breath will result in the revocation of driving privileges.

(c) As stated in paragraphs (a) and (b) of this section, the law enforcement official relying on implied consent will warn the person that driving privileges will be revoked if the person fails to voluntarily submit to or complete a requested chemical test. The person does not have the right to have an attorney present before stating whether he or she will submit to a test, or during the actual test. Installation commanders will prescribe the type or types of chemical tests to be used. Testing will follow policies and procedures in § 634.35. The results of chemical tests conducted under the implied consent provisions of this part may be used as evidence in courts-martial, nonjudicial proceedings under Article 15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this part.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.38.

§ 634.38 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined in this section pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated. Extractions of body fluids in furtherance of other kinds of investigations are governed by the Manual for Courts-Martial, United States, Military Rule of Evidence 315 (2002) (MRE 315), and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFI 44–102.

(2) Army and Marine Corps personnel should not undertake the nonconsensual extraction of body fluids for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in DLAR 5700.7.

(b) *Rule.* Involuntary bodily fluid extraction must be based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described in § 634.37, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle and suspected of being under the influence of an intoxicant may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.