



CYBER LEGAL ADVOCACY BRIEF

A Preventive Law Series
Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



ADMINISTRATIVE IMPLICATIONS OF REFUSING TO COMPLETE A LAWFULLY REQUESTED BLOOD, BREATH, OR URINE TEST FOR ALCOHOL

Drivers understand there are legal consequences for driving under the influence of alcohol or drugs (DUI). Convictions for DUI can have long lasting effects after fines have been paid and/or jail time has been served. Soldiers must understand there can be administrative actions taken against them unique to the military if the Soldier drives while under the influence of alcohol, is convicted of DUI, fails to complete a blood alcohol test, or refuses to take a blood alcohol test. Army Regulation 190-5 provides commanders authority to impose administrative action against Soldiers for refusing or failing to complete a test for blood alcohol level even before a civilian trial or suspension hearing occurs. AR 190-5 provides that "Army commanders will take appropriate actions against intoxicated drivers."

These military administrative actions can take many forms - suspension of on-post driving privileges, administrative reprimand, administrative separation action, administrative reduction, and/or bar to reenlistment. A general officer is required to issue a written reprimand (commonly known as a General Officer Memorandum of Reprimand or GOMOR) when a Soldier is convicted by court-martial or a civilian court for an offense of DUI, when non-judicial punishment (an Article 15) is issued for an offense of drunk driving, or when a Soldier refuses or fails to complete a blood or breath test for the measurement of blood alcohol content (BAC).

AR 190-5 requires Soldiers to submit to a lawfully requested test when there is a reasonable belief of driving under the influence. Reasonable belief exists when there is a reasonable basis to believe a crime is being or has already been committed. There will be a reasonable belief of DUI if the officer who writes the citation or incident report states that he or she smelled alcohol on the breath of the Soldier, observed the Soldier slurring their speech, saw the Soldier with bloodshot eyes, or that the Soldier failed field sobriety tests. Under Georgia law, there is implied consent to a blood alcohol content test by driving on Georgia roads. This means that by operating a vehicle on the roadways in Georgia, all drivers consent to a blood alcohol test. Failure to complete a blood alcohol test means the right to drive on Georgia roadways will be suspended. There is a right to a hearing on the matter of whether your driving rights will be suspended, which will be an administrative hearing separate from any trial on DUI in criminal court.

When a Soldier is stopped or suspected of DUI, the officer will ask the Soldier to submit a blood, breath or urine test of blood alcohol content. The officer will read Georgia's implied consent notice. The notice provides that the privilege to drive upon the highways in Georgia are conditioned upon submission to state administered chemical tests of the blood, breath, or urine to determine if a driver is under the influence of alcohol or drugs. If a lawfully requested test is refused, the Georgia driver's license or privilege to drive in Georgia will be suspended for a minimum period of one year. Refusing to submit to blood or urine testing may be offered into evidence against the driver at trial. If a driver submits to testing and the BAC is 0.08 or more, the Georgia driver's license or privilege to drive in Georgia may be suspended for a minimum period of one year. After first submitting to the requested state test, the driver is entitled to additional chemical tests of the blood, breath, urine, or other bodily substances at the driver's expense. A failure to submit to a lawfully requested test will result in suspension of the Soldier's driving privileges on and off post. The Soldier will also be subject to the administrative actions discussed in this paper.

Administrative actions can be taken whether you are driving or are sitting in a parked car while in physical control of the vehicle. Soldiers will find themselves facing the same actions if the officer encounters them sitting in a vehicle on the driver's side, with the vehicle running, and with keys in their possession even if they are in a parked car in a parking lot. AR 190-5 defines a "driver" as "any person...in physical control of a motor vehicle" and prohibits driving while under the influence of drugs or alcohol.

It is important to understand both AR 190-5 and Georgia state law. You will have a right to respond to the GOMOR before a decision is made on whether or not the GOMOR will be filed in your Army Military Human Resource Record, but you should be familiar with the regulatory requirements in choosing how to proceed with your response.

The effects of DUI are numerous and costly. A refusal or failure to complete a blood alcohol test sets off a chain reaction that can cost a Soldier their driving privileges, fines, probation, jail time, thousands in escalated insurance premiums, and even their career.

Additional Information

For additional information, the Fort Gordon Legal Assistance Division is located at 267 Heritage Park Lane, Building 35202, Fort Gordon, Georgia. You may reach the office by calling (706) 791-7812 / 7813. Please be advised you must have an appointment to consult with one of the attorneys; however, paralegals are available during hours of operation to answer general questions and notarize documents.

This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney. You may schedule a legal assistance appointment by calling the Fort Gordon Legal Assistance Office at 709-791-7812/7813.
