

13. CONTACTS WITH DIPLOMATS & ARREST OR DETENTION OF FOREIGN NATIONALS

(December 2005)

I. POLICY

Some foreign nationals in the United States are entitled to diplomatic immunity. When it is established that an individual is entitled to diplomatic immunity, officers will respect their privileges.

It is the policy of the Department to ensure that prompt notifications of consular officials are made on behalf of foreign nationals that have been arrested or detained.

II. CHECKLIST (N/A) III. FORMS

Incident Report (PGC Form #3529)
Commander's Information Report
(PGC Form #1545)

IV. DEFINITIONS

Detention: Refers to periods longer than reasonably required to verify identification, reconcile a minor problem, or record information for a police report

Foreign Mission: Personnel and official premises of:

A foreign government, including embassies and consulates
An international organization, including diplomatic missions of the organization
Missions authorized under the Foreign Mission Act of 1982

Foreign National: Any individual who is not a citizen of the United States

Full Immunity: Accorded to certain personnel of foreign governments who have been accredited to the U.S. In some cases, this immunity covers both criminal and civil process; in others, only criminal process. Individuals with criminal immunity may not be:

Detained longer than necessary to verify immunity status
Arrested
Prosecuted
Subjected to searches
Required to give evidence as witnesses

Functional Immunity or Official Acts Immunity: Individuals are not immune from detention or arrest, but may assert immunity for actions carried out in the course of their official duties as an affirmative defense

Vehicle Representative: Any individual authorized by a foreign mission to be responsible for any vehicle used by the mission, whether it bears diplomatic registration plates or not

V. PROCEDURES

1. Levels of Diplomatic Immunity

There are three broad categories of immunity:

Full Immunity: The following and their immediate family members are immune from arrest, detention, and prosecution:

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Diplomats, including those in transit to a diplomatic post
Embassy administrative and technical staff members

Staff Employee Immunity: Staff members of international organizations, service staff members, and consular employees may be charged with any crime. Immunity is determined by the courts.

Consular Immunity: Consular officers may be arrested for felonies when a charging document has been issued; they are immune from arrest for other acts or those committed as part of their official business; the courts determine immunity. Honorary consuls have official acts immunity but may be arrested for commission of any crime.

Officers shall contact the U.S. State Department to determine the proper course of action when dealing with individuals who claim diplomatic immunity.

Officers may temporarily detain individuals claiming diplomatic immunity. They shall request that the individual produce identification to verify their claim. Accredited diplomats carry a U.S. State Department identification card. The reverse side of the card lists the level of immunity to which the individual is entitled. If the individual does not have a State Department card in his or her possession, officers shall telephone the State Department.

If immunity is verified, the officer shall release the individual and complete an Incident Report. He shall write "U.S. STATE DEPARTMENT" in the COPY TO block. If the diplomat is a member of the U.N., the officer shall write "HOST

COUNTRY SECTION, U.S. MISSION TO THE U.N". in the COPY TO block of the report.

Officers may use necessary force to preserve public safety or stop a battery against anyone. An arrest will not be made; the officer will complete an Incident Report.

When an officer is the victim of a battery by a diplomat, a supervisor shall investigate the incident, and prepare a CIR.

2. Searches & Seizures of Property

Official documents, correspondence, and papers of an individual entitled to immunity may not be searched.

3. Registration Plates

The U.S. State Department issues diplomatic registration plates. Two plates are issued to each vehicle. The registration plates do not determine the level of immunity to which the driver of the vehicle is entitled. Immunity attaches only to an individual; occupants of a vehicle bearing diplomatic registration plates may not have immunity.

Vehicles bearing the following U.S. State Department registration plates are immune from search and seizure:

Diplomatic plates that begin with the letter "D"

Staff plates that begin with the letter "S"

Plates with the words "United Nations" on the upper right corner

Occupants of diplomatic vehicles suspected of being stolen or involved in the commission of a crime may be required to

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present identification. If the vehicle is stolen or was used in the commission of a crime, its inviolability is suspended, and search and seizure of the vehicle are permissible.

Articles within the vehicle remain inviolable.

If the occupants are not authorized to use the vehicle, whether or not they are entitled to immunity, the vehicle shall be released to a vehicle representative or impounded for safekeeping. Such vehicles shall be processed for evidence only at the owner's direction or with supervisory authorization.

The validity of a diplomatic driver's license should be verified separately. The status of drivers' licenses and registration plates issued by the State Department may be queried through NLETS.

4. Traffic Violations

(Maryland Vehicle Law 16-901)

Officers confronting individuals who have committed a moving violation under the vehicle laws or regulations of this State or any local authority, and display a U.S. State Department issued driver's license or otherwise claim diplomatic immunity shall:

Contact the U.S. State Department at 202-647-7277 to verify immunity
Document all relevant information from the driver's license or identification card
Forward to the Motor Vehicle Administration copies of any accident reports, incident reports (write "MVA" in the COPY TO section), citations, or other charging documents issued to the driver within 5 workdays of the incident through the Records Section.

Officers may issue traffic citations for any violation of the Maryland vehicle laws, however:

The violator's signature on the citation is not mandatory

The violator, if entitled to criminal immunity, shall not be arrested or subjected to any test without his or her permission

When individuals with immunity are detained for longer than several minutes or removed from the scene, they shall be provided with access to a telephone. Officers shall complete an Incident Report whenever they issue a citation to a diplomatic or consular officer.

When dealing with individuals who are suspected of driving while intoxicated and have diplomatic immunity, officers shall ensure that the individual does not endanger himself or herself or the public. The officer may:

Offer field-sobriety or chemical tests
Safeguard the violators until they are capable of driving safely
Park and secure the violator's vehicle
Provide transportation to the violator

Parking Violations

Vehicles bearing diplomatic registration plates may be towed only if necessary to prevent a serious obstruction of traffic. When possible, the officer shall attempt to contact a vehicle representative and seek voluntary removal of the vehicle.

If towed, the vehicle will be moved to the closest available legal parking space. The officer shall request that a vehicle

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representative accept financial responsibility for the crane service. If the representative is unavailable, unwilling, or unable to do so, the officer shall sign the tow service invoice and advise the crane operator to submit it to the Fiscal Affairs Division (FAD) for payment. When a diplomatic vehicle is moved by crane at an officer's direction, the officer shall complete an Incident Report, noting "FAD" in the COPY TO block.

Notifications

If a diplomat is seriously injured or dies in the County, the appropriate District Commander or ODC will make notification to:

The diplomat's embassy
The U.S. State Department

5. Arrest or Detention of Foreign Nationals

When officers arrest or detain a foreign national, they shall contact the U.S. State Department to determine whether the individual's country requires notification of the action.

When the agreement with the arrestee's country requires notification, the reporting officer shall make the notification, document the name of the individual notified on the Incident Report, and advise the arrestee that it has been made.

If notification is optional, and the arrestee wishes that it be made, the officer shall immediately inform the appropriate foreign mission, and document the name of the individual notified on the Incident Report. If

the arrestee declines notification, this shall be documented on the Incident Report.

Subject to security considerations, consular officers shall be permitted to visit and speak with the arrestee and to arrange for their legal representation. The consular officer may be prohibited from these contacts if the arrestee opposes them.

VI. GOVERNING LEGISLATION & REFERENCE

This General Order addresses:

Commission on Accreditation for Law Enforcement Agencies,
Standards 1.1.4, 1.2.4, 1.3.1, 55.2.6,
61.1.2, 61.1.3, 61.1.13, 61.4.3, 82.2.1

Governing Legislation:

Diplomatic Relations Act of 1978 (22 USC 254)
Maryland Vehicle Law 16-901

Reference:

Vienna Convention on Consular Relations (VCCR)

The matrix found in this directive provides guidance for interacting with diplomats.

The U.S. Department of State publishes the following documents that may aid officers in determining an individual's immunity status:

Blue Book – Lists accredited diplomatic officers and their spouses
White List – Lists administrative, clerical and service personnel of diplomatic missions

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Grey List – Lists foreign consular officers
in the U.S.