

Cocoa Beach Police Department

Standard Operating Procedure



Effective Date: November 23, 2020	Rescinds: Amends: February 03, 2017	Number: 200.81
Subject: Diplomatic Immunity & Consular Notification		Re-evaluation Date: 2023
Distribution: ALL PERSONNEL	Related CFA Standards: 18.01	

This order consists of the following numbered sections:

1. Purpose
2. Scope
3. Policy
4. Definitions
5. Procedures
6. Verification of Diplomatic Status
7. Procedure for Other Foreign Nationals
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9. Appendix

1. PURPOSE

The purpose of this policy is to comply with federal law and international protocol regarding the principle and practice of diplomatic immunity as related to diplomats, their families, and employees. The Department is further committed to following federal law with respect to foreign nationals. Under provisions of the 1963 Vienna Convention on Consular relations, all foreign nationals, including resident and non-resident, have the right to have their Consulate notified if they are arrested and/or detained for a significant period of time.

2. SCOPE

The provisions set forth herein apply to all sworn police personnel.

3. POLICY

It is the policy of the Department when dealing with questions of diplomatic immunity, that all police officers shall be mindful of the following:

- A. Safety considerations are paramount. Police Officers may take any reasonable steps needed to ensure their safety and that of the general public.
- B. Police Officers are not required to ignore or condone the commission of crimes. If it is apparent that a crime is being committed, or is about to be committed, police officers may intervene to the extent necessary to stop such activity.
- C. Police Officers shall, when possible, work in close cooperation with federal authorities regarding cases involving diplomatic immunity.

4. DEFINITIONS

- A. **CONSULAR OFFICER** - A consular officer is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. Consular officers are assigned to foreign embassies in Washington D.C. or in other locations nationwide. Consular officers are issued identification cards by the Department of the State.
- B. **DIPLOMATIC IMMUNITY** - International law that requires that local and federal law enforcement authorities extend certain privileges and immunities to members of foreign diplomatic missions and consular posts.
- C. **DIPLOMATIC OFFICER** - A diplomat is an officer of a foreign government, assigned to an embassy in Washington D.C. They may also act as a consular officer and are issued identification cards by the Department of the State.

5. PROCEDURES

- A. Each On-Duty Shift Supervisor will follow guidelines issued by the U.S. Department of State and consult available resources when dealing with issues regarding foreign nationals and potential diplomatic and consular immunity situations. They will ensure that all notifications and times are well documented in the incident report. These resources include, but are not be limited to:

1. DIPLOMATIC AND CONSULAR IMMUNITY Guidance for Law Enforcement and Judicial Authorities. <https://www.state.gov/privileges-and-immunities/>
 2. CONSULAR NOTIFICATION AND ACCESS Instructions for Federal, State, and Local Law Enforcement regarding Foreign Nationals in the United States and the Rights of Consular Officials to assist them. <https://www.state.gov/subjects/consular-notification-and-access/>
- B. The Office of Protocol, U.S. Department of State, is available 24 hours a day and may be contacted to confirm the status of individuals claiming diplomatic immunity. It also investigates violations of American law by diplomatic personnel and may request waivers of immunity to allow prosecution. Only completed reports provided by the Records Division and copies of any documentation generated in accordance with this operating procedure will be faxed to the Office of Protocol, Diplomatic Security Services, Protective Liaison Division at (202)895-3613 located 3507 International Drive N.W., Washington, D.C. Status queries can be made as follows:
1. Business Hours (8:15 a.m. - 5:00 p.m.): (202) 647-1985
 2. Non-Business Hours: (202) 647-7277
- C. When responding to or investigating a criminal complaint, an officer should take the following steps when confronted by a suspect claiming diplomatic immunity:
1. Ask the individual claiming diplomatic immunity to produce his or her identification card issued by the U.S. Department of State (if the individual is unable to produce such a card, proceed to step 2).
 2. Verify the individual's status by asking Communications to contact the Office of Protocol.
 3. Notify the On-Duty Shift Supervisor
 4. Refer to the Diplomatic and Consular Immunity resources and *Law Enforcement Aspects Summary* (Appendix) to determine whether the individual may be detained or arrested.
 5. Complete an incident report and forward it to the Records Division after supervisory review.
- D. Police Officers may detain all individuals claiming immunity until their status has been confirmed with the Office of Protocol. If the person attempts to leave before the officer has been able to confirm diplomatic status, the officer may use the restraints necessary to prevent him or her from leaving the scene.
- E. If a police officer detains a foreign national from a mandatory notification country, as listed at <https://travel.state.gov/content/travel/en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html> the officer shall notify the Office of Protocol and document such notification in the case report. The individual foreign national cannot waive this mandatory notification requirement. If the individual asks the officer to contact his or her embassy or consulate, the officer shall do so immediately and document such notification in the case report.
- F. Non-Criminal Traffic Infractions (CFA 18.01)
1. If an officer stops a vehicle for a non-criminal traffic infraction, and he or she is confronted by a person claiming diplomatic immunity or consular immunity, the officer may write a citation. Prior to issuing the citation, officers should act as referenced "C" and "D" above.
 2. If the officer observes contraband in plain view, it may be confiscated. Since a violation of law other than a traffic infraction is then involved, the officer should refer to the steps outlined above. If the individual is entitled to full diplomatic immunity, his or her vehicle may not be seized or searched; in addition, the person is not subject to arrest.
- G. Driving Under the Influence (CFA 18.01)
1. If an officer initiates a traffic stop for possible DUI, and is confronted by a person claiming diplomatic immunity, the officer should confirm the individual's status as referenced in section "C" above. The officer will notify the On-Duty Shift Supervisor.
 2. If the individual possesses full diplomatic immunity, the officer may not compel him or her to take a breath test or field sobriety tests. However, if the person represents a danger to the community, the officer may prevent him or her from driving; if necessary, the officer may use physical restraint to do so.
 3. If a person with full diplomatic immunity is deemed to be impaired, and therefore unable to continue driving, officers are encouraged to use the least intrusive means possible in restraining the individual. For example, if an unimpaired person is a passenger in the vehicle, the officer may allow that person to drive if they possess a valid driver's license.
 4. If the officer determines that it is necessary to tow the diplomat's vehicle, an inventory of its contents shall be completed.
- H. Family Members and Staff of Diplomatic Agents and Consulars
1. When dealing with family and service staff members of Diplomatic Agents and Consulars refer to the *Law Enforcement Aspects Summary* (Appendix) to verify their status prior to taking law enforcement action.

6. **VERIFICATION OF DIPLOMATIC STATUS**

- A. All identification cards have affixed a photo of the bearer with their name, title, mission, city, state, date of birth, identification number, expiration date, and the U.S. State Department seal. A brief statement of the bearer's immunity is printed on the back of the card and a space is provided for their signature. The following forms of identification are considered authoritative proof by the Department of State, Office of Protocol:
1. Diplomatic (blue border)
 2. Official (green for embassy employees)
 3. Consular (red border)
- B. The following forms of identification are not conclusive proof of diplomatic immunity.
1. Foreign Diplomatic Passport
 2. Diplomatic Visa
 3. Tax Exemption Cards
 4. Automobile registrations, license plates, and driver's licenses.

7. **PROCEDURE FOR OTHER FOREIGN NATIONALS**

- A. The following steps are to be taken when a Foreign National who is not claiming or possessing consular or diplomatic immunity is arrested or detained:
1. Determine the country of citizenship.
 2. Determine the countries notification requirement by viewing the Mandatory Notifications Countries and Jurisdictions at <https://travel.state.gov/content/travel/en/consularnotification/countries-and-jurisdictions-with-mandatory-notifications.html>
 3. If the foreign national is from a non-mandatory country the officer shall offer to notify the Office of Protocol on their behalf.
 4. Notify the Office of Protocol without delay if the country is on the mandatory notification list and inform the Foreign National that you are doing so.
 5. If the Foreign National does not speak English, present the scripted version in his or her native language. This is available at:
<https://travel.state.gov/content/travel/en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html>
 6. If they can not read, call the U.S. Department of State (202) 647-4415 or (202) 647-1512. If unsuccessful refer to the Office of Protocol for guidance.

8. **REFERENCES**

- A. U.S. Department of State (2019). Diplomatic and Consular Immunity, Guidance for Law Enforcement and Judicial Authority. Retrieved November 9, 2020 from:
[Diplomatic and Consular Privileges & Immunities from Criminal Jurisdiction, Law Enforcement Aspects Summary](#)
- B. U.S. Department of State (2018). Consular Notification and Access, Instruction for Federal, State, and Local and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials To Assist Them. Retrieved November 9, 2020 from:
https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf

9. **APPENDIX**

Diplomatic and Consular Privileges & Immunities from Criminal Jurisdiction, Law Enforcement Aspects Summary. Retrieved January 6, 2017 from:
<https://www.state.gov/documents/organization/150531.pdf>



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