

# PROCEDURE MANUAL

## 05-07



MICHIGAN STATE POLICE

## Incidents Involving Foreign Nationals and Diplomats

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**Purpose:** This manual establishes procedures relating to diplomatic and consular officials, arrest and detention of foreign nationals, and identification of persons who may be non-citizens.

**Effective Date:** April 19, 2022

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## Definitions:

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**Diplomatic Immunity:** A principle of international law, is broadly defined as the freedom from local jurisdiction accorded to duly accredited diplomatic officers, their families, and servants. Diplomatic officers shall not be arrested or detained except for the commission of a grave crime. Family members of diplomatic officers, their servants, and employees of a diplomatic mission are entitled to the same immunities under current U.S. law, 22 U.S.C. 254a-e, if they are not nationals of or permanently residing in the receiving state.

Associated with this personal diplomatic immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private residence of a diplomatic agent, their property, papers, and correspondence.

**Diplomatic Officers:** Ambassadors and ministers are the highest-ranking diplomatic representatives of a foreign government. Other diplomatic titles are minister counselor, counselor, first secretary, second secretary, third secretary, and attaché. These officials are primarily located in Washington, D.C., but may have offices in other cities around the country. Diplomatic officers, their families, official staff, and servants, who are not nationals of or a permanent resident in the receiving state, are protected by unlimited immunity from arrest, detention, or prosecution with respect to any civil or criminal offense.

**Consular Officers:** Consular officers are consuls-general, deputy consuls-general, consuls, and vice consuls. They are also official representatives of foreign governments. Consular officers are required to be treated with due respect, and all appropriate steps shall be taken to prevent an attack on their person, freedom, or dignity. They are entitled to limited immunities as described below:

## Section 1: Foreign Nationals, Diplomats, and Identification

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### 1.1 General Policy for Foreign Diplomats and Consular Officers

#### a. Diplomatic Officers

- i. Associated with this personal diplomatic immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private residence of a diplomatic agent, their property, papers, and correspondence.

b. Consular Officers

- i. Under prevailing international law and agreement, a foreign career consular officer is not liable to arrest or detention pending trial, except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. Their immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.

c. Families of Consular Officers

- i. Family members of consular officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the receiving state as do consular officers. However, they shall be accorded appropriate courtesy and respect.

d. Consular Premises

- i. Consular premises, used exclusively for work of the consular post, shall not be entered without explicit permission of the head of the consular post or their designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.

e. Consular Archives, Documents, Records and Correspondence

- i. The consular archives and documents are inviolable at all times and wherever they may be. The official correspondence of the consular post, which meets all correspondence relating to the consular post and its functions, is likewise inviolable.

f. Honorary Consuls

- i. Often nationals or permanent residents of the receiving state are appointed and received as honorary consular officers to perform the functions generally performed by career consular officers. Such officers do not receive identification cards from the State Department of the type issued to career consular officers, though they may exhibit reduced-size copies of the exequatur or diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state, except as to official acts performed in the exercise of their consular functions. However, appropriate steps shall be provided to accord to such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of an honorary consul and persons working with them.

## 1.2 Methods of Handling Selected Incidents, Violations, or Minor Offenses by Consular Officers

a. Moving Traffic Violations

- i. When a consular officer is stopped for a moving traffic violation, the enforcement member shall exercise discretion based on the nature of the violation and either issue a

verbal warning or proceed with issuance of the appropriate citation. Mere issuance of a traffic citation does not constitute arrest or detention in the sense referred to above.

b. Driving While Intoxicated

- i. The primary consideration in this type of incident shall be to see that the consular officer is not a danger to themselves or the public. Based on a determination of the circumstances, the following options are available:
  1. Take the consular officer to the post or a location where the consular officer may recover sufficiently to enable them to drive safely.
  2. Permit the consular officer to make a telephone call to arrange for a relative or friend to come for them.
  3. Call a taxi for the consular officer.
  4. Take the consular officer home.
- ii. The official shall not be handcuffed, subjected to any sobriety test, or mistreated in any way.
  1. At best, this is a sensitive situation. The official shall be treated with respect and courtesy. The official shall be reminded that their primary responsibility is to care for their own safety and the safety of others.

c. Offenses Involving Family Members of a Consular Officer

- i. Family members of a consular officer cannot claim immunity. However, considerations shall be given to the special nature of this type of case. A criminal violation shall be handled, when possible, by seeking a complaint and warrant. The individual shall be released once positive identification is made and relationship with the consular official is verified. If the relative is a juvenile, as in all juvenile cases, the subject shall be released to the parent consular officer.

d. Reporting of Incidents to Office of the Governor

- i. If a consular officer or member of their family or personal staff should become involved in any actions taken by members, the member shall notify the Operations Section of all available information relative to this action. The Operations Section shall immediately furnish the Office of the Governor with all pertinent information.

### 1.3 Death of Foreign Nationals

- a. Members who become aware of the death of a foreign national in the United States shall ensure that the nearest consulate of that national's country is notified of the death.

### 1.4 Arrest of Foreign Nationals

- a. Whenever a foreign national is arrested, the arresting enforcement member shall ensure the individual is informed of their right to have their foreign consular officer notified.
  - i. If a foreign national arrestee is from one of the [56 listed mandatory reporting countries and jurisdictions](#), the arresting enforcement member, without delay, shall ensure the Operations Section is notified of the arrest without delay, even if the foreign national

objects. The arresting enforcement member shall document the foreign national's response and the notification in the member's incident report.

- ii. If a foreign national arrestee is from a country or jurisdiction other than a listed mandatory reporting country or jurisdiction, the arresting enforcement member shall offer to contact the arrestee's foreign consular officer. The foreign national may accept or decline the offer to notify. If the arrestee requests notification, the arresting enforcement member shall, without delay, ensure the Operations Section is notified of the arrest. The arresting enforcement member shall document the foreign national's response and any notification in the member's report.
- b. The Operations Section shall promptly notify the appropriate consulate or embassy of the name, address, charge, and place of detention of each foreign national arrested where notification is required or requested.
- c. Foreign consular officials have a treaty right to visit their arrested countrymen, unless the arrestee objects to such visits.

### 1.5 Identification Procedures

- a. Enforcement members shall act in accordance with written directives when identifying any person detained, arrested, or who comes into the custody of the MSP. An individual shall not be stopped or detained, or a traffic stop prolonged, solely for the purpose of establishing an individual's citizenship status, unless it is necessary to identify the individual where an investigation reveals that an individual has committed a crime or civil infraction.
- b. United States citizens are not required to carry evidence of citizenship, such as birth or naturalization certificates. Undocumented presence, in and of itself, is not a crime punishable under federal law. Enforcement members shall not assume that an individual is not a citizen based solely upon that individual's race, ethnicity, color, culture, attire, religion, national origin, language, or limited English proficiency.
- c. Unless there is voluntary admission from an individual that they are not lawfully present in the United States or there is reasonable suspicion to believe that an individual is unlawfully present in the United States, they must be presumed to be a citizen.
- d. All resident aliens, and most nonresident aliens lawfully admitted to the United States, are required by federal law to have in their possession documents issued by federal immigration services. These documents detail conditions of admission.
- e. If an enforcement member is presented with foreign identification documents, that member shall do the following:
  - i. Determine if the individual presenting the document is the person named on the document.
  - ii. Attempt to determine if the documents are issued through a verifiable source.
  - iii. If the documents appear altered or forged, enforcement members shall notify the relevant embassy or consulate to determine to authenticity of documents, in addition to pursuing any criminal charges that might exist based on the alteration or forgery.

- f. Enforcement members may be presented with numerous forms of identification. Individuals shall not be subject to a higher level of suspicion based solely on the type of identification they provide. All forms of identification are subject to reasonable scrutiny. Forms of identification may include:
  - i. Driver's licenses from any U.S. state, territory or foreign country.
  - ii. Government-issued identifications from any U.S. or foreign jurisdiction, including city or municipal identifications.
  - iii. U.S. or foreign passports or passport cards.
  - iv. Consular identification cards.
  - v. Refugee verification packets.
  - vi. U.S. armed services identification card with photo.
  - vii. U.S. B I/B2 visa border crossing card.
  - viii. U.S. certificate of citizenship or naturalization with photo.
  - ix. U.S. Department of Homeland Security issued identifications (which includes, but is not limited to I-327, Permit to Re-Enter).
  - x. I-551 Permanent Resident card (including I-551s that do not have an expiration date).
  - xi. I-571, Refugee Travel Document.
  - xii. I-766, Employment Authorization Document.
  - xiii. I-94, Arrival/Departure Record.
  - xiv. I-220B, Order of Supervision.
  - xv. Verification ID letter from the Department of Social and Health Services Children's Administration for foster youth.
- g. An individual in an illegal status may present a false or altered card or document, or an authentic one belonging to someone else. This is a violation of 8 U.S.C. 1324c, which is punishable as a felony. Enforcement members may detain and arrest individuals for this type of violation.
- h. Career consular officers can be identified by credentials issued by the State Department and by other locally issued official identification papers. The State Department credential bears its seal, the name of the officer, their title, and the signatures of State Department officials.

## 1.6 Assistance in Foreign Document Authentication

Members attempting to confirm or investigate the authenticity of foreign issued documents shall first attempt to contact the issuing consulate or embassy of the location indicated on the documents.

The Department of State maintains a list of embassies, consulates, and missions in the United States through contact with the [Bureau of Consular Affairs](#).

## 1.7 Alien Identification Documents

For a list of documents to verify resident and non-resident aliens, visit the [U.S. Citizenship and Immigrations Handbook for Employers M-274](#).

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**Review Responsibility:** Field Operations Bureau; Criminal Justice Information Center

**Accreditation Standards:** CALEA