

**2.411 DIPLOMATIC IMMUNITY, CONSULAR AFFAIRS** (1.2.5, 61.1.3.d)

- A. The primary source documents relating to diplomatic immunity are the US Department of State “Guidance for Law Enforcement Officers: Personal Rights and Immunities of Foreign Diplomatic and Consular Personnel” and “Consular Notification and Access: Instruction for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them.”
- B. These source documents contain complete notification protocols, phone numbers and FAX numbers, web site addresses, etc. Copies of these documents are:
  - 1. In Communications;
  - 2. In the patrol squad room; and
  - 3. Issued to all sergeants and commanders.

**2.411.02 Diplomatic Immunity**

- A. Officers may intervene to any extent necessary with persons of any level of immunity in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed. This includes the authority for officers to defend themselves and others from personal harm.
- B. Full diplomatic immunity means that those persons, their residences, vehicles, belongings, and papers cannot be searched. They cannot be arrested or detained and are not required to give evidence as witnesses. Those persons with full diplomatic immunity are:
  - 1. Diplomatic agents;
  - 2. Diplomatic mission staff;
  - 3. Administrative and technical mission staff;
  - 4. Spouses of 1 - 3; and
  - 5. Dependent children of 1 - 3, until the age of 21 or 23 if full-time students.
- C. Limited criminal immunity prevents convictions if judges find that criminal acts transpired in the course of official duties. Persons enjoying limited immunity may be detained or arrested, their persons and belongings searched, and they may be required to give evidence as witnesses. Those persons with limited criminal immunity are:
  - 1. Service staff such as chauffeurs, drivers, mission servants, and domestic mission employees; and
  - 2. Consular officers.
- D. Persons who have no criminal or diplomatic immunity are:
  - 1. Families of service staff;
  - 2. Families of consular officers;
  - 3. Consular service staff or their families;
  - 4. Citizens of the United States who are employed by a consulate; and
  - 5. Private servants of any foreign national.
- E. Diplomatic pouches:
  - 1. Are containers of any size used to transport official communications or equipment needed for communication;
  - 2. Are required to be clearly marked as such; and
  - 3. Will not be opened by officers in any circumstance. An officer who has probable cause to believe that a diplomatic or consular pouch is being used in furtherance of a crime will promptly report this to a supervisor who will report the information to the US State Department Bureau of Diplomatic Security.
- F. The burden of proof falls upon those claiming any level of diplomatic immunity to display valid diplomatic credentials. The US Department of State:
  - 1. Issues identification cards to diplomatic officials, consular agents, and officials of international organizations accredited to the United States. On the back of these cards is an explanation of the

- immunity to which the official is entitled and telephone numbers which may be called to verify status;
2. Issues driver's licenses to persons entitled to diplomatic or consular immunity. These licenses will not be relied on as conclusive proof of the immunity of the bearer; and
  3. License tags for vehicle operated by persons entitled to diplomatic and consular immunity. These tags will not be relied on as conclusive proof of the immunity of the bearer, but only as an indication that the vehicle may be operated by someone entitled to diplomatic or consular immunity.
- G. Claims of diplomatic immunity may be verified by calling the State Department.
- H. All incidents involving claims of any level of immunity, whether *bona fide* or not, will be documented in appropriate agency reports. The Central Records supervisor is responsible for ensuring related reports are forwarded to the United States Department of State.
- I. Vehicles bearing diplomatic registration plates, or owned by persons with full diplomatic immunity cannot be searched unless the vehicles are verified to have been stolen or to have been used by unauthorized persons in the commission of crimes.
- J. Duties and responsibilities of officers responding to calls involving individuals with diplomatic immunity include, but are not limited to:
1. Identifying and/or verifying through the State Department the categories of immunity for which the individuals are entitled;
  2. Respecting the individuals' immunity to the degree they are entitled;
  3. Ensuring supervisors are notified of all incidents involving individuals who claim or have diplomatic immunity; and
  4. Completing agency reports on all incidents involving individuals who claim or have diplomatic immunity.
- K. Duties and responsibilities of supervisors becoming aware of calls involving individuals with diplomatic immunity include, but are not limited to:
1. Responding to incident locations;
  2. Ensuring related reports are completed;
  3. Ensuring a commander is notified of all incidents, except for parking citations and traffic stops for minor violations involving individuals with immunity; and
  4. Ensuring the appropriate offices in the State Department are notified of these incidents involving individuals with diplomatic immunity:
    - a. Traffic stops;
    - b. Serious injuries or deaths;
    - c. Commission of crimes or victims of criminal acts;
    - d. Alcohol/CDS related driving offenses;
    - e. Illegally parked vehicles requiring relocation;
    - f. Individuals claiming immunity without satisfactory identification;
    - g. Officers believing invalid or false identification is being presented; or
    - h. Other incidents when it is reasonably believed that the State Department should be notified.

#### **2.411.04 Diplomat Traffic & Parking Offenses**

(61.1.3.d)

- A. Officers may issue traffic citations or warnings to drivers who are believed to have diplomatic immunity. Issuance of citations does not constitute arrests or detention of diplomats.
1. The burden of proof falls upon those claiming diplomatic immunity to display valid diplomatic credentials.
  2. Diplomats do not have to sign citations, and cannot be arrested for refusal to sign citations.
    - a. When diplomats refuse to sign citations, officers will write "Diplomat-Refused to Sign" on the defendant's signature line and give the defendant's copy to the diplomat.

- b. If diplomats refuse to accept their copies, officers will submit those copies with all other regularly submitted copies. The Central Records supervisor is responsible for ensuring these copies are mailed to the State Department's Diplomatic Motor Vehicle Office (DMVO).
3. Officers issuing citations to individuals with immunity will promptly fax copies of the citations to the DMVO.
- B. Individuals with diplomatic immunity who are suspected of alcohol or CDS related driving violations will not be arrested and cannot be compelled to take any sobriety or otherwise mandatory tests.
  1. Officers may offer these individuals standard roadside sobriety tests, including PBTs.
  2. Officers will:
    - a. Not allow subjects with immunity to continue driving in order to protect the safety of the diplomat and the public;
    - b. Ensure the related vehicles are in safe locations; and
    - c. Make arrangements for the diplomat's removal from the location by:
      - (1) Requesting taxi services;
      - (2) Transporting the individuals to their residences;
      - (3) Contacting the diplomats' embassies or consulates for assistance; or
      - (4) Contacting the State Department's Diplomatic Security Command Center for assistance.
  3. Offenders will be cited as appropriate consistent with **A**.
    - a. DR-15 procedures do not apply.
    - b. Copies of all related documents will be promptly sent via fax to the DMVO by citing officers.
- C. Parking citations may be issued to vehicles displaying diplomatic license plates.
- D. Vehicles bearing diplomatic tags will not be impounded, but may be towed a distance necessary to remove them from obstructing traffic or endangering public safety.
  1. If diplomats' vehicles are suspected of being stolen or used in the commission of crimes, occupants may be required to present vehicle documentation to permit police verification of vehicle status through computer checks.
  2. Vehicles verified to have been stolen or to have been used by unauthorized persons in the commission of crimes may be searched.
- E. When drivers claiming diplomatic immunity have been stopped for violations of **CR Title 2, Subtitle 5 Homicide by Motor Vehicle or Vessel While Impaired or Under the Influence, CR § 2-209 Manslaughter by Vehicle or Vessel or CR § 3-211 Life-Threatening Injury by Motor Vehicle or Vessel While Under the Influence of Alcohol and Related Crimes**, officers will comply with the requirements of **TR § 16-901 et. seq.** in order to:
  1. Contact the US Department of State as soon as practicable to verify any immunity status;
  2. Ensure all relevant information from the person's driver's license or identification card issued by the US Department of State is recorded in related agency reports; and
  3. Ensure copies of all related documents are submitted to the MVA within five workdays.

#### **2.411.06 Consular Affairs**

(1.1.4)

- A. Foreign nationals who are not granted criminal immunity are afforded certain rights and privileges under agreements between the United States and certain foreign countries. The individuals covered are:
  1. Families of embassy services staff, or of consular officers;
  2. Private servants of diplomatic agents; and
  3. All other non-United States citizens, regardless of legal status.
- B. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
- C. In some cases, the nearest consular officials must be notified of the arrest or detention of foreign nationals, regardless of the individuals' wishes.

- D. Consular officials are entitled to access their nationals in detention and provide consular assistance. However, consular officers may not take such actions on behalf of their nationals if those individuals being held expressly oppose the actions.
- E. Consular officials must be notified when governmental officials become aware of deaths of foreign nationals.
- F. When foreign nationals are arrested or detained, officers will:
  - 1. Determine the foreign national's country. In the absence of other documentation, assume this is the country on whose passport or other travel documents the foreign national travels;
  - 2. If the foreign national is a university student, ensure the International Student and Scholar Office is notified;
  - 3. If the foreign national's country **is not** on the list of mandatory notification countries and jurisdictions, offer, without delay, to notify the foreign national's consular officials of the arrest or detention. Notifications must be made if they are requested;
  - 4. If the foreign national's country **is** on the list of mandatory notification countries and jurisdictions, tell the foreign national that notifications will be made as required. Notifications will be made;
  - 5. Ensure supervisors are notified of all incidents involving foreign nationals; and
  - 6. Ensure information pertaining to advisements and notifications are included in reports of incidents involving the arrest or detention of foreign nationals.
- G. When foreign nationals are arrested or detained, supervisors will:
  - 1. Respond to incident locations;
  - 2. Ensure related reports are completed;
  - 3. Ensure the appropriate consular, State Department, TU International Student and Scholar Office, and Immigration and Naturalization offices are notified of these incidents.

## 2.411.50 Summary of Diplomatic and Consular Privileges and Immunities

(Reprinted from US Department of State Guidance for Law Enforcement Officers: Personal Rights & Immunities of Foreign Diplomatic & Consular Personnel.

Category	May be Arrested or Detained	Residence May be Entered Subject to Ordinary Procedures	May be Issued Traffic Citation	May be Subpoenaed as Witness	May be Prosecuted	Recognized Family Member
<sup>(A)</sup> Diplomatic Agent	NO <sup>(2)</sup>	NO	YES	NO	NO	Same as sponsor (full immunity & inviolability).
<sup>(A)</sup> Member of Admin. & Tech. Staff	NO <sup>(2)</sup>	NO	YES	NO	NO	Same as sponsor (full immunity & inviolability).
<sup>(A)</sup> Service Staff	YES <sup>(1)</sup>	YES	YES	YES	NO for official acts. Otherwise, YES <sup>(1)</sup>	No immunity or inviolability. <sup>(1)</sup>
<sup>(B)</sup> Career Consular Officers	YES if for a felony & pursuant to warrant. <sup>(1)</sup>	YES <sup>(4)</sup>	YES	NO for official acts. Testimony may not be compelled any time.	NO for official acts. Otherwise, YES <sup>(1)</sup>	No immunity or inviolability. <sup>(1)</sup>
<sup>(B)</sup> Honorary Consular Officers	YES	YES	YES	NO for official acts. YES all other cases.	NO for official acts. Otherwise, YES.	No immunity or inviolability.
<sup>(B)</sup> Consular Employees	YES <sup>(1)</sup>	YES	YES	NO for official acts. YES all other cases	NO for official acts. Otherwise, YES <sup>(1)</sup>	No immunity or inviolability. <sup>(1)</sup>
<sup>(C)</sup> International Org. Staff <sup>(3)</sup>	YES <sup>(3)</sup>	YES <sup>(3)</sup>	YES	NO for official acts. YES in all other cases.	NO for official acts. Otherwise, YES <sup>(3)</sup>	No immunity or inviolability.
<sup>(C)</sup> Diplomatic Level Staff of Missions to Int'l Org.	NO <sup>(2)</sup>	NO	YES	NO	NO	Same as sponsor (full immunity & inviolability).
<sup>(C)</sup> Support Staff of Missions to Int'l Org.	YES	YES	YES	NO for official acts. YES in all other cases.	NO for official acts. Otherwise, YES.	No immunity or inviolability.

- (A) Diplomatic
- (B) Consular
- (C) International Organizations

- (1) This table presents general rules. Particularly in the cases indicated, the employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (2) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
- (3) A small number of senior officers are entitled to be treated identically to "diplomatic agents."
- (4) Note that consular residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.