



DIPLOMATIC IMMUNITY		
✓ new: rescinds: amends:		cross-reference: accreditation standards: NYSLEAP Standard(s): 47.1
effective date: December, 2022	amend date:	

I. PURPOSE

The purpose of this Order is to establish and describe policies and procedures for taking law enforcement action involving foreign diplomatic and consular personnel.

II. POLICY

It is the policy of the Tompkins County Sheriff’s Office to abide by international customs and treaties, to recognize the privileges and immunities afforded various members of diplomatic missions and consulates, and to treat such officials of foreign countries with normal respect and courtesy.

III. DEFINITIONS

Diplomatic Immunity: Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.

IV. BACKGROUND

The principle of diplomatic immunity is one of the oldest concepts of foreign relations. As a matter of international law, diplomatic immunity was primarily based on custom and international courtesy among countries.

Since World War II, several international conventions, most noteworthy, the Vienna Convention on Diplomatic and Consular Relations, have formalized the rules and made their application more uniform.

Diplomatic immunity, even at its highest level, does not exempt diplomatic officers from the obligations of conforming to national and local laws and regulations. It is not intended to serve as a license for such persons to flout the law and purposely avoid liability for their actions. The purpose of these privileges and immunities is not to benefit individuals, but to ensure the efficient and effective performance of their official missions.

Frequently (and erroneously), immunity is understood to mean pardon, total exoneration, or total release from the responsibility to comply with the law. In actuality, immunity is simply a legal barrier which precludes U.S. courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the United States. There are diplomatic remedies available to deal with such persons even when immunity bars prosecution and conviction. Such incidents should always be promptly reported to the U.S. Department of State.

V. CATEGORIES OF DIPLOMATIC PERSONNEL AND EXTENT OF PRIVILEGES

A. The category and extent of privileges and immunities is determined by the function a position of the person in the foreign mission or consulate. The following provides general rules. The diplomatic and consular personnel of certain foreign countries may enjoy higher levels of privileges based on special bilateral agreements. Individuals who are U.S. nationals or permanent residents of the United States generally enjoy reduced, or no, privileges and immunities.

1. Diplomatic Agent

A Diplomatic Agent is the head of a diplomatic mission or a member of the diplomatic staff of the mission. Diplomatic Agents, and members of their immediate families, are granted the highest levels of privileges and immunities including:

- Full inviolability
- Immunity from criminal jurisdiction.
- Immunity from civil jurisdiction; and
- Freedom from having to give evidence as a witness.

2. Administrative and Technical Staff

This group of the non-diplomatic support staff of a diplomatic mission and members of their families, enjoy full immunity, civil immunity for acts performed as part of their official duties, and inviolability. They are not obliged to give evidence as a witness.

3. Service Staff

This group of non-diplomatic support staff of a diplomatic mission enjoy civil and criminal immunity only for acts performed as part of their official duties. They enjoy no inviolability. The family of a service staff member enjoys no immunity or inviolability.

4. Private Servants

A person privately employed by a member of a diplomatic mission is not a member of the mission and does not enjoy any immunity or inviolability.

5. Career Consular Officers

This group consists of career employees who are appointed to perform consular duties on behalf of their country. When stationed at a diplomatic mission, consular officers are accredited as diplomatic agents. When stationed at a consulate they are accredited as consular officers and enjoy a significantly lower level of privileges. They may be arrested provided that the offense is a felony and the arrest is made pursuant to a warrant. Consular officers enjoy civil and criminal immunity from prosecution only for official acts. They are not obliged to give evidence as a witness concerning official matters. They may be called on to testify in other matters, but no measures of coercion or penalties may be applied if they decline to testify. Members of their family enjoy no immunity or inviolability.

6. Consular Employees

This group performs the administrative and technical services for the consular post. They may be arrested or detained. They enjoy civil and criminal immunity only for official acts. They are not obliged to give evidence as a witness concerning official matters. The members of their families enjoy no immunity or inviolability.

7. Consular Service Staff

They do not enjoy immunity or inviolability of any kind, but they are not obliged provide evidence as witnesses concerning official matters.

8. Honorary Consular Officers

These are U.S. nationals or legal permanent residents of the U. S. who are appointed and received as Honorary Consular Officers and perform a variety of consular functions. Such officers do not receive identification cards from the U.S. 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 enjoy civil and criminal immunity for official acts performed in the exercise of their official consular functions. They are subject to arrest and detention. They are not obliged to give evidence as a witness concerning official matters. Members of their families enjoy no immunity or inviolability.

9. International Organizations and Missions

The staff of certain international organizations and missions of such international organizations enjoy privileges and immunities as specified in relevant treaties or headquarters agreements. Officers should be guided by U.S. Department of State identification documents.

VI. PROCEDURE

A. Identification of Diplomatic and Consular Personnel

1. Police officers confronted by a person claiming immunity shall immediately request that the person present his official U.S. Department of State identification in order to verify the person's status and immunity. The only authoritative identity document is the identity card issued by the U.S. Department of State Protocol Office. The identification cards will contain a photograph of the bearer and the bearer's name, title, mission, and date of birth. The expiration date, U.S. State Department identification number, and a U.S. Department of State seal will appear on the front of the card. A brief statement of the bearer's immunity will be printed on the reverse side.
2. When proper identification is produced the individual's privileges and immunity shall be fully respected to the degree to which he is entitled. Whenever it is established that the individual is entitled to full inviolability he may not be arrested or detained and should not, except in extraordinary emergency circumstances, be handcuffed or restrained in any way.
3. Officers should not accept other forms of proof of diplomatic status as conclusive evidence of the person's position or privilege. Other forms of proof may include, but are not limited to, diplomatic passports or visas, diplomatic license plates, automobile registrations and tax exemption cards. If the individual claiming diplomatic status is unable to produce satisfactory identification and the situation would normally warrant arrest or detention, officers shall inform the individual that he will be detained until proper identity can be confirmed.
4. If for any reason the status cannot be readily determined locally, the following telephone numbers may be attempted:
 - For verification of the status of United Nations personnel, officers may call (212) 415-4444 during business hours.
 - Diplomatic Security Command Center for emergency or after-hours contact: 1-866-217-2089.
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 - General Information or questions about DS: e-mail: DSPublicAffairs@state.gov
 - <https://www.state.gov/wp-content/uploads/2019/07/2018 DipConImm v5 Web.pdf>
5. Officers shall record all pertinent details from the identification card.

B. Personal Inviolability and Public Safety

1. In circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, officers may intervene to the extent necessary to halt such activity

C. Traffic Enforcement

1. Traffic stops and the issuance of traffic citations or summons do not constitute arrest or detention. Officers may issue summonses for traffic offenses without regard to the level of immunity or inviolability.
2. Individuals believed to be driving while intoxicated shall not be allowed to continue to drive. Individuals enjoying inviolability may be offered breath and chemical tests but they are not required or compelled to submit to the tests. Officers shall ensure that the person is not a danger to himself or the public. Officers shall have the following options when resolving these incidents:
 - Take the individual to Police Headquarters or a location where he can recover sufficiently to drive;
 - Call a relative, friend, or mission official to come for him or her;
 - Call a taxi for him/her; or
 - Take him/her home.
3. License plates are coded to reflect the degree of immunity that the registered owner of the vehicle enjoys:
 - a. PLATES WITH A “D” PREFIX OR SUFFIX are issued to diplomatic missions and those members who hold diplomatic rank.
 - b. PLATES WITH A “C” PREFIX are issued to consular missions and career consular officers
 - c. PLATES WITH AN “S” PREFIX are issued to the administrative and technical staff at diplomatic missions and consular employees at consular missions.
 - d. PLATES WITH AN “A” PREFIX OR SUFFIX are issued to official vehicles of the Secretariats of the United Nations and the Organization of American States and the personally owned vehicles of those staff members who have diplomatic status.
 - e. PLATES WITH AN “E” PREFIX are issued to other foreign missions that are not included in the above categories and their eligible employees.
 - f. SEE ATTACHMENT A FOR MORE INFORMATION/EXAMPLES

D. Property and Vehicles of Diplomatic Missions, Consular Posts and Their Personnel

1. Diplomatic and consular premises cannot be entered without the consent of the head of the diplomatic mission or by the head of the post or his designee.

2. Diplomatic and consular archives, documents, records, and correspondence are inviolable at all times and wherever they may be. 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 him.
3. The property of an individual enjoying personal inviolability, including his residence and vehicle, may not be searched, entered, or seized without the consent of the individual or the head of the mission. Residences and vehicles of consular officers are not generally inviolable. Inviolable vehicles may be towed the distance necessary to remove them from obstructing traffic or endangering public safety. Vehicle occupants may be required to present vehicle and personal identifications. If the vehicle is stolen or was used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled is temporarily suspended and normal search and detention of the vehicle is permissible.

E. Reporting Procedures

1. Whenever anyone with immunity is involved in an incident, investigation, crime or traffic violation, officers shall:
 - a. Immediately notify an on-duty supervisor.
 - b. Complete an Incident Report fully recording the details and circumstances of the incident. Proper documentation and notification are essential to permit the U.S. Department of State to take appropriate action.
 - c. The on-duty supervisor shall notify the Lieutenant.
 - d. It is the policy of the U.S. Department of State to suspend the operator's license of diplomatic personnel who are irresponsible drivers, and to take action against diplomatic personnel who violate criminal statutes. Waivers of immunity may be requested from the sending Nation to permit prosecution, or the individual may be expelled from the United States. This policy may only be effectively enforced if all driving related infractions and criminal investigations are fully reported to the U.S. Department of State.
 - e. It shall be the responsibility of the Administrative Division to promptly forward a copy of all reports involving diplomatic or consular personnel to the U.S. Department of State.

VII. **WAIVER OF IMMUNITY**

- A. Upon formal request by the United States Government, a foreign nation may waive diplomatic or consular immunity and permit the arrest and prosecution of its citizens.

B. In the event that a serious criminal offense is committed by an individual who enjoys diplomatic or consular immunity, the Sheriff may initiate the process to obtain such a waiver. No TCSO personnel will request or initiate such process without the express written authorization of the Sheriff.

Attachments:

A. *Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities.*

By Order Of

A handwritten signature in black ink, appearing to read "Derek Osborne".

Derek Osborne
Sheriff