

TAKOMA PARK POLICE DEPARTMENT - GENERAL ORDERS



TITLE: DIPLOMATIC IMMUNITY	NUMBER: 610
EFFECTIVE DATE: August 6, 2012	REVIEW DATE:
New X Amends Rescinds	General Order 610, dated March 23, 2002
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	TOTAL PAGES: 8

01 Purpose: To establish guidelines that ensure the department’s enforcement procedures conform to federal law regulating diplomatic immunity.

02 Policy: It is departmental policy to support the principles of international law and to extend privileges and immunity, when warranted, to members of foreign diplomatic missions and consular posts. However, the department also recognizes that most such privileges and immunity are not absolute and, therefore, will assure the appropriate degree of immunity is afforded once the immunity claimant has been precisely identified. The department will further maintain its fundamental responsibility to protect the public welfare in connection with criminal law enforcement actions involving foreign diplomatic personnel. Foreign diplomats who violate traffic laws shall be cited. Allegations of serious crime or other serious difficulties with diplomatic or consular personnel will be fully investigated, promptly reported to the U.S. Department of State, and procedurally developed to the maximum permissible extent.

03 Background: Departmental policy and procedures relative to diplomatic immunity are drawn from publication 9533, “Guidance for Law Enforcement Officers,” issued by the United States Department of State (USDS). Dealing with diplomatic immunity poses particular problems for law enforcement officers, and officers may react improperly if they do not understand its purposes or rules.

Diplomatic immunity is a well-established doctrine of international law. In general, diplomats, their families, and their staff enjoy complete immunity from the criminal laws of the host nation. These guarantees are for the benefit of the sending nation, to ensure that its diplomatic missions around the world function with maximum effectiveness.

It is important to understand that the individual diplomat does not “own” immunity; and that immunity can be waived, in whole or in part, by the nation that employs the diplomat. Waiver of criminal immunity in the face of criminal charges is not common, but it is routinely sought and occasionally granted. The ability of the State Department to secure such a waiver depends in large part on the strength and documentation of the criminal case at issue.

While officers must extend every courtesy to diplomats, it is imperative that they also conduct thorough investigations, keep good records, and report whenever appropriate to the Department of State. This will enable the State Department to exercise the tools it has to remove persons from the United States who are engaged in criminal activity. The State Department may also cause drivers' licenses to be revoked.

04 References: USDS Publication 10524, "Diplomatic and Consular Immunity, Guidance for Law Enforcement and Judicial Authorities."

05 Definitions:

A. Diplomatic Mission: Encompasses both the chancery where embassy work is performed and the residence of the head of the mission.

B. Diplomatic Immunity: Full or limited criminal immunity which the personnel of a foreign diplomatic mission and, in varying degrees, their family members enjoy because they serve as representatives of a sovereign state and require special rights and guarantees for the effective functioning of the mission.

1. Full Criminal Immunity: Full criminal immunity is given to diplomatic agents, administrative and technical staff of missions, and their families. Full criminal immunity means more than immunity from prosecution. It means that the residence, vehicles, papers, and correspondence of an individual with this immunity classification cannot be searched; the person cannot be detained or arrested; and the person is not required to give evidence as a witness.

2. Limited Criminal Immunity: Individuals with limited criminal immunity can be detained, arrested, and prosecuted for criminal acts. If prosecuted, some members can raise "official acts" immunity as an affirmative defense. The court will determine whether or not the member was acting in an official capacity at the time of the offense. These individuals can be required to give evidence as witnesses, and, in accordance with local law, their persons and effects **may** be searched.

C. Diplomatic Agent: This is a term for foreign ambassadors, designated ministers, and other diplomatic officers (e.g., First Secretary, Second Secretary, etc.) who generally deal with the host country officials.

D. Serious Incident: Any incident wherein an officer would normally perform a custodial arrest of a subject if the subject did not have diplomatic immunity.

06 Categories of Individuals Entitled to Privileges and Immunity: The following categories are presented in general terms for informational purposes only. There are other categories that might apply or circumstances that might exist, such as bilateral agreements, which could offer more privileges and immunities than provided below. (Also, refer to Appendix B)

A. Diplomatic Agent (Head of Mission – Ambassador or Charge d' Affaires) and their family members enjoy the highest degree of privileges and immunity. They enjoy complete inviolability, i.e., may not be handcuffed (except in extraordinary circumstances), arrested or detained beyond a reasonable amount of time to verify their identity and obtain all pertinent information. Neither their

property, including vehicles, nor their residences, may be entered or searched. Diplomatic Agents enjoy complete immunity from the criminal jurisdiction of the host country's courts and thus cannot be prosecuted, no matter how serious the offense, unless their immunity is waived by the sending country. They enjoy complete immunity from the obligation to provide evidence as a witness and cannot be required to testify even, for example, if they have been the victim of a crime.

B. Embassy administrative and technical staff and family members enjoy privileges and immunity identical to those of Diplomatic Agents in respect to their personal inviolability, immunity from criminal prosecution, and immunity from the obligation to provide evidence as witnesses. Such personnel include Administrative Officers/Assistants, Security Officers, Purchasing Agents, Budget and Fiscal Technicians, Archivists, Cryptographers, Receptionists/Secretaries, Stenographers/Typists, Clerks, Couriers/Messengers, and Guards.

C. Service Staff of diplomatic missions, e.g., chauffeurs, drivers, servants in missions, and/or employees performing domestic duties in missions. These individuals have official acts immunity only and enjoy no personal inviolability, no inviolability of property, and no immunity from the obligation to provide evidence as a witness. The families of service staff enjoy no privileges or immunities.

D. Private Servants of Members of the Mission – they and their families are hired by diplomats for their personal use. Such individuals have no immunity for their criminal acts or private wrongs even if the acts occur in the course of performing their duties.

E. Members of Consular Posts: Career consular officers are titled Consuls-General, Deputy Consuls-General, Consuls, and Vice Consuls. Consular officers and their personnel must not be confused with, nor considered identical to, diplomatic agents. Members of consulates have a significantly lower degree of privilege and immunity, reflecting the fact that consular officers are concerned with issuing travel documents, etc., and not with communication between countries. Consular officers have only “official acts” immunity in both criminal and civil matters. They may be arrested for felonies, with a warrant, but have immunity from providing evidence as witnesses where a case involves their official duties. Family members of consular officers enjoy no immunity.

NOTE: No police officer is expected to determine whether a given set of circumstances constitutes an “official act.” Thus, a person enjoying “official acts” immunity may always be prosecuted if the alleged criminal act is believed outside the scope of “official duties.” The court will decide whether the alleged crime was part of an “official act.”

F. International Organization Personnel (e.g., United Nations, Organization of American States, Commission of the European Communities, UN Secretariat): The degree of privileges and immunity enjoyed by personnel of such organizations are generally based on the job functions they perform. The majority of employees enjoy only “official acts” immunity, but in a very few cases, such as the Secretary General of the UN and his/her senior-most colleagues, immunity is equal to that of ambassadors.

G. Special Bilateral Agreements: There are some foreign countries for which the categories set forth above are not applicable. These are countries (e.g., Russia and the Peoples' Republic of China) with which the United States has bilateral agreements that grant significantly higher privileges and immunities to all members of their embassy staffs who are nationals of the sending state and to certain of their consular personnel and family members. In some cases, these privileges and immunities approximate those accorded diplomatic agents. This situation will be taken care of when identity documents are produced, but officers should be aware of this distinction because they may have to confront situations where a chauffeur or mechanic from the embassy of one of these countries asserts a right to full diplomatic privileges and immunities.

07 Identification of Diplomatic Personnel:

A. The only authoritative identity document is the identification card issued by the USDS Office of Protocol or, in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These cards are 3 3/4" x 2 1/2" and contain a photograph of the bearer, name, title, mission, city and state, date of birth, identification number, expiration date and a USDS seal on the front of the card. A brief statement of the bearer's immunity is printed on the reverse side with the bearer's signature. There are three types of identification cards (see Appendix C):

1. Diplomatic – blue border for diplomats
2. Official – green border for embassy employees
3. Consular – red border for consular personnel

B. Foreign Diplomatic Passports and U.S. Diplomatic Visa: Possession of a foreign diplomatic passport containing U.S. "A" or "G" visas is an indication that the bearer might be entitled to privileges and immunities in the United States. This identity document is not conclusive. Police Officers must be alert to good faith, albeit erroneous, assertions by the bearers of these documents that they are entitled to immunity in the United States.

C. Tax Exemption Cards: The USDS issues tax exemption cards to all persons entitled to such exemptions, but tax cards do not give a definitive indication of the degree of immunity for the bearer. They should not be relied upon for immunity purposes and should be considered only as an indication that the bearer may enjoy some degree of immunity. (See also Appendix C)

D. Automobile Registration, License Plates and Driver Licenses: Federally issued registration documents and drivers licenses do not definitively reflect the degree of privileges and immunities of the bearer. They should be relied upon only as an indication that the bearer may enjoy some degree of immunity. Vehicle license plates issued by the USDS are coded to reflect the degree of immunity, which the registered owner of the vehicle enjoys: (see also Appendix C)

1. Plates with a “D” prefix or suffix are issued to diplomatic missions and those members who hold diplomatic rank.
2. Plates with a “C” prefix or suffix are issued to consular missions and career consular officers.
3. Plates with an “S” prefix or suffix are issued to the administrative and technical staff at diplomatic missions and consular employees at consular missions.
4. Plates with an “A” prefix or suffix are issued to official vehicles of the United Nations Secretariat and the Organization of American States, and the personally owned vehicles those staff members who have diplomatic status.

08 Handling Claims of Diplomatic Immunity:

A. Non-Traffic Incidents:

1. In situations, other than traffic violations, wherein an individual exerts a claim of diplomatic immunity of any kind (whether or not the individual displays credentials), officers, *once it is safe to do so*, shall immediately request that the Dispatcher contact the Department of State (refer to Appendix A) to verify the individual’s status. (For Incidents involving traffic violations refer to section 08 B that follows herein). Verification will be made through the Command Center of the Bureau of Diplomatic Security, US Department of State, which operates 24 hours a day. Officers should be alert to the fact that newly arrived individuals may not yet have official identity documents.
2. When the situation would normally warrant arrest or detention, officers shall detain the person until proper *diplomatic status* can be confirmed. Officers shall inform the individual of the reason for the detention. When proper identification is shown and status is verified, the immunity will be fully respected. When there is full immunity as a diplomatic agent the person may not be arrested and should not, except in the most extraordinary circumstances, be detained in any way.
3. When public safety is in imminent danger or it is apparent that a serious crime may be committed, officers may intervene to the extent necessary to halt the activity. This naturally includes power of officers to defend themselves from personal harm.
4. Serious incidents should be reported by telephone as soon as possible to the Command Center, Office of Diplomatic Security, USDS (refer to Appendix A).
5. Officers shall notify the Duty Commander when it is verified that a person who is entitled to immunity has committed a crime that would have resulted in the arrest of a person without immunity.

6. In all serious incidents involving persons entitled to diplomatic immunity, officers shall record all pertinent information from the diplomat's ID card and the circumstances of the incident in the appropriate police report. Officers initiating such a report shall complete a Command Summary.

7. The Division Commander shall promptly fax a copy of the report, with a cover letter to the Command Center, Office of Diplomatic Security, USDS (refer to Appendix A). The Division Commander shall forward a copy of the letter to the Commander of Administrative Services, to be maintained with the original report.

B. Traffic Violations:

1. Moving Violations: When a driver with proper and valid identification indicating diplomatic immunity is stopped for any traffic violation, the officer may issue an appropriate traffic citation or warning notice. The issuance of a traffic citation does not constitute an arrest or detention. The arrest/detention of members of the Diplomatic Corps for any violation of the Transportation Code of Maryland is not authorized.

a. The diplomat does not have to sign the citation and cannot be arrested for refusal to sign or accept the citation.

b. Failure of the diplomat to appear in court to answer the citation may cause action by the Motor Vehicle Administration (MVA) in relation to the diplomat's driving privileges within this state.

c. Officer Responsibilities: Pursuant to Maryland law (TA 16-902) whenever an officer stops a person, based upon probable cause that the person violated the Transportation Article, who displays a driver's license issued by the US Department of State, the officer shall:

(1) Request the Dispatcher to contact the Department of State (refer to Appendix A) to verify the driver's license and immunity status. If this is not practical, the officer will verify the driver's status as soon as the officer can access a phone. This should be done prior to the end of the officer's *tour of duty*.

(2) Note on the citation/report the driver's immunity status.

(3) Record all relevant information from the driver's license or identification card and the vehicle registration.

(4) The issuing officer's supervisor will complete a Command Summary and attach one or more of the following to the memorandum sent to their division commander:

- Any citation(s) that was issued.
- The accident / DWI report
- If no citation was issued and no accident / DWI report was written, a written police report detailing the stop to include the vehicle/driver's information.

NOTE: Officers stopping drivers entitled to diplomatic immunity must issue a citation and/or write a report.

d. The Division Commander's Responsibilities: Within five workdays after the date of the stop, the Division Commander shall mail a copy of any report and/or citation, with a cover letter to:

Maryland MVA
Chief, Diplomatic Section
Administrative Adjudication
6601 Richie Highway, Room 211
Glen Burnie, MD 21062

The Division Commander shall forward a copy of the packet to the Commander of Administrative Services Division to be filed with the report.

2. Driving Under the Influence Violations:

a. Any officer with probable cause to believe that a person with full immunity is driving/attempting to drive under the influence or while impaired must not allow that person to operate the vehicle. The officer's primary concern in this situation should be the safety of the community and the individual who is under the influence/impaired by alcohol. The officer shall provide assistance in parking the vehicle or securing another driver. If the vehicle is parked, the location will be recorded in CAD.

b. An officer **may** issue a traffic citation to the person for DWI and any other related traffic charges. However, no physical arrest can be made.

c. If the diplomat refuses assistance or a claim is made that the officer's requested action would restrict the effective exercise of diplomatic functions, the officer will inform the diplomat that the diplomat is free to go, but the vehicle may not be moved. The embassy or legation concerned shall be contacted immediately for advice or assistance in obtaining a driver and removing the vehicle.

d. If the driver is entitled to diplomatic immunity, the driver should not be restrained except in extreme cases. Sobriety tests should be offered, but a diplomat may not be compelled to take any tests. Force must not be used except when necessary to prevent injury to the diplomat or others and then only the absolute minimum should be applied.

C. Towing; When it becomes necessary to have a vehicle bearing diplomatic registration towed, officers shall comply with General Order 705, Vehicle Impounds. A diplomat's vehicle is considered secure from violation and cannot be searched.

09 Waivers of Immunity:

Even though individuals ultimately enjoy the protections afforded by diplomatic or consular privileges and immunities, it is for the benefit of the sending country that these protections are actually devised. The country that employs such persons may always waive such immunity, in whole or in part. The ability to secure a waiver may depend on the strength and documentation of the case at issue. It is of little avail to secure a waiver of immunity in a particular case if the case has not been developed with sufficient care and completeness to permit a successful subsequent prosecution.

Proper documentation and reporting by law enforcement authorities plays a critical role in both of these respects.