



COTTAGE CITY POLICE DEPARTMENT

GENERAL ORDER

SUBJECT: DIPLOMATIC IMMUNITY

NEW REVISED RESCINDS

APPROVED: *GM*
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ACTING CHIEF OF POLICE

Effective Date 8/22/2018

I. POLICY

To ensure that Cottage City police enforcement procedures conform to federal law regulating diplomatic immunity which affect the department's enforcement procedures.

II. POLICY

These procedures are taken from the "Guidance for Law Enforcement Officers" paper issued by the State Department. It is understood that dealing with diplomatic immunity poses particular problems for law enforcement officers, and that officers may be overly generous in applying immunity if they do not understand its purposes or rules. However, allegations of serious crime or other serious difficulties with diplomatic or consular personnel should be fully investigated and promptly reported to the State Department as set out in this general order.

While officers will give every courtesy to diplomats, it is imperative that they also conduct good investigations, keep good records, and report whenever appropriate, to the State Department. To do so is to allow the State Department to exercise the tools it has to remove persons from the U.S. who are engaged in criminal activity. The State Department may also cause driver's licenses to be revoked.

III. 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 member enjoy because they serve as representatives of a sovereign state and require special rights and guarantees for the effective functioning of the mission.
- C. Diplomatic Agents - a term embracing heads of missions, ambassadors and charge d'affaires, and members of their diplomatic staff, i.e., those recognized by the U.S. Government as having diplomatic rank and title.
- D. Administrative and Technical Staff - this category includes secretaries, clerical personnel, officer managers and certain professional security personnel. These persons also enjoy a high level of privilege, but somewhat less than diplomatic agents.
- E. Service Staff - these persons are drivers, cleaners, and building/grounds personnel. They have much less in the way of immunity.
- F. Private Servants of Members of the Mission - they and their families are hired by diplomats for their personal use and have no immunity for their criminal acts or private wrongs even if such acts occur in the course of the performance of their duties.
- G. Consular Officers - are not to be confused with diplomatic agents and do not enjoy the privileges and immunities. Consular officers perform a variety of functions of principal interest to their countries (e.g., issuance of travel documents, attending to difficulties of their own countrymen who are present in the host country, and generally promoting the commerce of their countries).
- H. Special Bilateral Agreements - there are some foreign countries in _ respect of which the categories set forth above are not applicable. These are countries with which the United States has bilateral agreements which grant significantly higher privileges and immunities to all members of their embassy staffs (provided the staff member is a national of the sending state) and to certain of their consular personnel (and sometimes their 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 issued, but police officers should be aware of this distinction because

they may confront situations where a chauffeur or a mechanic from the embassy of one of these countries asserts a right to full diplomatic privileges and immunities.

IV. FULL CRIMINAL IMMUNITY

- A. This type of immunity is given to diplomatic agents, administrative and technical staff of missions and their families.
- B. 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 is not required to give evidence as a witness.

V. LIMITED CRIMINAL IMMUNITY

Service staff members have limited criminal immunity. They can be detained, arrested, and prosecuted for criminal acts. If prosecuted, service staff members can raise "official acts" immunity as an affirmative defense. The court having jurisdiction will then determine whether or not the service staff member was acting in his capacity at the time of the offense. Service staff can be required to give evidence as witnesses, and their persons and effects can be searched, in accordance with local law.

VI. OUTLINE OF CRIMINAL IMMUNITY BY PERSONNEL CATEGORY OR FAMILY CLASSIFICATION

- A. Diplomatic Agents - Full Immunity
 - 1. Head of Mission (Ambassador or Charge d'affaires)
 - 2. Carry diplomatic identification documents issued by the State Department
- B. Diplomatic Staff of Mission - Full Immunity
 - 1. Carry diplomatic identification documents issued by the State Department
 - 2. Includes:
 - a. Members of the Delegation of the Commission of the European Communities;

- b. Permanent representatives and senior staff of missions to the Organization of American States and the United Nations;
 - c. Senior officials of the United Nations Secretariat.
- C. Administrative and Technical Staff - Full Immunity Includes:
 - 1. Administrative Officers/Assistants
 - 2. Security Officers
 - 3. Purchasing agents
 - 4. Budget and Fiscal Technicians
 - 5. Archivists
 - 6. Cryptographers
 - 7. Receptionists/Secretaries
 - 8. Stenographers/Typists
 - 9. Clerks
 - 10. Couriers/Messengers
 - 11. Guards
- D. Families of Diplomatic Agents, Staff of Mission, Administrative and Technical Staff - Full Immunity Includes:
 - 1. Spouses
 - 2. Dependent children until age 21, or age 23 if a full-time student at an institution of higher learning
- E. Service Staff - Immunity only for acts in the course of duties (Court decides if acts are in the course of duties) Includes:
 - 1. Chauffeurs

2. Drivers
 3. Servants in missions
 4. Employees performing domestic duties in missions
- F. Families of service staff - No Immunity
- G. Private servants and their families - No Immunity
- H. Members of Consular Posts - Consular officers and their personnel must not be considered identical to embassies. Members of consulates have a significantly lower amount 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." Also note that consular service staff has no immunity except they do not have to serve as witnesses concerning "official acts." Family members have no immunity. U.S. nationals or permanent residents employed by a consulate have limited immunity, and honorary consuls have only "official acts" immunity and witness immunity regarding "official acts." Family members have no immunity.

VII. TRAFFIC VIOLATIONS INVOLVING DIPLOMATS

A. Moving Violations

When a driver believed to have diplomatic immunity is stopped for any moving traffic violation and has proper and valid identification indicating immunity, the officer may issue an appropriate traffic citation or warning notice. The issuance of a traffic citation does not constitute an arrest or detention. This paragraph shall not be construed as authorizing the arrest or detention of member of the Diplomatic Corps for any violation of the Transportation Code of Maryland.

1. It must be noted that the diplomat does not have to sign the citation and cannot be arrested for refusal to sign or accept the citation.
2. Failure of the diplomat to appear in court to answer the citation may cause action by the Motor Vehicle Administration in relation to the diplomat's driving privileges within this state.

B. Copies of Citations and Accident Reports

1. Officers should, in addition to usual procedure, advise the Sergeant/Chief on the next regular business day if one of the following situations occur:
 - a. A citation is issued to the driver of a vehicle (or the accident involves a vehicle) with U.S. Department of State diplomatic license plates;
 - b. A citation is issued to (or the accident involves) the bearer of a U.S. Department of State diplomatic driver's license; or,
 - c. A citation is issued (or the accident involves) a driver whose identity has been confirmed by the U.S. Department of State, Office of Protocol, as a member of a foreign mission entitled to immunity.
2. The Sergeant/Chief will promptly forward the original report and/or citation with a cover letter under the respective official's signature addressed to the Office of Foreign Mission, DMVO, and Attention: Driver Services, 3507 International Place, N.W., Washington, D.C. 20008. A copy will be sent to the PGPD Director of the Records Division for official dissemination.

C. Driving While Intoxicated Violations

When an officer stops an individual with the intention of making an arrest for driving while intoxicated and that individual is entitled to diplomatic immunity, the officer shall extend the same courtesy and consideration to him as a member of the Diplomatic Corps as has existed in the past.

1. If the state of intoxication of the individual entitled to immunity, whether claimed or not, is such that his driving would endanger the safety of the community, the officer shall request that the diplomat not drive and provide assistance in parking the vehicle or securing another driver. Once the vehicle is parked, record the location on the CCPD Vehicle Impound Form, and provide the diplomat with a copy of the form.

2. 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.
3. A "Police Event Report" (not a DWI Arrest Report) will be written and submitted for supervisory review and approval, along with copies of all citations and reports.
4. If the diplomat refuses assistance or a claim is made that the officer's requested action would restrict the effective exercise of his function as a diplomat, the officer will politely inform the diplomat that he is free to go, but the vehicle may not be moved, and the embassy or legation concerned will be contacted immediately for advice or assistance in obtaining a driver and removing the driver.
5. If the driver is entitled to diplomatic immunity, he should not be restrained except in extreme cases and will not be subjected to any sobriety or any other mandatory test. 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.

D. Towing

When it becomes necessary to have a vehicle bearing diplomatic registration towed, officers will comply with the Department's Towing Policy. It should be noted that a diplomat's vehicle is considered secure from violation and cannot be searched.

VIII. CLAIMS OF DIPLOMATIC IMMUNITY

- A. When proper I.D. has been shown and status is verified, the immunity will be fully respected. Where 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. However, in any serious incident, the officer will record all pertinent details from the I.D. card and details and circumstances of the incident in accordance with usual police procedures.

An officer initiating such a report will notify the Chief on the next business day. The Chief will promptly forward the original report, with a cover letter under his signature, addressed to the Command Center, Office of Security, Department of State, 2121 Virginia Ave., N.W., Washington, D.C. 20520. A copy will be sent to the Director of the PGPD Records Division for official dissemination.

Serious incidents should be reported by telephone as soon as possible to 202-663-0812, which is operational 24 hours a day. It is requested that officers notify the Prince

George's County Vice/Intelligence Section when they issue a traffic citation to a diplomat that would have resulted in an arrest for a person without immunity. This information should be provided either over the telephone or via a note sent through interoffice mail.

- B. When an officer is confronted with a person claiming immunity and the person cannot produce satisfactory I.D. and the situation would normally warrant arrest or detention, the officer will inform the person that he or she will be detained just until proper identity can be confirmed. The State Department Protocol Office will be called immediately 202-663- 0812 to verify claims of Diplomatic Immunity. The "Blue Book" and "White List" will no longer be used to verify diplomatic immunity.
- C. Inquiry should also promptly be made to the State Department in any case where an individual claims immunity and cannot present satisfactory identification or in any case where the officer has reason to believe that invalid identification is being presented. The following telephone numbers are provided for use in this regard:

REF:Diplomatic and Consular Personnel and International Organizations Other than the United Nations During normal business hours - Current Status of:

U.S. Department of State federal license tags, registration, or other motor vehicle information:
202-895-3512

U.S. Department of State driver's licenses and general licensing information:
202-895-3512

- After hours for both of the above: 202-647-7277

For reporting traffic accidents/incidents, issuance of citations, etc., involving foreign missions personnel:
202-895-3522

Diplomatic agents and family members: 202-647-4570
Embassy administrative and technical, service staff and families: 202-647-1405

Consular personnel and families: International organization:

- After normal business hours: 202-647-1404, 202-647-1402

All inquiries should be made to the Command Center of the Bureau of Diplomatic Security, Department of State, 202-647-7277 (operates 24 hours a day)

- D. Where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, police may intervene to the extent necessary to halt the activity. This naturally includes power of the police to defend themselves from personal harm.

REF: United Nations Personnel during normal business hours
U.N. (New York) verification information is available from the Host Country Section of the U.S. Mission to the United Nations: 212-415-4131.

Current status of U.S. Department of State license tags, registration, or other motor vehicle information: 212-826-4500

- After normal business hours:

Information is available from the Communication Section of the U.S. Mission to the United Nations: 212-415-4444 (operates 24 hours per day):

- E. Tax Exemption, Auto Registration, License Plates and Driver's Licenses are not conclusive proof of diplomatic immunity. Again, these only indicate that the bearer may be entitled to some degree of immunity.
- F. There are three types of identification cards: Diplomatic (blue border for diplomats); Official (green border for employees); and, Consular (red border for consular personnel). These identification cards are 3 1/2" x 2 1/4," and contain a photograph of the bearer. The bearer's name, title, mission, city and state, date of birth, identification number, expiration date, and a U.S. Department of State seal appears on the front of the card. A brief statement of the bearer's immunity is printed on the reverse side. Space is also provided for the bearer's signature.

While this form of identification is generally to be relied upon, law enforcement authorities are nonetheless urged immediately to seek verification as indicated above in connection with any serious incident or in any case where they have reason to doubt the validity of the card.

Police officers should be alert to the fact that newly arrived members of the diplomatic and consular staffs may not yet have these official identity documents and should be prepared to contact the U.S. Department of State, Protocol Office, 202-647-7277 (24 hrs./day) for verification if confronted with such situations.

- G. Even though individuals ultimately enjoy the protections afforded by diplomatic or consular privileges and immunities, as indicated above, it is for the benefit of the sending country that these protections are actually devised. This concept is well-established in international law and explains the fact that the individual concerned does not "own" the immunity; such immunity may always be waived, in whole or in part, by the country which employs such person.

While waiver of immunity in the face of criminal charges is not common, it is routinely sought and occasionally granted. The Department's ability to secure such a waiver may depend to a large degree on the strength (and documentation) of the case at issue. Similarly, it is of little avail for the Department to secure 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.

- H. When a U.N. diplomat is involved in an incident or arrest, the initiating officer will notify the Chief the next business day. The Chief will promptly forward the original report, with a cover letter under his signature, addressed to the Host Country Section, U.S. Mission to the United Nations, 799 UN Plaza, New York, NY 10017. A copy will be sent to the PGPD, Director of the Records Division for official dissemination. Serious incidents should be reported by telephone as soon as possible to the Communications Section of the U.S. Mission to the United Nations in New York.