



DIPLOMATIC IMMUNITY

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Contents:

- I. Policy
- II. Definitions
- III. Individuals with Immunity by Job Title
- IV. Claims of Diplomatic Immunity
- V. Reporting of Serious (Non-Traffic) Incidents
- VI. Traffic Violations Involving Diplomats
- VII. Waivers of Immunity
- VIII. Proponent Unit
- IX. Cancellation
- Appendix A: Diplomatic and Consular Privileges and Immunities
- Appendix B: Example Identification Cards
- Appendix C: Points of Contact for Information/Notification

I. Policy

It is the policy of the department to conform to federal law regulating diplomatic immunity. Allegations of serious crime or other serious difficulties with diplomatic or consular personnel should be fully investigated and promptly reported to the Department of State. It is imperative that officers perform good investigations, keep good records, and report to the US Department of State whenever appropriate. This allows the US Department of State to exercise the tools it has to remove individuals from the US who are engaged in criminal activity or to revoke the driving privileges of individuals who repeatedly violate the traffic code. (CALEA 1.2.6)

II. 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.

- C. 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 is not required to give evidence as a witness.
- D. 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.
- E. Serious Incident: Any incident where an officer would normally perform a custodial arrest if the individual did not have diplomatic immunity.
- III. **Individuals with Immunity by Job Title** (Refer to Appendix A)
 - A. Diplomatic Agents - Full Immunity
Head of Mission (Ambassador or Charge d'Affaires)
 - B. Diplomatic Staff of Mission - Full Immunity
 1. Members of the Delegation of the Commission of the European Communities
 2. Permanent Representatives and Senior Staff of Missions to Organization of American States and United Nations
 3. Senior Officials of the United Nations Secretariat
 - C. Administrative and Technical Staff - Full Immunity
 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
1. Spouses
 2. Dependent children until age 21, or age 23 if 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)
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."

- I. Special Bilateral Agreements - There are some foreign countries where the categories set forth above are not applicable. These are countries with that the United States has bilateral agreements which 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. Again, this situation will be taken care of when identity documents are issued. 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.

IV. Claims of Diplomatic Immunity

- A. There are three types of identification cards (see Appendix B):
1. Diplomatic (blue border for diplomats)
 2. Official (green border)
 3. Consular (red border)
- The identification cards are 3 ¼" x 2 ½" 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 US 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 with the bearer's signature. Tax exemption, auto registration, license plates, and driver's licenses are not conclusive proof of diplomatic immunity.
- B. In situations not involving traffic violations when an individual claims diplomatic immunity of any kind (whether or not the individual displays credentials), officers, ***once it is safe to do so***, will immediately request, through ECC, that the station contact the Department of State (refer to Appendix C) to verify the individual's status. (For incidents involving traffic violations refer to section VI.) 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.

C. When the situation would normally warrant arrest or detention, officers will detain the person until proper **diplomatic status** can be confirmed. Officers will 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.

D. 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.

V. **Reporting of Serious (Non-Traffic) Incidents**
(CALEA 74.3.1)

A. Serious incidents (refer to section II.E) should be reported by telephone as soon as possible to the Command Center, Office of Diplomatic Security (refer to Appendix C).

B. Officers will notify the Vice and Intelligence Section within 24 hours, either by phone, (301) 840-2496, or interoffice mail, 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.

C. In all serious incidents (refer to section II.E) involving persons entitled to diplomatic immunity, officers will 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 will notify the district/unit commander, via a memorandum, by the next business day.

D. The district/unit commander will promptly fax a copy of the report, with a cover letter under the commander's signature, to the Command Center, Office of Diplomatic Security (refer to Appendix C). The commander will forward a copy of the letter to the Director, **Records Division**, to be maintained with the original report.

VI. **Traffic Violations Involving Diplomats**

A. 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.

1. 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 (MVA) in relation to the diplomat's driving privileges within this state.

B. 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, through ECC, that the station contact the Department of State (refer to Appendix C) 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 status.
3. Record all relevant information from the driver's license or identification card and the vehicle registration.
4. Advise the district/unit commander by the next business day, via a memorandum, of the stop. Attach one or more of the following to the memorandum:
 - a. Any citation(s) that was issued.
 - b. The collision/**DUI** report.
 - c. If no citation was issued and no collision/**DUI** report was written, a written police report detailing the stop to include the vehicle/driver's information.
5. If a traffic citation is issued, notify the Vice and Intelligence Section within 24 hours by phone, (301) 840-2496, or interoffice mail.

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

- C. District/Unit Commander's Responsibilities
Within five workdays after the date of the stop, the district/unit commander will mail a copy of any report and/or citation, with a cover letter under the commander's signature to:

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

The commander will forward a copy of the packet to the Director, **Records Division**, to be maintained centrally.

- D. Driving *Under the Influence* Violations

1. 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 will provide assistance in parking the vehicle or securing another driver. If the vehicle is parked, the location will be recorded on an MCP 20, "Notice of Towed Vehicle." The diplomat will be provided with a copy of the form.
2. An officer may issue a traffic citation to the person for ***DUI*** and any other related traffic charges. However, no physical arrest can be made.
3. 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 will be contacted immediately for advice or assistance in obtaining a driver and removing the vehicle.
4. 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.

- E. Towing

When it becomes necessary to have a vehicle bearing diplomatic registration towed, officers will comply with FC 1060, "Towing of Motor Vehicles." A diplomat's vehicle is considered secure from violation and cannot be searched.

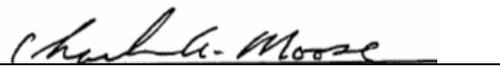
VII. **Waivers of Immunity**

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 individual concerned does not "own" the immunity. The country that employs such person 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.

VIII. **Proponent Unit:** Policy Development Section

IX. **Cancellation**

This directive cancels Function Code 519, effective date 06-15-99.



Charles A. Moose, Ph.D.
Chief of Police

Points of Contact for Information/Notification

Diplomatic and Consular Personnel and International Organizations other than the UN

During Normal Business Hours

- For reporting traffic incidents/accidents, issuance of citations, etc., involving foreign missions personnel:
(202) 895-3522 FAX (202) 895-3646
Office of Foreign Missions, DMVO
Attention: Driver Services
3507 International Place, N.W.
Washington, D.C. 20008
- For reporting any serious incident (non-traffic) involving foreign missions personnel:
(202) 647-7277 FAX (202) 647-0122
Department of State (202) 647-1811
Office of Diplomatic Security Command Center
2201 C St., N.W.
Washington, D.C. 20520
- Current status of U.S. Department of State federal license tags, registration, or other motor vehicle information:
(202) 895-3532
- Current status of U.S. Department of State driver licenses and general licensing information:
(202) 895-3521
- Current status of:
 - Diplomatic agents and family members:
(202) 647-**1664**
 - Embassy administrative/technical service staff and families:
(202) 647-1405

- Consular personnel and families:
(202) 647-1404
- International organizations:
(202) 647-1402

After Normal Business Hours

- All inquiries should be made to the Command Center of the Office of Diplomatic Security, Department of State:
(202) 647-7277 (operates 24 hrs/day)

United Nations Personnel

During Normal Business Hours

- Verification information is available from the Host Country Section of the U.S. Mission to the United Nations:
(212) 415-4131
Host Country Section
U.S. Mission to the United Nations
799 UN Plaza
New York, NY 10017
- Current status of U. S. Department of State license tags, registration, or other motor vehicle information:
(202) 647-7277

After Normal Business Hours

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