



# Ocean City Police Department

## General Order

<b>Subject:</b> Diplomatic and Consular Immunity		<b>No.</b> G.O. 400 D-1	
<b>Rescinds:</b>	<b>Amends:</b> 400 D-1 (10/02/1995)	<b>Related Directive:</b> OCPD Training Bulletin 005-2008	
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<b>References:</b> 1961 Vienna Convention on Diplomatic Relations, 1963 Vienna Convention on Consular Relations, Diplomatic Relations Act (22 U.S.C. 254), International Organizations Immunities Act (22 U.S.C. 288, <a href="http://www.state.gov/m/ds/immunities/c9125.htm">http://www.state.gov/m/ds/immunities/c9125.htm</a> ), C.A.L.E.A. References: 1.2.5, 41.2.5, and 61.1.3			

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**I. Purpose:**

The purpose of this policy is to establish guidelines for personnel who come in contact with foreign nationals, subjects claiming to be foreign nationals, diplomatic officers and consular officers.

**II. Definitions:**

- A. **Foreign National:** For the purposes of consular notification a foreign national is any person who is not a U.S. citizen. Lawful Permanent Resident Aliens (or LPRs) who have resident alien registration cards (green cards) retain their foreign nationality and must be considered foreign nationals. The terms foreign national and alien are used interchangeably. Undocumented or illegal aliens are also included in the definition of a foreign national.
- B. **Detainee:** A detainee in this context is a foreign national who is arrested or placed in custody pending investigation or judicial appearance, or both. Brief stops of such persons for motor vehicle violations or similar incidents are not considered detentions for purposes of this policy.
- C. **Consul or Consular Officer:** A consular officer is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, D.C., or to consular offices maintained by the foreign government in locations in the United States outside of Washington, D.C.
- D. **Diplomatic Immunity:** A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and authorities for both their official and, to a large extent, their personal activities. Immunity is not a pardon, total exoneration, or total release from the responsibility to comply with the law. It is simply a legal barrier which precludes United States 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.
- E. **Inviolability:** Embodied in international law that generally precludes law enforcement officials from handcuffing, arresting or detaining certain foreign diplomatic and consular officials in any form and forbids U.S. authorities from entering the residences, automobiles, or other property of protected persons. Where public safety is in imminent danger or it is apparent that a felony or crime of violence may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity or defend themselves or others from personal harm.

**III. Policy:**

The Department will adhere to the guidelines provided by the U.S. Department of State concerning immunities for foreign nationals based on international treaty obligations. Adherence to these international treaty obligations is required by law and also helps protect American diplomatic officers and consular officials stationed abroad.

**IV. Procedure:****A. Identification**

1. Officers shall identify and verify the diplomatic status of the detainee in the most efficient manner possible.
2. Only an identity card issued by the U.S. Department of State, Office of Protocol, or by the U.S. Mission to the United Nations may be used as valid identification for diplomats and consular officials. The identification cards are color coded according to the following:
  - a. Blue border: Diplomatic officers and their families, UN diplomatic officers and their families. Persons holding this status hold full criminal immunity and may not be arrested or detained.
  - b. Green border: Embassy administrative, technical, and service staff employees. Persons holding this status have limited immunity to official acts only.
  - c. Red border: Consular officers, employees, or their families. Persons holding this status hold limited immunity for official acts only. There are exceptions for some persons holding this status if they come from countries that have a special agreement with the United States. In these circumstances, full immunity is granted.
3. Foreign diplomatic passports, U.S. diplomatic visas, tax exemption cards, vehicle registration, license plates, and driver licenses should not be used to determine whether an individual enjoys immunity.
4. License plates issued by the U.S. Department of State are coded to reflect the degree of immunity which 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 a "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.

These license plates are designed to assist officers identifying vehicles that belong to persons who *may* enjoy some degree of immunity, however, in no circumstance should the license plate be used alone to verify the status of an individual claiming immunity.

5. When legal grounds permit, officers should detain an individual who is unable to produce valid identification but claims diplomatic immunity. He or she shall be informed of the reason for detention until the U.S. Department of State’s Office of Protocol confirm the proper identity. Once immunity verification has been confirmed, the individual shall be immediately released.

#### B. Personal Inviolability vs. Public Safety

1. Personal inviolability is enjoyed to some degree by a majority of foreign diplomatic and consular personnel. This inviolability generally precludes handcuffing, arrest, or detention in any form and forbids U.S. authorities from entering residences, automobiles, or other property of the protected person.
2. The United States does not give up its right to protect the safety and welfare of its citizens and retains the right, in extraordinary circumstances, to prevent the commission of a crime. Thus, in circumstances where public safety is in imminent danger or it is apparent that a grave crime may otherwise be committed, police may intervene to the extent necessary to halt such activity. This includes the use of force.
3. Until an individual’s status of inviolability has been confirmed in situations that warrant criminal arrest, the individual shall be handcuffed and searched if he or she could reasonably pose a threat. Officers will first take reasonable measures to ensure safety to the public and other officers.
4. Verification of the diplomatic claim will take place after a danger has been neutralized. If required to release the individual because of diplomatic immunity the normal criminal investigation will proceed as if no valid diplomatic immunity claim has been made.

#### C. Handling Incidents – Criminal Violations

1. The burden to claim privileges and immunities is always on the individual diplomat or consular personnel. Although, an officer must verify the identity of any person claiming diplomatic or consular immunity and may reasonably detain the person until their identity is confirmed; they may not be handcuffed, except if they pose an immediate threat to safety.

2. When it has been confirmed that the subject enjoys personal inviolability and all pertinent identifying information has been obtained the person must be released immediately. They cannot be searched; their property (including automobiles) cannot be searched or impounded; their residence may not be entered or searched without their consent; and offices or annex buildings used by a foreign government may not be entered or searched without consent.
3. All criminal incidents involving individuals claiming diplomatic or consular status shall have a supervisor dispatched to the scene as soon as practical. All cases involving diplomatic personnel shall be fully investigated and documented with a police incident report (except minor traffic violations and/or parking violations).
4. All information regarding the identity of the diplomat, name of the embassy or consular post, vehicle description, diplomatic status, and facts surrounding the incident, shall be noted in the report. If the individual is accused of committing a felony (or in extreme cases involving public safety) the supervisor in charge shall notify the U.S. Department of State immediately and notify them that a copy of the report will be faxed to them.
5. A copy of the report will be forwarded to the Administrative Division Commander. The term "Diplomatic Personnel" shall be included in the title of the report. Recovered stolen property and/or contraband should be seized and turned into the police Property Unit as evidence.

D. Handling Incidents – Traffic Violations

1. Officers shall issue traffic citations as normal to individuals with immunity. However, the individual is not required to sign the citation.
2. Officers shall fax a copy of the citation along with any other pertinent documentation to the U.S. Department of State as soon as possible.
3. Officers shall give the option to cited individuals, for pre-payable offenses, of paying the fine or to contest the charge.
4. Officers shall contact the U.S. Department of State in serious incidents such as D.U.I, personal injury, or accidents by telephone.
5. Officers primary consideration in a D.U.I./D.W.I. incident is to assure that the driver does not endanger himself/herself or the public. A sobriety test shall be offered in accordance with normal police department procedures, but cannot be required or compelled.

A supervisor should immediately be dispatched to the scene. If the individual is intoxicated, the officer shall not permit the individual to continue driving. The following options may be considered depending upon the circumstances:

- a. A friend, relative, or taxi may be summoned to drive the individual home.
- b. With the individual's permission, he/she may be taken to the police department or another location to recover sufficiently to drive.
- c. Upon the approval of a supervisor, the individual may be transported home by a police officer.
- d. In extreme cases, the Department of State Protocol Office shall be notified immediately. The Protocol Office shall be responsible for notifying the respective embassy.
- e. Should the diplomat refuse the above options, he/she shall be transported to police headquarters to wait arrival of an embassy or State Department official. For purposes of officer safety, a pat down search may be conducted prior to transport and only in extreme cases may the diplomat be restrained in any manner.

E. Handling Incidents – Parking Violations

1. Vehicles bearing valid federal diplomatic plates may be issued a parking ticket if found to be in violation of the Town of Ocean City Parking Regulations.
2. Vehicles bearing valid federal diplomatic plates shall not be impound for a traffic/parking violation.
3. Vehicles, bearing valid federal diplomatic plates which are endangering public safety or obstructing traffic, may be towed to the nearest legal parking space at the Police Department's expense. If this is not practical the vehicle may be taken to the Town of Ocean City Impound Lot for safekeeping. The impound form should be marked "Diplomat" and the vehicle should be released to an authorized person free of charge.
4. The officer shall not search or seize any items from the individual's vehicle.
5. If a vehicle that is owned by a foreign national is suspected of being stolen or used in a crime, the officer shall request vehicle documentation. If it is determined that the vehicle is stolen or has been used in a crime, the vehicle may be searched and impounded.
6. The officer shall fax a copy of the violation to the U.S. Department of State promptly after an incident.

F. Waiver of Immunity

1. Officers shall prepare cases carefully and completely, and document each incident properly so that charges may be pursued as far as possible in the U.S. judicial system.
2. The U.S. Department of State will, in all incidents involving persons with immunity from criminal jurisdiction, request a waiver of immunity from the sending State if the prosecutor advises that but for such immunity he or she would prosecute or otherwise pursue the criminal charge.
3. In those instances in which a person with immunity is believed to have committed a serious offense (any felony or crime of violence) and the sending State has not acceded to the U.S. Department of State's request for a waiver of immunity, the offender will be required to leave the United States.
4. Criminal immunity expires upon termination of the diplomatic or consular tour of the individual enjoying the immunity. Obtaining an indictment, information, or arrest warrant could be the basis for prosecution at a later date. The existence of an outstanding warrant may be entered into NCIC and thus serve to bar the subsequent issuance of a United States visa permitting such person re-entry into the United States.

G. Consular Notification Procedures

Consular notification procedures shall be followed even if the individual enjoys diplomatic immunity.

1. An officer shall notify the detained foreign national that his/her country's consular representatives in the United States will be notified of his/her detention.
2. Once this notification is made, consular officials may decide to call or visit the detained foreign national. The foreign national is not required to accept the assistance offered by the consular officials
3. Notification to the detained foreign national's country's consular must be made without any unnecessary delay.

**V. Points of Contact:**

- A. U.S. Department of State's Office of Protocol: 202-647-1985 (during business hours)
- B. Bureau of Diplomatic Security: 202-647-7277 (after business hours)
- C. U.S. Department of State Fax Number: 202-895-3613 (for citations and copies of incident reports)

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- D. Office of Public Affairs and Policy Coordination for Consular Affairs:  
202-647- 4415 (Fax: 202-736-7559 or E-mail: [consnot@state.gov](mailto:consnot@state.gov))
- E. State Department Operations Center: 202-647-1512
- F. United Nations Communication Section: 212-415-4444 (24 hours a day)

**VI. Appendix:**

“Diplomatic and Consular Privileges and Immunities From Criminal Jurisdiction –  
Summary of Law Enforcement Aspects”



## Appendix: Diplomatic and Consular Privileges and Immunities from Criminal Jurisdiction Summary of Law Enforcement Aspects

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
<b>Diplomatic</b>						
Diplomatic Agent	No <sup>1</sup>	No	Yes	No	No	Same as Sponsor (full immunity and inviolability).
Member of Administrative and Technical Staff	No <sup>1</sup>	No	Yes	No	No	Same as Sponsor (full immunity and inviolability).
Service Staff	Yes <sup>2</sup>	Yes	Yes	Yes	No – for official acts. Otherwise, yes <sup>2</sup>	No immunity or inviolability. <sup>2</sup>
<b>Consular</b>						
Career Consular Officers	Yes, if for a felony and pursuant to a warrant. <sup>2</sup>	Yes <sup>4</sup>	Yes	No – for official acts. Testimony may not be compelled in any case	No – for official acts. Otherwise, Yes <sup>2</sup>	No immunity or inviolability. <sup>2</sup>
Honorary Consular Officers	Yes	Yes	Yes	No – for official acts. Yes, in all other cases	No – for official acts. Otherwise, yes	No immunity or inviolability.
Consular Employees	Yes <sup>2</sup>	Yes	Yes	No – for official acts. Yes, in all other cases	No – for official acts. Otherwise, yes <sup>2</sup>	No immunity or inviolability. <sup>2</sup>
<b>International Organizations</b>						
International Organization Staff	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
Diplomatic – level Staff of Missions to International Organizations	No <sup>1</sup>	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
Support Staff of Missions to International Organizations	Yes	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes	No immunity or inviolability

<sup>1</sup> Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or prevention of serious criminal acts.

<sup>2</sup> 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.

<sup>3</sup> A small number of senior officers are entitled to be treated identically to “diplomatic agents.”

<sup>4</sup> 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.