



# DIPLOMATIC IMMUNITY

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## **I. DEFINITIONS & IMMUNITY CATEGORIES**

### **A. Complete Personal Inviolability**

Complete personal inviolability means that a person with status may not be handcuffed (except in extraordinary circumstances), may not be arrested; and their property, (including vehicles), and residences may not be entered or searched.

### **B. 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 both their official and, to a large extent, their personal activities.

### **C. Diplomatic Agents**

Diplomatic Agents enjoy the highest degree of privileges and immunities. They enjoy complete personal inviolability. Diplomatic agents also 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 immunity is waived by the sending state.

Family members enjoy precisely the same privileges and immunities.

### **D. Administrative and Technical Staff**

Members of the administrative and technical staff of a diplomatic mission perform tasks critical to the inner workings of the embassy. Accordingly, they enjoy privileges identical to those of diplomatic agents in respect of personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as a witness.

Family members enjoy precisely the same privileges and immunities.

**E. Service Staff**

Members of the service staff of diplomatic missions perform less critical support tasks for the missions and are accorded much less in the way of privileges and immunities than are those in other categories. Service staff members have official acts immunity only and they enjoy no personal inviolability, no inviolability of property, and no immunity from the obligation to provide evidence as witnesses.

The families of service staff members enjoy no privileges or immunities.

**F. Foreign Nationals**

Any individual in the United States who is not a United States citizen, regardless of their legal standing to be in the United States.

**G. Private Servants of Members of the Mission**

Personal servants and their families hired by diplomats for their personal use. This class of employee has no immunity for criminal acts.

**H. Consulates**

Representatives of a foreign nation who perform a variety of services on behalf of their country in the United States, such as issuing travel documents, attending to the problems of their countrymen while traveling in the United States, and promoting the commerce of their nation. Consuls do not enjoy full diplomatic immunity.

**II. BACKGROUND**

The policy and procedures that follow are drawn from the “Guidance for Law Enforcement Officers” *publication* issued by the United States Department of State. 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 their diplomatic missions around the world function with maximum effectiveness.

It is important to understand that the individual diplomat does not “own” immunity; such 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 case at issue.

Therefore, 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. While officers must extend every courtesy to diplomats, it is imperative that they also perform 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.

**III. FULL DIPLOMATIC IMMUNITY**

Full diplomatic immunity means more than immunity from prosecution. It means that the person, residence, vehicles, belongings, and papers of an individual with full diplomatic immunity cannot be searched, the person cannot be arrested or detained, and is not required to give evidence as a witness.

In order to determine the extent of a person’s immunity, check the category designation of their identification and then review Appendix A to determine which immunities apply or do not apply.

(See attached Appendix “A” on Privileges and Immunities)

#### **IV. LIMITED DIPLOMATIC IMMUNITY**

Limited criminal immunity prevents conviction if a judge finds that a criminal act transpired in the course of a person's "official duties." Persons enjoying limited immunity may be detained or arrested, their persons and belongings can be searched, and they may be required to give evidence as a witness.

#### **V. IDENTIFICATION OF DIPLOMATIC PERSONNEL**

There are three types of identification cards issued by the State Department to representatives of foreign nations:

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

The identification cards are 3 ¾" x 2 ½" in size, 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. State Department seal appear on the front of the card. A brief statement of the bearer's immunity is printed on the reverse, with space for the bearer's signature. (Further guidance on privileges and limitations of law enforcement may be found by checking the ID's category against the Diplomatic Privileges and Immunities Chart, Appendix A)

Verification of the validity of any diplomatic identification can be obtained from the State Department's protocol office.

#### **VI. HANDLING CLAIMS OF DIPLOMATIC IMMUNITY**

A. In cases where public safety is in imminent danger or it is apparent that a crime may otherwise be committed, the officer may intervene to the extent necessary to halt the activity. This includes the authority of the police to defend themselves and others from harm.

B. The following procedure should be followed when a law enforcement officer is called to the scene of a criminal intent involving a person who claims diplomatic or consular immunity:

1. Ask for Official U.S. Department of State Identification Card.
2. If in possession, contact the U.S. Department of State to verify individual's status.
3. Should the person be unable to produce satisfactory identification, and the situation would normally warrant arrest or detention, the officer should inform the individual that he or she will be detained until identity and status can be confirmed. (In all cases, including those in which the individual provides a State-Department issued identification; the law enforcement officer should verify their status with the U.S. Department of State or in the case of the U.N. community, the U.S. Mission to the United Nations.)
4. Once status is verified, the officer should prepare a report fully describing the circumstances of the incident. If the person enjoys personal inviolability, he or she may not be handcuffed, except when that individual poses an immediate threat to safety, and they may not be arrested or detained. Once all pertinent information is obtained, that person **MUST** be released.

C. In any serious incident involving a diplomat, the officer will record all pertinent details from the diplomatic identification card, as well as all circumstances of the crime or incident. "Serious incident" includes a traffic citation where arrest would have been exercised if that person did not have immunity.

D. A copy of the officer's report of a diplomatic incident will be forwarded to the Chief of Police via the chain of command. The Intelligence Section will maintain liaison with the State Department, and will notify the State Department of all police contacts with diplomatic personnel of a serious nature.

#### **VII. TRAFFIC VIOLATIONS**

##### **A. Moving Violations**

The issuance of a traffic citation or warning does not constitute an arrest or detention. When a person possessing diplomatic immunity is stopped for a traffic violation, the officer may, at his/her discretion, issue a traffic citation or a warning. In such situations, officers of this Department are cautioned to exercise the utmost courtesy and discretion, bearing in mind that they are representing the United States of America, the state of Maryland, and this county. The following circumstances also apply:

1. The diplomat may refuse to sign the citation, and cannot be arrested for refusing to sign or accept the citation.
2. Failure of the diplomat to appear in court will result in no criminal or administrative (MVA) consequences.
3. The diplomat has the ability to administratively void the citation through the State Department.

**B. Driving While Intoxicated (DWI/DUI) Cases**

When an officer stops a diplomat and confirms a DWI/DUI situation, the diplomat will be afforded all courtesies and privileges stated above. However, the diplomat will not be permitted to continue to drive a motor vehicle until he or she is sober. The diplomat will not be restrained except in extreme cases, and will not be subjected to any chemical tests. Force may be used only to prevent injury to the diplomat or others, and then only the absolute minimum will be applied. The following procedures will be followed:

1. The officer will request that the diplomat not drive, and will provide assistance in parking the vehicle and/or securing another driver. The diplomat will be provided with a written description of the location of the parked vehicle.
2. If the diplomat refuses assistance, or claims that the officer's actions violate his or her diplomatic rights or privileges, the officer will politely inform the diplomat that he/she is free to go, but may not continue to drive a motor vehicle. Communications will dispatch a supervisor to the scene, and will contact the diplomat's embassy or legation immediately for assistance in securing transportation for the diplomat.
3. An officer may issue a traffic citation for DWI/DUI or any related traffic charges. No physical arrest will be made, and the diplomat cannot be compelled to sign or accept the citations.

**C. Towing Procedures**

A vehicle bearing diplomatic registration plates, or owned by a person with full diplomatic immunity, cannot be searched. If it becomes necessary to tow the vehicle, the officer will first attempt to locate the owner or operator and solicit his/her cooperation in moving the vehicle. If unsuccessful, the officer:

1. Have the vehicle towed by the nearest available tow service to the nearest legal parking space or adjacent side street. The Communications Section will be notified of the vehicle's location.
2. Accept the tow bill from the towing service. Prior to the end of the tour of duty, submit the tow bill and a memorandum detailing the facts and circumstances to the Office of the Chief of Police via the chain of command.
3. Notify the owner or the owner's embassy by telephone of the location of the vehicle and the reason for towing, if not previously explained.

**VIII. REPORTING PROCEDURES**

In addition to normal reporting procedures, officers will submit copies of any citations, accident reports, or incident reports involving diplomatic personnel or vehicles to the Office of the Chief of Police via the chain of command. The Intelligence Section will maintain liaison with the State Department, and will forward any such copies to them.

**IX. STATE DEPARTMENT CONTACTS**

See Appendix "B" for a list of State Department offices and telephone numbers to be contacted in the event of a police-diplomat contact.

**X. SPECIAL BILATERAL AGREEMENTS**

**A. Russia and the People's Republic of China**

By virtue of bilateral agreements entered into by the United States of America, Russia, and the Peoples' Republic of China (PRC), all members of the embassy staffs of Russia and the PRC have full diplomatic immunity. This includes service staff, servants, and their families. If one of these individuals becomes involved in a criminal or serious incident, contact the State Department immediately for verification of identification and diplomatic status.

**XII. PROPONENT UNIT:** Intelligence Unit.

**XIII. CANCELLATION:** This directive cancels Index Code 2001.1, dated 09-15-04.