



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



EFFECTIVE DATE: APRIL 14, 2008	REVISED DATE:	NO. PAGES: 1 of 5	NUMBER: 1.3.35
SUBJECT: <b style="text-align: center;">DIPLOMATIC AND CONSULAR IMMUNITY			
ASSOCIATED MANUAL:		RELATED ORDERS: <b style="text-align: center;">1.3.13	
CHIEF OF POLICE: <b style="text-align: center;"><i>Michael McGrath, Chief</i>			

PURPOSE: To establish guidelines for Division members to recognize diplomatic/consular immunity.

POLICY: In accord with international law the Cleveland Division of Police shall recognize consular/diplomatic immunity. Members shall extend certain privileges and immunities to members of foreign diplomatic missions and consular posts while retaining their fundamental responsibility to protect and police the conduct of persons in their jurisdiction.

DEFINITION:

Diplomatic immunity is a principal of international law by which certain foreign government officials are **not** subject to the jurisdiction of local courts and other authorities for their official and, to a large extent, their personal activities. It is important to note that there are different degrees of immunity that are afforded to various members of diplomatic missions.

PROCEDURES:

I. Categories of Persons Entitled to Privileges and Immunities.

A. Diplomatic Missions

1. Diplomatic Agents enjoy the highest degree of privileges and immunity. They enjoy complete inviolability which means that they may not be handcuffed (except in extraordinary circumstances), arrested, or detained: neither their property (including vehicles) nor residences may be entered or searched. Diplomatic Agents also have complete immunity from criminal prosecution regardless of the seriousness of the crime (unless the immunity is waived by the sending State).

2. Members of Administrative and Technical Staff perform the tasks critical to the inner workings of the diplomatic mission. They enjoy the identical degree of privileges and immunity as Diplomatic Agents. The only degree of difference between Diplomatic Agents and Members of Administrative and Technical Staff is the degree to which they are liable to civil laws.
3. Recognized family members forming part of the households of Diplomatic Agents and Members of Administrative and Technical Staff have the same criminal immunities as described above.
4. Members of Service Staff perform less critical support and consequently are afforded less in the way of privileges and immunities. Service Staff Members have only “official acts” immunity and they have no personal inviolability, no inviolability of property, and no immunity from obligation to provide evidence as witnesses. Their family members enjoy no privileges or immunities.
5. Nationals or Permanent Residents of the United States who are staff members of diplomatic missions enjoy no privileges or immunities.
6. There may exist certain special Bilateral Agreements that extend certain privileges or immunities to persons beyond the scope enumerated above. These covered members will have special identification cards stating such.
7. Waiver – Even though diplomatic privileges or immunities may impede officers from the full use of their police powers, officers should still proceed in using what police powers they may have in a given circumstance in the furtherance of upholding criminal laws. The U.S. Department of State may request and receive a waiver of immunity whereby prosecution may be pursued against a privileged member of a foreign mission.

B. Consular Posts

1. Consular Officers are authorized to perform a broad array of formal consular functions. However, they have only “official

acts” or functional immunity in respect to both criminal and civil matters and their personal inviolability is quite limited.

2. Consular Officers may be prosecuted, but not arrested, for misdemeanors. Consular Officers may be arrested for felonies only. Property of Consular Officers is not inviolable.
 3. Family members of Consular Officers do not enjoy personal inviolability or jurisdictional immunity of any kind.
 4. Consular Employees have no personal inviolability, only official acts immunity. Their family members enjoy no privileges or immunities.
 5. Consular Service Staff have no personal inviolability or jurisdictional immunity, but they do have immunity from obligation to provide evidence as witnesses in respect of “official acts”. Their family members enjoy no privileges or immunities.
- C. Nationals or Permanent Residents of the United States who are staff members of diplomatic missions enjoy no privileges or immunities.
- D. Honorary Consuls are American citizens or permanent resident aliens who perform consular services on a part time basis. These persons have “official acts” immunity and immunity from obligation to provide evidence as witnesses in respect of “official acts”. They do not enjoy personal inviolability and may be arrested as necessary. Their family members enjoy no privileges or immunities.
- II.** Identifying Persons (and their vehicles) Entitled to Privileges and Immunities in the United States: The only authoritative identity document is the identity card issued by the U.S. Department of State, Office of Protocol, or by the U.S. Mission of the United Nations. These identification cards are color coded to indicate the level of immunity. This information can also be found on the back of the card.
- III.** Response to incidents involving persons having diplomatic or consular privilege:
- A. A supervisor shall respond to the scene of any incident involving a person purportedly having diplomatic or consular privilege. If the

person is a suspect in a crime, the supervisor shall verify the status of the individual(s) in question, advising the individual(s) that they will be detained until their identity can be confirmed.

- B. Supervisors shall verify the status of a person claiming diplomatic or consular privilege whether or not that person has a State Department issued identification card.
1. The supervisor shall contact the Communications Control Section (CCS) to make the appropriate notifications. CCS shall contact the Diplomatic Security Command Center at 1-866-217-2089.
 2. If the suspect has personal inviolability, they shall not be handcuffed unless they pose an immediate threat to safety or as is necessary to de-escalate a volatile situation. However, once the threat to safety ends or de-escalation has satisfactorily occurred, the handcuffs must be removed.
 3. Depending on the level of immunity, the suspect must be released once all pertinent information has been obtained. Arrests may be made when warranted and to the extent as permitted on the back of the diplomatic/consular identification card.
 4. Regardless of the level of immunity, contraband may be seized to the extent of applicable search and seizure laws. Weapons and evidence used in the commission of a crime may also be seized. Illegally owned, possessed or transported firearms may also be seized.
 5. Regardless of the level of immunity, any person claiming diplomatic or consular immunity may be subdued to the extent that is necessary to control a violent situation or prevent a serious crime.
 6. Regardless of the level of immunity, any person claiming diplomatic or consular immunity may be requested to make a voluntary witness statement.
 7. Regardless of the level of immunity, all persons are subject to a “stop and frisk” within the guidelines established by Terry v. Ohio and other case law.

8. Foreign diplomatic passports and U.S. Diplomatic passports are not proof of diplomatic or consular immunity. These documents do not convey any privileges or assertions of immunity. In rare instances they may indicate that the bearer has not yet received the appropriate U.S. identity documents. This information may be verified via the same manner as verifying a State Department issued identify card.

C. Traffic Enforcement

1. Stopping a mission member or dependent and issuing a traffic citation for a moving violation is permitted since it does **not** constitute arrest or detention. Depending on the level of immunity, the subject may not be compelled to sign the citation. In that case, the officer shall write “Refused - Diplomatic Immunity” in the signature area.
2. For serious traffic infractions such as Operating Vehicle under the Influence of alcohol or drugs (OVI), officers shall follow established divisional guidelines to the extent permitted on the back of the diplomatic/consular identification card. Officers may not compel a mission member or dependent to take a field sobriety test. However, if the individual is too impaired to drive safely, the officer shall not allow the individual to drive but shall arrange for alternate safe transport of the individual. The officer shall also arrange for safekeeping of the involved vehicle either by releasing it to a third party or arranging for other alternative safekeeping.

- D. Copies of any reports, citations, summons, memorandums, or informational Form-1’s shall be forwarded to the Deputy Chief of Homeland Security for forwarding to the U.S. State Department in Washington D.C. or to the U.S. Mission to the United Nations in New York City. The U.S. State Department shall be contacted in instances of OVI or other serious traffic infractions or accidents.