

	DELMAR POLICE DEPARTMENT	
	Policy 7.7 Diplomatic Immunity / Other Immunity from Arrest	
	Effective Date: 04/02/15	Replaces: N/A
	Approved: <u>Ivan Barkley</u> Chief of Police	
	Reference: N/A	

I. POLICY

Officers of the Delmar Police Department shall adhere to Federal and State laws that provide under certain circumstances, individuals that are immune from arrest. With the limited exception of certain diplomatic officials, immunity from arrest does not preclude prosecution of the individual for the offense for which immunity from arrest is claimed.

II. BACKGROUND

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.

The State of Maryland and the State of Delaware have also established laws, individually, that provide immunity to certain individuals outside of those stated above.

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. GOVERNMENT OFFICIALS, ELECTORS, AND NATIONAL GUARD

A. The United States Constitution prohibits the arrest of all United States senators and representatives, except for treason, felonies, and breach of the peace, during their attendance at a session of Congress, and while they are traveling to and from such sessions.

- B. The Delaware Constitution prohibits the arrest of all state senators and representatives, except for treason, felonies, and breach of the peace, during their attendance at a session of the General Assembly, and while they are traveling to and from such sessions.
- C. No person belonging to the military forces of the State of Delaware shall be arrested on any traffic citations while going to, remaining at, or returning from any place at which he or she may be ordered to attend for military duty when the Delaware National Guard has been called out upon state duty.
- D. The Delaware Constitution provides that electors (voters) shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections and in going to or returning from them.



DIPLOMATIC AND CONSULAR PRIVILEGES & IMMUNITIES FROM CRIMINAL JURISDICTION
LAW ENFORCEMENT ASPECTS SUMMARY

Category	Arrested or Detained?	Enter Residence Subject to Ordinary Procedures?	Issued Traffic Citation?	Subpoenaed as Witness?	Prosecuted?	Recognized Family Member?	
International Organizations	International Organization Staff	Yes	Yes	No—for official acts. Yes, in all other cases.	Official acts immunity; Consul Dept. of State.	No immunity or inviolability.	
	Diplomatic-level Staff of Missions to International Organizations	No ¹	No	No	No	Some 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.	Official acts immunity; Consul Dept. of State.	No immunity or inviolability.
Diplomatic	Diplomatic Agent	No ¹	No	Yes	No	Some as sponsor (full immunity and inviolability).	
	Member of Administrative and Technical Staff	No ¹	No	Yes	No	Some as sponsor (full immunity and inviolability).	
	Service Staff ²	Yes	Yes	Yes	Yes	No immunity or inviolability.	
Consular	Career Consular Officers ²	No, except in the case of a felony and pursuant to a warrant.	Yes ⁴	Yes	No—for official acts. Testimony may not be compelled in any case.	Official acts immunity; Consul Dept. of State.	No immunity or inviolability.
	Honorary Consular Officers	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	Official acts immunity; Consul Dept. of State.	No immunity or inviolability.
	Consular Employees ²	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	Official acts immunity; Consul Dept. of State.	No immunity or inviolability.

¹ Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
² This table presents general rules. The employees of certain foreign countries may enjoy *higher* levels of privileges and immunities on the basis of special bilateral agreements.
³ A small number of senior officers are entitled to be treated identically to "diplomatic agents."
⁴ 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.

Direct questions or inquiries to the Diplomatic Security Command Center:
 Call **571-345-3146** or Toll free to **1-866-217-2089**
 Available 24 hours daily

Assistance with consular notification procedures following the arrest or detention of a foreign national:
CONSULAR NOTIFICATION
 Business hours: 202-647-4415
 After-hours: 202-647-1512
 Fax Number: 202-647-7559

Contact the Office of Protocol: Diplomatic Affairs
202-647-1727

IMMUNITY ISSUES

DEPARTMENT OF STATE
 BUREAU OF DIPLOMATIC SECURITY
 Publication 11353
 Released August 2006

For Information on Diplomatic and Consular Personnel and Personnel of International Organizations Other Than The United Nations	
During Normal Business Hours (8 a.m. – 5 p.m. EST)	
Current status of U.S. Department of State drivers licenses, diplomatic license plates, registrations, or other diplomatic motor vehicle information:	202-895-3521 Fax: 202-895-3646
For reporting traffic incidents or accidents, issuance of citations, etc., foreign missions personnel:	202-895-3521
Send all citations and/or reports to:	Fax: 202-895-3646
To verify immunity status:	202-647-1985 or 202-647-1727
Please send copies of criminal incident reports and citations to:	
The Office of the Chief of Protocol	Fax: 202-647-1198
Diplomatic Security Service Protective Liaison Division	Fax: 202-895-3613
After Business Hours	
All after business hours inquiries should be made to the U.S. Department of State Diplomatic Security Command Center (operates 24-hours daily):	571-345-3146 or toll free 1-866-217-2089
To Verify the Immunity Status of United Nations Personnel	
During Business Hours (8 a.m. – 5 p.m. EST)	
Diplomatic agents and family members, UN Mission staff and family members, or UN Secretariat employees	212-415-4168 or 212-415-4407 or 212-415-4131
U.S. Department of State license tags, registration, or other motor vehicle information:	646-282-2825 or 646-282-2812
After Business Hours	
Information is available from the Communications Section of the U.S. Mission to the United Nations (USUN - operates 24-hours daily)	212-415-4444