

Bowie Police Department - General Orders



TITLE: DIPLOMATIC IMMUNITY	NUMBER: 438
EFFECTIVE DATE: 9/3/12	REVIEW DATE:
<input checked="" type="checkbox"/> NEW <input type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	DATE:

AUTHORITY Chief John K. Nesky	ACCREDITATIONS STANDARDS CALEA STANDARDS: 1.2.7, 1.3.1, 61.1.2-a-b-c, 61.1.3-d, 61.1.5, 61.1.8, 61.1.11, 82.2.4	TOTAL PAGES 7
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I. PURPOSE

To ensure that Bowie Police Department procedures conform to federal laws regulating diplomatic immunity that affect the Department’s enforcement procedures.

II. POLICY

These procedures are taken from the “Guidance for Law Enforcement Officers” paper issued by the State Department. Diplomatic immunity poses particular problems for law enforcement Officers, and that Officers may be overly lenient in applying immunity if they do not understand its purposes or rules. Allegations of serious crime or other serious difficulties with diplomatic or consular personnel should be fully investigated and promptly reported to the State Department as set out in this General Order.

While Officers will give every courtesy to diplomats, it is imperative that they also conduct thorough investigations, keep good records, and report whenever appropriate, to the State Department. Taking these steps allows the State Department to exercise the tools it has to remove persons from the U.S. who are engaged in criminal activity. The State Department may also cause driver’s licenses to be revoked.

III. 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 conferred upon the personnel of a foreign diplomatic mission and, in varying degrees, their family member(s) enjoy because they serve as representatives of a sovereign state and require special rights and guarantees for the effective functioning of the mission.

- C. Diplomatic Agents – heads of missions, ambassadors and charge d’affaires, and members of their diplomatic staff, i.e., those recognized by the U.S. Government as having diplomatic rank and title.
- D. Administrative and Technical Staff – secretaries, clerical personnel, office managers and certain professional security personnel.
- E. Service Staff – drivers, cleaners, and building/grounds personnel.
- F. Private Servants of Members of the Mission – persons hired by diplomats for their personal use and their families.
- G. Consular Officers – persons who are not Diplomatic Agents and do not enjoy the privileges and immunities, but may perform a variety of functions of principal interest to their countries (e.g., issuance of travel documents, attending to difficulties of their own countrymen who are present in the host country, and generally promoting the commerce of their countries).
- H. Special Bilateral Agreements – agreements with some foreign countries to which the categories set forth above are not applicable and which **grant significantly higher privileges and immunities to all members of their embassy staffs (provided the staff member is a national of the sending state) and to certain of their consular personnel (and sometimes their family members). In some cases, these privileges and immunities approximate those accorded Diplomatic Agents.** Officers should be aware of this distinction because they may confront situations where a chauffeur or a mechanic from the embassy of one of these countries asserts a right to full diplomatic privileges and immunities.

IV. FULL CRIMINAL IMMUNITY

- A. This type of immunity is given to Diplomatic Agents, Administrative and Technical staff of missions and their families.
- B. Full criminal immunity means immunity from prosecution, and 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 the person is not required to give evidence as a witness.

V. LIMITED CRIMINAL IMMUNITY

- i. Service Staff members have limited criminal immunity. They can be detained, arrested, and prosecuted for criminal acts. If prosecuted, service staff members can raise “official acts” immunity as an affirmative defense. The court having jurisdiction will then determine whether or not the Service Staff member was acting in his capacity at the time of the offense. Service Staff can be required to give evidence as witnesses, and their persons and effects can be searched, in accordance with local law.

- ii. Consular Staff have limited immunity for “official Acts”. They may be arrested for felonies, **with a warrant**, but have immunity from providing evidence as witnesses where a case involves their official duties. Officers are not expected to determine whether a given set of circumstances constitutes an “official act”, as this will be determined by a court of law.

VI. OUTLINE OF CRIMINAL IMMUNITY BY PERSONNEL CATEGORY OR FAMILY CLASSIFICATION

- A. The following persons have full immunity and will carry diplomatic identification documents issued by the State Department:
 1. The Head of Mission (Ambassador or Charge d’affaires)
 2. Diplomatic Staff of Mission – Full Immunity
 3. Members of the Delegation of the Commission of the European Communities;
 4. Permanent representatives and senior staff of missions to the Organization of American States and the United Nations;
 5. Senior officials of the United Nations Secretariat;
 6. Administrative and Technical Staff, including;
 - a. Administrative Officers/Assistants
 - b. Security Officers
 - c. Purchasing agents
 - d. Budget and Fiscal Technicians
 - e. Archivists
 - f. Cryptographers
 - g. Receptionists/Secretaries
 - h. Stenographers/Typists
 - i. Clerks
 - j. Couriers/Messengers
 - k. Guards
 7. Families of Diplomatic Agents, Staff of Mission, Administrative and Technical Staff, including:
 - a. Spouses
 - b. Dependent children until age 21, or age 23 if a full-time student at an institution of higher learning
- B. The following persons have immunity for acts in the course of their duties (as decided by a court):
 1. Service Staff, including:
 - a. Chauffeurs
 - b. Drivers
 - c. Servants in missions

d. Employees performing domestic duties in missions

C. The following persons have no immunity:

- i. Families of service staff – No Immunity
- ii. Private servants and their families
- iii. Family members of consular officers

D. The following persons have limited immunity for “official acts” in both criminal and civil matters.

- i. Consular Staff
- ii. Private servants and their families
- iii. Family members of consular officers

VII. TRAFFIC VIOLATIONS INVOLVING DIPLOMATS

A. Moving Violations

When a driver believed to have diplomatic immunity is stopped for any moving traffic violation and has proper and valid identification indicating immunity, the Officer may issue an appropriate traffic citation or warning notice. The issuance of a traffic citation does not constitute an arrest or detention. This paragraph shall not be construed as authorizing the arrest or detention of member of the Diplomatic Corps for any violation of the Transportation Code of Maryland. A diplomat does not have to sign the citation and cannot be arrested for refusal to sign accept the citation.

B. Copies of Citations and Accident Reports

1. Officers should, in addition to usual procedure, advise the Sergeant on the next regular business day if one of the following situations occur:
 - a. A citation is issued to the driver of a vehicle (or the accident involves a vehicle) with U.S. Department of State diplomatic license plates;
 - b. A citation is issued to (or the accident involves) the bearer of a U.S. Department of State diplomatic driver’s license; or,
 - c. A citation is issued (or the accident involves) a driver whose identity has been confirmed by the U.S. Department of State, Office of Protocol, as a member of a foreign mission entitled to immunity.
2. The Sergeant will promptly forward the original report and/or citation with a cover letter under the respective official’s signature addressed to the Office of Foreign Mission, DMVO, Attention: Driver Services, 3507 International Place, N.W., Washington, D.C. 20008.

C. Driving While Intoxicated Violations

When an Officer stops an individual with the intention of making an arrest for driving while intoxicated and that individual is entitled to diplomatic immunity:

1. If the state of intoxication of the individual entitled to immunity, whether claimed or not, is such that his driving would endanger the safety of the community, the Officer shall request that the diplomat not drive and provide assistance in parking the vehicle or securing another driver. Once the vehicle is parked, record the location on the Vehicle Impound Form, and provide the diplomat with a copy of the form.
2. An Officer may issue a traffic citation to the person for DWI and any other related traffic charges; however, no physical arrest can be made.
3. An Incident Report (not a DWI Arrest Report) will be written and submitted for supervisory review and approval, along with copies of all citations and reports.
4. If the diplomat refuses assistance or a claim is made that the Officer's requested action would restrict the effective exercise of his function as a diplomat, the Officer will politely inform the diplomat that he is free to go, but the vehicle may not be moved, and the embassy or legation concerned will be contacted immediately for advice or assistance in obtaining a driver and removing the driver.
5. If the driver is entitled to diplomatic immunity, he should not be restrained except in extreme cases and will not be subjected to any sobriety or any other mandatory test. 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.

D. Towing

When it becomes necessary to have a vehicle bearing diplomatic registration towed, Officers will comply with the Department's Towing Policy. A diplomat's vehicle is considered secure from violation and cannot be searched.

VIII. CLAIMS OF DIPLOMATIC IMMUNITY

- A. When proper I.D. has been shown **and status is verified**, the immunity will be fully respected. Where 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. However, in any serious incident, the Officer will record all pertinent details from the I.D. card and details and circumstances of the incident in accordance with usual police procedures.

An Officer initiating such a report will notify the Chief on the next business day. The Chief will promptly forward the original report, with a cover letter under the Chief's signature, addressed to the Command Center, Office of Security, Department of State, 2121 Virginia Ave., N.W., Washington, D.C. 20520.

Serious incidents should be reported by telephone as soon as possible to 202-663-0812, which is operational 24 hours a day.

- B. When an officer is confronted with a person claiming immunity and the person cannot produce satisfactory I.D. and the situation would normally warrant arrest or detention, the Officer will inform the person that he or she will be detained just until proper identity can be confirmed. The State Department Protocol Office will be called immediately 202-663-0812 to verify claims of Diplomatic Immunity.
- C. Inquiry should also promptly be made to the State Department in any case where an individual claims immunity and cannot present satisfactory identification or in any case where the Officer has reason to believe that invalid identification is being presented. The following telephone numbers are provided for use in this regard:

During normal business hours – Current Status of:

U.S. Department of State federal license tags, registration, or other motor vehicle information:
202-895-3512

U.S. Department of State driver's licenses and general licensing information:
202-895-3512

For reporting traffic accidents/incidents, issuance of citations, etc., involving foreign missions personnel: 202-895-3522

Diplomatic agents and family members: 202-647-4570

Embassy administrative and technical, service staff, and families: 202-647-1405

Consular personnel and families: 202-647-1404

International organization: 202-647-1402

After normal business hours:

All inquiries should be made to the Command Center of the Bureau of Diplomatic Security, Department of State, 202-647-7277 (operates 24 hours a day)

- D. Where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, police may intervene to the extent necessary to halt the activity. This naturally includes the power of the police to defend themselves from personal harm.

During normal business hours

U.N. (New York) verification information is available from the Host Country Section of the U.S. Mission to the United Nations, 212-415-4131.

Current status of U.S. Department of State license tags, registration, or other motor vehicle information: 212-826-4500

After normal business hours:

Information is available from the Communication Section of the U.S. Mission to the United Nations, 212-415-4444 (operates 24 hours per day):

- E. Tax Exemption, Auto Registration, License Plates and Driver's Licenses are not conclusive proof of diplomatic immunity. Again, these only indicate that the bearer may be entitled to some degree of immunity.
- F. There are three types of identification cards: Diplomatic (blue border for diplomats); Official (green border for employees); and, Consular (red border for consular personnel). These identification cards are 3 3/4" x 2 1/2" 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. 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. Space is also provided for the bearer's signature.

While this form of identification is generally to be relied upon, law enforcement authorities are nonetheless urged immediately to seek verification as indicated above in connection with any serious incident or in any case where they have reason to doubt the validity of the card.

Police officers should be alert to the fact that newly arrived members of the diplomatic and consular staffs may not yet have these official identity documents and should be prepared to contact the U.S. Department of State, Protocol Office, 202-647-7277 (24 hrs./day) for verification if confronted with such situations.

- G. Even though individuals ultimately enjoy the protections afforded by diplomatic or consular privileges and immunities, as indicated above, it is for the benefit of the sending country that these protections are actually devised. Immunity may always be waived, in whole or in part, by the country which employs such person.

While waiver of immunity in the face of criminal charges is not common, it is routinely sought and occasionally granted. The Department's ability to secure such a waiver may depend to a large degree on the strength (and documentation) of the case at issue. Similarly, it is of little avail for the Department to secure 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.

- H. When a U.N. diplomat is involved in an incident or arrest, the initiating Officer will notify the Chief the next business day. The Chief will promptly forward the original report, with a cover letter under the Chief's signature, addressed to the Host Country Section, U.S. Mission to the United Nations, 799 UN Plaza, New York, NY 10017. A copy will be sent to the PGPD, Director of the Records Division for official dissemination. Serious incidents should be reported by telephone as soon as possible to the Communications Section of the U.S. Mission to the United Nations in New York.