



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.12

TITLE: DIPLOMATIC AGENTS & CONSUL OFFICERS

EFFECTIVE: 01/07/2018

REVISED: (Conversion replaces Policy 422)

PURPOSE:

This Chapter outlines the process and procedure to be followed by members in addition to the guidelines of **Chapter 1.9 – Arrests** and shall be utilized for the arrest or detainment of a foreign national with diplomatic immunity.

POLICY

It is the policy of this Department to adhere to the guidance 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.

DEFINITIONS:

Diplomatic Mission Administrative and Technical Staff—The administrative and technical staff are members of a diplomatic mission who perform tasks critical to the inner operation of the embassy. They enjoy many of the same privileges as diplomatic agents, including personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as a witness. With regard to civil jurisdiction, however, they enjoy only official acts immunity. As with diplomatic agents, recognized household members of the administrative and technical staff enjoy the same immunity from criminal jurisdiction as do recognized household members of diplomatic agents.

Arrest—The taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him/her.

Consular Officer—An official appointed by a sovereign state to protect its commercial interest and aid its citizens in a foreign city.

Consulate Employees—Employees who perform administrative and technical services for the consulate post. They have no personal inviolability, and only official acts immunity. Their family members enjoy no personal inviolability or jurisdictional immunities of any kind.

Detainee—For the purposes of this Chapter, a detainee 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, traffic crash investigations or investigatory stops are not considered detentions for purposes of this policy.

Diplomatic Agents—Diplomatic agents are ambassadors and other diplomatic officers who generally have the function of dealing directly with the host country officials. They enjoy the highest degree of privileges and immunity. They enjoy complete personal inviolability, which means that they may not be handcuffed (except in extraordinary circumstances), arrested, detained, or prosecuted, or subpoenaed as a witness. Residences or property, including vehicles, may not be entered or searched. Recognized household members enjoy precisely the same privileges and immunities as do the sponsored diplomatic agents.

Diplomatic Immunity—A principle of international law exempting designated foreign government officials from the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.

Honorary consul / honorary consular officer—American citizens or permanent resident aliens who perform consular services on a part-time basis. Honorary consuls, unlike career consuls, are permitted to carry on another business. These persons have “official acts” immunity only and immunity from the obligation to provide evidence as witnesses only in respect of official acts. They do not enjoy personal inviolability and may be arrested pending trial if circumstances should otherwise warrant. Recognized household members of honorary consuls enjoy no immunity or personal inviolability. Honorary consuls are issued official identification cards by the U.S. Department of State.

Personal Inviolability—A principle 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.

Personnel of International Organizations—Employees of international organizations, such as the United Nations and the World Bank. The vast majority of personnel employed by an international organization enjoy official acts immunity only and no personal inviolability. In certain cases, the most senior executives of such organizations have been accorded privileges and immunities equal to those afforded diplomatic agents, such as the Secretary General and all Assistant Secretaries-General of the United Nations.

Personnel of National Missions to International Organizations—Employees of national missions to international organizations, such as a foreign government’s mission to the United Nations. Pursuant to international law, the most senior representatives in national missions to the international organizations have the personal inviolability and immunity equivalent to that afforded diplomatic agents. The remainder of the staff are granted only official acts immunity.

Diplomatic Mission Service Staff—Members of the service staff who perform tasks such as driving, cleaning, or grounds maintenance for the mission. They are accorded much less in the way of privileges and immunities than diplomatic agents or members of administrative and technical staff. Service staff members generally have only official acts immunity. Families of the service staff enjoy no diplomatic privileges or immunities.

Official Acts Immunity—Official acts immunity is not a prima facie bar to the exercise of jurisdiction by U.S. courts. Rather, it is an affirmative defense to be raised before the U.S. court

with subject matter jurisdiction over the alleged crime. If such court, in the full light of all the relevant facts, determines the action complained of was an official act, only at that point does international law preclude the further exercise of jurisdiction by the U.S. court. Because judicial determination in a case of this type is highly dependent on the facts surrounding the incident, a full and complete police report may be critical in permitting the court to make a just decision.

Recognized Household Members—Spouses, children until the age of 21 (until the age of 23 if they are full-time students at an institution of higher learning), and such other persons expressly agreed to by the US Department of State in extraordinary circumstances.

TECRO / TECO—An acronym for the Taipei Economic and Cultural Representative Office in the United States (TECRO) and its subsidiary offices, the Taipei Economic and Cultural Offices (TECO). They facilitate the commercial, cultural, and other relations between the people of the United States and the people on Taiwan. The term “TECRO designated employees” means persons duly notified to and accepted by the American Institute in Taiwan (AIT) as designated employees of TECRO at its primary office or one of its subsidiary offices (TECO). TECRO / TECOs in the United States enjoy many diplomatic privileges such as extraterritoriality, providing consular protection and their staff have diplomatic immunity.

GENERAL

1. If an incident involves someone who may have diplomatic immunity, the investigating officer(s) shall conduct a complete investigation of the incident. It is the United States Department of State’s policy to encourage law enforcement authorities to: pursue criminal investigations vigorously; prepare cases carefully and completely; and document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system. The U.S. Department of State will request a waiver of diplomatic immunity in every case in which the prosecutor advises that he or she would prosecute but for immunity. If the charge is a felony or a crime of violence and the sending country does not waive immunity, the U.S. Department of State will require that person to depart the U.S. and will request that law enforcement issue a warrant for that person’s arrest so that the name will be entered in NCIC.
2. If a person claims diplomatic immunity or personal inviolability, it is imperative that the investigating officer promptly and accurately confirm the status of the person, as outlined below.
3. Investigating officers may contact the Communications Section to seek assistance from the Department of State (see **NOPD.org / Resources / Diplomatic and Consular Immunity - Guidance for Law Enforcement** for contact information).
4. If the individual is entitled to the full inviolability and immunity of a diplomatic agent, he or she may not be arrested, handcuffed, and/or detained, **except** 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.
5. In circumstances when there is imminent danger to public safety or it is apparent a serious crime may otherwise be committed (felony or crime of violence), police officers may intervene to the extent necessary to halt such activity, regardless of personal inviolability.
6. Police officers are permitted to defend themselves from personal injury in conformity with **Chapter 1.3 – Use of Force**.

7. When responding to or investigating an apparent violation of the law involving a person claiming diplomatic immunity, the investigator shall request the official identity card issued by the Department of State (or the U.S. Mission to the United Nations in the case of persons accredited to the UN, or the American Institute in Taiwan for the employees of TECRO or TECO) and verify the immunity status by contacting the State Department or card-issuing agency.
8. If the individual is unable to produce satisfactory identification, and the results of the investigation normally require an arrest, the officer shall inform the individual he or she will be detained until proper identity can be confirmed by the Department of State, the U.S. Mission to the United Nations, or the American Institute in Taiwan. Until an individual's status of inviolability has been confirmed in situations that warrant criminal arrest, the individual shall only handcuffed if the person claiming personal inviolability poses an immediate threat to [public] safety or it is apparent that a serious crime may otherwise be committed. (See: **Chapter 1.3.1.1 – Handcuffing and Restraint Devices.**)
9. Once proper identification is available or obtained and the individual's status of immunity and/or inviolability has been confirmed, he or she shall be released immediately; the investigating officer shall honor the individual's immunity granted by law. (See: **NOPD.org / Resources / Diplomatic and Consular Immunity - Guidance for Law Enforcement**)
10. In all instances involving individuals claiming diplomatic immunity the investigating officer(s) shall:
 - (a) Identify and verify the diplomatic status of the detainee by calling the State Department. Identity cards are issued by the U.S. Department of State, Office of Protocol, and the U.S. Mission to the United Nations and by the American Institute in Taiwan to be used as identification for diplomats and consular officials. The front of the card displays the Department of State or United Nations Seal and foreign official's photograph. A statement of the bearer's immunity is printed on the back with his/her signature. The identification cards are color coded according to the following:
 - **Blue Border** - Diplomatic officers (including UN diplomatic officers) and their recognized family members.
 - **Green Border** - Embassy administrative and technical staff employees and their families, embassy service staff, UN Permanent Mission support staff, and TECRO employees and their recognized family members.
 - **Red Border** – Career consular officers, employees, or their recognized family members, honorary consular officers, and TECO head and deputy head, and TECO employees and their recognized family members.
 - (b) Contact the State Department if the person claiming diplomatic status cannot produce a valid identity card or other official identification.
 - (c) Request a supervisor meet him/her at the scene;
 - (d) Document all pertinent information from the identity card in the police incident report (EPR);
 - (e) Fully document the incident on the NOPD incident report form (EPR), including traffic offenses;
 - (f) Submit the report for approval (see **Chapter 82.1**); and
 - (g) Forward a copy of the approved police incident report and all related documentation to the Department of State or the US Mission to the UN(see **NOPD.org / Resources / Diplomatic and Consular Immunity - Guidance for Law Enforcement** for contact information)

TRAFFIC OFFENSES BY DIPLOMATS AND CONSULS

11. Stopping a diplomatic or consulate officer and issuing a traffic citation is permitted. **A signature on the citation by the individual cited is not required.**
12. 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:
 - Plates with a “D” prefix or suffix are issued to diplomatic missions and those members who hold diplomatic rank.
 - Plates with a “C” prefix are issued to consular missions and career consular officers.
 - Plates with an “S” prefix are issued to the administrative and technical staff at diplomatic missions and consular employees at consular missions.
 - 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.
13. 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.**
14. Vehicle registration cards are issued by the Department of State to accompany diplomatic license plates. The card provides the vehicle description, name and address of the registered owner, and the license plate number assigned to the vehicle. Verification of the registered owner, vehicle, or license plate can be made through standard access of NLETS.
15. Officers shall follow normal procedures to intervene in a traffic violation he/she has observed, even if immunity ultimately bars any further action at the scene, and report the incident in accordance with this Chapter if the violator claims immunity.
16. 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 (202-895-3613 / see **NOPD.org / Resources / Diplomatic and Consular Immunity - Guidance for Law Enforcement** for contact information).
17. Serious traffic violations such as driving while intoxicated and/or an accident with personal injury require:
 - (a) Telephonic notification to the U.S. Department of State (see **Appendix 3** for contact information);
 - (b) Scene response by the investigating officer’s supervisor; and
 - (c) A standard field sobriety test shall be offered, but may not be compelled. If a test is agreed to, the results shall be documented. If the investigating officer believes the individual too impaired to drive safely, the officer shall not permit the individual to drive. The options available are:
 - Take the individual to the district station, or other suitable location, where the individual may recover sufficiently to drive;
 - Allow the individual to summon a friend or relative to drive;
 - Call a taxi for the individual at his/her cost; or
 - Suggest an alternative form of transportation.
18. A copy of an approved, completed report shall be sent to the Department of State (see

NOPD.org / Resources / Diplomatic and Consular Immunity - Guidance for Law Enforcement for contact information). It is the Department of State's policy to suspend the operator's license of foreign mission personnel not considered responsible drivers, and this policy may only be effectively enforced if all driving related infractions are fully reported to the Department of State.

DIPLOMATIC AND/OR CONSULATE VEHICLES AND PROPERTY

19. The property of a person enjoying full immunity, including his/her vehicle, **may not be searched or seized**. Such vehicles may not be impounded or "booted" but may be towed the distance necessary to remove them from obstructing traffic or endangering public safety.
20. If a vehicle owned by a diplomat is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle's status through standard access to the **National Law Enforcement Telecommunications System (NLETS)** use access code U.S. Should the vehicle prove to be stolen or to have been used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled must be considered **temporarily suspended**, and normal search of the vehicle and, if appropriate, its detention, are permissible.
21. Vehicles registered to consular officials, including those with full criminal immunity, and consulates are not inviolable and may be towed, impounded or booted in accordance with local procedures.
22. The Commander of Education and Training shall create a lesson plan detailing Diplomatic and consulate immunity privileges for recruit and in-service training.