



LAW ENFORCEMENT OPERATIONS POLICY AND PROCEDURES

Procedure 7.3.1p11. Chapter 11: Consular/ Diplomatic Immunity

Revised:

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I. PURPOSE:

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 for their official and, to a large extent, their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming to national and local laws and regulations. Moreover, 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.

In all cases where a person asserts immunity from arrest, the detaining officer will immediately notify their immediate supervisor.

Under no circumstances will an officer permit a person entitled to immunity from arrest to continue operating a motor vehicle or boat if the officer has probable cause to believe that the person is under the influence of alcohol or drugs.

II. DEFINITIONS:

Diplomatic Agent

Diplomatic Agents enjoy the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested, or detained for any

criminal offense. Generally, they are immune from civil suits but not immune from receiving a citation/summons. Family members of these persons enjoy identical privileges and immunity.

Diplomatic Administrative and Technical Staff

Enjoy privileges and immunity like Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested, or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties.

Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity for Diplomatic Service Staff

They are accorded a few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for traffic violations. Family members enjoy no privileges or immunities.

Consular Officers

Enjoy privileges and immunity from criminal and civil matters arising from their official duties.

For example, Consular Officers may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors but may not be arrested or detained prior to trial or other disposition of charges. Officers may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.

Consular Employees

Enjoy privileges and immunity from criminal and civil matters arising from their official duties.

Consular Employees may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.

Honorary Consuls

Enjoy privileges and immunity from criminal and civil matters arising from their official duties. For example, Honorary Consuls may be arrested or detained for criminal offenses. Officers may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.

III. DIPLOMATIC IMMUNITY:

- A. Under Federal law, heads of a mission (usually called the Embassy) of a foreign government to the United States and the United Nations Headquarters in New York, members of the diplomatic, administrative, and technical staff of the mission, and members of their family household are "not liable to any form of arrest or detention." Generally, this does not extend to United States citizens employed by an embassy.
- B. Persons entitled to diplomatic immunity are entitled, by law, to be treated with "due respect" and "appropriate steps (must be taken) to prevent any attack on their person, freedom, or dignity."
- C. Under normal circumstances, a person who establishes that they are entitled to diplomatic immunity (see Verification of Status) cannot be arrested or tried for any criminal offense unless the foreign government expressly waives such immunity. As indicated above, immunity continues only if the person is accredited as such to the United States.

IV. CONSULAR IMMUNITY:

- A. In addition to members of their embassy staff, foreign governments may, with the approval of the United States, establish consular offices to provide consular services to their foreign

nationals in the United States and to represent them in trade matters. Under Georgia Law, officials of the Atlanta office of the Coordination Council for North American Affairs of the Republic of China (also known as Taiwan) are entitled to the same protections and immunities as career Consuls.

There are two types of consular officials, career Consuls, and honorary Consuls.

1. Career Consuls are normally full-time employees of the foreign government.
2. Honorary Consuls may be a citizen of the foreign government who has residency in the United States or a United States citizen.

B. In the absence of a specific treaty, consular officials are not entitled to diplomatic immunity, but they are entitled to consular immunity, which is more limited than diplomatic immunity.

Career consular officers entitled to consular immunity.

1. Included are consul-generals, deputy consul-generals, Consuls, vice Consuls, and consular agents who are official representatives of a foreign government accredited to the United States.
2. "Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority." A "grave crime" is a felony offense that endangers public safety, and a warrant is required.
3. Career consular officers are subject to criminal prosecution by the courts of this State except for acts performed within the scope of consular duties.

C. Honorary Consuls

Honorary Consuls are not entitled to immunity from arrest or detention. They are subject to the civil or criminal jurisdiction of the courts of this State unless they were performing official acts in the exercise of their consular function.

D. Family members

Family members of consular officers are not entitled to immunity but will be treated with appropriate courtesy and respect. Incidents involving family members of consular officials will be reported through channels the same as for consular officials.

E. Consulates and Consular Premises

Consulates and consular premises are inviolable. This means that law enforcement and other government officials cannot enter that portion of the consular premises "which is used exclusively for the work of the consular post except with the consent of the consular post, or his designee or the head of the diplomatic mission of the sending state." Consulates are required to be marked. If in the case of an honorary consul, the consular premises are within a building or office used for other purposes, only that portion of the marked structure cannot be entered.

F. Diplomatic and Consular Pouches

1. A diplomatic or consular pouch is a container (of any size) used to transport official communications (including equipment needed for communication). It is required to be marked as such.
2. No officer will open a diplomatic or consular pouch under any circumstance. If an officer has probable cause to believe that a diplomatic or consular pouch is being used in furtherance of a crime, all of the facts will be reported to their supervisor, who will contact the U.S. State Department Bureau of Diplomatic Security.

V. PROCEDURES:

1. In all cases where a person is known to be entitled to or asserts diplomatic or consular immunity, the person will be treated with the courtesy and respect that befits their distinguished position, and a supervisor will be contacted immediately. The supervisor must immediately contact the United States State Department immediately to verify the person's status and seek official guidance. (See Verification of Status)
 2. Career consular officials may only be arrested for a felony pursuant to a warrant issued by a judge.
 3. Traffic violations (**GLECP 6.15d**)
 - a) Under international law, the issuance of a traffic citation does not constitute an arrest or detention. Therefore, the officer on the scene may, after ascertaining that the official has the proper credentials (See Verification of Status), based on the nature of the offense, issue a warning or citation.
 - b) A copy of the citation and a report of the incident will be forwarded through the chain of command to the United States Department of State, Washington D.C. 20520.
 4. Traffic Accidents
 - a) If a motor vehicle involved in an accident (1) was operated by a person who has verified diplomatic or consular status or (2) bears diplomatic or consular motor vehicle license plates issued by the United States Department of State, a copy of the accident report, together with a copy of any traffic citations issued to the person entitled to diplomatic or consular status and the report of the incident will be forwarded through the chain of command to:

OFM Diplomatic Motor Vehicle Office 3507
International Place, N.W. Washington, D.C. 20008
- Vehicles issued with Department of State license plates must be covered by liability insurance.
5. Driving Under the Influence and other Offenses Where the Safety of the Official or Public is Involved
 - a) The primary consideration in DUI cases and other more serious offenses is to ensure that the official is not a danger to themselves or the public. At best, these are sensitive situations, and the officer must treat the official with respect and courtesy. If it is necessary to restrain the official to prevent them from harming themselves, or others (including the officer). (See the procedures outlined in 6. Protection of Officials from Harm to Themselves or Others; Preventing Further Criminal Activity)
 - b) If the supervisor determines that a diplomatic or consular official is a danger to themselves or others, the supervisor may direct that:
 - i. The official is taken to the station or another location.
 - ii. Where they may recover sufficiently to drive safely.
 - iii. The official is taken to a telephone to call someone to drive them home.

- iv. A taxi is called for the official.
 - v. The official is taken home.
- c.) In cases involving a motor vehicle or boat operated by a person asserting diplomatic or consular immunity who the officer believes to be intoxicated, the officer may ask the individual to perform field sobriety tests the same as any other driver while awaiting verification of the status claimed.
- d.) If the incident involves a person entitled to diplomatic immunity, the supervisor will contact the United States Department of State, Office of Protocol by telephone immediately and advise them of the situation. A full written report will be submitted within 24 hours through channels to:

Office of Protocol
Department of State
Post Office Box 2976
Washington, D.C. 20520

- e) For consular officials, a full report will be submitted, through channels, to the United States Department of State, Office of Protocol

6. Protection of Officials from Harm to Themselves or Others; Preventing Further Criminal Activity

- a) If a person asserting or entitled to diplomatic or consular immunity presents a clear, present, and actual danger to him or herself, or others, an officer may take such reasonable actions as may be necessary to protect public safety and the person entitled to immunity or to prevent further illegal activity.
- b) If it is necessary to physically restrain a diplomatic or consular official (i.e., handcuff), the officer will, after taking appropriate action, explain to the official why they are being restrained and that they will be released from restraint as soon as they no longer are a danger to their self or others.
- c) The responding supervisor will immediately contact the U.S. State Department if a diplomatic or consular official must be restrained. (See 8. Verification of Status at the bottom of this page.) The supervisor will also report the incident through the department chain of command and notify the District Attorney.
- d) Use of excessive force or use of force where there was no clear, present, and actual danger to the person entitled to immunity or others may result in the prosecution of the officer under Federal law.

7. Possession of Contraband

- a) If a person asserting diplomatic or consular immunity has contraband (i.e., controlled substances), the officer may seize the contraband. (See Diplomatic and Consular Pouches)

b) Any such seizure will be immediately reported to a supervisor. The supervisor will contact the District Attorney and the United States Department of State, Office of Protocol by telephone immediately and advise them of the situation. A full written report will be submitted within 24 hours through channels to:

Office of Protocol
Department of State
Post Office Box 2976
Washington, D.C. 20520

8. Verification of Status

- a) Persons claiming diplomatic or consular immunity are required to produce satisfactory evidence of their official status.
- i. The United States Department of State issues identification cards to diplomatic officials, consular agents, and officials of international organizations accredited to the United States. On the back of these cards is an explanation of the immunity to which the official is entitled and telephone numbers that may be called to verify status.
 - ii. The Georgia Secretary of State may issue honorary Consuls identification cards.
 - iii. The United States Department of State issues motor vehicle operator permits (driver's licenses) to persons entitled to diplomatic or consular immunity and functions similarly to the Georgia Department of Public Safety regarding these licenses. Driver's licenses issued by the Department of State will not be relied on as conclusive proof of the immunity of the bearer.

NOTE: U.S. State Department driver's licenses have a hologram over a portion of the photograph. It will turn dark if tampered with.

- iv. The United States Department of State issues motor vehicle plates (license tags) for vehicles operated by persons entitled to diplomatic and consular immunity.
 - (a) These tags are red, white, and blue in color. A letter code indicates the status of the vehicle:
 - D = diplomatic vehicle
 - S = diplomatic staff vehicle
 - C = consular vehicle
 - (b) Information regarding the vehicle and registered owner is available through NLET, the same as out-of-state license plates. Use the State code "US."
 - (c) In addition, the Georgia Department of Revenue may issue consular license plates for vehicles registered and operated in Georgia by career or honorary Consuls.
 - (d) License plates issued by the Department of State, or the State of Georgia will not be relied on as conclusive proof of the immunity of the bearer but only as an indication that the vehicle may be operated by someone entitled to diplomatic or consular immunity.

(e) In any situation in which an official asserting immunity cannot produce satisfactory evidence thereof or the officer wishes to confirm the status claimed, the United States Department of State should be contacted:

i Regular Hours:

Diplomats & families: 202-647-4510

Diplomatic employees & families: 202-647-1405

Consular personnel & families: 202-647-1404

International Organizations: 202-647-1402

ii After hours: 202-647-7277

(f) Verification of Department of State Drivers Licenses and motor vehicle registrations may be obtained through NLET (State Code is "US") or by calling:

Registrations: 202-895-3532

Driver Licenses: 202-895-3512

After hours: 202-647-7277

9. Official Guests of the United States

Official Guests of the United States are foreign nationals who are in the United States and are so designated by the U.S. Secretary of State.¹

NOTE: Except at large events such as the Olympics, persons designated as Official Guests of the United States may be accompanied by a representative of the U.S. State Department.

1. Official Guests can include:

- a) Foreign government officials.
- b) Olympic athletes, coaches, and trainers.
- c) Members of the International Olympic Committee accredited to the games.
- d) Members of national Olympic committees accredited to the games.
- e) Members of international sports federations accredited to the games.
- f) Immediate family members of official guests.
- g) Foreign officials accredited the games.

2. Official Guests do not have immunity but will be treated with courtesy and respect. A superior officer should be contacted immediately for any incident

¹ By law, only the United States Secretary of State may designate a foreign national as an "Official Guest of the United States", 18 U.S.C. § 1116(b)(2); 22 C.F.R. § 2.2, 2.4, although it is common practice for state and local governments and some private organizations to honor individuals by referring to them as "official guests." However only foreign nationals who are formally designated by the U.S. Secretary of State as an Official Guest of the United States are covered by 18 U.S.C. §§ 112, 878, 970 1116, 1117 and 1201.

involving an Official Guest. The supervisor will, in turn, contact the District Attorney's office or, in the case of misdemeanors, the Solicitor of the State Court.

3. The superior officer will submit a report of any incident in which a person designated as an Official Guest of the United States is involved (either as an accused, victim, or witness) through official channels to:

United States State Department
101 Marietta Street, N.W.
Suite 1010
Atlanta, GA 30303
404-331-3521 or 331-3522 or 331-3523
or contact 202-647-7277

4. Verification of an individual's status as an Official Guest may be obtained from:
U.S. State Department 404-331-3521
After hours: 202-647-7277

10. Diplomats, Consuls, or Official Guests as Victims or Witnesses to a Crime

i. If a diplomat, consul, or official guest of the United States is a victim of a crime, the officer will immediately contact a supervisor.

ii. It is the responsibility of the supervisor to immediately contact:

1. In the case of diplomats and official guests², the regional office of the F.B.I. and the U.S. State Department command post by phone at 202-663-0812. The F.B.I. has primary jurisdiction over offenses committed against diplomats and official guests.³ The District Attorney should also be contacted.

2. In the case of a consul, the District Attorney, and the U.S. State Department. The F.B.I. should also be contacted if the consul is a career consul.

iii. If a diplomat, career consul, or official guest is a witness to a crime, a supervisor will be notified.

1. A person entitled to diplomatic or consular immunity may not be detained as a witness, but the officer should promptly obtain the witness's name and a telephone number where the official may be contacted later.

2. The supervisor will notify the District Attorney in writing as soon as possible that one of the witnesses is a diplomat, consul, or official guest. The District Attorney's Office will coordinate interviews with the witness.

iv. By law, diplomats and Consuls can appear as a witness only with the prior consent of their government.⁴

11. Arrests of Foreign Nationals

Citizens of other nations residing in or visiting Georgia are subject to Georgia law. Except as indicated below, foreign nationals who are arrested will be treated like U.S. citizens.²

1. If the foreign national who is arrested has a passport, visa, border crossing card, resident alien card, or alien registration card, the arresting officer shall make a photostatic copy of the documents and attach them to the arrest/booking report.³

2. By law, if a citizen of the following countries is arrested, the supervisor or their designee will notify the nearest consulate, or the embassy of the arrest and the accused will be told their embassy or consulate has been contacted.⁴ Notification will be made at the time the accused is booked.

Albania, Antigua, Armenia, Azerbaijan, Bahamas, Barbados, Belarus, Belize, Brunei, Bulgaria, Peoples Republic of China, Republic of (Taiwan), Costa Rica, Cyprus, Czech Republic, Dominica, Fiji, The Gambia, Republic of Georgia, Ghana, Grenada, Guyana, Hungary, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Malaysia, Malta, Mauritius, Moldova, Mongolia, Nigeria, Philippines, Poland, Romania, Russian Federation, St. Kitts/Nevis, St. Lucia, St. Vincent/Grenadines, Seychelles, Sierra Leone, Singapore, Slovak Republic, South Korea, Tajikistan, Tanzania, Tonga, Trinidad/Tobago, Turkmenistan, Tuvalu, Ukraine, United Kingdom (including Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands), U.S.S.R. (Although the U.S.S.R. no longer exists as a national entity, many citizens of its successor states still carry passports issued by the former U.S.S.R.), Uzbekistan, and Zambia.

3. Citizens of other countries should be permitted to contact their country's embassy or the nearest consulate. The accused will be informed of this right at the time of the arrest but no later than during booking at the jail.⁸ The Appendix contains a list of the current foreign embassies and consulates and their phone numbers.

4. The officer who contacts an embassy or consulate on behalf of an accused foreign national will note the date, time, and name of the person who received the call at the embassy or consulate in a supplemental report and place it in the case file.⁵

5. If the accused foreign national is a juvenile not accompanied by a

²18 U.S.C. § 112.

³18 U.S.C. §§ 1116, 1117, and 1201.

⁴*Vienna Convention on Diplomatic Relations*, Art. 32; *Vienna Convention on Consular Relations*, Art. 44; see *United States v. Wilburn*, 497 F.2d 946 (5th Cir. 1974) (vice-consul has right to elect whether or not to testify in state judicial proceedings).

Harsiades v. Shaughnessy, 342 U.S. 580, 586, 72 S.Ct. 512, 96 L.Ed.2d 586, 597 (1951); *Wong Wing v. United States*, 163 U.S. 228, 237, 16 S.Ct. 977, 41 L.Ed 140, 143 (1895).

³ Photocopying of passports, visa and other documents of identification by which foreign nationals may enter or remain in the United States for law enforcement purposes is authorized by 18 U.S.C. § 1546(c).

⁴ U.S. Dept. of State, *Memorandum, Notice for law Enforcement Officials on Detention of Foreign Nationals*, (April 20, 1993). Compliance with these treaty obligations regarding notification "is essential to insure that similar notice is given to U.S. diplomatic and consular officials when U.S. citizens are arrested or detained abroad."
Id.

⁵ *Id.*

parent or legal guardian, the Immigration and Naturalization Service will be notified at the same time as the Juvenile Court. It is the responsibility of the Immigration and Naturalization Service to contact the embassy of the accused juvenile's nation.

6. If the foreign national cannot communicate in English, a supervisor will be contacted, and every effort will be made to obtain a translator. However, Miranda warnings must be translated before questioning can begin.⁶ The investigating officer will include the name, address, telephone number, and relationship of the translator to the victim/witness in the Incident Report or Supplemental Report.
7. During major events such as the Olympics, international sporting events, or international conferences, if a foreign national who is officially connected with the event is arrested, the District Attorney or their designee (Solicitor in misdemeanor cases) should be immediately contacted by telephone and provided with an oral summary of the incident. The prosecuting attorney will advise the supervisor of any special procedures which should be followed.
8. If a foreign national is arrested for a felony, the U.S. Immigration and Naturalization Service (INS) will be notified and provided with the name of the accused and the nature of the charges.⁷ By law, the INS is required to notify the appropriate consulate or embassy if one of their citizens has been taken into custody by I.N.S.¹² Contact INS at:

U.S. Immigration and Naturalization Service
77 Forsyth Street, Suite G-89
Atlanta, GA 30303
Phone: 404-331-2765

12. Foreign Nationals as Victims or Witnesses to a Crime

- i. If a foreign national is a victim or witness in a crime, the investigating officer will determine if the individual anticipates traveling out of the State of Georgia within the next six months. If the foreign national indicates that they will be traveling out of Georgia or the officer has reason to believe that the individual may depart the State, the District Attorney's office will be immediately contacted so that the testimony of the individual may be taken by videotape.⁸
- ii. If the foreign national cannot communicate in English, a supervisor will be contacted, and every effort will be made to obtain a translator. The investigating officer will include the name, address, telephone, number, and relationship of the translator to the victim/witness in the Incident Report or Supplemental Report.

13. Defection and Requests for Asylum

- i. Defections and requests for political asylum by foreign nationals are highly sensitive and may affect the relations between a foreign government and the United States, as well as the

⁶ See *De La Fe v. United States*, 413 F.2d 543 (5th Cir. 1969).

⁷ The arrest of a foreign national for a violation of the laws of this State does not automatically lead to the deportation of the individual. In most misdemeanor cases, the only action INS will take is to notify the appropriate embassy or consulate if the individual is not released on bond. ¹² 8 C.F.R. § 242.2.

⁸ O.C.G.A. § 24-10-130 (b)(3).

treatment of U.S. citizens who travel outside the United States. It is the policy of the TCSG that all officers will handle any request for asylum or a defection with speed, tact, and resolution.

- ii. If an officer is approached by a foreign national who: (1) requests asylum in the United States or (2) indicates that they want to defect to the United States, the officer will:
 - 1. Contact their immediate supervisor and request the supervisor come to the scene immediately. If communication is by non-secure means (i.e., radio), do not indicate the reason.
 - 2. Take the person into protective custody and permit no one to interfere with the situation. It is important that the officer protects the person from harassment or forceful repatriation.
 - 3. Release the person only to the supervisor or a representative from a Federal Agency approved by the supervisor.
 - 4. Prepare a written report on the incident.
- iii. A supervisor, upon learning that a foreign national has approached an officer and (1) requested asylum in the United States; or (2) indicated that they want to defect to the United States, the supervisor will:

- 1. Immediately contact by secure means (not radio):

U.S. Immigration and Naturalization Service
77 Forsyth Street, Suite G-89
Atlanta, GA 30303
Phone: 404-331-2765 or 404-331-2762 (24-hour number)

- 2. Take the person into protective custody and transport the person to a secure location designated by INS or to headquarters.

**SPECIAL INSTRUCTIONS:
GEORGIA LAW ENFORCEMENT CERTIFICATION PROGRAM
(GLECP) STANDARDS INCLUDED: 6.15d**

This policy is for the Law Enforcement Agencies of the Technical College System of Georgia use only and does not apply to any criminal or civil proceeding. The policy shall not be construed as creating a higher standard of safety or care in an evidentiary sense concerning third-party claims. Violations of this policy will form the basis for departmental administrative sanctions only. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.