



CHEVY CHASE
VILLAGE
POLICE
DEPARTMENT

Police Chief: John Fitzgerald

GENERAL ORDER: 5-43 DIPLOMATIC IMMUNITY

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CALEA: 1.1.4, 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

I. PURPOSE

To ensure that Chevy Chase Village police enforcement procedures conform with federal law regulating diplomatic immunity, and reflect all changes in federal laws relating to diplomatic immunity, and which affect the department's enforcement procedures. Cross reference G.O. 5-44 Consular Notification. (CALEA 1.1.4)

II. POLICY

These procedures are taken from the "Guidance for Law Enforcement Officers" publication issued by the State Department. It is understood that dealing with diplomatic immunity poses particular problems for law enforcement officers, and that officers may be overly generous in applying immunity if they do not understand its purposes or rules. However, 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. (CALEA 1.2.7)

While officers will give every courtesy to diplomats, it is imperative that they also conduct good investigations, keep good records, and report whenever appropriate, to the State Department. To do so is to allow 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 drivers' licenses to be revoked. To check the diplomatic status of an individual the officer should call [REDACTED]. This number is available 24 hours a day.

III. DEFINITIONS

- A. Diplomatic Mission – encompasses both the chancery where the embassy work is performed and the residence of the head of the mission.
- B. Diplomatic Immunity – full or limited criminal immunity which the personnel of a foreign diplomatic mission and, in varying degrees, their family members 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 Agent – a team for ambassadors and other diplomatic officers who generally deal directly with the host country officials. This category enjoys the highest degree of immunity. They enjoy complete inviolability and may not be handcuffed (except in extraordinary circumstances), arrested, or detained; and neither their property (including vehicles) nor residences may be entered or searched.
- D. Administrative and Technical Staff – Enjoy privileges and immunities identical to those of diplomatic agents in respect of personnel inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as witnesses.
- E. Service Staff – have official acts immunity only and enjoy no personal inviolability, no inviolability of property, and no immunity from the obligation to provide evidence as witnesses. The families of service staff enjoy no privileges or immunities.
- F. Private Servants of Members of the Mission – they and their families are hired by diplomats for their personal use and have no immunity for their criminal acts or private wrongs even if such acts occur in the course of the performance of their duties.
- G. Consular Officers – are not to be confused with diplomatic agents and do not enjoy the privileges and immunities. Consular Officers 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 – there are some foreign countries in respect of which the categories set forth above are not applicable. **These are countries with which the United States has bilateral agreements which grant significantly higher privileges and immunities to all members of their embassy staffs (provided the staff member is a national of the sending country) and to certain of their consular personnel (and sometimes their**

family members). In some cases, these privileges and immunities approximate those accorded diplomatic agents. This situation will be taken care of when identity documents are issues, but police 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 more than immunity from prosecution. It means 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 is not required to give evidence as a witness.

V. LIMITED CRIMINAL IMMUNITY

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.

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

- A. Diplomatic Agents – Full Immunity
 - 1. Head of Mission (Ambassador or Charge d’affaires)
 - 2. Carry diplomatic identification documents issued by the State Department
- B. Diplomatic Staff of Mission – Full Immunity
 - 1. Carry diplomatic identification documents issued by the State Department
 - 2. Includes:
 - a. Members of the Delegation of the Commission of the European Communities;
 - b. Permanent representatives and senior staff of missions to the Organization of American States and the United Nations;
 - c. Senior officials of the United Nations Secretariat.

C. Administrative and Technical Staff – Full Immunity

Includes:

- 1. Administrative Officers/Assistants
- 2. Security Officers
- 3. Purchasing agents
- 4. Budget and Fiscal Technicians
- 5. Archivists
- 6. Cryptographers
- 7. Receptionists/Secretaries
- 8. Stenographers/Typists
- 9. Clerks
- 10. Couriers/Messengers
- 11. Guards

D. Families of Diplomatic Agents, Staff of Mission, Administrative and Technical Staff – Full Immunity

Includes:

- 1. Spouses
- 2. Dependent children until age 21, or age 23 if a full-time student at an institution of higher learning

E. Service Staff – Immunity only for acts in the course of duties (Court decides if acts are in the course of duties)

Includes:

- 1. Chauffeurs
- 2. Drivers
- 3. Servants in missions
- 4. Employees performing domestic duties in missions

F. Families of service staff – No Immunity

G. Private servants and their families – No Immunity

- H. Members of Consular Posts – Consular officers and their personnel must not be considered identical to embassies. Members of consulates have a significantly lower amount of privilege and immunity, reflecting the fact that consular officers are concerned with issuing travel documents, etc., and not with communication between countries. Consular officers have only “official acts” immunity in both criminal and civil matters. They may be arrested for felonies, **with a warrant**, but have the immunity from providing evidence as witnesses where a case involves their official duties. Family members of consular officers enjoy no immunity.

Note: No police officer is expected to determine whether a given set of circumstances constitutes an “official act.” Thus, a person enjoying “official acts” immunity may always be prosecuted if the alleged criminal act is believed outside the scope of “official duties.” The court will decide whether the

alleged crime was part of an “official act.” Also note that consular service staff have no immunity except they do not have to serve as witnesses concerning “official acts.” Family members have no immunity. U.S. nationals or permanent residents employed by a consulate have **limited** immunity, and honorary consuls have only “official acts” immunity and witness immunity regarding “official acts.” Family members have no immunity.

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 members of the Diplomatic Corps for any violation of the Transportation Code of Maryland. (CALEA 1.2.7, 61.1.2-c, 61.1.3-d)

1. It must be noted that the diplomat does not have to sign the citation and cannot be arrested for refusal to sign or accept the citation. (CALEA 61.1.2-a, 61.1.8)
2. Failure of the diplomat to appear in court to answer the citation **may** cause action by the Motor Vehicle Administration in relation to the diplomat’s driving privileges within this state.

B. Notifications

1. Officers should, in addition to usual procedures, complete a summary of the stop in CODY and advise the Lieutenant/Chief on the next regular business day when one of the following situations occurs:
 - a. Anytime an officer stops a driver who is entitled to diplomatic immunity. (whether or not a citation has been issued.)
 - b. 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;
 - c. A citation is issued to (or the accident involves) the bearer of a U.S. Department diplomatic driver’s license; or,
 - d. 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 Lieutenant/Chief 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 Missions, DMVO, Attention: Driver Services, 3507 International Place, N.W., Washington, D.C. 20008. A copy will be sent to the MCPD Director of the Records Division for official dissemination.

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, the officer shall extend the same courtesy and consideration to him as a member of the Diplomatic Corps as has existed in the past. (CALEA 61.1.3-d, 61.1.5, 61.1.8, 61.1.11)

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 CCV Vehicle Impound Form, and provide the diplomat with a copy of the form. (CALEA 61.1.8)
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. (CALEA 61.1.2-a-b, 61.1.3-d)
3. A “Police Information Report” (not a DWI Arrest Report) will be written and submitted for supervisory review and approval, along with copies of all citations and reports. (CALEA 82.2.1-a-b-e)
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.

(CALEA 1.3.1)

D. Towing

When it becomes necessary to have a vehicle bearing diplomatic registration towed, officers will comply with G.O. 5-48 entitled Towing Policy. It should be noted that 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. When 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. cards and details and circumstances of the incident in accordance with usual police procedures.
- B. See Appendix A – (List of Useful Telephone Numbers)
See Appendix B – (Diplomatic & Consular Privileges and Immunities from Criminal Jurisdiction)
- C. 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 power of the police to defend themselves from personnel harm.
- D. 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.
- E. There are three types of identification cards: Diplomatic (blue border for diplomats); Official (green border for employees); and, Consular (red border for consular personnel). See Appendix C
- F. 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. This concept is well-established in international law and explains the fact that the individual concerned does not "own" the immunity; such 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 to 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.

- G. Passport Information for Law Enforcement Officers (Appendix D)
Consular Notification Process (Appendix E)
International Parental Child Abduction (Appendix F)
Handling Incidents (Appendix G)

This directive voids the previous version dated 7/5/2012.