

510.00 ENFORCEMENT ACTIONS AND DIPLOMATIC AND CONSULAR OFFICIALS

510.01 Policy:

- Diplomatic and consular officers should be accorded their respective privileges, rights and immunities as directed by international law and Federal statute. These officials should be treated with the courtesy and respect that befit their distinguished positions. At the same time, it is a well established principle of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect local laws and regulations.

510.02 The law:

- The Vienna Convention on Diplomatic Relations enacted on December 13, 1972, changes in the immunity status of family members of diplomatic mission employees serving in foreign countries. As a result, the Office of the Chief of Protocol, U.S. Department of State, has revised standing order to police officers on immunity of diplomatic personnel and their families. These new guidelines are set out here with the cooperation of the Department of State. They should be informational not only to those departments having official foreign missions in their territories, but to any police officer who could encounter diplomatic personnel and their families traveling throughout the United States.

510.03 Diplomatic Immunity:

- Diplomatic immunity, a principle of international law, is broadly defined as the freedom from local jurisdiction accorded to duly accredited diplomatic officers, their families, and servants. Diplomatic officers should not be arrested or detained for any offense, and foreign career consular officers should not be arrested or detained except for the commission of a grave crime. Family members of diplomatic officers, their servants, and employees of a diplomatic mission are entitled to the same immunities under current U.S. law (22 U.S.C. 252), if they are not nationals of or permanently residing in the receiving state.
- Associated with this personal diplomatic immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private resident of a diplomatic agent, his property, papers, and correspondence.

510.04 Diplomatic Officers:

- Ambassadors and Ministers are the highest ranking diplomatic representatives of a foreign government. Other diplomatic titles are minister counselor, counselor, first secretary, second secretary, third secretary, and attaché. These officials are located either in Washington D.C., or in New York City. Diplomatic officers, their families, official staff, and servants, who are not nationals of or permanently residing in the receiving state, are protected by unlimited immunity from arrest, detention, or prosecution with respect to any civil or criminal offense.

510.05 Consular Officers:

- Consular officers are consuls general, deputy consuls general, consuls, and vice consuls. They are also official representatives of foreign governments. Consular officers are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom, or dignity. They are entitled to limited immunities as described below.
- Under prevailing international law and agreement, a foreign career consular officer is not liable to arrest or detention pending trial except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. His immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.
- Career consular officers can be identified by credentials issued by the State Department and by other locally issued official identification papers. The State Department credential bears its seal, the name of the officer, his title, and the signatures of State Department officials.
- Often nationals or permanent residents of the receiving state are appointed and received as honorary consular officers to perform the functions generally performed by career consular officers. Such officers do not receive identification cards from the State Department of the type issued to career consular officers, though they may exhibit reduced-size copies of the exequatur or diplomatic note evidencing recognition by the U.S. Government. These individuals are not immune from the arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions. However, appropriate steps must be provided to accord to such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of an honorary consul and persons working with him.

- Family members of consular officers do not enjoy the same privileges and immunities with respect to the civil criminal jurisdiction of the receiving state as do consular officers. However, they should be accorded appropriate courtesy and respect. See further comment below regarding offenses involving family members of a consular officer.
- Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post or his designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.
- The consular archives and documents are inviolable at all times and wherever they may be. The official correspondence of the consular post, which means all correspondence relating to the consular post and its functions, is likewise inviolable.
- In felony incidents in which the suspect has diplomatic immunity, a police report will be completed and copies of the report forwarded to the FBI for resolution. If the suspect is not eligible for diplomatic immunity, the officer will handle the individual as any other suspect and notify the FBI.
- Methods for handling incidents, violations, or minor offenses by consular officers:
 - Moving Traffic Violations: When a consular officer is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he is a consular officer and ascertaining that he possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him go with a warning of the danger of his actions or proceed with issuance of appropriate citation. Mere issuance of a traffic citation does not constitute arrest or detention in the sense referred to above.
 - Driving While Under the Influence: The primary consideration in this type of incident should be to see that the consular officer is not a danger to himself or the public. Based upon a determination of the circumstances, the following options are available:
 - Take him to the station or a location where he can recover sufficiently to enable him to drive safely.
 - Take him to a telephone so that he can call a relative or a friend to come for him.

- Call a taxi for him.
 - Take him home.
 - The consular officer should not be handcuffed, subjected to any sobriety test, or manhandled in any way.
 - At best, this is a sensitive situation. The consular officer should be treated with respect and courtesy. It should be impressed upon him that the officer's primary responsibility is to care for his safety and the safety of others.
 - If the consular official is involved in a traffic accident which results in injury or a fatality and is in violation of the law, the officer will complete the necessary police report and issue the official the appropriate citation.
- Offenses Involving Family Members of a Consular Officer: Family members of a consular officer cannot claim immunity. However, consideration should be given to the special nature of this type of case. A violation should be handled, when possible, through the seeking of a complaint. The individual should be released once positive identification is made and relationship with the consular office is verified. If the relative is a juvenile, as in all juvenile cases, the subject should be released to the parent consular officer.
 - Reporting of Incidents to the Division Commander: In the event that a consular officer or members of his family or personal staff should become involved in any actions taken by members of this department the appropriate Division Commander will be immediately furnished with all pertinent information.

510.06 ACT FOR THE PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS OF THE UNITED STATES PUBLIC LAW 92-439

- Public Law 92-439 provides for concurrent Federal jurisdiction when the following prohibited acts are committed against foreign officials: 1) murder; 2) conspiracy to murder; 3) manslaughter; or, 4) kidnapping of a foreign official or official guest. (Federal jurisdiction attaches immediately in the kidnapping of a foreign official or official guest. The victim need not be transported in interstate or foreign commerce.)
- The Act also prohibits anyone from 1) assaulting; 2) striking; 3) wounding; 4) imprisoning; or, 5) offering violence to a foreign official or official guest; and from 1) intimidating; 2) coercing; 3) threatening; or, 4) harassing a

foreign official or official guest; and from obstructing a foreign official in the performance of his duties.

- Outside the District of Columbia, the Act also prohibits anyone from, within 100 feet of a foreign or international establishment or the residence of a foreign official, 1) parading; 2) picketing; 3) displaying any flag, banner sign, placard, or device; 4) uttering any word, phrase, sound, or noise, or 5) congregating with two or more persons with the intent to perform such acts, for the purpose of 1) intimidating; 2) coercing; 3) threatening; or, 4) harassing any foreign official in the performance of his duties. (These prohibitions shall not be construed or applied to abridge the exercise of First Amendment rights.)
- The Act further prohibits anyone from 1) injuring; 2) damaging; 3) destroying; or, 4) attempting to injure, damage, or destroy any real or personal property belonging to, utilized by, or occupied by a foreign government, international organization, foreign official, or official guest.
- Definitions, for the purpose of the Act:
 - Foreign Official: A Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officer of cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, (i.e., the United States has been officially informed of his position) and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.
 - Foreign Government: “the government of a foreign country, irrespective of recognition by the United States.”
 - International organization: “a public international organization designated as such pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. 288).”
 - Family: “(a) spouse, parent, brother, or sister, child, or person to whom the foreign official stands in loco parentis, or (b) any other person living in his household and related to the foreign official by blood or marriage.”

- Official guest: “a citizen or national of a foreign country present in the United States as an official guest of the government of the United States as an official guest of the government of the United States pursuant to designation as such by the Secretary of State.”
- The definitions are quite broad, and are not limited to individuals with diplomatic status.