

COVINGTON POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

Subject: DIPLOMATIC AND CONSULAR IMMUNITY

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I. Purpose

To establish procedures for the handling of persons with diplomatic or consular immunity privileges or foreign nationals.

II. Statement of Policy

It shall be the policy of the Covington Police Department to handle all contacts with persons claiming diplomatic or consular immunity in accordance with guidelines established by the U.S. Department of State and international law.

III. Definitions

Alien – An alien is the same as a foreign national; any person who is not a U.S. citizen.

Diplomatic Immunity – A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. Diplomatic immunity is not intended to serve as a license for persons to flout the law and purposely avoid liability for their actions. **The purpose of these privileges and immunities is not to benefit individuals, but to ensure the efficient and effective performance of their official missions on behalf of their governments.** (Note: The U.S. Department of State requests waivers of immunity in every case where the prosecutor advises that, but for the immunity, charges would be pursued. In serious cases, if a waiver is refused, the offender will be expelled from the United States.)

Foreign National – A foreign national is any person who is not a U.S. citizen.

Immunity – A legal barrier which precludes U.S. courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the United States. It does not mean pardon, total exoneration, or total release from the responsibility to comply with the law.

IV. Introduction

Federal and state laws provide that under certain circumstances, individuals may be immune from arrest. 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 in which the immunity is claimed, an officer has the right to detain the person long enough to verify that the person is entitled to the immunity claimed. The detaining officer will immediately notify his or her immediate supervisor of the situation. **In all cases, including those in which the suspect provides a State Department-issued identification card, the law enforcement officer should verify the status with the U.S. Department of State or in the case of the U.N. community, with the U.S. Mission to the United Nations.**

Once the status is verified, the officer should prepare his or her report, fully describing the details and circumstances of the incident in accordance with normal police procedures. If the suspect enjoys personal inviolability, he or she may not be handcuffed, except when that individual poses an immediate threat to safety, and may not be arrested or detained. Once all pertinent information is obtained, that person must be released. A copy of the incident report should be faxed or mailed to the U.S. Department of State in Washington, D.C., or to the U.S. Mission to the U.N. in New York. Detailed documentation of incidents is essential to enable the U.S. Department of State to carry out its policies.

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

V. Diplomatic and Consular Immunity

- A. Under Federal law, diplomatic and consular officers, members of their official staff, officials of international organizations such as the United Nations and family members of such officers will be accorded their respective privileges, rights and immunities as provided by the Treaties and laws of the United States.
 - 1. All officers will treat these officials with the utmost courtesy and respect that befits their distinguished position if, for no other reason, that the treatment which foreign diplomatic and consular officials receive from this department can directly affect how U.S. diplomatic and consular officials are treated in the foreign country.
 - 2. It is a well established principle of international law, that persons enjoying such privileges and immunities are to respect local laws and regulations. Any incident involving persons claiming diplomatic or consular immunity or a family member of a diplomatic or consular official will be reported immediately through the chain of command. It is the policy of this department to report all such incidents to the U.S. Department of State for such diplomatic action as may be appropriate.
 - 3. Because diplomatic and consular immunity may be waived or withdrawn by the foreign government, it can never be ascertained with certainty at the investigative stage that a person asserting immunity will continue to enjoy that immunity with allegation of criminal conduct or that the accused will not later become subject to prosecution. Therefore, all serious incidents (i.e., felonies, DUI's and misdemeanors involving death or serious bodily harm) involving persons with diplomatic or consular immunity will be referred to the District Attorney for prosecution.
 - 4. Where, however, a person entitled to diplomatic or consular immunity presents a clear, present and actual danger to him or herself or others or it is apparent that a serious crime may be committed, a law enforcement officer may take such reasonable actions necessary to protect public

safety and the person entitled to immunity or to halt the illegal activity. This naturally includes the power to defend yourself from personal harm. In all such cases, a supervisor must be called and the United States Department of State contacted immediately.

VI. 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 who are 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 his person, freedom, or dignity."
- C. Under normal circumstances, this means that a person who establishes that he or she is entitled to diplomatic immunity cannot be arrested or tried for any criminal offense unless such immunity is expressly waived by the foreign government. As indicated above, immunity continues only as long as the person is accredited as such to the United States.

VII. 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.
- C. Career consular officers entitled to consular immunity
 - 1. Include 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 a case of a grave crime and pursuant to a decision by a competent judicial authority." A "grave crime" is a felony offense that endangers the 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 which are within the scope of consular duties.

D. 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.

E. 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.

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 clearly marked as such.
2. A diplomatic or consular pouch will not be opened by any officer under any circumstances. If an officer has probable cause to believe that a diplomatic or consular pouch is being used in furtherance of crime, all of the facts will be reported to his or her supervisor who will contact the U.S. State Department Bureau of Diplomatic Security.

G. Procedures

1. In all cases where a person who is known to be entitled to or asserts diplomatic or consular immunity, the person will be treated with the courtesy and respects that befits their distinguished position and a supervisor contacted immediately. It is the duty of the supervisor to contact the United States State Department immediately to verify the person's status and seek official guidance.
2. Career consular officials may only be arrested for a felony pursuant to a warrant issued by a judge.
3. Traffic violations
 - 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, based on the nature of the offense issue a warning or citation.
 - b. A copy of the citation, along with 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 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
 - b. Vehicles issued Department of State license plates are required to 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 him or her from harming themselves, or others, the officer is authorized to do so.
 - b. If the supervisor determines that a diplomatic or consular official is a danger to themselves or others, the supervisor may direct that:
 1. The official be taken to the police department or another location where he/she may recover sufficiently to drive safely;
 2. The official be taken to a telephone to call someone to drive them home;
 3. A taxi be called for the official; or
 4. The official be 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

- 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 necessary to physically restrain a diplomatic or consular official (i.e. handcuffs), the officer will, after taking appropriate action, explain to the official why he or she is being restrained and that they will be released as soon as they are no longer a danger to themselves or others.
- c. The responding supervisor will immediately contact the U.S. Department of State, in the event a diplomatic or consular official must be restrained. 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 is in possession of contraband (i.e. controlled substances), the officer may seize the contraband.
- 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.

1. The U.S. 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 which may be called to verify status.
2. Honorary consuls may be issued identification cards by the Georgia Secretary of State.
3. The U.S. 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 Motor Vehicle Services with regard to 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. Department of State driver's licenses have a hologram over a portion of the photograph. It will turn dark if tampered with.

4. The United States Department of State issues motor vehicle plates (license tags) for vehicles operated by persons entitled to diplomatic and consular immunity.
 - aa. These tags are red, white and blue in color. The status of the vehicle is indicated by a letter code.

D = diplomatic vehicle
S = diplomatic staff vehicle
C = consular vehicle
 - bb. Information regarding the vehicle and registered owner is available through GCIC/NCIC the same as out-of-state plates. Use State code "US".
 - cc. In addition, the Georgia Department of Revenue may issue consular license plates for vehicles registered and operated in Georgia by career or honorary consuls.
 - dd. 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.
5. In any situation in which an official asserting immunity cannot produce satisfactory evidence thereof, or the officer wishes to confirm the status claimed, the Department of State should be contacted.
 - aa. Regular hours:
Diplomats & families: 202-647-1664

Diplomatic employees & families: 202-647-1405
Consular personnel & families: 202-647-1404
International Organizations: 202-647-1402
Fax number for sending incident reports and citations: 202-895-3613

bb. After hours: 202-647-7277

6. Verification of Department of State driver's licenses and motor vehicle registration made be obtained through GCIC/NCIC (State Code is "US") or by calling:

Registrations: 202-895-3532
Drivers Licenses: 202-895-3521
After Hours: 202-647-7277
Fax number: 202-895-3646

H. Official Guests

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.

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. Department of State.

1. Official Guests can include:
 - a. Foreign government officials;
 - b. Olympic athletes, coaches and trainers;
 - c. Members of international sports federations accredited to some international games being held in the United States
2. Official Guests do not have immunity, but will be treated with courtesy and respect. A supervisor should be contacted immediately for any incident involving an Official Guest. The supervisor will, in turn, contact the District Attorney's office.
3. The supervisor 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, Georgia 30303
404-331-3521 or 331-3522 or 331-3523
or contact 202-647-7277 (Washington)

4. Verification of an individual's status as an Official Guest may be obtained from:

U.S. Department of State - 404-331-3521 (Atlanta)
After hours: - 202-647-7277 (Washington)

- I. Diplomats, Consuls or Official Guests as Victims or Witnesses to a Crime
 - 1. If a diplomat, consul or official guest of the United States is a victim of a crime, the officer will immediately contact a supervisor.
 - 2. It is the responsibility of the supervisor to immediately contact:
 - a. In the case of diplomats and official guests, the regional office of the F.B.I. and the U.S. Department of State command post by phone at 202-663-0812. The F.B.I. has primary jurisdiction over offenses committed against diplomats and official guests. The District Attorney should also be contacted.
 - b. In the case of a consul, the District Attorney and the U.S. Department of State. If the consul is a career consul, the F.B.I. should also be contacted.
 - 3. If a diplomat, career consul or official guest is a witness to a crime, a supervisor will be notified.
 - a. 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.
 - b. 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. Any interviews with the witness will be coordinated through the District Attorney's office.
 - 4. By law, diplomats and consuls can appear as a witness only with the prior consent of their government.
- J. Foreign Nationals as Victims or Witnesses to a Crime
 - 1. 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 6 months. If the foreign national indicates that they will be traveling out of Georgia of the officer has reason to believe that the individual may leave the state, the District Attorney's office will be immediately contacted in order that the testimony of the individual may be taken by video tape.
 - 2. If the foreign national is unable to communicate in English, a supervisor will be contacted and every effort 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.
- K. Defection and Requests for Asylum
 - 1. 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 treatment of U.S. citizens who travel outside the United States. It is the policy of this

department that all officers will handle any request for asylum or a defection with speed, tact and resolution.

2. If an officer is approached by a foreign national who: (1) requests asylum in the United States, or (2) indicates that he or she wants to defect to the United States, the officer will:
 - a. Contact his or her 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.
 - b. Take the person into protective custody and permit no one to interfere with the situation. It is important that the officer protect the person from harassment or forceful repatriation.
 - c. Release the person only to the supervisor or a representative from a Federal agency approved by the supervisor.
 - d. Prepare a written report on the incident.
3. A supervisor, upon learning that a foreign national has approached an officer and (1) requested asylum in the United States, or (2) indicated that he or she wants to defect to the United States, the supervisor will:
 - a. Immediately contact by secure means:

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

VIII. Vienna Convention on Consular Relations (VCCR)

- A. The VCCR is an international treaty, which spells out procedures to be followed when a foreign citizen is arrested or detained. The United States is a signatory to the VCCR. Under the Constitution, any treaty entered into by the United States becomes the "supreme law of the land".
- B. The VCCR requires that a foreign citizen be advised that he or she has the right to have their consulate notified of their arrest. Depending on the country of residence, it may be mandatory to notify that consulate. Once notified, the arrestee is entitled to communicate with their consulate.
- C. In some cases, the nearest consular officials **must** be notified of the arrest or detention of a foreign national, regardless of the national's wishes.
- D. Consular officials are entitled to access to their nationals in detention and are entitled to provide consular assistance.
- E. Steps to Follow When a Foreign National is Arrested or Detained
 1. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.
 2. If the foreign national's country is **not** on the mandatory notification list:

- a. The officer will offer, without delay, to notify the foreign national's consular officials of the arrest/detention. See suggested statement to the foreign national in appendix A.
 - b. If the foreign national asks that consular notification be given, the officer will notify the nearest consular officials of the foreign national's country without delay.
3. If the foreign national's country **is** on the list of mandatory notification countries:
- a. The officer will notify the country's nearest consular officials, without delay, of the arrest/detention.
 - b. The officer will tell the foreign national that the notification is being made.
 - c. The officer will detail all actions in his/her incident report including all notifications and actions taken.

IX. Identifying Documents - U.S. Department of State Identification Cards

While these identification cards are generally to be relied upon, officers should immediately seek to verify the document in connection with any serious incident or in any case where they have reason to doubt the validity of the card. Newly arrived members of diplomatic and consular staff may not yet have these official identity documents and should contact the U.S. Department of State, Office of Protocol, for verification if confronted with such situations.

A. Diplomatic Identification Card - Diplomatic Officers and Families

1. Blue border
2. Issued to diplomatic officers and their families. Refer to the title section of the card. They are entitled to full criminal immunity and may not be arrested or detained. They may be given a citation.
3. Contains photo of person, number issued by Department of State, expiration date, name of person, date of birth, title, mission (country) and location.

4. The rear of the card contains the following information:

"This person has been duly notified to the Department of State and under International law enjoys immunity from criminal jurisdiction. The bearer shall not be liable to any form of arrest or detention, but may be given a notice of violation.

The bearer shall be treated with due respect and all appropriate steps shall be taken to prevent any attack on the bearer's person, freedom of dignity."

B. Diplomatic Identification Card - United Nations Diplomats and Families

1. Blue border

2. Issued to UN diplomatic officers and their families. Refer to the title section of the card. This card signifies that the bearer is entitled to full criminal immunity and may not be arrested or detained. They may be given a citation.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.
4. The rear of the card contains the following information:

"This person has been duly notified to the Department of State and under International law enjoys immunity from criminal jurisdiction. The bearer shall not be liable to any form of arrest or detention, but may be given a notice of violation.

The bearer shall be treated with due respect and all appropriate steps shall be taken to prevent any attack on the bearer's person, freedom of dignity."

C. Official Identification Card - Embassy Staff

1. Green border
2. Issued to embassy administrative and technical staff employees and their families. Refer to the title section of the card. This card signifies that the bearer is entitled to full criminal immunity and may not be arrested or detained. They may be given a citation.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.
4. The rear of the card contains the following information:

"This person has been duly notified to the Department of State and under International law enjoys immunity from criminal jurisdiction. The bearer shall not be liable to any form of arrest or detention, but may be given a notice of violation.

The bearer shall be treated with due respect and all appropriate steps shall be taken to prevent any attack on the bearer's person, freedom of dignity."

D. Official Identification Card - Embassy Service Staff

1. Green border
2. Issued to embassy service staff employees. Refer to the title section of the card. This card signifies that the bearer is entitled to immunity for official acts only.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.

4. The rear of the card contains the following information:

"This person has been duly notified to the Department of State and under International law enjoys immunity from jurisdiction with respect to acts performed in the course of official duties. This form of immunity must be asserted before, and proven to, the appropriate judicial authorities. The bearer is not immune from arrest or the issuance of a citation."

E. Consular Identification Card - Career Consular Officers

1. Red border
2. Issued to career consular officers. Refer to the title section of the card. This card signifies that the bearer is entitled to immunity for official acts only.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.
4. The rear of the card contains the following information:

"This person has been duly recognized by the Department of State and under International law shall not be amenable to jurisdiction with respect to acts performed in the exercise of consular functions. This form of immunity must be asserted before, and proven to, the appropriate judicial authorities. The bearer shall not be liable to arrest or detention pending trial except on a warrant for a felony offense.

The bearer shall be treated with due respect and a notice of violation may be issued."

F. Consular Identification Cards - Career Consular Employees

1. Red border
2. Issued to career consular officers. Refer to the title section of the card. This card signifies that the bearer is entitled to immunity for official acts only.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.
4. The rear of the card contains the following information:

"This person is registered with the Department of State and under International law shall not be amenable to jurisdiction with respect to acts performed in the exercise of consular functions. This form of immunity must be asserted before, and proven to, the appropriate judicial authorities. The bearer is not immune from arrest or the issuance of a citation."

G. Consular Identification Card - Consular Officers/Employees and Families

1. Red border

2. Issued to consular officers/employees and their families from countries with which the United States has special agreements. Refer to the title section of the card. They are entitled to full criminal immunity and may not be arrested or detained.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.
4. The rear of the card contains the following information:

"In accordance with a special agreement, this person enjoys immunity from criminal jurisdiction. The bearer shall not be liable to any form of arrest or detention, but may be given a notice of violation.

The bearer shall be treated with due respect and all appropriate steps shall be taken to prevent any attack on the bearer's person, freedom, or dignity."

H. Consular Identification Card - Honorary Consular Officers

1. Red border Refer to the title section of the card.
2. Issued to honorary consular officers. Refer to the title section of the card. This card signifies that the bearer is entitled to limited immunity for official acts only.
3. Contains photo of person, number issued by Department of State, expiration date, date of birth, name of person, title, mission (country) and location.
4. The rear of the card contains the following information:

"This person is registered with the Department of State and under International law shall not be amenable to jurisdiction with respect to acts performed in the exercise of consular functions. This form of immunity must be asserted before, and proven to, the appropriate judicial authorities. The bearer is not immune from arrest or the issuance of a citation. The bearer shall be treated with due respect."

This SOP supersedes any SOP previously issued.

BY ORDER OF THE CHIEF OF POLICE:

Stacey L. Cotton

Stacey L. Cotton
Chief of Police