

“Keep Orlando a safe city by reducing crime and maintaining livable neighborhoods.”

ORLANDO POLICE DEPARTMENT POLICY AND PROCEDURE

1112.5, FOREIGN NATIONALS AND CONSULAR OR DIPLOMATIC IMMUNITY

EFFECTIVE DATE:	6/26/2024
RESCINDS:	P&P 1112.4
DISTRIBUTION GROUP:	ALL EMPLOYEES
REVIEW RESPONSIBILITY:	POLICE LEGAL ADVISOR
ACCREDITATION STANDARDS:	N/A
RELATED LAWS:	Vienna Convention on Consular Relations
RELATED POLICIES:	N/A
CHIEF OF POLICE:	ERIC D. SMITH

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1. PURPOSE

The purpose of this policy is to advise personnel about procedures pertaining to required notifications with respect to incidents involving foreign nationals and to advise sworn personnel about procedures pertaining to law enforcement action involving foreign consulates and diplomatic and other consular officials and employees.

2. POLICY

It is the policy of the Orlando Police Department to make the proper notification whenever a foreign national is deceased or arrested. The notification shall be completed within the guidelines established by the United States Department of State. Failure to make the proper notification is a violation of the treaty and international law.

Certain foreign nationals visiting or residing within the jurisdictional limits of the City may be entitled to certain immunities from arrest, search, and prosecution and care must be taken to ensure that their rights are protected. This policy will detail when and how officers should handle cases when a person claims to possess diplomatic immunity.

3. DEFINITIONS

Administrative and Technical Staff- Have the same protection and immunity as the diplomatic agent.

Consular Employees- Any person employed in the administrative or technical service of a consular post. They have "official acts immunity" which means they are only immune for acts that relate to their official duties.

Consular Officers- Any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions. They are foreign nationals who are authorized to perform a wide variety of functions for the sponsoring country. They have "official acts immunity" which means they are only immune for acts that relate to their official duties. However, they may be arrested for felonies outside their official acts pursuant to a warrant.

Consular Premises- The buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post.

Diplomatic Agents- Include those foreign nationals who are provided diplomatic status by the United States government. They have complete immunity from the criminal jurisdiction of the United States government.

Family Members of Consular Officers- Generally have no or very limited immunity if a special agreement has been reached between the host country and their country of origin.

Family Members of Diplomatic Agents- Generally only include spouses and dependent children. They have the same protection and immunity as the diplomatic agent.

Foreign Nationals- Include any citizen of a foreign country present in the United States (without regard to legal status).

Head of Consular Post- The person charged with the duty of acting in that capacity.

4. PROCEDURES

4.1 NOTIFICATION OF DEATH, ARREST, AND OTHER INCIDENTS INVOLVING FOREIGN NATIONALS

The United States has entered into certain treaties and agreements with other countries that require this agency to provide notification within a specific time limit of arrest or death to the foreign national's consulate or embassy.

- a. ARRESTS will include all misdemeanor and felony cases that result in a custodial arrest.
- b. DEATH will include homicides, traffic fatalities, accidental deaths, and those from natural causes.

Additionally, officers are required to make consular notifications when any of the following situations involving a Foreign National occur:

- a. Baker or Marchman Act detention initiated by law enforcement
- b. Serious injury, illness or trauma
- c. Placement of minors with Department of Children and Families (DCF); or
- d. Crash or wreck of foreign aircraft or ship.

4.1.1 DUAL CITIZENSHIP

A person who is a *citizen* of the United States and another country may be treated exclusively as a United States citizen when in the United States. In other words, consular notification is not required if the detainee is a United States citizen. This is true even if the detainee's other country of citizenship is a mandatory notification country.

4.1.2 HOW TO IDENTIFY A FOREIGN NATIONAL

A foreign national may present a foreign passport or an alien registration document as identification. If they present a document that indicates birth outside the United States, or claim to have been born outside the United States, they may be a foreign national. Unfamiliarity with English may also indicate foreign nationality. Such indicators could be a basis for asking the person whether he/she is a foreign national.

4.1.3 MANDATORY NOTIFICATION OF ARREST

The countries listed in Attachment A have mandatory notification clauses in their treaties with the United States requiring notification upon the arrest of a foreign national from their country. The individual foreign national cannot waive a notification required by treaty. Notification of these arrests must be documented using the form contained in Attachment B. See Section [4.3](#) regarding locating a current list of phone numbers of foreign consulates and/or diplomatic representatives.

4.1.4 NONMANDATORY NOTIFICATION OF ARREST

Foreign nationals, from countries not listed on the mandatory notification list, must be informed of the right to have their government notified. If notification is requested, it must be given as soon as practical. If notification is not requested, it should be documented, and no notification should be given.

4.1.5 NOTIFICATION OF DEATH

Article 37 of the Vienna Convention on Consular Relations requires that in the event of the death of a foreign national, the governmental agency in possession of that information must immediately notify the regional consulate office or embassy of the foreign national's home country. This extends to any deaths as the result of accidents or other incidents to which the Orlando Police Department may be assigned. If a foreign national is seriously injured and death is possible, notification is not required, however, it should be done as a courtesy.

4.1.6 DOCUMENTATION OF NOTIFICATION

Documentation of mandatory notification, nonmandatory notification, and advising of the right to have his/her government notified will be on a Foreign National Notification Form (Attachment B). This form will be retained by the Records Unit with other written reports related to the case.

Notification will be considered complete whenever a consulate or diplomatic representative of the foreign country has been notified and a notification form has been completed.

Notifications delayed more than 24 hours will require a watch commander's approval. In such cases, a representative of the United States Department of State should be consulted.

Notification shall be made in person or by telephone whenever possible. A follow-up fax will be sent for all telephone notifications. Notification by fax shall be done as soon as practical. A supervisor must approve alternative methods of notification.

4.1.7 OFFICER RESPONSIBILITY

Upon the death or arrest of a foreign national, the investigating officer is responsible for the notification process and documentation of notification, as well as any reports that may be required. If the incident involves a traffic-DUI related incident, the officer will ensure that the Criminal Intake Unit receives the documents required in this policy within 24 hours of the incident. If the incident occurs during a weekend or after hours, the documents shall be placed in the Criminal Intake box in Patrol.

Officers who come in contact with any foreign national must complete an FIR and forward it to OPD's Intelligence Unit.

The Intelligence Unit will then complete a background check in an attempt to verify the legal status of the foreign national. If it appears the foreign national is not in proper immigration status, Immigration and Customs Enforcement (ICE) will be notified so they may further investigate and take any action they deem necessary.

4.1.8 COMMUNICATIONS RESPONSIBILITY

The Communications Division will be responsible for maintaining a current list of phone numbers that will facilitate the contacting of foreign consulates and/or diplomatic representatives.

Communications will be responsible for contacting the appropriate watch commander in a timely manner whenever a foreign consulate requests information from the Orlando Police Department.

4.1.9 SUPERVISORY RESPONSIBILITY

Supervisors are to ensure that the proper notification and documentation is complete within 24 hours. (See Attachment B.) The supervisor will review and initial the Foreign National Notification Form and ensure that a complete copy of the notification and police reports are forwarded to the office of the Chief of Police within 24 hours of the incident.

4.1.10 WATCH COMMANDER RESPONSIBILITY

Managers may approve an extension of the notification time with a reasonable explanation. Notification of the United States Department of State is mandatory if an extension is greater than 24 hours.

Managers are responsible for facilitating a timely response to inquiries by foreign consulates or foreign government representatives.

4.2 IMMUNITY FROM CRIMINAL JURISDICTION

Attachment C is a chart summarizing the law enforcement aspects of diplomatic and consular privileges and immunities. It is evident that the action an officer may take varies greatly depending upon the status of the foreign official. This chart should be consulted after verification of the status of the official or the relationship of the individual to the official.

4.2.1 DIPLOMATIC AGENTS

These include ambassadors and ministers. They are the highest-ranking diplomatic representatives of their governments. Other diplomatic titles include: Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary, and Attaché. The officials are posted either in Washington, D.C., or in New York City.

Family members and administrative and technical staffs of diplomatic agents have the same protection and immunity as the diplomatic agent.

Homes, hotels, cars, and other premises, belongings and documents of diplomatic agents, their families, and staff may not be searched.

4.2.2 CONSULAR OFFICERS

These include 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 upon their persons, freedom, or dignity. They are entitled to limited immunities as outlined in the attached chart, and as further described.

4.2.3 CAREER CONSULAR

Persons with this status have "official acts immunity" which means they are only immune for acts related to their official duties. They may be arrested for felonies outside their official acts pursuant to an arrest warrant. Consular

officers are fully immune from criminal prosecution only for those acts performed in the exercise of their consular function. This immunity is subject to court determination.

4.2.4 HONORARY CONSULS

These are nationals or permanent residents of the U.S. who have been appointed and have received honorary consular officer status to perform the functions generally performed by career consular officers. They do not receive identification cards from the U.S. Department of State, although they may have reduced-sized copies of the diplomatic note evidencing recognition by the U.S. They are not immune from arrest or detention and are not entitled to personal immunity from civil or criminal process except as to official acts performed in the exercise of the consular functions.

4.2.5 FAMILY MEMBERS

Family members of consular officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the U.S., as do consular officers. Criminal complaints should be handled at large, without physical arrest, except in the most serious offenses. If the family member is a juvenile, the juvenile should be released to the parent foreign official.

4.2.6 PREMISES AND DOCUMENTS

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/her designee or by the head of the diplomatic mission. Such permission may be assumed in the case of fire or other disaster requiring prompt protective action.

Consular archives, documents, and all official correspondence of the consular post are to be considered inaccessible and may not be seized or reviewed by any law enforcement personnel.

The consular archives and documents of a consular post headed by an honorary consul are considered inaccessible at all times, wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to other personal activities of an honorary consul and persons working with him/her.

4.3 VERIFICATION OF DIPLOMATIC OR OTHER PROTECTED STATUS AND IMMUNITY

It is the responsibility of the person claiming immunity or protected status to advise law enforcement of his/her status. Persons with diplomatic or other immunity should have in their possession a picture ID issued by the U.S. Department of State. A passport, visa, license, or diplomatic tag alone is not enough to verify diplomatic immunity. Examples of identifying documents are shown in Attachment D.

OFFICERS HAVE THE RIGHT TO DETAIN AN INDIVIDUAL USING REASONABLE FORCE UNTIL VERIFICATION OF THE STATUS AND EXTENT OF THEIR IMMUNITY HAS BEEN DETERMINED.

All claims of diplomatic immunity should be verified through the U.S. Department of State before taking further action. During normal business hours (Eastern time), you may call the number on the back of the person's identification card or the following numbers:

- a. Current status of United States Department of State federal license tags, registrations, or other motor vehicle information can be verified during the hours of 9:00 a.m. through 1:00 p.m. Monday through Friday by calling 202.274.1217. Outside of these hours, status can be verified by emailing the Office of Foreign Missions duty officer at ofm-immunity@state.gov.
- b. Current status of U.S. Department of State driver licenses and general licensing information can be verified during the hours of 9:00 a.m. through 1:00 p.m. Monday through Friday by calling 202.274.1217. Outside of

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these hours, status can be verified by emailing the Office of Foreign Missions duty officer at ofm-immunity@state.gov.

- c. For reporting traffic incidents/accidents, issuance of citations, etc., involving diplomatic personnel 202.895.3521.
- d. Diplomatic agents and family members 212.415.4168, 212.415.4407.
- e. Copies of Incident Reports and citations should be sent to Diplomatic Security Service, Protective Liaison Division – Fax 202.895.3646.

A 24-hour direct line to the Center of the Bureau of Diplomatic Security is available to verify such claims after business hours 571.345.3146, 1.866.217.2089.

With respect to United Nations personnel, the following telephone numbers are available:

- a. For verification of their Diplomatic agents' and family members' diplomatic status during normal business hours by the Host Country Section of the United States Mission to the United Nations 212.415.4168.
- b. United Nations mission staff and family members 212.415.4168.
- c. United Nations Secretariat employees 212.415.4168
- d. United States Department of State license tags, registration, or other motor vehicle information can be verified during the hours of 9:00 a.m. through 1:00 p.m. Monday through Friday by calling 202.274.1217. Outside of these hours, status can be verified by emailing the Office of Foreign Missions duty officer at ofm-immunity@state.gov.
- e. For verification after normal business hours by the Communications Section of the United States Mission to the United Nations 212.415.4444.
- f. Copies of Incident Reports should be sent to USUN Host Country – Fax 212.415.4162.

All instances involving a person with diplomatic immunity or other protected status must be reported by the responding officer in the form of an Incident Report and an arrest report if an arrest is permitted and made. The responding officer's immediate supervisor shall ensure that copies of these documents are delivered to the office of the Chief of Police within 24 hours of the incident. After hours, they will secure a key from the watch commander and place the packet in the Chief's office.

4.4 INCIDENTS INVOLVING IMMUNE PERSONS AND FOREIGN NATIONALS

In the event an officer encounters a foreign diplomat or other immune person, in connection with a violation of the law, and the status of the immune person has been determined, refer to the table in Attachment C to determine whether the individual may be detained or arrested if the offense so requires.

For those diplomats who enjoy full immunity from detention or arrest, remember that reasonable constraints may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts. This does not mean the person is subject to arrest, but the officer is expected to preserve public safety, within reasonable limits. This may require the removal of the individual from the scene, a temporary detention, etc. Supervisors should be consulted, whenever possible if such actions are being considered.

An officer has the right to take any authorized legal action required to prevent property loss, injury, or death, and to preserve the peace as appropriate, whether or not the suspect is claiming diplomatic immunity.

Any valid claim to immunity should begin with the individual claiming immunity presenting a red, blue, or green card issued by the U.S. Department of State, Office of Protocol. There will be occasions when, for whatever reason, a person with immunity may not be in possession of his/her credentials. The officer should call the U.S. Department of State to verify the person's claim to immunity.

Foreigners who are diplomats in a host country other than the United States do not enjoy immunity in this country unless the U.S. Department of State has issued the proper credentials.

4.4.1 PASSPORTS

If a foreign national or immune person loses their passport or it is stolen, an Incident Report should be completed and they should contact their foreign consulate. An Incident Report, alone, will not be sufficient to allow the person to enter another country.

4.4.2 TRAFFIC VIOLATIONS

The U.S. Department of State, Office of Foreign Missions, issues drivers' licenses and vehicle tags for all persons afforded diplomatic immunity. This ensures that vehicles driven by those with diplomatic immunity are adequately insured, and that the U.S. Department of State has some measure of control over the issuance of licenses for the privilege of driving in this country.

Any person with diplomatic status may be detained long enough to be issued a traffic citation. For moving traffic violations involving such persons, the officer should exercise discretion based on the nature of the violation and either issue a warning or issue a citation. Mere issuance of a citation does not constitute arrest or detention in the sense referred to in this directive.

A person with full immunity may not, however, be compelled to sign the citation. Accordingly, such a person may not be arrested for failing to sign the citation.

The U.S. Department of State has established a point system to determine whether diplomats should have their driving privileges suspended. Each time an officer issues a traffic citation to someone presenting a driver's license issued by the U.S. Department of State, a photocopy of the ticket along with a brief report should be forwarded to the Criminal Intake Unit, which will send the information to the Director of the Diplomatic Motor Vehicle Office.

Points will be assessed by the U.S. Department of State upon receipt of the citation copy. Revocation can occur once sufficient points have accumulated. The U.S. Department of State will, in some cases, ask the home country to waive an individual's immunity status in order that the individual be compelled to go to court. In other, more extreme, cases the host country may be told that the individual must be removed from the United States.

Vehicles driven by diplomats or other immune persons who are not licensed by the U.S. Department of State do not necessarily carry privileges of immunity. The Director of the Diplomatic Motor Vehicle Office should be notified in those instances, as the diplomat may be attempting to circumvent the formal registration process. A copy of the traffic citation and a brief report of the incident should be forwarded to the Criminal Intake Unit.

4.4.3 DRIVING UNDER THE INFLUENCE

For situations involving a suspected DUI offense, where the person is immune from detention and arrest, unless such a person is considered a serious danger to him/herself or others, the driver should not be physically restrained or subjected to sobriety tests. Clearly, these can be delicate situations for the officer. The officer should treat the diplomat with respect and courtesy. It should be emphasized to the diplomat that the officer's primary responsibility is to care for the diplomat's safety and the safety of others. Options that may be considered, upon supervisory approval, include:

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- a. Take the individual to the station or other location where the individual may recover sufficiently to permit him/her to drive safely.
- b. Make arrangements for a friend or relative to pick up the individual.
- c. Call a taxi for the individual.
- d. Take the individual home.

A first-time DUI offense will normally result in a one-year driving suspension from the U.S. Department of State. A second case will normally result in the removal of the diplomat from the United States. In the event of a DUI, copies of any videotapes along with copies of relevant reports and tickets or other tangible evidence will be forwarded by the officer to the Criminal Intake Unit, which will forward them to the U.S. Department of State.

A person who has full immunity from detention and arrest is not required to perform a field sobriety test or submit to a blood alcohol test but can be asked to submit to a field sobriety test or blood alcohol test.

4.5 ENTRY TO FOREIGN CONSULATE PREMISES

REGARDING ALL CONSULATES:

OPD members are **not permitted to enter anywhere on consulate property to make an arrest or conduct an investigation without the consent of the head of the consular post.** This applies to entry of the property of the consulate post, its furnishings and its means of transport. The consent of the head of the consular post may, however, be assumed in cases requiring prompt protective action, such as fire, disaster requiring prompt protective action or prevention of intrusion or damage.

5. FORMS AND APPENDICES

ATTACHMENT A- Countries for Which Consular Notification is Mandatory

ATTACHMENT B- Foreign National Notification Form

ATTACHMENT C- Summary of Diplomatic and Consular Privileges and Immunities

ATTACHMENT D- Identification Cards