

Georgia Department of Public Safety
Policy Manual Exhibit

SUBJECT DIPLOMATIC AND CONSULAR IMMUNITY REQUESTS FOR ASYLUM / DEFECTION	POLICY NUMBER 17.12-4
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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 immunity is claimed, a member has the right to detain the person long enough to verify that the person is entitled to the immunity claimed. This can usually be done by examination of official identification cards. The member may also request that the dispatcher contact the appropriate government agency to verify the individual's status.

In all cases in which a person asserts immunity from arrest, the detaining member will immediately notify their immediate supervisor.

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

A. Diplomatic and Consular Immunity

Under Federal law, diplomatic and consular members, members of their official staff, officials of international organizations such as the United Nations and family members of such members will be accorded their respective privileges, rights and immunities as provided by the Treaties and laws of the United States.

1. Members shall treat diplomatic and consular officials with the utmost courtesy and respect befitting of their distinguished position, if, for no other reason, than 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 when their government is confronted with allegations 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, persons entitled to diplomatic or consular immunity present a clear, present and actual danger to themselves or others or it is apparent that a serious crime may be committed, a member 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 of a member to defend him or herself from personal harm. In all such cases a supervisor must be called and the United States Department of State contacted immediately.

B. Diplomatic Immunity

1. Under Federal law, heads of a mission of a foreign government to the United States (usually called the Embassy) 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.
2. 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."
3. 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.

C. Consular Immunity

1. 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 personnel: consular officers and honorary consuls.

- a. Consular officers are normally full time employees of the foreign government.
- b. Honorary consuls may be a citizen of the foreign government who has residency in the United States or a United States citizen.
2. In the absence of a specific treaty, consular personnel are not entitled to diplomatic immunity, but they are entitled to consular immunity which is more limited than diplomatic immunity.
3. Consular officers entitled to consular immunity
 - a. 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.

- b. Consular officers may be arrested or detained pending trial only if the offense is a felony and the arrest is made pursuant to a warrant. They cannot be placed under arrest for a felony without a warrant and cannot be placed under arrest for a misdemeanor even with a warrant.
- c. Notwithstanding the above restrictions on arrest, 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.

4. 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.

5. Family members

Family members of consular members 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.

6. Consulates and consular premises

- a. 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 clearly 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 structure which is clearly marked cannot be entered.
- b. In the event of a fire or other emergency, the consent of head of the consular post is assumed and officials may enter for the purpose of dealing with the emergency. Any emergency entry into a consulate will be immediately reported to the Agency's Chief Executive Member, the District Attorney and the U.S. State Department by telephone.
- c. Except in an actual emergency, the decision to enter a consulate for law enforcement purposes, without the consent of the head of the consular post will be made only by the Agency's Chief Executive Member after consultation with the District Attorney and the United States State Department. The Agency will strictly abide by the guidance received from the State Department.
- d. A violation of this section may result in the prosecution of the member under 18 U.S.C. § 112.
- e. 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 member under any circumstance. If a member 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 their supervisor who will contact the U.S. State Department Bureau of Diplomatic Security.

f. 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 respect 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) Consular officials may only be arrested for a felony pursuant to a warrant issued by judge.

3) Traffic violations

- a) Under international law, the issuance of a traffic citation does not constitute an arrest or detention. Therefore, the member on the scene may, after ascertaining that the official has the proper credentials, issue a warning or citation based on the nature of the offense.
- b) A copy of the citation along with a report of the incident will be forwarded through the chain of command to the Diplomatic Motor Vehicle Office ("DMVO") of the U.S. Department of State's Office of Foreign Missions, using the following contact information:

Mail: 3507 International Place, NW
Washington D.C. 20522

Phone: (202) 895-3521 (M-F. 0900-1700 EST)
(866) 217-2089 (after hours)

E-mail: OFMDMVEenforcement@state.gov

FAX: (202) 895-3646

4) Traffic Crashes

- a) If a motor vehicle involved in a crash (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 crash 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 the U.S. Department of State's DMVO using the following contact information:

Mail: 3507 International Place, NW
Washington D.C. 20522

Phone: (202) 895-3521 (M-F. 0900-1700 EST)
(866) 217-2089 (after hours)

E-mail: OFMDMVEenforcement@state.gov

FAX: (202) 895-3646

- 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 their self or the public. At best these are sensitive situations and the member 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 member), the member restraining the official should contact their supervisor as soon as possible to inform them of the situation.
 - 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 be taken to the station or another location where they may recover sufficiently to drive safely;
 - ii. The official be allowed to use taken to a telephone to call someone to drive them home;
 - iii. A taxi be called for the official, or
 - iv. 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 member believes to be intoxicated, the member may ask the individual to perform field sobriety tests under the same manner 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. The Office of Protocol may be reached by calling the following telephone number:

(202) 647-1727 (M-F, 0900-1700 EST)
(866) 217-2089 (after hours)
 - e) A full written report will be submitted within 24 hours through channels to:

Office of the Chief of Protocol
Department of State
2201 C Street NW
Room 1238
Washington, DC 20520
 - f) For consular officers, a full report will be submitted, through channels, to the United States Department of State, Office of the Chief of Protocol, using the same address.

6) Protection

- a) If persons asserting or entitled to diplomatic or consular immunity presents a clear, present, and actual danger to themselves or others, a member 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 member will, after taking appropriate action, explain to the official the reason for the restraint and that they will be released from restraint as soon as they no longer are a danger to their self or others and shall notify a supervisor as soon as feasible.
- c) The responding supervisor will immediately contact the U.S. State Department, in the event a diplomatic or consular official must be restrained. (See 8. Verification of Status on page 6.) 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 member 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 member 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 the Chief of Protocol by telephone immediately and advise them of the situation. A full written report will be submitted within 24 hours through channels to:

(202) 647-2663 (M-F, 0900-1700 EST)
(202) 647-1512 (after hours)

A full written report will be submitted within 24 hours through channels to:

Office of the Chief of Protocol
Department of State
2201 C Street NW
Room 1238
Washington, D.C. 20520

8) Verification of Status

Persons claiming diplomatic or consular immunity are required to produce satisfactory evidence of their official status.

- a) 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 which may be called to verify status.

- b) 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 Driver 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.
- c) The United States Department of State issues motor vehicle plates (license tags) for vehicle operated by persons entitled to diplomatic and consular immunity.
 - i. 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
 - A = United Nations/Organization of American States vehicles
 - E = other foreign missions
 - ii. Information regarding the vehicle and registered owner is available through NLET the same as out-of-state license plates. Use State code "US".
 - iii. In addition, the Georgia Department of Revenue may issue consular license plates for vehicles registered and operated in Georgia by career or honorary consuls.
 - iv. 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.
- d) In any situation in which an official asserting immunity cannot produce satisfactory evidence thereof, or the member wishes to confirm the status claimed, the United States Department of State should be contacted. If the official has an identification card issued by the Department of State, contact information should be listed on the back of the card. If not, use the following contact information:
 - i. Regular Hours (M-F, 0900-1700):
 - Taiwanese diplomats/officials (TERO/TEC): (703) 525-8474
 - United Nations diplomats/officials: (212) 415-4168
(212) 415-4407
(212) 415-4300
 - All other diplomats/consuls/officials: (202) 647-1985
(202) 647-1727
 - ii. After hours:

United Nations diplomats/officials: (212) 415-4444
All other diplomats/consuls/officials (including Taiwanese):
(571) 345-3146
(866) 217-2089

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

(202) 895-3521 (M-F, 0900-1700)
(571) 345-3146 (after hours)
(866) 217-2089 (after hours)

D. 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.

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, and
 - g. Foreign officials accredited to the games.
2. Official Guests do not have immunity but will be treated with courtesy and respect. A supervisor shall be contacted immediately for any incident involving an Official Guest. The supervisor will, in turn, contact the District Attorney's office or, in the case of misdemeanors, the Solicitor of State Court.
3. The supervisor member shall 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
Office of the Chief of Protocol
2201 C Street NW
Room 1238
Washington, DC 20520
(202) 647-2663 (M-F, 0900-1700)
(202) 647-1512 (after hours)
(202) 647-4080 (fax)

protocolhelp@state.gov

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

(202) 647-2663 (M-F, 0900-1700)
(202) 647-1512 (after hours)

E. 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 member will immediately contact a supervisor.
2. It is the responsibility of the supervisor to immediately contact:
 - a. In the case of diplomats, official guests, and consular (except honorary consuls), the regional office of the F.B.I. and the U.S. State Department command post by phone at (571) 345-3146 / (866) 217-2089. 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 honorary consul, the District Attorney and the U.S. State Department.
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 member 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.

F. Foreign Nationals as Victims or Witnesses to a Crime

1. If a foreign national is a victim or witness in a crime, the investigating member 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 or the member has reason to believe that the individual may depart the State, the District Attorney's office will be immediately contacted in order that the testimony of the individual may be recorded.
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 member will include the name, address, telephone number and relationship of the translator to the victim/witness in the Incident Report or Supplemental Report.

G. 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 members will handle any request for asylum or a defection with speed, tact and resolution.

2. If a member 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 member shall:
 - a. Contact their immediate supervisor and request the supervisor come to 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 member 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 a member and (1) requested asylum in the United States, or (2) indicated that they want to defect to the United States, the supervisor shall:
 - a. Immediately contact by secure means (not radio):

U.S. Immigration and Customs Enforcement
SAC Atlanta
1100 Centre Parkway
Atlanta, GA 30344

(404) 346-2300
(404) 346-2374 (fax)

Or

U.S. Immigrations and Customs Enforcement
Law Enforcement Support Center
188 Harvest Lane
Williston, VT 05495

(802) 872- 6050 (24/7)
 - b. Take the person into protective custody and transport the person to a secure location designated by U.S. Immigration and Customs Enforcement or to headquarters.