



Jeffrey R. Gahler,  
Sheriff

# HARFORD COUNTY SHERIFF'S OFFICE OPERATIONS POLICY

## Diplomatic Immunity for Motor Vehicle Violations

<b>Distribution:</b>	<b>All Personnel</b>	<b>Index:</b>	<b>OPS 0917</b>
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### 1. Purpose

To provide employees with guidance on dealing with foreign diplomatic and consular personnel.

### 2. Policy

Law enforcement authorities of the United States must always treat foreign diplomatic and consular personnel with respect and with due regard for the privileges and immunities to which they are entitled under international law.

### 3. Definitions

**ADMINISTRATIVE AND TECHNICAL STAFF:** secretaries, clerical personnel, office managers and certain professional security personnel.

**CONSULAR OFFICERS:** persons who are not Diplomatic Agents and do not enjoy the privileges and immunities, but may perform a variety of functions of principal interest to their countries (e.g., issuance of travel documents, attending to difficulties of their own countrymen who are present in the host country, and generally promoting the commerce of their countries).

**DIPLOMATIC AGENTS:** heads of missions, ambassadors and charge d'affaires, and members of their diplomatic staff, i.e., those recognized by the U.S. Government as having diplomatic rank and title.

**DIPLOMATIC CORPS:** the collection of accredited heads of mission (ambassadors / high commissioners) who represent their countries in another state or country.

**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, but in no way releases such persons who enjoy it from the duty embodied in international law, to respect the laws and regulations of the United States.

**FULL CRIMINAL IMMUNITY:** full criminal immunity is given to diplomatic agents, administrative and technical staff and their families. Full criminal immunity means more than immunity from prosecution. It means that the residence, vehicles, papers, and correspondence of an individual with this immunity classification cannot be searched, the person cannot be detained or arrested and is not required to give evidence as a witness.

**IDENTIFICATION CARD:** issued by the US Department of State upon entry into the United States or its Territories and contain a brief statement of the bearer's immunity on the reverse side. Diplomatic (blue border for diplomats); Official (green border for employees); and, Consular (red border for consular personnel).

**LIMITED CRIMINAL IMMUNITY:** service staff members have limited criminal immunity. They can be detained, arrested, and prosecuted for criminal acts. If prosecuted, service staff members can raise "official acts" immunity as an affirmative defense. The court will determine whether or not the member was acting in an official capacity at the time of the offense. Service staff can be required to give evidence as witnesses and, in accordance with local law, their persons and effects can be searched.

**PRIVATE SERVANTS AND MEMBERS OF MISSION:** persons hired by diplomats for their personal use and their families.

**SERVICE STAFF:** drivers, cleaners, and building/grounds personnel.

#### **4. Procedures**

- A. The Maryland Transportation Article requires the U.S. Department of State and the Maryland Motor Vehicle Administration to be notified when foreign diplomats are stopped for probable cause violations of motor vehicle laws.
- B. After stopping an individual who displays a driver's license issued by the U.S. Department of State or who otherwise claims immunities or privileges as a foreign diplomat the deputy will notify the Duty Officer (DO) to telephone the U.S. State Department to verify the driver's status and immunity, if any. The telephone number of the U.S. State Department is 202-647-7277 and is available 24 hrs. per day.
- C. If the DO is not able to contact the U.S. Department of State:
  - 1. The DO will so inform the deputy.
  - 2. The deputy will not detain the driver any longer than is necessary to record the appropriate information.
  - 3. The deputy will, as soon as practicable, contact the U.S. Department of State, even if the driver has already been released.
- D. If a citation or other charging document is not issued, the deputy will record on a Field Based Reporting (FBR) Incident, all relevant information from any driver's license or identification card, including a driver's license or identification card issued by the U.S. Department of State and the reason for the stop.
- E. Within five days after the date of a stop, the deputy will forward to the Maryland Motor Vehicle Administration, the following:
  - 1. A Vehicle Accident Report if the driver was involved in a vehicle accident.
  - 2. A copy of the citation or other charging document if issued to the driver.

Mail to:  
Motor Vehicle Administration  
Administrative Adjudication, Room 212

6601 Richie Highway, NE  
Glen Burnie MD 21062

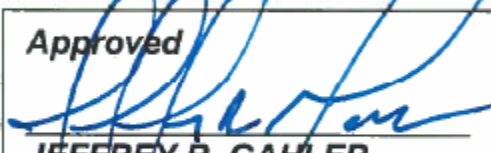
- F. When a driver with proper and valid identification indicating diplomatic immunity is stopped for any moving traffic violation, the deputy may issue an appropriate traffic citation or warning notice.
1. The diplomat does not have to sign the citation and cannot be arrested for refusal to sign or accept the citation.
  2. If diplomat refuses to sign, deputy will write "Refused to Sign" on citation.
  3. Failure of the diplomat to appear in court to answer the citation may cause action by the Motor Vehicle Administration (MVA) in relation to the diplomat's driving privileges within Maryland.
  4. The issuance of a traffic citation does not constitute an arrest or detention.
  5. The arrest / detention of members of the Diplomatic Corps for any violation of the Transportation Code of Maryland is not authorized.
- G. Driving Under the Influence (DUI)
1. Individuals with diplomatic immunity stopped for DUI will not be allowed to operate a motor vehicle under the influence.
  2. The deputy's primary concern in this situation should be the safety of the community and of the intoxicated individual.
  3. The deputy will provide assistance in parking the vehicle or securing another driver.
  4. If the vehicle is parked, the location will be recorded with Department of Emergency Services (DES).
  5. A deputy may issue a traffic citation to the person for DUI and any other related traffic charges, however, no physical arrest can be made.
  6. If the diplomat refuses assistance or a claim is made that the deputy's requested action would restrict the effective exercise of diplomatic functions, the deputy will inform the diplomat that the diplomat is free to go, but the vehicle may not be moved.
  7. The embassy or legation concerned will be contacted immediately for advice or assistance in obtaining a driver and removing the vehicle.
  8. If the driver is entitled to diplomatic immunity, the driver should not be restrained except in extreme cases.
  9. Sobriety tests should be offered, but a diplomat may not be compelled to take any tests.
  10. Force must not be used except when necessary to prevent injury to the diplomat or others and then only the absolute minimum should be applied.
- H. Towing
1. When it becomes necessary to have a vehicle bearing diplomatic registration towed, deputies

will comply with current towing policy.

2. A diplomat's vehicle is considered secure from violation and cannot be searched.

## 5. The Persona Non-Grata Procedure

- A. Persons may be stripped of their privileges and immunity by their host countries. These individuals have a reasonable amount of time to exit the host country. This concept is known as the "Persona Non-Grata Procedure" and it may be employed at any time by the "host" country. There is no requirement, under international law, for such countries to justify their action. For the U.S., however, use of this procedure has inherent constraints. The Department of State's Office of Protocol recommends a high standard of police investigation, records, and reporting in diplomatic incident cases, which is essential to permit the Department of State responsibly to exercise the diplomatic tools available to remove persons engaged in criminal activity in the U.S.
- B. Deputies will document all diplomatic incidents on the appropriate report forms and submit them for supervisory approval, without unnecessary delay.

Approved  
  
JEFFREY R. GAHLER  
SHERIFF  
DATE 2/14/19