

DEPARTMENT GENERAL ORDER 99-16

OFFICE of the CHIEF OF POLICE
REPLACES: SOP 501.37.00

DATE: February 20, 1999

IMMUNITY FROM ARREST

I. PURPOSE.

To establish guidelines in regard to ensuring department compliance with the legal protections inherent to the various types and/or degrees of immunity from arrest.

II. DEFINITIONS.

Diplomatic 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.

Immunity - A legal state wherein a person is exempted from, or protected against, civil and criminal process. Such immunity may be total or partial.

III. DIPLOMATIC IMMUNITY.

International law requires that domestic law enforcement authorities of the United States extend certain extraordinary privileges and immunities to members of foreign diplomatic missions and consular posts. Most of these privileges and immunities are not absolute however, and are contingent upon the position an individual holds within a foreign delegation.

A. Total Diplomatic Immunity

Ambassadors, ministers, attaches, and charge d'affairs are protected by international law which grants such diplomats unlimited immunity from civil and criminal action, to include detention, arrest, or prosecution for any and all felony charges, misdemeanors, and/or traffic violations. Such individuals possess diplomatic passports and identification cards issued by the U.S. State Department verifying their absolute immunity from local and state jurisdiction.

Diplomatic immunity also extends to those family members and the administrative and technical staff of foreign officials with diplomatic immunity, provided such family and staff members are certified and registered with the state department. Identification cards are not issued to such individuals by the U.S. Government.

The diplomatic immunity possessed by qualified representatives of foreign governments also extends to protection of their personal property. Real property which serves as an embassy is considered foreign soil and as such, may not be subjected to police entry or search. Real property which is owned by lesser rank foreign embassy officials and/or their staff is of local concern and not a subject for immunity.

Diplomatic pouches, archives, documents, correspondence, and/or records are inviolable at all times and may not be searched or seized by law enforcement personnel regardless of the location or circumstances.

B. Limited Diplomatic Immunity

Consular officers, which are another class of foreign representatives assigned to this country, include consul-generals, deputy consul-generals, consuls, and vice-consuls. Consular officials are not diplomatic officers and are therefore not immune from criminal or civil action except for actions performed in their official capacity. They are liable to arrest and/or detention provided that the underlying offense is a felony, and that the arrest is made pursuant to a decision by a competent judicial authority.

Career consular officers may be identified by credentials issued by the U. S. State Department, which shall bear the department seal, the name of the officer, appropriate title, and the signature of the appropriate issuing official(s).

Foreign nationals serving as consular officers who violate traffic laws may be issued a traffic summons at the discretion of the officer on the scene.

C. Diplomatic Certification

Diplomatic immunity is possessed only by those individuals who have been

certified and registered by the U.S. State Department. As such, in those cases where an individual claims immunity but cannot produce satisfactory identification, a prompt inquiry should be made to the state department to clarify the status of the individual in question.

D. Investigative Requirements

Diplomatic immunity is not intended to serve as a license for legally inviolate persons to flout the law and purposely avoid liability for their actions. Sworn officers are obliged, under international customary and treaty law, to recognize the immunity of the envoy; however, sworn officers shall not ignore the commission of any criminal act(s) committed by a envoy protected by diplomatic immunity. Proper investigative procedures shall be followed in all incidents involving persons with diplomatic immunity and the state department contacted. The U.S. Government shall then have full responsibility to formulate the appropriate measures to deal with criminal offenders via proper diplomatic channels.

IV. LEGISLATIVE IMMUNITY.

Section 19, Article III, of the Missouri State Constitution provides that, "Senators and representatives shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and for the fifteen days next before the commencement and after the termination of each session; and they shall not be questioned for any speech or debate in either house in any other place."

V. IMMUNITY OF STATE MILITIA.

Missouri Revised Statute 41.680, states, "No person belonging to, or on duty with, the organized militia of the state, or engaged in the performance of militia duty on call of the governor, shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required for militia duty." As such, members of the organized state militia shall be immune (exempt) from civil process and jury service.

VI. IMMUNITY OF STATE WITNESSES.

Missouri Revised Statute 491.430, states, "If a person comes into this state in obedience to a summons directing him to attend and testify in this state he is not, while in this state pursuant to such summons, subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons."

The statute additionally provides, "If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he is not while so passing through this state subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons."

VII. COMPLIANCE WITH IMMUNITY PROTECTIONS.

Sworn officers of this command will properly investigate all criminal offenses involving diplomats or other protected individuals within the City of Clayton, yet they shall also abide by all legal requirements in regard to those individuals and/or property which are protected by diplomatic or legal immunity.

BY ORDER OF:

RICHARD T. MORRIS
Chief of Police

RTM:dld

CALEA Reference: 1.2.1/1.2.5/61.1.3