

City of Johns Creek Police Department

<i>Subject:</i>	Immunity from Arrest	<i>Number:</i>	04-14
<i>Reference:</i>	See also "Traffic Enforcement: Immunities"	<i>Amends:</i>	
<i>Effective:</i>	04/08	<i>Review Date:</i>	Annually
		<i># of Pages:</i>	3

PURPOSE:

Establish guidelines for certain arrest procedures, limitations regarding certain arrests, procedures for alternatives, and procedures in determining whether a person has diplomatic or other immunities.

DEFINITIONS:

Immunity: The special protection afforded to all employees of foreign governments who are present in the United States as official representatives of their home governments.

Complete Immunity: The highest degree of immunity from civil and criminal prosecution, no matter how serious the offense.

Official Act Immunity: A class of immunity which offers protection from prosecution if the act was performed as an official act of the country which the person represents. Only a court with subject matter jurisdiction may determine that the action complained of is an official act.

POLICY: (04-14)

Different categories of immunity may be afforded to different classes of persons. If an officer arrests someone claiming he/she has diplomatic immunity, the officer will investigate the claim in order to determine its validity. Other citizens of this state, country and other countries also enjoy complete or limited immunities during specific events or during specific times. Persons granted certain immunities may be exempt from immediate arrest and the arresting officer may be compelled to seek alternatives. The Shift Supervisor will be consulted and shall determine the appropriate action.

PROCEDURES:

Staffs of Diplomatic Missions (04-14-01)

Staffs of diplomatic missions are composed of diplomatic agents, administrative, technical, and service staff. Diplomatic missions are the principal communication link between the country which sends them and the host country. Diplomatic agents and family members forming part of the household enjoy *complete immunity*. Members of the diplomatic agent's administrative and technical staff and their immediate families also have

complete immunity, with the exception of civil jurisdiction.

Members of Consular Posts (04-14-02)

Consular posts are composed of consular officers, consular employees, service staff and honorary consuls. Consulates are distinct from diplomatic missions in that they do not have the principle role of providing communication between the two countries but rather perform a variety of functions for their countries (e.g., issuance of travel documents, promoting the commerce of the sending country, etc.) Generally, members of Consular Posts have only *official act immunity* with respect to both criminal and civil matters. The following conditions apply:

- A. No law enforcement officer is expected or authorized to determine whether a given set of circumstances constitutes an official act. Rather, this is an issue which may only be resolved as a matter of law by the host country court with subject matter jurisdiction over the alleged crime.
- B. International law holds that consular members may only be arrested pending trial provided the underlying offense is a felony and the arrest is made pursuant to a decision by a competent judicial authority, (e.g., a warrant issued by an appropriate court). Hence, the degree of the offense will usually dictate the course of action to be taken.
- C. Without a special bilateral agreement to the contrary, neither the service staff nor family members of consular members enjoy personal inviolability. The only exception, beyond that afforded by any bilateral agreement, involves an immunity enjoyed by service staff from any obligation to provide evidence as a witness with respect to official acts.

International Organization Personnel (04-14-03)

International organization personnel and national missions to such organizations are extended privileges and immunity. The nations concerned here have concluded treaties embodying grants of privileges and immunities, agreeing that the important purposes of their envoys may only be accomplished if these measures are afforded. The vast majority of international organization personnel have *only official act immunity*. The assignment of international organizations is differentiated generally on the basis of the functions performed. Pursuant to international law, and in many cases, the most senior representatives in these missions of international organizations have privileges and immunities equivalent to those afforded diplomatic agents. The remainders of the staffs of these missions have only official act immunity.

Traffic Enforcement (04-14-04)

Stopping a foreign official and issuing a citation doesn't constitute an arrest or detention and is permissible, although a signature on the citation by such a person may not be required. Accordingly, an officer should never hesitate to follow normal procedures to intervene in a situation involving a traffic violation he/she has observed even if immunity ultimately bars any further action at the scene. Sobriety tests may be *offered* in accordance with ordinary procedure but *may not be required or compelled*. If the officer judges the person to be intoxicated, the officer should not permit the person to continue to drive since the primary concern is the safety of the public and the intoxicated driver. Under such circumstances a number of options are available: the officer could summon a friend of the driver, if appropriate; call a taxi; or the officer could provide transportation. In any event, the officer

involved with the incident should fully document the facts of the incident, the identity of the person, and a written report of the incident should be forwarded to the Department of State.

Identification of Persons Entitled to Privilege and Immunity (04-14-05)

The only authoritative identity document providing an accurate indication of the status of the holder is the identity card issued by the Department of State, Protocol Office. There are three types of identification cards: Diplomatic (blue border for diplomats), Official (green border for employees), and Consular (red border for consular personnel). Identification cards contain a photograph of the bearer along with the bearer's name, title, mission, city and state or country, date of birth, identification number, expiration date, and a United States Department of State seal. A brief description of the bearer's immunity will be printed on the reverse side.

While this form of identification is generally to be relied upon, Department personnel are nonetheless urged to seek immediate verification in connection with any traffic or criminal incident or any other case where they have reason to doubt the validity of the card. Additionally, officers should be alert to the fact that newly arrived members of diplomatic and consular staffs may not yet have these official identity documents and should be prepared to coordinate with the U.S. State Department for verification if confronted with such a situation.

Procedure for Establishment of Diplomatic Immunity (04-14-06)

Should any officer of this Department have grounds, or probable cause to arrest a person who claims immunity, he or she must proceed with coordination through the U.S. State Department utilizing the following procedures:

- A. Whether the case involves an ordinance violation, a misdemeanor or a felony, the person may be briefly detained until his/her diplomatic status can be verified. Extreme patience and courtesy are called for in these situations and the use of handcuffs or other restraints should be avoided, if possible. (However, officer safety is paramount)
- B. The ranking officer on duty at the time should be notified. The State Department shall be contacted as soon as possible to determine the person's status. This notification to the State Department should be made by the ranking officer.
- C. If the State Department does not verify the diplomatic status of the person, he/she shall be processed routinely. If the person's immunity is confirmed, he/she should be handled in accordance with the instructions provided by State Department personnel.

Members of Congress (04-14-07)

U.S. Senators and Representatives are free from arrest during their attendance at Congress and in going to and from sessions of Congress except for "treason, felony, larceny, or breach of the peace."

Members of the Georgia General Assembly (04-14-08)

The members of the Georgia General Assembly are free from arrest during their attendance at the General Assembly and traveling to or from except for "treason, felony, larceny, or breach of the peace."

Others Exempt from Civil Arrest (04-14-09)

The following persons are exempt from arrest during the listed times:

- A. Members of the state militia during the performance of their duties.
- B. Poll officers during their attendance at elections, and in going to and returning from the same.
- C. Voters while casting their ballots.
- D. Witnesses on their way to and from court.