

VI

Handling Incidents

U.S. Department of State Policy

It is the policy of the U.S. Department of State with respect to alleged criminal violations by persons with immunity from criminal jurisdiction to encourage law enforcement authorities to pursue investigations vigorously, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system.

The U.S. Department of State will, in all incidents involving persons with immunity from criminal jurisdiction, request a waiver of that immunity from the sending State if the prosecutor advises that but for such immunity he or she would prosecute or otherwise pursue the criminal charge. If the charge is a felony or any crime of violence, and the sending State does not waive immunity, the U.S. Department of State will require that person to depart the United States and not return but to submit to the jurisdiction of the court with subject matter jurisdiction over the offense. Upon departure, the Department will request that law enforcement issue a warrant for the person's arrest so that the name will be entered in NCIC.

General Procedures

The vast majority of persons entitled to privileges and immunities in the United States are judicious in their actions and keenly aware of the significance attached to their actions as representatives of their sending State. On occasion, however, one of them may become involved in criminal misconduct. The more com-

mon violations are traffic (illegal parking, speeding, reckless driving, and DWI), shoplifting, and assault.

Whatever the offense or circumstances of contact, law enforcement officers should keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect possible under the circumstances. It is not an exaggeration to say that police handling of incidents in this country may have a direct effect on the treatment of U.S. diplomatic or consular personnel abroad.

When a law enforcement officer is called to the scene of a criminal incident involving a person who claims diplomatic or consular immunity, the first step should be to verify the status of the suspect. Should the person be unable to produce satisfactory identification and the situation be one that would normally warrant arrest or detention, the officer should inform the individual that he or she will be detained until his or her identity can be confirmed. **In all cases, including those in which the suspect provides a State Department-issued identification card, the law enforcement officer should verify the status with the U.S. Department of State or in the case of the U.N. community, with the U.S. Mission to the United Nations.** Once the status is verified, the officer should prepare his or her report, fully describing the details and circumstances of the incident in accordance with normal police procedures. If the suspect enjoys personal inviolability, he or she may not be handcuffed, except when that individual poses an immediate threat

to safety, and may not be arrested or detained. Once all pertinent information is obtained, that person must be released. A copy of the incident report should be faxed or mailed to the U.S. Department of State in Washington, D.C., or to the U.S. Mission to the U.N. in New York in cases involving the U.N. community, as soon as possible. Detailed documentation of incidents is essential to enable the U.S. Department of State to carry out its policies.

Traffic Enforcement

Stopping a mission member or dependent and issuing a traffic citation for a moving violation does not constitute arrest or detention and is permitted. However, the subject may not be compelled to sign the citation. In all cases, officers should follow their departmental guidelines and document the facts of the case fully. A copy of the citation and any other documentation regarding the incident should be forwarded to the U.S. Department of State as soon as possible. For “must appear” offenses, the Department uses the citation and any report as the basis for requesting an “express waiver of immunity.” Individuals cited for prepayable offenses are given the option of paying the fine or obtaining a waiver in order to contest the charge.

In serious cases, e.g., DWI, DUI, personal injury, accidents, telephonic notification to the U.S. Department of State is urged. The officer should follow his or her department’s guidelines with respect to the conduct of a field sobriety investigation. If appropriate, standardized field sobriety testing should be offered and the results fully documented. **The taking of these tests may not be compelled.** If the officer judges the individual too impaired to drive safely, the officer should not permit the individual to continue to drive (even in the case of diplomatic agents). Depending on the circumstances, there are several options. The officer may, with the individual’s permission, take the

individual to the police station or other location where he or she may recover sufficiently to drive. The officer may summon, or allow the individual to summon, a friend or relative to drive; or the police officer may call a taxi for the individual. If appropriate, the police may choose to provide the individual with transportation.

The U.S. Department of State’s Diplomatic Motor Vehicle Office maintains driver histories on all its licensees and assesses points for moving violations. Drivers who demonstrate a pattern of bad driving habits or who commit an egregious offense such as DWI are subject to having their licenses suspended or revoked as appropriate. This policy can be enforced effectively only if all driving infractions (DWI, DUI, reckless driving, etc.) are reported promptly to the U.S. Department of State. It is U.S. Department of State policy to assign “points” for driving infractions and to suspend the operators license of foreign mission personnel who abuse the privilege of driving in the United States by repeatedly committing traffic violations and demonstrating unsafe driving practices.

The property of a person enjoying full criminal immunity, including his or her vehicle, may not be searched or seized. Such vehicles may not be impounded or “booted” but may be towed the distance necessary to remove them from obstructing traffic or endangering public safety. If a vehicle that is owned by a diplomat is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle’s status through standard access to NLETS (use access code US). Should the vehicle prove to have been stolen or to have been used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled must be considered temporarily suspended, and normal search of the vehicle and, if appropriate, its detention, are permissible.

Vehicles registered to consular officials, including those with full criminal immunity, and consulates are not inviolable and may be towed, impounded, or booted in accordance with local procedures. The U.S. Department of State should be notified if a consular vehicle has been detained or impounded so that its Office of Foreign Missions can follow up with the proper consular official or mission.

Federal license plates issued by the U.S. Department of State are not the property of the diplomat or of a diplomatic mission and remain the property of the Department at all times. As such, they must be surrendered to the U.S. Department of State when recalled. Similarly, these license plates may not be transferred from the

vehicle to which they were assigned by the U.S. Department of State without the authorization of its Office of Foreign Missions.

In cases where the officer at the scene has determined that the vehicle is being operated without insurance and/or has verified with the U.S. Department of State that the vehicle bearing U.S. Department of State license plates is not the vehicle for which those plates were intended, the Department may request that the local law enforcement agency impound the plates and return them to the Department. Such impoundment should only be upon the request of the U.S. Department of State. Subsequent detention of the vehicle must conform to the guidelines above.