

YORK-POQUOSON SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Diplomatic Immunity	NUMBER: GO 2-40
EFFECTIVE DATE: May 15, 2019	REVIEW DATE: March 11, 2019
AMENDS/SUPERSEDES: GO 2-40, January 1, 2002	APPROVED: _____  Sheriff
VLEPSC: ADM.02.04	

1 **INDEX WORDS**

- 2
- 3 Consular Official
- 4 Department of State
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- 6 Foreign Diplomat
- 7

8 **POLICY**

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10 The York-Poquoson Sheriff's Office has developed the following policy to insure compliance

11 with all instructions of the United States Department of State relating to:

- 12 • The arrest and detention of foreign nationals,
- 13 • Deaths of foreign nationals,
- 14 • Appointment of guardians for minors or incompetent adults who are foreign nationals,
- 15 • Foreign aircraft crashes, and
- 16 • Related issues pertaining to the provision of consular services to foreign nationals.
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18 **PURPOSE**

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20 The purpose of this directive is to establish guidance for members of the York-Poquoson

21 Sheriff's Office who come into contact with foreign nationals or individuals claiming to be

22 foreign nationals.

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24 **PROCEDURES**

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- 26 • Requirements pertaining to foreign nationals:
- 27 ○ When foreign nationals are arrested or detained, they must be advised of the right to
- 28 have their consular officials notified.
- 29 ■ Consular Notification Assistance for arrested or detained foreign nationals:
- 30 ❖ Business hours: 202-485-7703
- 31 ❖ After-hours: 202-647-1512
- 32 ❖ Email: consnot@state.gov
- 33
- 34 ○ If the subject does not claim foreign citizenship, but has indicators of non-U.S.
- 35 citizenship such as language barriers it is the deputy's responsibility to make every
- 36 reasonable effort to determine the subject's nationality and follow the proper course
- 37 of action.

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- In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the subject's wishes.
 - The list of countries, which require mandatory notification of consular officials, in the event that one of their citizens has been arrested, is extensive.
 - ❖ The list of mandatory Consular notification countries can be found on the [Consular Notification and Access Reference Card](#) found in the forms folder in Power DMS.
 - Consular officials are entitled access to their citizens in detention and are entitled to provide consular assistance.
 - When a government official becomes aware of the death of a foreign national, consular officials shall be notified.
 - When guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent such as adult temporary detention order for mental reasons, consular officials shall be notified.
 - When a foreign aircraft crashes, consular officials must be notified.
 - In all cases of enforcement contact with foreign nationals, claiming any level of immunity, the shift supervisor will be immediately contacted.
 - The supervisor will then make a determination on contacting the patrol Division Commander or Chief Deputy based on the circumstances.
 - If questions arise regarding the arrest or detention of a foreign national, the U. S. State Department may be contacted for guidance.
 - ❖ Diplomatic Security Command Center:
 - 1-866-217-2089
 - Foreign Diplomats and Consular Officials
 - Contact with foreign diplomats and government officials should be handled with extreme care.
 - The deputy's priority is public safety; however, the deputy is also bound to honor immunity granted by the U.S. State Department to certain officials of foreign nations.
 - See the [Diplomatic and Consular Immunity Law Enforcement Guide](#) in the Power DMS folder, for details regarding the identity of, immunity status and level of immunity for foreign diplomats, Consular, their families and employees.
 - Diplomatic Immunity
 - Varying degrees of diplomatic immunity may be granted to the following:
 - Diplomatic Agents, their Family Members and Sponsoring Diplomatic Agents.
 - ❖ Enjoy the highest level of immunity and may not:
 - Be handcuffed,
 - Arrested or detained,
 - Neither their property, including vehicles, nor residences may be entered or searched.
 - Enjoy complete immunity from criminal jurisdiction and cannot be prosecuted no matter how serious the offense unless their immunity is waived by their sending country.

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- Members of Diplomatic Agent’s Administrative and Technical Staff and Family Members.
 - ❖ Enjoy the same level of immunity as the diplomatic agent except:
 - Are not immune from civil jurisdiction unless in the performance of their official duties.
 - ✓ Staff and family members who are U. S. Nationals of the United States or are legal permanent residents of the United States enjoy no immunity.

 - Members of Diplomatic Agent’s Service Staff and Family Members.
 - ❖ Only enjoy Official Acts immunity.
 - ❖ Family members of service staff have no diplomatic immunity.

 - Consular Officers
 - ❖ Have only Official Acts or functional immunity.
 - ❖ Have immunity from testifying as a witness involving official duties.
 - ❖ May be arrested and detained if the offense is a felony.
 - ❖ May be prosecuted for misdemeanors but not held in custody pending trial.
 - ❖ Family members, unless a bilateral agreement is in place, enjoy no immunity.
 - Staff and family members who are U. S. Nationals of the United States or are legal permanent residents of the United States enjoy no immunity.

 - Consular Employees and Family Members.
 - ❖ Enjoy only Official acts immunity.
 - ❖ Have immunity from testifying as a witness in respect to official acts.
 - ❖ Family member have no immunity.
 - Staff and family members who are U. S. Nationals of the United States or are legal permanent residents of the United States enjoy no immunity.

 - Consular Service Staff
 - ❖ Enjoy no immunity.
 - ❖ Have immunity from testifying as a witness regarding official acts.
 - Staff and family members who are U. S. Nationals of the United States or are legal permanent residents of the United States enjoy no immunity.

 - Honorary Consuls
 - ❖ Enjoy official acts immunity.
 - ❖ Have immunity from testifying as a witness regarding official acts.
 - ❖ May be arrested pending trial.
 - Family members have no immunity.

 - Special Bilateral Agreements
 - In some cases the Unites States have entered into Special Bilateral Agreements which may grant the above personnel, their staff and family the same immunity provided for

- 129 diplomats provided they are not U. S. Nationals, legal permanent residents or
 130 permanently resident in the United States.
- 131 ▪ Prior to taking law enforcement actions immunity status can be verified by
 132 calling:
 - 133 ❖ The Office of Protocol Diplomatic Affairs:
 - 134 ➤ Business hours: 202-647-1727
 - 135 ➤ After-hours: 571-345-3146
 - 136 ➤ Toll Free: 1-866-217-2089
 - 137 ➤ FAX: 202-647-4080
- 138
 - 139 • International Organizations
 - 140 ○ Personnel from International Organizations that have headquarters in the United
 141 States such as the United Nations their staffs and employees generally on enjoy
 142 Official Acts immunity.
 - 143 ○ The most senior executives of such organizations have been accorded privileges and
 144 immunities afforded Diplomatic Agents such as:
 - 145 ▪ Secretary General of the United Nations,
 - 146 ▪ All Under Secretaries-General, and
 - 147 ▪ Assistant Secretaries General of the United Nations,
 - 148 ▪ Principal Resident of the International Monetary Fund,
 - 149 ▪ Principal Resident of the World Bank, and
 - 150 ▪ Some senior officials of the Organization of Americans States Secretariat.
 - 151 ❖ The immunity status of the above can be verified by calling:
 - 152 ➤ M-F 9am to 5pm: 212-415-4168
 - 153 ➤ M-F 9am to 5pm: 212-415-4407
 - 154 ➤ M-F 9am to 5pm: 212-415-4300
 - 155 ➤ USUN- Communications Section After-hours: 212-415-4444
 - 156
 - 157 ○ Taipei Economic and Cultural Representative Office in the United States (TECRO)
 158 and Taipei Economic and Cultural Offices (TECO)
 - 159 ▪ TECRO designated employees.
 - 160 ❖ Enjoy full immunity from criminal jurisdiction.
 - 161 ❖ Enjoy civil immunity with regard to official acts only.
 - 162 ➤ Family members enjoy full criminal immunity so long as they are not U.
 163 S. Nationals or permanent residents.
 - 164
 - 165 ▪ TECRO Head and Deputy Head.
 - 166 ❖ Enjoy immunity from both criminal and civil jurisdiction only in regards to
 167 official acts.
 - 168 ❖ May only be detained or arrested pending trial pursuant to a felony warrant.
 - 169 ➤ Family members enjoy no immunity.
 - 170
 - 171 ▪ TECO Designated Employees.
 - 172 ❖ Only enjoy immunity from testifying as a witness in regards to official acts.
 173 ➤ Family members enjoy no immunity.

- 175 ▪ The immunity status of TECRO and TECO personnel can be verified by calling:
- 176 ❖ M-F 9am to 5pm: 703-525-8474
- 177 ❖ Diplomatic Security Command Center after-hours: 571-415-3146
- 178 ❖ Diplomatic Security Command Center Toll Free: 1-866-217-2089
- 179
- 180 • Diplomat Identification Cards
- 181 ○ While a person claiming diplomatic immunity may present any number of
- 182 identification papers, the only one that is indicative of the level and privilege of
- 183 immunity is a card issued by the U.S. State Department.
- 184 ▪ The holder's level of immunity will be indicated on the card.
- 185 ❖ See the [Diplomatic and Consular Immunity Law Enforcement Guide](#) in Power
- 186 DMS for examples of the different Diplomatic Immunity Identification Cards
- 187 and levels of immunity.
- 188
- 189 ▪ If a person claiming immunity does not possess this card and the incident involves
- 190 a criminal offense, deputies may detain the person either at the scene or at the
- 191 sheriff's office long enough to verify official status.
- 192 ❖ Verification can be obtained by calling:
- 193 ➤ The Office of Protocol Diplomatic Affairs:
- 194 ✓ Business hours: 202-647-1727
- 195 ✓ After-hours: 571-345-3146
- 196 ✓ Toll Free: 1-866-217-2089
- 197 ✓ FAX: 202-647-4080
- 198
- 199 • Diplomatic License Plates
- 200 ○ Individuals enjoying diplomatic immunity are issued "Diplomat" license plates for
- 201 their registered vehicles.
- 202 ○ The license plate number may give reference to the position held by the diplomat the
- 203 vehicle is registered to.
- 204 ▪ The following is a guide to diplomatic license plates:
- 205 ❖ "D" prefix or suffix:
- 206 ➤ Diplomatic missions and members who hold diplomatic rank.
- 207
- 208 ❖ "C" prefix:
- 209 ➤ Consular missions and career Consular officers.
- 210
- 211 ❖ "S" prefix:
- 212 ➤ Administrative and technical staff at diplomatic missions and consular
- 213 employees at consular missions.
- 214
- 215 ❖ "A" prefix or suffix:
- 216 ➤ Official vehicles of Secretariats of the United Nations, and
- 217 ➤ The Organization of American States, and
- 218 ➤ Those staff members who have diplomatic status.
- 219
- 220 ❖ "E" prefix:

- 221 ➤ Other foreign missions not mentioned above and their eligible employees.
222
- 223 ○ Vehicles displaying Diplomatic license plates may be operated by persons who do not
224 enjoy immunity or only enjoy partial immunity; therefore, verifying the immunity
225 status of the persons operating or with vehicles displaying Diplomatic license plates
226 should be verified.
227
- 228 ● Traffic Stops and Infractions
- 229 ○ The level of immunity enjoyed regarding traffic stops and summonses is not based on
230 the type of Diplomatic license plate displayed but on the highest level of immunity
231 enjoyed by the vehicle's occupant(s).
- 232 ○ Stopping and issuing a summons to a diplomat or consular for a traffic violation does
233 not constitute arrest or detention, and is permitted. However, based on the subject's
234 level of immunity, the subject may not be compelled to sign the Uniform Traffic
235 Summons.
- 236 ▪ If the subject does not sign the summons, write "refused" on the signature line.
237 ▪ In all cases, copies of traffic summonses signed or not, shall be emailed or faxed
238 to the U.S. State Department for review.
- 239 ❖ Main: 202-895-3521
240 ❖ After-hours: Diplomatic Security Command Center: 571-345-3146 or 886-
241 217-2089
242 ❖ FAX: 202-895-3646
243 ❖ Email: ofmdmvenforcement@state.gov
- 244 ➤ This information may be used by the U. S. State Department to revoke the
245 diplomat's State Department operator's license.
246
- 247 ○ In serious traffic cases, such as DUI/DUID, reckless driving, evade and elude,
248 telephonic notification of the U.S. State Department is strongly encouraged.
- 249 ▪ M-F 9am to 5pm: 202-895-3521
250 ▪ Diplomatic Security Command Center after-hours: 571-345-3146
251 ▪ Diplomatic Security Command Center Toll Free: 1-866-217-2089
252
- 253 ○ In cases of driving under the influence, the deputy should conduct field sobriety tests
254 to determine the level of impairment. However, the subject, enjoying immunity, may
255 not be compelled to take these tests.
- 256 ○ If the deputy determines the immune individual to be too impaired to drive, the
257 deputy should not allow the individual to operate a motor vehicle.
- 258 ○ The deputy may:
- 259 ▪ Attempt to locate an associate of the subject to drive.
260 ▪ Summons a taxi service to transport the subject.
261 ▪ With the individual's permission, transport them to a location where the subject
262 may recover sufficiently to drive.
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- 264 ● Searches Related to Diplomats and their Property

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- When encountering a criminal suspect, who claims diplomatic immunity, deputies shall first take reasonable measures, including pat-downs or other legal searches, to insure safety to the public and other deputies.
 - Verification of the diplomatic claim shall take place after any danger has been neutralized.
 - Because diplomatic and consular immunity may be waived or withdrawn by the foreign government, a criminal investigation shall proceed as if no valid diplomatic immunity claim has been made.
 - Although the subject cannot be detained or arrested once appropriate immunity is established, an investigation into the incident shall proceed pursuant to the policy of the York-Poquoson Sheriff's Office, in anticipation that immunity may be waived.
 - In cases of criminal acts, the United States Department of State will request an immunity waiver from the immune person's home country.
 - ❖ If the immune person enjoys immunity from criminal jurisdiction, no arrest or detention shall be made until such waiver is granted.
 - ❖ In a criminal investigation, the Sheriff, or his designee, shall remain in contact with the U.S. State Department.
 - ❖ Criminal and non-traffic misdemeanors shall be reported to:
 - The Office of the Chief of Protocol:
 - ✓ FAX: 202-647-1198, and
 - DSS-Protective Liaison
 - ✓ FAX: 202-895-3613
 - The property of a subject enjoying certain levels of diplomatic immunity, including their vehicle, may not be searched or seized.
 - Such vehicles may not be impounded or immobilized, but may be towed the distance necessary to remove them from obstructing traffic or endangering public safety.
 - If the vehicle is determined to be stolen or used by **unauthorized persons** to commit a crime, the immunity from search of the vehicle is considered temporarily suspended and a normal search and if appropriate its detention is permissible.
 - The search of a vehicle displaying Diplomatic license plates shall not be based on the type of Diplomatic license plate but on the highest level of immunity enjoyed by the vehicle occupants.
 - **A diplomatic or consular pouch shall not be opened by any deputy under any circumstance.**
 - A diplomatic or consular pouch is a container used to transport official documents and equipment for communications.
 - It is required to be clearly marked as a diplomatic pouch.
 - If a diplomat, consular, or official guest of the United States is a victim of a crime, the responding deputy will immediately notify his supervisor.
 - Contact shall then be made with the FBI Norfolk/ Hampton Field Office.

- 311 ▪ According to Federal regulations, the Federal Bureau of Investigations has
312 primary jurisdiction over offenses committed against diplomats and official
313 guests.
314
- 315 • Arrests or Detention of Foreign Nationals
 - 316 ○ A traffic stop or brief investigative detention of a foreign national does not require
317 consular notification.
 - 318 ○ The notification of the arrest or detention of some foreign nationals require
319 mandatory Consular notification.
 - 320 ▪ See [Consular Notification and Access Reference Card](#) on the forms folder in
321 Power DMS for a list of mandatory notification countries.
322
 - 323 ○ Foreign nationals who are detained or arrested for a criminal offense are entitled to
324 assistance from their country’s consulate.
 - 325 ▪ Suggested Statements to Arrested or Detained Foreign Nationals
 - 326 ❖ When Consular Notification is at the Foreign National’s Option:
 - 327 ➤ “As a non-U.S. citizen who is being arrested or detained, you may request
328 that we notify your country’s consular officers here in the United States of
329 your situation. You may also communicate with your consular officers. A
330 consular officer may be able to help you obtain legal representation, and
331 may contact your family and visit you in detention, among other things. If
332 you want us to notify your consular officers, you can request this
333 notification now, or at any time in the future. Do you want us to notify
334 your consular officers at this time?”
 - 335 ✓ See [Consular Notification and Access Reference Card](#) in the forms
336 folder in Power DMS.
 - 337 ❖ When Consular notification is Mandatory.
 - 338 ➤ Because of your nationality, we are required to notify your country’s
339 consular officers here in the United States that you have been arrested or
340 detained. We will do this as soon as possible. In addition, you may
341 communicate with your consular officers. You are not required to accept
342 their assistance, but your consular officers may be able to help you obtain
343 legal representation, and may contact your family and visit you in
344 detention, among other things. Please sign to show that you have received
345 this information.
 - 346 ✓ See [Consular Notification and Access Reference Card](#) in the forms
347 folder in Power DMS.
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 - 351 • Documentation and Communication
 - 352 ○ It is imperative that deputy sheriffs keep detailed documentation on activities
353 involved in this policy if interaction with a foreign national occurs.
 - 354 ▪ These records should include:
 - 355 ❖ The time of notification to the foreign consular representatives, and
 - 356 ❖ To whom notification was made,

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- ❖ Time subject was notified of his or her right to consular notification, and
 - ❖ Confirmation that the consular received the notification.
 - If the subject is in possession of a passport, visa, resident alien card, or any other related identification, the arresting deputy should make a photocopy and attach it to the offense report.
 - If the language of a foreign national is a barrier to conducting the requirements as outlined in this policy, contact the 911 Emergency Communications Center to arrange for a translator.
 - Handbooks that contain all pertinent information, including embassy phone and fax numbers, will be kept in 911 Emergency Communications Center, the Patrol Lieutenant's Office, and the Accreditation Manager's Office.
 - If any contact with a foreign national or diplomat reveals that a criminal or traffic offense was committed, the proper reports will be completed.
 - Copies of all incident reports, accident reports, and uniform traffic summons will be sent, through the chain of command, to the U.S. State Department, Office of Protocol.
 - See the [Diplomatic and Consular Immunity Law Enforcement Guide](#) in the forms folder of Power DMS for additional information.