

April 8, 2010

**CITY OF FERGUSON  
OFFICE OF THE CHIEF OF POLICE**

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**IMMUNITY FROM ARREST**

415.00 PURPOSE

Certain persons are protected from prosecution, arrest, and detention by police under the law. This protection ranges from complete immunity for any offense, to limited immunity for minor violations. The purpose of this General Order is to:

- A. List those persons eligible to receive immunity.
- B. Describe the level of protection they are entitled to.
- C. Establish procedural guidelines to follow when handling them.

415.01 IMMUNITY OF LEGISLATORS:

Section 19, Article III, of the Missouri Constitution provides: "Legislative privileges. Senators and representatives will, in all cases except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and for fifteen days before the commencement and after the termination of each session."

415.02 IMMUNITY OF STATE MILITIA:

The applicable laws of the Missouri Revised Statutes, 1978, concerning the rights and immunities of the militia are as follows:

- A. Members of organized militia exempt from civil process and jury service. "No person belonging to, or on duty with, the organized militia of this state, or engaged in the performance of militia duty on call of the governor, will be arrested on any civil process while going to, remaining at or returning from any place at which he may be required to attend for militia duty..."
- B. Conservators of the peace. "Every commissioned officer, warrant officer and enlisted person acting under the order of the governor, or of any officer, civil or military,

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authorized by law to call out the organized militia or any part thereof, as provided in this military code, will have the same rights and immunities as other conservators of the peace under the provisions of the law of the state."

- C. Organized militia not liable for acts done in performance of duty. "Whenever any portion of the organized militia is called into active service to execute the laws, engage in disaster relief, suppress actual or prevent threatened insurrection or repel invasion, the commanding officer will use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly. His honest and reasonable judgment in the exercise of his duty will be full protection, civilly and criminally, for any act or acts done while on duty; and no member of the organized militia in the active service of the state will be liable civilly or criminally for any acts done by him in the performance of his duty."
- D. Militia - right-of-way on streets or highways penalty for obstructing. "The commanding officer of any portion of the organized militia or his representative performing any militia duty in any street or highway may require persons in such street or highway to yield the right-of-way to such militia, except that the carriage of the United States mail, the legitimate functions of the police and fire apparatus, will not be interfered with thereby. Any person who hinders, delays or obstructs any portion of such militia duty, or who attempts to do so, is guilty of a misdemeanor."

#### 415.03 IMMUNITY OF FOREIGN OFFICIALS:

Diplomatic immunity, a principle of international law, is broadly defined as the freedom from local jurisdiction accorded diplomatic officers, their families and servants. Diplomatic officers should not be arrested or denied for any offense, and foreign career consular officers should not be arrested or detained except for the commission of a grave crime. Family members of diplomatic officers, their servants, and employees of a diplomatic mission are entitled to the same immunities under current U.S. law (22 U.S.C. 252), if they are not nationals of or a permanent resident in the receiving state.

##### A. General Information:

1. Only those individuals who have been certified and registered by the United States Department of State possess diplomatic immunity.
2. A representative of the State Department can be contacted at telephone number 202 647-1985 or 202 647-1727 between 9 a.m. and 5 p.m. on weekdays for verification concerning the diplomatic immunity of individuals. An officer will report any Incident(s) involving foreign diplomats and consuls to his Watch Commander. Situations occurring outside commonly accepted daily office hours and requiring immediate attention should be directed to the 24 hour State Department number at Washington, D.C. – 866 217-2089.

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3. Further, if a consular officer or member of his family becomes involved in any actions taken by members of this Department, the Chief of Police should be notified at the earliest possible moment.

B. Individuals With Diplomatic Immunity:

1. Ambassadors and Public Ministers - [Ambassadors, Ministers, Attaches and Charge'D'Affairs are absolutely exempt from civil and criminal action, including felony arrests and traffic violations.] Such individuals possess Diplomatic Passports, and identification cards issued by the State Department verifying their immunity from local jurisdiction.
2. Families and Employees of Officials With Diplomatic Immunity - Diplomatic immunity extends to those family members and employees of foreign officials with diplomatic immunity, provided such family members and employees are certified and registered by the State Department.} {Identification cards are not issued to such individuals by the State Department.}

C. Immunity of Personal and Real Property: Diplomatic immunity possessed by qualified representatives of foreign governments also extends to protection of their personal property. However, matters involving real property are of local concern and not therefore a subject for immunity. Consequently, in building code and sanitation violation cases, local officials can place liens or judgments against real property belonging to foreign officials.

D. Individuals Possessing Limited Diplomatic Immunity:

1. Consular officers: Consular officers are not diplomatic officers and are therefore not immune from criminal and civil action except for actions performed in their official capacity. They are liable to arrest or detention in the instance of a grave crime (for example, a felony that would endanger the public safety) pursuant to a decision by a competent judicial authority.
2. Honorary Consuls: United States citizens serving in the United States as consuls or honorary consuls for a foreign country are not generally immune from criminal or civil action, nor arrest and detention. However, such officers may properly be accorded the consideration required by virtue of their official position.

E. Handling Selected Incidents, Offenses, or Violations by Consular Officers:

1. Moving Traffic Violations: When a consular officer is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he is a consular officer and ascertaining that he possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him go with a warning of the danger of his actions or proceed with

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issuance of the appropriate citation. Mere issuance of a traffic citation does not constitute arrest or detention in the sense referred to above.

The Diplomatic Motor Vehicle Office (DMVO) in Washington, D.C., issues driver licenses to all members of the foreign diplomatic community and their eligible dependents. The DMVO maintains an automated database, which contains driver record/licensing information of all individuals possessing diplomat licenses. The driver's license number will be an eight-digit number and the state of issue should always indicate "U.S." The vehicle plate number should be the plate number assigned by the DMVO and the state of issue should always indicate "U.S."

The only type of immunity the diplomat has on Missouri highways is from arrest. He/she must pay all appropriate fees relating to traffic tickets received and licenses may be confiscated, as normal procedures would entail.

If you have any questions on how to process a certain traffic violation issued to a diplomat, you should immediately contact the Driver Services Section in D.C. at (202) 895-3521 from 8:00 a.m. to 5:00 p.m. eastern standard time; during non-office hours, contact the Diplomat Security Watch Officer at 571 345-3146 or toll free 866 217-2089.

The word "Diplomat" should be written at the top of any conviction as an easy reference for Drivers License Bureau employees.

2. Driving While Under the Influence: The primary consideration in this type of incident should be to see that the consular officer is not a danger to himself or the public. Based upon a determination of the circumstances, the following options are available:
  - a. Take him to the station or a location where he can recover sufficiently to enable him to drive safely;
  - b. Take him to a telephone so that he can call a relative or friend to come for him;
  - c. Call a taxi for him;
  - d. Take him home.

The consular officer should not be handcuffed, subject to any sobriety test, or manhandled in any way.

At best this is a sensitive situation. The consular officer should be treated with respect and courtesy. It should be impressed upon him

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that the officer's primary responsibility is to care for his safety and the safety of others.

3. Offenses Involving Family Members of a Consular Officer: Family members of a consular officer cannot claim immunity. However, consideration should be given to the special nature of this case. A violation should be handled, when possible, through release on a uniform traffic ticket or city ordinance violation summons in lieu of physical arrest. The individual should be released once positive identification is made and relationship with the consular official is verified. If the relative is a juvenile the subject should be released to the parent consular officer.

By order of:

A handwritten signature in cursive script that reads "Colonel Thomas Jackson". The signature is written in dark ink and is positioned above the printed name.

COLONEL THOMAS JACKSON  
Chief of Police

Distribution

All Department Personnel