

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

DIPLOMATIC AND CONSULAR OFFICIALS
SUBJECT

DATE: January 11, 2006

NO: P-15

FROM: CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX: **Diplomatic and Consular Officials**
Citations Involving Diplomats/Consular Officials
Arrests of Diplomats/Consulars

I. POLICY

Members of the Stockton Police Department will respect and honor the privileges, rights and immunities accorded to Diplomatic and Consular Officials by international agreement and federal status.

II. DEFINITION

A. Diplomatic Officials

1. Persons serving their Government as Ambassador, Minister, Minister Counselor, Counselor, Secretary, Secretary First, Second and Third, or Attaché.

B. Diplomatic Immunity

1. Defined from principle of international agreement as the freedom from local jurisdiction accorded to duly accredited diplomatic officers, their families, official staffs, and servants. Diplomats cannot be arrested or detained for any offense.

C. Consular Officials

1. Persons who are Consuls-General, Deputy Consuls-General, Consuls, and Vice Consuls or official representatives of foreign governments.

D. Consular Official Immunity

1. Consular Officials are accorded certain immunities and privileges. They may not be arrested for misdemeanors but may be arrested for grave crimes (felonies which endanger the public safety). The families, servants, and staff of consular officers are not entitled to immunity from arrest.
2. Law enforcement personnel should treat consular officials with due respect and should take all appropriate steps to prevent any attack on their personal freedom or dignity.

E. Honorary Consular Officials' Immunity

1. Some citizens of the U.S., or permanent residents of this country are appointed as Honorary Consular Officials by foreign countries for the purpose of facilitating and promoting the interests of those countries.
 - a. Although Honorary Consular Officials may perform the same duties as career consular officials, they are not accorded the full range of immunities, including the immunity from arrest, accorded to career consular officials.

F. Consular Archives, Records, Documents, and Correspondences

1. These are the official working papers of the consular post, including an honorary consulate. They are inviolable at all times and wherever they may be. The official correspondence of the consular post, that is, all correspondence relating to the consular post and its functions, are inviolable.
 - a. Those portions of an honorary consul's records which are entitled to inviolability must be separate from other records and must be devoted exclusively to Consular activities.

G. Official Guests

1. Official guests are foreign nationals present in the United States at the invitation of the United States and so designated by the U.S. Secretary of State. They normally carry letters of introduction or other documentation identifying them as official guests of the United States Government. Official guests have no immunity.

H. Identification of Diplomatic, Official, and Consular Officials.

1. There are three (3) variances of the identification card, all being 3-3/4 X 2-1/2 and bearing the U.S. Department of State seal.
 - a. Diplomatic Status - I.D. card bearing their name, D.O.B., Country, etc., and the card will have a blue border.
 - b. Official Status - I.D. card will also bear the name, D.O.B., Country, etc., however, the border of the card will be green.
 - c. Consular Status - I.D. card will have the same information, but a red border.
2. Honorary Consular Officials do not receive identification cards from the U.S. State Department. However, they may exhibit reduced-sized copies of the exequatur or diplomatic note evidencing recognition by the United States Government.
3. Vehicle registration and license plates of diplomats, diplomatic staff, and consulars.
 - a. State of California/Federal Government issues license plates with letters preceding the numbers indicating the status of the bearer.

D = Diplomatic Agent.
S = Administration/Diplomatic Staff
C = Consular Official.

III. PROCEDURE

A. Arrests

1. Basing actions on the preceding immunity information, the officer must determine whether his/her suspect can legally be placed under arrest, and, if so, whether the official's actions are endangering the public safety.
 - a. If the suspect is arrestable, and that person's actions are a danger to the public safety, the officer will refer the matter to the District Attorney and a direct arrest will be avoided, if at all possible.

B. Communication and contact with nationals or another nation, as per the Vienna Convention on Consular Relations and Optional Protocol on disputes (April 21, 1963).

1. The 1969 Vienna Convention on Consular Relations (VCCR) Treaty, Article 36 requires that an officer who arrest a citizen of a foreign country that is a VCCR signatory must:
 - a. Advise the arrestee of his/her right to have consular officials promptly notified of the arrest.
 1. Mandatory notification of consular officials is required if the arrestee is a citizen of the 58 nations, even if the arrestee does not request notification.
 - (a) A list of VCCR signatory countries, consular contact information, advice –of-right cards, and other information are available from the United States State Department, Bureau of Consular Affairs. The information is available online at http://travel.state.gov/consul_notify.html.
 2. Permit contact visits if requested by the arrestee.
 - b. As required by Penal Code 834c., whenever a foreign national is detained, arrested, or held in custody for more than two hours, California law enforcement must:
 1. Give the consular advice
 2. Inform the foreign national of the right to have the appropriate consular officials notified without delay and of the consular officials' right to have access to the foreign national.
 3. Notify the appropriate consular officer without delay if the foreign national Requests notification.
 4. Notify the appropriate consular officer without delay when the foreign national is a citizen of Algeria, Tunisia, or one of the 56 countries listed in Penal Code Section 834c.(d). This notification is mandatory.
 5. Permit the foreign national to have communication, correspondence, and visitation with the consular officer of the foreign national's country.
2. With a view to facilitating the exercise of consular functions relating to nationals of the sending state:
 - a. Consular officials shall be free to communicate with nationals of the sending state and to have access to them. Nationals of the sending state shall have the same freedom with respect to communication with and access to consular officers of the sending state.
 - b. If he/she so requests, the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in person, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his/her rights under this sub-paragraph.
 - c. Consular officers shall have the right to visit a national of the sending state who is in prison, custody, or detention, to converse and correspond with him/her and to arrange for his/her legal representation. They shall also have the right to visit any national of the sending state who is in prison, custody, or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a

national who is in prison, custody, or detention if he expressly opposes such action.

- C. Consular Notification and Access (CNA) to foreign nationals who are arrested, detained, or held in custody in California. CNA refers to treaty obligations that require law enforcement, corrections, and other Government officials to inform foreign nations "without delay" of their right to have their consular officials notified of their arrest or detention.
- D. Information in cases of deaths or other misfortunes involving consular officials.
 - 1. If the relevant information is available, the competent authorities have the duty;
 - a. In the case of the death of a national of the sending state, to inform without delay the consular post in whose district the death occurred.
 - b. If an aircraft registered in the sending state suffers an accident on the territory of the receiving state, inform without delay the consular post nearest the scene of the occurrence.
- E. Traffic Violations
 - 1. When a Consular or Diplomatic Official is stopped for moving violation the officer, after becoming aware that the person may be a Consular or Diplomatic Official, will:
 - a. Actually observe the proper credentials.
 - b. Exercise discretion based on the nature of the violation and whether the official could be held accountable for it.
 - c. Either issue a citation (it does not constitute an arrest or detention) or a verbal warning (this may be the most beneficial thing to do).
 - (1) If a citation is issued and the official refuses to sign, the word "REFUSED" will be written across the face of the citation. DO NOT ARREST.
 - (a) The matter will be referred to the District Attorney's Office with a written report of the incident.
- F. Driving while under the influence of an intoxicant.
 - 1. The suggestions for handling this type of delicate situation are:
 - a. First use tact. The officer's primary emphasis should be to assure the Consular Official that his and the public's safety are the principal concern. There should be no arrest.
 - b. Get the official to a telephone so that a call may be made requesting someone to pick the person up.
 - c. Take the official to the police facility or some other location, thus allowing the sufficient recovery so the official can drive home safely. If the official is taken to the station, do not place the person in a cell or into any kind of confinement while there, although the official can be transported in the back of a partitioned car if the official's wish is to be taken to the facility. Never use handcuffs and do not administer a sobriety test.
- G. Reporting Incidents to the City Manager
 - 1. When any Consular or Diplomatic Official or a member of the official's family comes in contact with

a member of the Stockton Police Department, the member will:

- a. Immediately advise the Watch Commander.
- b. The Watch Commander will notify The Chief of Police, through the proper chain of command, who will then be responsible for notification to The City Manger.

H. Report

1. An officer involved in any situation where any Consular or Diplomatic Official or family member comes into Police Contact, will list all pertinent information on an S.I.R. directing it "Attention Administrative Service Bureau."
2. The Administration Services Bureau will write to the State Department, Federal Building, San Francisco, advising them of any abuse of privilege that may have occurred.

I. Problems

1. If any serious problem arises that cannot be resolved, the officer will call the Law Enforcement Division, Office of Emergency Services, in Sacramento, via the Telecommunications Center. Assistance is available 24 hours a day, or one of the numbers at the end of this policy.
 - a. The Watch Commander's office contains a copy of the "GUIDANCE FOR LAW ENFORCEMENT OFFICERS" (Rights and Immunities of Diplomats), printed by U.S. Department of State.
 - b. This manual explains the State of California and the Untied States Government philosophy and protocol for Consulars and Diplomats and a list of Federal Laws that protect them.
2. Any information or verification needed, contact the Telecommunications Center for the proper phone numbers:
 - a. Current Status of Federal Diplomatic license plates registration, or other motor vehicle information.
 - b. Diplomatic Agents and Family members.
 - c. Administration, Technical Service Staff and Families.
 - d. Consular personnel and families.
 - e. International Organization.
 - f. After normal business hours.