

Cobb County Police Department

Policy 5.12

IMMUNITY FROM ARREST

Effective Date: October 1, 2019	Issued By: Chief C.T. Cox
Rescinds: Policy 5.12 (November 1, 2017)	Page 1 of 4
The words "he, his, him," which may appear in this policy, are used generically for clarity and ease of reading. These terms are not meant to imply gender and relate to all employees of the Department.	

The purpose of this policy is to establish guidelines for employees of the Department when dealing with persons who have immunity from arrest under the law.

I. LEGISLATORS

All legislators, state or federal, shall be free from arrest during legislative sessions or committee meetings, and in going thereto or returning there from, except for treason, felony, or breach of the peace (United States Constitution, Article I, Section 6; Georgia Constitution, Article III, Section IV, Paragraph, IX). If an arrest needs to be initiated in accordance with the above clause, the arresting officer will notify his supervisor immediately.

II. PRIVILEGE OF MILITIAMEN

- A. The members of the organized militia or military forces (see definitions in OCGA 38-2-2) shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at drills, parades, meetings, encampments, and the election of officers and going to, during, and returning from the performance of any active duty as such members (OCGA 17-4-2).
- B. Any sheriff or peace officer may apprehend persons subject to the Georgia Code of Military Justice (GCMJ) upon reasonable belief that an offense has been committed and that the person apprehended has committed an offense (OCGA 38-2-340). All members of the Georgia organized militia are subject to the provisions of the Georgia Code of Military Justice (OCGA 38-2-322).

III. WITNESSES

A witness shall not be arrested on any civil process while attending any court to which he or she is subpoenaed or otherwise required to attend as a witness or while going to or returning from such court. An officer who holds such witness imprisoned after seeing his or her subpoena or being satisfied of the fact that such person was a witness shall be liable for false imprisonment (OCGA 24-13-1).

IV. DIPLOMATIC AND CONSULAR IMMUNITIES

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming to national and local laws and regulations. Categories of persons entitled to diplomatic immunity are as follows (see also the *Diplomatic and Consular Privileges and Immunities from Criminal Jurisdiction* from the U.S. Department of State):

- A. **Diplomatic Agent:** Enjoys the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested or detained for any criminal offense. Generally, they are immune from any civil suits, but are not immune from receiving a citation/summons. Family members of these persons enjoy the identical privileges and immunity.
- B. **Diplomatic Administrative and Technical Staff:** Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.
- C. **Diplomatic Service Staff:** They are accorded few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for traffic violations. Family members enjoy no privileges or immunities.
- D. **Consular Officers:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Officers may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors, but may not be arrested or detained prior to trial or other disposition of charges. Officers may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.
- E. **Consular Employees:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Employees may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.
- F. **Honorary Consuls:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Honorary Consuls may be arrested or detained for criminal offenses. Officers may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.

V. INTERNATIONAL ORGANIZATION PERSONNEL

The final general category of individuals to which privileges and immunity extend, consists of International Organization Personnel and National Missions to such organizations. 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. In certain cases however, the most senior executives of such organizations have been accorded privileges and immunities equal to those afforded diplomatic agents.

- A. **International Organization Staff:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. International organization staff may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.
- B. **Diplomatic-Level Staff of Missions to International Organizations:** Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic-level staff of missions to international organizations may not be handcuffed, arrested or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.
- C. **Support Staff of Missions to International Organizations:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Support staff of missions to international organizations may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.

VI. VERIFICATION OF IMMUNITY STATUS

- A. A person claiming immunity is required to produce satisfactory evidence that he is entitled to immunity.
 - 1. The U.S. Department of State issues identification to diplomatic agents and Consular officials accredited to the United States.
 - 2. The Georgia Secretary of State issues identification cards to honorary consuls and members of the families of career Consular officials who are stationed in Georgia.
- B. In any situation in which a law enforcement official needs to establish entitlement to diplomatic or consular immunity and the person asserting it cannot produce satisfactory evidence thereof, (i.e., identification card issued by the U.S. Department of State), or the law enforcement official wishes to verify the

employment for which the person is declaring immunity or that a family member driver's permit is still valid, confirmation of the correct status, or wishes advised concerning a particular situation, the law enforcement official can telephone the U.S. Department of State Diplomatic Security Command Center at (571) 345-3146.

VII. NOTIFICATIONS

- A.** If, during a law enforcement encounter it becomes known to an officer that any individual included in this policy is involved, the officer shall notify his supervisor immediately.
- B.** In the event that a consular officer or employee, or members of their families are taken into custody, the arresting officer should attempt to contact the U.S. Department of State (571-345-3146) and notify them of the arrest.

VIII. ARREST OF FOREIGN NATIONALS

Occasionally, officers will arrest individuals who are not U.S. Citizens. While these individuals do not have immunity from arrest, it is required by treaty that when foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes. Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.

- A.** The Cobb County Sheriff's Office handles all consular notifications of arrested/detained non-U.S. Citizens. When Department personnel arrest a subject who is known (or claims) to be a non-U.S. Citizen, the transporting officer shall advise book-in personnel of the detainee's claims so that the proper notifications may be made.
- B.** These are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country.
- C.** For more information on this topic, personnel can consult the U.S. Department of State's publication entitled *Consular Notification and Access*.