

	MARICOPA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURES	
	Subject IMMUNITY	Policy Number EA-16
		Effective Date 02-06-19
Related Information Arizona Constitution - Title 4, Section 6, Part 2 Executive Order 2018-05 EB-1, <i>Traffic Enforcement, Violator Contacts, and Citation Issuance</i> United States Code	Supersedes EA-16 (12-02-05)	

PURPOSE

This Office Policy establishes guidelines regarding immunity privileges afforded to legislators, diplomats, military personnel, and National Guard personnel.

POLICY

It is the policy of the Office to provide deputies with procedures for determining law enforcement action related to immunity privileges to legislators and diplomats as defined by law.

DEFINITIONS

Breach of the Peace: Acts or conduct that seriously endanger or disturb public peace and order.

Dignitaries: Those who hold a high rank or office in a government.

Diplomatic Immunity/Full Immunity: The exclusion or immunity from federal or local jurisdiction afforded under international law by the United States to certain diplomatic agents such as ambassadors, foreign ministers, and consulars. In some cases, immunity covers both criminal and civil process (“full immunity”) and in some cases the immunity may be limited.

Elector: A member of the Electoral College of the United States.

Legislative Immunity Period: Arizona Constitutional provision period which prevents a legislator from being arrested or being subject to civil process while the Arizona Legislature is in session or for a period of 15 days before a legislative session commences.

Official Acts Immunity: Afforded by the United States to certain foreign mission personnel. Persons with official acts immunity do not have immunity from detention or arrest but may assert immunity for actions carried out in the course of their official duties within any judicial or administrative process.

PROCEDURE

1. **Legislator Immunity:** The Arizona Constitution, Title 4, Section 6, Part 2, specifically states that legislators are immune from arrest in all cases except treason, felony, or a breach of the peace and they shall not be submitted to any civil process during the session of the Legislature, nor for 15 days immediately before the commencement of each session.
 - A. During the legislative immunity period, deputies shall not cite legislators for civil traffic violations. Deputies shall, however, take the following action:

1. A deputy shall complete a memorandum detailing the contact with the legislator and the alleged civil traffic violations, in addition to completing required documentation, as specified in Office Policy EB-1, *Traffic Enforcement, Violator Contacts, and Citation Issuance*.
 2. A deputy shall forward the completed memorandum through the chain of command to the Sheriff or designee, for determination of action.
 3. Civil traffic citations are considered to be civil process; therefore, a legislator is immune from the service of a civil traffic citation if the legislator can present identification proving that the person is a legislator. If unable to present the appropriate identification, the citation should be issued.
 4. A deputy shall take normal law enforcement action regarding civil traffic violations incurred by a legislator outside of the legislative immunity period.
- B. Regardless of the legislative immunity period, deputies shall enforce criminal traffic violations by legislators that endanger the safety of another as a breach of the peace. These criminal traffic violations include, but are not limited to, the following:
1. Criminal speed;
 2. Reckless driving; and
 3. Driving Under the Influence (DUI).
2. **Electors:** Except in cases of treason, felony, or a breach of the peace, electors shall be privileged from arrest while going to, leaving from, or during their attendance at any election.
3. **Foreign Diplomats:** Foreign diplomats have special privileges or immunities such as full immunity status or official acts immunity status, based upon their official title given by their country and recognized as such by the United States Government. Most foreign diplomats and their families hold full immunity status; however, this status only frees them from physical arrest and detention. The issuance of a traffic citation does not constitute an arrest for the purpose of immunity and is permissible. Diplomatic immunity provided to foreign officials is governed by the United States Code.
- A. When the question arises whether to arrest or not, the deputy shall consult their supervisor. The supervisor shall contact the U. S. Department of State duty officer, to determine if the Sheriff's Office has the authority to arrest. Information concerning the title, credentials, and immunity status of the official and that of their family members, employees, and servants are available by contacting the U. S. Department of State, Office of Protocol; a duty officer is available 24 hours a day, seven days a week.
 - B. If a foreign diplomat is issued a civil or criminal traffic citation and refuses to sign the citation, the foreign diplomat shall not be arrested. The refusal shall be noted on the appropriate signature block and the citation shall be issued. An Incident Report (IR) shall be completed and the refusal by the diplomat to sign the citation shall be noted in the report.
 - C. If a foreign diplomat is driving under the influence (DUI) or operating under the influence (OUI) of intoxicating liquors and/or drugs and the deputy determines the diplomat is too intoxicated to drive, the deputy shall not permit the individual to continue to drive. The deputy may assist the diplomat in arranging an alternative means of transportation. A field sobriety test and intoxilyzer test may be requested but the diplomat is not compelled or required to submit to the test. The deputy may issue

any appropriate traffic citations and complete a detailed IR, in addition to completing all required documentation, as specified in Office Policy EB-1, *Traffic Enforcement, Violator Contacts, and Citation Issuance*.

- D. The deputy involved with a foreign diplomat in a traffic related incident shall fully document the facts of the incident and the identity of the individual. A copy of the IR shall be promptly forwarded to the U. S. Department of State, Office of Protocol, Washington, D. C.
- E. The U. S. Department of State issues official identification cards. Diplomatic credentials and identification cards may be verified by contacting the U. S. Department of State. Diplomatic identification cards contain the following information:
 - 1. A photograph of the bearer;
 - 2. The bearer's name and title;
 - 3. The mission of the bearer including the city and state;
 - 4. The bearer's date of birth;
 - 5. The bearer's identification number;
 - 6. The card's expiration date; and
 - 7. The U. S. Department of State seal.
- 4. **Foreign Consulars:** Foreign consulars hold only official acts immunity and are not immune from arrest for acts, which are not a direct result of their official duties. Family members of a consular hold no special immunity status and may be cited and released or physically arrested.
 - A. Foreign consulars may be issued traffic citations. Deputies issuing the citation shall complete an IR in addition to completing all required documentation, as specified in Office Policy EB-1, *Traffic Enforcement, Violator Contacts, and Citation Issuance*. A copy of the IR shall be forwarded to the U. S. Department of State.
 - B. A foreign consular may be arrested for DUI and required to submit to an intoxilyzer test. The consular must be cited and released and shall not be booked. In cases involving serious incidents, deputies should advise their supervisor of the incident and report the incident to the U. S. Department of State by telephone as well as forward them a copy of the IR.
 - C. The U. S. Department of State issues official identification cards. Foreign consular identification cards contain the same information as found on the foreign diplomat's identification card. Foreign consular credentials and identification cards may be verified by contacting the U. S. Department of State.
- 5. **Military Personnel:** Military personnel on active duty are subject to the same traffic laws and regulations as any member of the public, with the exception of the operator's licenses.
 - A. Military personnel in personal vehicles are required to possess an operator's license from any state. Even if expired, the license shall remain valid until 90 days after discharge from military service.
 - B. If an active member of the military is booked into an Office jail facility, the arresting deputy shall notify the appropriate military police unit.

6. **National Guard Personnel:** Unless charged with the commission of a felony, National Guard personnel shall not be arrested while on active duty in camp, maneuvers, or formations, while engaged in armory drills, or while on the way to or from such duties; however, this does not give the guardsman freedom from prosecution.
 - A. When a guardsman on active duty is stopped for a serious criminal traffic violation such as DUI or OUI, the guardsman may be detained pending contact of the appropriate military police unit. The deputy making the traffic stop shall seek the assistance of the military police unit's personnel in the completion of the investigation such as intoxilyzer testing.
 - B. Deputies may cite and release guardsman on active duty.
7. Normal law enforcement action shall be taken for dignitaries subject to arrest or civil or criminal citation outside of the circumstances listed in this Office Policy. A deputy shall forward notification of such action through the chain of command to the Sheriff or designee.