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Effective Date	January 1, 2010		



Wilkesboro Police Department

Electronic Written Directives Document

I. PURPOSE

To establish procedures for notifying consular officers whenever a foreign national is arrested or detained for an extended period of time and to establish procedures for special enforcement situations involving persons with limited or full immunity from law enforcement activities.

II. POLICY

Officers have an obligation to advise foreign nationals that the Department will notify their consul of their arrest or detention. In certain circumstances, the Department has an obligation to notify the foreign national's consul regardless of his/her wishes. Officers will adhere to and respect the principles of diplomatic immunity when encountering individuals who are entitled to claim limited or full immunity. While officers must recognize the immunity of the individual, officers will not ignore or condone violations of the law or the commission of crimes by these officials with diplomatic immunity. Officers will notify a supervisor whenever they arrest any local, state or congressional legislative or government official.

III. DEFINITIONS

- A. **Diplomatic immunity:** A principle of international law in 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.
- B. **Diplomat:** An officer of a foreign government that is assigned to an embassy in Washington, DC; also known as Diplomatic Officers, they enjoy the highest degree of privileges and immunity.
- C. **Consular Officer (Consul):** A citizen or lawful permanent resident of foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in the United States.
- D. **Foreign National:** Any person who is not a United States citizen.

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- E. Dual National: A person who is a citizen of two or more countries. A person who is a citizen of the United States and another country will be treated exclusively as a U. S. citizen when in the United States. A person who is a citizen of two or more countries other than the United States will be treated in accordance with the rules applicable to each or all of those countries.
- F. Legislator: A member of Congress, Senate, or the House of Representatives; includes legislators for the State of North Carolina.
- G. Armed Forces Personnel: Regular members of the Army, Navy, Air Force, Marine Corps, Coast Guard, and Reservists who are on active duty.

IV. DIPLOMATIC IMMUNITY

- A. Diplomatic Immunity does not exempt diplomatic and consular officers from the obligation of conforming to national and local laws and regulations.
- B. Whatever the offense or circumstances of contact, law enforcement officers must keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect possible under the circumstances.
- C. For a violation of a motor vehicle law, officers are authorized to issue a citation, but no arrest will be made. A copy of the citation and other documentation regarding the incident must be submitted to the Records Division for forwarding to the U.S. Department of State as soon as possible.
 - 1. In serious cases (e.g., DWI, personal injury crashes), telephonic notification to the U.S. Department of State must be made.
 - 2. If the officer judges the individual too impaired to drive safely, the officer must not allow the individual to continue to drive. Officers are authorized, with the individual's permission, to take the individual to the police station or other location where the individual will recover sufficiently to drive. Officers are authorized to summon a friend or relative to drive or call a taxi for the individual.
- D. The property of a person possessing full criminal immunity, including the individual's vehicle, cannot be searched or seized. Such vehicles cannot be impounded or booted but will be moved the distance necessary to remove them from obstructing traffic or endangering public safety.

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- E. For other criminal violations, including felonies, the U.S. Department of State will request a waiver of immunity if the local prosecutor indicates they will prosecute if the waiver is granted. If the country of the person with immunity does not waive immunity, the individual with immunity will be required to depart the United States.

V. CONSULAR NOTIFICATION

- A. Officers will determine if a person is a foreign national by asking the individual if they are a citizen of the United States; asking the individual where they were born; and/or by examining documents such as passports and alien registration documents.
- B. Consular notification applies to any person who is not a United States citizen. This includes permanent resident aliens and non-citizens who may or may not be in the country legally. Any person may decline the offer of consular notification; however, the notification must be made if he/she is from one of the “mandatory notification” countries. Officers will not make the consular notification if the individual refuses notification, and the person is not from one of the “mandatory notification” countries. A list of mandatory notification countries will be maintained in the “Procedures and Consulate Directory” located in each division office and the Intake Center.
- C. Whenever a foreign national is arrested or detained for more than one (1) hour, the arresting officer or detaining officer will advise the foreign national of the right to have their country’s consulate notified of their situation. The arresting or detaining officer is responsible for making the consular notification by following the steps in the “Procedures and Consulate Directory” located in each division office and the Intake Center.
- D. Officers will make consular notification when investigating the death of any foreign national.

VI. CONGRESSIONAL AND STATE LEGISLATORS

- A. Members of the United States Congress will, in all cases, except treason, felony, and breach of the peace, be immune from arrest during their attendance at the session of their respective House, in going to and returning from their respective House, and for any speech or debate in either House. This applies to members of the United States Congress in transit within Wilkes County.

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- B. Members of the State Legislature in some cases have the same immunity granted to Congress, and will remain immune from arrest while attending, going to, or returning from a session of their respective Houses. This applies to members of the State Legislature in transit within Wilkes County.
- C. There are no North Carolina laws which exempt any state or local officials, either appointed or elected, from federal, state and local laws. The issuance of a warning, traffic citation, or a physical arrest is authorized whenever lawful except as noted in section VI.B, above.

VII. MILITARY PERSONNEL

- A. Military personnel whose permanent residence or permanent duty station is located outside of North Carolina will be treated as non-residents of North Carolina. All others will be treated as residents.
- B. There are no laws which exempt active duty military personnel from federal, state and local laws.

VIII. REFERENCES

CALEA 1.1.4 and 61.1.3(c-e)