

Immigration Violations

570.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Tumwater Police Department relating to immigration laws and interacting with federal immigration officials (RCW 43.10.315).

570.2 POLICY

It is the policy of the Tumwater Police Department that all members make personal and professional commitments to equal enforcement of the laws and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

570.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or Washington constitutions.

570.4 FEDERAL REQUEST FOR ASSISTANCE

Requests by federal immigration officials for assistance from this department shall be directed to a supervisor. The Department may provide available support services, such as traffic control or peacekeeping efforts.

570.5 INFORMATION SHARING

No member of this department will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373):

- a. Sending information to, or requesting or receiving such information from federal immigration officials.

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- b. Maintaining such information in department records.
- c. Exchanging such information with any other federal, state or local government entity.

570.6 U-VISA and T-VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U-Visa or T-Visa status should be forwarded in a timely manner to the Detective supervisor assigned to oversee the handling of any related case. The Detective supervisor should:

- a. Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- b. Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- c. Address the request and complete the certification or declaration, if appropriate, in a timely manner (RCW 7.98.020).
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
- d. Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

570.6.1 TIME FRAME FOR COMPLETION

The Detective supervisor should ensure that the certification for the U visa or T visa is processed within 90 days of the request, unless the victim is in federal immigration removal proceedings, in which case the certification shall be executed within 14 days after the request is received. The certification may be withdrawn only if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the department (RCW 7.98.020).

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570.6.2 U-VISA AND T-VISA DOCUMENTATION AND REPORTING

The detective supervisor shall keep written documentation regarding the number of certification forms that are (RCW 7.98.020):

- a. Requested by a victim.
- b. Signed.
- c. Denied.
- d. Withdrawn.

The detective supervisor or the authorized designee should ensure that the information collected regarding certification forms is reported annually to the Office of Crime Victims Advocacy (RCW 7.98.020).

570.7 TRAINING

The assigned lieutenant shall ensure that all appropriate members receive immigration training on this policy.

570.8 WASHINGTON STATE IMMIGRATION RESTRICTIONS

Members shall not (RCW 10.93.160):

- a. Inquire into or collect information about an individual's immigration or citizenship status, or place of birth unless there is a connection between such information and an investigation into a violation of state or local criminal law.
- b. Provide information pursuant to notification requests from federal immigration authorities for the purposes of civil immigration enforcement, except as required by law.
- c. Provide nonpublicly available personal information about an individual to federal immigration authorities in a noncriminal matter, except as required by state or federal law.
- d. Give federal immigration authorities access to interview individuals about a noncriminal matter while they are in custody, except as required by state or federal law, a court order, or written consent of the individual.
- e. Allow a federal immigration authority to conduct an interview regarding federal immigration violations with a person who is in custody if the person has not consented in writing to be interviewed. In order to obtain consent, the person shall be provided with an oral explanation and a written consent form that explains the purpose of the interview, that the interview is voluntary, and that the person may decline to be interviewed or may choose to be interviewed only with the person's attorney present.

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- f. Detain individuals solely for the purpose of determining their immigration status.
- g. Take a person into custody or hold a person in custody:
 - 1. Solely for the purposes of determining immigration status
 - 2. Based solely on a civil immigration warrant issued by a federal immigration authority
 - 3. On an immigration hold request

570.9 SCHOOL RESOURCE OFFICERS

Members who are school resource officers shall not (RCW 10.93.160):

- a. Inquire or collect information about an individual's immigration or citizenship status, or place of birth.
- b. Provide information pursuant to notification requests from federal immigration officials for the purposes of civil immigration enforcement, except as required by law.

Arrest or Detention of Foreign Nationals

908.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Tumwater Police Department extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

908.2 POLICY

The Tumwater Police Department respects international laws related to the specific privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

908.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- a. Notify a supervisor
- b. Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- c. Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.
- d. Contact the DOS Diplomatic Security Command Center at (571) 345-3146 or toll free at (866) 217-2089, or at another current telephone number and inform the center of the circumstances.
- e. Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity of immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomatic or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

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908.4 ENFORCEMENT ACTION

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

- a. Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear.
- b. All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- c. An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
 1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- d. The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
 1. Diplomatic-level staff of missions to international organizations and recognized family members.
 2. Diplomatic agents and recognized family members.
 3. Members of administrative and technical staff of a diplomatic mission and recognized family members.
 4. Career consular officers, unless the person is the subject of a felony warrant.
- e. The following persons may generally be detained and arrested:
 1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
 2. Support staff of missions to international organizations.
 3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
 4. Honorary consular officers.

908.5 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

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908.6 DIPLOMATIC IMMUNITY TABLE

Category	Arrested or Detained	Enter Residence subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note b)	No	Yes	No	No	Same as sponsor (full immunity and inviolability)
Member of Admin and Tech Staff	No (note b)	No	Yes	No	No	Same as sponsor (full immunity and inviolability)
Service Staff	Yes (note a)	Yes	Yes	Yes	No for official acts.	No immunity or inviolability (note a)
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note a)	Yes (note d)	Yes	No for official acts. Testimony may not be compelled in any case.	Yes otherwise (note a)	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts. Yes otherwise.	No for official acts. Yes otherwise (note a)	No immunity or inviolability
Consulate Employees	Yes (note a)	Yes	Yes	No for official acts. Yes otherwise.	No for official acts. Yes otherwise	No immunity or inviolability (note a)
Int'l Org Staff (note b)	Yes (note c)	Yes (note c)	Yes	Yes (note c)	No for official acts. Yes otherwise (note a)	No immunity or inviolability
Diplomatic-Level Staff of Missions to Int'l Orgs.	No (note b)	No	Yes	No	No for official acts. Yes otherwise (note c)	Same as sponsor (full immunity and inviolability)
Support Staff of Missions to Int'l Orgs.	Yes	Yes	Yes	Yes	No for official acts. Yes otherwise	No immunity or inviolability

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Notes for diplomatic immunity table:

- a. This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- b. Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- c. A small number of senior officers are entitled to be treated identically to diplomatic agents.
- d. Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

908.6.1 ARREST PROCEDURE

Whenever an officer physically arrests or detains an individual for criminal investigation and the officer reasonably believes the person to be a foreign national, the officer shall inquire to determine the person's citizenship.

This procedure applies to detentions of more than two hours. An inquiry is not required if the individual is detained less than two hours for criminal investigation.

If the individual indicates that he/she is other than a U.S. citizen, the officer shall advise the individual that he/she has a right to have the nearest appropriate embassy or consulate notified of the arrest/detention (Vienna Convention on Consular Relations. Art. 36. (1969)). If the individual requests such notification, the officer shall contact dispatch as soon as practical and request the appropriate embassy/consulate be notified. Officers shall provide dispatch with the following information concerning

- Country of citizenship.
- Full name of individual, including paternal and maternal surname if used.
- Date of birth or age.
- Current residence.
- Time, date, place, location of incarceration/detention, and the 24-hour telephone number of the place of detention if different from the Department itself.

If the individual claims citizenship of one of the countries for which notification of the consulate/embassy is mandatory, officers shall provide dispatch with the information above as soon as practicable, regardless of whether the individual desires that the embassy/consulate be notified. This procedure is critical because of treaty obligations with the particular countries. The list of countries and jurisdictions that require notification can be found on the U.S. Department of State website.

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908.6.2 DOCUMENTATION

Officers shall document on the face page and in the narrative of the appropriate Arrest-Investigation Report the date and time dispatch was notified of the foreign national's arrest/detention and his/her claimed nationality.