



Helen Police Department

Standard Operating Policies and Procedures

Chapter P-035 Arrest	Effective Date:	August 22, 2022	# of Pages:	25
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	Special Instructions:			

I. PURPOSE

Establish guidelines for serving criminal arrest warrants and for making probable cause arrests by officers of the Helen Police Department.

II. POLICY

It shall be the policy of the Helen Police Department to serve criminal arrest warrants and to arrest the defendants listed on those warrants as well as to arrest perpetrators of crime within the Department's jurisdiction, while ensuring that the rights of the accused are observed.

III. SCOPE

This policy shall apply to all sworn personnel of the Helen Police Department who are authorized to make a lawful arrest.

IV. DEFINITIONS

A. Arrest

To deprive a person of his/her liberty by legal authority. "If the person voluntarily submits to an arrest or yields on condition of being allowed his freedom of locomotion under the discretion of the officer, the arrest is complete." (O.C.G.A. 17-4-1).

B. Arrest Warrant

A warrant issued on probable cause, directing a law enforcement officer to arrest and bring a person before the court.

C. Civil Process

Civil process is defined as those services performed by law enforcement officers that are sanctioned by the courts and by the law, which supports the judicial functions relating to civil matters.

NOTE: *It will be the policy of this department that employees will not perform the task of serving civil process documents. The responsibility for performing this task will lie with the White County Sheriff's Office.*

D. Criminal Process

Criminal process is defined as those services performed by law enforcement officers that are sanctioned by the courts and by the law, which supports the judicial function relating to criminal matters. These services may include executive arrest warrants, search warrants and affidavits, administrative warrants or any other type of service permitted by law which directly results from or related to a criminal matter.

E. Interview

The free and willing exchange of information between the interviewer (officer or investigator) and the person being interviewed. This type of verbal exchange may occur at accident scenes, when interviewing witnesses, or when responding to general calls for information.

F. Interrogation

An exchange in which the subject is unwilling to exchange information with the interviewer or is being questioned about his/her involvement in a crime or criminal activity.

G. Investigative Detention

The holding, delaying, or detaining a person without formal arrest during the investigation of the suspect's participation in a crime. This detention must be based upon factors leading the officer to reasonably believe, supported by specific and articulable facts, that criminal activity may be afoot. Articulable reasonable suspicion that criminal activity may be afoot is based on the officer's knowledge, training, experience, circumstances at hand and other independent variables.

H. Felony

A violation of State law criminal in nature with the minimum punishment being one-year imprisonment.

J. Misdemeanor

A misdemeanor is a violation of state law criminal in nature with the maximum punishment being up to one-year imprisonment.

K. Immediate Knowledge

The officer did not actually observe the event, but is knowledgeable enough to draw strong conclusions that it occurred. An example of immediate knowledge would be an officer who hears a gun discharge and immediately turns to observe someone holding a smoking gun.

V. ARREST PROCEDURE

A. Authority

Sworn officers of the Helen Police Department shall have the authority to arrest for violations of City Ordinance or violations of State Law pursuant to the Official Code of Georgia Annotated, occurring within the jurisdictional limits of the Helen Police Department. This authority is outlined in the City of Helen Code of Ordinances as well as in the Official Code of Georgia Annotated. All sworn officers must complete POST mandated training (BLETC) before being assigned to a capacity in which they carry a weapon or make arrests.

B. Force Used to Execute a Warrant

An officer has a right to use that amount of force necessary and reasonable to arrest a person where probable cause has been attained. "In order to arrest under a warrant charging a crime, the officer may break open the door of any house where the offender is concealed." (OCGA 17-4-3)

When force is used to affect an arrest and the force used causes injury or any damage to any property, the incident shall be fully documented by completion of an incident report, completion of the use of force forms, and photographs shall be taken.

C. Legal Categories of Arrest

When an officer is presented with certain facts or a situation that calls for legal action to be taken, the officer must determine if any laws or ordinances have been violated and if so what action to take. The following legal categories of offenses will help to clarify the appropriate action to be taken:

1. FELONY

A felony is a violation of a state law that is criminal in nature with the minimum punishment being one-year imprisonment. Felony arrests may be made with a warrant, or in cases without a warrant, when the offense occurs within the officer's presence or immediate knowledge; when an offender is endeavoring to escape, when the officer has probable cause to believe that an act of family violence has been committed (O.C.G.A. 19-13-1) or to prevent the commission of a felony. (This exception should only be utilized when the criminal act is imminent.) Once a felony arrest has been made, the arresting officer must take appropriate warrants as required by law. The magistrate will determine bonds for felony charges and the case will ultimately be heard in Superior Court.

2. MISDEMEANOR

A misdemeanor is a violation of a state law that is criminal in nature with the maximum punishment being up to 12 months imprisonment. Misdemeanor arrests may be made with a warrant, or in cases without a warrant, when the offense occurred in the presence or the immediate knowledge of the officer. (Exceptions to this are offenses resulting from traffic accidents and related offenses, and the "Family Violence Act". These exceptions entitle the officer to make a warrantless misdemeanor arrest based on probable cause.) After a warrantless misdemeanor arrest has been made, the officer shall obtain a warrant as soon as possible and then lodge the arrested person in the Jail. Bonds for misdemeanor charges have been predetermined and are available at the Jail and the case will ultimately be heard by the State Court.

Note: *Under no circumstances will persons remain in the Jail for more than forty-eight (48) hours without a warrant being issued. (OCGA 17-4-62)*

5. WARRANTLESS ARREST / CRIMINAL WARRANTS

It is the policy of the Helen Police Department as well as the White County Sheriff's Office and White County Jail that an arrestee may be detained with only warrantless arrests for no longer than 48 hours after securing a warrantless arrest. Before the closure of this 48 hour period, criminal warrants must be secured.

Upon making an arrest which requires a detainee to be housed at the White County Jail (charges not tried in Municipal Court) The Officer making the arrest shall remain on duty until such time as a warrant can be acquired via the White County Magistrate Court. It will be permissible for one of the following courses of action to be followed.

a. Warrantless Arrest Procedures

Note: For the purposes of this policy, "Business Hours" for the White County Magistrate Court will be defined as 8am – 5pm on normal business days. On weekend days or after business hours, officers should contact the on-call Magistrate Judge to arrange a meeting time for the criminal warrant application process on Facetime or Sykpe.

If a suspect is arrested on scene in the case of a warrantless arrest during off-hours for Magistrate Court, Officers may immediately proceed to transport the arrestee to the White County Jail and complete a statement of charges. The Officer will then remain on shift to acquire criminal warrants as soon as possible.

When criminal warrants have been secured originals of the warrants will be taken to the White County Jail to be served and posted by detention personnel.

4. LOCAL ORDINANCES AND TRAFFIC OFFENSES

A local ordinance violation is a violation of the City of Helen Ordinance. A traffic offense is a violation of Title 40 of the Official Code of Georgia (OCGA) that, under most circumstances, which falls under the jurisdiction of the municipal court. City ordinance violations and traffic offenses are heard in the City of Helen Municipal Court. The maximum punishment for a local ordinance violation and traffic offense violation is 12 months imprisonment and/or a fine up to \$1,000 or as assessed by the Municipal Court Judge.

The officer must issue a citation to the offender and release the offender with a copy of charges to the offender. In the event the offender poses a severe danger to himself or herself or a risk to the Citizens of the City of Helen, an arrest may become necessary for local ordinances and traffic violations.

- a. Issuing a citation and releasing. An officer may elect to make a local ordinance case or issue a traffic citation where the offender is released at the scene with a copy of charges (citation) to appear at the Helen Municipal Court. In these cases, the officer must either have observed the offense occur, or it be within their immediate knowledge.
- b. Issuing a citation and custodial arrest. When an officer elects to make an arrest on a local ordinance case or traffic violation where the offender is taken into custody and transported to the White County Jail, the courts have determined that this is a warrantless arrest. For such violations, a warrantless arrest is legal if an offense is committed in an officer's presence or within his/her immediate knowledge. An officer may not arrest someone based on an ordinance violation and transport him/her to

the White County Jail unless the offense occurred in the presence of the officer or within his/her immediate knowledge.

Whenever an officer makes an arrest based on a City Ordinance violation or traffic violation, the officer will set a court date for Helen Municipal Court and the court time will be written on the citation. A copy of the citation with the court date will be given to the arrested individual.

D. Law Enforcement Verbal Contact

Every day, in every phase of law enforcement, officers, while performing their duties and responsibilities will come into verbal contact with individuals. This verbal contact shall be in the form of either a/an:

1. CONSENSUAL POLICE-CITIZEN ENCOUNTER

A consensual police-citizen encounter is the lowest level of contact between an officer and the public, wherein an officer may approach and speak to a citizen. That citizen has the right to voluntarily comply with the officer's requests or choose to ignore them. Because the citizen is free to leave during a consensual encounter, no constitutional safeguards apply. (United States v. Mendenhall, 446 U.S. 544 1980)

2. INTERVIEW

An interview is the free and willing exchange of information between the interviewer (officer) and the interviewee. This type of verbal exchange may occur at accident scenes, interviewing witnesses, or responding to general calls for information.

3. INTERROGATION

An exchange in which the subject is unwilling to exchange information with the interviewer or is being questioned about his/her involvement in a crime or criminal activity.

The Fifth Amendment to the United States Constitution states that persons shall not be compelled in any criminal case to be a witness against themselves. With this in mind, any in-custody individual suspected of committing a crime and interrogated concerning their involvement in that crime shall be advised of their constitutional rights pursuant to *Miranda v. Arizona*, 86 S.Ct. 1062; 1966. *Miranda* states that before an in-custody interrogation of a suspect in a criminal case, the suspect must be advised of his right to consult with counsel and to have counsel present during questioning and must be advised that if he cannot afford a attorney, one will be appointed to represent him. If the accused indicates he wants an attorney, the interrogation must cease until the attorney is

present. The burden is on the government (officer) to show that the accused knowingly and intelligently waived his right to counsel. The failure of an accused to ask for counsel does not constitute a waiver.

Once a suspect or accused has been advised of his "Miranda Warning" and has invoked his right to have counsel present during custodial interrogations, the suspect or accused shall not be subject to further interrogation until counsel has been made available or he has himself initiated further communications, exchanges, or conversations (Edwards v. Arizona, 101 S. Ct. 1880; 1981). Once again, the burden is on the officer to prove a voluntary waiver by the suspect or accused.

Whenever an individual is arrested by a law enforcement officer, OCGA 17-4-62 requires that if the arrest is made without a warrant as defined, the officer shall bring the arrested person before a judicial officer within a reasonable time, but under no circumstances, later than 48 hours after arrest.

If the arrest is made with a warrant, the person must be brought before a judicial officer within a reasonable time and no later than 72 hours after arrest. A reasonable time would include as soon as possible.

In summary, if an individual is taken into custody and questioned about a criminal matter, he/she must be advised of his/her constitutional rights pursuant to Miranda.

E. Arrest without Warrant

1. O.C.G.A. 17-4-20 sets out situations in which an officer may arrest without a warrant.
 - a. When an offense is committed in the officer's presence or within his immediate knowledge.
 - b. When an offender is endeavoring to escape.
 - c. If the officer has probable cause to believe that an act of family violence has occurred. (O.C.G.A. 19-13-1)
 - d. For other cause, there is likely to be a failure of justice for want of an officer to issue a warrant.

Although not listed among the statutory exceptions, there are fifth, sixth and seventh situations:

- e. To prevent the commission of a felony (when the act constituting the felony is imminent).

- f. Upon receiving information from a law enforcement officer who observed an offense being committed, provided such information would constitute the basis for arrest had it been committed in the officer's presence. (The citation issued must list the names of each officer, and both officers must be present when charges against the offender are heard.)

Note: *All of the above exceptions are based on timeliness; if enough time has passed for a warrant to be obtained, an arrest without a warrant will not be upheld.*

- g. Outside the time restriction, the seventh exception is noted, that of a fugitive arrest based upon belief that a warrant exists in the jurisdiction from which the suspect fled. An officer has no official power to arrest without a warrant beyond the boundaries of his jurisdiction except for when the officer is in hot pursuit that is continuous and uninterrupted (an officer may temporarily lose sight of the suspect). No officer shall arrest any person without a warrant when he knows that he is without reasonable cause to arrest such person.

Note: *For the handling of juveniles refer to Section P-045 Juvenile Procedures of this policy manual.*

F. Arrest with a Warrant

An arrest with a warrant is made when a criminal arrest warrant or Municipal Court warrant has been issued by an appropriate judicial officer of the court and the sworn officer fulfills his/her responsibility by arresting the individual named in the warrant.

Note: *The execution of warrants shall only be conducted by sworn officers, who are in compliance with Georgia Post Training Council requirements.*

Whenever any person is arrested with a warrant, the officer shall bring the arrested person before a judicial officer within a reasonable time, but under no circumstances later than 72 hours OCGA 17-4-26.

No officer will affect an arrest under the authority of a warrant unless the officer reasonably believes the warrant is valid and the person described in the warrant matches the person being arrested.

No officer shall arrest persons described in wants on GCIC/NCIC communications until the Communications Dispatcher has a tele-type confirmation of the warrant. Verbal confirmation of a warrant of a hit received from GCIC/NCIC shall not constitute grounds for an arrest.

Officers arresting persons in the City of Helen shall ensure that all persons arrested are fingerprinted in accordance with Section 35-3-36 of the Official Code of Georgia Annotated for offenses described in Section 35-3-33(1) (See GCIC Operations Rules).

G. Good Faith

Whenever a departmental law enforcement officer executes any phase of the legal process function, that officer will do so in good faith and pursuant to all federal, state and local laws, and in accordance with departmental procedures and policies. In situations where procedures are not clearly set out by law or policy, the officer will consult with his supervisors, prosecutors or the city attorney.

Officers and investigators will stay abreast of current laws, ordinances and court decisions that may affect their duties. This information will be obtained through independent study, in-service training, legal bulletins, specialized training and roll-call training.

H. Alternatives to Physical Arrests/Officer Discretion

What can be defined as reasonable police action or what constitutes probable cause varies with each situation, and different facts may justify an investigation, a detention, a search, an arrest, or no action at all. There may be a report written and an application for a complaint made, or in some cases, when the offense is of a minor nature, a verbal warning or other direction may be given. The requirement that legal justification be present imposes a limitation on an officer's action. In every case, an officer must act reasonably within the limits of his/her authority as defined by statute and judicial interpretation.

Whether a person is arrested or released with a copy of charges (citation), officers shall not inhibit the person's right of access to the courts. Assigning or obtaining a court date accomplishes this. If the case is sent to Municipal Court, the officer will assign a court date. Superior Court dates are assigned by those courts, and they will make defendant court date notifications.

In misdemeanor cases where the officer feels that an arrest should be made and the offense did not occur in his presence or within his immediate knowledge, the officer should locate the victim of the offense and receive an affirmative acknowledgment from that individual with regards to desiring prosecution and signing a warrant. In cases where the victim is a business or something other than an individual, an agent for that entity should express the same desire to prosecute. In cases of shoplifting, to protect the officer from false arrest charges and liability, the officer should have the agent for the entity complete a witness statement. The officer responding to the incident will complete an Incident Report.

I. Obtaining an Arrest Warrant

1. Criminal Arrest Warrant Obtained After an Arrest

When a Helen Police Department officer has arrested an individual for a misdemeanor to be housed at the County Jail or felony offense, the officer will complete in detail a statement of charges and a White County Pre-Booking Form.

2. Criminal Arrest Warrant Obtained Prior to an Arrest

When a Helen Police Department officer has obtained probable cause for the arrest of an individual, the officer should obtain a criminal arrest warrant. Once the arrest warrant is obtained, it will be the responsibility of the officer/investigator to locate the individual named on the arrest warrant in order to affect the arrest.

Warrants that are generated or obtained as a result of an investigation will be turned over to the White County Jail, if the warrant cannot be served by the end of the officer's shift. Exceptions to this policy must be approved by the Chief of Police.

3. Warrant Requirements

All criminal arrest warrants shall be obtained from a Magistrate Judge or Municipal Court Judge, if applicable. If the officer is the prosecutor, the officer shall swear or affirm under oath that probable cause exists to arrest the individual. The arrest warrant shall contain the following:

- a. A warrant number designated by the magistrate.
- b. The name of the individual to be arrested. If a name is not known then a detailed description shall be included (John Doe Warrant). If an arrest warrant is obtained and the individual is known and has not been arrested, the officer shall include on the warrant the arrestee's full name, last known address, height, weight, age, date of birth, social security number, driver's license number, FBI or SID number if known, physical characteristics if unusual and vehicle if known.
- c. Name of the criminal offense violated and the O.C.G.A. section number.
- d. Probable cause for the warrant.
- e. The officer's or prosecutor's signature.

- f. The magistrate's signature.

Warrants turned over to the White County Jail will be maintained in accordance with White County Sheriff's Office policy.

Officers/investigators shall keep a copy of all warrants. Copies of the original warrant will be marked COPY in ink on the front of the warrant and maintained in the case file.

The White County Sheriff's Office will handle all entries on GCIC/NCIC for warrants obtained through the Magistrate Judge. Helen Police Communications will be responsible to enter all warrants into GCIC/NCIC that are generated by the Municipal Court Judge.

Access to warrants and warrant information is available 24 hours a day, seven days a week through the White County Jail at 706-865-5177.

Once a criminal arrest warrant has been executed, where the individual named on the warrant has been arrested, it will be the responsibility of the entering agency to ensure that the individual has been taken off GCIC/NCIC.

VI. CONTACT WITH AN INDIVIDUAL TO BE ARRESTED

Any person about to be arrested has the right to know that an officer with lawful authority is taking him into custody.

A. The suspect may have notice if he/she:

1. Actually knows the person making an arrest is an officer;
2. Sees the officer's uniform or badge;
3. Is apprehended while committing a crime;
4. Is pursued from the scene of a crime; or
5. Is told by the officer that he is making an arrest and why.

B. If an officer, who is not known to a suspect, fails to identify himself/herself or to make his/her purpose known, the suspect has the right to resist what appears to be an unjustified assault. However, once identified as an officer, the assumption that the arrest is unlawful is made at the peril of the person who resists.

- C. If a person knows or believes the arrest is lawful, it is his duty to submit quietly to custody. An officer making a lawful arrest has the right to use whatever force is necessary to accomplish the arrest, but not any more.

NOTE: *If the arrest is unlawful, a person has the right to resist the arrest. All arrests made by officers of the Helen Police Department shall be lawful arrests.*

- D. Officers of the Helen Police Department when arresting an individual will comply with the following guidelines to ensure that the arrest and booking process are completed properly:

1. Identify yourself and show your identification if not in uniform.
2. Inform the subject that he/she is under arrest.
3. Inform the subject of the charge(s).
4. Inform the subject of the Miranda warnings and right to counsel as required in custodial interrogation situations.
5. Handcuff and search the subject prior to transportation.
6. If the arrestee is charged with a state charge, warrants will be obtained from the Magistrate judge and served on the arrestee by a Helen Police Department Officer.
7. Turn the arrestee over to intake deputies and all items belonging to the arrestee that can be released and are not being held as evidence.
8. Complete the felony/misdemeanor warrant paperwork required by the White County Sheriff's Office (Helen Police Department A/B), VINE form (Victim).
9. Complete other necessary reports and/or forms: incident report, supplemental forms, citations, impound sheet, etc.

VII. SERVICE OF WARRANTS

A. Maintenance of Warrants

Shift Supervisor will be responsible for overseeing the execution of warrants issued by the courts. Officers obtaining arrest warrants from a municipal, magistrate, state or superior court judge, and who attempt to serve the same will ensure that a log is kept which reflects:

1. Date and time received
2. Nature of document
3. Source of the document
4. Name of defendant
5. Officer assigned for service
6. Date assigned for service
7. Court docket number and/or warrant number
8. Date process expires, if any
 - a. Helen Municipal Warrants pertaining to failure to appear shall expire two years from the issuance date.
9. Date and time service performed

A listing of active municipal warrants will be located in the Communications Center and on the Police Department computer system. This log will be updated as necessary to show the status of current warrants and will be maintained for audit and inventory purposes of warrants held by the department.

B. Access to Warrants

Access to Municipal Court warrant information is available 24 hours a day, seven days a week at the Helen Police Department or by radio through the Communications Center. State issued warrants will be available through the White County Sheriff's Office.

When a wanted person has been contacted, the officer will take the person into custody and shall complete an Incident/Arrest Report. An executed municipal warrant will be returned to the Communications Officer, so that the execution can be recorded and removed from the active warrant list and GCIC/NCIC. The officer executing the warrant will receive a copy of the warrant, a copy of the GCIC/NCIC paperwork clearing the warrant out of GCIC/NCIC from the dispatcher. These copies are to be marked "Warrant Cleared" and shall include the time, date and the officers badge number placed in the appropriate location. This paperwork will accompany the arrest report to be turned in to the records clerk.

Officers' primary responsibility shall be to serve those warrants where the person resides in the city limits of Helen.

Officers who have warrants on persons who reside in another jurisdiction shall first notify the proper agency, inquire about the individual to be arrested and request an officer from that agency to help serve the warrant. Under no circumstances will an officer attempt to serve a warrant outside the city limits Helen without an officer from the appropriate jurisdiction being present.

VIII. DUE PROCESS PROCEDURES FOR FOREIGN NATIONALS

A. General Information

The term immunity is commonly and erroneously understood to refer to the special protections afforded to all employees of foreign governments who are present in the United States as official representatives of their home governments. In the United States persons are entitled to some degree of special privilege under international law, i.e., the Vienna Convention on Diplomatic Relations. Some of these persons are members of diplomatic missions, others are assigned to consular posts, and still others are employees of international organizations or members of national missions to such international organizations. For each of these categories of persons, particular rules apply and, even within these categories, different degrees of immunity may be accorded to different classes of persons. Although the majority of these persons are assigned to Washington, D.C. and New York City, a considerable number are assigned to Atlanta (excluding ambassadors). Moreover, nearly all of these persons are free to travel around the country either on official business or for pleasure.

1. Staffs of Diplomatic Missions

Three categories of persons are entitled to privileges and immunities under international law. The first of these, staffs of diplomatic missions, are composed of diplomatic agents, administrative, technical and service staff. Diplomatic missions are the principal communication link between the country that sends them and the host country. Diplomatic agents and family members forming part of the household enjoy the highest degree of immunity and privileges. These include complete immunity from the criminal jurisdiction of the host state and from prosecution no matter how serious the offense. Members of the diplomatic agents' administrative and technical staff and their immediate families share this high degree of immunity and privilege from the criminal jurisdiction, with the only distinction being with regard to immunity from civil jurisdiction. Service staff members have only official act immunity, which in practical terms is simply an affirmative defense to be raised by an accused staff member before a U.S. Court with subject matter jurisdiction over the alleged crime. If such court, in full light of all the relevant facts, determines

that the action complained of is an official act, only at that point does international law preclude the further exercise of jurisdiction by the U.S. Court. Because the judicial determination in a case of this type is very much dependent on the facts surrounding the incident, a full and complete report may be critical in permitting the court to make a just decision. The families of staff members enjoy no privileges or immunities.

2. Members of Consular Posts

The second category consists of members of consular posts, which is composed of consular officers, consular employees, service staff and honorary consuls. Consulates are distinct from diplomatic missions in that they do not have the principle role of providing communication between the two countries but rather perform a variety of functions of principle interest to their respective sending countries (e.g., issuance of travel documents and generally promoting the commerce of the sending country). The current treaty regime recognized a hierarchy within the staff of the consular posts but since the privileges and immunities are few there is not a great deal of practical difference in the degree of immunity afforded the various general categories of persons. Generally, members of consular posts have only official act immunity as explained above with respect to both criminal and civil matters. It is essential to know that no law enforcement officer is expected or authorized to determine whether a given set of circumstances constitutes an official act. Rather, this is an issue, which may only be resolved as a matter of law by the host country court with subject matter jurisdiction over the alleged crime. However, international law holds that consular members may only be arrested pending trial provided that the underlying offense is a felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g., a warrant issued by an appropriate court). Hence, the degree of the offense will usually dictate the course of action to be taken. Finally, with a special bilateral agreement to the contrary, neither the service staff nor family members of consular members in general enjoy personal inviolability. The only exception here, beyond that afforded by any bilateral agreement, involves an immunity enjoyed by service staff from any obligation to provide evidence as a witness with respect to official acts.

3. International Organizations 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. The assignment of international organizations is differentiated generally on the basis of the functions performed. Pursuant to international law, the most senior representatives in these missions of international organizations have privileges and immunities equivalent to those afforded diplomatic agents. The remainder of the staffs of these missions has only official act immunity.

B. Traffic Enforcement

Stopping a foreign official and issuing a citation does not constitute an arrest or detention and is permissible, although signature of the citation by such an individual may not be required. Accordingly, an officer should never hesitate to follow normal procedures to intervene in a situation involving a traffic violation that he has observed even if immunity ultimately bars any further action at the scene. Sobriety tests may be offered in accordance with ordinary procedure but may not be required or compelled. If the officer judges the individual to be intoxicated, the officer should not permit the individual to continue to drive since the primary concern here should be the safety of the public and the intoxicated driver. Under such circumstances a number of options are available: the officer could summon a friend of the driver, if appropriate; call a taxi; or the officer could provide transportation. In any event, the officer involved with the incident should fully document the facts of the incident, the identity of the individual and a written report of the incident should be forwarded to the State Department.

C. Identification of Persons Entitled to Privilege and Immunity

The only authoritative identity document providing an accurate indication of the status of the holder is the identity card issued by the Department of State, Protocol Office. There are three types of identification cards: Diplomatic (blue border for diplomats), Official (green border for employees), and Consular (red border for consular personnel). Identification cards contain a photograph of the bearer along with the bearer's name, title, mission, city and state or country, date of birth, identification number, expiration date and a U.S. Department of State seal. A brief description of the bearer's immunity will be printed on the reverse side.

While this form of identification is generally to be relied upon, departmental personnel are nonetheless urged to seek immediate verification as indicated below in connection with any traffic or criminal incident or any other case where they have reason to doubt the validity of the card. Additionally, officers should be alert to the fact that newly arrived members of diplomatic and consular staffs may not yet have these official identity documents and should be prepared to coordinate with the U.S. Department of State for verification if confronted with such a situation.

D. Procedure

Should any officer of this department have grounds to arrest a person who claims immunity, he must proceed by coordinating with the State Department of the United States utilizing the following procedure:

1. Whether the case involves an ordinance violation, a misdemeanor or a felony, the suspect may be briefly detained until his diplomatic status can be verified. Extreme patience and courtesy are called for in these situations and the use of handcuffs or other restraints should be avoided, if possible.
2. The ranking officer who is on duty at the time should be notified. During regular business hours, the officer will attempt to contact a staff advisor in the Director's Office. The State Department should be contacted as soon as possible so that the individual's status can be determined. If a departmental staff advisor cannot be reached, the ranking officer will make the necessary communication. The telephone numbers are:

Business Hours

(202) 647-1664	Staffs of Diplomatic Missions
(202) 647-1404	Members of Consular Posts
(202) 647-1402	International Organizations
(212) 415-4131	United Nations Personnel

After Hours

(202) 647-7277	All Inquires
(212) 415-4444	United Nations Personnel

3. If the State Department does not verify diplomatic status of the suspect, the suspect should be processed routinely. If the suspect's immunity is confirmed, the suspect should be handled in accordance with the instructions provided by the State Department personnel.

E. Others Exempt From Arrest

1. Military

Members of the Georgia Army National Guard and the Georgia Air National Guard are privileged from arrest, except in cases of treason or breaches of the peace, under the following circumstances: 1) While attending drill; 2) during parades; 3) when attending meetings, encampments, and election of officers; and 4) while going to, during, and returning from the performance of active duty.

Category		May Be Arrested or Detained	Residence May Be Entered Subject To Ordinary Procedures	May be Issued Traffic Citations	May Be Subpoenaed as Witness	May be Prosecuted	Recognized Family Members
Diplomatic	Diplomatic Agent	No ¹	No	Yes	No	No	Same As Sponsor (fill immunity and inviolability)
	Members of Administrative and Technical	No ¹	No	Yes	No	No	Same As Sponsor (fill immunity and inviolability)
	Service staff	Yes ²	Yes	Yes	Yes	No for official acts Otherwise Yes ²	No immunity or inviolability ²
Consular	Career Consular Officers	Yes, If for a felony and pursuant to a warrant. ²	Yes ⁴	Yes	No- for official acts. Testimony may not be compelled in	No- for official acts. Otherwise yes. ²	No immunity or inviolability. ²
	Honorary Consular Officers	Yes	Yes	Yes	No- for official acts. Yes for all other cases	No- for official acts. Otherwise Yes	No immunity or inviolability.
	Consular Employees	Yes ²	Yes	Yes	No- for official acts. Yes in all other cases	No- for official acts. Otherwise Yes	No immunity or inviolability ² .
International organizations	International Organization Staff ³	Yes ³	Yes ³	Yes	No – for official acts. Yes , in all other cases	No- for official acts. Otherwise yes ³ .	No immunity or inviolability.

	Diplomatic-Level Staff of Missions to International Organization	No ¹	No	Yes	No	No	Same as Sponsor(full immunity and inviolability)
	Support Staff of Missions to International	Yes	Yes	Yes	No- for official acts. Yes, in all cases	No –for official acts. Otherwise yes	No immunity or inviolability

¹Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or prevention of serious criminal acts.

²This table presents general rules. Particularly in the cases indicated, the employees of certain foreign countries may enjoy **higher** levels of privileges and immunities on the basis of special bilateral agreements.

³ A smaller number of senior officers are entitled to be treated identically to “diplomatic agents.”

⁴Note that consular residents are sometimes located within the official consular premises. In such cases, **only** the official office space is prohibited from police entry.

F. Arrest of Foreign Nationals

1. A foreign national who is arrested (taken into custody)³ will be informed that he or she has the right under a treaty to which the United States is a party⁴, to have his or her country's embassy or nearest consulate notified of his or her arrest and detention. This should be done at the time of the arrest but no later than during booking at the Jail⁵.
 - a. Notation should be made in the case file of the fact that the accused was advised of his or her rights under the Vienna Convention on Consular Relations and whether or not the accused requested that the embassy/consulate be contacted.
 - b. The foreign national asks that their embassy or consulate be notified, it is the agency's responsibility to contact the consulate or embassy⁶. Unless the accused is a national from the countries listed below, do not notify the embassy/consulate unless the accused requests they be notified.⁷
 - b. An updated listing of consulates and embassies can be found at the U.S. State Department web site: <http://www.state.gov>. This site also contains translations of the suggested rights warning in several different languages.
2. By law, if a citizen of the following countries is arrested, the supervisor or his or her designee will notify the nearest consulate or the embassy of the arrest⁸.
 - a. Accused will be told that his or her embassy or consulate will be contacted, even if the accused does not want his or her consulate notified⁹. A supervisor should contact the U.S. State Department for additional guidance if the accused indicates a fear of persecution or mistreatment by his or her government. The U.S. State Department may be contacted by phone at the following:
 - (1) Business hours: 202-647-4415 fax 202-736-7559
 - (2) After business hours: 202-647-1512.
 - b. Notification of the consulate will be made at the time the accused is booked¹⁰. A suggested form for sending a fax notice to the applicable consulate can be found at the State Department Web Site.
 - c. If the accused also requests asylum, contact the U.S. State Department for further guidance prior to notifying the consulate or embassy¹¹.

- | | | |
|-----------------------------------|--|---|
| 1) Antigua and Barbuda% | 25) Kazakhstan# | |
| 2) Armenia# | 26) Kiribati% | 48) Tonga% |
| 3) Azerbaijan# | 27) Kuwait% | 49) Trinidad and Tobago% |
| 4) Bahamas% | 28) Kyrgyzstan# | 50) Turkmenistan |
| 5) Barbados% | 29) Malaysia% | 51) Tuvalu% |
| 6) Belarus# | 30) Malta% | 52) Ukraine# |
| 7) Belize% | 31) Mauritius% | 53) United Kingdom,
<i>including Anguilla,
British Virgin Islands,
Bermuda, Montserrat, and
the Turks and Caicos
Islands</i> |
| 8) Brunei% | 32) Moldova# | 54) U.S.S.R.
<i>(Although the U.S.S.R.
no longer exists as a
national entity, many
citizens of its successor
states still carry passports
issued by the former
U.S.S.R.)</i> |
| 9) Bulgaria | 33) Mongolia | 55) Uzbekistan# |
| 10) China, Peoples
Republic of | 34) Nigeria% | 56) Zambia% |
| 11) Congo, Republic of% | 35) Philippines | |
| 12) Costa Rica | 36) Poland | |
| 13) Cyprus% | 37) Romania | |
| 14) Czech Republic | 38) Russia# | |
| 15) Dominica% | 39) St. Kitts and Nevis% | |
| 16) Fiji% | 40) St. Lucia% | |
| 17) The Gambia% | 41) St. Vincent and the
Grenadines% | |
| 18) Georgia, Republic of# | 42) Seychelles% | |
| 19) Ghana% | 43) Sierra Leone% | |
| 20) Grenada% | 44) Singapore% | |
| 21) Guyana% | 45) Slovakia | |
| 22) Hong Cong | 46) Tajikistan# | |
| 23) Hungary | 47) Tanzania% | |
| 24) Jamaica% | | |

% Rules applicable to United Kingdom apply.

Rules applicable to the former U.S.S.R. apply.

3. Diplomatic and consular officers have the legal right to consult with their citizens who are detained by federal, state or local authorities¹². Any communication by a detained foreign national must be forwarded to the consular post without delay.
 - a. A diplomatic or consular official who is acting in this capacity will be treated with the utmost courtesy as befits their rank.
 - b. The right of consular access and communication are generally subject to local laws and regulations concerning prisoner visitations.
 - d. Whenever possible a senior officer or prosecuting attorney should brief the diplomatic or consular officer on the fact and circumstances of the arrest and the legal process that will be followed in the case¹⁴.

4. If the foreign national who is arrested is in possession of a passport, visa, boarder crossing card, resident alien card or alien registration card, the arresting officer shall make a photo static copy of the documents and attach them to the arrest/booking report¹⁵. A copy should also be made of any other identity or travel documents in the possession of the accused.
5. When completing the arrest booking report, obtain the following information:
 - a. A complete home address (foreign address) of the accused;
 - b. A complete local address for the accused.
6. The officer who contacts an embassy or consulate on behalf of an accused foreign national will note the date, time and the name of the person who received the call at the embassy or consulate in a supplemental report and place it in the case file¹⁶.
7. If the accused foreign national is a juvenile who is not accompanied by a parent or legal guardian, the Immigration and Naturalization Service will be notified at the same time as the Juvenile Court. It is the responsibility of the Immigration and Naturalization Service to contact the embassy of the accused juvenile's nation.
8. If the foreign national is unable to communicate in English, a supervisor will be contacted and every effort made to obtain a translator¹⁷. Miranda warnings must be translated before a questioning can begin¹⁸. The investigating officer will include the name, address, telephone number and relationship of the translator to the victim/witness in the Incident Report or Supplemental Report.
9. During major events such as the Olympics, international sporting events, or international conferences, if a foreign national who is officially connected with the event is arrested, the District Attorney or his/her designee (Solicitor-General in misdemeanor cases) should be immediately contacted by telephone and provided with oral summary of the incident. The prosecuting attorney will advise the supervisor of any special procedures which should be followed.
10. If a foreign national is arrested for a felony, the U.S. Immigration and Naturalization Service (INS) will be notified and provided with the name of the accused and the nature of the charges¹⁹. By law, the INS is required to notify the appropriate consulate or embassy if one of their citizens has been taken into custody by I.N.S.²⁰

11. Contact U.S. Immigration and Naturalization Services at:

U.S. Immigration and Naturalization Service
77 White Street, Suite G-89
Atlanta, Georgia 30303
Phone: 404-331-2765

These policies and procedures will be updated annually as new case law or other regulatory/statutory changes are adopted.

1 {Private}Silver v. State , 147 Ga. 162, 166 - 167 (1917).
2 Harisiades v. Shaughnessy, 342 U.S. 580, 586, 72 S.Ct. 512, 96 L.Ed.2d 586, 597 (1951); Wong
Wing v. United States , 163 U.S. 228, 237, 16 S.Ct. 977, 41 L.Ed 140, 143 (1895).
— For the purposes of this section, arrest refers to a custodial arrest and detention and does not
include a release on citation. See U.S. Dept. of State, Memorandum, Notice for law Enforcement
3 Officials on Detention of Foreign Nationals (April 20, 1993) (hereafter "Detention of Foreign
Nationals"); Id., CONSULAR NOTIFICATION AND ACCESS JANUARY 1998,
http://www.state.gov/www/global/legal_affairs/legal_adviser.html; Note, Motor Vehicles: Traffic
Citations , 79 Am. J. Int'l L. 1048 (1985).
Vienna Convention on Consular Relations, Art. 36(1)(b), 21 U.S.T. 77, T.I.A.S. 6820, 596 U.N.T.S.
261 (hereafter referred to as the "Vienna Convention") was ratified by the United States in 1969.
("U.S.T." refers to the United States Treaties and International Agreements, the official compilation
4 of treaties to which the United States is a party and is comparable to the United States Code.) As
such it is part of the laws of the United States and its provisions apply to the State of Georgia. See
Flint River Steamboat Co. v. Foster, 5 Ga. 194, 195 (1848); Schofield v. Hertz Corp., 201 Ga. App.
830, 832 - 834 (1991); Goldstein v. Goldstein , 229 Ga. App. 862, 665 (1997).
Vienna Convention, Art. 36(1)(b); U.S. Dept. of State, Memorandum, Notice for law Enforcement
Officials on Detention of Foreign Nationals (April 20, 1993) (hereafter "Detention of Foreign
Nationals"); see also Rep. of Paraguay v. Allen, 134 F.3d 622, 625 (4th Cir. 1998); Breard v. Pruett,
134 F.3d 615, 619 - 620 (4th Cir.), cert. denied sub nom Breard v. Greene, ___ U.S. ___, 118 S.Ct.
5 1352, 140 L.Ed.2d 529, 63 Crim. L. Rep. 2026 (1998); Murphy v. Netherland, 116 F.3d 97, 99 - 101
(4th Cir. 1997); Faulder v. Johnson, 81 F.3d 515, 520 (5th Cir.), cert. denied, 519 U.S. 995, 117
S.Ct. 487, 136 L.Ed.2d 380 (1996); Kadish, Article 36 of the Vienna Convention on Consular
Relations: A Search for the Right to Consul , 18 MICH. J. OF INT'L L. 565 (1997) (hereafter
"Kadish").
6 Vienna Convention , Art. 36(1)(b).
7 Vienna Convention , Art. 36(1)(c). See Kadish, at 598.
Detention of Foreign Nationals; Id., CONSULAR NOTIFICATION AND ACCESS, at
http://www.state.gov/www/about_state. Compliance with these treaty obligations regarding
notification "is essential to insure that similar notice is given to U.S. diplomatic and consular officials
8 when U.S. citizens are arrested or detained abroad." Id. "United States citizens are scattered about
the world - as missionaries, Peace Corps volunteers, doctors, teachers and students, as travelers for
business and for pleasure. Their freedom and safety are seriously endangered if state officials fail to
honor the Vienna Convention (on Consular Relations) and other nations follow their example. Breard
v. Pruett , 134 F.3d at 622 (Butzner, J. concurring).
9 Id.
Consular treaties between the United States and some mandatory notification countries provide for a
10 longer period in which the consulate or embassy must be notified. See e.g. 26 U.S.T. 687, Art. 38(2);
23 U.S.T. 2873, Art. 35(2). However, most require immediate notification. For this reason, a policy of
immediate notification, no later than booking is strongly recommended.
11 CONSULAR NOTIFICATION AND ACCESS, at p. 14.
Vienna Convention on Consular Relations, Art. 6, 36(1)(c); see generally, Dupree v. United States,
12 559 F.2d 1151, 1154 (9th Cir. 1977); Breard v. Pruett, 134 F.3d at 619 - 620; Murphy v. Netherland,
116 F.3d at 99 - 101; Faulder v. Johnson , 81 F.3d at 520.
13 Vienna Convention on Consular Relations , Art. 36(1)(c) & 36(2).
14 Vienna Convention on Consular Relations, Art. 6; see generally, Dupree v. United States , 559 F.2d
at 1154.
Photocopying of passports, visa and other documents of identification by which foreign nationals
15 may enter or remain in the United States, for law enforcement purposes is authorized by 18 U.S.C. §
1546(c).
16 Detention of Foreign Nationals .
The Supreme Court of Georgia, Office of Commissions and Programs maintains a Registry of
17 Foreign Language Interpreters. The complete Registry is available on the Internet at
<http://www.doas.state.ga.us/courts/supreme/cehome.htm> or you may contact the Office of
commissions and programs at 404-463-6478.
18 See De La Fe v. United States , 413 F.2d 543 (5th Cir. 1969).
The arrest of a foreign national for a violation of the laws of this State does not automatically lead to
19 the deportation of the individual. In most misdemeanor cases, the only action INS will take is to notify
the appropriate embassy or consulate if the individual is not released on bond.
20 8 C.F.R. § 242.2.