

Asheville Police Department Policy Manual

Chapter: 5 - Law Enforcement Operations

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Introduction

This policy provides instruction and guidance on consular notifications and access required upon the arrest, detention, or death of foreign nationals.

Policy Statement

It is the policy of the Asheville Police Department (APD) to adhere to the guidance provided by the U.S. Department of State regarding consular notification and access under treaty obligations. [1.1.4]

Definitions

Foreign National: for consular notification purposes, a foreign national is any person who is not a U.S. citizen. Lawful permanent resident aliens with resident alien registration cards (green cards) retain their foreign nationality and must be considered foreign nationals.

Detainee: a detainee, for the purposes of this policy, is a foreign national who is arrested or placed in custody pending investigation, judicial appearance, or both.

Rules and Procedures

516.1 Identification

- A. Officers who suspect that a person being arrested or detained is not a U.S. citizen may inquire about the individual's nationality in order to determine whether any consular notification obligations apply. When such requests are made, the officer should explain the purpose of the inquiry.
 - 1. Determining a suspect's immigration status cannot be the sole purpose of stopping a person or forming the basis for an investigation or inquiry. Knowledge of an individual's status must follow the establishment of reasonable suspicion that they have committed or are committing a crime; see [Policy 304 - Unbiased Policing](#).
- B. If an arrestee or detainee indicates they are a foreign national, officers should, if possible, request documentation for proper identification.
- C. Undocumented aliens are also entitled to consular notification and access. In the absence of citizenship documentation, the officer will accept the foreign national's own statement regarding nationality.
- D. Persons who indicate they are U.S. citizens will be presumed citizens.
- E. Officers will identify a foreign national's citizenship in the most efficient manner possible, such as a passport, travel document, or diplomatic card, when feasible.
- F. If an officer discovers during the identification process that a foreign national has, or may have, diplomatic immunity, they must contact a supervisor immediately.

516.2 Consular Notification Obligations

- A. Consular notification obligations are triggered upon any one of the following situations:
 - 1. The arrest or detention of a foreign national.
 - 2. The death or serious injury of a foreign national.
 - 3. A wreck or crash in U.S. territory of a ship or aircraft under a foreign registry.
- B. In cases where a foreign national is the victim of a serious crime or felony, the officer or supervisor should, if feasible, ask the victim whether they would like consular notification to be made. The Federal Bureau of Investigation (FBI) will

be notified when the following acts have been committed against a foreign national:

1. Murder or attempted murder.
 2. Conspiracy to commit murder.
 3. Manslaughter or attempted manslaughter.
 4. Kidnapping or attempted kidnapping.
- C. Persons who indicate they are dual citizens of another country and the United States will be treated as U.S. citizens, and consular notification is not required.

516.3 Mandatory Versus Optional Notification

- A. Foreign nationals will be informed of the option to communicate with their consular officials whenever they are arrested or detained.
- B. In most cases, foreign nationals can decide whether to notify their consular representative of arrest or detention. This applies in all cases except foreign nationals who are citizens of states listed on the mandatory notification list within the [Consular Notification and Access Manual](#).
1. The arresting officer or a supervisor will notify an arrested or detained foreign national when a mandatory notification has been made to their consulate or embassy. Mandatory notification requirements must be honored.
 2. Under no circumstances will any information indicating that a foreign national has applied or is considering applying for asylum be disclosed to a foreign national's government official.

516.4 Providing Notification

- A. When officers believe that consular notification may be required, they should notify a supervisor.
- B. The supervisor should verify the country of origin of the foreign national and determine whether consular notification is at the option of the individual or whether it is mandatory. In the case of optional notifications, the supervisor or detaining officer will ascertain if the individual desires notification to be made.
- C. A consular notification statement should be provided to the foreign national to review and sign. This statement and translations of these statements are

available in the [Consular Notification and Access Manual](#) or through the State Department's website.

- D. Notifications to consuls or embassies should be made by facsimile transmission, and a copy of the completed transmission verification should be kept on file. The department will keep a written record of each instance a consul has been contacted to demonstrate that it has complied with the notification requirements set forth by the U.S. Department of State.
- E. The district attorney's office should be notified whenever a consular notification has been made, as applicable.
- F. Supervisors with questions regarding a consular notification may contact representatives from the State Department for assistance as outlined on their website or within the [Consular Notification and Access Manual](#).

By order of:

A handwritten signature in black ink, appearing to read "David J. Zack". The signature is written in a cursive style with a large, sweeping flourish at the end.

David Zack
Chief of Police