



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations	Section: 406.3	
Subject: Response to Selected Situations	Topic: Arrest of Foreign Nationals	
Accreditation: ADM.02.06	Revised:	Reaffirmed:
Enacted: 07/30/2015	Last Review: 07/24/2015	Review: 07/30/2016

I. PURPOSE

The purpose of this General Order is to ensure that upon arrest or detainment of a foreign national, the foreign national is promptly advised of the right to have consular assistance. If the detainee requests consular notification, the foreign national's nearest consular official shall be promptly notified so that consular services may be provided as appropriate.

This General Order relates to the arrest and detention of foreign nationals, deaths of foreign nationals, notification of consular officials when a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent and related issues pertaining to the provision of consular services to foreign nationals in the United States. Consular services are intended to ensure that foreign governments can extend appropriate services to their nationals in the United States and that the United States complies with its legal obligations to such governments.

II. POLICY

During the arrest or detainment of a foreign national, death of a foreign national or when a guardianship or trusteeship is being considered with respect to a foreign national, who is a minor or incompetent, it shall be the policy of the Loudoun County Sheriff's Office to advise the foreign national of his/her right to have the designated consular official notified.

III. DEFINITIONS

Consular Officer: A consular officer (consul) is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, DC.

Diplomatic Immunity: A principal of international law by 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.

Foreign National: Any person who is not a citizen of the United States. This also encompasses undocumented (illegal) aliens.

Honorary Consular Officer: An honorary consul is a citizen or lawful permanent resident of the United States who has been authorized by a foreign government to perform official functions on its behalf in the United States. An honorary consular officer is to be treated in the same way as a consular officer.

Legal Authority: (Section 19.2-81.6 of the Code of Virginia establishes the criteria for the arrest of a person for immigration status.) All law enforcement officers enumerated in §19.2-81 shall have the authority to enforce immigration laws of the United States, pursuant to the provisions of this section. Any law enforcement officer enumerated in §19.2-81 may, in the course of the acting upon reasonable suspicion that an individual has committed or is committing a crime, arrest the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Upon receiving such confirmation, the officer shall take the individual forthwith before a magistrate or other issuing authority and proceed pursuant to §19.82. (See additional sections, refer to code.)

IV. PROCEDURE

A. Summary of Requirements Pertaining to Foreign Nationals

1. When a foreign national is arrested or detained, he/she must be advised of the right to have the designated consular office notified
2. Based on the foreign national's citizenship, in some cases the nearest consular official must be notified of the arrest or detention regardless of request made by the foreign national
3. A consular official is entitled to have access to his/her foreign national in detention and is entitled to provide consular assistance
4. When a Loudoun County Sheriff's Office deputy becomes aware of the death of a foreign national, the consular official must be notified
5. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, the consular official must be notified
6. When a foreign ship or aircraft wrecks or crashes, consular officials must be notified

B. Steps to follow when a foreign national is arrested or detained

1. The arresting deputy must determine the foreign national's country of origin. In the absence of other information, the foreign national's travel documents or passport should be used to make a determination. Upon an arrest, a determination must be made whether the foreign national is from a country of mandatory notification or not. The arresting deputy shall ensure that the suggested Statements of Rights have been administered to the arrested or detained foreign national. (See attachment C). This information must be noted in the deputy's IBR report.

2. If the foreign national's country is not on the mandatory notification list, (Attachment A), the arresting deputy shall ensure that the following occurs:
 - a. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. The Consular Notification and Access booklet, which contains phone and fax numbers, is available at the Loudoun Adult Detention Center (LADC).
 - b. If the foreign national asks that consular notification be made, notify the nearest consular officials of the foreign national's country without delay. Notification may be made using the attached Notification to Consular Officers of Arrest/Detainment(Attachment B).
 - c. A notation shall be made in the arresting deputy's IBR that an offer was made to notify the foreign national's consular service and whether notification was refused by the foreign national or contact was made
3. If the foreign national's country is on the list of mandatory notification countries (Attachment A):
 - a. Notify that country's nearest consular officials, without delay, of arrest/detention (Attachment B)
 - b. Tell the foreign national that you are making this notification
 - c. A notation is to be made in the narrative of the arrest report that notification was made, listing the date, time and the person contacted at the appropriate consular office. The arresting deputy can obtain this information from the LADC deputy who made contact with the consulate. For telephone numbers and fax numbers for foreign embassies and consulates in the United States, a reference guide will be available at the LADC. If the foreign national is committed to the LADC, information pertaining to consular notification will be made part of the inmate's records.
4. Foreign consular officers must be given access to their nationals and be permitted to communicate with them. Such officers have the right to their nationals to converse and correspond with their nationals and to arrange for their legal representation. They must refrain from acting on behalf of a foreign national, however, if the national opposes their involvement. In addition, consular officers may not act as attorneys for their nationals.
5. Consular notification should not be confused with the Miranda warning, which is given regardless of nationality to protect the individual's constitutional rights against self-incrimination and to have the assistance of legal counsel. Consular notification is given as a result of international legal requirements so that a foreign

government can provide its nationals with whatever consular assistance it deems appropriate.

C. Deaths of Foreign Nationals

If a member of the Loudoun County Sheriff's Office becomes aware of the death of a foreign national in the course of his/her duties, he/she must ensure that the nearest consulate of that national's country is notified of the death. This will permit the foreign government to make an official record of the death for its own legal purposes

D. Appointments of Guardians or Trustees for Foreign Nationals

Whenever a probate court or other legally competent authority considers appointing a guardian or trustee with respect to a foreign national who is a minor or an adult lacking full capacity, the nearest consular authorities for that national's country must be informed without delay

E. Diplomatic Immunity

Diplomatic immunity is granted by the United States government under provisions of the Vienna Convention on Diplomatic Relations. Generally, these provisions apply to two classes of immunity:

1. Diplomats and members of their families enjoy full immunity
2. Employees of diplomatic missions and members of their families enjoy immunity with respect to acts performed in the course of their official duties

The burden is upon the diplomat to claim immunity through the presentation of valid credentials. If the subject is unable to produce proper credentials, the deputy shall take him or her before the Magistrate on duty where diplomatic status may be verified through current State Department publications that list diplomats and employees of diplomatic missions. The State Department may be contacted for verification through the Sheriff's Office Emergency Communications Center.

F. Wanted Checks

When a foreign national or legal/illegal alien is arrested or detained, a VCIN/NCIC check is required as with any other person arrested or detained. In addition, a U.S. Immigration and Custom Enforcement (US-ICE) name check shall be made via teletype through the US-ICE Law Enforcement Support Center (LESC)

The U.S. Immigrations and Custom Enforcement (US-ICE) maintains a 24 hour, 7 day a week service center for law enforcement inquiries and assistance. The law enforcement telephone number is 1-802-872-6020. The arresting deputy shall note that these steps were completed within the narrative of the IBR/arrest report

G. Notification to the U.S. Immigrations and Custom Enforcement

Deputies have limited statutory authority to arrest undocumented aliens for violations of Federal immigration laws under the Code of Virginia. Deputies shall notify the U.S. Immigrations and Custom Enforcement (US-ICE) regarding the arrest of an illegal alien upon receipt of a confirmation message from NCIC showing that a detained or arrested subject is wanted and subject to arrest for a preexisting US-ICE detainer based on any of the following:

1. Involvement in terrorist or subversive activities
2. Involvement in fraudulent activities aimed at assisting undocumented aliens to enter the United States
3. Possession of a firearm
4. Involvement in organized crime to include gambling, prostitution, narcotics distribution, etc.
5. Membership and/or participation in a criminal street gang
6. Commission of a felony offense

Attachment "A"

Mandatory Notification Countries and Jurisdictions

Antigua and Barbuda	Malaysia
Armenia	Malta
Azerbaijan	Mauritius
Bahamas, The	Moldova
Barbados	Mongolia
Belarus	Nigeria
Belize	Philippines
Brunei	Poland (non-permanent residents only)
Bulgaria	Romania
China (1)	Russia
Costa Rica	Saint Kitts and Nevis
Cyprus	Saint Lucia
Czech Republic	Saint Vincent and the Grenadines
Dominica	Seychelles
Fiji	Sierra Leone
Gambia, The	Singapore
Georgia	Slovakia
Ghana	Tajikistan
Grenada	Tanzania
Guyana	Tonga
Hong Kong (2)	Trinidad and Tobago
Hungary	Turkmenistan
Jamaica	Tuvalu
Kazakhstan	Ukraine
Kiribati	United Kingdom (3)
Kuwait	U.S.S.R. (4)
Kyrgyzstan	Uzbekistan
	Zambia
	Zimbabwe

1. Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representatives Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.
2. Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR". Under paragraph 3(f)(2) of the March 25, 1997, U.S. -China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports -- i.e., *immediately*, and in any event within four days of the arrest or detention.
3. British dependencies also covered by this agreement are Antigua, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

4. Although the U.S.S.R. no longer exists, some nationals of its successor states may still be travelling in its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those travelling on old U.S.S.R. passports. The successor states are listed separately above.



Sheriff Michael L. Chapman

LOUDOUN COUNTY SHERIFF'S OFFICE

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FAX SHEET FOR NOTIFYING CONSULAR OFFICERS OF ARRESTS OR DETENTIONS

DATE: _____ TIME: _____

To: Embassy of _____, Washington, D.C.

Or

Consulate of _____, _____, _____ (Country) (City) (State)

From: Name: _____ Office: _____ Street Address: _____ City: _____ State: _____ Zip Code: _____ Telephone: () - Fax: () -

Subject: NOTIFICATION OF ARREST/DETENTION OF A NATIONAL OF YOUR COUNTRY

We arrested/detained the following foreign national, whom we understand to be a national of your country on _____, _____.

Mr./Mrs. _____ Date of Birth: _____ Place of Birth: _____ Passport Number: _____ Date of Passport Issuance: _____ Place of Passport Issuance: _____

To arrange consular access, please call () - _____ between the hours of _____ and _____. Please refer to case number _____ when you call.

Comments: _____

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Attachment "C"

Suggested Statements to Arrested Foreign Nationals**Statement 1:****When Consular Notification is at the Foreign National's Option**

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?

Statement 2:**When Consular Notification is Mandatory**

Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.

NOTE: For translations, you must refer to the United States State Department Consular Notification and Access Handbook.