



APPENDIX 1 – I
CONSULAR NOTIFICATION

UPDATED 11/06/2025

I. POLICY

- A. It is the policy of the New Castle County Police to comply with all United States Government treaty obligations regarding the arrest and detention of foreign nationals in their custody. The Division should also make death notifications of foreign nationals to their respective countries.

II. DEFINITIONS

A. Arrest

1. Any arrest, detention or other commitment to custody which results in a foreign national being incarcerated for more than a few hours triggers the consular notification requirements under this policy. A brief traffic stop or an arrest which results in a citation and release at the scene for an infraction or misdemeanor would not require that consular notification be provided. On the other hand, requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for several hours or overnight. The longer a detention continues, the more likely it is that a reasonable person would conclude that the consular notification obligation is triggered.

B. Foreign National

1. Any person who is not a U.S. citizen. The term foreign national and alien are used interchangeably. Resident aliens who have a resident alien registration card, commonly known as a "green card," are considered foreign nationals for the purposes of consular notification, as are undocumented (or "illegal") aliens.

C. Consular Officer or Consul

1. 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. The term "consul" should not be confused with "Counsel", which means an attorney authorized to provide legal counsel and advice.

D. Diplomat

1. An official of a foreign government assigned to an embassy in Washington, D.C. Diplomats may also perform consular functions and should be treated the same as a consular officer.

E. Mandatory Notification

1. Arrests or detentions of foreign nationals from specific countries require notification to the consulate of the foreign national regardless of whether the foreign national desires that notification to be made. These countries can be found on the U.S. Department of State website:
<https://travel.state.gov/content/travel/en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html>

F. Non-Mandatory Notification

1. If the detained foreign national is a citizen of a country not on the Mandatory Notification list, the requirement is that the foreign national be informed “without delay” (defined below) of the option to have their government’s consular representatives notified of the detention. If the detainee requests notification, the officer responsible for the detention or arrest must ensure that notification is given to the nearest consulate of the detainee’s country, also “without delay.”

G. “Without Delay”

1. A term contained in the Vienna Convention on Consular Relations generally understood to mean that there should be no deliberate delay, and that notification should occur as soon as reasonably possible under the circumstances. Nevertheless, notification to consular officials should have been made within the first **24** hours of the detention, and certainly within **72** hours.

III. PROCEDURE

A. Consular Notification Process

1. The notification process will begin at the time the arrested foreign national arrives at the Paul Sweeney Public Safety Building or a detention facility.
2. Determine the foreign national's country - in the absence of other information, assume it is the country on whose passport or other travel documents the foreign national travels. Absent any citizenship documentation or other evidence to the contrary, accept the foreign national’s own statement as to nationality.
3. Determine whether the detainee is a national of a country on the Mandatory Notification List, which can be found on the U.S. Department of State website. Once Mandatory or Non-Mandatory status has been determined, follow the procedures outlined below. Whenever possible, notification must be made by fax.

Note: To assist with the notification, the Suggested Statements to Arrested or Detained Foreign Nationals form is available on the web-based pass-on system, in the patrol folder.

a. Mandatory Notification

- i. Notify the consulate of the foreign national's country immediately via fax. Notification should occur as soon as is reasonably possible under the circumstances. Notification must be made regardless of whether the foreign national desires notification.
- ii. Inform the foreign national of the mandatory notification of arrest/detention to the consulate of the foreign national's country. Make a note of the completed notification in your police report (or use the fax confirmation sheet as the record and write case number on fax).

iii. Always take precautions regarding the disclosure of inappropriate information to a foreign government, i.e. if a detainee has applied for asylum or refugee status. If a consular officer insists that they are entitled to information about a detainee that the detainee does not want disclosed, please contact your shift commander/supervisor or the State Department for guidance.

b. Non-Mandatory Notification

- i. Inform the foreign national “without delay” of the entitlement to notification of arrest/detention to the consulate of the foreign national's country. Make a record of the detainee’s decision in your police report.
- ii. If the foreign national requests notification, contact the nearest consulate of the foreign national's country “without delay”. Make a note of the completed notification in your police report (or use the fax confirmation sheet as the record and write the case number on the fax).

Note: Phone and fax numbers for foreign Embassies and Consulates in the USA can be found on the U.S. Department of State’s website:
<https://travel.state.gov/content/travel/en/consularnotification/ConsularNotificationandAccess.html>

iii. If the foreign national does not request notification, no notification must be made. The offer to notify the defendant’s consulate will be made regardless of the defendant’s immigration status. Suggested language for the notification offer is available on the U.S. Department of State website.

B. Facility Access/Visitation Privileges of Consular Officers

1. Consular officers and diplomats will be afforded the same access and visitation privileges as attorneys. Consular officers and diplomats will be required to adhere to the same visitation guidelines as attorneys.
2. Consular officers or diplomats must have proper identification to gain access to their foreign national. Diplomats and consular officers have identification cards issued by the Department of State. If the authenticity of the identification card is in question, you may call the State Department's Office of Protocol (phone 202-647-1985 during business hours, 202-647-7277 outside business hours).

C. Documentation/Recordkeeping

1. Notification or offer of notification to the foreign national's consulate will be documented in an officer’s police report. Whenever possible, notification must be made by fax. A copy of the fax and the fax confirmation receipt must be turned over to the Records Unit.
2. If notification must be made by telephone, the officer will note in their police report the name and location of the embassy or consulate notified, the name of the person to whom the information was given, and the date and time notification was made.
3. The officer will note the offer of non-mandatory notification, if applicable, indicating the date and time of the offer and the detainee's response.
4. The detaining/arresting officer will be responsible for ensuring the proper notations are made in their police report.

D. Death or Serious Injury of a Foreign National

1. Death or life-threatening injury of a foreign national in the custody of the New Castle County Police will be subject to the guidelines outlined in this standard operating procedure.
2. In addition to the above procedure, notification of the death or life-threatening injury must be made immediately to the nearest consulate of the national's country. The notification will be documented in the police report documenting the death or serious injury.
3. Whenever possible, notification must be made by fax. A copy of the fax and the fax confirmation receipt must be placed in the Records Unit with the case number assigned to the incident.

E. Notification process for the detention of Foreign Dignitaries

1. If a foreign dignitary is detained by an officer this policy will be followed along with the following additional steps:
 - a. The officer will immediately notify their supervisor of the detention.
 - b. The supervisor will assess the situation and address all matters pertaining to diplomatic immunity.
 - c. The supervisor will then contact the on-duty Patrol Lieutenant and inform them of the situation and the status of the detention.
 - d. The Patrol Lieutenant will notify the Staff Duty Officer of the situation.
 - e. The Staff Duty Officer will notify the Chief of Police, and the Chief will make the determination if any other notifications should be made about the detention.