

DIPLOMATS, CONSULAR OFFICIALS, AND FOREIGN NATIONALS

PREAMBLE:

Under international treaties and customary international law, the United States is required to notify certain foreign authorities when their Foreign Nationals are detained, arrested, seriously injured, or deceased. In addition, the United States Department of State (DOS) designates some Foreign Nationals as Diplomats or Consular Officials with varying degrees of immunity against detention, arrest, search, seizure, and prosecution. These protections may also extend to members of their household and/or staff. The purpose of these privileges and immunities is not to benefit individuals but to make certain that foreign governments can extend appropriate consular services to their nationals in the United States and that the United States complies with its legal obligations to such governments.

POLICY:

It is the policy of the Omaha Police Department (OPD) to respect the special provisions accredited to Diplomats and Consular Officials, members of their family, and their staff by the United States DOS and to comply with the mandatory notification agreements between the United States and specific foreign countries when Foreign Nationals of those countries are arrested or detained.

DEFINITIONS:

Consular Official (Consul/Consular Officer): A foreign official authorized by the DOS to provide assistance to the foreign government's citizens in the United States. Some classes of Consular Officials enjoy Diplomatic Immunity.

Consulate: The place or buildings in which Consular Officials' duties are carried out.

Diplomat (Diplomatic Officers): A foreign official at the country's embassy in Washington, D.C., assigned to represent the country.

Diplomatic Immunity: A principle of international law in 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 United States citizen. This includes permanent resident aliens (these individuals carry a resident alien registration card), non-citizens who may or may not be in the country legally, foreign Diplomats, and/or Consular Officials.

Mandatory Notification: Consular notification procedures that apply when you arrest or detain a Foreign National from any of the countries that have agreed to special rules with the United States.

Upon Request Notification: Consular notification procedures that apply when a Foreign National from any country that has not agreed to special rules with the United States and is not on the mandatory list of countries is arrested or detained and requests consular notification.

PROCEDURE:

I. Identifying/Verifying Foreign Nationals' Status

- A. When making an arrest or detention, officers will determine the nationality of Foreign Nationals.
 1. Officers will ask the arrestee/detainee if they were born outside of the United States.
 - a. Most but not all persons born outside of the U.S. are Foreign Nationals.

- b. If the arrestee/detainee states that they were born outside of the U.S., or if the arrestee/detainee's identification, passport, and/or travel documents identify a birthplace outside of the U.S., then they should be considered a Foreign National who's Consulate may require notification of the arrest/detention.
2. If an officer believes that indicators (such as unfamiliarity with the English language) suggest a foreign nationality, the officer will attempt to determine the arrestee/detainee's nationality by reviewing available documentation or information.
 - a. In the absence of other information, the officer may assume that the Foreign National's country is the country of their passport or other travel documents.
 - b. If no documentation is available officers will accept the statement of the individual, absent other evidence to the contrary, as to their nationality.

II. Diplomats and Consular Officials

- A. Employees of foreign countries may enjoy various levels of privileges and immunities. If a Foreign National claims to be an employee of a foreign country, officers shall request documentation indicating the individual's DOS status.
 1. Diplomats and Consular Officials are issued DOS driver's licenses and/or identification cards. These individuals may also have DOS issued license plates.
 2. Officers will contact their supervisor who will confirm the individuals' status as well as any privileges and/or immunities with the DOS.
 - a. Supervisors may use the [DOS Website](#) or contact the DOS directly for confirmation (see [Appendix A](#) for phone numbers).
- B. Individuals with immunity status, including full immunity, will be cited as appropriate for traffic offenses.
 1. Officers WILL NOT compel the subject to sign the citation.
 - a. Officers will write "REFUSED TO SIGN" in the signature block if the subject refuses to sign the citation.
 2. Officers will fax a copy of the citation and any related reports to the DOS Office of Foreign Missions (see [Appendix A](#) for the fax number). The fax confirmation sheet will be submitted with all other reports.
- C. In the case of Driving Under the Influence (DUI), individuals with Diplomatic Immunity will receive differential treatment.
 1. Officers may request that the individual complete field sobriety tests, however, Diplomats and Consular Officials WILL NOT be forced to comply with sobriety testing.
 2. If the officer(s) believes the individual is impaired and cannot drive safely, the individual WILL NOT be allowed to continue driving.
 - a. Officers shall notify their supervisor who will determine an appropriate manner to transport the individual to their destination.

3. Officers will document the incident in an Incident Report (OPD Form 189) and promptly fax a copy of the Incident Report to the DOS Office of Foreign Missions (see [Appendix A](#) for the fax number).
- D. Additional information regarding Diplomats and Consular Officials can be found on the [DOS Website](#).

III. Consular Notification Procedures

- A. If a Foreign National is detained by an officer, the officer shall determine whether their country requires consular notification.
- B. All Foreign Nationals are entitled to consular notification if they are under confinement or restraint.
- C. Foreign Nationals are NOT entitled to consular notification if they are detained only momentarily (i.e. a brief traffic stop, citation for a misdemeanor or similar event in which a Foreign National is questioned and then allowed to resume their activities).
- D. The Douglas County Department of Corrections (DCDC) is responsible for conducting appropriate consular notification for all Foreign Nationals who are arrested and booked into DCDC facilities.
- E. A link to the complete list of countries or jurisdictions that have entered into agreements with the U.S. that require notification of Consular Officials upon the arrest or detention of their citizens can be found on the DOS website.
- F. When an agreement with the Foreign National's country requires consular notification, officers will:
 1. Present the Foreign National with Page 1 of the Statement to Arrested or Detained Foreign Nationals form (OPD Form 170A) as soon as reasonably possible after detention.
 - a. Page 1 contains the paragraph entitled "When Consular Notification Is Mandatory" written in English and Spanish.
 - b. Translations other than Spanish are available in the Consular Notification and Access Manual on the [DOS website](#).
 2. Officers will list the Foreign National's name, country, and RB number on the Statement to Arrested or Detained Foreign Nationals form (OPD Form 170A).
 3. Officers shall notify their supervisor without delay when they have detained a Foreign National whose country requires consular notification. The officer's supervisor will then notify the Consulate.
- G. When the Foreign National's country does not appear on the list for Mandatory Notification, officers will:
 1. Present the Foreign National with Page 2 of the Statement to Arrested or Detained Foreign Nationals form (OPD Form 170A) as soon as reasonably possible after detention.
 - a. Page 2 contains the paragraph entitled "When Consular Notification Is at the Foreign National's Option" written in English and Spanish.

- b. Translations other than Spanish are available in the Consular Notification and Access Manual on the [DOS website](#).
 - 2. List the Foreign National's name, country and RB number on the Statement to Arrested or Detained Foreign Nationals form (OPD Form 170A).
 - 3. Request that the Foreign National complete the form by circling "yes" or "no" to indicate whether or not consular notification is requested.
 - 4. If the Foreign National indicates that they would like for Consular Officials to be notified, officers shall notify their supervisor who will then notify the Consulate.
 - 5. If the Foreign National indicates that they do not wish to have their Consulate notified:
 - a. Officers will document that the Foreign National declined consular notification.
 - b. The original Statement to Arrested or Detained Foreign Nationals form (OPD Form 170A) will be submitted with all other reports.
- H. When a supervisor is notified of a Foreign National being detained by officers, and either the Foreign National's country requires Mandatory Notification or the Foreign National requests consular notification, the supervisor will:
- 1. Notify the Consulate as soon as possible but no later than the end of the shift in which the Foreign National was detained.
 - 2. Use the Fax Sheet for Notifying Consular Officers of Arrests/Detentions (OPD Form 170) to contact the nearest Consulate. A list of Consulate addresses, telephone numbers and fax numbers is available on the [DOS website](#).
 - a. The confirmation of receipt of the fax will be submitted with all other reports.
 - 3. The original Fax Sheet for Notifying Consular Officers of Arrests/Detentions (OPD Form 170) and the original Statement to Arrested or Detained Foreign Nationals form (OPD Form 170A) will be submitted with the original incident reports.
- I. Additional information regarding Consular Notification can be found on the [DOS website](#).

IV. Death or Serious Injury of a Foreign National

- A. In the event of the death or serious injury of a Foreign National, the Foreign National's Consulate must be notified via fax or email without delay.
- 1. Officers will notify their supervisor who will notify the Consulate.
 - 2. There is no specific format for the notification.
 - a. Email notifications may be in a narrative format and will include the contact information for the appropriate unit. Emails will be sent with a confirmation request.
 - b. Fax notifications may be in a narrative format and will include the contact information for the appropriate unit. Faxes may be on any appropriate form, letterhead or sheet of paper.

3. Regardless of the format, a record of the notification (i.e. fax confirmation, copy of the email, etc.) will be submitted with all other reports.

V. Consular Officials' Access to Detained Foreign Nationals.

- A. OPD employees will not interfere with Consular Officials who seek to communicate with Foreign Nationals of their country.
 1. DCDC is responsible for providing Consular Officials access to Foreign Nationals detained in any of their facilities. Consular Officials seeking access to such Foreign Nationals will be referred to DCDC.
 2. Consular Officials and Diplomats visiting a Foreign National detained by OPD officers will be given the same access privileges as attorneys visiting a client.
 3. In all cases, detainees may communicate with Consular Officials and may request consular access at any time (whether previously declined or not).

REFERENCES:

I. Previous OPD Orders

- A. Previous OPD General Orders include the following: #17-06 and 47-14.

II. CALEA Accreditation Standards

- A. Relevant CALEA Accreditation Standards include the following: 1.2.5 and 61.1.3.

III. Other References

- A. United States Department of State (2016). Consular Notification and Access (4th ed.).
- B. United States Department of State (2011). Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities (3rd ed.).

III. Relevant PPM Updates

- A. PPM Update #11-2017