

Waltham Police Department

CHAPTER 14

CONSULAR NOTIFICATION

General Order #: GO-01 2009

Effective Date: 09/2008, 2015, 02/2024

Accreditation Standard #: 72.7.2

BACKGROUND:

NOTE: All supporting documents pertaining to Consular Notification are referenced throughout the body of this Policy.

On December 24, 1969 the United States became a party to an International Treaty known as the Vienna Convention on Consular Relations (VCCR) which was first formed in Vienna on April 24, 1963. The VCCR now establishes the baseline for most obligations with respect to the treatment of foreign nationals in the United States and for treatment of U.S. citizens abroad for foreign governments.

Therefore, the procedures outlined in this policy, which are in conformity with the VCCR, focus primarily on providing consular notification and access with respect to foreign nationals arrested or detained in the United States, so that their governments can assist them. The obligations of consular notification and access apply to United States citizens in foreign countries just as they apply to foreign nationals in the United States.

1. SUMMARY OF REQUIREMENTS PERTAINING TO FOREIGN NATIONALS:

- a.** When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified. [72.7.2-EI]
- b.** In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes.
- c.** Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance
- d.** When a government official becomes aware of the death of a foreign national, consular official must be notified.
- e.** When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.

- f. When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

2. **POLICY:**

It shall be the policy of the Waltham Police Department, that whenever a foreign national, as defined herein, is arrested or detained, they must be advised of the right to have their consular officials notified. See Consular Notification Form which is located on the share drive under WPD FORMS. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes. Once notified, Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.

3. **DEFINITIONS:**

CONSULAR OFFICER: A consular officer or consul as sometimes referred to, 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, or to consular offices maintained by the foreign government in locations in the United States outside of Washington, DC.

DETENTION: The placing of a foreign national under arrest or in custody pending investigation or judicial appearance, or both. Brief stops of such persons for motor vehicle violations or similar incidents are not considered detentions for purposes of this policy. [72.7.2B]

FOREIGN NATIONAL OR ALIEN: For the purposes of consular notification, a "foreign national" is any person who is not a U.S. citizen. The terms "foreign national" and "alien" are used interchangeably [72.7.2A].

NOTE: ALL foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States. Thus "illegal" aliens have the same rights to consular assistance as do "legal" resident aliens. There is no reason, for purposes of consular notification, to inquire into a person's legal status in the United States. [72.7.2A]

4. **ARRESTS AND DETENTIONS OF FOREIGN NATIONALS:**

Whenever a foreign national is arrested or detained in the United States, there are legal requirements to ensure that the foreign national's government can offer them appropriate consular assistance.

In **ALL** cases, the foreign national must be told of the right of consular notification and access.

In most cases, the foreign national then has the **OPTION** to decide whether to have consular representatives notified of the arrest or detention.

In other cases, however, the foreign national's consular officials **MUST** be notified of an arrest and/or detention regardless of the foreign national's wishes. A list of all embassies and consulates in the United States, with their telephone and fax numbers, shall be available in police operations and booking room. This is in order to facilitate the provision of notification by detaining officers to consular officials when required.

5. STEPS TO FOLLOW WHEN A FOREIGN NATIONAL IS ARRESTED OR DETAINED:

- a.** Whenever a foreign national is taken into custody, the detaining official should determine whether consular notification is at the option of the foreign national or whether it is mandatory, by determining the national's country.
- b. NOTIFICATION AT THE FOREIGN NATIONAL'S OPTION: [72.7.2C]**

In **ALL** cases, the foreign national must be told of the right of consular notification and access. The foreign national then has the option to decide whether they want consular representatives notified of the arrest or detention, unless the foreign national is from a Mandatory Notification Country. The mandatory notification countries are posted in the booking room. All forms can be located in the share drive under WPD FORMS.

If the detained foreign national is a national of a country not on the mandatory notification list, the requirement is that the foreign national shall be informed without delay of the option to have their government's consular representatives notified of the detention. **[72.7.2F]** For the purposes of this policy, without delay means there should be no deliberate delay in notifications. **[72.7.2F]** If the detainee requests notification, a responsible detaining official must ensure that notification is given to the nearest consulate or embassy of the detainee's country without delay. For the Officer's convenience, a Consular Notification Fax Cover Sheet is on the share drive under WPD FORMS. The Consular Notification Fax Cover Sheet shall be used to satisfy this notification requirement. Please take the time to fill out the appropriate information on this fax cover sheet. In addition, please fill out the Consular Notification Form and attach to the original report.

c. MANDATORY NOTIFICATION: [72.7.2C, D, F]

In some cases, mandatory notification must be made to the nearest consulate or embassy without delay, regardless of whether the foreign national requests such notification.

Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirement. Thus, the foreign national should be informed that notification has been made and advised that they may also specifically request consular assistance from their consular officials.

Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by their government may exist in some mandatory notification cases. The notification requirement should still be honored, but it is possible to take precautions regarding the disclosure of information. For example, it may not be necessary to provide information about why a foreign national is in detention. Moreover, under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government. The Department of State can provide more specific guidance in particular cases if necessary.

The Consular Notification Fax Cover Sheet shall be used to satisfy this information requirement. Please take the time to fill out the appropriate information on this fax cover sheet. In addition, please fill out the Consular Notification Form and attach it to the original report.

d. RECORDKEEPING:

The Waltham Police Department shall maintain written records sufficient to show compliance with the above notification requirements. These records should show all notifications to foreign consular representatives. In addition, in cases in which notification is at the discretion of the detained foreign national, these records should show that the foreign national was informed of the option of consular notification, the date when the foreign national was so informed, and whether or not the foreign national requested that consular officials be notified. If a confirmation of receipt of notification is available (e.g., fax confirmation receipt), it should be saved. All appropriate records should be kept with the OIC and subsequently turned in to the Captain of Patrol who will keep these records.

The Department of State from time to time receives inquiries and complaints from foreign governments concerning foreign nationals in detention. The Department in such cases may request information from the relevant law enforcement officials on whether consular notification was in fact given. Concerns about consular

notification may also be raised by foreign consular officials directly with the responsible federal, state, and local officials. Good recordkeeping will facilitate responding to these inquiries and to any consular notification issues that may be raised in litigation.

6. CONSULAR ACCESS TO DETAINED FOREIGN NATIONALS: [72.7.2E-III]

Detained foreign nationals are entitled to communicate with their consular officers. Any communication by a foreign national to their consular representative must be forwarded by the Officer in Charge, or designee, to the consular post without delay.

Foreign consular officers must be given access to their nationals and permitted to communicate with them. Such officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. The consular officer may speak with/visit the national according to local laws and departmental regulations. In addition, consular officers **may not act as attorneys** for their nationals. Phones are located in every cell block as well as in the booking area. Detainees may be taken out of the cell block and brought into the booking area for phone calls or in person visits with consular officers. Normal procedure for dealing with detainee will remain.

Consular officers or diplomats must have proper identification to gain facility access. 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 at 202-647-2663 during normal business hours.

7. DEATH:

If federal, state or local government officials become aware of a death of a foreign national in the U.S., they 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. For example, such notice will help ensure that passports and other legal documentation issued by that country are canceled and not reissued to fraudulent claimants. In addition, it may help ensure that foreign national's family and legal heirs, if any, in the foreign country are aware of the death and that the death is known for estate purposes. These requirements are set out in Article 37 of the VCCR.

8. SUMMARY OF PROCESS:

4 steps to follow when a foreign national is arrested or detained:

- a. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.

- b. If the foreign national's country is not on the mandatory notification list, offer, without delay, to notify the foreign national's consular officials of the arrest/detention. Please use the following Statement to facilitate this purpose:

“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?”

If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay using the Consular Notification Fax Cover Sheet. This document is also listed on the Waltham Police Department's share drive under WPD FORMS and is available in the booking room.

- c. If the foreign national's country is on the list of mandatory notification countries:

Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification. Please use the following Statement to facilitate this purpose:

“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.”

Notify the nearest consular officials of the foreign national's country without delay using the Consular Notification Fax Cover Sheet. Phone and fax numbers for foreign embassies can be located in the WPD share drive under WPD Forms, Consular Notification, or at the booking desk.

NOTE: Translations of these statements made to the Foreign Nationals can be located in the WPD share drive under WPD Forms, Consular Notification.

- d. Keep a written record of the provision of notification and actions taken. Keep a copy of the Fax Notification Receipt as well as the Consular Notification Fax Cover Sheet. Make appropriate notations to the narrative of the Arrest / Incident Report

of all notifications made and actions taken. All written documentation shall be stored with the appropriate report (Arrest/Incident).

Consular notification process, access guide and a list of mandatory countries is in the booking desk.