



# **POLICY AND PROCEDURE NO. 705**

## **Arrest of Foreign Nationals, Advisement and Consular Notification**

Date Issued: September 6, 2015

Date Effective: September 6, 2015

7 Pages

### **Purpose:**

The policy and procedure statement contains instructions and guidance relating to the obligations of police officials to provide information to foreign consular officers and to permit foreign consular officers to assist their nationals in the United States. The instructions and guidance in this policy and procedure pertain to all foreign nationals in the United States regardless of their legal status. These legal obligations arise primarily from treaties which form part of the supreme law of the land under Article VI of the U.S. Constitution. (Also see WPD Policy #455, Detentions of Foreign Nationals for information as to diplomatic status.)

### **Policy:**

It is the policy of the Worcester Police Department to comport to all federal and state laws and regulation pertaining to the arrest and detainment of foreign nationals. All foreign nationals arrested and detained by this department will be treated in the same manner as all other arrestees and prisoners.

### **Definition:**

Foreign National: an individual who is a citizen of any country other than the United States

### **Procedure:**

#### **Arrest of Foreign Nationals, Advisement and Consular Notification:**

If, during the course of the arrest, detention or booking of an individual who identifies himself as a foreign national or who offers reason to believe that he or she is a foreign national, inquiry shall be made as to the individual's country of nationality. If a determination is made that the individual is indeed a foreign national, a supervisor of the Service Division shall be notified.

Once the country of nationality is identified, the Service Division supervisor shall then determine whether the foreign national's country is on the "Mandatory Notification" list attached to this policy and procedure statement.

If the foreign national's country is NOT on the "Mandatory Notification" list, the Service division supervisor shall;

- Inform the foreign national, without delay, that he or she may have his or her consular officers notified of the arrest or detention and communicate with them.
- If the foreign national requests that his or her consular officers be notified, notify the nearest embassy or consulate of the foreign national's country without delay. Foreign

embassy and consulate phone numbers, fax numbers and email addresses can be found on the Department of State's website at <http://trvel.state.gov/CNA>.

- Forward any communication from the foreign national to his or her consular officers without delay

If the foreign national's country IS on the "Mandatory Notification" list, the Service division supervisor shall;

- Notify that country's nearest embassy or consulate, without delay, of the arrest or detention. Foreign embassy and consulate phone numbers, fax numbers and email addresses can be found on the Department of State's website at <http://trvel.state.gov/CNA>.
- Inform the foreign national that you are making this notification and inform him or her, without delay, that he or she may communicate with his or her consular officers.
- Forward any communication from the foreign national to his or her consular officers without delay

Regardless of whether the foreign national's country is on the Mandatory Notification list or not, consular officers are must be permitted access to detainee/arrestee if they request such access. Any access is subject to reasonable security measures determined by the supervisor of the Service Division.

The supervisor of the Service Division shall then document the following information in Police Server attached to the incident number of the arrest or detention:

- What information was provided to the foreign national and when.
- The foreign national's requests of any.
- Whether you notified consular officers, if so, the date and time of notification and the mean of notification (i.e. phone, fax, email).
- Any other relevant actions taken.

Regardless of detention and/or release of foreign nationals, any criminal investigations will be continued to their natural conclusion. Immunity is not an absolute bar to prosecution but is merely a legal barrier to jurisdiction. Subsequent prosecution may be possible if there is a waiver of immunity or the person leaves their protected position or immunity is otherwise terminated.

Questions relative to the detention or foreign nationals beyond this simply notification process shall be determined pursuant to WPD Policy # 455, Detentions of Foreign Nationals

## **Mandatory Notification Countries**

ALBANIA

ALGERIA

ANTIGUA AND BARBUDA

ARMENIA

AZERBAIJAN

BAHAMAS

BARBADOS

BELARUS

BELIZE

BRUNEI

BULGARIA

CHINA (Inc. Macao & Hong Kong)

COSTA RICA

CYPRUS

CZECH REPUBLIC

DOMINICA

FIJI

GAMBIA

GEORGIA

GHANA

GRENADA

GUYANA

HONG KONG

HUNGARY

JAMAICA

KAZAKHSTAN

KIRIBATI

KUWAIT

KYRGYZSTAN

MALAYSIA

MALTA

MAURITIUS  
MOLDOVA  
MONGOLIA  
NIGERIA  
PHILIPPINES  
POLAND  
ROMANIA  
RUSSIA  
SEYCHELLES  
SIERRA LEONE  
SINGAPORE  
SLOVAKIA  
ST. KITTS/NEVIS  
ST. LUCIA  
ST. VINCENT/GRENADINES  
TAJKISTAN  
TANZANIA  
TONGA  
TRINIDAD AND TOBAGO  
TUNISIA  
TURKMENISTAN  
TUVALU  
U.S.S.R. (Former)  
UKRAINE  
UNITED KINGDOM  
UZBEKISTAN  
ZAMBIA  
ZIMBABWE

Per:

*Gary J. Gemme*  
Chief of Police

This policy and procedure severed from WPD P&P #700 Sept. 2015 for classification and clerical purposes.

## **SUMMARY OF STEPS TO FOLLOW WHEN A FOREIGN NATIONAL IS ARRESTED OR DETAINED**

Determine the foreign national's country of nationality. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national is traveling.

If the foreign national's country is NOT on the list of "mandatory notification" ("list") countries and jurisdictions:

- Use Statement 1 (below) to inform the national, without delay, that he or she may have his or her consular officers notified and may communicate with them.
- If the foreign national requests that his or her consular officers be notified, notify the nearest embassy or consulate of the foreign national's country without delay.
- Forward any communication from the foreign national to his or her consular officers without delay.

If the foreign national's country is on the list of "mandatory notification" ("list") countries:

- Notify that country's nearest embassy or consulate, without delay, of the arrest or detention.
- Use Statement 2 (below) to tell the national, without delay, that you are making this notification and that he or she may communicate with the consulate.
- Forward any communication from the foreign national to his or her consular officers without delay.

Keep a written record of:

- What information you provided to the foreign national and when.
- The foreign national's requests, if any.
- Whether you notified consular officers and, if so, the date and time and the means used to notify them (e.g., fax, email or phone.) If you used fax or email to notify the consular officers, you should keep the fax confirmation sheet or sent email in your records.
- Any other relevant actions taken.

### **STATEMENT 1: For All Foreign Nationals Except Those from "Mandatory Notification" Countries**

As a non-U.S. citizen who is being arrested or detained, you may request that we notify your country's consular officers here in the United States of your situation. You may also communicate with your consular officers. A consular officer may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?

### **STATEMENT 2: For Foreign Nationals from "Mandatory Notification" Countries**

Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been arrested or detained. We will do this as soon as possible. In addition, you may communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things.