

CONSULAR NOTIFICATIONS

GREAT BARRINGTON POLICE DEPARTMENT POLICY & PROCEDURE NO. 1.22	EFFECTIVE DATE: <u>07/22/2008</u>
	REVISION DATE:
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.1.4	REVIEW DATE: <u>3/12/2019</u>

I. GENERAL CONSIDERATIONS AND GUIDELINES

As a signatory to the Vienna Convention on Consular Relations, the United States government has agreed to ensure the rights of foreign nationals to have access to their own governments in the event that they are detained or arrested. These rights are also granted to American citizens in the foreign countries that are also signatories. This reciprocal relationship is particularly important for Americans in countries which do not provide many of the rights that Americans enjoy, to their own citizens or visiting foreigners.

The application of this treaty rests with the employees of each police agency when they arrest or detain foreign nationals. Police employees should treat foreign nationals as they would want an American citizen to be treated in a similar situation in a foreign country.

II. POLICY

It is the policy of the department that:

- A. Foreign nationals arrested or detained by members of this agency shall be advised of their right to have their consular officials notified, or that their consular officials shall be notified if such notification is mandatory.
- B. Consular officials will be notified if requested by the foreign national or regardless of the wishes of the foreign national if such notification is mandatory.
- C. Consular officials may have access to detainees to provide consular assistance.

D. Consular offices shall be notified of the death of a foreign national.

III. DEFINITIONS

A. *Foreign National*: Any person who is not a U.S. citizen.

B. *Consular Official* (Consul): 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.

C. *Optional Notification*: A foreign national may refuse the offer to have their consular office notified of their detention.

D. *Mandatory Notification*: Bilateral agreements require that the consul be notified in the event of a detention of a national, regardless of the wishes of the detainee.

E. *Detention*: An arrest, protective custody, or other custodial situation. A traffic stop or threshold inquiry is not a detention for the purposes of this policy.

IV. PROCEDURES [1.1.4]

A. Arrest and Detention of Foreign Nationals

1. GENERALLY

- a. Whenever a foreign national is arrested or detained, there are legal requirements to ensure that the foreign national's government can offer the detainee appropriate consular assistance.
- b. During the booking process, the booking officer shall ask the detainee their country of origin. In absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
- c. All foreign nationals are entitled to consular notification regardless of their immigration status.
- d. The reporting officer shall include that the foreign national was advised of his/her option for consular notification, or advised of mandatory notification in the incident report, and if such notification was made.

2. MANDATORY NOTIFICATIONS

- a. Determine if the detainee's country of origin is one requiring mandatory notification. A list of countries requiring notification is listed in Appendix C which can be found on the s-drive under department forms.¹
- b. Foreign nationals for whom mandatory notification must be made shall be notified during the booking process using forms

provided by the U.S. Department of State in Appendix A which can be found on the s-drive under department forms. The forms are available in several languages and can be found in a copy of the United States Department of State Consular Notification and Access manual located on the s-drive in the 'Consular Notification and Access' folder.

- c. Mandatory consul notifications shall be made regardless of the detainee's wishes.

3. OPTIONAL NOTIFICATIONS

- a. Nationals of countries not listed as mandatory notification shall be considered as optional notifications.
- b. Nationals of optional notification countries shall be advised of their right of consular notification and access using forms provided by the U.S. Department of State in Appendix A which can be found on the s-drive under department forms.
- c. All notification forms shall be filed with the booking documents by the booking officer.

B. Notification of Consul

1. NOTIFICATION

- a. All actual notifications of foreign consuls shall be made "without delay" and such notification noted in the incident log. The entry must contain at a minimum:
 - 1) Identity of the foreign national;
 - 2) Date and time of notification;
 - 3) Employee making notification; and
 - 4) Identity of the country notified.
- b. After refusing notification of consul, foreign nationals may request notification be made on their behalf at any time while being held.
- c. For foreign nationals from optional notification countries who do not wish to have their consul notified, take no further action.
- d. For foreign nationals who request notification or are subject to mandatory notification of their consul, fax the notification using the Consul Notification Fax Sheet in Appendix B which can be found on the s-drive under department forms. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases.

The notification requirement still must be honored. Employees are not obligated to provide any further information regarding the foreign national's detention or circumstances.

2. Application for Asylum: Under no circumstances shall 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.

C. Access of Consular Officials to Detainees

1. Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance, subject to provisions of this policy. For further information about access to detainees generally, see the department policy on Detaining Prisoners.
2. Consular officials may be granted access to detainees held in custody in person or by telephone, at the discretion of the shift supervisor. Prior to granting access, the supervisor should at a minimum consider:
 - a. The reason for being detained, nature of the charges;
 - b. The detainee's demeanor (violent, intoxicated, etc.);
 - c. Bail status and anticipated length of custody;
 - d. Security considerations; and
 - e. Availability of personnel or appropriate facilities to accommodate such a visit.
3. Consular officials and diplomats will be afforded the same access and visitation privileges as attorneys and are subject to visiting rules, conditions, and procedures as set forth in the Department policy on the Detaining Prisoners.
4. Consular officials may not act on behalf of the foreign national if the national opposes their involvement.
5. Consular officials may not act as an attorney for the national.

D. Deaths or Life Threatening Injuries of Foreign Nationals

1. Notification: In the event that a foreign national becomes deceased or suffers a life threatening injury (accident, crime victim, criminal action, unattended death, etc.), the consul of that national's country must be notified. The foreign government may then notify the deceased's next of kin, cancel the party's passport, etc.
2. Notification may be made by FAX or telephone and should include at the minimum:

- a. The national's name, address and date of birth if known;
- b. A brief description of the circumstances surrounding the person's death (homicide, accident victim, found deceased, etc.); and
- c. Passport number, date of issuance and place of issuance if known.

E. References

1. The U.S. State Department publication "Consular Notification and Access" is located at:
https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf.
2. Appendix A: Consular Notifications Rights Forms
3. Appendix B: Consular Notification Fax Sheet
4. Appendix C: Mandatory Notifications
5. Assistance is available at the Office of Public Affairs and Policy Coordination for Consular Affairs, CA/P, Room 6831, U.S. Department of State, Washington, DC 20520; telephone number 202-647-4415; facsimile number 202-736-7559. Urgent telephone inquiries after regular business hours may be directed to the State Department Operations Center, 202-647-1512.

¹ U.S. Department of State Consular Notification and Access, Department of State Publication 10969, Office of the Legal Advisor.

ISSUING AUTHORITY:

Chief William R. Walsh Jr.:

