

	DELMAR POLICE DEPARTMENT	
	Policy 7.6 Arrest/Detention of Foreign Nationals & Consular Notification	
	Effective Date: 03/27/15	Replaces: N/A
	Approved: <u>Ivan Barkley</u> Chief of Police	
	Reference: N/A	

I. POLICY

It is the policy of Delmar Police Department to comply with all United States treaty obligations on consular notification and access.

II. PURPOSE

To establish direction in dealing with Foreign Nationals who have been arrested or detained.

III. DEFINITIONS

- A. Arrest or Detention: Any arrest, detention, or other commitment to custody which results in a foreign national being incarcerated for more than a few hours triggers consular notification requirements. A brief traffic stop or an arrest resulting in a citation for a misdemeanor and release at the scene does not trigger such requirements. 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 a number of hours or overnight. The longer a detention continues, the more likely it is that consular notification requirements are triggered.
- B. Foreign National: Any person who is not a U.S. citizen; same as “alien.” Aliens who are lawful permanent residents in the United States and who have a resident alien registration card (“green card”) are foreign nationals. So are undocumented or “illegal” aliens.
- C. Consular Officer or Consul: A foreign official authorized by the Department of State to provide assistance to the foreign government’s citizens in the United States. Different from “counsel,” which is an attorney authorized to provide legal advice. Consuls are not authorized to practice law.
- D. Diplomat: A foreign official at the country’s embassy in Washington, D.C., assigned to represent the country. Diplomats may also perform consular functions, and should be treated the same as a consular officer.

- E. Mandatory Notification: Consular notification procedures that apply when you arrest or detain a foreign national from any of the 57 countries that have agreed to special rules with the United States. For such a foreign national, you must notify the consular officer regardless of whether the national requests or wants you to do so. The “mandatory” list of these 57 countries is in Appendix C of this Policy.
- F. Upon Request: Consular notification procedures that apply when you arrest or detain a foreign national from any country not on the “mandatory” list of 57 countries.

IV. CONSULAR NOTIFICATION PROCEDURES

- A. Obligation Triggered at Time of Booking - The notification process will begin at the time the arrested foreign national is booked into the police facility. The booking officer who processes the foreign national is responsible for implementing the notification process. See Appendix D for processing guidelines.
- B. Determine the Foreign National’s Country - In the absence of other information, assume this is the country on whose passport the foreign national travels. Absent citizenship documentation or other evidence to the contrary, accept the foreign national’s own statement as to his or her nationality.
- C. Determine Whether or Not This Country is a Mandatory Notification (“List”) Country - If the foreign national’s country is not on the list of “mandatory notification” countries, he or she is from an “upon request” country.
 - 1. For foreign nationals whose country is on the list of mandatory notification countries:
 - a. Notify the nearest consulate of the foreign national’s country via fax (Appendix B) immediately or as soon as reasonably possible, and in no case longer than the end of the booking shift. Notify the consulate even if the foreign national does not want notification. Contact information for consulates is at www.travel.state.gov/consularnotification.
 - b. Never tell the consular officer that the foreign national has requested asylum. If the consular officer insists on information the foreign national does not want disclosed, contact your supervisor or the Department of State at (202) 647-4415.
 - c. Inform the foreign national that you notified his or her consulate. Use the sample statement in Appendix A of this Policy.
 - d. Make a note of the completed notification in the Incident Report and attach the fax (Appendix B) and fax confirmation sheet.

2. For foreign nationals whose country is not on the list of mandatory notification countries:
 - a. As soon after the arrest as reasonably possible, but no later than booking, inform the foreign national that he or she may have his or her consular officers notified of the arrest or detention. Use the sample statement in Appendix A of this Policy.
 - b. Make a note of the foreign national's decision in the Incident report.
 - c. If the foreign national requests notification, notify the nearest consulate of the foreign national's country as soon as reasonably possible but no later than 72 hours after arrest. Contact information for consulates is at www.travel.state.gov/consularnotification.
 - d. Never tell the consular officer that the foreign national has requested asylum. If the consular officer insists on information the foreign national does not want disclosed, contact your supervisor or the Department of State at (202) 647-4415.
 - e. Make a note of the completed notification in the Incident report and attach the fax (Appendix B) and fax confirmation sheet.

V. FACILITY ACCESS & VISITATION OF CONSULAR OFFICIALS

- A. Give consular officers and diplomats visiting a detained foreign national the same access privileges as attorneys visiting a client. Consular officers and diplomats are required to adhere to the same visitation guidelines, rules, and regulations as attorneys.
- B. Consular officers and diplomats must have proper identification to gain facility access. They should be carrying identification cards issued by the Department of State. If you have reason to doubt the authenticity of the identification card, call the Department at (202) 647-1985 or after hours at (571) 345-3146 or (866) 217-2089.

VI. REQUIRED DOCUMENTATION

- A. Document the consular notification and/or offer of notification in the narrative of an Incident report in LERMS.
- B. Make the consular notification by fax if possible, and by telephone if not. Place a copy of the fax and fax confirmation receipt in the foreign national's file. Use the sample fax sheet in Appendix B of this Policy.
- C. If notification must be made by telephone, note the name and location of the consulate notified, the name of the person to whom you gave the information, and the date and time of notification in the Incident report.

- D. For foreign nationals from “upon request” countries, make a notation in the Incident report that you told the national that he or she may have the consulate notified, and note the national’s response. Indicate the date and time of your offer and the national’s response. Use the sample statement in Appendix A of this Policy.
- E. For foreign nationals from mandatory notification (“list”) countries, make a notation in the Incident report that you told the national that you notified the consulate. Use the sample statement in Appendix A of this Policy.
- F. The on-duty supervisor or the officer in charge will be responsible for ensuring the proper notations are made in the Incident report.
- G. A copy of all documentation relating to the foreign national must be forwarded to the Administrative Commander.

VII.DEATH, SERIOUS INJURY OR SERIOUS ILLNESS OF A FOREIGN NATIONAL

- A. In addition to the above procedures, when a foreign national dies, is seriously injured or becomes seriously ill, notify the nearest consulate of his or her country immediately or as soon as reasonably possible. Make such notification by fax if possible, and by telephone if not. Use the sample fax sheet in Appendix B of this Policy.
- B. Document this notification in the Incident report, and place a copy of the fax and the fax confirmation receipt in the foreign national’s file.

ENGLISH

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?

YES

NO

Printed Name: _____

Witness: _____

Signature: _____

Date: _____

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. Please sign to show that you have received this information.

Printed Name: _____

Witness: _____

Signature: _____

Date: _____

FAX SHEET – CONSULAR NOTIFICATION

SUBJECT:

NOTIFICATION OF ARREST OR DETENTION OF A NATIONAL OF YOUR COUNTRY

DATE/TIME: _____

TO: Embassy/Consulate of _____ in _____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____

Address _____

City _____ State _____ Zip Code _____

Telephone (_____) _____ Fax (_____) _____

We arrested/detained the following foreign national, who we understand is a

national of your country, on _____.
(DATE)

Name: _____

Date of Birth/Place of Birth: _____

Nationality/Country: _____

Passport Issuing Nation: _____

Passport Number: _____

This person has been or may be charged with the following offense(s):

For more information, please call _____ between the hours of _____.

Please refer to case number _____ when you call.

ADDITIONAL INFORMATION:

FAX SHEET – CONSULAR NOTIFICATION

SUBJECT:

NOTIFICATION OF DEATH, SERIOUS INJURY OR ILLNESS OF A NATIONAL OF YOUR COUNTRY

DATE/TIME: _____

TO: Embassy/Consulate of _____ in _____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____

Address _____

City _____ State _____ Zip Code _____

Telephone (_____) _____ Fax (_____) _____

The following individual, who we understand is a national of your country:

*has died, was seriously injured, **OR** is seriously ill within our jurisdiction.*
(CIRCLE ONE)

Name: _____

Date of Birth/Place of Birth: _____

Nationality/Country: _____

Passport Issuing Nation: _____

Passport Number: _____

Date of Death: _____ Place of Death: _____

Apparent Cause of Death: _____

For more information, **please call** _____ between the hours of _____.

Please refer to **case number** _____ when you call.

ADDITIONAL INFORMATION:

Mandatory Notification Countries and Jurisdictions

The following countries and jurisdictions require consular notification:

Albania	Ghana	Saint Lucia
Algeria	Grenada	Saint Vincent and the
Antigua and Barbuda	Guyana	Grenadines
Armenia	Hungary	Seychelles
Azerbaijan	Jamaica	Sierra Leone
Bahamas	Kazakhstan	Singapore
Barbados	Kiribati	Slovakia
Belarus	Kuwait	Tajikistan
Belize	Kyrgyzstan	Tanzania
Brunei	Malaysia	Tonga
Bulgaria	Malta	Trinidad and Tobago
China (including Macao and Hong Kong) ¹	Mauritius	Tunisia
Costa Rica	Moldova	Turkmenistan
Cyprus	Mongolia	Tuvalu
Czech Republic	Nigeria	Ukraine
Dominica	Philippines	United Kingdom ³
Fiji	Poland ²	Uzbekistan
Gambia	Romania	Zambia
Georgia	Russia	Zimbabwe
	Saint Kitts and Nevis	

¹Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request. TECRO's offices are listed on pages 126-127 in the [Consular Notification and Access Manual](#); see also footnote 128 on page 66 of the manual.

²Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., "green card" holders). Otherwise, upon the national's request. See the question "But since 'green card' holders are living in the United States permanently, why can't I ignore consular notification requirements for them?" on page 12 of the manual; see also footnote 18 on page 43 of the manual.

³The bilateral consular convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales, and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat,

and the Turks and Caicos Islands, along with other island territories. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate. For advice on how to ascertain whether an arrested or detained person is a British national, see the question "What about British nationals" on page 24 of the manual. For the U.S.–U.K. convention, see footnote 30 on page 47 of the manual.

ARRESTING A NON-U.S. CITIZEN

Consular Notification Process



Q. Are you a U.S. citizen?

A. **"YES, I am a U.S. citizen."**

(No further action required.)



"NO, I am not a U.S. citizen."



IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.
- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).
- Consular officers may have access to detainee regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Poland ²	Tanzania
Algeria	Cyprus	Kiribati	Romania	Tonga
Antigua and Barbuda	Czech Republic	Kuwait	Russia	Trinidad and Tobago
Armenia	Dominica	Kyrgyzstan	St. Kitts and Nevis	Tunisia
Azerbaijan	Fiji	Malaysia	St. Lucia	Turkmenistan
Bahamas	Gambia	Malta	St. Vincent and the Grenadines	Tuvalu
Barbados	Georgia	Mauritius	Seychelles	Ukraine
Belarus	Ghana	Moldova	Sierra Leone	United Kingdom ³
Belize	Grenada	Mongolia	Singapore	Uzbekistan
Brunei	Guyana	Nigeria	Slovakia	Zambia
Bulgaria	Hungary	Philippines	Tajikistan	Zimbabwe
China ¹	Jamaica			

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).
2. Mandatory only for non-permanent residents in the United States (i.e. those not holding a "green card"); for green card holders, notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. **"YES."**

Step 1. Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.



Q. Do you want your consulate notified of your arrest/detention?

A. **"YES."**

Step 1. Make note in case file.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Step 1. Make note in case file.

Step 2. Do **NOT** inform the consulate.

(No further action required.)



Consular Notification & Access (CNA)

U.S. Department of State
CA/P

SA-17, 12th Floor
Washington, DC 20522-1712

P: 202-485-7703

F: 202-485-6170

consnot@state.gov

For more information visit: <http://travel.state.gov/CNA>