

POLICY #1-8



CONSULAR NOTIFICATION

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GENERAL CONSIDERATIONS

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. Pursuant to Article VI, clause 2 of the United States Constitution, a Treaty of which the US is a signatory has the status of law ("all treaties made . . . shall be the supreme law of the land"). It is binding on federal, state, and local government officials to the extent that they pertain to matters within such officials' competence.

Because of its comprehensive nature and near universal applicability, 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. When U.S. citizens are arrested or detained abroad, the United States Department of State seeks to ensure that they are treated in a manner consistent with these instructions, and that U.S. consular officers can similarly assist them. It is therefore particularly important that federal, state, and local government officials in the United States comply with these obligations with respect to foreign nationals here.

POLICY

It shall be the policy of the Weymouth Police Department, that whenever foreign nationals, as defined herein, are arrested or detained, they must be advised of the right to have their consular officials notified. 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.

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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.

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. **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.

Arrest or Detention: To deprive a person of his/her liberty by legal authority with or without a warrant, which includes the legal authority to physically remove a person from his/her location, taking that person into custody for the purpose of holding or detention to answer a violation of law before a court of proper jurisdiction.

PROCEDURES [1.1.4]

1. Arrest and Detention of Foreign Nationals

- 1.1. 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 him/her appropriate consular assistance.
 - 1.1.1. In all cases, the foreign national must be told of the right of consular notification and access.
 - 1.1.2. In most cases, the foreign national then has the option to decide whether to have consular representatives notified of the arrest or detention.
 - 1.1.3. 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.
- 1.2. 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. Aside from detainees self-identifying themselves as foreign nationals, some other indicators requiring further inquiry include place of birth outside the United States, does not speak English, or is carrying identification documents from outside the United States.
- 1.3. Foreign nationals shall be advised of the consular notification process and asked to sign an acknowledgement. For non-English speaking detainees, forms in other languages should be printed from the U.S. Department of State website: <http://www.travel.state.gov/CNA> and click on Consular Notification Statement, choosing the language you need. [1.1.4]

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- 1.4. The booking officer shall note in the arrest report that the foreign national has been advised of mandatory notification, or has been advised of the option for consular notification. If consular notification is made, this information will be noted in the report, and the form used to fax the notification to the consulate shall be filed with the arrest report. The dispatcher shall make a note in the Dispatch Log that consular notification was made and to whom it was made.
- 1.5. A list of all embassies and consulates in the United States, with their telephone and facsimile numbers, shall be maintained in the Watch Commander's Office and the Booking Desk.
2. Notification at the Foreign National's Option
 - 2.1. 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 he/she wants 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. [1.1.4]
 - 2.2. 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 his/her government's consular representatives notified of the detention. 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. [1.1.4] For the Officer's convenience, a [Consular Notification Fax Cover Sheet](#) is stored at the front desk. The [Consular Notification Fax Cover Sheet](#) shall be used to satisfy this notification requirement. It is important to take the time to fill out the appropriate information on this fax cover sheet and to fill out the [Consular Notification Form](#), which should then be attached to the original report.
3. Mandatory Notification
 - 3.1. 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. [1.1.4]
 - 3.2. Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirement. For example, the foreign national should be informed that notification has been made and advised that he/she may also specifically request consular assistance from his or her consular officials.
 - 3.3. 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 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.
 - 3.4. For the Officer's convenience, a [Consular Notification Fax Cover Sheet](#) is stored at the front desk. The [Consular Notification Fax Cover Sheet](#) shall be used to satisfy this notification

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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.

4. Recording Keeping

- 4.1. The Weymouth 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, such as the fax confirmation receipt, it should be saved if possible.
- 4.2. 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.

5. Consular Access to Detained Foreign National's

- 5.1. Detained foreign nationals are entitled to communicate with their consular officers. Any communication by a foreign national to his/her consular representative must be forwarded by the Officer in Charge, or designee, to the consular post without delay.
- 5.2. 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. Consular officers may not act as attorneys for their nationals. [1.1.4]
- 5.3. The rights of consular access and communication generally must be exercised subject to local laws and regulations. Department Policy may not, however, be so restrictive as to defeat the purpose of consular access and communication. Such policies "must enable full effect to be given to the purposes" for which the right of consular assistance has been established.
- 5.4. Consular officials must have proper identification. If there are questions about the validity of an identification, contact the State Department's Office of Protocol at 202.647.1985. Calls after hours should be referred to the Bureau of Diplomatic Security at 571.345.3146 or 866.217.208. Assistance is also available at the State Department website: <http://www.travel.state.gov>.

6. Death or Life Threatening Injury of Foreign Nationals

- 6.1. If a foreign national dies 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. In the

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event of a serious illness, the consulate may offer assistance or referrals, and may provide notification to family members.

- 6.2. If an officer becomes aware of the death or serious injury or illness of a foreign national, a copy of the Notification of Death or Serious Injury or Illness of a National of your Country Form shall be faxed to the appropriate consular offices. Copies of this form can be found at <http://travel.state.gov/CNA> along with the contact information of consular offices.

7. Summary of Process - Four (4) Steps to Follow When a Foreign National is Arrested or Detained

- 7.1. 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.

- 7.2. If the foreign national's country is not on the mandatory notification list:

- 7.2.1. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. 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?”

- 7.2.2. 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](#). For phone and fax numbers for foreign embassies see the linked document to this policy titled [Consular Notification](#). This document is also stored at the front desk and dispatch center.

- 7.3. If the foreign national's country is on the list of [mandatory notification countries](#):

- 7.3.1. Notify that country's nearest consular officials, without delay, of the arrest/detention.

- 7.3.2. 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.”

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- Notify the nearest consular officials of the foreign national's country without delay using the [Consular Notification Fax Cover Sheet](#). For phone and fax numbers for foreign embassies see the document titled [Consular Notification](#). This document is stored at the front desk and dispatch areas.

7.3.3. Note: For translations check the reference material from the United States Department of State titled Consular Notification and Access (2003).

- 7.4. Keep a written record of the provision of notification and actions taken. Keep a copy of the [Consular Notification Fax Cover Sheet](#) and 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, either an Arrest or Incident Report.

8. U.S. Department of State Resources and Contacts

- 8.1. Information on Consular Notification and Access along with the U.S. Department of State publication "Consular Notification and Access –Manual" may be found on the U.S. Department of State's web site at: <http://travel.state.gov/CNA>.
- 8.2. A helpful Consular Notification and Access process flow chart is also available at this web site for printing (a copy is provided at the back of this policy).
- 8.3. Assistance is available at the U.S. Department of State by calling (202) 485-7703; fax number (202) 485-6170; email consnot@state.gov
- 8.4. Urgent telephone calls outside of normal business hours can be made to the Department of State Operations Center by calling (202) 647-1512.
- 8.5. Any questions regarding an individual's status or immunity as well as questions pertaining to the treatment of a Consular under arrest, can be directed to the Department of State Office of Protocol by calling (202) 647-1985.
- 8.6. Calls after hours should be directed to the Protective Liaison Division of Department of State's Bureau of Diplomatic Security by calling (866) 217-2089; fax number (202) 895-3613.

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COUNTRIES AND MANDATORY NOTIFICATIONS [1.1.4]

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

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Chief of Police

ⁱ Mandatory 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.

ⁱⁱ Notification 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.

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ⁱⁱⁱ The 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.