



ACTON POLICE DEPARTMENT

DEPARTMENT MANUAL; P&P: Operations		
POLICY & PROCEDURE # 1.22	DATE OF ISSUE: 1/26/2024	EFFECTIVE DATE: 2/9/2024
SUBJECT: CONSULAR NOTIFICATION	ISSUING AUTHORITY: Chief James Cogan	
REFERENCE(S): Massachusetts Police Accreditation Commission # 72.7.2	___NEW __X__AMENDS ___RESCINDS	

I. POLICY

It shall be the policy of the Acton 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. 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 their national(s) in detention, and to provide consular assistance.

II. DEFINITIONS

- **Consular Officer** - A Consular Officer or Consul as it is 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 United States citizen. The terms "foreign national" and "alien" are used interchangeably. [72.7.2(A)]
- **Arrest and Detention** - Consular notification is necessary if the national is "arrested or committed to prison or to custody pending trial or is detained in any other manner." While there is no explicit exception for short detentions, the Department of State does not consider it necessary to follow consular notification procedures when an alien is detained only momentarily, e.g., during a traffic stop. 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 a reasonable person would conclude that Article 36 of the Vienna Convention obligation is triggered. [72.7.2(B)]

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.

III. PROCEDURE

A. 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 him/her appropriate consular assistance. **[72.7.2(C)]**

1. In all cases, the foreign national must be told of the right of consular notification/access. **[72.7.2(FI)]**
2. In most cases, the foreign national has the option to decide whether to have consular representatives notified of the arrest or detention.
3. In other cases, however, it is mandatory that the foreign national's consular officials be notified of an arrest and/or detention regardless of the foreign national's wishes.
4. Whenever a foreign national is taken into custody, the detaining official shall determine whether consular notification is at the option of the foreign national or whether it is mandatory.

A list of all embassies and consulates in the United States, with their telephone and facsimile numbers, shall be maintained in the Booking Area titled US DOS Consular Notification and Access. The phone and fax numbers of embassies can also be found using: <https://www.embassy-worldwide.com/country/united-states/>

B. Notification at the Foreign National's Option

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 to facilitate this purpose. 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, without delay, to the nearest consulate or embassy of the detainee's country. **[72.7.2(FI)(FII)(FIV)]**

C. Mandatory Notification [72.7.2(C)]

In some cases, “mandatory notification” must be made to the nearest embassy or consulate, without delay, regardless of whether or not the foreign national requests such notification.

Foreign nationals subject to mandatory notification requirements should otherwise be treated as foreign nationals not subject to the mandatory notification requirement. In some cases, "mandatory notification" must be made to the nearest consulate. 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/her consular officials.

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.

D. Consular Access to Detained Foreign Nationals [72.7.2(D)]

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 Patrol Shift Supervisor, or detaining officer, to the consular post without delay.
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. In addition, consular officers may not act as attorneys for their nationals. However, when they do wish to speak with them in person guidelines set forth in Department policy Detainee Visitors (3.07) shall be followed. [72.7.2(FIII)]
3. The rights of consular access and communication must generally 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.

E. Officers shall follow these steps whenever a foreign national is arrested or detained:

1. Determine the foreign national's country - In the absence of other information, assume that the country on the person's passport or other travel documents is the person's country.
2. 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.

Officers shall 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?”

3. 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 and tell the foreign national that you are making this notification.
[72.7.2(FII)(FIV)]

Officers shall 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.”

Note: For translations of these statements made to the foreign nationals, please reference the United States Department of State Consular Notification and Access Third Edition (2010) located in the Booking Area.

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 Form and make appropriate notations to the narrative of the Arrest/Incident report of all notifications, dates, and times made and actions taken. All documentation shall be filed with the report (Arrest/Incident).

CONSULAR NOTIFICATION INFORMATION

History: Manual I, Section III.