

CHELSEA POLICE DEPARTMENT		Department Manual: Policy No. 4.36
Subject: Consular Notification and Access Arrest and Detention of Foreign Nationals In Police Custody		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.1.4; 74.2.1	GENERAL ORDER 06-05	
Effective Date: March 21, 2005 Amended; 12/09/09 References: <u>Consular Notification and Access</u> ; US Department of State; <u>Frequently Asked Questions;</u> <u>Consular Notification Flow Chart</u>	Issuing Authority <hr/> Brian Kyes Chief of Police	 The badge is shield-shaped with "CHELSEA POLICE" at the top and "ESTABLISHED 1857" at the bottom. It features a central circular emblem with a building and a lighthouse.

I. Historical Background:

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.

II. Policy Statement: 1.1.4

It shall be the policy of the Chelsea 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. See **Consular Notification Form** [Located on Shared G-Drive under FORMS]. 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 [See Section VI. below]. Once notified, Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.

III. 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 their location, taking that person into custody for the purpose of holding or detaining them to answer a violation of law before a court of proper jurisdiction. **1.1.4, 74.2.1**

IV. 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. **74.2.1**

- **ALL:** In all cases, the foreign national must be told of the right of consular notification and access.
- **OPTION:** In most cases, the foreign national then has the Option to decide whether to have consular representatives notified of the arrest or detention.

- **MANDATORY:** In other cases, however, the foreign national's consular officials must be notified without delay of an arrest and/or detention regardless of the foreign national's wishes.

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.

A list of all embassies and consulates in the United States, with their telephone and facsimile numbers, shall be maintained in the Officer in Charge's Office and linked to this policy [Ctrl + Click to follow link] in a document titled Consular Notification [See Exhibit A] to facilitate the provision of notification by detaining officers to consular officials when required.

V. 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. [See Exhibit B] The mandatory notification countries are posted in the Booking Room and linked [Ctrl + Click to follow link] to this policy 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 to the nearest consulate or embassy of the detainee's country without delay. For the Officer's convenience, a Consular Notification Fax Cover Sheet [See Exhibit C] is listed on the Shared Drive (G) under FORMS, linked to this policy [Ctrl + Click to follow link] and stored in the Officer in Charge's Office. The Consular Notification Fax Cover Sheet shall be used to satisfy this notification 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.

VI. Mandatory Notification: 1.14

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.

Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirement. Thus, 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.

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.

For the Officer's convenience, a Consular Notification Fax Cover Sheet [See Exhibit C] is listed on the Shared Drive (G) under FORMS, linked to this policy [Ctrl + Click to follow link] and stored in the Officer in Charge's Office. The Consular Notification Fax Cover Sheet shall be used to satisfy this notification 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.

VII. Recordkeeping:

The Chelsea 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 (e.g. fax confirmation receipt), it should be saved if possible.

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.

VIII. Consular Access to Detained Foreign Nationals:

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.

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. See 3.04 Detaining Prisoners. In addition, consular officers may not act as attorneys for their nationals.

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. See 3.04 Detaining Prisoners.

IX. Summary of Process: [See also Consular Notification Process Flow Chart]

4 Steps to Follow When a Foreign National is Arrested or Detained:

- (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.

(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. Please 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? “
- 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 listed on the Chelsea Police Department's Shared Drive (G) under FORMS and is maintained at the Booking Desk.

(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.
- 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.”
 - 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 listed on the Chelsea Police Department's Shared Drive (G) under FORMS and is maintained at the Booking Desk.

Policy # 4.36, Consular Notification and Access

Note: For TRANSLATIONS of these Statements made to the Foreign Nationals please click on the following link: Consular Notification and Access or check the reference material from the United States Department of State titled Consular Notification and Access (2003) Part Four page 25 maintained in the Officer in Charge's Office.

(4.) 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 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 (Arrest/Incident).