



Somerville Police Department 	TYPE: GENERAL ORDER		POLICY NUMBER: 302	
	Subject: Consular Notification			
	Issuing Authority: Charles Femino Chief of Police		Signature: 	Effective Date: December 4, 2023
		Number of Pages: Page 1 of 9		
Accreditation Standards (6th Edition) 72.7.2		<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised <input type="checkbox"/> Amended		
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Purpose

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. As a signatory to the International Treaty known as the Vienna Convention on Consular Relations, these rights are also granted to American citizens in foreign countries who are also signatories.

Under Article VI, clause 2, of the Constitution of the United States, a treaty to which the United States is a signatory, has the status of law. It is binding upon federal, state, and local governments. As such, the treaty is binding upon municipalities and their police departments.

As a general rule, officers should treat foreign nationals as they would want an American to be treated in a similar situation in a foreign country. In addition, the obligation of notification applies to incidents regarding the death of a foreign national. The notification of the consul will allow for the deceased person's family to be notified, ensure that passports and other documents issued by that country are cancelled and not reissued, and prevent identity fraud.

Policy

It shall be the policy of the Somerville Police Department that whenever a foreign national 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 to their nationals in detention, and are entitled to provide consular assistance.

Definitions

Consular Officer: A consular officer, or consul, 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.

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Consular and Access Manual: Manual containing instructions and guidance relating to the obligations of federal, state and local government officials to provide information to foreign consular officers and to permit foreign consular officers to assist their nationals in the United States. A copy of this manual shall be kept at the booking window and can be obtained through the internet at: <https://travel.state.gov/content/travel/en/consularnotification.html> [72.7.2]

Detention: Any arrest 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 resulting in a citation or criminal application and release at the scene does not trigger such requirements. [72.7.2]

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. All foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States. Thus undocumented aliens have the same rights to consular assistance, as do documented resident aliens. There is no reason, for purposes of consular notification, to inquire into a detainee's legal status in the United States. [72.7.2]

Procedures

1. Arrests and Detentions of Foreign Nationals

A. 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 appropriate consular assistance:

1. **All:** In all cases, the foreign national must be told of the right of consular notification and access by the booking officer. [72.7.2]
2. **Option:** In most cases, the foreign national then has the option to decide whether to have consular representatives notified of the arrest or detention.
3. **Mandatory:** In other cases, the foreign national's consular officials must be notified of an arrest and/or detention regardless of the foreign national's wishes. See the list at the booking window, at the end of this policy, or refer to the following link for a complete list of countries requiring mandatory reporting, fax cover sheets, and email addresses. <http://travel.state.gov/content/travel/english/consularnotification.html> [72.7.2]

2. Notification at the Foreign National's Option

A. In all cases, the foreign national must be told of the right of consular notification and access. [72.7.2]

1. The foreign national then has the option to decide whether they want consular representatives notified of the arrest or detention—unless the foreign national is from a [mandatory notification country](#), in which case, the foreign consulate must be notified. The mandatory notification countries are posted at the booking window and listed at the end of this policy.

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2. If the detained foreign national is a national of a country not on the mandatory notification list, the foreign national shall be informed, without delay, of the option to have their government's consular representatives notified of the detention. [72.7.2]
3. If the detainee requests notification, the Shift Commander must ensure that notification is given to the nearest consulate or embassy of the detainee's country without delay. [72.7.2]

3. Mandatory Notification [72.7.2]

- A. In some cases, mandatory notification must be made to the nearest consulate or embassy, regardless of whether the foreign national requests such notification. See the list of countries requiring mandatory notification at the end of this policy.
 1. Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirement.
 2. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution, or other mistreatment by their 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. A Consular Notification Fax Cover Sheet is kept at in the booking window or can be found online. The Consular Notification Fax Cover Sheet shall be used to satisfy this notification requirement.
 4. If the detainee is a foreign national of a mandatory notification country it is the responsibility of the Shift Commander to ensure that notification is given to the nearest consulate or embassy of the detainee's country without delay. [72.7.2]
 5. Consular notification is now a mandatory field in the booking process. If the arrestee/detainee has the option of denying the notification because they are from a non-mandatory reporting country, a record of the denial shall be satisfied by the booking query.

4. Recordkeeping

- A. The Somerville Police Department shall maintain records sufficient to show compliance with the notification requirements.
 1. 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.

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.
3. In the case of mandatory notification, a copy of the Consular Notification Fax Cover Sheet and the fax receipt shall be forwarded to the Records Bureau.

5. Consular Access to Detained Foreign Nationals [72.7.2]

A. Detained foreign nationals are entitled to communicate with their consular officers.

1. Any communication by a foreign national to their consular representative must be forwarded by the Shift Commander, or their designee, to the consular post without delay. Use the Consular Notification Fax Cover Sheet to comply with this notification requirement.
2. Foreign consular officers must be given access to their nationals and permitted to communicate with them. Officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. See the department policy on Holding Facility. Consular officers may not act as attorneys for their nationals.
3. The rights of consular access and communication generally must be exercised subject to local laws and regulations. Department policy may not be so restrictive as to defeat the purpose of consular access and communication.

6. Summary of Process

A. Procedures to be followed 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 document, the foreign national travels.
2. If the foreign national's country is not on the mandatory notification list:
 - a) Offer 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?”

- b) 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 an alphabetical list of the most current contact information for foreign embassies and consulates in the United States, go to: <http://travel.state.gov/content/travel/english/consularnotification.html>
 - c) Fill out the consular notification form, indicating whether the foreign national requested you contact their consular officers. Have the foreign national print their name on the form, sign and date the form and you print your name as the witness. If the foreign national refuses to fill out the form, make the appropriate refusal notation on the form. Forward the form to the records bureau.
3. If the foreign national's country is on the list of [mandatory notification countries](#):
- a) Notify that country's nearest consular officials, without delay, of the arrest/detention.
 - b) 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.”
 - c) Notify the nearest consular officials of the foreign national's country using the [Consular Notification Fax Cover Sheet](#) which is kept at the booking window, or which can be found at:
<http://travel.state.gov/content/travel/english/consularnotification.html> [72.7.2]
 - d) Fill out the consular notification form, indicating that you have advised the foreign national that you will have to contact their consular officers. Have the foreign nation print their name on the form, sign and date the form and you print your name as the witness. If the foreign national refuses to fill out the form, make the appropriate refusal notation on the form. Forward the form to the records bureau.

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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 forwarded to the Records Bureau.

Mandatory Notifications:

Foreign nationals from the following countries require consulate notification:

A

Albania
Algeria
Antigua and Barbuda
Armenia
Azerbaijan

B

Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria

C

China (including Macao and Hong Kong)*
Costa Rica
Cyprus
Czech Republic

D

Dominica

F

Fiji

G

Gambia
Georgia
Ghana
Grenada
Guyana

H

Hungary

J

Jamaica

K

Kazakhstan
Kiribati
Kuwait
Kyrgyzstan

M

Malaysia
Malta
Mauritius
Moldova
Mongolia

N

Nigeria

P

Philippines
Poland*

R

Romania
Russia

S

Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines

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Seychelles
Sierra Leone
Singapore

Tavalu

U

T

Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Tunisia
Turkmenistan

Ukraine
United Kingdom*
Uzbekistan

Z

Zambia
Zimbabwe

*Refer to <http://travel.state.gov/content/travel/english/consularnotification.html> for specific instructions regarding foreign nationals from these countries.

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:**
