

 Lexington Police Department	Subject: Diplomat & Consular Notifications (Arrests, Detentions, Deaths & Serious Injuries of Foreign Nationals)					Policy Number: <h1>55E</h1>	
	Accreditation Standards: Reference: 1.1.4					Effective Date: 11/1/15	
<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised	Revision Dates:	1/24/19					
By Order of: Mark J. Corr, Chief of Police							

GENERAL CONSIDERATIONS AND GUIDLINES

The obligations of consular notification and access are not codified in any federal statute.

Implementing legislation is not necessary because executive, law enforcement, and judicial authorities can implement these obligations through their existing powers on the basis of the relevant international agreements and written guidance. Implementation may also be facilitated through issuance of internal directives, orders, or similar instructions by appropriate federal, state, and local officials.

The Department of State strongly encourages all law enforcement agencies to develop standard operating procedures for complying with consular notification and access requirements. Such procedures help your agency avoid costly litigation and diplomatic complaints.

It is the policy of the Lexington Police Department to comply with all United States treaty obligations on consular notification and access. The purpose of this policy is to provide written procedures on the arrest, detention, death or serious injury of foreign nationals.

PROCEDURES

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 resulting in a citation or criminal application 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.

1. **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.

2. **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.
3. **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.
4. **“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 at <http://travel.state.gov/CNA>. *It is also located in the Consular Notification and Access booklet placed in the Commanding Officer’s office.*
5. **“Upon request” notification:** Consular notification procedures that apply when you arrest or detain a foreign national from any country not on the “mandatory” list of 57 countries.

B. CONSULAR NOTIFICATION PROCEDURES

1. Obligation triggered at time of booking. The notification process will begin at the time the arrested foreign national is booked into the detention facility. The booking officer who processes the foreign national is responsible for implementing the notification process. The Commanding Officer may also designate or handle the notification process.
2. 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.
3. 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.
 - a. For foreign nationals whose country is on the list of mandatory notification countries:
 - i. Notify the nearest consulate of the foreign national’s country via fax immediately, 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

- <http://travel.state.gov/CNA>. It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.
- ii. 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, notify the Commanding Officer or the Department of State at (202) 485-7703.
 - iii. Inform the foreign national that you notified his or her consulate. You may use the sample statement, available in several languages, at <http://travel.state.gov/CNA>. It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.
 - iv. Make a note of the completed notification in the case file and keep the fax and fax confirmation sheet, or, the sent email.
- b. For foreign nationals whose country is not on the list of mandatory notification countries:
- i. Soon after the arrest or as reasonably possible as 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. You may use the sample statement, available in several languages, at <http://travel.state.gov/CNA>. It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.
 - ii. Make a note of the foreign national's decision for the case file.
 - iii. 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 <http://travel.state.gov/CNA>. It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.
 - iv. 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, notify the Commanding Officer or the Department of State at (202) 485-7703.
 - v. Make a note of the completed notification in the case file and keep the fax and fax confirmation sheet, or, the sent email.

C. FACILITY ACCESS AND VISITATION PRIVILEGES OF CONSULAR OFFICERS

1. 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.
2. 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.

D. DOCUMENTATION AND RECORDKEEPING

1. Document the consular notification in the arrest journal note or the arrest report.
2. Make the consular notification by fax or email if possible, and by telephone if not. Place a copy of the fax and fax confirmation receipt, or the sent email, in the foreign national's file. You may use the sample sheet available at <http://travel.state.gov/CNA>. *It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.*
3. 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.
4. For foreign nationals from "upon request" countries, make a notation 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. You may use the sample statement at <http://travel.state.gov/CNA>. *It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.*
5. For foreign nationals from mandatory notification ("list") countries, make a notation that you told the national that you notified the consulate. You may use the sample statement at <http://travel.state.gov/CNA>. *It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.*
6. Print the journal note or police report and include it in the paperwork for the foreign national's records file.
7. The Commanding Officer shall be responsible for ensuring the proper notations are made in the record.

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

1. 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 or email if possible, and by telephone if not. You may use the sample fax sheet available at <http://travel.state.gov/CNA>. *It is also located in the Consular Notification and Access booklet placed in the Commanding Officer's office.*
2. Document this notification in the incident report, and place a copy of the fax and fax confirmation receipt or sent email in the foreign national's file.

