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Chief of Police

# ALBANY, NEW YORK

## POLICE DEPARTMENT

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ALBANY, NEW YORK 12210



1789

### CONSULAR NOTIFICATION GENERAL ORDER NO: 1.4.05

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<b>Issuing Authority:</b> Chief Eric Hawkins	

**PURPOSE:** The purpose of this policy is to provide guidelines concerning the basic requirements of consular notification and access when members of the Albany Police Department have contact with a foreign national.

**POLICY:** It is the policy of the Albany Police Department to comply with all United States treaty obligations on consular notification and access. Consular assistance, notification, and access shall be prompt and courteous at all times.

**DEFINITIONS:** **Asylum** – Asylum means an alien or foreign national in the United States who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.

**Citizenship** – Citizenship normally means the country where a person was born. However, a person can change citizenship in a process called naturalization.

**Competent Authorities** – Competent authorities means those officials, whether federal, state, or local, who are responsible for legal action affecting the foreign national and who are competent, within their authorities, to give the notification required. Law enforcement officers who actually make the arrest or who assume responsibility for the foreign national's detention are deemed a competent authority.

**Consular Officer** – Consular officer means a foreign official who is authorized by the Department of State to provide assistance to the foreign government's citizens in the United States. Consular officers are generally identified by one of the following titles: Consul General; Deputy Consul General; Consul and Vice Consul.

**Diplomatic Officer** – Diplomatic officer means 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. Diplomatic Officers are generally identified by one of the following titles: Ambassador; Minister; Minister Consular; Consular; First Secretary; Second

Secretary; Third Secretary.

**Foreign National** – (Alien) Foreign national means any citizen of another country, excluding diplomats and consuls, who are in the United States on a temporary basis, either legally or illegally. This includes tourists, students, and aliens. It also includes those holding an Alien Registration Card, commonly referred to as a "green card."

**"Mandatory" Notification** – Mandatory notification means consular notification procedures that apply when a foreign national from any of the fifty-seven (57) countries that have agreed to special rules with the United States is arrested or detained for an extended period of time: [Countries and Jurisdictions with Mandatory Notifications](#).

**"Upon Request" Notification** – Upon request notification means consular notification procedures that apply when a foreign national from any of the fifty-seven (57) countries not on the "Mandatory" notification list, is arrested or detained for an extended period.

**The Vienna Convention on Consular Relations (VCCR)** – The [VCCR](#) establishes the baseline for most obligations with respect to the treatment of foreign nationals in the United States, and for foreign governments' treatment of U.S. nationals abroad.

## I. SUMMARY OF REQUIREMENTS PERTAINING TO FOREIGN NATIONALS

- A. When foreign nationals from most countries are arrested or detained, they must be advised of the right to have their consular officials notified.
- B. 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.
- C. Consular officials are entitled to communicate with and to have access to their nationals in detention, as within department guidelines outlined in [GO 5.2.20 – Central Booking: Prisoner Processing](#), and are entitled to provide consular assistance, including arranging for legal representation.
- D. When a law enforcement officer or other government official becomes aware of the death, serious injury, or serious illness of a foreign national, a consular official must be notified.
- E. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or who is an incompetent adult, a consular official must be notified.
- F. When a foreign ship wrecks or a foreign aircraft crashes in U.S. territory, consular officials must be notified.
- G. The [Consular Notification and Access Manual](#) has detailed instructions for federal, state, and local law enforcement regarding foreign nationals in the United States and the rights of consular officials to assist them.

## II. IDENTIFICATION DOCUMENTS

**A.** The United States Department of State, Office of Protocol, issues identification documents to foreign government personnel who are entitled to immunity. Since there are different degrees of immunity, personnel should carefully read all identification cards presented to them. If there is reason to doubt the authenticity of the identification card(s) presented, or if there are questions regarding an individual's status or immunity, personnel shall contact the Department of State, according to the following:

1. During regular business hours, call (202) 647-1985.
2. After regular business hours and on weekends/holidays, call (571) 345-3146 or (866) 217-2089.

**B.** Identification Card Descriptions: (Samples of the different types of diplomatic and consular identification cards can be viewed on pages 98 and 99 of the [Consular Notification and Access Manual](#). Due to the different degrees of immunity, personnel should carefully read the back of each card presented.)

**1.** Blue Bordered Cards:

**a.** Issued to diplomatic officers and their families:

- i.** They are entitled to full criminal immunity and may not be arrested or detained.

**b.** Issued to UN diplomatic officers and their families:

- i.** They are entitled to full criminal immunity and may not be arrested or detained.

**2.** Green Bordered Cards:

**a.** Issued to embassy administrative and technical staff employees and their families:

- i.** This card signifies that the bearer is entitled to full criminal immunity and may not be arrested or detained.

**b.** Issued to embassy service staff employees:

- i.** This card signifies that the bearer is entitled to immunity for official acts only.

**3.** Red Bordered Cards:

**a.** Issued to career consular officers:

- i.** This card signifies that the bearer is entitled to immunity for official acts only.

- b. Issued to consular officers/employees and their families from countries with which the United States has special agreements:
  - i. This card signifies that the bearer is entitled to full criminal immunity and may not be arrested or detained.
- c. Issued to career consular employees:
  - i. This card signifies that the bearer is entitled to immunity for official acts only.
- d. Issued to honorary consular officers:
  - i. This card signifies that the bearer is entitled to limited immunity for official acts only.

### III. GUIDELINES WHEN A FOREIGN NATIONAL IS ARRESTED OR DETAINED

- A. Certain foreign nationals are immune from arrest and prosecution in the U.S., the [Diplomatic and Consular Privileges and Immunities from Criminal Jurisdiction](#) guidelines summarizes these immunities.
  - 1. For further instructions regarding arrests of foreign nationals, personnel shall refer to the [Consular Notification and Access Manual](#).
- B. When foreign nationals are arrested or detained, they must be advised of the right to have their consular official notified. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the individual's wishes.
  - 1. Personnel shall first determine the foreign national's country. In the absence of other information, personnel should assume the foreign national's country is the country that is listed on the foreign national's passport or other travel documents.
- C. If the foreign national's country is on the list of [Countries and Jurisdictions with Mandatory Notifications](#), personnel shall complete the following:
  - 1. Notify that country's nearest consular officials, without delay, of the arrest/detention;
  - 2. Explain to the foreign national that you are making such notification; and
  - 3. Begin the documentation process by completing a [Consular Notification Request Form](#).
    - a. To locate the applicable foreign consular's phone number, fax number or email address, personnel will need to enter the foreign national's country into the field labeled "Foreign Consular Offices" located on the [U.S. Department of State - Bureaus of Consular Affairs](#) website.
- D. If the foreign national's country is not on the mandatory notification list, personnel shall complete the following:

1. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention; and
  2. If the foreign national asks that a consular notification be given, notify the nearest consular officials of the foreign national's country, without delay, by completing a [Consular Notification Request Form](#).
    - a. To locate the applicable foreign consular's phone number, fax number or email address, personnel will need to enter the foreign national's country into the field labeled "Foreign Consular Offices" located on the [U.S. Department of State - Bureaus of Consular Affairs](#) website.
- E. Personnel must document any contact with a consular on a Standardized Incident Report (SIR), and shall note the following:
1. In the case of mandatory notifications, personnel shall document the date and time of notification, and the means used to make the notification (e.g., fax, phone or email).
  2. In the case of non-mandatory notifications, personnel shall document the offer to notify the foreign national's consular office and whether or not the foreign national wanted the notification to be made.
    - a. If a notification was made, personnel shall document the date and time of notification, and the means used to make the notification (e.g., fax, phone or email).

#### **IV. MOVING TRAFFIC VIOLATIONS**

- A. If a foreign national or one of their family members is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he/she is a foreign national or family member of a foreign national and ascertaining that he/she possesses the proper credentials, should exercise discretion based on the nature of the violation and either let driver go with a warning of the danger of his/her actions or proceed with the issuance of the appropriate citation.
1. A brief traffic stop or an arrest resulting in a citation for a misdemeanor and release at the scene does not trigger consular notification requirements, as defined in Section III of this policy.
- B. Personnel can locate a description of [Diplomatic and Consular License Plates](#) by clicking on the above the link.

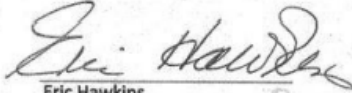
#### **V. DRIVING WHILE UNDER THE INFLUENCE**

- A. The primary consideration in this type incident should be to see that the individual is not a danger to himself/herself or the public. Based upon a determination of the circumstances, the following options are available:
1. Take the foreign national to a telephone so that he/she can call a relative or a friend to come and get him/her;
  2. Call a taxi for him/her; or
  3. Take him/her home.

- B.** The individual should not be handcuffed, subjected to any sobriety test, or mistreated in any way. At best, this is a sensitive situation. The official should be treated with respect and courtesy. It should be impressed upon him/her that the officer's primary responsibility is to care for his/her safety, as well as the safety of others.

**VI. REPORTING OF INCIDENTS TO OFFICE OF THE GOVERNOR**

- A.** In the event that a foreign national or member of his/her family or personal staff should become involved in any actions taken by personnel of this department, the Office of the Governor shall be immediately furnished with all pertinent information through the Office of the Chief of Police.



Eric Hawkins  
Chief of Police