



GENERAL ORDER

Foreign National Consular Notification and Access

Purpose and Scope

If a foreign national in the United States is arrested or detained, he/she must be told he/she may have their country's embassy or consulate notified. In some cases, the foreign embassy must be notified regardless of the individual's wishes. In addition, officials from the embassy or consulate must be allowed access to the individual upon request.

The obligations of consular notification and access are not codified in any federal statute; however, the Department of State strongly encourages all law enforcement agencies to develop standard operating procedures to avoid costly litigation and diplomatic complaints.

The Sacramento County Probation Department complies with international treaty obligations concerning foreign nationals in this country under the Vienna Convention on Consular Relations. This order establishes guidelines for consular notification of known or suspected foreign nationals.

Affected Personnel

Officers assigned to the Youth Detention Facility, Juvenile Court, Adult Court, Juvenile Field, and Placement.

Authority

Administrative Directive
The U.S. Department of State

Effective Date

January 1, 2016

I. Definition

Foreign National: Any person who is not a U.S. citizen, including resident aliens who are lawful permanent residents in the United States with a registration card or green card, and undocumented or "illegal" aliens.

II. Determining Foreign National Status

A. Probation Officers are not authorized to determine if the juvenile is not legally present in this country or whether or not he or she is a foreign national.

B. In making the assessment that the juvenile is possibly not legally present in the United States, the Probation Officer shall take into consideration a combination of objective factors, routinely reviewed for all persons being detained in the YDF, including but not limited to:

1. Existence of a verifiable local address;
2. Location of parents or guardian;
3. Birth certificate;
4. Self-report of immigration status;
5. Inconsistent report of immigration status;
6. Report by parent;
7. Guardian or other reliable person of immigration status;
8. Possession of documentation that establishes legal immigration status;
9. Method of entry into the country;
10. Or the existence of any court or delinquent history information indicating a prior ICE hold or proceedings.

II. Immigration Status / Notification to Immigration and Customs Enforcement (ICE)

- A. Juvenile court records shall remain confidential regardless of the juvenile's immigration status.
- B. The disclosure or dissemination of juvenile information to Federal ICE officials is specifically prohibited by Section 831¹ of the Welfare and Institutions Code, absent a court order as provided in Section 827 (WIC).

III. Determining Mandatory versus Discretionary Notice to Consulate

- A. If the foreign national's country is known, staff shall determine whether or not his/her country is on the Mandatory Notification List. The countries and jurisdictions listed on the Mandatory Notification List require consular notification regardless of the wishes of the juvenile.
- B. If a country or jurisdiction is not listed on the Mandatory Notification List, consulate notification is considered discretionary and should only be made at the juvenile's request.

IV. Advisement to Known or Suspected Foreign Nationals

All known or suspected foreign nationals booked into the YDF shall be advised by intake staff that he/she has a right to communicate with an official from the consulate of his/her country.

- A. *Notification Statement* forms in a variety of languages can be found in the Consulate Notification and Access Manual or at <http://travel.state.gov/CNA>.

¹ Enacted January 1, 2016

- B. Upon request, a juvenile shall be provided with the telephone number of the closest consulate of his/her country and allowed to place a telephone call to his/her consulate.

V. Advisement to Juvenile- Discretionary Consulate Notification

Staff shall provide the applicable notice provisions contained on the *Notification Statement* form to the juvenile and shall indicate on the form whether the juvenile requests the Probation Department to notify his/her country's consulate of the arrest or detention.

VI. Advisement to Juvenile • Mandatory Consulate Notification

Staff shall provide the applicable notice provisions contained on the *Notification Statement* form to the juvenile and shall indicate on the *Notification Statement* form whether the juvenile believes there are special circumstances that would prohibit such mandatory notification (e.g., political asylum issues). If special circumstances exist that would prohibit notifying the consulate, contact the shift supervisor or the Department of State at (202) 485-7703.

VII. Making a Consulate Notification

If consulate notification is required by either the foreign national's request or mandate, notice shall be provided to the consulate office closest to the YDF, as soon as reasonably possible.

- A. Contact information for foreign consulate offices in the United States can be found at: <http://travel.state.gov/CNA>.
- B. If possible, the notice to the consulate should be provided by facsimile using the *Consular Notification Fax Sheet*. *Consular Notification Fax Sheet* forms can be found in the Consulate Notification and Access Manual or at: <http://travel.state.gov/CNA>.
- C. Where facsimile notice is not possible, telephone notice shall be provided. The *Consular Notification Fax Sheet* form should be used as a guide. Notations of the conversation should be made and documented in a similar manner to the facsimile notification.
- D. If the juvenile has requested asylum, do not tell the consulate official. Contact the shift supervisor or the Department of State at (202) 485-7703.

VIII. Contacts with Consulate Officials

- A. Staff shall accommodate the requests of juveniles, their parents/guardians, and consulate officials to communicate with each other to the extent reasonable and appropriate. Communications may occur in writing, over the telephone, or in person.
- B. Consulate officials must present valid Department of State identification

prior to visiting or coming into contact with any juvenile in custody.

Examples of valid diplomatic and consulate identification cards can be found in the Consulate Notification and Access Manual.

IX. Documentation and Recordkeeping

The completed *Notification Statements*, *Consular Notification Fax Sheets* and facsimile transmission records shall be maintained in the juvenile's custody file and scanned and saved with the juvenile's FileNet documents.

A copy of the *Notification Statement* form shall be provided to the juvenile's parents/guardians via mail or hand delivery.

X. Juvenile Court Notification

Information regarding a completed *Notification Statement* and any actions taken with respect to providing notice to a consulate shall be included in the Social History Report provided to the Juvenile Court.

XI. Death, Serious Injury, or Serious Illness of a Foreign National

In addition to the above procedures, in the event a foreign national dies, is seriously injured, or becomes seriously ill, Probation staff shall notify the nearest consulate of his or her country immediately or as soon as reasonably possible.

XII. Consulate Notification and Access Booklet

Information regarding the rights of foreign nationals and consulate notification is provided in the U.S. Department of State's Consulate Notification and Access Manual, a copy of which shall be kept in the Youth Detention Facility (YDF) intake area. For the most current edition visit: <http://travel.state.gov/CNA>.

Attachments

[Consular Notification Process Flow Sheet](#)

[Consular Notification Statement- English](#)

[Consular Notification Statement- Spanish](#)


[Consular Notification Fax Sheet- Notification of Arrest or Detention](#)

[Consular Notification Fax Sheet- Notification of Death, Serious Injury or Illness](#)

[Consular Notification and Access Manual, Fourth Edition, March 2014](#)

Amends/Replaces

Foreign National Consular and Immigration and Customs Enforcement (ICE) Notification, Effective 12/10/2014

Authorized By  Date 2/29/16
Lee Seale, Chief Probation Officer