

FLORIDA HIGHWAY PATROL POLICY MANUAL

	SUBJECT DEALING WITH FOREIGN NATIONALS	POLICY NUMBER 11.06
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11.06.01 PURPOSE

To provide members with guidelines in cases of the arrest, detention or death of a foreign national.

11.06.02 AUTHORITY

The Vienna Convention on Consular Relations (VCCR).

U.S. Department of State, Bureau of Consular Affairs – Consular Notification and Access General Website (<http://travel.state.gov/content/travel/english/consularnotification.html>)

U.S. Department of State, Consular Notification and Access Manual: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them (http://travel.state.gov/content/dam/travel/CNAtrainingresources/CNAManual_Feb2014.pdf)

11.06.03 POLICY

It is the policy of the Florida Highway Patrol to comply with all United States treaty obligations on consular notification and access.

11.06.04 DEFINITIONS

- A. **ARREST OR DETENTION** – For the purposes of this policy, 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 or an arrest resulting in a citation for a misdemeanor 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.

- B. **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.
- C. **DETAINEE** – A person held in the custody of or whose freedom of movement is at the will of members of the Patrol. Detainees may otherwise be referred to as “suspect,” “arrestee,” “prisoner,” “inmate,” “held for mental observation,” or other similar terms. The U.S. Department of State does not consider a traffic stop or crash investigation as a detention for the purposes of consular notification.
- D. **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.
- E. **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.
- F. **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 can be found at the end of this policy or at: www.travel.state.gov/consularnotification.
- G. **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.

11.06.05 OBJECTIVES

To ensure that the provisions of the Vienna Convention on Consular Relations (VCCR) related to cases involving the arrest, detention, or death of a foreign national as well as their handling in the issuance of citations and crash investigations are followed.

11.06.06 PROCEDURES

- A. **CONSULAR NOTIFICATION PROCEDURES**
 - 1. Obligation for notification is triggered at the time of booking.
 - a. The notification process will begin at the time the arrested foreign national is booked into the detention facility.
 - b. The member who processes the foreign national is responsible for implementing the notification process.

2. Members shall attempt to determine the foreign national's country of origin.
 - a. In the absence of other information, assume this is the country on whose passport the foreign national travels, if available.
 - b. 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. (The mandatory notification list is located at the end of this policy) If the foreign national's country is not in the list of "mandatory notification" countries, he or she is from an "upon request" country.
 - a. MANDATORY NOTIFICATION COUNTRIES - For foreign nationals whose country is on the list of mandatory notification countries:
 - (1) Members shall notify the Regional Communications Center (RCC) and the on-duty supervisor. The on-duty supervisor shall notify the Troop PAO in all cases which involve the arrest of a foreign national.
 - (2) Once notified, the RCC shall notify the nearest consulate of the foreign national's country via fax (Consular Notification Fax Sheets can be found on the FHP Forms page in SafetyNet). This step is to take place immediately upon the RCC's notification or as soon as reasonably possible, and in no case longer than the end of the booking process.
 - (3) In mandatory notification countries, members are obligated to notify the consulate even if the foreign national does not want notification.
 - (a) Contact information for consulates may be found at: <http://travel.state.gov/content/travel/english/consularnotification.html>
 - (b) However, no member shall ever 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, contact the Department of State at (202) 647-4000 immediately.
 - (4) Once the RCC has received the fax confirmation, inform the foreign national that you notified his or her consulate. If the foreign national does not speak English, utilize the sample statements provided on the FHP Forms page in

SafetyNet (<http://safetynet/FHP/Pages/FHPForms.aspx>) which is available in several languages. The arresting member shall attach a copy of the "Foreign National Statement Sheet" to applicable arrest/case paperwork as well as forward a copy to the Troop Legal Advisor. (Members are reminded that translators are available via CTS Language Link and are an option for communication difficulties encountered. RCC duty officers are familiar with this resource and should be able to assist.)

- (5) The original of the fax confirmation to the specific consulate shall be maintained at the RCC. RCC Managers shall maintain a separate file for any consular notifications which may occur through their particular center.
- (6) A copy of the fax and fax confirmation shall be forwarded to the arresting/detaining member for inclusion in the case file.
- (7) Upon delivery of a foreign national to a county jail, the jail personnel shall be notified of the arrestee's foreign national status and whether notification has been made to the appropriate consulate.

b. UPON REQUEST NOTIFICATION COUNTRIES - For foreign nationals whose country is not on the list of mandatory notification countries:

- (1) As soon after arrest as reasonably possible; but no later than the end of the booking process, inform the foreign national that he or she may have his or her consular officers notified of the arrest or detention. Contact information for consulates may be found at: <http://travel.state.gov/content/travel/english/consularnotification.html>
- (2) Make a note of the foreign national's decision in the case file.
- (3) If the foreign national requests notification, notify the nearest consulate of the foreign national's country as soon as reasonably possible but under no circumstances later than 72 hours after arrest.
- (4) As previously indicated, members shall 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, contact the Department of State at (202) 647-4000.

- (5) Members shall make a note of the completed notification on the appropriate arrest paperwork and keep a copy of the fax and fax confirmation sheet in their case file.

B. 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.
 - a. They should be carrying identification cards issued by the Department of State.
 - b. If there is any reason to doubt the authenticity of the identification card, call the Department of State at (202) 647-4000 or after hours at (571) 345-3146 or (866) 217-2089.

C. DOCUMENTATION AND RECORDKEEPING

1. For RCC members, it is mandatory that the consular notification and/or offer of notification be documented in CAD.
2. RCC members shall make the consular notification by fax if possible, and by telephone if not. RCC managers shall place a copy of the fax and fax confirmation receipt in the Master Foreign National's File which is maintained at each RCC.
3. If notification must be made by telephone, the RCC member shall note the name and location of the consulate notified, the name of the person to whom they gave the information, and the date and time of notification. Members are encouraged to make an audio recording of the telephone call, if possible, and maintain a copy of the recording along with any applicable paperwork in the Master Foreign National's File.
4. For foreign nationals from "upon request" countries, members shall make a notation in the appropriate case document. The notation shall indicate that they told the national that he or she may have the consulate notified, and note the national's response.
 - a. Indicate the date and time of your offer and the national's response.
 - b. If the foreign national does not speak English, utilize the sample statements provided in SafetyNet which is available in several languages.

5. For foreign nationals from mandatory notification ("list") countries, members shall make a notation that they told the national that they notified the consulate on the appropriate case paperwork.
 - a. Consular Notification Forms can be found at: <http://safetynet/FHP/Pages/FHPForms.aspx>.
 - b. Various translations are available and have been provided for the member. It is mandatory that this form be completed and signed by the member and the foreign national if possible.
 - c. If it is not possible to obtain a signature from the foreign national, members are to document the reason why on the form.
6. Members shall make a copy of the signed notification form and include it in their copy of the arrest paperwork.
7. Immediate supervisors will be responsible for ensuring the proper notations are made in the record.

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

1. In addition to all the applicable aforementioned procedures, when a foreign national dies, is seriously injured or becomes seriously ill, members shall notify the nearest consulate of his or her country immediately or as soon as reasonably possible.
2. As with an arrest/detainment, notification shall be made by fax if possible, and by telephone if not.
3. Applicable fax sheets provided in SafetyNet shall be utilized.
4. Members shall document this notification in an Offense Report (HSMV 60009), and place a copy of the fax and the fax confirmation receipt, as well as a copy of the crash report in the appropriate case file.
5. These documents shall be forwarded for inclusion into the RCC Master Foreign National File as well.

E. CITATIONS AND TRAFFIC CRASH INVESTIGATIONS

The VCCR on its face requires informing a foreign national that a consular official may be notified whenever a foreign national is arrested or detained in any manner, without distinguishing arrests that do not result in a significant detention. The purpose of this requirement, however, is to ensure that a government does not place a foreign national in a situation in which he/she cannot receive assistance from his/her own government.

When a foreign national is issued a citation and immediately released, this consideration is not relevant because they are free to contact consular officials independently. Therefore,

brief routine detentions, such as for issuing a citation for traffic violations or crash investigations, are allowed without the need for consular notification.

Further inquiries and reports concerning foreign nationals should be directed to the Assistant Legal Advisor for Consular Affairs, at (202) 647-4000-. After hours inquiries should be directed to the State Department Operations Center, at (571) 345-3146.

F. CONSULAR NOTIFICATION AND ACCESS REFERENCE CARD

The Consular Notification and Access Reference Card summarize for law enforcement officials the basic consular notification procedures to follow upon the arrest or detention of a foreign national. For more detailed instructions and legal material, see the Department of State publication *Consular Notification and Access*. The complete publication is available at http://travel.state.gov/content/dam/travel/CNAtrainingresources/CNAManual_Feb2014.pdf.

MANDATORY NOTIFICATION COUNTRIES (“LIST” COUNTRIES)

Countries listed below have specific agreements with the United States Department of State requiring consular notification regardless of the arrestee’s wishes.

Albania	Guyana	Sierra Leone
Algeria	Hungary	Singapore
Antigua and Barbuda	Jamaica	Slovakia
Armenia	Kazakhstan	Tajikistan
Azerbaijan	Kiribati	Tanzania
Bahamas	Kuwait	Tonga
Barbados	Kyrgyzstan	Trinidad & Tobago
Belarus	Malaysia	Tunisia
Belize	Malta	Turkmenistan
Brunei	Mauritius	Tuvalu
Bulgaria	Moldova	Ukraine
China (including Macao and Hong Kong) ¹	Mongolia	United Kingdom ³
Costa Rica	Nigeria	Uzbekistan
Cyprus	Philippines	Zambia
Czech Republic	Poland ²	Zimbabwe
Dominica	Romania	
Fiji	Russia	
Gambia	Saint Kitts & Nevis	
Georgia	Saint Lucia	
Ghana	St. Vincent & the Grenadines	
Grenada	Seychelles	

1. Notification is not mandatory in the case of persons who carry “Republic of China” passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office (“TECRO”), the unofficial entity representing Taiwan’s interests in the United States, can be notified at their request.

2. Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., “green card” holders). Otherwise, upon the national’s request.

3. The bilateral consular convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales, and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands, along with other island

territories. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate.

ARRESTING A NON-U.S. CITIZEN

Consular Notification Process



Q. Are you a U.S. citizen?

A. **"YES,** I am a U.S. citizen."

(No further action required.)



"NO, I am not a U.S. citizen."



IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.

- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).

- Consular officers may have access to detainee regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Poland ²	Tanzania
Algeria	Cyprus	Kiribati	Romania	Tonga
Antigua and Barbuda	Czech Republic	Kuwait	Russia	Trinidad and Tobago
Armenia	Dominica	Kyrgyzstan	St. Kitts and Nevis	Tunisia
Azerbaijan	Fiji	Malaysia	St. Lucia	Turkmenistan
Bahamas	Gambia	Malta	St. Vincent and the Grenadines	Tuvalu
Barbados	Georgia	Mauritius	Seychelles	Ukraine
Belarus	Ghana	Moldova	Sierra Leone	United Kingdom ³
Belize	Grenada	Mongolia	Singapore	Uzbekistan
Brunei	Guyana	Nigeria	Slovakia	Zambia
Bulgaria	Hungary	Philippines	Tajikistan	Zimbabwe
China ¹	Jamaica			

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).

2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders, notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. **"YES."**

Step 1. Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.



Consular Notification & Access (CNA)
U.S. Department of State
CA/P
SA-17, 12th Floor
Washington, DC 20522-1712

P: 202-485-7703
F: 202-485-6170
consnot@state.gov

Q. Do you want your consulate notified of your arrest/detention?

A. **"YES."**

Step 1. Make note in case file.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Step 1. Make note in case file.

Step 2. Do **NOT** inform the consulate.

(No further action required.)



For more information visit: <http://travel.state.gov/CNA>