

<b>FRAMINGHAM POLICE DEPARTMENT</b>		Next Review Date: Annually
<b>Subject: Consular Notification and Access</b>		Effective Date: 06/30/2007; Rev. 01/22/2014; 12/01/2022
<b>Category: 400 – Transportation, Processing and Detention of Prisoners</b>		Expiration Date: Indefinite
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED:		<b>POLICY</b>  <b>400-6</b>
Distribution:  Sworn Personnel	<b>Issuing Authority</b> <i>Lester Baker</i> <b>Lester Baker</b> <b>Chief of Police</b>	

## Policy Statement

It shall be the policy of the Framingham Police Department, that whenever a foreign national, as defined herein, 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 to provide consular assistance.

## References

None

## Special Terms

- Consular Officer: A consular officer or consul as sometimes referred to, 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.
- Foreign National (or Alien): A "foreign national" is any person who is not a U.S. citizen. The terms "foreign national" and "alien" are used interchangeably.

- **NOTE:** ALL foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States. Thus "illegal" aliens have the same rights to consular assistance as do "legal" resident aliens.
- For purposes of this policy a detention is defined as anytime a person is taken into custody and not free to leave on their own regardless of where they are held (i.e police station, hospital, etc.)
- **NOTE:** Momentary incidents such as traffic stops are not considered detention for this policy.

## Policy

### I. Historical Background

The United States is a party to an International Treaty known as the Vienna Convention on Consular Relations (VCCR). It is binding on federal, state, **and local government officials**. The VCCR now establishes the baseline for most obligations with respect to the treatment of foreign nationals in the United States and for treatment of U.S. citizens abroad for foreign governments.

Therefore, the procedures outlined in this policy, which are in conformity with the VCCR, focus primarily on providing consular notification and access with respect to foreign nationals arrested or detained in the United States, so that their governments can assist them.

### II. Arrests and Detentions of Foreign Nationals

**All** foreign nationals under arrest/detention must be advised of their *right* to consular notification and access.

- **Option:** After they have been advised of their right, in most cases, the foreign national then has the **option** to have his/her consular representatives notified of the arrest or detention.
- **Mandatory:** In other cases however (depending on their nationality), the foreign national's consular officials **must** be notified of an arrest and/or detention regardless of the foreign national's wishes (see section IV).

A list of all embassies and consulates in the United States, with their telephone and fax numbers are listed in the **Consular Notification and Access** manual (in the CO's office). The telephone numbers are also published on the "S" drive, Forms Folder under **Consular Phone Numbers**.

### III. Notification at the Foreign National's Option

A. After the foreign national has been advised of their right to consular notification, he/she then has the *option* to decide whether they want their consular representatives notified of the arrest or detention, unless the foreign national is from a Mandatory Notification Country (see section IV).

- **NOTE: Brazil** is an optional notification country.

1. A Consular Notification form is automatically generated during booking when the question "citizenship" is answered (other than US). The *right to consulate notification* may be read to the detainee from this form or as follows:

- *"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? "*

**NOTE:** For TRANSLATIONS of these Statements made to the Foreign Nationals please check the reference material from the United States Department of State titled Consular Notification and Access (page 25) maintained in the CO's Office.

2. If the detainee **refuses** consulate notification, the Commanding Officer will submit the Consular Notification Form to our Records Bureau along with the rest of the booking forms.
3. If the detainee **requests** notification, the Commanding Officer will **fax** the completed **Consular Notification Form** to the appropriate consulate "*without delay*" in order to satisfy the notification requirement. After the form has been faxed, it is then submitted to Records along with the fax sent receipt and the rest of the booking forms.
4. For phone and fax numbers for foreign embassies see the Consular Phone Number List.
5. The **Consular Notification Form** is also listed on the Shared Drive (S) in the FORMS folder.

### IV. Mandatory Notifications

1. In some cases, notification **must** be made to the nearest consulate or embassy "*without delay,*" regardless of whether the foreign national requests such notification. Refer to the list of mandatory countries in the Consular Notification and Access Manual (in the CO's Office). A list of mandatory countries are also kept on file in "S" drive in the FORMS folder named Consular Mandatory Notification Countries.
  
2. Tell the foreign national that you are making this notification. 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."*

**NOTE:** For TRANSLATIONS of these Statements made to the Foreign Nationals please check the reference material from the United States Department of State titled Consular Notification and Access (page 25) maintained in the CO's Office.
  
3. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist. 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.
  
4. A Consular Notification form is automatically generated during booking when the question "citizenship" is answered (other than US).
  
5. The Commanding Officer will then **fax** the completed **Consular Notification Form** to the appropriate consulate in order to satisfy the notification requirement. After the form has been faxed it is then submitted to Records along with the sent fax receipt and the rest of the booking forms.
  
6. For phone and fax numbers for foreign embassies see the Consular Phone Number List found on "S" drive.
  
7. The **Consular Notification Form** is also listed on the Shared Drive (S) in the FORMS folder.

## **V. Recordkeeping**

1. The Framingham Police Department shall maintain written records sufficient to show compliance with the above notification requirements. 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. If a confirmation of receipt of notification is available (e.g. fax confirmation receipt), it shall be saved and forwarded to the Records Bureau.
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 our department on whether consular notification was in fact given. Good recordkeeping will facilitate responding to these inquiries and to any consular notification issues that may be raised in litigation.

## **VI. Consular Access to Detained Foreign Nationals**

1. Detained foreign nationals are entitled to communicate with their consular officers. Foreign consular officers must be given access to their nationals and permitted to communicate with them. Such officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. In addition, consular officers may not act as attorneys for their nationals.