

# ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



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**SUBJECT: CONSULAR NOTIFICATION AND ACCESS**

EFFECTIVE DATE:

**September 22, 2020**

ACCREDITATION STANDARDS:

N/A

BY THE ORDER OF:

Chief Giacomo Sacca

BY AUTHORITY OF:

Police Director Earl J. Graves

SUPERSEDES ORDER #:

**PURPOSE** The purpose of this general order is to comply with the provisions of the *Vienna Convention on Consular Relations* regarding notifications to consulate officials in the event foreign nationals die or are arrested or detained.

**POLICY** Under the provisions of the *Vienna Convention on Consular Relations*, Apr. 24, 1963, articles 5, 36, 37, 21 U.S.T. 77, 101, when foreign nationals are arrested or detained, they must be advised of the right to have their consular official notified. In some cases notification is mandatory, whether the foreign national consents to the notification or not. Further, in the event a foreign national dies, their consulate must be notified.

The *Vienna Convention on Consular Relations* is a bilateral agreement between nations regarding the legal obligations that countries have towards foreign nationals in certain situations.

All personnel must be aware that they are required to provide prompt notification to a foreign national's consular officials. Failure to provide prompt notification may result in the reversal of any criminal conviction (State v. Cevallos-Bermo, 333 N.J. Super. 181 (App. Div. 2000)).

It is the policy of the Elizabeth Police Department to promptly provide these notifications, where necessary, in the event a foreign national is arrested, detained, or suffered serious injury or death.

## PROCEDURES

### I. DEFINITIONS

- A. Arrest refers to any detention or other commitment to custody that results in a foreign national being incarcerated for more than a few hours triggering the consular notification requirements in this order.
1. A brief traffic stop or an arrest that results in a uniform traffic ticket or special complaint and release at the scene for an infraction or offense would not require that consular notification is provided.
  2. 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.
  3. The longer a detention continues, the more likely it is that a reasonable person would conclude that the consular notification obligation is triggered.
- B. Consular assistance is defined as the right to visit, correspond with, and arrange for legal representation of a foreign national detained or in detention.
- C. Consular official or consul 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. The term consul should not be confused with counsel, which means an attorney authorized to provide legal counsel and advice.
- D. Detention/detained shall refer to the temporary seizure of a person not amounting to a custodial arrest, but more than the brief stopping of a person to answer questions in a street or motor vehicle investigative encounter. The detention is greater than that which occurs during a simple Terry stop or a field interview.
- E. Foreign national is any person who is not a United States citizen. The term foreign national and alien are used interchangeably. Resident aliens who have a resident alien registration card, commonly known as a green card, are considered foreign nationals for the purposes of consular notification, as are undocumented aliens.
- F. Without delay is a term contained in the *Vienna Convention on Consular Relations* generally understood to mean that there should be no deliberate delay, and that notification should occur as soon as reasonably possible under the circumstances. Nevertheless, notification to consular officials should be made within the first 24 hours of the detention, and certainly within 72 hours.

### II. GENERAL PROVISIONS

- A. When foreign nationals are arrested, they must be advised of the right to have their consular officials notified.
- B. Consular officials are entitled to have access to their foreign national in detention and are entitled to provide consular assistance.

- C. A formatted fax sheet for notifying consular officials of arrests or detentions is contained in Attachment B.
- D. A formatted fax sheet for notifying consular officials of death/serious injuries is contained in Attachment C.
- E. A compendium of translated statements in multiple languages is contained in Attachment D to this general order. (For purposes of this general order only 13 languages are listed. It is impossible to list all possible languages. Only those languages common to this region are listed.)
- F. 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.
- G. If a foreign aircraft crashes, consular officials must be notified. These notifications will generally be made by the state or federal agency having overall jurisdiction for the crash.

### III. NOTIFICATION PROCEDURES

- A. When a foreign national is arrested or detained, determine their country of nationality. Normally, this is the country on whose passport or other travel document the foreign national travels.
- B. If the foreign national's country is not on the mandatory notification list in Attachment A:
  - 1. Without delay, offer to notify the foreign national's consular officials of the arrest/detention. See Statement #1 in section IV (page 5).
    - a. If the foreign national understands English, then the statement can be given in English. If the foreign national does not understand English, a listing of statements in 13 foreign languages is contained in Attachment D of this SOP.
    - b. If the language is not listed, notify the appropriate consulate by telephone to obtain a copy of the notification in its language or access. See the U.S. State Department, Bureau of Consular Affairs, Consular Notification and Access website at <http://travel.state.gov/CNA>.
  - 2. If the foreign national asks that a consular notification be given, notify the nearest consular official of the foreign national's country without delay. Foreign embassy and consulate telephone numbers, fax numbers, and email addresses can be found on the Department of State's website at <http://travel.state.gov/CNA>.
- C. If the foreign national's country is on the list of mandatory notification countries:
  - 1. Notify that country's nearest consular officials of the arrest/detention, without delay immediately via fax. Notification should occur as soon as is reasonably possible under the circumstances. Notification must be made

regardless of whether the foreign national desires notification. Telephone numbers, fax numbers and email addresses can be found on the U.S. State Department, Bureau of Consular Affairs, Consular Notification and Access website at <http://travel.state.gov/CNA>.

2. Inform the foreign national of the mandatory notification of their arrest/detention. See Statement #2 in section V (page 5).
  - a. If the foreign national understands English, then the statement can be given in English. If the foreign national does not understand English, a listing of statements in 13 foreign languages is contained in Attachment D.
  - b. If the language is not listed, notify the appropriate embassy or consulate by telephone to obtain a copy of the notification in its language or access the U.S. State Department, Bureau of Consular Affairs, Consular Notification and Access website at <http://travel.state.gov/CNA>.
- D. Document the notification or the declined notification on the incident report noting the following:
  1. Name of consulate notified;
  2. How notified, voice, fax, email, etc.;
  3. Name of the official notified;
  4. Time notification was made;
  5. If notification was made by fax, a copy of the fax sheet and the transmission verification report must be maintained with the case file.
  6. A copy of the appropriate statement whether in English or in one of the other languages, noting 'Yes' or 'No', (in the case of a non-mandatory notification) must be maintained with the case file.

#### **IV. STATEMENT #1**

- A. To be read to or viewed by a foreign national in a non-mandatory notification setting:

*“As a non-U.S. citizen who is being arrested or detained, you may request that we notify your country’s consular officers here in the United States of your situation. You may also communicate with your consular officers. A consular officer may be able to help you obtain legal representation and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?”*

**V. STATEMENT #2**

- A. To be read to or viewed by a foreign national in a mandatory notification setting:

*“Because of your nationality, we are required to notify your country’s consular officers here in the United States that you have been arrested or detained. We will do this as soon as possible. In addition, you may communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation and may contact your family and visit you in detention, among other things.”*

**VI. DEATH OR SERIOUS INJURY OF A FOREIGN NATIONAL**

- A. Notification of the death or life-threatening injury of a foreign national must be made immediately to the nearest consulate of the national's country. The detective bureau commander or his/her designee shall cause this notification to be documented in the incident/supplemental report documenting the death or serious injury.
- B. Whenever possible, notification must be made by fax or email. When using a fax, use the fax sheet in Appendix C of this general order or the fax sheet found on the U.S. State Department, Bureau of Consular Affairs, Consular Notification and Access website at <http://travel.state.gov/CNA> to document and transmit the notification of death or serious injury.
- C. Such notice will help to ensure that passports and other legal documentation issued by that country are cancelled and not reissued to fraudulent claimants. Additionally, it may help ensure that the foreign national’s family and legal heirs, if any, in the foreign country are aware of the death and that the death is known for estate purposes in that country.