

	Winchester City Sheriff's Office Manual of General Orders Administration 118	Effective Date: May 1, 2014 Accreditation Standards: ADM .02.04
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		By Authority of: <hr/> William E Sales, Sheriff
Subject: Consular Notification/Diplomatic Immunity		

Effective/ Review Date	Sections Changed	Changes	Reviewed by	Approved by
01-05-23	E	Added: E: On-line Resources for Consular Notification and Access Refer to website link below for current/updated information regarding Consular Notification. https://travel.state.gov/	BWD	WES

I. PURPOSE

The purpose of this General Order is to establish guidance for Sheriff's Office members who come in contact with foreign nationals, subjects claiming to be foreign nationals, diplomatic officers, and consular officers.

II. POLICY

It shall be the policy of the Winchester City Sheriff's Office to comply with all instructions of the United States Department of State as outlined in Diplomatic and Consular Immunity relating to the arrest and detention of diplomatic and consular personnel and Consular Notification and Access relating to the arrest and detention of foreign nationals, deaths of foreign nationals, the appointment of guardians for minors or incompetent adults who are foreign nationals, and related issues pertaining to the provision of consular to foreign nation with whom we come in contact in this country. A copy of this publication is on the Sheriff's Office Intranet under Sheriff Info Resources.

III. PROCEDURES – GENERAL

A. Requirements pertaining to foreign nationals (See State Department publication Consular Notification and Access).

1. When foreign nationals are arrested or detained, they must be advised of their right to have their consular officials notified.
2. There are two types of notification, Mandatory and Optional. If in doubt, contact the State Department.
 - a. Mandatory Notification-- The nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes. The list of countries, which require

mandatory notification of consular officials, is extensive. A complete list of mandatory notification will be maintained on the reverse side of the Consular notification form. The list shall be updated whenever the State Department releases a new list. In the event that a foreign national is arrested or detained, review the list.

Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirements. Thus, for example the foreign national should be informed that notification has been made and advised that he/she may also specially request assistance from his or her consular officials.

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 in some mandatory notification cases. 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, after consulting the mandatory list, the deputy is unsure of mandatory notification requirements for the individual country in question, the Department of State should be contacted for guidance.

- b. Optional Notification-- Upon the arrest of a foreign national who does not wish to have his consult notified, ensure that the country, which the national is from, is not mandatory. In this situation, have the arrestee (foreign national) indicate in writing that they have been asked and declined notification. If the detainee requests notification, the deputy must ensure that notification is given to the nearest consulate or embassy of the detainee's country without delay. It may be assumed, from travel documents or passports, that the individual's country of origin is the same as that shown on the documents. Notification may be made by phone or fax. The Sheriff's Office fax notification form should be used for proper notification. This form lists the mandatory nations on the reverse side.
3. All personnel shall include in their report all notifications to foreign consular representatives. In addition, in cases in which notification is at the discretion of the detained foreign national, reports must 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. A copy of the fax transmittal will suffice.
4. Consular officials are entitled to free access to their nationals in detention and are entitled to provide consular assistance.
5. In the event of death of a foreign national, consular officials must be notified.
6. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.

B. Diplomatic Immunity from Arrest or Detention (see State Department publication

Diplomatic and Consular Immunity

1. Upon exhibiting proof of diplomatic status, individuals shall be released from misdemeanor traffic violation stops. If there is a question regarding this procedure or if an arrest for felony conduct is necessary, contact the State Department.
2. While a person claiming diplomatic immunity may present any number of identification papers, only one is indicative of the level of privilege and immunity. This card is issued by the United States Department of State. The holder's level of immunity is indicated on the card by color of the border.
 - a. **BLUE-BORDERED CARDS:** These cards are issued to Diplomatic officers and their families, and UN diplomatic officers and their families. They all have full criminal immunity and may not be arrested or detained for any reason.
 - b. **GREEN-BORDERED CARDS:** These cards are issued to Embassy administrative and technical staff. They all have full criminal immunity and may not be arrested or detained for any reason. Green-bordered cards are also issued to Embassy service staff. They have limited immunity relating to official acts only. (Read the back of the card)
 - c. **RED-BORDERED CARDS:** are issued to the following:
 - 1) Career Consular officers are entitled to immunity for official acts only;
 - 2) Career Consular employees are entitled to immunity for official acts only;
 - 3) Consular officers/employees with a special agreement with the U.S. are entitled to full criminal immunity and may not be arrested or detained;
 - 4) Honorary consular officers are entitled to limited immunity for official acts only. (Read the back of the card) If a person claiming immunity does not possess one of these cards and the incident involves a criminal offense, deputies may detain the person either at the scene or at the department long enough to verify official status. These identification cards are generally reliable, however, deputies are nonetheless urged to seek verification in connection with any serious incident or in any case where they have reason to doubt the validity of the card.
 - d. Other forms of identification that indicate diplomatic or consular employment
 - (1) Tax Exemption Card: Blue background with I.D. picture and words "Mission Tax Exemption Card". This card does not provide immunity without one of the cards noted in 2 a, b, or c above.
 - (2) Non-Driver ID: Blue background with I.D. picture and words "Non-Driver ID". This card does not provide immunity without one of the cards noted in 2 a, b, or c above.
 - (3) Driver's License: Blue background with I.D. picture and words Driver's License. This card does not provide immunity without one of the cards noted in 2 a, b, or c above.
3. When encountering a criminal suspect who claims diplomatic immunity, deputies shall first take reasonable measures to ensure safety to the public and other deputies. Verification of the diplomatic claim shall take place after a danger has been neutralized. If required to release the individual because of diplomatic immunity the normal criminal investigation shall proceed as if no valid diplomatic immunity claim has been made. However, interviews, interrogations, seizures of evidence, or issuance of warrants, should proceed as in any investigation with the guidance and advice of the Department of State.

4. Deputies should be alert to the fact that newly arrived members of diplomatic and consular staff may not yet have these official identity documents and should contact the U. S. Department of State, Office of Protocol, for verification if confronted with situations in which the individual claims immunity but does not have the necessary documents and indicates that he or she has recently arrived in the United States.
5. Passports containing U. S. "A" or "G" visas are issued to a broad range of persons, including those who are accredited to the United States or to internal organizations and who therefore have no privileges and immunities in the United States. Possession of these type documents indicates that the bearer might be entitled to privileges and immunities. In cases of doubt, contact the Department of State.

C. Statements to be read to Arrested or Detained Foreign Nationals

1. When Consular notification is Mandatory: "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."
2. When Consular notification is at the Foreign National's Option: "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?"
3. Translations available in Arabic, Chinese, Farsi, French, German, Italian, Japanese, Korean, Polish, Portuguese, Russian, Spanish and Vietnamese. Copies of these are in the Department of State, Consular Notification and Access. A copy of this publication is on the Sheriff's Office Intranet under Sheriff Info Resources.

D. Handling Arrest/Traffic Arrest

1. When a deputy is called to the scene of a criminal incident involving a person or suspect who claims diplomatic immunity, the first step is to verify his/her status with the State Department. If the suspect has demonstrated personal reliability he or she may not be handcuffed and not be arrested or detained. Once all pertinent information is obtained, that person must be released. A copy of the Sheriff's Office's Incident Report shall be faxed to the State Department. If the individual poses a threat to health and safety, deputies may handcuff and restrain the individual. However, once the danger has passed the individual must be released from restraint.
2. Stopping a mission member or dependent and issuing a traffic summons does not constitute an arrest or detention. However, the subject may not be compelled to sign the citation. Certain persons will be exempt, if in doubt, contact the State Department.

3. A copy of all summon(s) and any other documentation regarding the traffic stop should be faxed to the State Department as soon as possible. For “must appear” offenses/arrests, the State Department uses the citation and any report as the basis for requesting an “express waiver of immunity”.
4. In serious cases, e.g., DUI, accidents and personal injury, telephonic notification to the State Department is requested. All DUI investigations shall be conducted as any other investigation.

E. On-line Resources for Consular Notification and Access

1. Refer to website link below for current/updated information regarding Consular Notification.
https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf

