

# FLORENCE POLICE DEPARTMENT GENERAL ORDER

<b>Subject:</b> FOREIGN NATIONALS	<b>Procedure:</b> General Order 1.1.4 CALEA 1.1.4	<b>Total Pages:</b> 8
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## I. POLICY

It is the policy of this Department that members comply with the United States Department of State Guidelines when a foreign national is arrested or detained in order for the United States Government to expect reciprocity from other countries in which a U.S. Citizen may be arrested and detained. In so doing, our officers will extend every courtesy and consideration to all foreign nationals.

## II. PURPOSE

The purpose of this general order is to establish direction for members of the Florence Police Department in handling incidents involving the arrest and/or detention of foreign nationals, and the notification of appropriate authorities of other incidents involving foreign nationals.

## III. SCOPE

The purpose of this directive is applicable to all personnel.

## IV. RESPONSIBILITY

All personnel shall be responsible for complying with this directive.

## V. PROCEDURES

### A. DIPLOMATIC IMMUNITY

1. Foreign diplomatic personnel, known to and received by the United States Government in such a capacity, are immune from arrest and imprisonment. Any writ or process issued against such persons shall be deemed null and void. Any person who obtains or executes such writ or process is liable to a fine and/or imprisonment.
2. Except in cases of public emergency such as fire or matters affecting public safety, the premises occupied by a foreign diplomatic mission are immune from local jurisdiction and shall not be entered without the consent of the mission member.
3. Persons having diplomatic immunity cannot be summoned to court. In order for them to testify, it is necessary for their government to waive diplomatic immunity.

4. Any person who assaults, strikes, wounds, imprisons, threatens violations or harm, intimidates, coerces, or harasses a diplomatic officer is liable to a fine and/or imprisonment.
5. It is unlawful to injure, damage, destroy, or to attempt to injure, damage or destroy any real or personal property belonging to, utilized by, or occupied by a foreign government, international organization, foreign official, or official guest of the United States.

B. IMMUNE PERSONS

1. Recognized diplomatic officers, members of their immediate families;
2. Administrative and technical staff members and their families, provided they are not U.S. citizens;
3. Service staff employees of diplomatic missions if performing in an official capacity, but not their families;
4. Official guests of the United States; and
5. Certain members of the following organizations:
  - a. Permanent delegations to the United States;
  - b. Permanent delegations to the Organization of American States;
  - c. The North Atlantic Treaty Organization;
  - d. The International Bank for Reconstruction and Development; and
  - e. The International Monetary Fund.
6. The diplomatic immunity of foreign consular officers who are not attached to the diplomatic missions in Washington, D.C. depends on treaty provisions between the United States and the consul's government. It is necessary to check with the State Department Operations Center (202-647-1512) to resolve the issue of immunity regarding these individuals.
7. Domestic servants of accredited diplomatic officers only when acting in an official capacity.

C. Law Enforcement Procedures

1. If an officer apprehends an individual who claims diplomatic immunity, the officer shall:
  - a. Obtain the individual's name, address, and country of citizenship;

- b. Ascertain the validity of the claim;
  - c. Release him if the claim is valid; and
  - d. Report the facts on an Incident Report.
2. If an individual claims diplomatic immunity but does not have an identification card to verify it, the officer shall have the Communications Section contact the State Department to verify the claim.
3. If an individual entitled to diplomatic immunity assaults a police officer, the police officer is then justified in using the normal and reasonable amount of force necessary to protect himself; however, no arrest will be made.
4. The property (including vehicles) of a diplomatic person may not be searched or seized, but this rule does not give immunity to all occupants in a vehicle. Occupants of a vehicle that is suspected of being stolen, or involved in the commission of a crime, shall be required to present identification in accordance with the procedures outlined in paragraph #1 above. If the occupants, whether or not they are diplomats, are not authorized to use the vehicle, it shall be taken into protective custody for immediate return to the owner or otherwise processed at the owner's direction.
5. Diplomats stopped for driving while intoxicated are entitled to diplomatic immunity. If the diplomat's state of intoxication is such that his driving would endanger the safety of the community, the officer shall request that he not drive and assist him in parking the vehicle or in securing an acceptable driver. If the vehicle is parked, its location will be recorded in the report of the incident.
6. If the request for assistance is refused or it is claimed that the requested action would restrict the effective exercise of the diplomat's official duties, the officer shall politely inform the diplomat that he is free to go, but that he may not drive the vehicle. The embassy or legation concerned shall be immediately contacted by the Communications Section for advice or assistance in obtaining a driver for the vehicle. In no event shall the diplomat be detained or arrested, or his vehicle impounded.
7. Traffic violation notices shall not be issued to diplomats.
8. The officer investigating an accident involving diplomatic personnel shall indicate on the accident report the diplomat's occupation and place of employment.

9. Vehicles bearing diplomatic tags which are parked in violation and which are creating a severe traffic problem or inconvenience may be moved to another location. In so doing, the officer shall adhere to the following procedures:
  - a. Attempt to notify the owner or operator to have him move the vehicle; or
  - b. Arrange to have the vehicle moved to the nearest legal parking space if the owner or operator cannot be located. If the vehicle is moved, notify the Communications Section and give a description of the vehicle, license number, the location from which it was removed, and the location to which it was moved.

## **VI. OTHER FOREIGN NATIONALS**

### **A. GENERAL PROVISIONS**

1. The United States government has signed reciprocal agreements with a number of foreign countries in which notification of a signatory country's consulate is required whenever a national of that country is arrested or detained. In addition, customary international law requires consular notification without delay in the absence of special bilateral agreements. "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.
2. A foreign national is any person who is not a U.S. 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 (or "illegal") aliens.
3. Consular notification is unnecessary if the arrest is for a minor traffic violation or misdemeanor and the foreign national is released at the scene.

### **B. CONSULAR NOTIFICATION**

1. A consular officer, 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 the 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.

2. The arresting officer shall immediately attempt to contact the appropriate consular officer following a foreign national's arrest. Phone and fax numbers can be found on the State Department website at [http://travel.state.gov/law/consular/consular\\_745.html](http://travel.state.gov/law/consular/consular_745.html).
3. If the arrest occurs during other than normal business hours and the consular officer cannot be reached, the arresting officer shall ensure that notification is made as soon as possible the following day.
4. In cases when an officer arrests a foreign national whose country does not maintain diplomatic relations with the United States, the officer shall contact the Office of the Chief of Protocol, Department of State (Main Protocol 202-647-1985) (after hours 202-647-7277), to ascertain which embassy should be notified of the arrest.

C. MANDATORY NOTIFICATION COUNTRIES AND JURISDICTIONS

Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas, The	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	Saint Kitts and Nevis
China <sup>1</sup>	Saint Lucia
Costa Rica	Saint Vincent and the Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia, The	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong <sup>2</sup>	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom <sup>3</sup>
Kiribati	U.S.S.R. <sup>4</sup>
Kuwait	Uzbekistan
Kyrgyzstan	Zambia
Malaysia	Zimbabwe

<sup>1</sup> 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.

<sup>2</sup> Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports--*i.e.*, immediately, and in any event within four days of the arrest or detention.

<sup>3</sup> United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

<sup>4</sup> Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

#### D. REPORTING

1. The arresting officer shall advise a supervisor as soon as possible that a foreign national has been arrested.
2. The arresting officer shall submit a report prior to the end of his tour of duty. The report shall include the name of the consular officer notified and the time and date of notification.
3. If the arresting officer is unable to contact the appropriate consular officer, he shall indicate the time(s) and date(s) notification was attempted.
4. When the arresting officer makes the proper notification, he shall include on the report or supplement the name of the person contacted and the date and time of such communication.
5. The shift supervisor shall ensure that the Chief of Police is notified.
6. The Chief of Police will forward an appropriate letter to the embassy or legation concerned, if necessary.

### VII. REQUEST FOR ASYLUM

#### A. NOTIFICATION PROCEDURES

1. A supervisor shall contact the U.S. Department of State Operations Center (202-261-8000) immediately in the event of any request, or imminent request, for asylum which is politically sensitive or involves the possibility of forcible repatriation. In particular, the Department of State should be informed immediately of a request for asylum from:
  - a. Any national of the former Soviet Union;
  - b. Any national of Romania, Poland, Hungary, Czechoslovakia, Bulgaria, Mongolia, Cuba, Albania, the People's Republic of

China, North Korea, Vietnam, Laos, or Kampuchea, who is present in the United States as part of an official visit, formal cultural or athletic exchange, exchange student program or state-owned business or enterprise activity, or who is transit through the United States in such capacity;

- c. Any foreign diplomat, foreign consular officer, or foreign official, regardless of the country; and
  - d. Any other alien who asserts there is a serious threat of forcible repatriation to himself or to his family.
2. In addition, the Department of State should be informed immediately of any request for asylum which for other reasons presents special problems calling for the Department's prompt attention.
  3. Other requests, not calling for such attention by the Department of State, should be brought to the attention of the local district director of the Immigration and Naturalization Service only.
  4. The following information will be given to the Operations Center if available; in any case, the initial report should not be delayed:
    - a. Name and nationality of the individual seeking asylum;
    - b. Date and place of birth;
    - c. Occupation;
    - d. Description of any documents displayed;
    - e. Which foreign authorities, if any, are aware of his seeking asylum;
    - f. Circumstances surrounding the request for asylum;
    - g. Exact present location; and
    - h. Description of any pending criminal charges against the seeker of asylum.
  5. All notification procedures shall be complied with in cases of requests for asylum.

**B. PROTECTIVE CUSTODY**

Protective custody shall be provided to the asylum seeker and, if necessary, force may be used to thwart attempts at forcible repatriation. No greater force than that necessary to protect the individual and officer should be used.

**VIII. NATO PERMITS**

**A. NATO MEMBERS' AGREEMENT**

A number of countries of the North Atlantic Treaty Organization (NATO) have signed an agreement regulating the status of the armed forces of one member country within the territory of another member country. Article 4 of that agreement states that the receiving state shall either:

1. Accept as valid, without a driving test or fee, the driving permit or license or military driving permit issued by the sending state or a subdivision thereof to a member of a military or civilian component;  
or
2. Issue its own driving permit or license to any member of a military or civilian component who holds a driving permit or license or military permit issued by the sending state or a subdivision thereof, provided that no driving test is required.

**B. STATE REQUIREMENTS**

1. Presently the states of California, Maryland, New Jersey, New York, and District of Columbia accept as valid the driving permit or license issued by the sending state.