

MONROE COUNTY SHERIFF'S OFFICE

General Order

CHAPTER: 032-E		TITLE: Foreign Nationals/Diplomats-Consular Notification
EFFECTIVE DATE: August 19, 2009	NO. PAGES: 3	AMENDED: June 25, 2018
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 Sheriff of Monroe County		

- I. **PURPOSE:** The purpose of this order is to establish policy and procedures to assure compliance with all consular notification and access requirements in accordance with international treaties when dealing with foreign nationals.
- II. **POLICY:** It is the Sheriff's policy that the all employees comply with all consular notification and access requirements in accordance with international treaties when dealing with foreign nationals.
- III. **PROCEDURE:**
 - A. **Offenses involving foreign diplomats and consular officials:** Diplomatic and consular officers should be accorded their respective privileges, rights, and immunities as directed by international law and federal statute. These officials should be treated with the courtesy and respect that benefit their distinguished positions. At the same time, it is a well-established principle of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect local laws and regulations.
 - B. **Diplomatic Immunity:** A principle of international law is broadly defined as the freedom from local jurisdiction accorded to duly-accredited diplomatic officers, their families and servants. Diplomatic officers should not be arrested or detained except for the commission of a grave crime Family members of diplomatic officers, their servants and employees of a diplomatic mission are entitled to the same immunities under current United States law (22 U.S.C. § 254) if they are not nationals of, or permanently reside in, the receiving state. Associated with this personal immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private residence of a diplomatic agent, his property, papers and correspondence.
 - C. **Diplomatic Officers:** Ambassadors and ministers are the highest ranking diplomatic representatives of a foreign government. Other diplomatic titles are Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary, and Attaché. These Officials are located either in Washington, D.C. or in New York City. Diplomatic officers, their families, official staff and servants, who are not nationals of or permanently reside in the receiving state, are protected by unlimited immunity from arrest, detention or prosecution with respect to any civil or criminal offense.

Consular Officers are Consuls-General, Deputy Consuls-General, Consuls and Vice Consuls and are also official representatives of foreign governments. Consular officers are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom or dignity. They are entitled to the following limited immunities.

- D. Immunities:** Under prevailing international law and agreement, a foreign career Consular Officer is not liable to arrest or detention pending trial, except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. His immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to Court determination.
- E. Identification** - Career Consular Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers. The State Department credential bears its seal, the name of the officer, his title, and the signatures of State Department officials.
- F. Honorary Consuls:** Often nationals or permanent residents of the receiving state are appointed and received as honorary Consular Officers to perform the functions generally performed by career Consular Officers. Such officers do not receive identification cards from the State Department of the type issued to career Consular Officers, though they exhibit reduced-size copies of the exequatur or diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention. They are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state, except as to official acts performed in the exercise of their consular functions. However, appropriate steps must be provided to accord such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of an honorary consul and persons working with him.

Family members of Consular Officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the receiving state as do Consular Officers. However, they should be accorded appropriate courtesy and respect.

Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post or his designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.

Consular archives, documents, records and correspondence are inviolable at all times and wherever they may be. The official correspondence of the consular posts, which means all correspondence relating to the consular post and its functions, is likewise inviolable.

- G. Reporting Incidents to the Office of the Governor:** In the event that a Consular Officer or member of his family or personal staff should become involved in actions taken by members of this Office, the Office of the Governor shall be immediately furnished with all pertinent information through the Office of Sheriff.
- H. Arrest or Detention of Foreign Nationals:** For the purposes of consular notification, a foreign national is anyone who is not a United States citizen. This includes persons with "green cards". Citizens of foreign countries have, because of treaties between the United States and a foreign nation, the right to contact the embassy or consulate of their home nation. In some cases, treaties require local law enforcement agencies to contact the embassy or consulate, regardless of the wishes of the arrestee or detainees. These mandatory notification countries are:

Algeria
 Antigua and Barbuda
 Armenia
 Azerbaijan
 Bahamas
 Barbados
 Belarus
 Belize
 Brunei
 Bulgaria
 China (Notification not necessary in the case of persons carrying "Republic of China" passports issued by Taiwan. Advise such persons that the Taipei Economic and Cultural Representative Office can be notified on their behalf.)
 Costa Rica
 Cyprus
 Czech Republic
 Dominica
 Fiji
 Gambia
 Georgia
 Ghana
 Grenada
 Guyana
 Hong Kong (Notify Chinese consulate)
 Hungary
 Jamaica
 Kazakhstan
 Kiribati
 Kuwait
 Kyrgyzstan
 Malaysia
 Malta
 Mauritius
 Moldova

Mongolia
 Nigeria
 Philippines
 Poland (Non-permanent residents only)
 Romania
 Russia
 Saint Kitts and Nevis
 Saint Lucia
 Saint Vincent and the Grenadines
 Seychelles
 Sierra Leone
 Singapore
 Slovakia
 Tajikistan
 Tanzania
 Tonga
 Trinidad and Tobago
 Tunisia
 Turkmenistan
 Tuvalu
 Ukraine
 United Kingdom (United Kingdom includes England, Scotland, Wales, Northern Ireland and the Islands, and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat and the Turks and Caicos. Their citizens carry British passports.)
 U.S.S.R. (Although the USSR no longer exists, some people still carry its passports. Notify the proper successor state listed herein.)
 Uzbekistan
 Zambia
 Zimbabwe

- I. **Arrest:** The arresting officer shall determine if the subject is a foreign national and his or her country of origin. The deputy shall notify the corrections intake officer that the arrestee is a foreign national and his or her country of origin. Corrections shall follow their consular notification procedures. The deputy shall note in the arrest/ incident report that corrections was informed.
- J. **Detention:** If the detention of a foreign national is for a traffic stop or short investigative inquiry consular notification is not required. If the detention exceeds a reasonable amount of time, the foreign national shall be informed of his or her right to communicate with a consulate. If the foreign national is from one of the mandatory notification countries listed above, notification must be made. The foreign national will be informed that notification is being made. If the foreign national is not from a mandatory notification country, he or she shall be advised that notification will be made upon request. Notification shall be made as soon as possible. If the individual does not wish that notification be made, consular officials will not be notified.
- K. **Notification:** Communications or Corrections Intake can provide contact information for consular officers. The Legal Division will provide any assistance needed on a 24-hour basis. The on-duty supervisor is responsible to ensure that proper notification is made.