

MARIN COUNTY SHERIFF'S DEPARTMENT{PRIVATE }
CUSTODY DIVISION POLICY AND PROCEDURE MANUAL

CHAPTER 2 - BOOKING
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DATE
4-15-02

PROVIDING CONSULAR RIGHTS WARNINGS TO FOREIGN NATIONALS

POLICY

In accordance with federal law and Article 36(1)(b) of the *Vienna Convention on Consular Relations and Optional Protocol on Disputes* (VCCR), and California Penal Code section 834c, federal, state and local law enforcement officials must provide consular rights warnings to arrested or detained nationals' consular officials who are posted in the United States. Upon arrest and booking or detention for more than two hours of a known or suspected foreign national, every peace officer (per PC 834c) shall advise the foreign national, without unnecessary delay, that he or she has a right to communicate with an official from the consulate of his or her country. Some countries have mandated notification, regardless of the desires of the arrested or detained foreign national.

An arresting or detaining official must notify the foreign national of the right to have the individuals nearest consular officials notified of the arrest or detention so that the appropriate foreign official may visit and assist. The Article, and PC 834c contains similar language, provides that "consular officers shall have the right to visit a national of the sending state who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. The Department of State emphatically recites that foreign nationals are to be provided consular rights warnings without "...deliberate delay and notification [to the individuals] should occur as soon as reasonably possible under the circumstances." Notification to consular officials should follow thereafter and "...there should be no deliberate delay and...[it] should occur as soon as reasonably possible under the circumstances. State normally would expect notification to consular officials to have been made within 24 hours.

PROCEDURE

Mandatory versus Voluntary Notification

The U.S. Department of State (State) suggests the following notice be read (this should be documented) to those detained or arrested foreign nationals who have the right to decide (i.e., those who are not from a "mandatory notification country").

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?

In addition to the VCCR, the United States has entered into bilateral agreements with 56 countries that *require* consular notification despite even the individual's most emphatic desire to the contrary. These nations generally are

referred to as “mandatory notification countries” and are listed in an attachment to this policy.

State recommends that the following rights warning be provided in **mandatory notification circumstances**:

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.

Failure to Warn

Federal Courts have ruled that failure to warn will not lead to the suppression of evidence, however, the Federal Ninth Circuit Court of Appeals has suggested that civil remedies could be imposed against law enforcement agencies and the **individual officers involved**.

Process

If, upon booking, an inmate is known or suspected of being a citizen of a foreign country, they will be notified of their rights under the VCCR and PC 834c. If the inmate indicates that he/she wants their consular office notified, then an advisement fax or telephone call will be made to the nearest embassy or consular office (a sample fax form is attached to this policy). The original fax will be kept in the inmate’s jacket as proof of notification. If the inmate declines notification and his/her country of origin is **not** on the mandatory notification list, then no further action will be taken, other than a notation on the inmates’ classification sheet indicating that the advisement was given. If the inmate is from one of the 56 “**mandatory notification**” countries, then, regardless of the inmate’s desires, the nearest embassy/consular office will be called or sent an advisement fax, and likewise, this original fax will be retained in the inmate’s jacket as proof of advisement. Copies of the Foreign Embassy/Consulate phone number list will be kept in booking and in both sergeants’ offices.

RELATED STANDARDS:

Article 36(1)(b) of the Vienna Convention on Consular Relations and Optional Protocol on Disputes (VCCR)
PC 834c

DATE REVISED

4/19/04

By order of

DENNIS MCQUEENY
BUREAU COMMANDER