



Sheridan Police Department
Policies and Procedures
10.2
Chapter 10 – Search & Seizure
Section 2 – Arrest of Foreign Nationals

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Signature:

Citizens of other nations who reside in or are visiting Sheridan are subject to local, state and federal laws except as indicated in this policy and will be treated in the same manner as United States citizens except as listed. The Sheridan Police Department will comply with United States Government treaty obligations regarding consular notification following the arrest and incarceration of foreign nationals.

Definitions

Arrest or Detention-	Any arrest, detention, or other commitment to custody for more than a few hours triggers consular notification requirements. A brief traffic stop or an arrest resulting in a citation for a misdemeanor and release at the scene does not trigger such requirements.
Foreign National -	Any person who is not a U.S. citizen; same as “alien”. Aliens who are lawful permanent residents in the United States and who have a resident alien registration card (“green card”) are foreign nationals. So are undocumented or “illegal” aliens.
Consular Officer -	A foreign official authorized by the Department of State to provide assistance to the foreign government’s citizens in the United States.
Diplomat -	A foreign official at the country’s embassy in Washington, D.C., assigned to represent the country. Diplomats may also perform consular functions.
“Mandatory” Notification -	Consular notification procedures that apply when a foreign national from any of the 57 countries that have agreed to special rules with the United States is arrested or detained. For such a foreign national, the consular officer must be notified regardless of whether the foreign national requests or wants the notification.
“Upon Request” Notification -	Consular notification procedures that apply when a foreign national from any country not on the “mandatory” list of 57 countries is arrested or detained.

10.2.1 Consular Notification Requirements

- A. When foreign nationals are arrested they must be advised of the right to have their consular officials notified of the arrest and detention.
1. It is the responsibility of the arresting officer to give the consular notification to the arrested foreign national. This can be done any time before booking into the jail is completed.

2. In some cases, (those on the mandatory notification list) the nearest consular officials must be notified of the arrest or detention of a foreign national regardless of the foreign national's wishes.
- B. Determining if the arrestee is a foreign national may be difficult.
1. If the detainee claims to be a U.S. Citizen, it can generally be assumed that consular notification requirements are not relevant. However, if there is a reason to question whether the person being arrested or detained is a foreign national you may contact United States Immigration and Customs Enforcement for assistance. Illegal aliens have the same rights to consular assistance, as do legal aliens.
 2. Nationality may be determined from a foreign passport, an alien registration document, or other identification. Absent citizenship documentation, accept the foreign national's own statement as to his or her nationality. Obtain a complete home address (foreign address) of the arrestee.
 3. A person who is a citizen of two or more countries other than the United States should be treated in accordance with the rules applicable to each of those countries. A person who is a citizen of the U.S. and another country may be treated exclusively as a U.S. citizen when in the United States.

10.2.2 Consular Notification Procedures

- A. When foreign nationality has been established, determine whether or not the country is a mandatory notification country. If the foreign national's country is not on the list of "mandatory notification" countries, he or she is from an "upon request" country.
- B. For foreign nationals whose country is on the list of mandatory notification countries:
1. Notify the nearest consulate of the foreign national's country via fax immediately or as soon as reasonably possible, and in no case later than the end of shift.
 2. Place a copy of the fax in the case file. You may use the sample fax sheet available at www.travel.state.gov/consularnotification.
 3. Notify the consulate even if the foreign national does not want notification.
 4. Contact information for consulates is at www.travel.state.gov/consularnotification.
 5. If notification must be made by telephone, note the name and location of the consulate notified, the name of the person to whom you gave the information, and the date and time of notification.
 6. Inform the foreign national that you notified his or her consulate. You may use the sample statement, available in several languages, at www.travel.state.gov/consularnotification.
 7. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his or her government may exist in some mandatory notification cases. The notification must 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. 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.
- C. For foreign nationals whose country is not on the list of mandatory notification countries:
1. Inform the foreign national that he or she may have his or her consular officers notified of the arrest or detention. You may use the sample statement, available in several languages, at www.travel.state.gov/consularnotification.

2. Make a notation that you told the national that he or she may have the consulate notified, and note the national's response.
3. If the foreign national requests notification, notify the nearest consulate of the foreign national's country as soon as reasonably possible but no later than 72 hours after arrest. Contact information for consulates is at www.travel.state.gov/ consular notification.
4. Make a note of the completed notification in the case file along with the fax sheet.

10.2.3 Other Required Notifications

- A. In addition to the above procedures, when a foreign national dies, is seriously injured or becomes seriously ill, notify the nearest consulate of his or her country immediately or as soon as reasonably possible. Make such notification by fax if possible, and by telephone if not.
- B. Document this notification in the incident report, and place a copy of the fax in the case file.

10.2.4 List of Mandatory Notification Countries

- A. Albania, Algeria, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Barbados, Belarus, Belize, Brunei, Bulgaria, China, Costa Rica, Cyprus, Czech Republic, Dominica, Fiji, Gambia, Georgia, Ghana, Grenada, Guyana, Hungary, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Malaysia, Malta, Mauritius, Moldova, Mongolia, Nigeria, Philippines, Poland, Romania, Russia, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Seychelles, Sierra Leone, Singapore, Slovakia, Tajikistan, Tanzania, Tonga, Trinidad & Tobago, Tunisia, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uzbekistan, Zambia, Zimbabwe.
- B. This list is subject to amendment without notice from the Federal Government. The list may be verified via website: http://travel.state.gov/law/consular/consular_753.html.

10.2.5 Diplomatic Immunity

- A. International law requires that law enforcement authorities of the United States extend certain privileges and immunities to members of foreign diplomatic missions and consular posts. Personal inviolability is enjoyed to some degree by a majority of foreign diplomatic and consular personnel. This inviolability generally precludes handcuffing, arrest, or detention in any form and forbids authorities from entering the residences, automobiles, or other property of protected persons. Personal inviolability is, however, qualified by the understanding that the host country does not give up its right to protect the safety and welfare of its populace and retains the right, in extraordinary circumstances, to prevent the commission of a crime. Thus, in circumstances where public safety is in imminent danger or it is apparent that a grave crime may otherwise be committed, police may intervene to the extent necessary to halt such activity. This naturally includes the power of the police to defend themselves from personal harm.
- B. The United States Department of State, Office of Protocol, issues identification documents to foreign government personnel who are entitled to immunity. Because there are different degrees of immunity, officers should carefully read identification cards presented to them. Questions regarding an individual's status or immunity should be referred to the Office of Protocol (202) 647-1985; after hours calls should go to the Bureau of Diplomatic Security (202) 647-7277.
- C. The only authoritative identity documents are the identity card issued by the U.S. Department of State's Office of Protocol, or by the U.S. Mission to the United Nations in the case of persons accredited to the United Nations. There are three types of identification cards:

Diplomatic (blue border for diplomats), Official (green border for embassy employees), and Consular (red border for consular personnel). A brief statement of the bearer's criminal immunity is printed on the reverse side.

- D. It is the policy of the U.S. Department of State with respect to alleged criminal violations by persons with immunity from criminal jurisdiction to encourage law enforcement authorities to pursue investigations vigorously, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system. The U.S. Department of State will, in all incidents involving persons with immunity from criminal jurisdiction, request a waiver of that immunity from the sending country if the prosecutor advises that but for such immunity he or she would prosecute or otherwise pursue the criminal charge. If the charge is a felony or any crime of violence, and the sending country does not waive immunity, the U.S. Department of State will require that person to depart the United States and not return except to submit to the jurisdiction of the court with jurisdiction over the offense. Upon departure, the Department will request that law enforcement issue a warrant for the person's arrest so that the name will be entered in NCIC.
- E. Stopping a mission member or dependent and issuing a traffic citation for a moving violation does not constitute arrest or detention and is permitted. However, the subject may not be compelled to sign the citation. Officers should document the facts of the case fully. A copy of the citation and any other documentation regarding the incident should be forwarded to the U.S. Department of State as soon as possible. For "must appear" offenses, the Department uses the citation and any report as the basis for requesting an "express waiver of immunity." Individuals cited for forfeitable offenses are given the option of paying the fine or obtaining a waiver in order to contest the charge.
- F. Wyoming Statute 7-2-107 requires officers who detain a person claiming immunity for homicide by vehicle (W.S. 6-2-106), D. U. I., or a moving violation to contact the State Department to verify immunity and to forward details of the incident to the State Department.
- G. Additional information & guidance is available from www.state.gov/documents/organization/150546.pdf.