

TALLAHASSEE POLICE DEPARTMENT

GENERAL ORDERS

 Proudly Policing Since 1826	SUBJECT Foreign Nationals and Diplomatic Immunity		 Nationally Accredited 1986
	CHIEF OF POLICE <i>Signature on file</i>		
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AUTHORITY/RELATED REFERENCES

FS Chapter 811, Unauthorized Aliens, Nationality, and Immigration
 FS Chapter 901, Arrests
 FS Chapter 908, Federal Immigration Enforcement
 General Order 6, Arrests and Alternatives to Arrest
 General Order 8, Mentally Ill Persons
 General Order 24, Substance Abuse Impaired Persons
 General Order 59, Transporting and Booking Procedures
 United States Department of State Consular Notification and Access
 1963 Vienna Convention on Consular Relations

ACCREDITATION REFERENCES

CALEA Chapters 1, 61

KEY WORD INDEX

Consular Notifications	Procedure I
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POLICY

The Department is responsible for establishing protocols which support state and federal regulations regarding interactions with foreign nationals. Officers are responsible for adhering to established protocols in making certain notifications to federal entities and foreign government representatives, and honoring international agreements regarding diplomatic immunity.

DEFINITIONS

Administrative Immigration Warrant: A form utilized by a federal immigration

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agency which names a foreign national to be deported. An administrative immigration warrant is not an arrest warrant.

Consular Notification: The obligatory process by which federal, state and local law enforcement and legal authorities provide information to foreign government representatives regarding their citizens in the United States.

Foreign National: Any person not a citizen of the United States, including persons possessing a permanent resident card (i.e., green card) and those illegally in the United States. A foreign national claiming the United States as one country in their dual citizenship shall be treated exclusively as a citizen of the United States.

PROCEDURES

I. CONSULAR NOTIFICATIONS

- A. The 1963 Vienna Convention on Consular Relations creates a legal obligation for a host country to provide consular notification when a foreign national is:
 - 1. Arrested (i.e., custodial arrest),
 - 2. Taken into protective custody (e.g., Marchman Act, Baker Act), or
 - 3. Seriously injured or deceased (by accident, criminal act or natural causes).
- B. When an officer has interactions with a foreign national as listed in subsection A above, the officer is responsible for determining if consular notification is mandatory or optional.
- C. The current list of mandatory notification countries is maintained on the United States Department of State website:

<https://travel.state.gov/content/travel/en/consularnotification.html>
- D. If the foreign national resides in a mandatory notification country, the officer shall:
 - 1. Without unnecessary delay, advise the person notification will be made to consular officials, and

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2. Make the notification before the end of their tour of duty as described in subsection J below.
- E. If the foreign national resides in a non-mandatory notification country, the officer shall:
1. Without unnecessary delay, advise the person of the option for consular notification, and
 2. If the person requests consular notification, make the notification before the end of their tour of duty as described in subsection J below.
- F. In situations where the foreign national is deceased or otherwise incapacitated, the officer is responsible for using simple and direct means (e.g., interviews, document reviews) in determining the appropriate foreign consulate to notify.
- G. Consular notification requirements apply regardless of the person's immigration status (i.e., legally or illegally in the United States).
- H. Consular notification requirements apply to adults and juveniles.
- I. Absent a circumstance mentioned in subsection A above, consular notifications are not applicable in the following situations involving a foreign national:
1. Traffic stops, traffic crash investigations and issuance of citations,
 2. Field interviews or calls for service, or
 3. Providing an alternative to arrest (e.g., Notice to Appear).
- J. When making a consular notification, officers shall do so by either calling or e-mailing the appropriate foreign consular office.
1. The telephone or e-mail communication must be made on a Department-issued device.
 2. The contact information for each country's consular office or embassy in the United States is available by either:
 - a. Clicking on the "contact info for foreign embassies & consulates" tab on the webpage listed in subsection C above, or at

- b. <https://travel.state.gov/content/travel/en/consularnotification/ConsularNotificationandAccess.html>.

- K. The protocols of this section are applicable to investigators involved in follow-up activities where a consular notification is required, but not yet made by officers.
- L. The member making the consular notification is responsible for documenting the following information in an offense report:
 - 1. The date and time the notification was made, and
 - 2. The telephone number or e-mail address used to make notification to the foreign consular office/embassy.

II. COOPERATION WITH FEDERAL IMMIGRATION AUTHORITIES

- A. The Department and its officers are responsible for adhering to FS 908.104 (Cooperation with Federal Immigration Authorities) in support of federal immigration laws, which includes:
 - 1. Making notification to a federal immigration agency when aware of an administrative immigration warrant for a person (see subsections B and C below), and
 - 2. Being cooperative with federal immigration agencies, state and local governmental entities, and law enforcement agencies regarding requested information about an officer's interactions with a foreign national.
- B. Administrative immigration warrants are entered into NCIC/FCIC and the teletype entry provides information and instructions on contacting the federal Law Enforcement Support Center (LESC) for 24/7 assistance at 802-872-6020.
- C. Except as noted in subsections E and F below, an officer is responsible for notifying the LESC when aware of an administrative immigration warrant for a person with whom they are interacting.
 - 1. The LESC will facilitate communication between the officer and the federal immigration agency and coordinate any response by a federal agent to take custody of the foreign national.

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2. Federal agents do not respond to all situations where an officer has discovered a foreign national with an administrative immigration warrant.
3. Officers are responsible for the following:
 - a. Being cooperative with the LESC and the involved federal agent(s), and
 - b. Being cognizant of the fact an administrative immigration warrant:
 - 1) Is not an arrest warrant (nor does it solely provide detention authority over the foreign national), however it can be used to develop reasonable articulable suspicion to briefly detain an individual who may be in the country illegally in violation of chapter 811. The term "articulable" means that the officer must be able to clearly express or explain the specific facts that led to their suspicion.
 - 2) Detention authority can also be based upon Florida Statute and case law for the circumstances of the situation (e.g., traffic stop, call for service/investigation, arrest, investigative stop).
- D. When a foreign national is under arrest, the officer shall adhere to the protocols of General Order 6 (Arrests and Alternatives to Arrest) and General Order 59 (Transporting and Booking Procedures), and:
 1. Not allow the notification mandate to interfere with the arrest, investigation and booking/processing of the person, and
 2. Make the notification contemporaneous to the arrest.
- E. When the foreign national is in protective custody under the Marchman Act, Baker Act, or prolonged medical clearance is necessary, officers are required to make a notification to LESC if the foreign national has an administrative warrant.
- F. FS 908.104 does not require law enforcement agencies to provide a federal immigration agency with information related to a victim of or a witness to a crime as long as the person is cooperative in the investigation.

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- G. FS 908.104 mandates law enforcement agencies that withhold information as described in subsection F above to:
 - 1. Document the victim's or witness's cooperation in the offense report(s) related to the investigation(s), and
 - 2. Retain the documentation for at least 10 years for the purpose of audit, verification or inspection by the Florida Auditor General.
- H. The protocols of this section are applicable to investigators involved in follow-up activities where notification to a federal immigration agency is required, but not yet made by officers.
- I. The member making the federal immigration agency notification is responsible for documenting the following information in an offense report:
 - 1. The date and time the notification was made,
 - 2. The federal agency notified and, if applicable, the federal agent who took custody of the foreign national, and
 - 3. Any other information the officer deems relevant to the situation.

III. DIPLOMATIC IMMUNITY

- A. Diplomatic immunity is a principle of international law granting freedom from local jurisdiction detainment, search, arrest, prosecution and incarceration afforded to duly accredited diplomatic officers and certain other persons associated with the diplomatic officer.
- B. In accordance with international agreements, diplomatic officers and persons identified below *who are not nationals of or permanently residing in the United States* are protected by unlimited immunity from arrest, detention, search and prosecution with respect to any civil or criminal offense.
 - 1. Members forming part of the household of the diplomatic officer (i.e., spouses, children until the age of 21 [until 23 if they are a full-time student at an institution of higher learning] and such other persons expressly agreed to by the U.S. Department of State), and

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2. Members of administrative and technical staff (i.e., persons who perform tasks critical to the inner workings of an embassy or foreign consular office).
- C. Diplomatic officers are defined as Ambassador, Minister, Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary and Attaché.
- D. Consular officers such as Consuls General, Deputy Consuls General, and Vice Consuls are not subject to detention, search or arrest except in the case of a felony, and only pursuant to an arrest warrant.
- E. Family members and staff of a consular officer do not have diplomatic immunity.
- F. Diplomatic immunity is not applicable to the issuance of a UTC for a traffic law infraction.
- G. The United States State Department should be notified anytime a person afforded diplomatic immunity is suspected of committing any criminal act. Contact with foreign diplomats may be reported to the Bureau of Diplomatic Security Command Center at (866) 217-2089 or (571) 345-3146.
- H. When an officer has probable cause to make an arrest, but is prevented from doing so because the person has diplomatic immunity, the officer is responsible for documenting the incident as follows:
 1. Traffic crash – Traffic crash report.
 2. DUI and other criminal traffic law violations *not involving a traffic crash* – Offense report.
 3. Non-traffic criminal violation – Offense report.

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