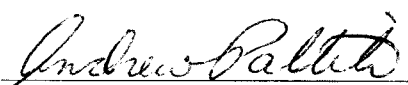


State of Vermont Agency of Human Services Department of Corrections	Title: Foreign Nationals	Page 1 of 8
Chapter Security and Supervision	# 315.02	New
Attachments, Forms & Companion Documents: 1. Mandatory Notification - Countries and Jurisdictions Chart 2. Foreign National Notification Transmittal 3. Standards for Translation of Vital Documents for Persons with Limited English Proficiency		
Local Procedure(s) Required: No Applicability: All staff (including contractors and volunteers) Security Level: "B" – Anyone may have access to this document.		
Approved:  <u>Andrew A. Pallito, Interim Commissioner</u> <u>December 1, 2008</u> Date Signed <u>December 15, 2008</u> Date Effective		

PURPOSE

The purpose of this administrative directive is to provide authority and guidance to Vermont Department of Corrections' staff regarding the intake and processing at a correctional facility of individuals who are citizens of a foreign country (foreign nationals/resident aliens). The US Department of State requires all law enforcement/correctional agencies to carry out treaty obligations of the United States pertaining to the arrest, detention, imprisonment, and death (while in custody) of specific foreign nationals in the United States.

POLICY

It is the policy of the Vermont Department of Corrections to have procedures and practices in place to ensure that foreign nationals are notified of, and are afforded the right to communicate with, their respective consular offices. Upon confinement to a correctional facility, foreign nationals have the right to communicate with their embassy/consulate of origin upon request for assistance in legal/diplomatic matters. When a foreign national is detained or arrested, the foreign national must be told of the right of consular notification and access. The Department of Corrections will notify specific embassies/consulates when individuals from specified mandatory notification countries are detained in the Department of Corrections' custody.

AUTHORITY

28 V.S.A. §102 (c)(19). *Vienna Convention on Consular Relations (VCCR), Article 36 (December 24, 1969).*

REFERENCE

American Correctional Association Standards for Adult Correctional Institutions, 4th Edition, January 2003, Standard 4-4280. American Correctional Association Standards for Adult Local Detention Facilities, 4th Edition, June 2004, Standard 6A-06. Administrative Directives #353, *Terminal Illness and Inmate Death – Facilities* and #371.01, *Americans with Disabilities Act (ADA) – Facility and Field.*

DEFINITIONS

Consular Officer or Consul: A citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country.

Dual Citizenship: Legal status of an individual who maintains citizenship in more than one country.

Foreign National/Resident Alien: A citizen of a foreign country presently in the United States under legal authority either by visitation, work permit, or visa.

Mandatory Country: Countries identified under the *Vienna Convention on Consular Relations* (VCCR) that require notification to the nearest consulate when a foreign national is detained or arrested.

Vienna Convention on Consular Relations (VCCR): A multilateral treaty that regulates the rights, privileges, and duties of consulates and consular staff worldwide.

PROCEDURAL GUIDELINES:

Upon their admission to a correctional facility after being arrested, individuals who maintain a foreign citizenship or are born outside of the United States and maintain a foreign citizenship are entitled to communicate with their respective foreign consulate. Not all countries require notification of the arrest of one of their citizens; therefore, for those countries not indicated as a mandatory notification country on the *Mandatory Notification - Countries and Jurisdictions Chart (Attachment 1)*, the individual may elect **not** to communicate with or have the Department of Corrections notify the consular officer or consulate. In all circumstances when an individual is a citizen of a country on the *Mandatory Notification Countries and Jurisdictions Chart*, correctional staff will notify the nearest consulate regardless of the wishes and desires of the individual in custody.

1. Upon admission to a Vermont Department of Corrections' facility, correctional staff will review all arrest paperwork and/or interview the arrested individual to determine the person's country of origin or citizenship. Staff will determine an individual's citizenship through a passport, alien registration paperwork, or other official legal documentation.
2. If no official paperwork is available, staff will interview the individual to determine the country in which the individual was born. For all individuals born outside of the United States, and who do not carry proof of US citizenship, correctional staff will proceed as if the individual is still a citizen of the country in which they were born.
3. For individuals who present proof of dual citizenship, in which one country's citizenship is the United States, no notification is required. For situations in which dual citizenship is provided and the individual is not a citizen of the United States, correctional staff will notify both (or all) of the countries in which the individual holds citizenship, as required by this administrative directive.
4. Once the country of origin is determined, correctional staff will notify the individual of their right to communicate with their respective foreign consulate. The Superintendent will ensure that telephone contact numbers of the nearest mandatory notification consulates/embassy offices will be available at the booking desk and that the information is updated at least annually (or more often as necessary). Contact information for non-mandatory notification countries and updated information

can be found at www.embassyworld.com.

5. In some situations, a foreign national who has obtained or applied for asylum/refugee status may not want his/her consulate contacted. This will be honored unless the person is from a country on the *Mandatory Notification - Countries and Jurisdictions Chart*.
6. **Limited English Proficiency:** For assistance with communicating with individuals with limited English proficiency, staff will:
 - a. Refer to the *Standards for Translation of Vital Documents for Persons with Limited English Proficiency (Attachment 3)* and AHS Intranet resources to identify the language spoken;
 - b. Once the appropriate language is determined, use the language interpretations found in the *United States Department of State, Consular Notification and Access Handbook* (see **Note** below) to inform the individual of their rights;
 - c. Copy the specific page in the handbook that is written in the individual's language and allow the person to read the excerpt. If the person cannot read it, a staff person will provide an in-person or telephonic interpretation of the page;
 - d. If a disability is apparent or the inmate requests any accommodation for a disability, follow the requirements of *Administrative Directive #371.01, Americans with Disabilities Act (ADA) – Facility and Field*.

Note: Each facility Superintendent will obtain and maintain a copy of the *United States Department of State Consular Notification and Access Handbook* at each booking desk and Caseworker's office for reference.

7. **Notification Process:** When an arrested foreign national requests that their government be notified of their arrest, or they are from a country which **requires** mandatory notification, the notification will be made at the time of booking as follows:
 - a. Booking Officers will immediately notify their supervisor if a foreign national is in the booking area.
 - b. The Shift Supervisor will complete the *Foreign National Notification Transmittal (Attachment 2)* and immediately contact the **nearest** consulate or official of that nation by telephone. If telephone contact cannot be made, the Shift Supervisor will fax the *Foreign National Notification Transmittal* to the consulate indicating the name of a facility Caseworker (or other staff member) who will function as the contact person for further information. The Booking Officer will retain the fax receipt and the *Foreign National Notification Transmittal* with the individual's booking papers as evidence of the communication.
 - c. If the consulate or official of the foreign national's country is unknown, the Shift Supervisor will notify the country's embassy in Washington, DC by telephone. If telephone contact cannot be made, the Shift Supervisor will fax the *Foreign National Notification Transmittal* to the country's embassy indicating the name of a facility caseworker (or other staff member) who will function as a contact person for further information. The Booking Officer will retain the fax receipt and the *Foreign National Notification Transmittal* with the individual's booking papers as evidence of the communication.

- d. The Booking Officer will record the consular notification in the booking area's logbook.
 - e. If further information is needed, the Shift Supervisor may contact the US Department of State.
 - f. Immigration and Customs Enforcement (ICE) officials or United States Marshals (USMS) who bring foreign nationals to the Department of Corrections for housing (no State charges) will retain the responsibility for consular notification regarding those individuals.
- 8. Death of a Foreign National:** The Superintendent (or designee) or the investigating authority must notify the nearest consulate of a foreign national's death while in the custody of the Vermont Department of Corrections. The Superintendent will be responsible for the notification if an investigating authority is not assigned (i.e., natural deaths). The management of an "in custody" death, notification to the foreign consulate, and notification of the next of kin must be in compliance with the procedures outlined in *Administrative Directive #353, Terminal Illness and Inmate Death – Facilities*. Such notifications will permit the foreign government(s) to make an official record of the death for their own legal purposes.
- 9. Access to Foreign Nationals:** Whenever a foreign national is arrested or detained, there are legal requirements to ensure that the foreign national's government can offer appropriate assistance.
- a. Consulate officers and their citizens are entitled to communicate in writing. Any communication by a foreign national to their consular representative must be forwarded by the appropriate correctional staff person to the consulate without delay.
 - b. Consulate staff must be given access to the detained foreign national for the purpose of visits, conversation, correspondence, and arranging legal representation. However, facility staff may require consulate officers to visit in accordance with the visiting schedule.
 - c. Foreign nationals must be provided with consulate telephone numbers and given opportunities to make telephone calls as necessary to facilitate communication.
 - d. Consulate officials may assist their citizens in obtaining legal representation. However, consulate staff are not permitted to practice law in the United States.
 - e. Consulate officers are subject to the rules of the facility and may be searched prior to entering the correctional facility.
 - f. As a general rule, conversations between a foreign national and their consulate officials should remain private, according to the VCCR. These conversations may be observed; however, they should not be recorded.
- 10.** Nothing in this directive prohibits or supersedes notification to Homeland Security or Customs Enforcement (ICE) during the booking process.

TRAINING

Current Booking Officers are required to read the directive and sign a written acknowledgement prepared by the local Training Coordinator that they understand their responsibilities in accordance with the directive. A copy will be placed in their local training file.

Superintendents will ensure that post orders for the booking area require newly assigned Booking Officers to read the directive and acknowledge their understanding in the same manner as above.

Living Unit Supervisors are required to meet with their casework staff and review the directive.

QUALITY ASSURANCE

The Director of Security, Operations, and Audits will incorporate a random sampling review of the Foreign National Notification procedures into the Security and Compliance Audits to ensure each facility is in compliance with this procedure.

MANDATORY NOTIFICATION - COUNTRIES AND JURISDICTIONS CHART*

Algeria	Guyana	Saint Vincent & Grenadines
Antigua and Barbuda	Hong Kong ***	Seychelles
Armenia	Hungary	Sierra Leone
Azerbaijan	Jamaica	Singapore
The Bahamas	Kazakhstan	Slovakia
Barbados	Kiribati	Tajikistan
Belarus	Kuwait	Tanzania
Belize	Kyrgyzstan	Tonga
Brunei	Malaysia	Trinidad and Tobago
Bulgaria	Malta	Tunisia
China **	Mauritius	Turkmenistan
Costa Rica	Moldova	Tuvalu
Cyprus	Mongolia	Ukraine
Czech Republic	Nigeria	United Kingdom ****
Dominica	Philippines	U.S.S.R. *****
Fiji	Poland	Uzbekistan
The Gambia	Romania	Zambia
Georgia	Russia	Zimbabwe
Ghana	Saint Kitts and Nevis	
Grenada	Saint Lucia	

- * For those countries not listed on the above chart, the individual may elect to communicate with or have the Department of Corrections notify the consular officer or consulate.
- ** 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.
- *** 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 US-China Agreement on the Maintenance of the US Consulate General in the Hong Kong Special Administrative Region, US officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as required for bearers of Chinese passports – i.e., immediately, and in any event within four (4) days of the arrest or detention.
- **** British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.
- ***** Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification must 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.



**VERMONT DEPARTMENT OF CORRECTIONS
FOREIGN NATIONAL NOTIFICATION TRANSMITTAL**

Date: _____ Time: _____

To: Embassy/Consulate: _____
(Country)

Faxed to #: _____

Called to #: _____

Name of Official Contacted: _____

From: Name: _____

Facility: _____

Street Address: _____

City: _____

State: _____ ZIP Code: _____

Subject: **NOTIFICATION OF ARREST/DETENTION OF A FOREIGN
NATIONAL OF YOUR COUNTRY**

**We received into custody the following foreign national, whom we understand to be a
national of your country, on _____ (date).**

Name: _____

Date of Birth: _____

Place of Birth: _____

Passport Number (PP): _____

Alien registration Number (ARN): _____

Admission Number (ADM): _____

To arrange for consular access, please call _____ or _____
between the hours of 0800 and 1700 hours. Please refer to the following Inmate ID
number or the subject's name when making an inquiry.

Inmate ID Number: _____

Charges: _____

AGENCY OF HUMAN SERVICES

STANDARDS FOR TRANSLATION OF VITAL DOCUMENTS FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

At a minimum, departments and offices within the Agency of Human Services should translate vital documents for persons with limited English proficiency. Departments and offices **must translate** all vital documents that a department or office is legally required to provide to an applicant or recipient about, among other things, information about eligibility, coverage, responsibility for payment of premiums and other costs, and fair hearings and other forms of review. On a case-by-case basis, other forms may need to be translated in addition to the vital documents. The following list provides examples of vital documents.

1. Consent Forms
2. Applications (to make available to the applicant; the application in the file would be completed in English by the worker)
3. Appeal Rights Information
4. Letters about Appointments (times and places of meetings, etc.)
5. Agreements, Acceptances of Services, Notices of Understanding, etc.
6. Notices of Decision
7. Program Requirements (requirements set forth in forms, brochures, etc., that affect a client's benefits, services, participation in a program, etc., especially if non-cooperation with the requirements has a consequence)
8. Regulations, if applicable (i.e., if participants or clients are given copies of regulations and expected to know and follow them, as they are in DAIL's Attendant Services Program, the regulations should be made available in the relevant language)

Departments and offices often send out other types of documents. For example, departments and offices may measure effectiveness through feedback supplied in surveys (routine, periodic, client and/or family satisfaction surveys, etc.). This type of document, while non-vital, is important. Departments and offices may wish to pay for the translation of this type of document.

The four most common languages in Vermont requiring translation are French, Spanish, Serbo-Croatian, and Vietnamese, followed by Russian and Swahili. Please refer to the AHS LEP resource sheet on how to arrange for the translation of the document in question with the contractor.