



JUVENILE HALL POLICY & PROCEDURE MANUAL

SECTION:
Intake & Release

SUBJECT:
Foreign Nationals

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POLICY STATEMENT

Detained youth who are known, or suspected, to be foreign nationals (i.e., citizens of another country) have the right to communicate with an official from the consulate of their country. If a youth chooses to exercise this right, the Probation Department shall provide notice of the request to such consulate and shall make reasonable arrangements for such communication to occur. In addition, the Probation Department is required to notify the consulates of certain designated countries if their citizens are arrested or detained, regardless of the wishes of the youth. Regardless, it is not within the purview of the Probation Department to inquire as to or determine the immigration status of any person in its custody.

PROCEDURES

1. GENERAL INFORMATION

- A. If a youth is in the custody of a probation officer for more than two hours, or is booked into the Juvenile Hall, Intake staff shall promptly inform the youth that he/she has a right to communicate with an official from the consulate of his/her country (hereby referred to as their Consulate).
 - i. If staff is uncertain as to the citizenship of a detained youth, staff shall apply the requirements of this policy to the youth as a suspected foreign national.
- B. If a detained youth is a citizen of a country that is a party to the Vienna Convention on Consular Relations, their Consulate is required to be notified of the arrest or detention regardless of the youth's wishes, absent exigent circumstances. Notice to Consulates is thus required to be provided to the countries set forth below, and as listed in the Consulate Notification Form*.
- C. Further information regarding the rights of foreign nationals and consulate notification is provided in the U.S. Department of State's Consulate Notification and Access booklet, a copy of which shall be located in the intake area.

2. NOTIFICATIONS

- A. Staff shall promptly advise all youth of their right to communicate with an official from their Consulate, as set forth on the Consulate Notification Form.
- B. Staff shall read the applicable notice provisions in the Consulate Notification Form to the youth and shall indicate on the form whether the youth requests the Probation Department notify their Consulate of the arrest or detention.
 - i. If notice to a youth's country is optional, then staff shall indicate on the Consulate Notification Form whether the youth requests to communicate with an official from their Consulate. If a youth is a citizen of a country that is not a party to the Vienna Convention on Consular Relations and they have



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indicated they do not want to communicate with an official from their Consulate, staff shall not notify their Consulate of their arrest or detention.

- ii. If notice to a youth's country is mandatory, then indicate on the Consulate Notification Form whether the youth believes there are special circumstances that would prevent such mandatory notification (e.g., political asylum issues). If special circumstances exist that would indicate against notifying the country, contact County Counsel for further direction prior to taking any other action.
 - iii. The completed Consulate Notification Form shall be maintained in the youth's custody file, and a copy shall be provided to the youth's parents/guardians via mail or hand delivery.
- C. Upon a youth's request to communicate with an official from their Consulate, or if mandatory notification is required, Intake staff shall provide notice to the applicable consulate without unnecessary delay.
- i. If possible, the notice to the consulate should be provided by fax, using the Notification to Consular Officers of Arrest or Detention form. Where fax notice is not possible within a reasonable period of time, telephone notice shall be provided.
 - ii. Upon request, a youth shall be provided with the telephone number of their country's closest consulate and allowed to place a call to it.
 - iii. Notice shall be provided only to the consulate office that is the closest to the Juvenile Hall.
- D. Staff shall accommodate the requests of youth, their parents/guardians, and consulate officials to communicate with each other to the extent reasonable and appropriate. Communications may occur in writing, over the telephone, or in person. Consulate officials must present valid Department of State identification prior to visiting or coming into contact with any youth in custody.
- E. If a Consulate representative wishes to obtain information about a youth, the representative shall be required to file a Petition for Disclosure of Juvenile Records, setting forth the reason(s) for the request, and secure a court order granting the representative access to the file.

3. IMMIGRATION STATUS

- A. It is not the role or responsibility of Juvenile Hall staff to determine the immigration status of a youth; rather, such determination is in the purview of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement ("ICE").
 - i. Juvenile Hall staff shall not provide copies of completed Consulate Notification



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Forms and other similar documents to ICE unless there is a valid order from the Juvenile Court authorizing the release of such information to ICE.

- ii. Similarly, pursuant to Welfare & Institutions Code sections 827 and 831, Juvenile Hall staff may provide a youth's case file and juvenile information requested by ICE including, but not limited to, information related to the youth such as name, date or place of birth, immigration status, booking charge, address, parent or guardian name and address, upcoming court date, etc., only upon the filing of an 827 petition and resulting order from the Juvenile Court authorizing the release of such information to ICE.

- B. Additional information may be provided only after consultation and approval from County Counsel. Requests for information regarding youth under probation officer supervision should be directed to the assigned probation officer. Staff may provide ICE with reasonable access to such youth for the purposes of questioning only when there is a valid waiver and/or consent for the questioning by the youth's attorney. When there is no valid waiver or consent, access shall only be allowed upon presentation by ICE of a valid court order or warrant authorizing the questioning of the youth.
- C. Staff may cooperate with federal immigration officials by responding to a Request for Notification of Release in instances where ICE has obtained a valid court order authorizing said notification to ICE, or as may otherwise be required or permitted by applicable state, federal, and local law.
- D. Youth shall not be detained beyond the time of their scheduled release on the basis of an immigration hold or at the request of ICE after the youth becomes eligible for release from custody.

REPLACEMENT HISTORY

Revised: 1/28/14; 9/22/16

APPROVED BY:

VANESSA FUCHS, Chief Probation Officer

REFERENCES

- Penal Code §§ 834c and 1016.5
- Health & Safety Code §11369



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- Welfare & Institutions Code §§ 827, 828, 831
- US Department of State Guidelines Regarding Consular Notification and Access

* Countries that require mandatory consulate notification without regard to an arrested or detained foreign national's request to the contrary include:

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

ⁱ Non-permanent residents only

ⁱⁱ United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands

ⁱⁱⁱ 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 Taipei Economic and Cultural Representative Office ("TECRO") can be notified at their request