POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

SUBJECT: **CONSULAR NOTIFICATION AND DIPLOMATIC IMMUNITY**

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PURPOSE: This policy contains instructions and guidance on consular notifications for the Sturgeon Bay Police Department along with the required procedures upon the arrest, detention, death, or serious injury of foreign nationals, and diplomatic immunity.

This Policy & Procedure consists of the following numbered sections:

I. BACKGROUND

II. POLICY

III. DEFINITIONS

IV. PROCEDURES

I. BACKGROUND

On December 24, 1969 the United States became a party to an International Treaty known as the Vienna Convention on Consular Relations (VCCR) which was first formed in Vienna on April 24, 1963. Pursuant to Article VI, clause 2 of the United States Constitution, a Treaty of which the US is a signatory has the status of law ("all treaties made shall be the supreme law of the land"). It is binding on federal, state, and local government officials to the extent that they pertain to matters within such officials' competence.

Because of its comprehensive nature and near universal applicability, the VCCR now establishes the baseline for most obligations with respect to the treatment of foreign nationals in the United States and for treatment of U.S. citizens abroad for foreign governments, and also provides immunity to persons according to their rank in a diplomatic mission or consular post and according to the need for immunity in performing their duties.

Diplomatic immunity is not meant to benefit individuals personally; immunity protects the channels of diplomatic communication by exempting diplomats from local jurisdiction so that they can perform their duties with freedom, independence, and security. Under the concept of reciprocity, diplomats assigned to any country in the world benefit equally from diplomatic immunity.

The procedures outlined in this Policy & Procedure focus primarily on providing consular notification and access with respect to foreign nationals arrested or detained in the United States, so that their governments can assist them, according to current VCCR information. The obligations of consular notification and access apply to United States citizens in foreign countries just as they apply to foreign nationals in the United States. When U.S. citizens are arrested or detained abroad, the United States Department of State seeks to ensure that they are treated in a manner consistent with these instructions, and that U.S. consular officers can similarly assist them. It is therefore particularly important that federal, state, and local government officials in the United States comply with these obligations with respect to foreign nationals here.

II. POLICY

A. It is the policy of the Sturgeon Bay Police Department to adhere to the guidance provided by the U.S. Department of State concerning consular notification and access based on VCCR treaty obligations.

Adherence to these obligations helps foreign governments provide assistance to foreign nationals arrested in the United States and helps the U.S. government protect U.S. citizens abroad. The Department shall ensure that all foreign nationals are treated with respect and provided with immunities under international law where applicable.

III. DEFINITIONS

A. ARREST/DETENTION: Any arrest, detention, or other commitment to custody which results in a foreign national being incarcerated 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. On the other hand, requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight. The longer a detention continues, the more likely

it is that consular notification requirements are triggered.

B. CONSUL OR CONSULAR OFFICER: A citizen of a foreign country employed by that government and authorized by both the sending and the host countries to provide assistance on behalf of that government to its citizens in another country. Such persons are generally assigned to a consular section of an embassy in Washington, D.C., or to a consulate in another U.S. city. Consular officers or consuls who are accredited by the U.S. Department of State bear identification cards to that effect issued by the U.S. Department of State.

C. DIPLOMAT: A foreign official at the country's embassy in Washington, D.C., assigned to represent the country. Diplomats may also perform consular functions, and should be treated the same as a consular officer.

D. DIPLOMATIC IMMUNITY: A requirement by international law under which certain foreign government officials are not subject to the jurisdiction of local courts and authorities, for both their official and, to a large extent, their personal activities. For example, diplomatic agents and members of their immediate families are immune from all criminal prosecution and most civil lawsuits. Administrative and technical staff members of embassies have a lower level of immunity. Consular officers serving in consulates throughout the country have an even lower level of immunity. Members of an embassy's service staff and consular employees are immune only for acts performed as part of their official duties.

E. FOREIGN NATIONAL: For the purposes of this policy, a foreign national is any person who is not a U.S. citizen. Lawful permanent resident aliens (or LPRs) who have resident alien registration cards (green cards) retain their foreign nationality and must be considered foreign nationals. The terms foreign national and alien are used interchangeably. Undocumented or illegal aliens are also foreign nationals.

F. INVIOLABILLTY: A principle embodied in international law that generally precludes law enforcement officials from handcuffing, arresting, or detaining certain foreign diplomatic officials, in any form, and forbids U.S. authorities from entering the residences, automobiles, or other property of protected persons. Where public safety is in imminent danger or it is apparent that a violent felony may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity or defend themselves or others from personal harm.

G. MANDATORY NOTIFICATION: As identified in this policy, certain foreign nations have entered into specific bilateral agreements with the United States requiring that their consulate or embassy be notified of any arrest or detention of a foreign national of their country regardless of the desires of the arrested or detained foreign national.

H. NOTIFICATION AT THE FOREIGN NATIONAL'S OPTION: Foreign nationals from countries that are parties to the Vienna Convention on Consular Relations (VCCR) must be provided with the option of having the consulate notified of their arrest or detention. If the detainee requests notification, a responsible detaining official must ensure that notification is given to the nearest consulate.

I. UPON REQUEST NOTIFICATION: Consular notification procedures that apply when you arrest or detain a foreign national from any country not on the "mandatory" list of countries.

IV. PROCEDURES

A. Identification

1. Officers shall identify the foreign national's citizenship in the most efficient manner possible (by passport, travel document, or diplomatic card, for example). Then determine whether that country is on the "mandatory notifications list", refer to list on Consular Notification form. If not, then they are on the "upon request list".

   a) If an arrestee or detainee indicates that he or she is a foreign national, he or she should be asked for a passport or green card as identification. Officers shall determine the foreign national's country using the identification information provided. Undocumented illegal aliens are also entitled to consular notification and access. Absent any citizenship documentation, accept the foreign national's own statement about nationality. If it is determined that the person is an illegal alien, the officers may send the information to the U.S. Immigration and Customs Enforcement (ICE) upon approval of a supervisor and document the notification in the incident report.

   b) Persons who indicate that they are U.S. citizens shall be presumed to be citizens.

   c) Persons who indicate that they are dual citizens of another country and the United States shall be treated as a U.S. citizen. In other words, consular notification is not required.

   d) Officers who suspect that a person being arrested or detained is not a U.S. citizen shall inquire about his or her nationality in order to determine whether any consular notification obligations apply. When such requests are made, the officer should explain the purpose of the inquiry.

2. Only an identity card issued by the U.S. Department of State's Office of Protocol or by the U.S. mission to the United Nations may be used as valid identification for diplomats and consular officials. The identification cards are color coded as follows:

   a) Blue border: diplomatic officers and their families

   b) Green border: embassy administrative, technical, and service staff employees

   c) Red border: consular officers, employees, or their families

3. License plates issued by the U.S. Department of State are coded to reflect the degree of immunity which the registered owner of the vehicle enjoys:

   a) Plates with a “D” prefix or suffix are issued to diplomatic missions and those members who hold diplomatic rank.

   b) Plates with a “C” prefix are issued to consular missions and career consular officers.

   c) Plates with an “S” prefix are issued to the administrative and technical staff at diplomatic missions and consular employees at consular missions.

   d) Plates with an “A” prefix or suffix are issued to official vehicles of the Secretariats of the United Nations and the Organization of American States and the personally owned vehicles of those staff members who have diplomatic status.

   These license plates are designed to assist officers identifying vehicles that belong to persons who may enjoy some degree of immunity, however, in no circumstance should the license plate be used alone to verify the status of an individual claiming immunity.

4. Foreign diplomatic passports, U.S. diplomatic visas, tax exemption cards, vehicle registration, license plates, and driver licenses should not be used to determine whether an individual enjoys immunity.

B. Consular Notification Obligations

1. Consular notification obligations are triggered upon any one of the following situations:

   a) The arrest or detention of a foreign national.

   b) The death or serious injury of a foreign national.

   c) A wreck or crash in U.S. territory of a ship or aircraft under foreign registry.

2. In cases where a foreign national is the victim of a serious crime or felony, the officer or supervisor shall ask the victim whether he or she would like consular notification to be made.

   The Federal Bureau of Investigation (FBI) shall be notified when any of the following acts have been committed against a foreign national:

   a) Murder or attempted murder

   b) Conspiracy to commit murder

   c) Manslaughter or attempted manslaughter

d) Kidnapping or attempted kidnapping

3. Consular notification procedures shall be followed even if the individual enjoys diplomatic immunity.

C. "Mandatory" versus "Upon Request" Notification

1. Those nations listed on the attachment to this policy are "mandatory" as they have bilateral treaties with the United States that require authorities to make notification to consular officials of the arrest or detention of one of their nationals, regardless of that national's wishes.

2. Mandatory notification requirements must be honored, even if the officer has reason to believe that the foreign national may suffer persecution or mistreatment by his or her government, though precautions should be taken to prevent the release of sensitive information.

3. "Upon request" foreign nationals shall be informed of the option to communicate with their consular officials whenever they are arrested or detained.

a) In most cases, foreign nationals shall have the option of deciding whether to have their consular representative notified of the arrest or detention. This applies in all cases except foreign nationals who are citizens of the states listed on the attached form of this policy.

4. The arresting officer or supervisor shall notify an arrested or detained foreign national when a mandatory notification has been made to his or her consulate or embassy.

a) The individual shall be advised that he or she is not required to accept the consulate's assistance, but that the consulate may be able to help obtain legal counsel, contact family members, and visit the individual in detention, among other things.

b) In most cases, the reason for the arrest and detention does not have to be volunteered to the consular official; it should be provided only when specifically requested by the official or when it is required under a specific provision in a bilateral treaty.

5. Under NO circumstances shall any information indicating that a foreign national has applied or is considering applying for asylum be disclosed to a foreign national's government official; contact the Department of State at (202) 485-7703 for further information in this area.

D. How to Provide Notification

1. When an officer believes that consular notification may be required, he or she should notify a supervisor. The supervisor should verify the country of origin of the foreign national and determine whether consular notification is upon

request of the foreign national or whether it is mandatory.

2. In the case of optional notifications, the supervisor or detaining officer shall ascertain whether the foreign national desires that the notification be made.

3. Statements regarding a notification may be provided to foreign nationals for review and a signature. Translations of these statements are available in the Consular Notification and Access booklet provide by the Department of State or through the State Department's Web site. If this is done, a signed copy of that form shall be retained in the arrest or booking file.

4. Notifications to consuls or embassies should be made by facsimile transmission as soon as reasonably possible and a copy of the completed fax transmission verification sheet retained with arrest or booking records. A suggested fax sheet for notification to foreign consuls and a list of foreign embassies and consulates in the United States with contact information is provided on the State Department's Web site.

5. The prosecutor's office should be notified whenever a consular notification has been made.

6. Consular officials shall also be notified in the foregoing manner upon the death or serious injury of a foreign national that comes to the attention of the Department and in incidents involving wrecks or crashes in U.S. territory of ships or airplanes registered to foreign countries.

7. The Department shall keep a written record of each instance a consul has been contacted to demonstrate that it has complied with the notification requirements set forth by the U.S.

E. Detaining Foreign Nationals and Immunity

1. When legal grounds permit, officers should detain an individual who is unable to produce valid identification but claims diplomatic immunity. He or she shall be informed of the reason for the detention until the U.S. Department of State's Office of Protocol (202-647-1985 during business hours or Bureau of Diplomatic Security, 202-647-7277 after business hours) can confirm the proper identity.

2. Officers shall request a supervisor when arresting or detaining an individual who claims to be a foreign national, consul, or diplomat regardless of the individual's immunity status.

3. If a person claims immunity when arrested or detained, the burden of proof shall be on the individual to provide proper identification. Officers shall notify a supervisor and make all reasonable attempts to verify the individual's claim of immunity.

4. Until an individual's status of inviolability has been confirmed in situations that warrant criminal arrest, the individual shall be handcuffed and searched if he or she could reasonably pose a threat.

5. Once the individual's status of immunity has been confirmed, he or she shall be released immediately, and the incident shall be fully documented in accordance with this policy.

6. Officers shall prepare cases carefully and completely, and document each incident properly 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 immunity from the sending State if the prosecutor advises that but for such immunity he or she would prosecute or otherwise pursue the criminal charge.

7. A copy of the incident report shall be forwarded to the U.S. Department of State.

F. Consular Access to Detained Foreign Nationals

1. The Department shall provide consular officers with reasonable access to detainees who request such access consistent with the Department's policy and procedures governing visitation of detainees.

   a) Consular officers and diplomats must have proper identification to gain access to the Department and access the detainee. They should present identification cards issued by the Department of State.
   If there is any reason to question the authenticity of any identification card(s), the Department of State should be contacted at (202) 647-1985 or after hours at (571) 345-3146 or (866) 217-2089.

2. Authorized personnel shall permit the transmission of communications from foreign nationals to their respective consular official provided the transmissions are of reasonable duration and frequency.

3. Consular officials shall not serve as legal counsel for their foreign national constituents and do not retain attorney-client privileges. However, consular officials may be allowed to converse privately with their constituent if they so request and the request can be reasonably accommodated.

4. Consular officers may provide the following types of assistance to a detainee under the terms of international agreements, although such services vary by the capabilities of country representation in the United States:

   a) Determine the detainee's situation and needs.

   b) Arrange for legal counsel and monitor case progress.

   c) Contact authorities concerning the conditions of confinement and bring personal items to the detainee as permitted by Departmental policy.

   d) Contact the detainee's family on his or her behalf.

G. 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 or email if possible, and by telephone if not. You may use the sample fax sheet available at *travel.state.gov/CNA.*

H. Reference Information on notification requirements, procedures, and contact numbers may change. The U.S. Department of State Web site at www.travel.state.gov/law/consular/consular_753.html shall be consulted periodically to update information on the following:

1. Requirements pertaining to foreign nationals

2. Steps to follow when a foreign national is arrested or detained

3. Mandatory notification countries and jurisdictions

4. Suggested statements to arrested or detained foreign nationals

5. Suggested translation procedures

6. Suggested fax sheet and telephone and fax numbers

7. Consular identification cards

I. Traffic violations for Persons with Immunity

1. Officers shall issue traffic citations as normal to individuals with immunity. However, the individual is not required to sign the citation.

2. Officers shall forward a copy of the citation along with any other pertinent documentation to the U.S. Department of State as soon as possible.

3. Officers shall give the option to cited individuals, for payable offenses, of paying the fine or obtaining a waiver in order to contest the charge.

4. Officers shall contact the U.S. Department of State in serious incidents such as OWI, personal injury, or accidents by telephone.

5. Officers shall follow departmental policy in cases involving OWI but may not force the individual to comply with sobriety tests. If the officer feels the individual is too intoxicated to drive, either of the following measures may be taken:

a) Take the individual to the police department where he or she may recover sufficiently enough to drive.

b) Summon, or allow the individual to summon, a friend or relative to drive.

c) Summon a taxi or other transportation.

d) With supervisory approval, provide transportation for the individual.

6. The officer shall not impound the individual's vehicle for a traffic violation, but may remove a vehicle from obstructing traffic or endangering public safety.

7. The officer shall not search or seize any items from the individual's vehicle.

8. If a vehicle that is owned by a foreign national is suspected of being stolen or used in a crime, the officer shall request vehicle documentation. If it is determined that the vehicle is stolen or has been used in a crime, the vehicle may be searched and impounded.

9. The officer shall forward a copy of the violation to the U.S. Department of State promptly after an incident.

Clinton Henry
Chief of Police

This Policy & Procedure cancels and supersedes any and all previous written directives relative to the subject matter contained herein.

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