

ARREST/DETENTION OR DEATH OF FOREIGN NATIONALS

14.01 PURPOSE

The Pennsylvania State Police (PSP) recognize the maintenance of public trust and confidence is foundational to effective, efficient delivery of police services to the communities we serve. Since its adoption in 1929, our Call of Honor dictates we enforce the law without consideration of class, color, creed or condition.

This regulation provides procedures for Department personnel to follow regarding the interaction with, the arrest/detention of, or the death of foreign nationals (FNs). The notification procedures contained herein are based on United States (U.S.) Department of State guidelines concerning U.S. international treaty obligations, which are legally binding.

14.02 DEFINITION

For the purposes of this regulation, an FN is defined as a citizen/national of a foreign country, regardless of immigration status, while in the U.S.

14.03 PROCEDURES DURING A TRAFFIC STOP, ARREST, OR DETENTION OF A FOREIGN NATIONAL

A. Members:

1. Properly identify the FN.
 - a. If a member is unable to identify the FN, the member shall utilize all available tools, as reasonably necessary, including federal databases, to identify the operator/individual; to include an Immigration Alien Query (IAQ) via the CLEAN PortalXL INS/LESC file folder, IAQ query screen function.
 - b. It is appropriate to respond to requests contained within the Immigration Alien Response (IAR) message and ascertain the nature of any further assistance Immigration and Customs

Enforcement (ICE) is requesting to determine if ICE is seeking custody of the FN. Regional ICE contact information may be obtained from the Department Watch Center.

- c. If an FN cannot be properly identified upon exhausting the aforementioned demographic queries, members may consider the utilization of Livescan to determine the existence of identifying information and/or warrants in biometric databases.
2. Complete a CLEAN/NCIC check to determine if the motor vehicle operator or other person legally detained/arrested is entered as a wanted person.

NOTE: Passengers in vehicles stopped for a violation of the Pennsylvania Vehicle Code shall not be summarily questioned regarding immigration status. Passengers shall not be asked for identification on the sole basis of determining immigration status and shall not be detained solely for questioning related to their or another person's immigration status.

3. Notify the Communications-Desk Unit of the encounter and provide the Police Communications Operator, or member assigned to the communications desk, with the operator's/individual's information.
4. Complete the appropriate reporting requirements according to the nature of the incident, to include the Undocumented Foreign National Contact text template within the Records Management System (RMS) (refer to Appendage A for further instructions). Regardless of the Computer-Aided Dispatch (CAD) Call Type Code classification, the minimum reporting requirement for all contacts with FNs shall be the General Offense – Assignment Report (GO-AR), or other appropriate investigative report, as circumstances dictate. Absent a more specific CAD Call Type Code, the GO-AR shall be generated under CAD Call Type Code "Other-Other."
5. Copies of any associated Traffic Citations or written warnings issued in accordance with FR 6-7, Uniform Traffic Law Enforcement, and all other related

attachments, shall be attached to any FN-related report, as follows:

- a. For RMS Phase I-trained members, these items shall be attached via the “CAD Call Maintenance,” “Attachments,” “Add” procedure.
 - b. For RMS Phase II-trained members, all attachments shall be scanned and attached to the associated GO or GO-AR in accordance with RMS Phase II training.
6. Members shall not attempt to detain or arrest an FN based solely upon immigration status.
 7. Members are prohibited from engaging in the indiscriminate questioning of an FN regarding their legal status in the U.S. without reasonable suspicion of criminal activity or violation of the law.
 8. In the course of daily law enforcement duties, including those instances evolving from a violation of the Pennsylvania Vehicle Code, the detention of an FN may not be prolonged beyond the time necessary to address the reason for the encounter or violation itself and/or to properly identify the individual; except in cases where there is a reasonable basis for suspicion of criminal activity. In those instances, the traffic stop and/or detention may be reasonably extended to eliminate or confirm the suspicion of criminal activity.
 9. Administrative Immigration Warrant:
 - a. Members shall not stop, detain, search, arrest, extend an encounter beyond its initial purpose, or otherwise take into custody an FN based solely on an administrative immigration warrant.
 - b. Once the interaction with the FN is completed, the member may contact the ICE call center and provide pertinent information; documenting same on the appropriate report.

NOTE: Administrative immigration warrants are civil in nature; therefore, the suspicion, knowledge, or evidence of an administrative immigration

warrant *does not*, in and of itself, constitute reasonable suspicion of criminal activity.

10. Criminal, Traffic, and Criminal Immigration Warrants:

- a. If a member determines there is a criminal warrant, traffic warrant, or criminal immigration warrant for the FN, the individual shall be detained and confirmation with the issuing authority shall be made, ensuring the warrant is both active and issued for a criminal or traffic offense.
- b. Upon confirmation of the warrant, the individual shall be arrested and handled pursuant to the Pennsylvania Rules of Criminal Procedure.

B. Criminal and Traffic Violations:

1. If during the investigation, it is determined that the FN is in violation of a Pennsylvania criminal or traffic law, the individual shall be subject to arrest/detention based upon the nature of the alleged violation(s), in accordance with the applicable Pennsylvania Rule(s) of Criminal Procedure.
2. If the FN is incarcerated based upon a PSP arrest, ICE shall be notified of the detention facility where the individual is being housed.
3. Certain diplomats and consulars are given extraordinary privileges and immunities. While these ranking officials are considered FNs, some may be immune from arrest/detention for various offenses. The U.S. Department of State created Appendage B to provide guidance in this area. The procedures for the arrest/detention of an FN do not apply to a diplomat or consular who is immune to arrest.

C. Liquor Enforcement Officers (LEOs):

1. Contact the Communications-Desk Unit of the nearest Troop Headquarters/Station. The LEO shall request a supervisor be notified of the incident and request a member respond to the scene.

2. Complete the appropriate reporting requirements, according to the nature of the incident, within the Incident Tracking System. The responding member shall complete the Undocumented Foreign National Text Template within the RMS.
- D. Motor Carrier Enforcement Officers (MCEOs) and Motor Carrier Enforcement Supervisors (MCESs):
1. During a traffic stop, arrest, or detention of an FN the MCEO or MCES shall:
 - a. Immediately notify the enlisted member assigned with them.
 - b. If working independently (i.e., there is no enlisted member present at the scene), immediately notify a supervisor at the nearest Troop Headquarters/Station of the situation and request that a member respond to the scene. MCEOs and MCESs shall not attempt to detain or arrest an FN based solely upon FN status.
 2. The accompanying/assisting member shall be responsible for completing the necessary reporting requirements in accordance with this regulation.
- E. Communications-Desk Unit Personnel:
1. Conduct the necessary IAQ Query via the CLEAN Portal XL INS/LESC file folder, IAQ query screen function, as required.
 2. Relay the query results to the requesting member/enforcement officer.
 3. Coordinate communications with ICE as requested and set forth in the IAR. Contact the Department Watch Center to obtain the regional ICE contact information if the response information is ambiguous or incomplete.
 4. Ensure the IAQ entries, IAR, and all associated documents are attached to the CAD Call via the "CAD Call Maintenance," "Attachments," "Add" procedure (in similar fashion to the current practice of attaching PennDOT-related returns).

F. Supervisors:

1. Ensure member/enforcement officer contacts with FNs are conducted and reported in accordance with this regulation.
2. Render assistance to members/enforcement officers during FN encounters, as necessary.
3. Liaison with ICE personnel during incidents, as necessary, to facilitate compliance with the directives provided in this regulation.
4. Ensure significant FN-related incidents are reported on the Electronic Daily Command Report.

14.04 LANGUAGE BARRIERS

If there is a language barrier to communication during an encounter with an FN, members/enforcement officers shall reference the RMS eLibrary for further instruction when communicating with a Limited English Proficiency individual.

14.05 NOTIFICATIONS

- A. For purposes of the following notification requirements, the U.S. Department of State's Assistant Legal Advisor for Consular Affairs advises that the issuance of a citation or the escorting of an FN defendant to post security or payment of a citation shall not be considered an arrest/detention. However, the taking of an FN defendant for an immediate summary trial shall be considered a detention.
- B. Whenever FNs are arrested/detained, members shall IMMEDIATELY advise the FN of their right to have their government notified concerning the arrest/detention. When practicable, this advisory shall be documented on the Foreign National Advisory, Form SP 7-0075 (refer to Appendage C).
 1. If applicable, the advisory should be provided to the arrested/detained FN during their Miranda warnings and documented on the appropriate report corresponding to the incident.

2. In cases where the arrested/detained FN is able to communicate in English, they shall be asked to read and sign their response in the appropriate section of the Foreign National Advisory form, as part of the standard warnings review and acknowledgments.
 3. In instances requiring the use of an interpreter, the name and signature of the interpreter and the response of the arrested/detained FN shall be documented in the appropriate section of the Foreign National Advisory form. In instances where the interpreter is unable to provide a signature, their name shall be printed in the appropriate section of the form, and the method of communication (e.g., telephone) shall be documented, in writing, on the signature line.
 4. Members shall ensure they use the appropriate section of the Foreign National Advisory form, as applicable, for mandatory and non-mandatory notification countries. Refer to Appendage D for the list of countries for which consular notification is mandatory.
- C. The Treaty of Vienna does not specify when the advisory must be given; therefore, if the arrested/detained FN provides a statement prior to the advisory, either voluntarily or after being provided Miranda warnings, the advisory may be provided afterwards and shall be documented.
- D. Notification to a foreign government shall be made WITHOUT DELAY when:
1. An FN requests that notification be made to their government.
 2. That foreign government requires mandatory notification when their nationals are arrested/detained (refer to Appendage D). In these instances, FNs have NO CHOICE regarding such notification; however, they shall be advised that their government has been notified.
 - a. Under no circumstances shall an FN's government be advised that they may have applied for asylum in the U.S. or elsewhere.

- b. Refer to Appendage E in all instances involving arrested/detained FNs of Mexico.
 3. An incident involving the death of an FN is investigated by a member.
- E. When notification is to be made to a foreign government:
 1. The member shall IMMEDIATELY notify their shift supervisor.
 2. The shift supervisor shall ensure that the appropriate Section/Station Commander, or designee, is contacted and provided with all information regarding the arrest/detention or death of the FN.
 3. The Section/Station Commander, or designee, shall ensure that the appropriate foreign consulate or embassy is contacted and provided with all information regarding the arrest/detention or death of the FN. A comprehensive list of foreign embassies and consulates can be found at the following website: <https://www.usembassy.gov/>. If the website cannot be accessed, urgent telephone inquiries, after normal business hours, may be made to the U.S. Department of State Operations Center at 202-647-1512.
 4. The notification should follow the arrest/detention process and shall be documented on the appropriate report corresponding to the incident. The documentation shall include the date and time of the notification; the name of the notifying member; and the name, title, telephone number, and address of the notified foreign consulate representative.
 5. A notification letter shall also be sent to the foreign consulate, containing the FN's complete name; date and time of the arrest/detention or death; place of arrest/detention or death; all charges, if applicable; location of the FN; the name of the foreign consulate representative originally notified; and the name and telephone number of the member. A copy of the notification letter shall be attached to the appropriate report corresponding to the incident.

6. In instances of off-business hours notifications, all contact attempts and voice messages shall be documented. A follow-up call shall also be made to a "live" foreign consulate representative.
- F. Incidents involving FNs designated as foreign officials, official guests of the U.S., or internationally protected persons require notification to the Federal Bureau of Investigation (refer to AR 7-13, Protection of Foreign Officials, Official Guests of the United States and Internationally Protected Persons).
- G. All notifications shall be recorded on the appropriate report corresponding to the incident.

14.06 ACCESS TO ARRESTED/DETAINED FOREIGN NATIONALS

- A. Subject to correctional and local procedures, regulations, and laws, Foreign Consular Officers shall have the right to:
 1. Visit their nationals who are in prison, custody, or detention.
 2. Converse and correspond with their nationals.
 3. Arrange for legal representation of their nationals, consistent with court rules and procedures.
- B. Members shall document, on the appropriate report corresponding to the incident, if the arrested/detained FN(s) does not desire contact or assistance from their Foreign Consular Officer(s).

RMS FN Contact Text Template Procedures for Members

The FN Contact text template shall be used by members to report FN contacts during traffic stops, arrests, or detentions of FNs. Members shall utilize the FN Contact text template to ensure:

- A. The Troop and Station where the incident/encounter occurred is listed in the "Troop" and "Station" fields.
- B. The reason for the initial detention is listed in the "Reason For Initial Detention And Enforcement Action" field.
- C. Details of the encounter are documented in the "Detention And Enforcement Action Synopsis" field.
- D. The reason the individual was taken into custody is documented in the "Why Is Foreign National Being Taken Into Custody?" field.
- E. The date and time Immigration and Customs Enforcement (ICE) was notified is documented.
- F. An Immigration Alien Query (IAQ) is run via the CLEAN PortalXL INS/LESC file folder, IAQ query screen function, and is scanned, uploaded, and attached to the appropriate GO Report.
- G. The person entity information for the individual is listed in the "Related UFN" field.
- H. Race is listed in the "Race" field.
- I. Ethnicity is listed in the "Ethnicity" field.
- J. The vehicle information, if any, is listed in the "Related Vehicle" field.
- K. The final outcome of the detention/encounter is listed in the "Final Outcome of Detention" field.
- L. The name and badge number of the ICE official contacted is listed in the "ICE or Other Immigration Official Name" and "Badge Number" fields.
- M. The location the FN is taken to is documented in the "Location FN Being Taken To" field.
- N. Any other information pertinent to detention/encounter is documented in the "Additional Comments" field.

- O. A separate FN Contact text template is prepared for each FN contact associated with the encounter.

NOTE: To facilitate the necessary supervisory review, regardless of the CAD Call Type Code classification, the minimum reporting requirement for all contacts with FNs shall be the General Offense – Assignment Report (GO-AR), or other appropriate investigative report, as circumstances dictate. Absent a more specific CAD Call Type Code, the GO-AR shall be generated under CAD Call Type Code “Other-Other.” Paper copies of any associated Traffic Citations or written warnings, and all other related attachments, shall be scanned, uploaded, and attached to the appropriate GO report.