

7 FAM 020 AUTHORITIES

(CT:CON-407; 06-29-2012)
(Office of Origin: CA/OCS/L)

7 FAM 021 SUMMARY

(CT:CON-106; 06-06-2005)

Consular authority to provide protection and services for U.S. citizens and nationals abroad is derived from various treaties, law, regulations, Executive Orders and inter-agency agreements. Authority for specific consular services addressed in other chapters of 7 FAM is detailed in those chapters.

7 FAM 022 TREATY AUTHORITY FOR CONSULAR PROTECTION

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- a. When you are newly assigned to a country as a consular officer, you should learn whether the country is a party to the multilateral Vienna Convention on Consular Relations of 1963 (VCCR). Also determine whether a bilateral consular convention is in force between the host country and the United States. (See Treaties in Force available on the Department of State Internet page). (See the Treaties feature on the CA/OCS Intranet page and the CA Internet Bilateral Consular Conventions feature). *CA/OCS/L* can assist posts in obtaining copies of treaties not yet available on-line. Contact us at Ask-OCS-L-Dom-Post@state.gov.
- b. **Signatory v. Party. Signature** is an expression of interest and general agreement with the text of a treaty, but does not convey a State's consent to be bound by it. A State which has signed a treaty which is subject to ratification is not obliged to ratify. (Art.12 (2) (b), Vienna Convention on the Law of Treaties) A **party** is a State which has consented to be bound by the treaty and for which the treaty is in force. (See the Treaties feature on the CA/OCS Intranet page).

Note: just because a country is a signatory to a treaty does not necessarily mean that the treaty is in force for that country.

- c. **Basic Consular Functions:** Article 5 of the VCCR enumerates the consular functions regarding protection of nationals and other services, including:

- “(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law
 - “(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State
 - “(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the **interests of minors and other persons lacking full capacity** who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons
 - “(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defense of their rights and interests”
- d. **Consular Notification and Access:** Because of its near universal applicability, Article 36(1)(b) of the VCCR establishes the baseline for consular notification and access. This article provides that if a national of the sending State is “arrested or committed to prison or to custody pending trial or is detained in any other manner”, that individual must be informed of the right to consular notification and access. If the national requests consular notification and access, the host country must inform consular officials of the home country “without delay.”
- e. **“Without Delay”:** The Department has interpreted the term “without delay” in the VCCR as meaning, generally, that there should be no deliberate delay, and notification should occur as soon as reasonably possible under the circumstances. The Department believes that notification within 24 hours would, prima facie, be considered to be “without delay” and that notification within 72 hours would, in most circumstances, be considered to be “without delay.” The Department similarly considers notification within 24-72 hours to be timely under bilateral consular treaties unless the language of the bilateral agreement specifies a different time frame. Under the VCCR, the form of notification is not specified and may take any form reasonably calculated to relay the relevant information to the consular officer so that the officer may take necessary steps to provide consular protective services, including requesting and gaining consular access. Thus, notification may be in writing (by diplomatic note, letter, or any other writing) or orally (in person or, for example, a message left on an answering machine). Faxing

or e-mailing the notification to the consular officer can greatly expedite receipt of notification and should be encouraged. The Department believes that to be useful, the notification should, at a minimum, provide the name and place of detention of the foreign national, and instructions for obtaining additional information should the consular officer wish to do so. Posts may also encourage host governments to provide other details known to the host government, such as date and place of birth, passport information, and any other information which could be helpful to the consular officer such as the charges or allegations against the detainee. Only a few of our bilateral agreements address the nature of the information to be provided. Posts should assess whether an impermissible delay in notification has occurred whenever post becomes aware that an American citizen has been detained. If a delay has occurred, post must report that delay to the Department and seek guidance before protesting the matter.

- f. **Minors, Deaths, Disasters:** Article 37 of the VCCR, Information In Cases Of Deaths, Guardianship Or Trusteeship, Wrecks And Air Accidents, provides that “If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:
- “(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred
 - (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments
 - (c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence”
- g. **Bilateral Consular Conventions:** Numerous bilateral consular conventions and older friendship, commerce and navigation agreements are also in force. (See Treaties in Force on the Department of State Internet home page to confirm whether a bilateral consular convention or other agreement exists). (See the CA/OCS Intranet page treaties feature for copies of most bilateral consular conventions, or contact [CA/OCS/L](mailto:CA/OCS/L@Ask-OCS-L-Dom-Post@state.gov) at Ask-OCS-L-Dom-Post@state.gov).

7 FAM 023 U.S. LAWS, REGULATIONS AND EXECUTIVE ORDERS

(CT:CON-106; 06-06-2005)

On April 14, 1792, the 2nd Congress enacted An Act Concerning Consuls and Vice-Consuls, Sess. I, Ch. 24. Current U.S. laws related to protection of citizens abroad include:

- 22 U.S.C. 1731 Protection to Naturalized Citizens Abroad
- 22 U.S.C. 2671(b)(2)(A) Evacuations, Warden Systems
- 22 CFR 71.1 – Protection of Americans Abroad
- 22 CFR 71.6 – Services for Distressed Americans
- Executive Order 13074, signed February 9, 1998, 63 Federal Register 7277, Coordination between Departments of State and Defense for protection and evacuation of U.S. citizens in threatened areas overseas
- Executive Order 12656, signed November 18, 1988, 53 Federal Register 47491, Assignment of Emergency Preparedness Responsibilities, provides that “the Department of State is responsible for the protection of U.S. citizens abroad, and for safeguarding their property.” (See 7 FAM 1800 Crisis Management and 7 FAM 600 Property).

7 FAM 024 DELEGATIONS OF AUTHORITY

(CT:CON-152; 01-11-2007)

Presidential delegations of authority and Secretary of State delegations of authority are available on the U.S. Department of State Directives Management Intranet page. Delegations of authority related to American Citizens Services work include:

- DA-261 - Delegation by the Secretary of State to the Assistant Secretary for Consular Affairs - The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption Act of 2000 (From S to CA)
- DA-173 - Delegation to the Director of the Office of Citizens Consular Services - Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act. (From CA to CA/OCS)
- DA-172 - Delegation of Authority with Respect to Performance of the Functions of Central Authority under the Hague Convention on

the Civil Aspects of International Child Abduction. (From S to CA)

- Delegation of Authority With Regard to Declaration of Foreign Countries to be Reciprocating Countries Under Section 371 of Public Law 104-193 and Conclusion of Related Executive Agreements (Child Support Enforcement) (From S to L and CA in coordination with each other September 5, 1997).

7 FAM 025 NON-BINDING U.N. RESOLUTIONS AND OTHER INSTRUMENTS

(CT:CON-106; 06-06-2005)

Posts should be familiar with various non-binding United Nations Resolutions and other instruments related to the treatment of persons, including, but not limited to, prisoners, the mentally ill, mentally retarded, minors and victims of crime.

7 FAM 026 INTER-AGENCY AGREEMENTS

(CT:CON-106; 06-06-2005)

Several inter-agency agreements related to consular protection functions. They are:

- Memorandum of Agreement between the Departments of State and Defense on The Protection and Evacuation of U.S. Citizens and Nationals and Designated Other Persons from Threatened Areas Overseas, signed on July 2, 1998 by then Under Secretary of State Thomas R. Pickering and on July 14, 1998 by then Under Secretary of Defense Walter B. Slocombe
- Memorandum of Understanding between the Department of State and the National Transportation Safety Board (NTSB) concerning assistance to families following transportation disasters signed June 2, 1997
- Memorandum of Understanding between the Department of State, Bureau of Consular Affairs, and the U.S. Department of Justice, Office for Victims of Crime and the Federal Bureau of Investigation concerning responding to victims of international terrorism signed March 19, 2003

7 FAM 027 THROUGH 029 UNASSIGNED