

7 FAM 340

MENTAL ILLNESS AND OTHER CASES OF CITIZENS LACKING FULL MENTAL CAPACITY

(CT:CON-120; 12-06-2005)
(Office of Origin: CA/OCS/PRI)

7 FAM 341 INTRODUCTION

(CT:CON-120; 12-06-2005)

- a. Assisting U.S. nationals suffering from mental illness, developmental disorders or other conditions resulting in a lack of full mental capacity in a foreign country can be one of the most difficult aspects of American Citizens Services work. The Department, specifically the Bureau of Consular Affairs (CA), has clear authority to protect the welfare of U.S. nationals who are outside the United States, particularly when there is any indication that their health and safety could be at risk. Our responsibilities for U.S. nationals suffering from mental illness or otherwise lacking full capacity are all the greater for their inherent vulnerability and need for protection. Most persons suffering from mental illness manage their illnesses with treatment and live productive lives. Most are not violent. All should be treated with dignity and respect. We are aware, however, that many of the cases that come to the attention of U.S. consular officers involve very troubled individuals, who frequently do not have private resources to turn to for assistance. It is not possible for you to predict the behavior of such individuals. This subchapter provides some guidance for dealing with the problems of mentally ill or incapacitated citizens/nationals abroad.
- b. Host country authorities may approach you about a U.S. citizen or non-citizen national who lacks full mental capacity. Foreign countries do not usually take legal jurisdiction over a person lacking full mental capacity who is not a national or a permanent resident. Unless the individual has committed a serious crime, it is extremely rare for a foreign court to make a finding of mental incompetence. Commitment to a foreign mental hospital for observation and treatment may occur, but usually only after specific behavior indicates to local authorities that the person may be a danger to him/herself or others. Deportation is an option, but most countries are not willing to bear the expense of returning the individual to his or her own country. Remember to make sure that you share

information on U.S. citizens/non-citizen nationals with host country authorities only in accordance with the Privacy Act, (see 7 FAM 066).

- c. It is important that local authorities understand that you cannot compel a mentally ill or incapacitated U.S. national to return to the United States.
- d. 45 CFR 211.3 sets forth the particulars regarding the “certificate of mental incompetence” needed by HHS/ISS-USA in order to provide temporary mental health assessment and resettlement assistance upon return to the United States. Obtaining a medical finding of incompetence by a foreign attending physician or legal authority can be difficult. The Department of State (CA) **has not** authorized consular officers to execute a certificate of incompetence as provided for by 45 CFR 211.3.
- e. If the host country will facilitate matters by deporting or expelling the individual, or canceling the individual’s tourist entry status or visa, and an attending physician will provide a written statement that the individual was in a named foreign country and was in need of care and treatment in a mental hospital (45 CFR 211.3), a consular officer can make arrangements for the reception and resettlement of the individual by mental health authorities in the United States for a brief period. (See 7 FAM 380 regarding the availability of repatriation loans.)
- f. HHS/ACF/ORR, which is charged with the reception and resettlement function concerning mentally ill citizens returning from overseas, advises that there is **no procedure** in the United States for long-term confinement of a U.S. national repatriated from abroad, unless that individual exhibits dangerous behavior when in the presence of U.S. state officials in the United States.
- g. Under certain circumstances, a U.S. national who committed a serious crime abroad, but found to be mentally incompetent by a court might be eligible to transfer to the United States under an applicable prisoner transfer treaty, (see 7 FAM 480).

For General Background See ...

National Institute of Mental Health

7 FAM 342 RECOGNIZING MENTAL ILLNESS

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Consular officers are not physicians, mental health experts, or social workers, and are not expected to diagnose possible mental illness. You are experienced interviewers and observers of human behavior in the consular context. Use these skills in your reporting regarding U.S. citizens abroad who may be suffering from mental illness. Often these U.S. citizens have

encountered problems in other countries. Check the ACS system and confer with CA/OCS/ACS to ascertain whether the Department or other posts have assisted this U.S. citizen/national in the past.

7 FAM 343 TRANSPORTING THE MENTALLY ILL BY AIR

(CT:CON-120; 12-06-2005)

- a. The Federal Aviation Administration's Advisory Circular AC 120-34 - Air Transportation of Mental Patients issued June 29, 1977, provides guidelines to organizations and persons responsible for transportation of mental patients and outlines the responsibilities of those escorting such persons. This is non-binding guidance to U.S. flag carriers and all planes arriving in and leaving U.S. airports. 7 FAM 362 provides specific guidance on medical escorts.
- b. Other countries have issued guidelines on the transport of patients with mental illness. See, for example, Transport of Patients with Mental Illness in Queensland, February 2003 (Australia). Posts should be familiar with host country laws and regulations on this subject, and share this information with your counterpart in CA/OCS/ACS.
- c. Many countries follow the International Air Transport Association (IATA) Resolution 700 – Acceptance and Carriage of Incapacitated Passengers guidelines and require the use of the Medical Information Sheet (MEDIF) by responsible family members, guardians or attending physicians in providing information about such patients/persons. IATA member airlines require medical clearance by the medical department/adviser of the airline if there is an indication that a passenger may be suffering from any disease, physical or mental condition, which may adversely affect the welfare and comfort of other passengers and/or crew members; be considered a potential hazard to the safety of the aircraft; require medical attention and/or special equipment during the flight; or be aggravated by the flight.

7 FAM 344 CONCERNS FOR SAFETY OF CONSULAR PERSONNEL

(CT:CON-120; 12-06-2005)

- a. While you should make every effort to assist U.S. nationals in distress, do not place yourself at risk. If an individual has a history of violence or displays erratic behavior with escalating aggression, and/or you have any reason to be concerned for your safety or the safety of your staff, contact

the regional security officer (RSO), Marine Security Detachment, or local guards (if the RSO is not available). It may be necessary or advisable to have the RSO or local guards present when you interview the individual, and, in some cases, to ask them to restrict the individual's access to post.

- b. If you are visiting a mentally ill U.S. citizen/national in a jail or hospital, you may wish to request prison or hospital personnel to accompany you.
- c. Threatening behavior targeted at official personnel outside post premises should be brought to the attention of the RSO, who may need to notify local authorities. Posts should notify CA/OCS/ACS in advance of notifying local authorities about violent or threatening behavior of private U.S. citizens/nationals if at all possible. CA/OCS is available 24 hours a day, 7 days a week through our duty officer program through the State Department Operations Center at 202-647-1512 and in CA/OCS at 202-647-5225.

7 FAM 345 PUBLIC SAFETY OF OVERSEAS AND U.S. COMMUNITY

(CT:CON-120; 12-06-2005)

- a. Host countries should not deport or otherwise return a violent mentally ill U.S. citizen to the United States without having made prior proper arrangements for coordination, escort and reception in the United States.
- b. In cases involving the travel of U.S. nationals with a history of violent behavior who may be suffering from mental illness, consular officers must be concerned not only for the safe return of the patient, but for the public safety. CA/OCS has assisted posts in a series of cases involving U.S. nationals who committed extremely violent or potentially deadly acts – including murder, threats against aircraft and airline personnel, discharging a firearm in an airport, and the manufacture of homemade incendiary devices. In these cases, Post and CA/OCS/AC, work closely with Diplomatic Security (DS) and federal and state agencies, foreign authorities and airlines on questions of public safety and the expulsion, deportation, repatriation, voluntary return or prisoner transfer of a person who committed a serious criminal offense abroad but was found to be mentally ill. Release of information about the patient was consistent with the Privacy Act, (see 7 FAM 060).

7 FAM 346 CONSULAR NOTIFICATION AND ACCESS REGARDING ANY FORM OF DETENTION OF MENTALLY ILL

CITIZEN/NATIONAL

(CT:CON-120; 12-06-2005)

- a. Persons who are experiencing mental health problems or who otherwise lack mental capacity can be especially vulnerable. Detained mentally ill U.S. citizens/nationals may be susceptible to injury and death in foreign custody, particularly if the illness is not understood.
- b. You should immediately convey post's concern about the welfare of a U.S. citizen/non-citizen national in such circumstances to host country authorities to ensure that adequate protective measures are taken to secure the citizen's welfare.
- c. Such cases should be immediately reported to CA/OCS/ACS, which will provide specific guidance to your questions on this issue. Articles 5, 36 and 37 of the VCCR include specific provisions about consular access, notification and consular responsibilities regarding persons lacking full capacity. (See discussion about consular access and notification requirements in 7 FAM 400.) Article 36 of the VCCR regarding consular access and notification applies if a person is involuntarily committed to a psychiatric institution. See Article 37 of the VCCR, which provides:

Article 37 VCCR INFORMATION IN CASES OF DEATHS, GUARDIANSHIP OR TRUSTEESHIP, WRECKS AND AIR ACCIDENTS

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(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.

7 FAM 347 PRIVACY AND MENTAL ILLNESS

(CT:CON-120; 12-06-2005)

- a. The Privacy Act covers all U.S. citizens/nationals and Legal Permanent Residents (LPR), including persons suffering from mental illness, (see 7 FAM 066). A person suffering from mental illness may not be in a position to exercise judgment regarding the propriety of releasing information about his or her condition or circumstances to others. An individual may execute a Privacy Act Waiver ("PAW") provided he or she has not been mentally declared incompetent and/or has not had a guardian appointed. The legal guardian of a person declared mentally

incompetent by a court of competent jurisdiction may execute a PAW on the person's behalf. The Privacy Act's **"health or safety" condition of disclosure** can provide an additional basis for releasing information about a mentally ill individual in the case of judicially declared incompetence, or if the individual refuses to execute a PAW (or severely limits it). It provides:

5 U.S.C. 552 (b)(8)

"No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior consent of, the individual to whom the record pertains, unless disclosure of the record would be: **to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.**"

- b. Before a disclosure can be made, this exception requires a "showing of compelling circumstances affecting the health or safety of an individual". In cases involving U.S. nationals suffering from mental illness or lacking full mental capacity, "compelling circumstances" could include, but are not limited to a person who is or appears to be mentally ill or lacking full mental capacity;
 - (1) Person is living on the streets;
 - (2) Person has no money or means of support;
 - (3) Person has been victimized and continues to be exposed to danger;
 - (4) Local authorities have indicated they may be forced to arrest the person for vagrancy, disturbing the peace, other grounds;
 - (5) Person appears to be unaware of his or her surroundings and to be incapable of caring for him/herself; and
 - (6) Person has exhibited violent behavior.
- c. The Privacy Act requires us to notify individuals in writing whenever we invoke the "health or safety" condition of disclosure with respect to information about them that is otherwise safeguarded by the Act. Therefore, you must advise the Department (CA/OCS/PRI) (a) whenever you use this condition of disclosure and (b) of any information re the individual's last known address so that we may attempt to effect the requisite notification;
- d. See 7 FAM 060 for other Privacy Act exceptions; and
- e. Questions about the Privacy Act may be directed to CA/OCS/ACS or to CA/OCS/PRI at ASKPRI@state.gov.

7 FAM 348 ATTEMPTED OR THREATENED SUICIDE

(CT:CON-120; 12-06-2005)

- a. Consular officers confronting cases of threatened or attempted suicide by U.S. nationals abroad should immediately bring the matter to the attention of CA/OCS/ACS. You may also wish to consult Post's medical experts and regional medical officers/regional psychiatrist and local mental health experts. Find out whether there are any local resources to assist U.S. citizens/non-citizen nationals and their families in these circumstances.
- b. You may be contacted by the U.S. citizen/non-citizen national directly, by local authorities or by family members in the United States or by friends and family abroad who have received a call from a U.S. citizen/non-citizen national who is contemplating suicide or has attempted suicide.
- c. Any threatened or attempted suicide should be taken seriously. Your conversations with the U.S. citizen/non-citizen national should be as calm and supportive as possible. The individual may not want you to contact his or her next-of-kin or others for help. You should recognize that a person who has threatened or attempted suicide may not be capable of exercising good judgment and that it may be appropriate to invoke the health and safety exception to the Privacy Act in such cases.

7 FAM 349 SPECIAL REPATRIATION ISSUES REGARDING THE MENTALLY ILL

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See 7 FAM 370 and 7 FAM 380 for discussion about Emergency Medical and Dietary Assistance loans and Repatriation loans, and 7 FAM 390 Regarding HHS/ISS-USA reception and resettlement in the United States.