

7 FAM 470 SPECIAL ARREST CASES

*(CT:CON-123; 12-23-2005)
(Office of Origin: CA/OCS/PRI)*

7 FAM 471 CRITICALLY ILL PRISONERS

7 FAM 471.1 General

(CT:CON-123; 12-23-2005)

- a. The Department, except for protests regarding abuse or mistreatment, normally does not intercede in a foreign judicial system on behalf of private U.S. citizens or nationals. However, one general exception to this rule involves U.S. citizen prisoners who:
 - (1) Are critically ill and for whom a medical diagnosis indicates that continued incarceration will prevent a reasonable recovery or will cause further deterioration in their condition; or
 - (2) Have been diagnosed with a terminal disease, and in the opinion of competent medical authorities have only a limited time left to live.
- b. In these cases, work closely with the Department and senior post management developing an appropriate strategy for approaching the host government to request release of the prisoner on humanitarian grounds.

7 FAM 471.2 HIV And AIDS Prisoners

(CT:CON-123; 12-23-2005)

Prisoners who are HIV positive, or who have been diagnosed with full-blown AIDS are particularly difficult cases and may require your special attention in certain areas.

7 FAM 471.2-1 Privacy Act Concerns

(CT:CON-123; 12-23-2005)

Should a prisoner confide in you that he or she is HIV positive, you must be extremely careful with this information.

- (1) Ask the prisoner who else already knows of the condition (e.g. family, friends, prison doctor, other prisoner officials, or fellow inmates);

- (2) Explain that you will need a specific signed Privacy Act waiver before you can share this information with anyone outside of the mission and the Department;
- (3) Urge the prisoner to confide in prison medical authorities so adequate treatment can be provided; and
- (4) If you believe the prisoner may be engaging in “at risk” behavior (e.g. needle sharing, etc.) that might endanger other prisoners consult with the Department immediately so we may help you determine the existence of a “public safety” exemption under the Privacy Act.

7 FAM 471.2-2 Maltreatment Concerns

(CT:CON-123; 12-23-2005)

In certain countries and societies, the fact that a prisoner is known to be HIV-positive or to have AIDS may make him or her particular targets for abuse or mistreatment by wardens, guards and other prisoners. Be alert for signs of such abuse, and be prepared to counter it with appropriate actions, including protests.

7 FAM 471.2-3 U.S. Government Intercession In Certain Cases

(CT:CON-123; 12-23-2005)

Because of the nature of the disease, the various stages of the illness, the extended time frames, and current life-prolonging pharmaceuticals, not every HIV-positive or AIDS patient necessarily meets the criteria outlined in 7 FAM 471. However, each case should undergo a preliminary review at post and in the Department, considering such factors as:

- (1) The prisoner’s current state of health;
- (2) Treatment available for those incarcerated in the host country; and
- (3) Availability of care in the United States (family, health insurance, etc.).

7 FAM 472 DEATH OF A PRISONER

(CT:CON-095; 12-02-2004)

The death of a U.S. citizen or national while under detention in a foreign country is an extremely serious matter. As in all death cases, it can be devastating for family members. This is particularly true if the death is sudden, or due to other than natural causes, such as an accident or an

attack by another prisoner. It can also quickly escalate to a major international incident that may affect the bilateral relationship, and could lead to extensive media coverage often unfavorable to the host government and the Department. Should a U.S. citizen or national prisoner die in your consular district, you must take prompt, appropriate action using whatever post resources are necessary.

7 FAM 472.1 Reporting The Death

(CT:CON-095; 12-02-2004)

- a. Immediately notify the Department (CA/OCS/ACS) by telephone (see “Who’s Who in CA” on the CA Intranet for offices and numbers). If after hours, call the Operations Center.
- b. Notify the next-of-kin in accordance with the procedures in 7 FAM 220.
- c. Follow with an immediate e-mail or cable to CA/OCS/ACS that provides as much of the following information as is available and applicable.
 - (1) Name;
 - (2) Date and time of death;
 - (3) Date and time you were notified;
 - (4) How you were notified (telephone call from prison, family member, other prisoner, attorney, etc.);
 - (5) Preliminary cause of death;
 - (6) Past medical history, if known;
 - (7) Prior medical treatment while incarcerated;
 - (8) Prior medical complaints made to consular officers;
 - (9) Any actions on your part regarding the prisoner’s medical condition, including requests to host government for medical attention, or any post actions to provide private medical attention to prisoner; and
 - (10) Any perceived failure of host government authorities to provide adequate and timely medical attention.

7 FAM 472.2 Dealing With Host Country Officials

(CT:CON-095; 12-02-2004)

It is important to remain in close contact with prison officials and others in the days following the death of a prisoner. While most of your actions will be those normally associated with the death of a U.S. citizen or national abroad (see 7 FAM 200) you should also take some or all of the actions listed in 7 FAM 472.2-1 through 2-3, depending upon the circumstances of

the case.

7 FAM 472.2-1 Determine The Host Country's Normal Procedures In A Prison Death

(CT:CON-095; 12-02-2004)

- a. Does the government provide local burial or cremation at their expense?
- b. Will the host government return the remains to the next of kin if the next of kin so desire?
- c. Will the host government pay for all or part of the costs involved in preparation and shipment of remains?
- d. Is an autopsy standard? Who is responsible for the cost?
- e. What are the time frames for completing an autopsy, releasing the remains, and preparing a report?
- f. Will the host country also make its own formal or informal notification to next of kin?
- g. What disposition will be made of the prisoner's personal property, and when?

7 FAM 472.2-2 Request An Autopsy And/Or Forensic Investigation

(CT:CON-095; 12-02-2004)

- a. If the death was unexpected, or due to other than natural causes; or
- b. If the family specifically requests that an autopsy be done.

7 FAM 472.2-3 Consider Filing A Protest

(CT:CON-095; 12-02-2004)

- a. A protest is warranted if there appears to be any culpability on the part of the host government or individual officials. Some factors to consider include:
 - (1) Any denial of or delays in receiving adequate medical attention for an ill prisoner;
 - (2) Any denial or delays of requests to have a prisoner relocated for reasons of health or security;
 - (3) Any refusal to accept needed medicines or private medical treatment offered by family or the post;
 - (4) Failure to act promptly on reports of threats against the prisoner;

and

- (5) Failure to timely notify post that the prisoner’s medical condition has deteriorated.
- b. Coordinate with the Department (CA/OCS/ACS) in preparing any protest or demarche.

7 FAM 473 ESCAPED PRISONERS

(CT:CON-095; 12-02-2004)

Dealing with the delicate issue of escaped U.S. citizens or nationals is a particular challenge. It often seems to bring into conflict the consular role of assistance to U.S. citizen or nationals with the post’s overall obligations in supporting compliance with local law. It can also create apparent conflict between the respective roles of the consular officer and Embassy counterparts such as the LEGATT or DEA office. For these reasons, posts are urged to contact CA, and to rely heavily upon the Department for guidance.

7 FAM 473.1 Reporting

(CT:CON-095; 12-02-2004)

- a. Notify the Department (CA/OCS/ACS) by telephone (see “Who’s Who in CA” on the CA Intranet for offices and numbers). If after hours, call the Operations Center.
- b. Provide as much factual information as known, such as:
 - (1) Name;
 - (2) Time, date and place of escape;
 - (3) Charges, sentence and time left to serve;
 - (4) Whether the prisoner escaped alone, or with other prisoners (include nationality);
 - (5) Whether it is believed the escapee acted alone, or had outside assistance;
 - (6) How the post learned of the escape;
 - (7) Whether the United States passport, if any, is in possession of the host government, the escapee, or the post; and
 - (8) Any request for assistance or information made to post by the host government.
- c. As soon as possible, prepare a telegram repeating the above information. Consider adding neighboring or other posts in your region as info addressees.

- d. Enter the information into the ACS system in order to update the worldwide Consular Consolidated Database (CCD).
- d. Unless this information is already part of the file, attempt to establish whether the escapee also has charges pending against him in the United States if:
 - (1) There is a LEGATT or other agency at post with direct connections to the National Crime Information Center (NCIC), request they run a namecheck, and include their response in your report; or
 - (2) You do not have such facilities at post, request in your cable reporting the escape that the Department (CA/OCS/ACS) clear the name through NCIC.

7 FAM 473.2 When An Escapee Contacts The Post

(CT:CON-095; 12-02-2004)

It is not uncommon for a U.S. citizen or national prisoner who has escaped from incarceration, or who plans to jump bail, to call or appear at post for assistance. Generally, these escapees are seeking a new passport and/or a repatriation loan. While he or she may be eligible for these services, you should consult with the Department (CA/OCS/ACS) before taking specific actions. You may have the escapee fill out and sign the appropriate forms in the interim.

7 FAM 473.3 Escapee Contacts Another Post

(CT:CON-095; 12-02-2004)

An escaped U.S. citizen prisoner may appear at a post in a different consular district or even a different country from the one in which they escaped and request consular services.

- (1) If a known escapee requests consular services from any post, advise the Department (CA/OCS/ACS) immediately.
- (2) In taking the passport and/or repatriation loan application, you should request the applicant to execute a statement, to be incorporated as part of the application, reciting the details of the applicant's departure from one country and entry into a second. See 7 FAM 300 for guidance on repatriation loans and 7 FAM 1300 for guidance on passport services.
- (3) In some instances, the arrested U.S. citizen will voluntarily surrender a passport to the foreign authorities of one country as a form of bond or bail; depart that country without proper documentation, and request repatriation and/or a replacement passport at a post in a second country.

- (4) Posts should issue a new passport upon application, if the citizen is entitled to one, and notify the appropriate post in the other country.
- (5) The home post may then request that the original passport be returned, as it is the property of the U.S. Government.

Note: The preceding should NOT be construed as authority to issue a passport to a U.S. citizen or national who is still incarcerated. The Department's policy is to deny passport services under most circumstances to such prisoners because a passport is primarily a travel document, which the applicant will not need until such time as he or she is released. Exceptions to this policy would include prisoners about to be returned to the United States under a Transfer Treaty (see 7 FAM 480) or a prisoner whose scheduled release is imminent.

7 FAM 473.4 Host Government Requests

(CT:CON-095; 12-02-2004)

Often local authorities will contact post before, after or concurrent with the escapee's appearance at post, and request information and assistance in locating and apprehending the fugitive. The United States exercises wide latitude regarding the extent of cooperation it may provide to foreign states with respect to international law enforcement matters. Such cooperation may be:

- (1) **Formal:** A Mutual Legal Assistance Treaty (MLAT) or appropriate provisions of a bilateral extradition treaty;
- (2) **Informal:** A history of close cooperation among law enforcement officials, joint participation or membership in an international law enforcement task force or working group, etc.; or
- (3) **Minimal:** Little or no history of cooperation.

7 FAM 473.4-1 Responding to Host Government Requests

(CT:CON-123; 12-23-2005)

Given the responsibilities of consular officers, and the restrictions of the Privacy Act, your role in responding to such host government requests is necessarily limited.

- (1) You should not volunteer information regarding consular services accorded an escapee unless specifically requested by the host government.

- (2) You may provide the host government, upon their request, information on passport issuance, explaining the continuing eligibility of the U.S. citizen or national for certain consular services.
 - (a) You may advise the host government upon their inquiry that the individual has been issued a passport.
 - (b) You may release information from consular files on U.S. citizen or nationals to other U.S. Government agencies or mission elements, but only in strict accordance with the requirements of the Privacy Act.
- (3) Requests for other information of a law enforcement nature, including the present whereabouts of the escapee, are the responsibility of the appropriate law enforcement officials at post, such as DEA, LEGATT, post Narcotics Coordinator, etc. Those agencies or entities will normally determine whether to release the requested information to host government authorities based on:
 - (a) Consultations with their own headquarters;
 - (b) The existence of any formal or informal law enforcement agreements; and
 - (c) The individual agency's "routine use exceptions" under the Privacy Act.
- (4) The appropriate U.S. Agency or entity may also opt to provide other guidance to the host government, in addition to, or in lieu of, release of the information, such as:
 - (a) If an extradition treaty exists, the host government may file an extradition request in the event the escapee should return to the United States;
 - (b) The host government may wish to consider issuing an appropriate notice through INTERPOL; and
 - (c) The host government may contact the U.S. Central Authority for mutual legal assistance, the Office of International Affairs, U.S. Department of Justice.

7 FAM 474 HUNGER STRIKES

(CT:CON-095; 12-02-2004)

A hunger strike is a very serious and highly dangerous protest tactic in which a prisoner refuses to eat in an effort to garner support for a particular cause or issue. While in some instances a hunger strike announced by a prisoner may be merely a bid to gain attention, it is nonetheless imperative that consular officers take with utmost seriousness the hunger strike of any U.S.

citizen in a foreign prison.

7 FAM 474.1 Policy

(CT:CON-095; 12-02-2004)

It is the Department's policy to take whatever effective measures are possible to prevent the death or permanent disablement of a U.S. citizen or national prisoner as a result of a hunger strike on the part of that prisoner. As a consular officer you should take proactive steps both to try to convince the prisoner to end the hunger strike, and to persuade the host government to take appropriate medical actions, including forced feeding, to prevent the imminent death or permanent disablement of a U.S. citizen or national prisoner.

7 FAM 474.2 Types Of Hunger Strikes

(CT:CON-095; 12-02-2004)

- a. **Water Only Regimen:** Perhaps the most common hunger strike, the prisoner forgoes all food, and drinks only water.
- b. **Liquids Only Regimen:** In this variation, the prisoner refuses all solid food, but in addition to water also drinks fruit juices, broth, etc. which does provide a basic level of certain sugars and nutrients.
- c. **Total Abstinence:** This is the most dangerous form of hunger strike, since failure to drink water can lead to death in three days or less, depending on conditions. In many cases, prisoners who opt for total abstinence may actually be suicidal.

7 FAM 474.3 Reasons For Hunger Strikes

(CT:CON-095; 12-02-2004)

While in theory any number of things can provoke a hunger strike, the primary causes are generally:

- (1) **Prison Conditions:** the prisoner, either alone or in conjunction with other prisoners, is trying to bring about some change in prison rules or practice, such as quality or quantity of meals, clothing, treatment by guards, etc;
- (2) **Political Statement:** the prisoner, either alone or in union with other prisoners, is protesting a political situation within or outside of the prison;
- (3) **Personal Tragedy:** At times, the prisoner might be reacting to an event in his or her personal life outside of the prison, e.g. an absentee divorce, broken engagement, death of a family member,

loss of child custody, etc; or

- (4) **Judicial Actions:** Often a conviction, denial of an appeal, extension of sentence, or other judicial actions will create depression, despondency or hopelessness in the prisoner, and cause a hunger strike that is actually a psychological withdrawal from life as the prisoner perceives it.

7 FAM 474.4 Learning Of A Hunger Strike

(CT:CON-095; 12-02-2004)

The fact a prisoner is on a hunger strike may come to your attention in one or more ways:

- (1) **Prisoner Statement:** Often, a prisoner will announce his or her attention to begin a hunger strike, not only to you and prison officials, but may also reach out to the local or even the United States media;
- (2) **Host Government:** Prison officials may alert you to a hunger strike. Bear in mind, however, that many prisons do not consider a prisoner to validly be on a hunger strike until a certain amount of time has passed, often from three to seven days. This means that the strike may be well underway by the time you learn of it; or
- (3) **Other Prisoners:** Other U.S. citizen or national prisoners may alert you to the strike, and even provide some insight into the reason behind it.

7 FAM 474.5 Communicate With The Striking Prisoner

(CT:CON-095; 12-02-2004)

Once you are aware that a prisoner has begun a valid hunger strike, you should try to visit the prisoner immediately. If an immediate visit in person is not possible, at a minimum speak with the prisoner by telephone. In either case:

- (1) Determine the type of strike in which the prisoner is engaged (see 7 FAM 474.2);
- (2) Try to determine the reasons behind the strike; and
- (3) Determine when the strike started.

7 FAM 474.5-1 Explain the Risks

(CT:CON-095; 12-02-2004)

Caution the prisoner that, depending on the length of a hunger strike, a person can do severe, in some cases irreparable, damage to his or her body. Explain to them, for example, that a reasonably healthy person on a water-only diet runs serious health risks involved in carrying the hunger strike beyond 2-3 weeks. The following information may be useful in your dialog with the prisoner.

- (1) **Damage to muscle tissue** (after approximately 4 weeks).
- (2) **Weakening of bones** (after approximately 4 weeks).
- (3) **Hallucinations / Dementia** (after approximately 3 weeks).
- (4) **Potentially permanent brain damage** (after approximately 4 to 5 weeks).
- (5) **Potentially permanent damage** to internal organs (after approximately 4 to 5 weeks).
- (6) **Potential failure of internal organs** (after approximately 4 to 5 weeks).
- (7) **Wernicke-Korsakoff's Disease** A hunger strike can lead to this sometimes-irreversible syndrome within a few weeks.
 - (a) The disease is due to a deficiency of vitamin B₁ or thiamine.
 - (b) It leads to lesions and increased micro-hemorrhages in the brain, (specifically, mammillary bodies, thalamus, and brainstem).
 - (c) Neurological symptoms include confusion, memory loss, impaired movements, and peripheral neuropathy (numbness, weakness, burning pain [especially at night], and loss of reflexes). The pain may be severe and disabling.
 - (d) Timely administration of thiamine is usually successful in treating the symptoms, but sometimes, permanent memory loss occurs.
- (8) **Sudden death** could occur at any time depending on the state of health, particularly where poor sanitary conditions, inadequate diet, and primitive medical facilities exist.

7 FAM 474.6 Inform The Department

(CT:CON-095; 12-02-2004)

- a. Keep the assigned officer in CA/OCS/ACS updated, on a daily basis if warranted.
- b. Be sure to thoroughly and promptly document and report your actions and efforts, those of the host government, and the prisoner's reactions.

7 FAM 474.7 Contact Host Government Authorities

(CT:CON-095; 12-02-2004)

Local prison officials have the **primary responsibility** to intervene in a hunger strike in an effort to preserve a prisoner's life. Stay in close contact with them and take the following actions as the strike progresses:

- (1) Make certain they are aware of the hunger strike, and know when it started;
- (2) If they seem unfamiliar with the concept of a hunger strike, brief them on the seriousness (see 7 FAM 474.5 above) of a hunger strike, and the level of U.S. government concern for the well being of the prisoner;
- (3) Ask them what actions they plan to take, and when, during course of the strike; and
- (4) Determine the current official policy, if any, the host government has towards hunger strikes in prisons.

7 FAM 474.7-1 Request Host Government Actions

(CT:CON-095; 12-02-2004)

Ask them to take the following interim measures as the strike progresses and the prisoner weakens:

- (1) Provide sufficient quantities of potable water: A healthy adult can survive without food for nearly two months, but humans can die in a matter of days without water;
- (2) Relieve the prisoner of any work details or compulsory exercise. It is crucial that the prisoner conserve as much energy as possible during a hunger strike. He or she should avoid any physical activity beyond standing temporarily and walking short distances;
- (3) Monitor the prisoner's vital statistics. Have the prison doctor or other competent medical authority examine the prisoner daily.
- (4) Deliver All Scheduled Meals: Ask authorities to deliver all meals to the prisoner as usual, rather than just accept the prisoner's verbal refusal;
- (5) Isolate the Prisoner: Many prison authorities will do this as a matter of course;
 - (a) To better monitor the prisoner and establish the validity of the hunger strike, and to deprive the prisoner of the support of fellow inmates, and
 - (b) To keep the idea of a hunger strike from spreading within the

prison population.

- (6) Place the prisoner in a clinic or similar facility where he or she can rest and receive ongoing medical attention;
- (7) Confine the prisoner in moderate conditions: Engaging in a hunger strike subjects one's body to incredible abuse and severely weakens the body's natural ability to protect itself against the elements. It is extremely important that the prisoner have the proper clothing, shelter and protection appropriate to the weather situation, in order to minimize the risk of heat stroke, hypothermia, etc.; and
- (8) Offer dietary supplements, fruit juices, soup broths, etc. Suggest to prison authorities that they offer these as a compromise with the prisoner.

As circumstances warrant, you may want to confer with the Department (CA/OCS/ACS) regarding use of the EMDA-I program to fund these "special" supplements if the host government refuses to pay.

7 FAM 474.8 Host Government Non-Intervention Policy

(CT:CON-095; 12-02-2004)

- a. Some foreign governments may have a policy of not force-feeding hunger strikers and will not intervene in a life-threatening situation.
- b. The Department recognizes the host country's absolute right to determine policy in enforcing their laws and judicial system.
- c. The Department also recognizes that many countries consider forceful intervention as a violation of individual human rights.
- d. Nonetheless, you should approach the host government authorities at whatever level you consider most appropriate and potentially beneficial, to discuss the issue. The following guidance might be useful in your discussions:
 - (1) Determine, in advance of any dialogue if possible, how long the "no interference" policy has been in effect, how many cases have arisen under the policy, and the final results. Also, try to identify any prior cases where an exception to the policy appears to have been made, and the reasons for it;
 - (2) Bring to their attention any past mental or physical illness or condition on the part of the prisoner, and emphasize any past history that might indicate possible impaired judgment;

- (3) Stress that it is the U.S. Bureau of Prisons policy to force feed any federal prisoner engaging in a hunger strike once a medical determination has been made which indicates;
- (4) That the striker's health has reached a life-threatening or comatose state;
- (5) That the striker cannot make rational decisions; and
- (6) Also stress that this policy would also apply to any alien hunger striker incarcerated in the United States.

7 FAM 475 MENTAL ILLNESS OR INCAPACITY

(CT:CON-095; 12-02-2004)

U.S. citizen or national prisoners who appear to be mentally ill or developmentally challenged are particularly vulnerable, and are often at high risk of mistreatment, injury or even death while in foreign custody, particularly if the illness is not diagnosed or understood by host government authorities.

- (1) You need to be particularly proactive in such cases, conveying your concerns to local officials and taking whatever steps you can to ensure the prisoner is receiving adequate protection and treatment; and
- (2) You **should** report such cases to the Department (CA/OCS/ACS), who in turn will provide assistance and specific guidance.

7 FAM 475.1 General Procedures

(CT:CON-095; 12-02-2004)

A U.S. citizen or national prisoner who is mentally ill is entitled to the same protection and assistance as any other U.S. citizen abroad with similar symptoms. The basic guidance for dealing with and assisting mentally ill U.S. citizens or nationals is detailed in 7 FAM 300.

7 FAM 475.2 Persons Mentally Ill At Time Of Arrest

(CT:CON-095; 12-02-2004)

In certain cases, the U.S. citizen or national will have displayed clear symptoms of mental instability before his or her arrest, and often the arrest itself is a direct result of his/her disturbed behavior.

7 FAM 475.2-1 Prisoners Who Should Or Must Remain Within The System

(CT:CON-095; 12-02-2004)

Often it is necessary or even desirable for the mentally ill prisoner to proceed through the legal system. In such cases, your role is to press host authorities for adequate diagnosis and treatment, and competent legal representation. Determining factors to consider include:

- (1) The details of a specific case;
- (2) The nature of the crime involved;
- (3) The level of flexibility in the local judicial system; and
- (4) The availability of adequate treatment in the host country.

7 FAM 475.2-2 Prisoners Who Should Or May Be Returned To The United States

(CT:CON-095; 12-02-2004)

In other cases, where the crimes are minor, such as disturbing the peace, or the arrest and detention are primarily because of a serious and obvious mental problem, you may direct your efforts towards attempting to secure the release of the prisoner and returning him or her to the United States for appropriate care. Steps to consider include:

- (1) Ask the host government to immediately conduct an appropriate medical examination, and provide a diagnosis and prognosis;
- (2) Check the ACS system to see whether the Department or another post has assisted this individual in the past;
- (3) Contact family members and obtain any prior relevant medical history and records;

FYI: While you should make every effort to secure a Privacy Act waiver from the prisoner, in this type of case, the exception under Section b(8) may also apply.

- (4) Determine host government law, policy and practice in dealing with the mentally ill in the criminal justice system; and
- (5) Work with the appropriate officer in CA/OCS/ACS to develop a proposed plan for repatriation and treatment.

7 FAM 475.2-3 Requesting That A Prisoner Be Returned To The United States

(CT:CON-123; 12-23-2005)

a. Approach the host government at the appropriate level and explain your

ability to assist in returning the prisoner to the United States for treatment.

Note: Be careful not to imply that the prisoner may be released to your custody.

- b. Explain that, if the prisoner is released, you cannot force him or her to return to the United States against his or her will. If there is reason to believe the prisoner will not wish to return voluntarily, there are some options available:
- (1) If the prisoner is found incompetent by action of a local court, and a temporary guardian is appointed, the guardian may apply for repatriation on the prisoner's behalf.
 - (a) Alternatively, an attending physician may provide a letter or affidavit along the lines of 45 CFR 211.3(b):
 - Need of care and treatment in a mental hospital
 - Stating that the individual is in a named country and, including, if possible all available medical and other pertinent information on the individual
 - (b) In the absence of family, friends or guardian to apply for a repatriation loan for a mentally ill prisoner, see 7 FAM 300 for procedures to execute the loan application "without recourse".
 - (2) If local immigration law permits the host government to expel the prisoner, this will normally allow them to place the prisoner on an outbound plane with an escort. In such a case, you should work with CA/OCS/ACS to arrange for appropriate reception and assistance at the port of entry (see 7 FAM 300).
 - (3) Local law may require a formal deportation. This generally requires at least one judicial hearing, and may require considerable time to accomplish.
 - (a) Normally, if a person is formally deported, the departing government assumes the transportation costs of the prisoner and any required escorts.
 - (b) However, if the host government insists the cost be born by the prisoner, a repatriation loan is appropriate if the prisoner is without other resources.

Note: Mentally ill persons who may have committed a serious crime abroad should be returned to the United States under the care of a qualified escort. See 7 FAM 300 and FAA Advisory Circular 120-34 Air Transportation of Mental Patients.

7 FAM 475.3 Manifesting Mental Illness After Arrest

(CT:CON-095; 12-02-2004)

In some cases, the prisoner was presumably lucid at the time of the crime and arrest, but begins developing symptoms of mental disorder at some point in the incarceration. Your efforts in these cases will depend upon several factors:

- (1) The specifics of the individual case, including the type and relative seriousness of the crime;
- (2) The diagnosis and prognosis of the illness; and
- (3) Where the individual's case is in the judicial process.

7 FAM 475.3-1 Diagnosis Made Prior To Conviction

(CT:CON-095; 12-02-2004)

A prisoner who has been confirmed, or is likely to be confirmed, as mentally ill at a point **prior to or during** their trial should normally be treated as outlined in 7 FAM 475.2 above. If appropriate, considering the facts of a specific case, the nature of the crime involved, or the availability of adequate treatment in the host country, you may direct your efforts towards attempting to secure the release of the prisoner and returning him or her to the United States for appropriate care. This is particularly apt if it appears the person's condition may prevent him or her from standing trial.

7 FAM 475.3-2 Diagnosis Made After Conviction

(CT:CON-095; 12-02-2004)

If a prisoner begins demonstrating symptoms of mental illness after his or her conviction, while they are serving their sentence, your options may be more limited by the regulations and procedures of the host government.

- (1) Unless the facts of a specific case, the nature of the crime involved, or the availability of adequate treatment in the host country indicate otherwise, you may explore the possibility of amnesty or a commuted sentence that would allow the prisoner to be returned to

the United States for treatment.

- (2) Barring that option, try to ensure that the prisoner is transferred to an appropriate secure clinical environment for appropriate care.

A NOTE ON SUBSTANCE ABUSE:

Given the number of U.S. citizen or national detainees who have been arrested on drug charges, it is not surprising that in some cases bizarre or pathological behavior may be due to substance abuse or to withdrawal symptoms. Host government officials often regard these cases as temporary illnesses that are treatable within the penal system, and your range of actions may be limited to ensuring they receive appropriate treatment. However, be very careful that neither you nor the host government makes unsupported assumptions in these cases. While your experience may enable you to recognize symptoms of drug abuse or withdrawal, the fact remains that other illnesses, both physical and mental, can mimic these symptoms. You should always insist on a medical examination of the prisoner, and base your actions on a professional diagnosis.

7 FAM 475.4 Depression

(CT:CON-095; 12-02-2004)

- a. Depression is a widespread and often misunderstood illness. While like any serious illness it requires professional diagnosis and treatment, there are signs and actions that an informed layman, such as a consular officer, may be able to note and address.
- b. The Department understands that often the brevity and relative frequency of routine consular visits may preclude meaningful observation of behavior. However, given the potentially serious, even life-threatening nature of this illness in the prison context, we want you to be as informed and ready to act as possible.
- c. Obviously most, if not all, U.S. citizens or nationals arrested or incarcerated abroad are going to feel depressed at some point, given their situation. However, there are different forms of depression.

7 FAM 475.4-1 The Consular Role

(CT:CON-095; 12-02-2004)

As you will not from the background information in this subsection, diagnosing depression is not easy. Nor is it your responsibility as consular officer to make a clinical diagnosis. However, if you believe depression may

be a possibility based on your contact with a prisoner, or even reports you receive from family members, or other concerned inmates:

- (1) Do not ignore it;
- (2) Try to increase your access to, and observation of, the prisoner to see if your impressions are supported by a number of the above symptoms;
- (3) Report this immediately to appropriate prison authorities, and press hard for a professional diagnosis; and
- (4) If the prisoner is diagnosed as suffering from clinical depression, push for appropriate medical treatment just as you would for any physical ailment.

7 FAM 475.4-2 Non-Clinical Depression

(CT:CON-095; 12-02-2004)

Often a person will “feel depressed” as a reaction to a specific event or circumstance. Persons in this category normally recover on their own, often very quickly. They can “get over” the “blues” with no or minimal help, and go back to coping with their particular situation and day-to-day life, even in prison.

7 FAM 475.4-3 Clinical Depression

(CT:CON-095; 12-02-2004)

True “clinical depression,” is a disorder that affects one’s thoughts, moods, feelings, behavior and physical health. Their depression is not a “weakness,” it is a medical disorder with a biological or chemical basis.

- (1) Persons who are suffering from clinical depression can neither treat it nor “snap back” on their own
- (2) It is much more than grieving or a “case of the blues.”
- (3) Depression may occur only once in a person's life. Often, however, it occurs as repeated episodes over a lifetime, with periods free of depression in between.
- (4) It may also be a chronic condition, requiring ongoing treatment over a lifetime.

7 FAM 475.4-4 Primary Signs of Possible Depression

(CT:CON-095; 12-02-2004)

Obviously many prisoners can and probably will display one or both of the following attributes at times, simply because of their confinement in a

foreign country. If you do notice these signs, however, you should be on the alert for symptoms of clinical depression:

- (1) **Loss of interest (Anhedonia):** The prisoner may lose interest in or pleasure from whatever recreational, therapeutic or sports activities may be available; or
- (2) **Moodiness:** The prisoner feels sad, helpless, and hopeless, and may have crying spells.

7 FAM 475.4-5 Symptoms of Depression

(CT:CON-095; 12-02-2004)

If you do note the above signs, try to determine if the prisoner also displays **most** of the following symptoms **most** of the day, nearly every day for 2 weeks or more:

- (1) **Problems sleeping:** The prisoner sleeps too much, or complains of problems sleeping, such as waking in the middle of the night or the small hours of the morning and not being able to get back to sleep;
- (2) **Concentration:** The prisoner has trouble concentrating; making decisions, or has problems with his or her memory;
- (3) **Sudden weight changes:** An increased or reduced appetite and an unexplained weight gain or loss of more than 5 percent of normal weight can indicate depression;
- (4) **Agitation or Lethargy:** The prisoner may seem restless, agitated, irritable, and easily annoyed. Alternatively, he or she may seem to do everything in slow motion and speak in a slow, monotonous voice;
- (5) **Fatigue.** The prisoner complains of weariness and lack of energy nearly every day;
- (6) **Low self-esteem:** The prisoner feels worthless and expresses a sense of guilt that seems excessive even considering his or her current situation;
- (7) **Hopelessness:** The prisoner has a persistent and exaggerated negative view of himself or herself, his or her situation, and the future; or
- (8) **Physical symptoms:** Sometimes depression can also cause a wide variety of physical complaints, such as generalized itching, blurred vision, excessive sweating, dry mouth, gastrointestinal problems, headaches, and backaches.

7 FAM 476 SUICIDE OR ATTEMPTED SUICIDE

(CT:CON-095; 12-02-2004)

- a. Suicide is a complex behavior, and many medical, psychological, and social factors can put a person at risk of suicide. Response to risk factors varies dramatically from person to person.
- b. As a consular officer, you are **not** expected to accurately diagnose or identify potential suicides among U.S. citizen or national prisoners. The information here is intended to provide some background that may help you focus on a prisoner in need of a professional diagnosis and treatment.

FYI: More than 30,000 U.S. citizens commit suicide each year, and an estimated 10 to 20 times that many people attempt suicide. The suicide rate in the United States is higher than the homicide rate. For every two people killed by homicide, three people die of suicide.

7 FAM 476.1 Depression's Role

(CT:CON-095; 12-02-2004)

About nine out of 10 people who commit suicide have one or more mental illnesses, most commonly clinical depression. People with untreated depression have a higher suicide rate than people receiving treatment. As discussed above in 7 FAM 475.4, depression is a not uncommon condition among many U.S. citizens or nationals in foreign prisons, so suicide is a potential risk, and letting depression go untreated or inadequately treated may increase the risk.

7 FAM 476.2 When Is A Prisoner At Risk?

(CT:CON-095; 12-02-2004)

It is impossible to predict with certainty who will kill themselves, or try. To help lessen the risk of suicide, it's important to be aware of key factors associated with its occurrence. A prisoner may be at risk of suicide if he or she:

- (1) **Is clinically depressed:** More than half the people who commit suicide have a form of depression, such as major depression or bipolar disorder;
- (2) **Has previously attempted suicide:** Between 20 percent and 50 percent of people who kill themselves, have tried before;
- (3) **Is abusing alcohol or drugs:** Substance abuse within the prison can lead to poor health, and can also worsen depression by impairing judgment and causing people to act on impulse;

- (4) **Has a family history of suicide:** A study sponsored by the National Institute of Mental Health showed that one in four people who attempted suicide had a family member who did the same. You are generally not in a position to ask the prisoner or the family for this type of family history, but make a note of it if the information comes your way from either the prisoner or family members;
- (5) **Is male:** Women attempt suicide more often than men, but men are more likely to succeed. Of the more than 30,000 suicides committed in the United States in 1998, more than 24,000 were by men; or
- (6) **Has access to the mechanics.** Possession of a weapon, sufficient illegal or legal drugs to provoke an overdose, or poisonous materials, while not essential, is a key factor.

7 FAM 476.3 The Warning Signs Of Suicide

(CT:CON-095; 12-02-2004)

Often there are indicators that a prisoner may be at risk of suicide. Many of these warning signs are also features of depression, and it can be difficult to determine if the behavior may be a warning of suicidal intentions or simply a symptom of depression. This is why it is important to recognize possible depression and get appropriate help as soon as possible.

- (1) **Suicidal threats:** Sometimes a prisoner will tell you or others outright that he or she is thinking of committing suicide. On the other hand, the person might try a less direct approach, such as saying that everyone would be better off if he or she had never been born or was dead.

Note: The common assumption that people, who threaten suicide, do not commit suicide is NOT true. Take the threat as a sign of needing professional help.

- (2) **Withdrawing from others:** People at risk of suicide may be less willing to talk with others or may want to be left alone. Failing to attend consular visits is an example.
- (3) **Moodiness:** We all have our ups and downs, but drastic mood swings — an emotional high on one day and deep discouragement the next — aren't normal.
- (4) **Personality changes:** You or other prisoners may notice marked changes in a specific prisoner's personality and routines, such as eating or sleeping patterns. For example, an individual who's

usually shy becomes outgoing or garrulous, or an outgoing individual becomes withdrawn.

- (5) **Risky behavior:** Uncharacteristically dangerous activities, such as fighting, defying guards, or sudden drug abuse, may be signs of an emerging desire to die.
- (6) **Personal crisis:** Major life setbacks, such as an absentee divorce, or the death of a loved one, can be difficult for anyone to manage when they are far away and powerless. If a prisoner is already depressed, a crisis like this can push them over the edge, triggering a suicide attempt.
- (7) **Giving away possessions:** Before committing suicide a prisoner may give away his or her few possessions, believing that they will not be needed any longer. They could distribute their goods among the other prisoners, or even ask for your help in sending or donating them to others.

7 FAM 476.4 The Consular Role

(CT:CON-095; 12-02-2004)

You need to keep in mind that not everyone who thinks about suicide attempts it. However, it's important to take any mention of suicide seriously, especially if you know or suspect that the person speaking of it is depressed. If for any reason, you believe a prisoner is having suicidal thoughts or intentions, take the actions addressed in 7 FAM 476.4-1 through 7 FAM 476.4-4:

7 FAM 476.4-1 Talk to the Prisoner

(CT:CON-095; 12-02-2004)

If you have **immediate access** to the prisoner, the best approach is to ask him or her directly. This will offer the prisoner the opportunity to talk and, if he or she is having suicidal thoughts, to discuss the pain and negativity fueling those thoughts. This can even help decrease suicide risk.

- (1) Questions to ask might include:
 - (a) Are you thinking about dying?
 - (b) Are you thinking about hurting yourself?
 - (c) How and when would you do it?
- (2) When discussing suicide with a prisoner, do not promise confidentiality, even if you think it is the only way to get the person to talk. To enlist professional help you will have to share the information with others.

- (3) Be supportive and empathetic.
- (4) Do not worry that you will “plant the idea” or push the person into something he or she had no intention of doing.
- (5) Keep in mind that your task is not to become a therapist but rather to convey your concern and get the prisoner appropriate medical care needed.

7 FAM 476.4-2 Contact Host Government Authorities Immediately

(CT:CON-095; 12-02-2004)

- a. Advise the prison warden, prison doctor, etc. that you have reason to believe the prisoner is contemplating suicide.
- b. If necessary, remind them of their international obligations to care for the foreign nationals in their custody.
- c. Insist they take immediate preventive actions. Many prisons will have a standard operating procedure for potential suicides, and will implement it immediately. In other cases, you may have to push for specific actions by host officials, including:
 - (1) Remove the prisoner’s belt, shoelaces, sash, and razor - anything that could be used in a suicide attempt;
 - (2) Search the prisoner and his or her cell for homemade weapons or smuggled drugs;
 - (3) Monitor use of all medications. Make certain the prisoner does not have a sufficient supply of any medication to be dangerous, and actually, takes medicine as prescribed;
 - (4) Establish a “Suicide Watch” - a 24/7 personal or electronic monitoring of the prisoner; and
 - (5) Provide prompt and appropriate medical and/or psychiatric diagnosis and treatment.

Note: If the host government is unwilling or unable to provide appropriate professional care, consult with CA/OCS/ACS regarding using the EMDA I program (see 7 FAM 443).

7 FAM 476.4-3 Notify the Department

(CT:CON-095; 12-02-2004)

As soon as possible, contact CA/OCS/ACS and advise them of the case,

including the following information:

- (1) Your concerns and what led to them;
- (2) Any conversation you have had with the prisoner in question;
- (3) Who you have contacted in the host government, what you have asked them to do, and their response; and
- (4) The current status of the prisoner's Privacy Act waiver, so the post and the Department can decide whom, if anyone, in the family to notify.

7 FAM 476.4-4 Monitor the Case

(CT:CON-095; 12-02-2004)

Continue to monitor the case as you would any serious medical case, and keep all interested parties advised.

7 FAM 477 PREGNANCY, CHILDBIRTH AND INFANT CARE

(CT:CON-095; 12-02-2004)

It is not unusual to encounter cases of prisoners who are pregnant, deliver babies, or care for their infants while incarcerated. These cases require particular attention on the part of the consular officer.

7 FAM 477.1 Pregnancy During Incarceration

(CT:CON-095; 12-02-2004)

Upon learning that a U.S. citizen or national prisoner is pregnant, you should:

7 FAM 477.1-1 Visit The Prisoner

(CT:CON-095; 12-02-2004)

- a. Determine the current state of her mental and physical health.
 - (1) Has she seen a health care professional?
 - (2) Is she aware of the importance of prenatal care?
 - (3) Is this her first child?
- b. Familiarize yourself and her with the medical care options available at the incarcerating institution.
- c. If the institutional care is rudimentary, determine whether she has the

option of paying for private care, such as regular visits with an OB-GYN specialist.

- d. Ask whom she might want notified, and provide her an opportunity to update her Privacy Act Waiver. As appropriate, discuss with her the importance of notifying:
 - (1) The father, as a potential source of financial and emotional support, and to obtain the information and documentation relative to establishing the child’s identity and citizenship;
 - (2) Parents or other family members as sources of financial and emotional support, as well as family medical histories that might be important to attending medical personnel; and
 - (3) The host government authorities. While they will obviously learn of her condition at some point, stress to her that they should know as soon as possible so she will begin receiving appropriate prenatal care.
- e. Discuss with her the appropriate citizenship issues involved in a birth outside of the United States.

7 FAM 477.1-2 Promptly Notify the Department

(CT:CON-095; 12-02-2004)

Contact the appropriate case officer in CA/OCS/ACS as soon as possible. The fact of a U.S. prisoner pregnancy will often affect the Department as well as the post.

- (1) It will often result in heightened media attention and interest within the United States.
- (2) It may well be seized upon by concerned family members and their congressional representatives as grounds for clemency, release, etc.

7 FAM 477.1-3 Identify Additional Support

(CT:CON-095; 12-02-2004)

In some cases, the institution will have a responsive, organized program of medical care and support. In others, the level of support may vary, and you should look for creative ways to help with unmet needs. The local Embassy or American community will often be willing to assist in these cases, and can be a valuable resource for:

- (1) Increased visits;
- (2) Appropriate literature on pregnancy, childbirth, and rearing infants;

- (3) Maternity clothes; and
- (4) Infant clothes and supplies.

7 FAM 477.1-4 Contact Local Authorities

(CT:CON-095; 12-02-2004)

Assuming you have the necessary Privacy Act Waiver, discuss the case with appropriate prison, medical and judicial authorities:

- (1) Try to ensure that the prisoner will receive an adequate level of prenatal care;
- (2) Determine the general process for pregnancy and childbirth within the penal system, as well as what facilities or assistance might exist for newborns; and
- (3) Make certain that the appropriate legal authorities are aware of the pregnancy, since in some cases it can influence any pending legal actions, such as sentencing, appeals, parole hearings, etc.

7 FAM 477.2 Childbirth

(CT:CON-095; 12-02-2004)

In most cases, you should assist the prisoner undergoing labor and childbirth as you would any other medical case as outlined in 7 FAM 464. Although not necessarily an emergency in the normal sense, childbirth is also not “elective”, and therefore benefits under EMDA–I would apply as needed.

7 FAM 477.3 Infant Care

(CT:CON-123; 12-23-2005)

- a. In some penal systems, the newborn is taken from the mother shortly after childbirth, and is placed in foster care. The extent of your responsibility for the welfare of the newborn in such cases depends on the need, the circumstances, and the child’s citizenship.
 - (1) Assuming the child acquires U.S. citizenship or nationality at birth, all of the usual services for U.S. citizens and nationals would apply. For example:
 - (a) The child would be eligible for emergency medical care under EMDA-II; and
 - (b) The child would be eligible for repatriation to the United States, to be placed in the care of grandparents or other family members.
- b. In other cases, the policy of the incarcerating authorities is to leave the

child in the mother’s care and custody for varying periods of time, possibly as long as two years or more. In these cases, both the child’s nationality and the fact that he or she is housed in prison with the mother impact on the services you may and should provide.

- (1) Assuming the child acquired U.S. citizenship or nationality at birth, the usual services available to U.S. citizens would apply, as described in 7 FAM 477.3 a. In addition, however, because the child is technically an “incarcerated” U.S. citizen or national, those related support services also apply. For example:
 - (a) Assuming there is a need, you may have the mother sign a promissory note and provide diapers, formula, infant vitamins and supplements, basic clothing and bedding, etc. for the infant using the EMDA-I program; and /or
 - (b) You may also utilize EMDA-I to provide routine post-partum medical examinations and treatment, as well as any emergency medical treatment.
- c. If the child **did not acquire** U.S. citizenship or nationality at birth, or subsequent to birth under the Child Citizenship Act, he or she is solely the responsibility of the host government or foster family, and consular assistance would **generally** not apply.

Note: Given the humanitarian, public diplomacy and political ramifications inherent in such cases, however, you should NOT deny services to the non-citizen child of an incarcerated U.S. citizen or national without first consulting the Department (CA/OCS/ACS)

d. Also see 7 FAM 1762.2.

7 FAM 478 PRISONERS AFFILIATED WITH THE U.S. MILITARY

(CT:CON-123; 12-23-2005)

- a. A number of posts have sought the Department’s (CA/OCS/PRI) assistance in clarifying posts’ responsibilities toward arrests of U.S. citizens who have a connection with the U.S. military as either active duty members, dependents of active duty personnel, or civilian employees of the U.S. military.*
- b. Posts should follow standard procedures and report the arrest or detention of U.S. Military personnel, dependents or U.S. military civilian employees using the arrest reporting cable format as appropriate. (See 7*

FAM 424). Please include both consular (CASC) and political/military (MARR and PINS) tags. (See 5 FAH-3 H-100).

- c. 32 CFR 151 provides Department of Defense (DOD) policy and procedures on trial by foreign courts and treatment in foreign prisons of U.S. military personnel, nationals of the United States serving with, employed by, or accompanying the Armed Forces of the United States, and the dependents of both (hereafter referred to as U.S. personnel); and provides uniform reporting on the exercise of foreign criminal jurisdiction.
- d. Generally, posts do not need to provide arrest-related consular services to active duty U.S. military personnel, because the military provides them. In countries where the United States has a Status of Forces Agreement (SOFA), that agreement applies to the arrests and imprisonment of active duty U.S. military personnel. Where there is a U.S. military base in the host country, the military commander normally assumes responsibility for the services outlined in 32 CFR 151 (Status of Forces Policies and Information), such as educating U.S. military personnel about local law, as well as visiting and protecting the rights of arrested military personnel. Where there is no U.S. military base, the U.S. military authorities may determine that the military attaché should assist the prisoner.
- e. Under 32 CFR 151.4(1)(6), military commanders must, in cooperation with the appropriate or consular mission and insofar as possible, ensure that dependents of U.S. military personnel, nationals of the United States serving with, employed by or accompanying the Armed Forces, and dependents of such nationals when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions receive the same treatment, rights, and support as would be extended to United States military personnel in comparable situations.
- f. In the case of a dependent or civilian employee, you should contact the local U.S. military commander to verify whether generally, or in a particular case, what assistance the U.S. military will provide to an arrested U.S. citizen or U.S. non-citizen national dependent or civilian employee of the U.S. military.
- g. If the local U.S. military commander indicates that the U.S. military will not be providing services to the U.S. citizen/national, post should provide all of the consular services normally accorded an arrested private U.S. citizen. If the military commander assumes responsibility for the case, you may limit your involvement, but ask that you be kept generally informed about the case, and request that you be notified promptly if the military discontinues its involvement in the case.
- h. Note that prisoner transfer treaties (see 7 FAM 480) also apply to U.S. military personnel who are imprisoned in foreign jails.

- i. Questions may be directed to CA/OCS/PRI (ASKPRI@state.gov) which will consult with the Office of the Legal Adviser, CA/OCS/ACS, regional bureaus and the Department of Defense as appropriate.*

7 FAM 479 UNASSIGNED