

ARRESTED ABROAD AS A U.S. CITIZEN?

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DISCLAIMER: THE FOLLOWING IS A SUMMARY OF SERVICES PROVIDED TO U.S. CITIZENS ARRESTED ABROAD. SINCE CONDITIONS VARY FROM COUNTRY TO COUNTRY, THE PRECISE NATURE OF SERVICES MAY VARY LIKEWISE, DEPENDING ON INDIVIDUAL CIRCUMSTANCES IN A PARTICULAR CASE.

SUMMARY: One of the many functions of the Department of State and of U.S. embassies and consulates abroad is to provide assistance to U.S. citizens incarcerated abroad. The State Department attempts to ensure fair and humane treatment for American citizens imprisoned overseas. They monitor conditions in foreign prisons and immediately protest allegations of abuse against American prisoners. Further, they work with prison officials to ensure treatment consistent with internationally recognized standards of human rights and to ensure that Americans are afforded due process under local laws.

BACKGROUND: While in a foreign country, a U.S. citizen is subject to that country's laws and regulations, which sometimes differ significantly from those in the United States and may not afford the protections available to the individual under U.S. law. As our Country Specific Information explain, penalties for breaking the law can be more severe than in the United States for similar offenses. Persons violating the law, even unknowingly, may be expelled, fined, arrested, or imprisoned. Penalties for possession, use, or trafficking in illegal drugs are strict, and convicted offenders can expect jail sentences and fines. If arrested abroad, a citizen must go through the foreign legal process for being charged or indicted, prosecuted, possibly convicted and sentenced, and for any appeals process. Within this framework, U.S. consular officers provide a wide variety of services to U.S. citizens arrested abroad and their families.

CONSULAR ACCESS TO PRISONERS: Article 36(a) of the Vienna Convention on Consular Relations of 1963, 21 UST 77, TIAS 6820, 596 UNST 261, a multilateral treaty to which many, but not all, countries are party provides that consular officers shall be free to communicate with their nationals and to have access to them. However, Article 36(b) provides that the foreign authorities shall inform the consular officer of the arrest of a national "without delay" (*no time frame specified*), **if the national requests such notification**. Bilateral Consular Conventions between the United States and individual countries are more specific, requiring notification, regardless of whether the arrested person requests it, and generally specifying the time period in which such notification is to be made. When there is no treaty in force, notification and access are based on comity and largely dependent on whether the two countries have diplomatic relations.

CONSULAR SERVICES: Consular officers abroad provide a wide variety of services to U.S. citizens incarcerated abroad. Specific services vary depending on local laws and regulations, the level of local services available in the country in question, and the circumstances of the

individual prisoner. The frequency of U.S. consular visits to citizens arrested abroad may likewise vary, depending upon circumstances.

Consular services include:

Upon initial notification of arrest:

- visiting the prisoner as soon as possible after notification of the arrest;
- providing a list of local attorneys to assist the prisoner obtain legal representation;
- providing information about judicial procedures in the foreign country;
- notifying family and/or friends, if authorized by the prisoner;
- obtaining a Privacy Act Consent;
- relaying requests to family and friends for money or other aid;

On-going support to incarcerated Americans:

- providing regular consular visits to the prisoner and reporting on those visits to the Department of State;
- providing loans to qualified destitute prisoners through the Emergency Medical/Dietary Assistance (EMDA) program;
- arranging dietary supplements (vitamins/minerals) to qualified prisoners;
- arranging for medical and dental care if not provided by prison, to be paid for from prisoner's funds, funds provided by family or funds loaned to the prisoner by the U.S. Government under the EMDA program for destitute Americans incarcerated abroad under the conditions specified at 22 CFR 71.10.;
- arranging for examinations by an independent physician if needed;
- arranging special family visits, subject to local law;
- protesting mistreatment or abuse to the appropriate authorities;
- attending the trial, if the embassy/consulate believes that discrimination on the basis of U.S. nationality might occur or if specifically requested by the prisoner or family, if possible.

- providing information about procedures to applications for pardons or prisoner transfer treaties, if applicable.

Discretionary support provided as needed:

- providing reading materials subject to local laws and regulations;
- arranging with American community to provide holiday meals;
- providing personal amenities such as stamps, toiletries, stationary, if permitted by prison authorities, from prisoner"s or family"s private funds;
- assisting in finding ways to expedite prisoners" mail;
- inquiring about the possibility of prison employment;
- assisting in arranging correspondence courses.
- arranging for American community volunteer visits to prisoners;

A consular officer **cannot** :

- demand the immediate release of a U.S. citizen arrested abroad or otherwise cause the citizen to be released.
- represent a U.S. citizen at trial, give legal advice or pay legal fees and/or fines with U.S. Government funds.

ADDITIONAL INFORMATION: Lists of foreign attorneys and country-specific information sheets regarding arrests abroad from the Department of State, Office of American Citizens Services or directly from U.S. embassies and consulates abroad. General information about retaining a foreign attorney and prisoner transfer treaties is also available via our automated fax service which can be accessed by dialing (202) 647-3000 using the phone on your fax machine and following the prompts and via our home page on the Internet. See our home page at **<http://travel.state.gov>** which is linked to the home pages of our embassies and consulates abroad.

QUESTIONS: Additional questions regarding services to Americans incarcerated abroad and prisoner transfer treaties may be addressed to the appropriate geographic division of the Office of American Citizens Services, Department of State, Room 4817 N.S., 2201 C Street N.W., Washington, D.C. 20520, tel: (202) 647-5225; 647-5226.