

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 05/02/2016	NUMBER 03.02.136
SUBJECT FOREIGN NATIONAL OFFENDERS		SUPERSEDES 03.02.136 (02/16/2016)	
		AUTHORITY Corrections Code, 1953 PA 232, MCL 791.201 et. seq, 1963 Vienna Convention on Consular Relations, US Const, art. 6, cl. 2, US Department of State; 8 USC §1304(e)	
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POLICY STATEMENT:

The Department shall provide notice regarding foreign nationals as set forth in this policy.

RELATED POLICIES:

- 04.01.105 Reception Facility Services
- 04.01.130 Prisoner Guidebook
- 04.01.140 Prisoner Orientation
- 04.06.110 Deaths: Natural, Accidental, Suicide, Homicide
- 05.03.118 Prisoner Mail
- 05.03.140 Prisoner Visiting

POLICY:

DEFINITIONS

- A. Foreign National – Any person who is not a U.S. citizen.
- B. Consul or Consular Officer – An official of a foreign government accredited by the U.S. Department of State and authorized to provide assistance on behalf of that government, to that government’s citizens. A Foreign Consular Officer is not authorized to practice law in the United States nor is s/he an attorney-at-law.
- C. Detained – Arrested or committed to prison or to custody pending trial or is held in any other manner. “Detained” does not include a brief traffic stop or situations where the foreign national is held for less than 24 hours or temporarily held for questioning and then released. This applies to prisoners, parolees, and probationers regardless of their sentence, to include deferred sentences.

GENERAL INFORMATION

- D. Any written communication by a foreign national to his/her consular officer, or any written communication received from a foreign national’s consular officer, must be treated in the same manner as legal mail and be forwarded to the consular officer or to the foreign national without delay. Any request by a foreign national to speak to his/her consular officer must be forwarded to the Administrator of the Office of Legal Affairs on the same day as the request is received.
- E. Consular officer(s) must be given access to the foreign national and be permitted to communicate with him/her. However, consular officers must visit during established visiting hours and comply with visiting guidelines as outlined in PD 05.03.140 “Prisoner Visiting.” Visits must be in person unless otherwise authorized by the Warden.
- F. If staff believe that the foreign national may be a physical threat to the consular officer, a non-contact visit may be appropriate as long as staff articulate their safety or security concerns to the consular officer.
- G. Staff may never reveal to the foreign national’s government that the foreign national has or may have applied for asylum or withholding of removal (i.e., does not want to be returned to his/her home country).

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PROBATION AGENT RESPONSIBILITIES

- H. Following the arrest of a foreign national, it is the responsibility of the local arresting officer(s) to follow the appropriate consular notification procedures. To ensure the proper notification has been made, the Department must complete the following:
1. At a Presentence Investigation (PSI) Interview the Probation Agent must ask whether the offender is a foreign national, ask to see the offender's immigration paperwork (visa, passport, or birth certificate and document the information in the Department's computerized database as well as on the Immigration Notification (CFJ-204). Federal law requires that most foreign nationals carry immigration documents with them at all times while in the United States.
 2. The Probation Agent must make a copy of the foreign national's immigration paperwork, the list of charged offense(s) and the sentencing date, and then e-mail the documentation immediately to the Administrator, Office of Legal Affairs (OLA), via the MDOC-ICE mailbox, who will make the proper consular notification. Probation Agents must also send notice to Immigration and Customs Enforcement (ICE) as noted on the bottom of the Immigration Notification (CFJ-204) and the original CFJ-204 shall be placed in the Field File.

PROBATION

- I. When the foreign national is sentenced, the Probation Agent must forward the offender's Judgment of Sentence to the OLA Administrator via e-mail to the mailbox established by the Field Operations Administration (FOA) as indicated in Paragraph H, 2.
- J. If the foreign national is from a country that requires immediate mandatory notification, the OLA Administrator will forward the "Mandatory Notification" form to the Probation Agent that the offender must sign and date. After the Probation Agent witnesses the signature of the foreign national, s/he shall sign, date and place a time on the document, and immediately e-mail the documentation to the OLA Administrator who will make the proper consular notification. The original form shall be placed in the offender's Record Office file and a copy shall be given to the foreign national. The Probation Agent must make a notation in the Department's computerized database of the date and time these forms were given to and signed by or refused by the foreign national.
- K. If the probationer absconds while on probation, has any other warrant(s) issued, is found mentally incompetent, is arrested or detained, violates probation, is gravely ill, hospitalized, in a coma or dies, the Probation Agent must immediately notify the OLA Administrator who will make the proper consular notification. If the probationer is discharged from probation, the Order of Discharge must be immediately e-mailed (successfully or unsuccessfully) to the OLA Administrator. The OLA Administrator will make the proper consular notification.

PRISON

- L. If a foreign national is sentenced to a term of imprisonment, including Special Alternative Incarceration (SAI), upon arrival at the Reception and Guidance Center (RGC) or Women's Huron Valley (WHV), staff must place a label marked "Foreign National" on the front of the foreign national's Records Office file and Prisoner Health Record. The foreign national's name, inmate number, country of origin and the Order/Judgment of Sentence shall be immediately e-mailed to the OLA Administrator along with the International Prisoner Transfer Notification and Acknowledgment Form and Notice (See Attachment A - Federal form number DOJ/OEO/IPTU 21). The OLA Administrator may or may not require the foreign national to sign additional paperwork and will determine the proper consular notification.
- M. If the foreign national is from a country that requires immediate mandatory notification, the OLA Administrator will forward the "Mandatory Notification" form to the facility that the offender must sign and date. A facility staff person, as designated by the Warden, shall witness, sign, date and place a time on the document, and immediately e-mail the documentation to the OLA Administrator who will make the proper consular notification. The original shall be placed in the prisoner's Records Office file, and a copy placed in the Prisoner Health Record. A copy shall be given to the foreign national. If the prisoner refuses to sign the required documentation, the refusal shall be noted on the form.
- N. While incarcerated, if the foreign national at any time escapes, has any other warrant(s) issued, is found mentally incompetent, is arrested or detained, is gravely ill, in a coma, is hospitalized, or dies, the facility staff must

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immediately notify the OLA Administrator by e-mail who will make the proper consular notification.

- O. If the foreign national serves his or her maximum sentence and is discharged from prison, facility staff, as designated by the Warden, must immediately e-mail the Certificate of Discharge/Sentence Discharge by Court Order (CSJ-130) to the OLA Administrator who will make the proper consular notification. If there is an active Immigration Detainer, the Records Office staff will notify ICE to arrange pick-up of the prisoner.

PAROLE

- P. Prisoners who are foreign nationals are currently eligible for parole after they have served their minimum sentence, minus any applicable credits, unless they are serving for certain identified drug offenses. When paroled, these prisoners are routinely paroled to a detainer filed by the United States Immigration and Customs Enforcement (ICE) to allow for deportation. Effective March 30, 2011, 1953 PA 232, MCL 791.234b, requires the Parole Board to parole a foreign national who has a final order of deportation issued against him/her when the prisoner has served half of the minimum non-life sentence imposed by the court. If the prisoner will not be removed from the United States by ICE, the prisoner will be returned to Department custody. Prisoners who meet the following criteria are ineligible for early release under MCL 791.234b:
1. Prisoners who were sentenced as a habitual offender under MCL 769.10, 769.11 or 769.12.
 2. Prisoners serving for either of the following offenses, including an attempt to commit the offense:
 - A. Murder in the first or second degree, being MCL 750.316 and 750.317.
 - B. Criminal Sexual Conduct in the first, second, or third degree, being MCL 750.520b, 750.520c, and 750.520d.
- Q. Prisoners who are not eligible for parole under PA 223, or cannot be placed on parole under the Act, remain eligible for parole as set forth in PD 06.05.104 "Parole Process."
- R. The parole eligibility date established under PA 223 shall not be used to determine appropriate security classification or for any other reason except as set forth in PA 223 and this policy.
- S. Field agents shall provide an Immigration Notification form (CFJ-204) to ICE prior to sentencing. In addition, a Federal Bureau of Investigation Fingerprint Card (FD-249) shall be completed for each prisoner identified at a reception facility as not being a United States citizen, unless a card has already been completed for the prisoner. The Central Records Section in the Operations Division of Correctional Facilities Administrations (CFA) shall also contact ICE and the OLA Administrator whenever a prisoner is identified during his/her incarceration as not being a United States citizen and they have never been designated as a foreign national. This notification shall be within five business days after being brought to the attention of the Central Records Section.
- T. The Central Records Section shall be responsible for notifying ICE of those prisoners who are identified as not being United States citizens to determine if ICE will initiate deportation proceedings against the prisoner. For each prisoner for whom a final deportation order has been issued, and who meets all other eligibility criteria for, the Central Records Section shall compute and verify the prisoner's eligibility date. The Central Records Section also shall request written assurance from ICE that the deportation order will be executed and the prisoner removed from the United States. This notification shall be prior to the prisoner's eligibility date or, if that date has already passed, as soon as possible. After a response is received from ICE, the case shall be referred to the Parole Release Unit in the Parole Board Services Section, Office of the Parole Board, for processing.
- U. For prisoners being paroled under MCL 791.234b, the prisoner is not entitled to a parole interview, parole guideline scores are not required to be calculated, and Parole Eligibility Reports are not required to be completed. The parole shall be based solely upon whether the prisoner meets the eligibility requirements set forth in statute and whether ICE has provided assurances that the deportation order will be executed and the prisoner removed from the United States.
- V. If ICE cannot provide assurance that the deportation order will be executed and the prisoner will be removed from the United States, the prisoner shall not be paroled under MCL 791.234b. However, the Central Records Section

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shall contact ICE on an ongoing basis to determine if ICE can provide the required assurance. When ICE provides assurance that the deportation order will be executed and the prisoner will be removed from the United States, the case shall be processed as set forth in this policy.

- W. If ICE does provide assurance that the deportation order will be executed and the prisoner will be removed from the United States, the prisoner shall be paroled to ICE's custody. A warrant for the paroled prisoner's return to the custody of the Department shall be issued and delivered to ICE when the paroled prisoner is transferred to ICE's custody. The warrant shall be executed upon notification from ICE that the paroled prisoner cannot be removed from the United States for any reason. The warrant shall be cancelled upon notification from ICE that the paroled prisoner has been removed from the United States.
- X. Any parole under MCL 791.234b is required to be for the remaining balance of the paroled prisoner's maximum sentence as imposed by the court. The Parole Board shall include as special conditions of parole that the paroled prisoner cannot return illegally to the United States and that the paroled prisoner must report for supervision if s/he returns legally to the United States. This statute also requires the Parole Board to revoke parole upon notification from any law enforcement agency that the paroled prisoner has returned illegally to the United States and has been taken into custody. A paroled prisoner whose parole is subsequently revoked is not eligible for reparole, or any other release from confinement, during the remainder of the sentence on which s/he was paroled. The Prisoner is required to complete his/her maximum sentence before being discharged from prison.
- Y. If the foreign national paroled to the community (not to ICE), if s/he absconds, has any other warrant(s) issued, is found mentally incompetent, is arrested or detained, violates parole, is gravely ill, in a coma, is hospitalized, or dies, the Parole Agent must immediately notify the OLA Administrator who will make the proper consular notification. If the parolee is discharged the CSJ-130 must be immediately scanned and e-mailed to the OLA Administrator. The OLA Administrator will make the proper consular notification.
- Z. If the foreign national is paroled to ICE for deportation, the Records Office staff will immediately notify the OLA Administrator by email of the date ICE took custody of the prisoner.

OPERATING PROCEDURES

- AA. An operating procedure is not required for this policy.

AUDIT ELEMENTS

- BB. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

ATTACHMENTS

- CC. Attachment A International Prisoner Transfer Notification and Acknowledgement Form (Federal form number DOJ/OEO/IPTU 21)

APPROVED: HEW 03/18/2016

**INTERNATIONAL PRISONER TRANSFER NOTIFICATION
AND ACKNOWLEDGMENT FORM**

The United States has entered into international treaties with many countries which may permit a foreign national prisoner from one of the treaty countries to transfer to his home country to serve the remainder of his sentence. The State of MI has enacted legislation which allows it to participate in the international prisoner transfer program. The transfer program is discretionary and not everyone who applies will be qualified or will be approved for transfer. To transfer your application must first be approved by the State of MI. The United States and your home country must also approve your application before a transfer can occur. If you are unsure whether your country participates in this program, please contact your case manager or your nearest consulate for more information. You must also contact your consulate to assist you and to determine if your home country has any additional requirements.

1. Name	2. Prisoner Number
3. Date of Birth	4. Place of Birth
5. Citizenship	6. Institution/Prison
7. Offense	8. Sentence
9. Projected Release Date	10. Language Preference

I am interested in being transferred to continue serving the sentence imposed by the State of MI to the country of citizenship indicated above. I understand that this is just an inquiry to obtain data before the actual request for transfer and is not binding upon either the government or me. I understand that upon approval for transfer, I will be required to attend a verification hearing before a United States Magistrate Judge. I have indicated above the language preference for my verification hearing and understand an interpreter will be available if necessary.

Signature	Date
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I hereby indicate that I am not interested in being transferred to continue serving the sentence imposed by the State of MI to the country of the citizenship indicated above.

Signature	Date
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