

Arrest & Detention of Foreign Nationals

422.1 PURPOSE AND SCOPE

Article 36 of the Vienna Convention on Consular Relations sets forth certain rights of foreign nationals from member countries when arrested, detained or imprisoned by law enforcement officials in the United States. This policy provides direction to officers when considering a physical arrest or detention of a foreign national. All foreign service personnel shall be treated with respect and courtesy, regardless of the level of established immunity.

As noted herein, the United States is a party to several bilateral agreements that obligate our authorities to notify the consulate upon the person's detention, regardless of whether the detained person(s) request that his/her consulate be notified. The list of specific countries that the United States is obligated to notify is listed at the U.S. Department of State at www.travel.state.gov/law/consular/consular_737.html#notification.

422.1.1 DEFINITIONS

Foreign National - Anyone who is not a citizen of the U.S. A person with dual-citizenship, U.S. and foreign, is not a foreign national.

Immunity - Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of his/her home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of his/her official missions (i.e., embassies, consulates, etc.) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad. Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's Office of Foreign Missions (OFM) that illegal acts by Foreign Service personnel should always be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

422.2 ARREST OR DETENTION OF FOREIGN NATIONALS

Officers should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity received from violators. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the officer, and the officer has verified or reasonably suspects that the claim of immunity is valid.

422.3 LEVELS OF IMMUNITY

The specific degree of immunity afforded to foreign service personnel within the U.S. is directly related to his/her function and position in this country.

422.3.1 DIPLOMATIC AGENTS

Diplomatic agents (e.g., ambassadors and United Nations representatives) are afforded the highest levels of immunity. He/she is exempt from arrest or detention and are immune from

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all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents enjoy these same immunities.

Currently there are no diplomatic agents permanently assigned to California but diplomatic agents do occasionally visit the state.

422.3.2 CONSULAR OFFICERS

Consular officers are the ranking members of consular posts who perform various formal functions on behalf of his/her own government. Typical titles include Consul General, Consul and Vice Consul. These officials are immune from arrest or detention, except pursuant to a felony warrant. He/she is only immune from criminal and civil prosecution arising from official acts. This official acts immunity must be raised as an affirmative defense in the court jurisdiction and its validity is determined by the court.

Under this defense, the prohibited act itself must have been performed as an official function. It is not sufficient that the consular agent was on-duty or in an official capacity at the time of the violation. The family members of consular officers generally enjoy no immunity, however, any family member who enjoys a higher level of immunity is issued an identification card by Department of State (DOS) enumerating any privileges or immunities on the back of the card. Examples are consular officers and family members from Russia or China.

There are approximately 600 consular officers in California, with most located in Los Angeles, San Francisco and San Diego.

422.3.3 HONORARY CONSULS

Honorary consuls are part-time employees of the country he/she represents and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained. Limited immunity for official acts may be available as a subsequent defense. Family members have no immunity.

There are less than 100 honorary consuls in California.

422.4 IDENTIFICATION

All diplomatic and consular personnel who are entitled to immunity are registered with the Department of State and are issued distinctive identification cards by the Department of State Protocol Office. These cards are the best means of identifying Foreign Service personnel. They include a photograph, identifying information, and, on the reverse side, a brief description of the bearer's immunity status. Unfortunately, these identification cards are not always promptly issued by the Department of State.

In addition to the Department of State identification card, Foreign Service personnel should also have a driver license issued by the Department of State Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued by the state. Additionally they may have California credentials issued by the California Emergency Management Agency (Cal EMA).

422.4.1 VEHICLE REGISTRATION

Vehicles that are owned by foreign missions or Foreign Service personnel and his/her dependents are registered with the DOS OFM and display distinctive red, white and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have

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license plates labels with the words "Diplomat" or "Consul." Vehicles owned by honorary consuls are not issued OFM license plates, but may have California license plates with an "Honorary Consul" label. Driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle.

The status of an OFM license plate should be run via JDIC, designating US as the state, if the officer has reason to question the legitimate possession of the license plate.

422.4.2 DRIVING PERMITS

Vehicle Code § 12505 (e) states, "...a person over the age of 16 years who is a resident of a foreign jurisdiction other than a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada, having a valid driver's license issued to him or her by any other foreign jurisdiction having licensing standards deemed by the Department of Motor Vehicles equivalent to those of this state, may operate a motor vehicle in this state without obtaining a license from the department, except that he or she shall obtain a license before being employed for compensation by another for the purpose of driving a motor vehicle on the highways."

Under the United Nations Convention on Road Traffic, nations agreed to recognize international driving permits for visiting foreign nationals only. This international driving permit is not an identity document. It is a supplement to a government issued driver's license from the driver's country of origin.

The international driving permit is a paper document that is not laminated and conforms to a design involving size, language and color (gray only) outlined by the Convention.

The State of California does not recognize an International Driving Permit (IDP) as a valid driver license. The IDP is also called an International Driver License, International License, etc. California does recognize a valid driver license that is issued by a foreign jurisdiction (country, state, territory) of which the license holder is a resident.

The IDP is only a translation of information contained on a person's foreign driver license and is not required to operate a motor vehicle in California. Citations issued to a person in California who has an IDP, but does not have a California driver license will be placed in the Department of Motor Vehicle database.

The international driving permit in no way provides any immunity to foreign nationals, excepting those with diplomatic immunity who will have a permit issued by the U.S. Department of State, from arrest for serious violations of U.S. traffic laws. Appropriate enforcement action can be taken against foreign nationals for violations of motor vehicle laws. Officers coming into contact with foreign nationals claiming diplomatic immunity and not possessing the appropriate documents can verify immunity status at (202) 647-7277 [24 hours].

Any foreign national arrested or detained by law enforcement for any offense must be advised of his/her consular notification rights pursuant to international law.

Officers have the right to request supplemental identification from a foreign national operating on an international driving permit. This should be a passport. Note that passports may have been left in hotel rooms or luggage and it is not a requirement that they be carried with an international driving permit.

Officers shown an international driving permits containing the United Nations name or emblem should consider it to be fraudulent. The United Nations has never allowed or

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permitted its name or emblem to be used for such purposes. Legitimate international driving permits refer to the 1949 United Nations Convention On Road Traffic and contain the name of the United Nations only in this context. The use of the United Nations name in this limited context does not constitute a fraudulent use.

Officers coming into contact with foreign nationals that produce his/her government issued license who have questions concerning the country of origin can contact the Interpol-USNCB at (202) 616-9000 [24 hours]. The USNCB can only confirm the country name not the validity of the license.

422.5 ENFORCEMENT PROCEDURES

The following procedures provide a guideline for handling enforcement of foreign nationals.

422.5.1 CITABLE OFFENSES

A Notice to Appear shall be issued at the scene for all violations warranting such action, regardless of the violator's immunity status. The issuance of a citation is not considered an arrest or detention under current Department of State guidelines. Whenever the equivalent of a Notice to Appear is issued to an immunity claimant, the following additional procedures shall be followed by the arresting officer:

- (a) Identification documents are to be requested of the claimant.
- (b) The title and country represented by the claimant are to be recorded on the back of the officer's copy of the Notice to Appear for later reference. Do not include on the face of the Notice to Appear.
- (c) The claimant shall be requested to sign the Notice to Appear. If the claimant refuses, the identity and immunity status of the individual shall be conclusively established.
- (d) Verified diplomatic agents and consular officers, including staff and family members from countries with which the U.S. has special agreements, are not required to sign the Notice to Appear. The word "Refused" shall be entered in the signature box and the violator shall be released.
- (e) Verified consular staff members, excluding those from countries with which the U.S. has special agreements, are generally obligated to sign the Notice to Appear, but a signature shall not be required if his/her immunity status is uncertain.
- (f) All other claimants are subject to the provisions of Vehicle Code § 40302 (b) and policy and procedures outlined in this policy.
- (g) The violator shall be provided with the appropriate copy of the Notice to Appear.

422.5.2 CUSTODIAL ARRESTS

Diplomatic agents and consular officers are immune from arrest or detention unless he/she has no identification and the detention is to verify his/her diplomatic status. Proper identification of immunity claimants is imperative in potential in-custody situations. Claimants who are not entitled to immunity shall be placed in custody in accordance with the provisions outlined in Policy Manual § 422.6.

A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim (unless restraint is necessary for the protection of the officer or others.)

A supervisor shall be promptly notified and should respond to the scene when possible.

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Field verification of the claimant's identity is to be attempted as follows:

- (a) Identification cards issued by the DOS Protocol Office, are the only valid evidence of diplomatic or consular immunity. The following types of identification cards are issued: Diplomatic (blue bordered), Consular (red bordered) and Official (green bordered). The DOS identification cards are 3-3/4" by 1-1/2" and contain a photograph of the bearer.
- (b) Initiate telephone verification with the DOS. Newly arrived members of diplomatic or consular missions may not yet have official DOS identity documents. Verify immunity by telephone with the DOS any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Officers should use the following numbers in order of preference:

Office of Foreign Missions

San Francisco, CA
(415) 744-2910, Ext. 22 or 23
(415) 744-2913 FAX
(8:00 a.m.-5:00 p.m. PST)

Office of the Foreign Missions

Los Angeles, CA
(310) 235-6292, Ext. 121 or 122
(310) 235-6297 FAX
(8:00 a.m.-5:00 p.m. PST)

Office of Foreign Missions

Diplomatic Motor Vehicle Office
Washington D.C.
(202) 895-3521 (Driver License Verification)
(202) 895-3532 (Registration Verification)
(202) 895-3533 FAX
(8:15 a.m.-5:00 p.m. EST)

Department of State

Diplomatic Security Service
Command Center
Washington D.C.
(202) 647-7277
(202) 647-1512
(202) 647-0122 FAX
Available 24 hours

The Los Angeles County Sheriff's Department International Liaison Bureau at (323) 526-5556, (323) 267-6625 - FAX, (8:00 a.m. - 5:00 p.m. M-F) or the Los Angeles Police Department Governmental Liaison Officer at (213) 485-4376, (213) 485-8967 or (213) 237-0676 - FAX may provide guidance and assistance on the subject of consular and diplomatic immunity.

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Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by OES, local law enforcement agencies, the foreign embassy or consulate driver licenses issued by DOS and DOS license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

Subjects verified through the above procedures as being officials entitled to immunity (diplomatic agent, consular officers and consular staff and family members from countries with which the U.S. has special agreements) may not be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified, but another form of identification indicates that immunity is probable.

If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained then the official shall be released. A supervisor's approval for the release shall be obtained whenever possible. The necessary release documents and/or a Certificate of Release form should only be issued under the proper conditions.

If the violator appears to have been driving while under the influence, field sobriety tests including Preliminary Alcohol Screening (PAS) device tests and chemical tests should be offered and obtained whenever possible, however, these tests cannot be compelled. The subject shall not be permitted to drive. A supervisor's approval for release shall be obtained whenever possible and alternative transportation should be arranged.

All facts of the incident shall be documented in accordance with this policy in a Driving Under the Influence (DUI) Arrest Investigation Report, Offense/Arrest Report and/or any other relevant report form. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued by the Department. The DOS will take appropriate sanctions against errant foreign service personnel, even where prosecution is not undertaken by the Department.

422.6 TRAFFIC COLLISIONS

Persons involved in traffic collisions who possess a DOS OFM Diplomatic Driver License, issued by the DMVO, shall have "D" coded in the license Class box of the Traffic Collision Report. The actual driver license class (e.g., A, B, C, M) shall be entered in the Miscellaneous box on page two of the traffic report.

If subsequent prosecution of the claimant is anticipated, the claimant's title, country and type of identification presented should be recorded for future reference. Issuance of a citation to or arrest of, an immunity claimant at the accident scene should be handled in accordance with the procedures specified in Policy Manual § 422.5.

422.6.1 VEHICLES

Vehicles, which are owned by subjects with full immunity, may not be searched, stored or impounded without the owner's permission. (Such permission may be assumed if the vehicle has been stolen.) These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

422.6.2 REPORTS

A photocopy of each traffic collision report and a copy of all documents and reports submitted by the investigating officer along with any supervisor's notes, materials and/or logs involving an identified diplomat and/or immunity claimant shall be forwarded by the

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Watch Commander to the Field Operations Captain within 48 hours whether or not the claim is verified.

The words "Immunity Claim" shall be marked on the copy, together with a notation of the claimant's title, country and type of identification presented (if applicable). In addition to the report, a memorandum should be submitted if the violation was flagrant, if the claimant was uncooperative or if there were any other unusual aspects of the enforcement contact that should be reported to the DOS for further action.

The Field Operations Captain will notify the Chief of Police, and check to ensure that notification of DOS and all necessary follow-up occur.

422.7 FOREIGN NATIONALS NOT CLAIMING IMMUNITY

This section applies to foreign nationals who do not claim diplomatic or consular immunity.

Officers shall arrest foreign nationals only under the following circumstances:

- (a) There is a valid warrant issued for the person's arrest.
- (b) There is probable cause to believe that the foreign national has violated a federal criminal law, a state law or a local ordinance.

Officers shall not arrest foreign nationals solely for alleged undocumented entry into the U.S. unless the undocumented entry is committed in the officer's presence

After a lawful detention or criminal arrest, officers may detain foreign nationals solely for alleged undocumented presence in the U.S. if the U.S. Immigration and Customs Enforcement (ICE) is contacted and can respond to take custody within a reasonable time. officers shall not arrest foreign nationals for undocumented presence. Federal courts have consistently held that undocumented presence is not a crime but a federal civil violation only enforceable by federal officers.

- Officers shall not stop or detain persons solely for determining immigration status.
- International treaty obligations provide for notification of foreign governments when foreign nationals are arrested or otherwise detained in the U.S.
- Whenever an officer arrests and incarcerates a foreign national or detains a foreign national for investigation for over two hours, the officer shall advise the individual that he/she is entitled to have his/her government notified of the arrest or detention. If the individual wants his/her government notified, the officer shall begin the notification process. Penal Code § 834c

422.7.1 ARREST PROCEDURE

Whenever an officer physically arrests or detains an individual for criminal investigation and the officer reasonably believes the person to be a foreign national, the officer shall inquire to determine the person's citizenship.

This procedure applies to detentions of more than two hours. An inquiry is not required if the individual is detained less than two hours for criminal investigation.

If the individual indicates that he/she is other than a U.S. citizen, the officer shall advise the individual that he/she has a right to have the nearest appropriate embassy or consulate notified of the arrest/detention.

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If the individual requests such notification, the officer shall contact the appropriate embassy/consulate as soon as practical. Officers shall provide the following information concerning the individual:

- Country of citizenship.
- Full name of individual, including paternal and maternal surname if used.
- Date of birth or age.
- Current residence.
- Time, date, place, location of incarceration/detention and the 24-hour telephone number of the place of detention if different from the Department.

If the foreign national claims citizenship of one of the countries (and Mexico) listed at the link below, officers shall contact the embassy/consulate as soon as practical, whether or not the individual desires the embassy/consulate to be notified. Officers should attempt to expedite these notifications.

This procedure is critical because of treaty obligations with the particular countries. The list of specific countries that the United States is obligated to notify may also be found at the U.S. Department of State at www.travel.state.gov/law/consular/consular_737.html#notification.

422.7.2 DOCUMENTATION

Officers shall document in the narrative of the Offense/Arrest Report the date and time the embassy/consulate was notified of the foreign national's arrest/detention and his/her claimed nationality.

Immigration Violations

428.1 PURPOSE AND SCOPE

The immigration status of individuals alone is generally not a matter for police action. It is incumbent upon all employees of the UCLA Police Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, United States Code §§ 1304, 1324, 1325 and 1326, this Department may assist in the enforcement of federal immigration laws.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the U.S. Immigration and Customs Enforcement (ICE). The Employer Sanction Unit of the ICE has primary jurisdiction for enforcement of Title 8, United States Code.

428.3.1 BASIS FOR CONTACT

Unless immigration status is relevant to another criminal offense or investigation (e.g., harboring, smuggling, terrorism), the fact that an individual is suspected of being an undocumented alien shall not be the sole basis for contact, detention or arrest.

428.3.2 SWEEPS

The Department does not independently conduct sweeps or other concentrated efforts to detain suspected undocumented aliens.

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

428.3.3 ICE REQUEST FOR ASSISTANCE

If a specific request is made by ICE or any other federal agency, this Department will provide available support services, such as traffic control or keep-the-peace efforts, during the federal operation.

Officers should not participate in such federal operations as part of any detention team unless it is in direct response to a request for assistance on a temporary basis or for

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officer safety. Any detention by officers should be based upon the reasonable belief that an individual is involved in criminal activity.

428.3.4 IDENTIFICATION

Whenever any individual is reasonably suspected of a criminal violation (infraction, misdemeanor or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls, LiveScan, Cal Photo, etc.). If the person's identity is thereafter reasonably established, the original Notice to Appear should be completed without consideration of immigration status.

428.3.5 ARREST

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation. See Vehicle Code § 40302 (a) and Penal Code § 836, if relevant to the circumstances. The Watch Commander or a patrol supervisor shall approve all such arrests.

428.3.6 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302 (a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond two hours for the purpose of establishing his/her true identity. Regardless of the status of that person's identity at the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

If the person is detained, the officer must document the steps and time taken to establish the arrestee's identity in a report.

428.3.7 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Whenever an officer has reason to believe that any person arrested for any offense listed in Health & Safety Code §11369 or any other felony may not be a citizen of the United States and the individual is not going to be booked into county jail, the arresting officer shall cause ICE to be notified for consideration of an immigration hold.

If an officer has an articulable belief that an individual taken into custody for any misdemeanor is an undocumented alien, and after he/she is formally booked there is no intention to transport to the county jail, ICE may be informed by the arresting officer so that ICE may consider placing an immigration hold on the individual.

In making the determination whether to notify ICE in such circumstances, the officer should, in consultation with a supervisor, consider the totality of circumstances of each case, including, but not limited to:

- (a) Seriousness of the offense
- (b) Community safety

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- (c) Potential burden on ICE
- (d) Impact on the immigrant community

Generally, officers will not need to notify ICE when booking arrestees at the county jail. Immigration officials routinely interview suspected undocumented aliens who are booked into the county jail on criminal charges and notification will be handled according to jail operation procedures.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Department is concerned for the safety of the campus community and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity. Title 8 United States Code §§ 1373 and 1644

428.4.1 U-VISA NONIMMIGRANT STATUS

Under certain circumstances federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 United States Code § 1101(a)(15)(U)). A petition for a U-Visa from the U.S. Citizenship and Immigration Services must be completed on DHS Form I-918 by the assigned detective or the assigned prosecutor and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa to be issued.

Any request for assistance in applying for U-Visa status should be forwarded in a timely fashion to the Detective Sergeant assigned to supervise the handling of any related case. The Detective Sergeant should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether an update on the case is warranted.
- (b) Review the instructions for completing the certification if necessary. Instructions for completing Form I-918 can be found on the DHS website at www.uscis.gov/portal/site/uscis.
- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification has not already been completed and that certification is warranted.
- (d) Timely address the request and complete the certification if appropriate.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.