

Proposal 07-03 (P.R. 0158)
Creates New Supreme Court Rule 404
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New Supreme Court Rule 404. Consular Notification for Foreign Nationals

At the initial appearance in a felony case, the circuit court must advise the defendant in open court that any foreign national who is arrested or detained has the right to have notice of the arrest or detention given to his or her country's consular representatives and the right to communicate with these consular representatives. The court must make a written record of so advising the defendant. This rule creates no judicial remedy for the violation of consular notification or communication rights, nor for the violation of this rule.

Committee Comment

Article 36 of the Vienna Convention on Consular Relations requires state and federal authorities to give certain information to foreign nationals who are arrested, in custody pending trial, or otherwise detained. Specifically, foreign nationals must be informed of (i) the right (upon request) to have their country's consular post notified of their arrest, custody, or detention; and (ii) the right to communicate with consular representatives. Giving this information and honoring these rights helps our consular representatives similarly assist United States citizens in foreign countries.

Because Article 36 requires the information to be given "without delay," the arresting or detaining authority should have informed a foreign national of these rights before the foreign national's initial appearance. This rule requires the judge to give the information as a backup measure, in case the arresting or detaining authority failed to give the information or kept no record of giving it.

A judge may advise felony defendants either individually or in a group, without having to ascertain each defendant's nationality. The written record called for by this rule may consist of a check box on a form.

The United States Supreme Court has determined that the exclusionary rule does not apply to Article 36 violations. *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006). This rule creates no Illinois exclusionary rule, nor other Illinois judicial remedy, for Article 36 violations. Because advising the defendant at the initial appearance is simply a backup measure, the rule requires no judicial remedy for violations of the rule itself.