

NAFSA's Brief Guide to Legal Issues Overseas

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The vast majority of U.S. students who study overseas have no problems with the laws and customs of the country they are visiting. Students generally understand how to respect differences and navigate the appropriate behavioral norms of their host country. Occasionally, though, students do find that they are confronted with the legal system of another country and it is the intent of this guide to provide some basic overview of rights, services and responsibilities.

PREPARATION

It is important to be prepared for all eventualities. Students can never know too much about the country they are visiting. While abroad, students should remember that they are subject to the laws of the host country. It is no excuse not to know them. Laws over the use of alcohol, drugs, participation in demonstrations, vary from country to country. Students should be advised not to use drugs overseas under any circumstances and should be strongly cautioned about how they use alcohol.

It is the student's responsibility to become familiar with the laws of the host country, as well as any countries to which they plan to travel. Students should be aware of areas in which these laws differ from U.S. law, and obey these laws. Penalties for breaking the law in other countries are generally more severe than they would be in the U.S.

For additional information on host country laws, read the US Department of *State Consular Information Sheets* found at www.travel.state.gov

Information on major differences between US and host country law should be covered in on-site orientation when students arrive at their study abroad programs. If this is not possible then pre-departure orientation should include this discussion. Students should consider their approach to certain possibilities overseas: would you carry any package for a stranger, would you accept drugs from anyone, would you involve yourself in a demonstration? Convictions of any crime overseas may lead to a student being deported and unable to obtain a visa to return to that country.

Some international insurance plans include legal consultation services, students should be sure to review and understand their coverage.

WHAT HAPPENS IF A STUDENT IS ARRESTED?

U.S. citizens have the right to request to speak to a Consular Officer from the nearest U.S. Embassy or Consulate.

The Vienna Convention on Consular Relations (VCCR) provides important rights for U.S. citizens arrested or detained overseas. Article 36 of the VCCR requires that the host government must inform a foreign national (in this case a U.S. citizen) arrestee without delay of the option to communicate with his or her consular officials, and must notify the consular officials without delay if the arrestee so requests. The State Department interprets "without delay" to mean that there should be no deliberate delay and notification should occur as soon as reasonably possible. This usually means within 24-72 hours. If there is a bilateral agreement with the country it will specify the time frame. This time frame could be as soon as immediately or a longer time frame. For example the agreement with Vietnam says notification must occur within 96 hours. Article 36 also gives consular officers the right to visit their nationals in detention, to converse and correspond with them, and to arrange for their legal

representation. More than 170 countries are party to the VCCR. Another 20 countries are not part of the VCCR. For many, but not all of these countries there is some other bilateral agreement with the United States that deals with consular access. Generally speaking, treaties do not require consular notification if the arrested or detained U.S. citizen is also a citizen of the host country.

Students should carry an emergency card containing key emergency phone numbers, including the phone number of the nearest US Embassy or Consulate and your insurance card. Students may also wish to note down the translation of the phrase “I wish to call the U.S. Embassy.” Students should also ensure they have contact information for host country nationals who they have met and become friends with.

If students are arrested or detained abroad, they should NOT make any statements to the host country police prior to contacting the US Embassy or Consulate (or the home country embassy, if not a US citizen) **and** NOT make any statements to the host country police without having a lawyer present. Contact the nearest US Embassy or Consulate immediately to inform them of the arrest and to request assistance. The US Embassy maintains a list of attorneys, but does verify the quality of professionals who ask to be included on this list. Contact the insurance emergency number for additional legal assistance.

Students should call the on-site program director/host university contact person and the home campus 24-hour emergency numbers as soon as possible.

Again, it is important to understand that neither the U.S. government nor the home or host institution can get someone out of jail if you are arrested abroad. That is why it is vitally important for students to understand and obey the laws of the host country and any countries to which a student plans to travel while are abroad.

WHAT HELP CAN A STUDENT EXPECT FROM THE U.S. CONSULATE?

The U.S. Embassy/Consulate CAN:

- Provide a list of local attorneys - the U.S. Government cannot assume responsibility for the professional ability or integrity of these individuals or recommend a particular attorney.
- Intercede with local authorities to make sure that Americans’ rights under local law are fully observed and that you are treated humanely, according to internationally accepted standards.
- Visit Americans in jail - local authorities should notify the U.S. consulate when an American is detained.

The U.S. Embassy/Consulate CANNOT:

- Demand your immediate release or get you out of jail or the country.
- Represent you at trial or give legal counsel.
- Pay legal fees and/or fines with U.S. Government funds.