

## What the Consulate Can Do

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Although the U.S. Consulate has no authority to intervene in the Chinese legal process, U.S. consular officers may communicate with and provide limited assistance to American citizens detained in China. Any time a U.S. citizen is detained or arrested in China, authorities are obligated to notify the appropriate U.S. Consulate within four days of detention and confirmation of citizenship. In most cases, the Consulate learns of the detention or arrest of U.S. citizens from friends, family, or other concerned parties, and these reports are very helpful and are encouraged. **If detained, politely request permission to contact the closest U.S. consulate or embassy.**

Once notified of a U.S. citizen's detention, a consular officer is entitled to visit that detainee. The initial consular visit will take place as soon as possible, but usually not earlier than two days after the Chinese authorities have notified the Consulate. During the initial visit, the detained U.S. citizen may communicate with consular officers in either Chinese or English. Consular visits to U.S. citizens who are detained, arrested, or imprisoned will occur at least quarterly. U.S. citizens detained in China are not permitted visits by family or friends until after conviction; in addition, a require special permission from the Prison Administration. During post-conviction consular visits, consular officers are sometimes allowed to deliver parcels containing food, clothing, medication, and reading material, but all packages are inspected by prison authorities before delivery to the prisoner.

**The consular officer will not act as an attorney or provide legal advice. Chinese regulations forbid discussion of the details of a case during consular visits.** However, the consular officer can provide the U.S. citizen with a list of attorneys practicing in the local jurisdiction and throughout China.

## Chinese Criminal Law

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The Criminal Law and Criminal Procedure Law of the People's Republic of China applies to anyone accused of committing a crime within China—including American citizens. Because of this, Americans in China do not enjoy many of the rights and presumptions to which they have grown accustomed to under the American justice system, such as the presumption of innocence, the right to remain silent, or the right to an attorney. An individual can be detained—held against his/her will—without being arrested or being allowed to consult an attorney.

**Regardless of the validity of the accusation, cooperation, deference, and a good attitude are extremely important in the Chinese legal system.** The police will not be intimidated or persuaded by threats, demands, or aggressiveness. In fact, an uncooperative approach is likely to further exacerbate the situation.

**American citizens who require assistance while traveling in China should contact:**

**U.S. Embassy Beijing**

Tel: (86 10) 8531-4000, AmCitBeijing@state.gov  
<http://beijing.usembassy.gov>

**U.S. Consulate General Chengdu**

Tel: (86 28) 8558-3992, AmCitChengdu@state.gov  
<http://chengdu.usconsulate.gov>

**U.S. Consulate General Guangzhou**

Tel: (86 20) 8518-7650, GuangzhouACS@state.gov  
<http://guangzhou.usconsulate.gov>

**U.S. Consulate General Shanghai**

Tel: (86 21) 3217-4650, ShanghaiACS@state.gov  
<http://shanghai.usconsulate.gov>

**U.S. Consulate General Shenyang**

Tel: (86 24) 2322-1198, ShenyangACS@state.gov  
<http://shenyang.usconsulate.gov>



## Information for American Citizens about the Chinese Legal System

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# Overview of Chinese Criminal Law

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## ***The Public Security Bureau (PSB), Preliminary Investigation and Interrogation***

When the authorities believe a crime has or may have been committed, the Public Security Bureau (PSB)—analogous to the police—will conduct an investigation, during which they have broad search and seizure and examination powers. The PSB may interrogate anyone suspected of involvement in the crime. Interrogations may be conducted “on the spot” or individuals may be directed to appear at the local PSB station for interrogation. The PSB may allow a suspect to remain out of custody, either with a guarantor or under surveillance. However, the PSB also has the power to detain a suspect.

When a U.S. citizen who does not speak Chinese is brought in for interrogation, the PSB should inform its corresponding Foreign Affairs Office, which will provide an English speaker to translate during the interrogation. However, if an individual speaks some Chinese, they will expect him/her to speak in Chinese rather than English.

During interrogation, a U.S. citizen does not have the right to have an attorney present; however, one can ask for permission to contact one. If permission is granted, finding an attorney is the responsibility of the accused; the PSB will not provide any assistance. The Consulate can provide a list of local attorneys but does not assume responsibility for the professional ability or integrity of these attorneys.

During the interrogation, the accused will be expected to explain or defend his/her actions, and cannot refuse to answer questions unless they have no connection to the case. Following the interrogation, the PSB will prepare a statement and ask the accused to sign. If

he/she cannot read or understand Chinese, the PSB should provide an English language copy. The accused cannot refuse to sign this statement. However, depending on the circumstances, he/she may add a comment, such as “I do not read Chinese, and I have not been provided with an English version of this statement” or “I dispute this version of the events in question”.

During the investigation stage, the PSB has considerable discretion. In China, the Procuratorate is the government body that is responsible for the issuance of arrest warrants to institute prosecution, which is not to be confused with the police's plenary power to arrest and for supplementary pre-trial investigation. The PSB may decide not to refer a case to the Procuratorate if the PSB determines that there is insufficient evidence of guilt or that the circumstances of the crime do not warrant prosecution. Given the PSB's discretion during the pre-arrest investigation stage, a U.S. citizen who has been falsely accused or is aware of mitigating factors would be wise to show cooperation and deference and request leniency at this point. However, it is very important that the detainee do everything possible to defend himself and assert his innocence during this stage. If the case goes to trial, conviction almost always follows.

## ***The Procuratorate, Arrest, and Pre-trial Detention***

If the PSB investigation concludes that the evidence is sufficient to warrant arrest, the case is passed to the Procuratorate. The suspect will likely be detained throughout the pre-trial investigation. Again, the Procuratorate has a great deal of discretion at this point in deciding whether to exempt the case from prosecution or refer the case to the next level: the People's Court.

## ***The People's Court, Trial, Sentencing, and Appeal***

If the Procuratorate refers the case to the Court—the Intermediate People's Court, in the case of foreigners—the Court will again review the case. If the Court decides to proceed to trial, conviction is virtually certain. It is only at the point of litigation that the defendant enjoys the right to counsel, often only shortly before the trial itself. During the trial, the U.S. citizen defendant will be represented by a Chinese attorney (according to the Ministry of Foreign Affairs, only Chinese attorneys may represent foreign defendants), who will be less adversarial in defending his client than an American defense attorney would likely be. In fact, the defense attorney will probably be more concerned with showing mitigating circumstances in an effort to obtain a favorable sentence for his client, rather than putting on a strong case in an attempt to contest guilt. If the defendant does not speak Chinese, an interpreter is normally provided.

The People's Court is presided over by a judge and two “citizen assessors”, or three judges in an important case. The structure of the trial will be similar to that of an American trial—the Court will hear the charges and evidence, including examination of witnesses although in reality few witnesses come, or are permitted to come, to court to testify and the Court is primarily focused on verifying the veracity of the evidence gathered by the PSB and the Procuratorate. The defendant will have an opportunity to make a public final statement, during which a contrite and deferential attitude toward the Court can have an impact on sentencing. The defendant's sentence can range from a fine to life imprisonment to the death penalty. Any appeal must be made within 10 days.

**Remember:** U.S. embassy or consulate official cannot act as your lawyer or provide legal advice should you be arrested or detained. You should contact a local attorney to answer any legal questions.