

INFORMATION FOR BRITISH NATIONALS IMPRISONED IN CUBA



BRITISH EMBASSY HAVANA CONSULAR SECTION

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CONTENTS	PAGE
Introduction	3
Consular Support	3
Arrest and detention	3
Contacting people	4
What will my family be told?	4
What will the Consulate do?	4
The Judicial System	5
Laywers in Cuba	5
Courts and trial procedures	6
Sentencing and appeals	7
Prison conditions	7
Visits – Consular and family/friends	8
Medical and dental treatment	8
Money	8
Letters and parcels	8
Reading material	8
Prison transfer	9
Release	9
Prisoners Abroad	10
Attachments	11-12

Introduction

The following information offers a basic background to the Cuban legal and prison system for British Nationals who are detained or imprisoned. It may also provide useful information to next of kin, family and friends, and details what the British Embassy's Consular Staff can and cannot do in such circumstances.

Consular Support

Consular officials are impartial; they are not there to judge you whatever the circumstances. The aim is to ensure that you are treated properly and fairly in accordance with Cuban regulations, and that you are treated no less favourably than other prisoners. We cannot get you better treatment than other prisoners nor can we offer legal advice but we can give you details of lawyers to consult.

We can ask prison officials about your welfare but we cannot get you out of prison, pay fines or stand bail. Nor can we investigate a crime or interfere in local judicial procedures to get you out of prison or secure you an earlier trial date.

We have tried to make sure that this information is accurate and up to date, but the Embassy cannot accept legal responsibility for any errors or omissions in the information.

We have also included leaflets with useful information for you, as well as pens, paper and basic toiletries.

Who is my Consular Representative?

Jonathan Wolstenholme
Consul

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Arrest and detention

There are few restrictions on police powers to stop and/or question people. However, the Cuban Constitution states that no-one may be detained except as established by law. Once suspects have been identified the police are authorised to make arrests. According to Cuban law, pre-trial imprisonment is supposed to be limited to individuals who cause public fear through crimes of murder, rape or robbery, or who pose a significant risk to the public. From our experience, foreign nationals are not always been detained in custody, except in serious cases such as drug trafficking. However, they may be refused permission to leave Cuba pending the outcome of

investigations. Release on bail may also be considered at this stage by the police inspector in charge of the case (for instance, in the event of a road traffic accident).

If detained, a suspect can only be held for up to 24 hours after which they must either be released or brought before a police inspector to be remanded. Being held on remand can involve either house arrest or remand on bail. Only the equivalent of a public prosecutor can order a suspect to be remanded in custody and for no more than three working days (72 hours). During this time a decision must be made about whether to release the suspect; impose precautionary measures or non-custodial remand; or request the prosecutor to remand the suspect in custody. The prosecutor's office then has three working days to either release the accused or submit to judicial review an application to keep the accused in custody until trial. This review must be made by the court that will hear and judge the case. The court is required within three further working days to either approve detention or order release. The court's decision is final. By law, a document (known in Cuba as an "AUTO") should be issued within seven days of detention which states the charges, file number, and other case-specific information.

Who will know that I have been detained?

When a British citizen is arrested and detained, the Cuban authorities are required to inform the British Embassy. By law, we should be officially informed during the first 72 hours. However, this is usually done in writing and can take a week to ten days to reach us. We may be informed more quickly by friends or relatives present at the time of the incident, or sometimes directly by the Cuban authorities involved in the case.

How can I contact my family or friends?

International telecommunications in Cuba can be difficult, frustrating and expensive, and it is unlikely that you will be able to contact family or friends in the UK to notify them directly of your arrest/detention. From our experience, the Cuban authorities will often allow or arrange for a phone call to the Embassy shortly after your detention to inform us that a British National has been detained. Once we have made contact with you, we can then contact other family members and/or friends, subject to your wishes.

What will my family be told?

For reasons of confidentiality we are not permitted to tell anyone that you have been detained or what the charges are without your permission.

What will the Consulate do?

As soon as we have been notified of an arrest (whether by family, friends or officially) we will apply for permission to visit. Please note that it can take several days for us to obtain permission, although in some cases it can be agreed more quickly.

When we visit, we will try to obtain an explanation of the charges that you face and will suggest that you contact a local lawyer. There is no independent judiciary in Cuba and, as such, the choice of a local lawyer is limited to two law practices that handle cases involving foreign nationals. A lawyer will not, however, be able to act on your behalf until you have been officially charged with an offence.

We can also explain to your next-of-kin how to transfer money to you through the Foreign & Commonwealth Office in London.

The Cuban Legal System

Cuba is a civil law state with an inquisitorial judicial system ('inquisitorial' means gathering and evaluating evidence, as well as questioning individuals). Central to this system is the notion that no criminal case exists until an initial investigation (*'fase preparatoria'*) shows that a crime has been committed, and that a particular person is the probable offender. Before a formal criminal case is established, so the argument follows, citizens have little need for 'procedural protection'. This explains why the police have such wide powers to stop and question people, and to search premises.

The legal process is divided into the following stages:

1. The denuncia, is the reporting of the crime followed by the police investigation.
2. The preparatory phase (*'fase preparatoria'*). Once a suspect has been identified, the investigation process begins in order to establish the facts and to gather evidence. This phase is controlled by the Public Prosecution Service (PPS) but the enquiries may be carried out by the police inspector, the Department for State Security, or directly by the public prosecutor. This process should not exceed 60 days but may be extended to a period of six months at the request of the inspector-in-chief. After six months, the case must be handed to the prosecutor, irrespective of progress, who may rule on a further period for completion of the preparatory phase. There may be no fixed limit for this extension and there is no right of appeal. The preparatory phase can take between 12 and 14 months to complete in serious cases.
3. The intermediate phase begins when the prosecutor confirms that the investigation has been completed or identifies further enquiries to be carried out, either by his office or by the police inspector. The prosecutor completes the legal request to the competent court, asking for the oral hearing to begin. At this stage, the prosecutor can request a temporary adjournment if there is not enough evidence that a crime has been committed. Additionally, the prosecutor may request a temporary adjournment if the facts of the crime have been established but there is not enough evidence to accuse anyone of committing the crime. In either case, precautionary measures (remand) are lifted.
4. The oral hearing or trial stage. This must involve impartial judges who have not been involved in any other stage of the proceedings. Lawyers for both prosecution and defence should also be present. The evidence on both sides is examined and judgment and sentence is passed.
5. The appeal stage. Appeals may be lodged on procedural grounds or points of law.

Lawyers

British Embassy Consular staff cannot give legal advice but we can offer general guidance on the Cuban legal system. We can also provide a list of English-speaking lawyers. In practice, however, this is limited to two law firms in Havana which both have representative offices throughout the country:

- **Bufete de Servicios Legales Especializados**, Calle 23, Esq. J, Vedado, La Habana; Tel: (53) 7 832 6024, 832 6813, Fax: (53) 7 833 2159, E-mail: besnet@ceniai.inf.cu
- **Consultoria Juridica Internacional**, Calle 16 No. 314, Entre 5ta y 7ma, Playa, La Habana; Tel: (53) 7 204 2490, Fax: (53) 7 204 2303, E-mail: cji@cji.get.cma.net

This list is provided by the British Embassy in Havana but neither Her Majesty's Government nor any official from the British Embassy take any responsibility for the competence or probity of any firm or advocate on the list or for the consequence of any legal action initiated or advice given.

A lawyer can be engaged through a "Contract for Legal Services". Payment is regulated with costs increasing for more complicated cases. If an accused cannot afford a lawyer, the courts will appoint one from a local legal collective often from one of the firms listed previously. Lawyers can only intercede on behalf of their clients on completion of the preparatory phase and once the oral hearing has commenced (or when a precautionary measure has been taken).

Courts and trial procedures

Although organs of the state, courts in theory operate independently. At the head of the judicial process is the Supreme Court, followed by provincial courts (which prosecute felonies), municipal courts (for misdemeanours) and military courts.

The role of the court is to hear and assess the evidence from the prosecution and the defence, and the statement of the accused at the oral hearing. There are no procedures for settling a case outside of the proceedings such as plea bargaining. All cases go to trial. There has been an effort in recent years to reduce the time that trials take to be heard and judged. For example, with serious crimes, the preparatory phase, plus trial and verdict, now takes an average of six months, while for lesser crimes the average is 30 days for first instance cases. However, sentencing can add additional time, as it is decided by a panel of judges. Due to the volume of cases, they may not convene until months after the case was first heard in court.

Judges

The judiciary comprises professional judges (i.e. trained jurists with law degrees, appointed as appropriate for the type of court) and lay judges. Members of the public (cuban nationals only) are chosen to serve as magistrates. The constitution decrees that judges are responsible for imparting justice and therefore owe obedience only to the law.

The state has the power to appoint judges to the People's Supreme Court, while at the level of provincial and municipal courts, they are chosen by the respective Provincial Assembly. The activity of the courts is monitored internally, with courts higher up the hierarchy monitoring those below it. At each level, there are specific responsibilities assigned to judges to ensure the internal monitoring of the system.

Trial

There is no jury in a trial and cases are determined by panels of judges much like an appeal court in the UK. Municipal courts, trying lesser crimes, usually have one professional judge and two lay judges (magistrates). Provincial courts are the same, except for certain cases that require by law the presence of three judges. In these cases, the court is made up of three judges and two magistrates. The Supreme Court has three professional judges.

The prosecutor requests the opening of the oral hearing and presents its file on the case (*'conclusiones provisionales'*). The court inspects the file and may return it if it finds that procedural formalities have not been observed in the preparatory phase. This could mean the rights of the suspect have been breached, or correct methods in gathering evidence have not been followed.

Proceedings begin with the court secretary giving an account of the events that gave rise to the case/charges, and reporting whether the accused is subject to any precautionary measures (remand). The secretary then reads out the list of expert witnesses and other witnesses who have been called. The evidence is then presented in the following order:

1. Statement of the accused;
2. Documentary evidence;
3. Witness examination; and
4. Reports from expert witnesses.

The prosecution speaks first at each stage, followed by the defence.

Once the evidence has been presented, the prosecution and the defence have the opportunity to revise their provisional conclusions. The account of events may only be revised if the revisions do not significantly alter the original charges. Any such revisions must be made in writing.

After presentation of the evidence, the presiding judge gives the floor to the prosecution and then to the defence. The accused person has the right to the last word. At the end of the trial, the judge will ask if they have anything further to add in their defence. If they do, they are then given the opportunity to address the court. A written report is made of each sitting of the court. This summarises everything of importance, as well as any formal objections by either side regarding witnesses who did not turn up and whose evidence is considered to be necessary to their case.

Sentencing

The panel of judges will consider the case to determine the verdict and deliver sentence. The sentence must reflect the charge and must not be heavier than that requested by the prosecution.

Appeals

Appeals may be made against municipal court and provincial court sentences. Your lawyer is best placed to advise whether or not you have grounds for appeal under the law and on the appeals process. Appeals can be made on procedural grounds (*'Infracción de Ley'*) or on points of law (*'Quebrantamiento de Forma'*).

Revision of sentencing

A sentence may be revised if the municipal courts deliver custodial sentences, heavy fines or other sentences that are either extremely severe or too lenient with regard to the crime. Resentencing can also be applied when the defendant has been wrongly acquitted. The revision request may not be accepted as it is not mandatory to do so. During this process, the sentence continues to be served.

Enforcing the sentence

Any consideration of substituting a custodial sentence for one of conditional release is the responsibility of the court that passed the sentence, as is the enforcement of the sentence.

Prison

Prisons are managed by the Ministry of the Interior. Male foreign nationals are detained in a separate prison to Cuban nationals at '*La Condesa*' prison, in Guines Province, about an hour's drive from Havana. Female prisoners are held at '*Occidente*' prison in Havana but are housed separately to Cuban nationals.

Cuban prisons are generally austere; neither their design nor construction lends them to be centres of rehabilitation excellence. Decades of underfunding, lack of resources and neglect have contributed to the state that now exists. That said, '*La Condesa*' offers educational programmes for prisoners but their efforts suffer from lack of resources. Prisoners appear to be allowed to wear their own clothes but much is left to the discretion of the prison staff.

'*La Condesa*' offers a basic medical facility but again this suffers from lack of resources. Prisoners suffering from any serious medical complaint will be taken to an alternative facility. Prison food is poor; protein food such as chicken is often in short supply and good vegetables and fruit are almost non-existent. However, Cubans also endure such shortages outside of the prison system.

Prisoners can supplement their diets by buying additional food, subject to availability, either from the prison shop, local suppliers or more regularly through consular visits using funds sent by relatives or the Prisoners Abroad organisation. However, shopping provided during consular visits is considered to be an additional favour by the prison authorities and can be withdrawn for disruptive behaviour. The prison has a phone on which prisoners can make and receive calls but line quality is poor.

The authorities do allow visits between male and female prison inmates and, according to one British prisoner held for over four years in 'Occidente', these can become conjugal visits although it was not clear if this was with or without the blessing of the authorities.

Consular visits

We will seek permission to visit as soon as we learn of an individual's detention. A member of the Consular section will visit you within two working days of receiving authority to do so. We will offer to contact your family or next-of-kin to tell them about your situation and can give them advice on prison procedures and regulations. We can discuss with the prison authorities your morale and your general well-being and progress. We can also pass on any messages from you to family and friends. We will arrange to visit you approximately every two months.

Visits by family, next-of-kin or friends

Visits by family and friends have to be pre-authorised by the Cuban authorities. It is advisable to contact the Consular section of the Embassy well in advance of any proposed visit so that the necessary permissions can be obtained. Although the Consular section can offer advice, it cannot arrange visits by family or friends. These should be arranged in person in Calle 15 y K, Vedado, La Habana, by the family member concerned. You should be aware that it can take an average time of seven to ten working days to get the requisite clearances from the prison authorities. Visitors' passports should also be submitted.

What can a visitor bring?

Visitors can bring clothes, toiletries, some medical supplies and any foodstuffs purchased in Cuba. However, Cuban customs regulations make it difficult to bring in many items, in particular meat, dairy and fruit products, from outside the country. If in doubt, please contact the Consular section of the British Embassy.

Medical and dental treatment

If you need medical or dental treatment you should make an appointment to see the prison doctor or dentist.

Funds

Money can be deposited with the prison authorities on your behalf to enable you to purchase additional food stuffs and any personal items from the prison shop or external local suppliers. However, there is a very limited selection available. Consular officials will deposit with the prison authorities money received from family or friends transferred via the Foreign and Commonwealth Office's Consular Directorate in London or from welfare organisations such as Prisoners Abroad.

Mail

The Cuban postal service is unreliable and delivery of items sent through the post cannot be guaranteed.

Reading Material

There is a small supply of English books which have been deposited at 'La Condesa' prison. In addition, consular officials will bring with them British newspapers when available.

Parole or early release

In principle, a system exists whereby a prisoner can be released after having served 50% of their sentence. However, this is at the mercy of the Prison Commander and is less likely to apply to foreign nationals. The courts sometimes give suspended sentences and allow foreigners to leave the country.

Remission

Cuba (technically) works on a ten-month year, i.e. two months are taken off for each year of good behaviour. However, the final decision still rests with the Prison Commander who can choose to delay release dates.

Fines

If fines are part of a foreigner's sentence, they have to be paid in CUCs (cuban convertible currency). Usually funds are confiscated on arrest and used to help pay off any fines.

Transfer to the UK

A bilateral UK/Cuba Prisoner Transfer Agreement (PTA) has now been signed and ratified. Prisoners have been transferred to the UK to serve out their sentences under the terms of this agreement. Consular officials can provide more information on the provisions of the PTA but, essentially, a transfer requires the following;

1. Your request/consent to transfer or that of your legal representative;
2. Agreement of the Cuban Government to the transfer; and
3. Acceptance of the authorities in the United Kingdom to your transfer.

You may be eligible for transfer if you meet the following conditions:

1. You are considered a national of the United Kingdom (for this purpose a UK national is a British citizen with the right of abode in the UK, or any person whose transfer the UK Government considers appropriate, having regard to any close ties which the person has with the UK);
2. Judgement which resulted in your sentence is final;
3. As a general rule, there are at least six months of your sentence to be served when your transfer request is received. In exceptional circumstances this period may be less; and
4. If the offence which you were tried is a criminal offence under the law of the relevant part* of the UK. (*England and Wales; Scotland; Northern Ireland).

The sentence you would serve in the UK is the amount of your original sentence which remains after deducting any remission earned in Cuba.

Release

On completion of sentence, deportation is almost certain and an airline ticket is essential. The prison authorities will hand you over to the Immigration Authorities who will hold you in their detention facility until travel to the UK has been arranged. The Consular Section of the Embassy can liaise with a prisoner's family or friends to transfer funds through the Foreign and Commonwealth Office to purchase a ticket.

PRISONERS ABROAD

PRISONERS ABROAD is an independent, UK-based, humanitarian charity that provides information, advice and support to Britons detained overseas, to their family and friends, and to released prisoners trying to re-establish themselves in society. They make no moral judgement about the persons they help convicted and unconvicted, solely on the basis of need.

PRISONERS ABROAD provides prisoners with a support service during the period of their imprisonment such as information and advice but also practical support such as books, magazines, pen-pals, language materials, subscriptions, and in some cases financial assistance.

PRISONERS ABROAD does not provide assistance to prisoners released on bail or parole and do not assist dual nationals in the country of their second nationality.

PRISONERS ABROAD will need your permission to keep your details on their database and to begin arranging help to you. If you would like to be in contact with them, you need to sign their Authorisation Form. (Attachment 1). A leaflet from Prisoners Abroad can also be found in Attachment 2.

**CONSULAR SECTION
BRITISH EMBASSY
HAVANA**

ATTACHMENT 1

AUTHORISATION

Prisoners Abroad 89 – 93 Fonthill Road Finsbury Park London N4 3JH T 020 7561 6820 F 020 7561 6821
email info@prisonersabroad.org.uk www.prisonersabroad.org.uk
Charity Number 1093710



Under the provisions of the 1998 Data Protection Act, Prisoners Abroad needs your permission to keep your details on our database and to share information about your situation with the Foreign and Commonwealth Office. If you would like to be in contact with us, please make sure you sign the authorisation form before sending it back to us.

At Prisoners Abroad we have a strict confidentiality policy and will not share any information about you with anyone else unless we have your permission. If you do not sign the form, it will be difficult for us to work with you in the future and you will not be able to access our Resettlement service after your return to the UK.

Please note that we cannot provide services to British dual nationals who are detained in the country of their second nationality (e.g. a British/US dual national detained in the USA).

If you would like to continue to receive services from us, please print your name and address and sign the form. If you have any questions about our services, please contact us.

day/month/year

Name: Prison number: Date of birth:

Name of Prison:

Prison Address:

Alleged offence (what have you been accused of):

To help you as much as possible, we sometimes need to contact prison authorities, social workers, lawyers and other agencies. Is this okay? YES NO

I (please print name), hereby agree that the Foreign and Commonwealth Office can, on request, disclose the details of my arrest, alleged offence and any subsequent trial and detention, and any other such pertinent information relating to my personal circumstances, to representatives of Prisoners Abroad. I further authorise Prisoners Abroad to disclose the above mentioned details to the Foreign and Commonwealth Office upon request.

Copies of this waiver will be held by both the Foreign and Commonwealth Office and Prisoners Abroad.

Signed: Date:

ATTACHMENT 2

IN PRISON ABROAD?

A GUIDE TO HOW PRISONERS ABROAD CAN HELP YOU



89 - 93 Fonthill Road London N4 3JH Tel 020 7561 6820 Fax 020 7561 6821
Email Info@prisonersabroad.org.uk Website www.prisonersabroad.org.uk
Charity Number 1093710

Being arrested and held in prison abroad can be a confusing, terrifying and lonely experience. You may not understand the people around you and may know little or nothing of the local criminal justice system.

Prisoners Abroad is a non-government organisation which provides a vital service to British nationals in prison abroad, to their families and to released prisoners returning to the UK. This leaflet explains the ways in which we can help you.

All our services are free and confidential, and we make no moral judgement about the people we work with; we help convicted and unconvicted, guilty or innocent, solely on the basis of need.

Our Casework team

Our casework team will be your main point of contact with Prisoners Abroad. We will provide a professional and confidential service and will try to respond to your questions and your needs. Where possible we can talk to the prison authorities, your lawyer, the British Embassy, or any other relevant authority or organisation on your behalf. Where it is not possible to talk to the prison authorities or your lawyer, all contact will be with the Embassy and the FCO. All caseworkers speak at least one European language.

Information

As part of the introductory Prisoners Abroad pack, you will receive two booklets containing information about issues which may affect you during your detention and (where available) you will also receive information on the prison and criminal justice system of the country in which you are held. If you have specific requests for information, our casework team will try to help. Where possible, they can also arrange for documents to be translated or provide information on how you can apply for transfer to the UK.

X

Financial Assistance

If you have no other source of income, we can help in the following ways:

- in developing countries, we can make regular payments to help you buy essentials such as food, vitamins and bedding;
- in some circumstances, we can help with the cost of essential medical treatment that is not provided by the prison; and
- in developed countries, we may be able to send you a one-off annual grant for items such as toiletries and stationery.

Representations and Liaison

Prisoners Abroad addresses complaints about prison conditions and treatment, and, where necessary, will let the relevant agencies that can help. We cannot get better treatment for you than is provided for other prisoners in the same country, and some authorities are more open to representations than others, but we will do whatever is possible. If you wish, we will keep in touch with an Embassy representative about your situation and can refer you to other organisations.

First Name: Surname: Date of Birth: / /
day / month / year

Prisoner Number: Are you: (please tick) Male Female

Name of Prison:

Prison Address:

Country:

Signed Date

March 2006

Page 1 of