

7 FAM 1780 BEHAVIOR MODIFICATION FACILITIES

*(CT:CON-102; 02-27-2005)
(Office of Origin: CA/OCS/PRI)*

7 FAM 1781 INTRODUCTION

(CT:CON-102; 02-27-2005)

Numerous camps, schools, or similar behavior modification facilities (BMF's), have opened in the United States and abroad for the purpose of "re-educating" or modifying the behavior of minors. Because these children are often kept in these facilities at their parents' wishes, but against their own desires, you may find them a difficult group to deal with and to monitor. It is the Department's policy not to interfere with the legitimate rights of parents to educate or raise their children as they see fit, so long as the living conditions and discipline meet generally acceptable norms. Though these facilities may be operated and staffed by U.S. citizens/nationals and populated primarily by U.S. citizen/national minors, the host country where the facility is located is responsible for compliance with local safety, health, sanitation, and educational laws and regulations, including all licensing requirements of the staff in that country. Information about such facilities is available in the Department of State Fact Sheet – Behavior Modification Facilities.

7 FAM 1782 CHARACTERISTICS OF BMF'S AND STUDENTS

(CT:CON-102; 02-27-2005)

While these facilities may differ somewhat based on location, stated purpose, and the intentions and prior experience of the founders and staff, there are several commonalities, including:

- (1) The vast majority of students at these facilities are U.S. citizens or nationals;
- (2) Students are often adolescents who have had serious behavior problems with their parents or guardians;

- (3) In some instances, a U.S. state court has ordered students to attend the Behavior Modification Facility;
- (4) U.S. citizen/national parents who place a child in these facilities typically sign a contract for their child’s treatment that authorizes the facility’s staff to act as agents for the parents;
- (5) Contracts often give the staff blanket authorization to take all actions deemed necessary, in their judgment, for the health, welfare, and progress in the child’s program;
- (6) The facilities tend to isolate the children in relatively remote sites;
- (7) Many employ a system of graduated levels of earned privileges and punishments to stimulate behavior change; and
- (8) The Behavior Modification Facilities often restrict contact with the outside world, and the child’s communication privileges may be limited.

7 FAM 1783 MONITORING AND REPORTING

7 FAM 1783.1 Authorities

(CT:CON-102; 02-27-2005)

You have significant and ongoing responsibilities for the protection of minor U.S. citizens/nationals in your consular district, even those placed there by custodial parent or parents. As noted above, the Department will not interfere with legitimate parental rights, but we do have certain obligations to monitor and protect the welfare of U.S. citizens or nationals abroad, particularly minors. Consular authority for the protection of minors is derived from a variety of treaties, laws and regulations, including:

- (1) **TREATIES.** See Treaties in Force on the Department of State Internet page to confirm whether a particular multilateral or bilateral treaty is in force between the United States and the host country.
 - (a) Vienna Convention on Consular Relations (VCCR). Article 5(h) and of the VCCR provides that consular functions include protection of the interests of minors of the sending State.

Article 5(h) Vienna Convention on Consular Relations

Consular functions include ...

“(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the **interests of minors** and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons.”

Article 37 of the VCCR concerns host country responsibilities in the event cases of guardianship or trusteeship.

Article 37 VCCR

“If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments.”

(b) **Bilateral Consular Conventions.** See the CA/OCS Intranet page treaties feature for information about bilateral consular conventions. Check Treaties in Force on the Department of State Internet page to confirm the status of a particular treaty.

(2) **Laws and Regulations.**

- (a) 22 CFR 71.1 Protection of Americans Abroad;
- (b) 22 CFR 71.6 Services for Distressed Americans; and
- (c) 22 U.S.C. 1731 Protection to Naturalized Citizens Abroad.

7 FAM 1783.2 Consular Monitoring Responsibilities

(CT:CON-102; 02-27-2005)

As soon as you learn of the existence of a Behavior Modification Facility in your consular district, you should take the following actions, even if you have received no complaints:

- (1) Make an initial visit to the facility as soon as possible;
- (2) Develop and maintain contact with the facility's management and explain post's consular protection function in monitoring the well being of U.S. citizen/national students;
- (3) Identify and network with any host government organization that has oversight or licensing responsibility for the facility. These include the local child welfare, health, and education authorities. You should strongly encourage these authorities to conduct their own independent oversight of the Behavior Modification Facility;
- (4) With the permission of the management, photograph the facility, preferably using a digital camera to permit rapid transmission of your photos to the Department (CA/OCS/ACS). You should assure the Behavior Modification Facility leadership that these photographs will be used for official government purposes only;
- (5) Ensure that all U.S. citizen/national students are registered with the consulate, and that you know how to contact their parents or guardians;
- (6) Determine if all the U.S. citizen/national students are documented as U.S. citizens;
- (7) Obtain written Privacy Act Waivers from each student, if they are willing to provide one;
- (8) Establish a schedule of visits to the facility, and an opportunity to speak alone with the U.S. citizen/national students in a location where you and the student are confident of not being monitored; and
- (9) Once you have established a pattern of scheduled visits, try to make occasional unannounced visits.

7 FAM 1783.3 Specific Consular Actions in Suspect Cases

(CT:CON-102; 02-27-2005)

If allegations surface, or if for any reason you are concerned about possible

mistreatment or abuse of a student or group of students, you need to take appropriate and immediate action.

7 FAM 1783.3-1 Verify the Allegations

(CT:CON-102; 02-27-2005)

- a. In some cases, abuse or mistreatment may be obvious, but often it is subtle. In addition, sometimes students, particularly those in the facility against their own wishes, may make false or exaggerated claims in an effort to get out. You should try to verify abuse, and to develop an informed opinion on the validity of any allegations. During your visits, always ask individual students if they are aware of any other students who might be having particular difficulties and then seek to interview anyone they might name. If you request Behavior Modification Facility management to make a specific student quickly available for an interview and they refuse, report this to the Department immediately.
- b. If a student alleges abuse or mistreatment, obtain as much independent verification as possible, by actions such as:
 - (1) Examining, and if possible photographing, any marks or bruises;
 - (2) Asking the student for the names of any witnesses, and interviewing them separately;
 - (3) Describing the abuse in general to other students, without identifying the alleged victim, to see if they verify the allegations;
 - (4) Get specifics. Having the victim describe in detail where, when and by whom the abuse occurred. This is important not only in verifying the abuse, but in taking appropriate follow-up actions; and
 - (5) If appropriate and possible, carefully examining the facility for any physical evidence that might support the allegations, such as a punishment box, whipping post, manacles or chains, etc.

Note: Bring all such allegations to the Department's attention immediately, even if you are still in the process of trying to verify the abuse. Normally, the Department will discuss the allegations directly with the parent, or ask the post to do so.

7 FAM 1783.3-2 Consult with Facility Administrators as Appropriate

(CT:CON-102; 02-27-2005)

The well being of the students under their care rests in the first instance with the facility administration and ownership. That being said, approaches in cases of abuse need to be carefully considered. In some cases, raising alleged or confirmed abuse with facility authorities may be the best solution, but in others, possible complicity on the part of facility administration may make approaching them not only futile, but also increase risks for the alleged victim or other students. In making this determination, you should try to consult with the Department (CA/OCS/ACS) in advance, and consider the following factors:

- (1) How well and for how long have you (or the mission) known the school and its practices?
- (2) What input has the host government provided?
- (3) What is your own best judgment as to the validity and seriousness of the allegations?
- (4) How strong is the possibility that this was an isolated event, or attributable solely to one specific individual in the facilities faculty or administrations?

7 FAM 1783.3-3 Discussing Cases with Host Government Authorities

(CT:CON-102; 02-27-2005)

While host government authorities do have primary responsibility for the conduct of facility administrators, and the welfare of students, you should carefully consider at what level, and to what degree, you place the matter in the hands of local authorities. Discuss possible approaches with the Department, and consider various factors, including:

- (1) Your opinion as to the effectiveness of host authority oversight, and ability to take corrective action;
- (2) Any prior experience with host authorities in this or related areas; and
- (3) The apparent relationships, official and unofficial, between local authorities and the BMF administration.

7 FAM 1784 CUSTODY ISSUES

(CT:CON-102; 02-27-2005)

A parent, other relative, an interested neighbor or an activist may all contact you to seek the release of a minor U.S. citizen/national from a Behavior Modification Facility. When you receive such a call, you should immediately notify the appropriate geographic division within CA/OCS/ACS.

7 FAM 1784.1 When Parents Or Guardians Disagree

(CT:CON-102; 02-27-2005)

These cases are often complicated by the fact that the child may have been placed in the facility by one parent over the strong objections of the other. The threshold question to ask a person calling to seek the release of a minor U.S. citizen/national from one of these facilities is whether he or she has custody of the child. The Department will not interfere with a parent's custody rights as determined by a competent court, but the answer to the question will have a significant bearing on the case. 7 FAM 1784.1-1 through 1784.1-4 reflect the four likely custody scenarios.

7 FAM 1784.1-1 The Caller Has Sole Custody Of The Child

(CT:CON-102; 02-27-2005)

If the caller can establish through appropriate documentation that he or she has **sole** custody of the child, you should:

- (1) Assist the caller in communicating with the Behavior Modification Facility, including informing the facility that the caller wishes to withdraw the child. In some cases, this will be enough to have the minor released from the Behavior Modification Facility;
- (2) If the Behavior Modification Facility will not release the child, advise the caller that he or she may wish to seek a court order from an appropriate court in the host country where the facility is located; and
- (3) Another alternative might be for the parent to contact local authorities who may be willing to revoke the child's immigration status based on the parent's request and U.S. custody order.

7 FAM 1784.1-2 The Caller Has Shared Custody Of The Child

(CT:CON-102; 02-27-2005)

If the caller can establish through appropriate documentation that he or she

has **joint or shared** custody of the child, or the caller does not technically have custody but has a right to concur in where the child lives/how the child is educated, you should assist the caller in communicating with the BMF, including informing the BMF that the caller wishes to withdraw the child. If the BMF declines to release the child:

- (1) Inform the Department (CA/OCS/ACS) immediately; and
- (2) Advise the caller that he or she may wish to seek a court order from the state granting custody, directing that the other parent withdraw the child from the facility and return the child to the United States. Many courts that have issued custody orders regarding children prefer to have the children remain in the United States where the court can monitor their well being, and will amend the custody agreement to compel the child's return to the United States.

7 FAM 1784.1-3 There Is No Custody Agreement

(CT:CON-102; 02-27-2005)

In the **absence** of any custody agreement, both parents have rights and obligations with regard to the child. In such cases you should assist the caller in communicating with the BMF, including informing the BMF that the caller wishes to withdraw the child. If the BMF declines to release the child:

- (1) Inform the Department (CA/OCS/ACS) immediately; and
- (2) Advise the caller to seek a court order from the state granting custody, directing that the other parent withdraw the child from the BMF and return the child to the United States.

7 FAM 1784.1-4 The Caller Has No Custody Rights With Regard To The Child

(CT:CON-102; 02-27-2005)

If the caller is a parent who does not have custody (e.g., who has only visitation rights), or some other person with no rights with regard to the child you should advise him or her that the only recourse is to retain counsel in the United States and try to obtain a court order directing that the parent who enrolled the child withdraw the child from the BMF and return the child to the United States.

7 FAM 1784.2 When The Behavior Modification

Facility Claims Legal Custody

(CT:CON-102; 02-27-2005)

At times a parent, or both parents, may have signed a document, usually as part of the admission requirement, relinquishing legal custody of the child to the Behavior Modification Facility. If confronted with such a document, you should ask for a copy, and request Department's guidance. Depending upon the laws of the state in which it was signed, the age of the child, and the laws of the host country, such a document may actually have very limited validity. While powers of attorney for various specific purposes are not unusual (medical treatment for minors, for example) most states in the United States do **not** permit a parent completely to abrogate their responsibilities for minor children absent a court order. The Department, generally, will **not** consider such a document adequate for the purposes of applying for a passport or requesting repatriation assistance.

7 FAM 1785 ASSISTING A CHILD'S RETURN TO THE UNITED STATES

(CT:CON-102; 02-27-2005)

A U.S. citizen or national child formerly in a Behavior Modification Facility may request your assistance in returning to the United States under a variety of circumstances.

7 FAM 1785.1 Child Released at the Request or One or Both Parents

(CT:CON-102; 02-27-2005)

Presumably, if both parents, or the parent having custody, request the release of the child, they should also have the means to fund the child's return. Your assistance would normally involve helping with logistical arrangements. In some cases, however, you may encounter a situation where the parent requesting return has no funds, and the other parent refuses to, or cannot, assist. In such cases, a repatriation loan is usually appropriate, with the parent requesting return signing the Form, DS-3072 Emergency Loan Application and Evacuation Documentation.

7 FAM 1785.2 Child Released Over The Objections of Parents

(CT:CON-102; 02-27-2005)

Occasionally you might encounter a case where the Behavior Modification Facility has decided to release the child, or host government authorities have intervened either to secure the child's release or by closing the facility. It is also possible that in such circumstances both parents, or the parent having custody, may not consent to the release, and may refuse to assist in the child's return to the United States. You should:

- (1) Notify the Department (CA/OCS/ACS) immediately;
- (2) Department will contact parents, guardians and/or courts as appropriate to address repatriation funding and ultimate destination; and
- (3) Often in such cases, the Department will approve repatriation loan, and arrange reception by HHS/ACF/ORR's contractor, International Social Services (ISS-USA), which will in turn place the child with an appropriate social services organization (see 7 FAM 300).

7 FAM 1785.3 Child Has Escaped From The Behavior Modification Facility – Privacy Considerations

(CT:CON-102; 02-27-2005)

a. This is an extremely difficult situation, with the decision regarding what action to take depending on a number of factors, including the child's age, the wishes of the parent(s) or guardian(s), the laws of the host country, the reason behind the escape, the presence or absence of any abuse or allegations of abuse. Ultimately the overriding concern will be the welfare of the child. If such a child appears at post, or otherwise comes to your attention, you should:

- (1) Notify the Department (CA/OCS/ACS) immediately;
- (2) Determine the reasons behind the child's escape from the facility;
- (3) Be particularly alert for, and document any signs or allegations of abuse; and
- (4) Assuming the child is at age 14 or older, ask the child to sign a Privacy Act waiver permitting you to notify his or her parents or guardians.

b. Parents and legal guardians or persons acting "in loco parentis" for their

children usually may obtain information that is otherwise protected by the Privacy Act.

- c. Section (h) of the Privacy Act – Rights of Legal Guardians - provides...

5 U.S.C. 552 (h)

"Rights of legal guardians: For purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual."

- d. The OMB Privacy Act Guidelines note that subsection Section (h), of the Privacy Act is "discretionary and that individuals who are minors are authorized to exercise the rights given to them by the Privacy Act, or in the alternative, their parents or those acting **in loco parentis**, may exercise them in their behalf.

"OMB Guidelines, 40 Fed. Reg. at 28,970; see also OMB Guidelines, 40 Fed. Reg. 56,741, 56,742 (1975) (noting that "[t]here is no absolute right of a parent to have access to a record about a child absent a court order or consent").

- e. In the context of this subchapter, the explicit wishes of minors must also be respected. Normally, if you have been advised by a minor age 14 or older that he or she does not want any information released to parent or guardian, you should honor those wishes absent the presence of compelling circumstances affecting the health or safety of the minor child. Bring the matter to the attention of CA/OCS/PRI immediately and we will provide an advisory opinion on a case-by-case basis.
- f. The Privacy Act's "health or safety" condition of disclosure is the one most relevant to U.S. citizen/national minors in overseas Behavior Modification Facilities. It provides ...

5 U.S.C. 552 (b)(8)

"No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior consent of, the individual to whom the record pertains, unless disclosure of the record would be: **to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.**"

- g. Before a disclosure can be made, this exception requires a "showing of compelling circumstances affecting the health or safety of an individual...." therefore, information about a U.S. citizen/national may be released to a person who it can be said can reasonably be expected to care for or assist the U.S. citizen/national. This section of the Act may also be invoked to save the life of the U.S. citizen/national, notwithstanding his/her written affirmation of his/her right to privacy.
- h. The Privacy Act requires us to notify individuals in writing whenever we invoke the "health or safety" condition of disclosure with respect to information about them that is otherwise safeguarded by the Act. Therefore, posts are requested to advise the Department (a) whenever they avail themselves of this condition of disclosure and (b) any information re the individual's last known address (the minor's address) so that we may attempt to effect the requisite notification. Questions about the Privacy Act may be directed to CA/OCS/ACS or to CA/OCS/PRI at ASKPRI@state.gov.

7 FAM 1785.3-1 If The Child Concurs

(CT:CON-102; 02-27-2005)

You should:

- (1) Notify the parents and determine their wishes;
- (2) Assist in setting up direct private dialog between parent(s) and child; and
- (3) If they desire to have the child returned to the Behavior Modification Facility, strongly encourage them to travel to post and take charge of the matter personally.

7 FAM 1785.3-2 If The Child Does Not Want Parents Contacted

(CT:CON-102; 02-27-2005)

Do not contact the Parents or the Behavior Modification Facility without prior, express approval from the Department. If necessary, a subsistence loan under EMDA –II might be appropriate to provide care for the child until a final decision is reached (see 7 FAM 380).

7 FAM 1785.3-3 If There Are Any Signs Or Reasonable Allegations Of Abuse

(CT:CON-102; 02-27-2005)

Do not contact the Parents or the Behavior Modification Facility without prior, express approval from the Department. If necessary, a subsistence loan under EMDA –II might be appropriate to provide care for the child until a final decision is reached (see 7 FAM 380). If warranted under the circumstances, notify host government authorities of the evident or alleged abuse. If the conditions at the BMF, and/or the wishes of the parent(s) seem in direct conflict with the child’s welfare, the best recourse may be the repatriation of the child to the United States, with HHS/ACF/ORR’s contractor International Social Services (ISS-USA) arranging for reception and onward placement of the child with appropriate social services.

7 FAM 1786 THROUGH 1789 UNASSIGNED