



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1337

Introduced 2/4/2015, by Rep. Scott Drury

SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-1
725 ILCS 5/109-1

from Ch. 38, par. 103-1
from Ch. 38, par. 109-1

Amends the Code of Criminal Procedure of 1963. Provides that when foreign nationals are arrested or detained, they must be advised of their right to have their consular officials notified, and if an individual chooses to exercise that right, a law enforcement official is required to notify the consulate. Provides that at the initial appearance of a defendant in any criminal proceeding, the 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 those consular representatives if the notice has not already been provided. Provides that the court must make a written record of so advising the defendant. Provides that if consular notification is not provided to a defendant before his or her first appearance in court, the court shall grant any reasonable request for a continuance of the proceedings to allow contact with the defendant's consulate. Provides that if consular notice is not provided before conviction and sentencing, the Appellate Court shall remand the case to the trial court if the defendant can show that he or she suffered prejudice as a result of the lack of consular notice. Provides that any delay caused by the granting of the request by a defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by the speedy trial provisions and on the day of the expiration of delay the period shall continue at the point at which it was suspended. States that the provisions do not create any new substantive State right or remedy.

LRB099 07209 RLC 27304 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Sections 103-1 and 109-1 as follows:

6 (725 ILCS 5/103-1) (from Ch. 38, par. 103-1)

7 Sec. 103-1. Rights on arrest. (a) After an arrest on a
8 warrant the person making the arrest shall inform the person
9 arrested that a warrant has been issued for his arrest and the
10 nature of the offense specified in the warrant.

11 (b) After an arrest without a warrant the person making the
12 arrest shall inform the person arrested of the nature of the
13 offense on which the arrest is based.

14 (b-5) This subsection is intended to implement and be
15 interpreted consistently with the Vienna Convention on
16 Consular Relations, to which the United States is a party.
17 Article 36 of that Convention guarantees that when foreign
18 nationals are arrested or detained, they must be advised of
19 their right to have their consular officials notified, and if
20 an individual chooses to exercise that right, a law enforcement
21 official is required to notify the consulate. It does not
22 create any new substantive State right or remedy.

23 (1) In accordance with federal law and the provisions

1 of this Section, the law enforcement official in charge of
2 a custodial facility shall ensure that any individual
3 booked and detained at the facility, within 48 hours of
4 booking or detention, shall be advised that if that
5 individual is a foreign national, he or she has a right to
6 communicate with an official from the consulate of his or
7 her country.

8 (2) If the foreign national requests consular
9 notification or the notification is mandatory by law, the
10 law enforcement official in charge of the custodial
11 facility shall ensure the notice is given to the
12 appropriate officer at the consulate of the foreign
13 national in accordance with the U.S. Department of State
14 Instructions for Consular Notification and Access.

15 (3) The law enforcement official in charge of the
16 custodial facility where a foreign national is located
17 shall ensure that the foreign national is allowed to
18 communicate with, correspond with, and be visited by, a
19 consular officer of his or her country.

20 (c) No person arrested for a traffic, regulatory or
21 misdemeanor offense, except in cases involving weapons or a
22 controlled substance, shall be strip searched unless there is
23 reasonable belief that the individual is concealing a weapon or
24 controlled substance.

25 (d) "Strip search" means having an arrested person remove
26 or arrange some or all of his or her clothing so as to permit a

1 visual inspection of the genitals, buttocks, anus, female
2 breasts or undergarments of such person.

3 (e) All strip searches conducted under this Section shall
4 be performed by persons of the same sex as the arrested person
5 and on premises where the search cannot be observed by persons
6 not physically conducting the search.

7 (f) Every peace officer or employee of a police department
8 conducting a strip search shall:

9 (1) Obtain the written permission of the police commander
10 or an agent thereof designated for the purposes of authorizing
11 a strip search in accordance with this Section.

12 (2) Prepare a report of the strip search. The report shall
13 include the written authorization required by paragraph (1) of
14 this subsection (f), the name of the person subjected to the
15 search, the names of the persons conducting the search, and the
16 time, date and place of the search. A copy of the report shall
17 be provided to the person subject to the search.

18 (g) No search of any body cavity other than the mouth shall
19 be conducted without a duly executed search warrant; any
20 warrant authorizing a body cavity search shall specify that the
21 search must be performed under sanitary conditions and
22 conducted either by or under the supervision of a physician
23 licensed to practice medicine in all of its branches in this
24 State.

25 (h) Any peace officer or employee who knowingly or
26 intentionally fails to comply with any provision of this

1 Section, except subsection (b-5) of this Section, is guilty of
2 official misconduct as provided in Section 103-8; provided
3 however, that nothing contained in this Section shall preclude
4 prosecution of a peace officer or employee under another
5 section of this Code.

6 (i) Nothing in this Section shall be construed as limiting
7 any statutory or common law rights of any person for purposes
8 of any civil action or injunctive relief.

9 (j) The provisions of subsections (c) through (h) of this
10 Section shall not apply when the person is taken into custody
11 by or remanded to the sheriff or correctional institution
12 pursuant to a court order.

13 (Source: P.A. 81-1509.)

14 (725 ILCS 5/109-1) (from Ch. 38, par. 109-1)

15 Sec. 109-1. Person arrested.

16 (a) A person arrested with or without a warrant shall be
17 taken without unnecessary delay before the nearest and most
18 accessible judge in that county, except when such county is a
19 participant in a regional jail authority, in which event such
20 person may be taken to the nearest and most accessible judge,
21 irrespective of the county where such judge presides, and a
22 charge shall be filed. Whenever a person arrested either with
23 or without a warrant is required to be taken before a judge, a
24 charge may be filed against such person by way of a two-way
25 closed circuit television system, except that a hearing to deny

1 bail to the defendant may not be conducted by way of closed
2 circuit television.

3 (b) The judge shall:

4 (1) Inform the defendant of the charge against him and
5 shall provide him with a copy of the charge;

6 (2) Advise the defendant of his right to counsel and if
7 indigent shall appoint a public defender or licensed
8 attorney at law of this State to represent him in
9 accordance with the provisions of Section 113-3 of this
10 Code;

11 (3) Schedule a preliminary hearing in appropriate
12 cases;

13 (4) Admit the defendant to bail in accordance with the
14 provisions of Article 110 of this Code; and

15 (5) Order the confiscation of the person's passport or
16 impose travel restrictions on a defendant arrested for
17 first degree murder or other violent crime as defined in
18 Section 3 of the Rights of Crime Victims and Witnesses Act,
19 if the judge determines, based on the factors in Section
20 110-5 of this Code, that this will reasonably ensure ~~assure~~
21 the appearance of the defendant and compliance by the
22 defendant with all conditions of release.

23 (c) The court may issue an order of protection in
24 accordance with the provisions of Article 112A of this Code.

25 (d) At the initial appearance of a defendant in any
26 criminal proceeding, the court must advise the defendant in

1 open court that any foreign national who is arrested or
2 detained has the right to have notice of the arrest or
3 detention given to his or her country's consular
4 representatives and the right to communicate with those
5 consular representatives if the notice has not already been
6 provided. The court must make a written record of so advising
7 the defendant.

8 (e) If consular notification is not provided to a defendant
9 before his or her first appearance in court, the court shall
10 grant any reasonable request for a continuance of the
11 proceedings to allow contact with the defendant's consulate.
12 Any delay caused by the granting of the request by a defendant
13 shall temporarily suspend for the time of the delay the period
14 within which a person shall be tried as prescribed by
15 subsections (a), (b), or (e) of Section 103-5 of this Code and
16 on the day of the expiration of delay the period shall continue
17 at the point at which it was suspended. If consular notice is
18 not provided before conviction and sentencing, the Appellate
19 Court shall remand the case to the trial court if the defendant
20 can show that he or she suffered prejudice as a result of the
21 lack of consular notice.

22 (Source: P.A. 97-813, eff. 7-13-12; 98-143, eff. 1-1-14;
23 revised 12-10-14.)