

HB5438



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5438

Introduced 1/31/2022, by Rep. Jawaharial Williams

SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-1

from Ch. 38, par. 103-1

Amends the Code of Criminal of Procedure of 1963. Provides that when a person is arrested, a peace officer may not subject the person to a custodial interrogation for more than 8 hours during a 24-hour period. Defines "custodial interrogation".

LRB102 25496 RLC 34784 b

A BILL FOR

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 Section 103-1 as follows:

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

7 Sec. 103-1. Rights on arrest.

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

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

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

1 (1) In accordance with federal law and the provisions
2 of this Section, the law enforcement official in charge of
3 a custodial facility shall ensure that any individual
4 booked and detained at the facility, within 48 hours of
5 booking or detention, shall be advised that if that
6 individual is a foreign national, he or she has a right to
7 communicate with an official from the consulate of his or
8 her country. This subsection (b-5) does not create any
9 affirmative duty to investigate whether an arrestee or
10 detainee is a foreign national.

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

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

23 (b-6) When a person is arrested, a peace officer may not
24 subject the person to a custodial interrogation for more than
25 8 hours during a 24-hour period. In this subsection (b-6),
26 "custodial interrogation" means any interrogation (i) during

1 which a reasonable person in the subject's position would
2 consider himself or herself to be in custody and (ii) during
3 which a question is asked that is reasonably likely to elicit
4 an incriminating response.

5 (c) No person arrested for a traffic, regulatory or
6 misdemeanor offense, except in cases involving weapons or a
7 controlled substance, shall be strip searched unless there is
8 reasonable belief that the individual is concealing a weapon
9 or controlled substance.

10 (d) "Strip search" means having an arrested person remove
11 or arrange some or all of his or her clothing so as to permit a
12 visual inspection of the genitals, buttocks, anus, female
13 breasts or undergarments of such person.

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

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

20 (1) Obtain the written permission of the police
21 commander or an agent thereof designated for the purposes
22 of authorizing a strip search in accordance with this
23 Section.

24 (2) Prepare a report of the strip search. The report
25 shall include the written authorization required by
26 paragraph (1) of this subsection (f), the name of the

1 person subjected to the search, the names of the persons
2 conducting the search, and the time, date and place of the
3 search. A copy of the report shall be provided to the
4 person subject to the search.

5 (g) No search of any body cavity other than the mouth shall
6 be conducted without a duly executed search warrant; any
7 warrant authorizing a body cavity search shall specify that
8 the search must be performed under sanitary conditions and
9 conducted either by or under the supervision of a physician
10 licensed to practice medicine in all of its branches in this
11 State.

12 (h) Any peace officer or employee who knowingly or
13 intentionally fails to comply with any provision of this
14 Section, except subsection (b-5) of this Section, is guilty of
15 official misconduct as provided in Section 103-8; provided
16 however, that nothing contained in this Section shall preclude
17 prosecution of a peace officer or employee under another
18 section of this Code.

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

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

26 (Source: P.A. 99-190, eff. 1-1-16.)