



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1906

Introduced 2/10/2011, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-1	from Ch. 38, par. 103-1
725 ILCS 5/109-1	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 neither the fact that a foreign national is identified as such, nor that he or she invokes the right to consular notification shall provide any law enforcement official with reason to believe that the person is unlawfully present in the United States or reason to otherwise inquire about that person's immigrant status in the United States. 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 such 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.

LRB097 05688 RLC 46029 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. Neither the fact
22 that a foreign national is identified as such, nor that he or
23 she invokes the right to consular notification shall provide

1 any law enforcement official with reason to believe that the
2 person is unlawfully present in the United States or reason to
3 otherwise inquire about that person's immigrant status in the
4 United States.

5 (1) In accordance with federal law and the provisions
6 of this Section, the law enforcement official in charge of
7 a custodial facility shall ensure that any individual
8 booked and detained at such facility, within 48 hours of
9 booking or detention, shall be advised that if that
10 individual is a foreign national, he or she has a right to
11 communicate with an official from the consulate of his or
12 her country.

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

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

25 (c) No person arrested for a traffic, regulatory or
26 misdemeanor offense, except in cases involving weapons or a

1 controlled substance, shall be strip searched unless there is
2 reasonable belief that the individual is concealing a weapon or
3 controlled substance.

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

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

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

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

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

23 (g) No search of any body cavity other than the mouth shall
24 be conducted without a duly executed search warrant; any
25 warrant authorizing a body cavity search shall specify that the
26 search must be performed under sanitary conditions and

1 conducted either by or under the supervision of a physician
2 licensed to practice medicine in all of its branches in this
3 State.

4 (h) Any peace officer or employee who knowingly or
5 intentionally fails to comply with any provision of this
6 Section is guilty of official misconduct as provided in Section
7 103-8; provided however, that nothing contained in this Section
8 shall preclude prosecution of a peace officer or employee under
9 another section of this Code.

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

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

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

18 (725 ILCS 5/109-1) (from Ch. 38, par. 109-1)

19 Sec. 109-1. Person arrested.

20 (a) A person arrested with or without a warrant shall be
21 taken without unnecessary delay before the nearest and most
22 accessible judge in that county, except when such county is a
23 participant in a regional jail authority, in which event such
24 person may be taken to the nearest and most accessible judge,
25 irrespective of the county where such judge presides, and a

1 charge shall be filed. Whenever a person arrested either with
2 or without a warrant is required to be taken before a judge, a
3 charge may be filed against such person by way of a two-way
4 closed circuit television system, except that a hearing to deny
5 bail to the defendant may not be conducted by way of closed
6 circuit television.

7 (b) The judge shall:

8 (1) Inform the defendant of the charge against him and
9 shall provide him with a copy of the charge.

10 (2) Advise the defendant of his right to counsel and if
11 indigent shall appoint a public defender or licensed
12 attorney at law of this State to represent him in
13 accordance with the provisions of Section 113-3 of this
14 Code.

15 (3) Schedule a preliminary hearing in appropriate
16 cases; and

17 (4) Admit the defendant to bail in accordance with the
18 provisions of Article 110 of this Code.

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

21 (d) At the initial appearance of a defendant in any
22 criminal proceeding, the court must advise the defendant in
23 open court that any foreign national who is arrested or
24 detained has the right to have notice of the arrest or
25 detention given to his or her country's consular
26 representatives and the right to communicate with those

1 consular representatives if such notice has not already been
2 provided. The court must make a written record of so advising
3 the defendant.

4 (e) If consular notification is not provided to a defendant
5 before his or her first appearance in court, the court shall
6 grant any reasonable request for a continuance of the
7 proceedings to allow contact with the defendant's consulate. If
8 consular notice is not provided before conviction and
9 sentencing, the Appellate Court shall remand the case to the
10 trial court if the defendant can show that he or she suffered
11 prejudice as a result of the lack of consular notice.

12 (Source: P.A. 90-140, eff. 1-1-98.)