



Sen. Kwame Raoul

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LRB097 05688 RLC 53451 a

1 AMENDMENT TO SENATE BILL 1906

2 AMENDMENT NO. _____. Amend Senate Bill 1906 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Sections 103-1, 103-8, and 109-1 as
6 follows:

7 (725 ILCS 5/103-1) (from Ch. 38, par. 103-1)

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

12 (b) After an arrest without a warrant the person making the
13 arrest shall inform the person arrested of the nature of the
14 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

1 Consular Relations, to which the United States is a party.
2 Article 36 of that Convention guarantees that when foreign
3 nationals are arrested or detained, they must be advised of
4 their right to have their consular officials notified, and if
5 an individual chooses to exercise that right, a law enforcement
6 official is required to notify the consulate. It does not
7 create any new substantive State right or remedy.

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

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

23 (3) The law enforcement official in charge of the
24 custodial facility where a foreign national is located
25 shall ensure that the foreign national is allowed to
26 communicate with, correspond with, and be visited by, a

1 consular officer of his or her country.

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

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

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

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

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

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

26 (g) No search of any body cavity other than the mouth shall

1 be conducted without a duly executed search warrant; any
2 warrant authorizing a body cavity search shall specify that the
3 search must be performed under sanitary conditions and
4 conducted either by or under the supervision of a physician
5 licensed to practice medicine in all of its branches in this
6 State.

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

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

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

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

22 (725 ILCS 5/103-8) (from Ch. 38, par. 103-8)

23 Sec. 103-8. Mandatory duty of officers.

24 Any peace officer who intentionally prevents the exercise
25 by an accused of any right conferred by this Article, except

1 subsection (b-5) of Section 103-1, or who intentionally fails
2 to perform any act required of him or her by this Article,
3 except subsection (b-5) of Section 103-1, shall be guilty of
4 official misconduct and may be punished in accordance with
5 Section 33-3 of the "Criminal Code of 1961" approved July 28,
6 1961, as heretofore and hereafter amended.

7 (Source: Laws 1963, p. 2836.)

8 (725 ILCS 5/109-1) (from Ch. 38, par. 109-1)

9 Sec. 109-1. Person arrested.

10 (a) A person arrested with or without a warrant shall be
11 taken without unnecessary delay before the nearest and most
12 accessible judge in that county, except when such county is a
13 participant in a regional jail authority, in which event such
14 person may be taken to the nearest and most accessible judge,
15 irrespective of the county where such judge presides, and a
16 charge shall be filed. Whenever a person arrested either with
17 or without a warrant is required to be taken before a judge, a
18 charge may be filed against such person by way of a two-way
19 closed circuit television system, except that a hearing to deny
20 bail to the defendant may not be conducted by way of closed
21 circuit television.

22 (b) The judge shall:

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

25 (2) Advise the defendant of his right to counsel and if

1 indigent shall appoint a public defender or licensed
2 attorney at law of this State to represent him in
3 accordance with the provisions of Section 113-3 of this
4 Code.

5 (3) Schedule a preliminary hearing in appropriate
6 cases; and

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

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

11 (d) At the initial appearance of a defendant in any
12 criminal proceeding, the court must advise the defendant in
13 open court that any foreign national who is arrested or
14 detained has the right to have notice of the arrest or
15 detention given to his or her country's consular
16 representatives and the right to communicate with those
17 consular representatives if such notice has not already been
18 provided. The court must make a written record of so advising
19 the defendant.

20 (e) If consular notification is not provided to a defendant
21 before his or her first appearance in court, the court shall
22 grant any reasonable request for a continuance of the
23 proceedings to allow contact with the defendant's consulate.
24 Any delay caused by the granting of the request by a defendant
25 shall temporarily suspend for the time of the delay the period
26 within which a person shall be tried as prescribed by

1 subsections (a), (b), or (e) of Section 103-5 of this Code and
2 on the day of the expiration of delay the period shall continue
3 at the point at which it was suspended. If consular notice is
4 not provided before conviction and sentencing, the Appellate
5 Court shall remand the case to the trial court if the defendant
6 can show that he or she suffered prejudice as a result of the
7 lack of consular notice.

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