



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB4053

Introduced 4/27/2023, by Rep. Patrick Windhorst - Dennis  
Tipsword, Jr., Tony M. McCombie and Kevin Schmidt

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/103-3.5

725 ILCS 5/109-1

from Ch. 38, par. 109-1

Amends the Code of Criminal Procedure of 1963. In a provision which specifies that a person who is in police custody shall have the right, upon being taken into police custody, to communicate free of charge with an attorney of his or her choice and members of his or her family, deletes a provision that required that right to be provided as soon as possible upon being taken into custody. Provides that, if a person who is in police custody is transferred to a new place of detention, that person has a right to make one telephone call (rather than 3 telephone calls) within 3 hours of arrival. Specifies that this right is not renewable. Provides that the person in police custody is prohibited from contacting the alleged victim or victims of the offense for which the person is charged. Provides that statements that are made by a person who is detained in police custody in violation of the right to communicate provisions of the Code may be used to evaluate whether those statements were voluntarily given and are reliable, based on the totality of the circumstances. Authorizes a custodial arrest of a person accused of an offense that is not a felony or Class A misdemeanor if necessary to verify the accused's identity.

LRB103 31716 RLC 60297 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 103-3.5 and 109-1 as follows:

6 (725 ILCS 5/103-3.5)

7 Sec. 103-3.5. Right to communicate with attorney and  
8 family; transfers; presumption of inadmissibility.

9 (a) Persons who are in police custody shall have the right  
10 to communicate free of charge with an attorney of his or her  
11 choice and members of his or her family ~~as soon as possible~~  
12 upon being taken into police custody, but no later than 3 hours  
13 of arrival at the first place of detention. Persons in police  
14 custody must be given access to use a telephone via a landline  
15 or cellular phone to make 3 telephone calls.

16 (b) In accordance with Section 103-7, at every police  
17 facility where a person is in police custody, a sign  
18 containing at minimum, the following information in bold block  
19 type must be posted in a conspicuous place:

20 (1) a short statement notifying persons who are in  
21 police custody of their right to have access to a phone  
22 within 3 hours of being taken into police custody; and

23 (2) that persons who are in police custody have the

1 right to make 3 phone calls within 3 hours of being taken  
2 into custody, at no charge.

3 (c) In addition to the information listed in subsection  
4 (b), if the place of detention is located in a jurisdiction  
5 where the court has appointed the public defender or other  
6 attorney to represent persons who are in police custody, the  
7 telephone number to the public defender or other attorney's  
8 office must also be displayed. The telephone call to the  
9 public defender or other attorney must not be monitored,  
10 eavesdropped upon, or recorded.

11 (d) If a person who is in police custody is transferred to  
12 a new place of detention, that person ~~person's~~ has a right to  
13 make one 3 telephone call ~~calls~~ under this Section within 3  
14 hours of arrival, and that right is not renewable ~~is renewed~~.

15 (d-5) The person in police custody is prohibited from  
16 contacting the alleged victim or victims of the offense for  
17 which the person is charged.

18 (e) Statements made by a person who is detained in police  
19 custody in violation of this Section may be used to evaluate  
20 whether ~~section are presumed inadmissible in court as~~  
21 ~~evidence. The presumption of inadmissibility may be overcome~~  
22 ~~by a preponderance of the evidence that the statements were~~  
23 ~~statement was~~ voluntarily given and are ~~is~~ reliable, based on  
24 the totality of the circumstances. As used in this subsection,  
25 "totality of the circumstances" includes, but is not limited  
26 to, evidence that law enforcement knowingly prevented or

1 delayed a person's right to communicate or failed to comply  
2 with the requirements of this Section.

3 (f) The 3-hour requirement under this Section shall not  
4 apply while the person in police custody is asleep,  
5 unconscious, or otherwise incapacitated or an exigent  
6 circumstance prevents the officers from timely complying with  
7 this Section. If this occurs, it must be documented within the  
8 police report detailing the exigent circumstance. Once the  
9 exigent circumstance ends, the right to make 3 phone calls  
10 within 3 hours resumes.

11 (g) In accordance with this Section, the following records  
12 shall be maintained: (i) the number of phone calls the person  
13 made while in custody; (ii) the time or times the person made  
14 phone calls; and (iii) if the person did not make any phone  
15 calls, a statement of the reason or reasons why no calls were  
16 made.

17 (h) For purposes of this Section, "place of detention"  
18 means a building or a police station that is a place of  
19 operation for a municipal police department or county sheriff  
20 department or other law enforcement agency, other than a  
21 courthouse, that is owned or operated by a law enforcement  
22 agency, or other building, such as a school or hospital, where  
23 persons are held in detention in connection with criminal  
24 charges against those persons.

25 (Source: P.A. 102-694, eff. 1-7-22.)

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

2 Sec. 109-1. Person arrested; release from law enforcement  
3 custody and court appearance; geographic constraints prevent  
4 in-person appearances.

5 (a) A person arrested with or without a warrant for an  
6 offense for which pretrial release may be denied under  
7 paragraphs (1) through (6) of Section 110-6.1 shall be taken  
8 without unnecessary delay before the nearest and most  
9 accessible judge in that county, except when such county is a  
10 participant in a regional jail authority, in which event such  
11 person may be taken to the nearest and most accessible judge,  
12 irrespective of the county where such judge presides, within  
13 48 hours, and a charge shall be filed. Whenever a person  
14 arrested either with or without a warrant is required to be  
15 taken before a judge, a charge may be filed against such person  
16 by way of a two-way audio-visual communication system, except  
17 that a hearing to deny pretrial release to the defendant may  
18 not be conducted by two-way audio-visual communication system  
19 unless the accused waives the right to be present physically  
20 in court, the court determines that the physical health and  
21 safety of any person necessary to the proceedings would be  
22 endangered by appearing in court, or the chief judge of the  
23 circuit orders use of that system due to operational  
24 challenges in conducting the hearing in person. Such  
25 operational challenges must be documented and approved by the  
26 chief judge of the circuit, and a plan to address the

1 challenges through reasonable efforts must be presented and  
2 approved by the Administrative Office of the Illinois Courts  
3 every 6 months.

4 (a-1) Law enforcement shall issue a citation in lieu of  
5 custodial arrest, upon proper identification, for those  
6 accused of any offense that is not a felony or Class A  
7 misdemeanor unless (i) a law enforcement officer reasonably  
8 believes the accused poses a threat to the community or any  
9 person, (ii) a custodial arrest is necessary because the  
10 criminal activity persists after the issuance of a citation,  
11 ~~or~~ (iii) the accused has an obvious medical or mental health  
12 issue that poses a risk to the accused's own safety, or (iv) a  
13 custodial arrest is necessary to verify the accused's  
14 identity. Nothing in this Section requires arrest in the case  
15 of Class A misdemeanor and felony offenses, or otherwise  
16 limits existing law enforcement discretion to decline to  
17 effect a custodial arrest.

18 (a-3) A person arrested with or without a warrant for an  
19 offense for which pretrial release may not be denied may,  
20 except as otherwise provided in this Code, be released by a law  
21 enforcement officer without appearing before a judge. A  
22 presumption in favor of pretrial release shall be applied by  
23 an arresting officer in the exercise of his or her discretion  
24 under this Section.

25 (a-5) A person charged with an offense shall be allowed  
26 counsel at the hearing at which pretrial release is determined

1 under Article 110 of this Code. If the defendant desires  
2 counsel for his or her initial appearance but is unable to  
3 obtain counsel, the court shall appoint a public defender or  
4 licensed attorney at law of this State to represent him or her.

5 (b) Upon initial appearance of a person before the court,  
6 the judge shall:

7 (1) inform the defendant of the charge against him and  
8 shall provide him with a copy of the charge;

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

14 (3) schedule a preliminary hearing in appropriate  
15 cases;

16 (4) admit the defendant to pretrial release in  
17 accordance with the provisions of Article 110 of this  
18 Code, or upon verified petition of the State, proceed with  
19 the setting of a detention hearing as provided in Section  
20 110-6.1; and

21 (5) order the confiscation of the person's passport or  
22 impose travel restrictions on a defendant arrested for  
23 first degree murder or other violent crime as defined in  
24 Section 3 of the Rights of Crime Victims and Witnesses  
25 Act, if the judge determines, based on the factors in  
26 Section 110-5 of this Code, that this will reasonably

1           ensure the appearance of the defendant and compliance by  
2           the defendant with all conditions of release.

3           (c) The court may issue an order of protection in  
4           accordance with the provisions of Article 112A of this Code.  
5           Crime victims shall be given notice by the State's Attorney's  
6           office of this hearing as required in paragraph (2) of  
7           subsection (b) of Section 4.5 of the Rights of Crime Victims  
8           and Witnesses Act and shall be informed of their opportunity  
9           at this hearing to obtain an order of protection under Article  
10          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 the 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  
21          defendant before his or her first appearance in court, the  
22          court shall grant any reasonable request for a continuance of  
23          the proceedings to allow contact with the defendant's  
24          consulate. Any delay caused by the granting of the request by a  
25          defendant shall temporarily suspend for the time of the delay  
26          the period within which a person shall be tried as prescribed



1 by subsection (a), (b), or (e) of Section 103-5 of this Code  
2 and on the day of the expiration of delay the period shall  
3 continue at the point at which it was suspended.

4 (f) At the hearing at which conditions of pretrial release  
5 are determined, the person charged shall be present in person  
6 rather than by two-way audio-video communication system unless  
7 the accused waives the right to be present physically in  
8 court, the court determines that the physical health and  
9 safety of any person necessary to the proceedings would be  
10 endangered by appearing in court, or the chief judge of the  
11 circuit orders use of that system due to operational  
12 challenges in conducting the hearing in person. Such  
13 operational challenges must be documented and approved by the  
14 chief judge of the circuit, and a plan to address the  
15 challenges through reasonable efforts must be presented and  
16 approved by the Administrative Office of the Illinois Courts  
17 every 6 months.

18 (g) Defense counsel shall be given adequate opportunity to  
19 confer with the defendant prior to any hearing in which  
20 conditions of release or the detention of the defendant is to  
21 be considered, with a physical accommodation made to  
22 facilitate attorney/client consultation. If defense counsel  
23 needs to confer or consult with the defendant during any  
24 hearing conducted via a two-way audio-visual communication  
25 system, such consultation shall not be recorded and shall be  
26 undertaken consistent with constitutional protections.

1 (Source: P.A. 101-652, eff. 1-1-23; 102-813, eff. 5-13-22;  
2 102-1104, eff. 1-1-23.)