

**BRAZIL'S CUSTODY HEARINGS PROJECT IN CONTEXT: THE RIGHT TO PROMPT IN-PERSON  
JUDICIAL REVIEW OF ARREST ACROSS OAS MEMBER STATES**

The custody hearing project of Brazil's National Justice Council (CNJ) represents a laudable and important step toward a better, more human rights-compliant criminal justice system. While recognizing this advance, it is also critical to reflect upon the sufficiency of its design and implementation, for the direction set during the project's current transition away from its early phase may well define whether and how it succeeds in the long term. In that spirit, this report reiterates and elaborates on the co-signed October 9 request to participate in today's thematic hearing before the Inter-American Commission on Human Rights. Complementing the serious problems discussed in that prior document,<sup>1</sup> this report focuses on the importance of enshrining the right to prompt in-person judicial review of arrest in legislation, binding caselaw or other equivalently more stable legal underpinning.

After a discussion of applicable international law, this report places the right to prompt in-person judicial review of *in flagrante* arrests in the context by comparing its level of recognition in the laws of all 35 member states of the Organization of American States (OAS). The picture that emerges is revealing. Of the 35 states, a full 28 generally guarantee such hearings for common *in flagrante* cases in their legislation, constitution, and/or binding jurisprudence. Brazil is among the outliers. It is hoped that these findings could lend even greater weight to the importance of consolidating custody hearings on more permanent legal footing.

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<sup>1</sup> For instance, the implementation problem apparent in the frequent lack of effective investigative follow through on abuse complaints made during custody hearings is especially troubling.

## **I. SCOPE OF RESEARCH**

The comparative analysis in this report is restricted to whether the laws of OAS member states provide for a basic right to prompt in-person judicial review of *in flagrante* arrests as envisioned under inter-American human rights law with respect to "common" criminal justice cases. The research is focused on principal sources of law concerning prompt in-person judicial review of *in flagrante* arrests in each State rather than on the mapping of all potential facets of such a guarantee. Accordingly, the research is not exhaustive as to special categories of cases (e.g. terrorism charges) about which OAS states might have different (often less protective) laws regarding prompt in-person judicial review of arrest, exceptions that may not comport with international standards.<sup>2</sup> The research also excludes analysis of the degree of each State's implementation of the right. Finally, though the comparative research presented concentrates on *in flagrante* arrests, the right to prompt in-person judicial review of detention applies to all arrests, as discussed in the international law section that follows.

## **II. THE IMPORTANCE OF INITIAL APPEARANCES BEFORE A JUDICIAL AUTHORITY**

The availability of a prompt, in-person judicial hearing post-arrest is central to the basic fairness and integrity of any criminal justice system. The *judicial* nature of the authority is critical—consistent with the notion of rule of law, independent, objective, and impartial judges<sup>3</sup> act as guarantors of the rights of individuals deprived of liberty by the State, and are charged

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<sup>2</sup> Regarding promptness of the judicial review in emergency situations, the United Nations Human Rights Committee, which is responsible for interpreting the International Covenant on Civil and Political Rights, determined that delays between the arrest of an accused individual and the time before he is brought before a judicial authority "must not exceed a few days." United Nations Human Rights Committee, *General Comment No. 35—Article 9 of the International Covenant on Civil and Political Rights (Liberty and Security of Person)*, adopted on October 28, 2014, ¶ 33.

<sup>3</sup> *Id.* at ¶ 32. ("It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with.").

with ensuring that detainees are treated justly and in a manner consistent with the presumption of innocence.<sup>4</sup> Against this background, it is no surprise that the Commission considers “[t]he single most important protection of the rights of a detainee [to be] prompt appearance before a judicial authority responsible for overseeing the detention.”<sup>5</sup>

A corollary of the role of judges in protecting the rule of law—and a bedrock principle of the Inter-American system—is that a remedy “must be truly effective in establishing whether there has been a violation of human rights and in providing redress.”<sup>6</sup> In other words, judges must be empowered to decide that detainees must be released as part of an “effective” review of a detention’s legality—a judicial remedy “cannot be reduced to a mere formality” and a judge “must examine the reasons invoked by the claimant” and make express findings in response.<sup>7</sup> For similar reasons, it is also crucial that judges be institutionally capable of deciding independently, objectively, and impartially<sup>8</sup>—only in this manner could “effective” judicial review protect against arbitrary or illegal detention.

Finally, the availability of a prompt, in-person judicial hearing helps to ensure respect for human rights by law enforcement officials before *and* after detention. In particular, the promptness with which detainees are physically presented before a judicial authority reduces the likelihood of torture being used in interrogation, since the initial hearing “gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a

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<sup>4</sup> See IACHR, *Case of Herrera Espinoza et al. v. Ecuador*, Report No. XX/14, ¶ 138 (2014) (“Immediate judicial control is a measure aimed at preventing arbitrary or illegal detention, inasmuch as under the rule of law it is the task of the judge to act as guarantor of the rights of the person in custody, . . . and to ensure, in general, that the defendant is treated in such a way that is consistent with the presumption of innocence.”).

<sup>5</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Ch. VII, ¶ 21 (2001). See also United Nations, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *Third Report to the [former] Commission on Human Rights*, ¶ 39 (2003) E/CN.4/2004/56. See IACHR, *Report on the Situation of Persons Deprived of Liberty in the Americas*, ¶ 120 (2011) OEA/Ser.L/V/II Doc. 64.

<sup>6</sup> IACtHR, *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87 Series A No. 9, ¶ 24 (1978).

<sup>7</sup> IACHR, *Report on the Use of Pretrial Detention in the Americas*, ¶ 197 (2013) OEA/Ser.L/V/II. Doc. 46/13.

<sup>8</sup> See HRC, *supra* note 2.

remand detention center if continued detention is ordered.”<sup>9</sup> Thus, immediate judicial control is a measure aimed at preventing misconduct by security personnel both during arrest and shortly thereafter.

### III. LEGAL OBLIGATIONS IN THE AMERICAN CONVENTION ON HUMAN RIGHTS

The American Convention on Human Rights forbids deprivation of liberty without due process of law, and guarantees all persons—regardless of status—a non-derogable right to judicial review of their detention.<sup>10</sup> Article 7(5) of the American Convention provides that “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power . . .”<sup>11</sup> The guarantee is echoed in other international instruments.<sup>12</sup> The Inter-American Court has held that “the terms of the guarantee established in Article 7(5) of the Convention are clear in what refers to the fact that the person arrested must be taken before a competent judge or judicial authority, pursuant to the principles of judicial control and procedural immediacy” in order to provide for “protection of the right to personal liberty and to grant protection to other rights, such as life and personal integrity.”<sup>13</sup>

The right to prompt in-person judicial review of detention applies broadly, not only in cases of alleged *in flagrante* arrests, in which a person is arrested while allegedly committing a crime. Inter-American Court jurisprudence has developed to show that the Convention applies to

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<sup>9</sup> See HRC, *supra* note 2, at ¶ 34.

<sup>10</sup> See, *mutatis mutandi*, IACtHR, *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87 Series A No. 9, ¶ 29–30 (1978).

<sup>11</sup> *The American Convention on Human Rights*, Art. 7(5) (1969).

<sup>12</sup> For example, the Inter-American Convention on Forced Disappearance of Persons establishes that “[e]very person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.” *The Inter-American Convention on Forced Disappearance of Persons*, Art. XI (1994). This Convention has been ratified by Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, México, Panama, Paraguay, Peru, Uruguay, and Venezuela. See Organization of American States, *General Information of the Treaty*, OAS.ORG, <http://www.oas.org/juridico/english/signs/a-60.html>.

<sup>13</sup> IACtHR, *Case of Acosta Calderon v. Ecuador*, Series C No. 129, ¶ 78 (2005).

warrant-based and other forms of arrests as well. In *Chaparro Alvarez & Lapo Iñíguez v. Ecuador*, the Court held that even though a warrant preceded the detention and a competent judicial authority was present at the time of the alleged victim's arrest, these factors did not satisfy the requirement of bringing a detainee before a judge pursuant to Article 7(5).<sup>14</sup>

Bringing a detainee before a judicial authority means that the judge “must hear the detained person's claims personally, and evaluate all the explanations that the latter provides in order to decide whether to proceed to release him or to maintain the deprivation of liberty.”<sup>15</sup> Further, in *Bayarri vs. Argentina* the Court stressed that the proper authority must do more than just be physically present or hear explanations.<sup>16</sup> The Court noted that the judge is the guarantor of the rights of any person in the State's custody, and therefore has the task of preventing and ending unlawful and arbitrary detentions. In other words, the detainee must be physically brought before a competent judicial authority who listens to the detainee's arguments and is able to, and who actually does, render a decision regarding the legality of the detention.<sup>17</sup> The Court has also affirmed “the simple awareness of a judge that a person is detained does not satisfy this guarantee, since the detainee must appear personally and give his statement before the competent judge or authority.”<sup>18</sup> Physically bringing an arrestee before a judge helps ensure official procedures are followed and the person has not been abused during or after the arrest.

Moreover, the Court held in *Acosta Calderón v. Ecuador* that a representative of the office of the public prosecutor did not have the attributes to be considered an “officer authorized

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<sup>14</sup> IACtHR, *Case of Chaparro Alvarez and Lapo Iñíguez v. Ecuador*, Series C No. 170, ¶¶ 63-68, 85-86 (2007). See also HRC, *supra* note 2, at ¶ 32.

<sup>15</sup> *Id.*

<sup>16</sup> IACtHR, *Case of Bayarri v. Argentina*, Series C No. 187, ¶ 67 (2008).

<sup>17</sup> *Id.* at ¶ 65.

<sup>18</sup> *Id.*; see also *The Case of Tibi v. Ecuador*, Series C No. 114, ¶ 118 (2004).

to carry out judicial functions” in the sense of Article 7(5) of the Convention.<sup>19</sup> On this point, the Commission has established in *Report 66/01 Dayra María Levoyer* that:

The review of the legality of a detention implies confirming, not only formally but also substantively, that the detention conforms to the requirements of the judicial system and that it does not violate any of the detained person’s rights. That such confirmation is carried out by a judge, invests the proceeding with certain guarantees that are not duly protected if the decision is in the hands of an administrative authority, which lacks the proper legal training and the authority to exercise judicial functions.<sup>20</sup>

In order to ensure effective judicial oversight of detention practices, a competent court must be quickly appraised of the persons who are held in confinement.<sup>21</sup> The Commission has suggested that a delay in bringing a detainee before a judicial authority in excess of two to three days will generally not be considered reasonable.<sup>22</sup> Moreover, the Inter-American Court has found a one-week delay of in-person judicial review of detention legality to not meet the standard of “promptly” under Article 7(5).<sup>23</sup> The word “promptly” has been used interchangeably with the word “immediately.”<sup>24</sup>

The promptness requirement should be sufficiently specific, regulated, and monitored to prevent abuses derived from lack of clarity or bad faith. For example, certain officers mistakenly interpreted a United States requirement that the government justify holding a person past 48

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<sup>19</sup> *Case of Acosta Calderón v. Ecuador supra* note 13, at ¶ 80 (“... since the Political Constitution of Ecuador itself, in force at that time, stated in its Article 98 which were the bodies that had the power to carry out judicial function and it did not grant that competence to prosecutors”); see also *Case of Tibi v. Ecuador supra* note 18, at ¶ 119.

<sup>20</sup> IACHR, *Dayra María Levoyer Jiménez v. Ecuador*, Case 11.992, Report No. 66/01, ¶ 79 (2001) OEA/Ser.L/V/II.114 Doc. 5.

<sup>21</sup> IACHR, *Report on the Situation of Human Rights in the Dominican Republic*, Ch. VI, ¶ 219 (1999) OEA/Ser.L/V/II.104. Doc. 49 rev. 1; IACHR, Report No. 2/97, Cases 11.205, 11.236, 11.238, 11.239, 11.242, 11.243, 11.244, 11.247, 11.248, 11.249, 11.251, 11.254, 11.255, 11.257, 11.258, 11.261, 11.263, 11.305, 11.320, 11.326, 11.330, 11.499, and 11.504, *Jorge Luis Bronstein et al.*, Argentina, ¶ 11 (1997).

<sup>22</sup> IACHR, *Report on Terrorism and Human Rights*, Ch. III, ¶ 122 (2002) OEA/Ser.L/V/II.116 Doc. 5 rev. 1.

<sup>23</sup> *Bayarri, supra* note 16, at ¶ 66.

<sup>24</sup> See *Case of Tibi v. Ecuador supra* note 18, ¶ 113–122.

hours as permitting procedures that authorize arrest and 48-hour detention without charge.<sup>25</sup> The United Nations Human Rights Committee affirms that “[t]he grounds and procedures prescribed by law must not be destructive of the right to liberty of person”<sup>26</sup> and that states should “provide strict and effective control to ensure that those powers [of State agents] are not misused, and do not lead to arbitrary or unlawful arrest or detention.”<sup>27</sup> Because officers can deliberately or accidentally misinterpret detention time-limits as in fact providing leeway, states should ensure their laws forbids aa detention where “there was never any interest in presenting [the suspect] to a judge,” and “the sole purpose of the pick-up [is] to hold [the suspect] until she either cooperate[s] or [the pre-charge period] expire[s].”<sup>28</sup>

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<sup>25</sup> *State v. Bishop*, No. W2010-01207-CCA-R3-CD, 2012 WL 938969, at \*4–7 (Tenn. Crim. App. Mar. 14, 2012) (citing police testimony on use of a 48-hour hold, which officers mistakenly believed was “constitutionally permissible” because “the defendant was not yet charged with any crime”).

<sup>26</sup> See HRC, *supra* note 2, at ¶ 14.

<sup>27</sup> *Id.* at ¶ 8.

<sup>28</sup> *United States v. Roberts*, 928 F. Supp. 910, 915 (W.D. Mo. 1996). Or, as in the case of *Willis v. Bell*, a person was deliberately held beyond the earliest practicable time where a probable cause hearing could be held. *Willis v. Bell*, 726 F. Supp. 1118, 1125, 1127 n.20 (N.D. Ill. 1989) (emphasis added) (calling the prosecution's argument that probable cause was present “beside the point” and a “lame attempt” at defending the policy); see also *Robinson v. City of Chicago*, 638 F. Supp. 186, 192–93 (N.D. Ill. 1986) (“However, that the original arrest was with probable cause does not satisfy the Constitutional requirement of judicial determination of probable cause prior to extended detention.” (citing *Gerstein v. Pugh*, 420 U.S. 103, 117–19 (1975))).

**IV. STATES' LEVEL OF LEGAL RECOGNITION OF THE RIGHT TO PROMPT IN-PERSON JUDICIAL REVIEW OF *IN FLAGRANTE* ARRESTS, BY CATEGORY**

*A. States whose domestic law generally guarantees prompt, in-person judicial review of in flagrante arrests in typical criminal justice cases:*

- 1. Antigua and Barbuda**
- 2. Argentina**
- 3. Belize**
- 4. Bolivia**
- 5. Canada**
- 6. Chile**
- 7. Colombia**
- 8. Costa Rica**
- 9. Dominica**
- 10. Dominican Republic**
- 11. Ecuador**
- 12. El Salvador**
- 13. Guatemala**
- 14. Guyana**
- 15. Haiti**
- 16. Jamaica**
- 17. Mexico**
- 18. Nicaragua**
- 19. Peru**
- 20. Panama**
- 21. Paraguay**
- 22. Saint Kitts and Nevis**
- 23. Saint Lucia**
- 24. The Bahamas**
- 25. Trinidad and Tobago**
- 26. United States**
- 27. Uruguay**
- 28. Venezuela**

*B. States seemingly lacking sufficient domestic law guarantees of the right to prompt in-person judicial review of in flagrante arrests in typical criminal justice cases:*

- 29. Barbados**
- 30. Brazil**
- 31. Cuba**
- 32. Grenada**
- 33. Honduras**
- 34. Saint Vincent and the Grenadines**
- 35. Suriname**

**V. STATES' LEGAL RECOGNITION OF THE RIGHT TO PROMPT IN-PERSON JUDICIAL REVIEW OF *IN FLAGRANTE* ARRESTS, BY ALPHABETICAL ORDER**

State	Prompt?	In-person presentation?	To a proper judicial authority with the mandate to review detention legality and authority to order release?	Domestic law source(s)
Antigua and Barbuda	48 hours, generally.	Yes.	Yes.	The Antigua and Barbuda Constitution, 1981, Art. 5. <sup>29</sup>
Argentina	6 hours.	Yes.	Yes.	Código Procesal Penal de la Nación, 2014, Art. 286. <sup>30</sup>
<b>Barbados</b>	<b>No, detention for five days without charge is allowed before presentation to a judge "without unnecessary delay".<sup>31</sup></b>			
Belize	72 hours.	Yes.	Yes.	Constitution of Belize, amended 2000, art. 5(3). <sup>32</sup>

<sup>29</sup> The Antigua and Barbuda Constitution, 1981, Art. 5 (“Any person who is arrested or detained-  
a. for the purpose of bringing him before a court in execution of the order of a court; or  
b. upon reasonable suspicion of his having committed or being about to commit a criminal offence under any law,  
c. and who is not released shall be brought before the court within forty-eight hours after his detention and, in computing time for the purposes of this subsection, Sundays and public holidays shall be excluded.”), <http://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html#titIcapII>. See also the Magistrate’s Code of Procedure Act.

<sup>30</sup> Código Procesal Penal de la Nación, 2014, Art. 286 (“El funcionario o auxiliar de la policía que haya practicado una detención sin orden judicial, deberá presentar al detenido inmediatamente en un plazo que no exceda de seis (6) horas, ante la autoridad judicial competente.”), <http://www.infoleg.gob.ar/infolegInternet/anexos/235000-239999/239340/norma.htm>.

<sup>31</sup> United States Department of State, *2014 Country Reports on Human Rights Practices - Barbados*, <http://www.state.gov/documents/organization/236876.pdf>

<sup>32</sup> Constitution of Belize, amended 2000, art. 5(3) (“Any person who is arrested or detained (a) for the purpose of bringing him before a court in execution of the order of a court; or (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law, and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention.”),

Bolivia	24 hours, generally.	Yes.	Yes.	Código de Procedimiento Penal, (25 Marzo, 1999), Art. 226-228. <sup>33</sup> Constitution, Art. 23. <sup>34</sup>
<b>Brazil</b>	<b>24 hours for in flagrante arrests to be communicated to judge in writing.</b>	<b>No.</b>	<b>No.</b>	<b>Criminal Procedure Code, Art. 304, 306.</b>

[http://www.oas.org/juridico/mla/en/blz/en\\_blz-int-text-const\\_2002.pdf](http://www.oas.org/juridico/mla/en/blz/en_blz-int-text-const_2002.pdf)

<sup>33</sup> Código de Procedimiento Penal, (25 Marzo, 1999), Art. 226-228 (“Artículo 226°.- (*Aprehensión por la Fiscalía*). El fiscal podrá ordenar la aprehensión del imputado cuando sea necesaria su presencia y existan suficientes indicios de que es autor o partícipe de un delito de acción pública sancionado con pena privativa de libertad cuyo mínimo legal sea igual o superior a dos años y de que pueda ocultarse, fugarse o ausentarse del lugar u obstaculizar la averiguación de la verdad, excepto en los delitos previstos y sancionados por los Artículos 132 bis, 185, 254, 271 primer párrafo y 331 del Código Penal. La persona aprehendida será puesta a disposición del juez, en el plazo de veinticuatro (24) horas, para que resuelva, dentro del mismo plazo, sobre la aplicación de alguna de las medidas cautelares previstas en este Código o decrete su libertad por falta de indicios.

Artículo 227°.- (*Aprehensión por la policía*). La Policía Nacional podrá aprehender a toda persona en los siguientes casos:

1. Cuando haya sido sorprendida en flagrancia;
2. En cumplimiento de mandamiento de aprehensión librado por juez o tribunal competente;
3. En cumplimiento de una orden emanada del fiscal, y,
4. Cuando se haya fugado estando legalmente detenida.

La autoridad policial que haya aprehendido a alguna persona deberá comunicar y ponerla a disposición de la Fiscalía en el plazo máximo de ocho horas.

Artículo 228°.- (*Libertad*). En ningún caso el fiscal ni la policía podrán disponer la libertad de las personas aprehendidas. Ellas deberán ser puestas a disposición del juez quien definirá su situación procesal.”)

[http://www.cicad.oas.org/fortalecimiento\\_institucional/legislations/PDF/BO/codigo\\_procedimiento\\_penal.pdf](http://www.cicad.oas.org/fortalecimiento_institucional/legislations/PDF/BO/codigo_procedimiento_penal.pdf)

<sup>34</sup> Constitution of Bolivia, art. 23. (“Artículo 23. . . . III. Nadie podrá ser detenido, aprehendido o privado de su libertad, salvo en los casos y según las formas establecidas por la ley. La ejecución del mandamiento requerirá que éste emane de autoridad competente y que sea emitido por escrito. IV. Toda persona que sea encontrada en delito flagrante podrá ser aprehendida por cualquiera otra persona, aun sin mandamiento. El único objeto de la aprehensión será su conducción ante autoridad judicial competente, quien deberá resolver su situación jurídica en el plazo máximo de veinticuatro horas.”), [http://www.oas.org/juridico/spanish/mesicic3\\_blv\\_constpolitica.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_constpolitica.pdf)

Canada	24 hours, generally.	Typically. <sup>35</sup>	Yes.	Criminal Code of Canada, last amended July 2015, Art. 503 (1). <sup>36</sup>
Chile	24 hours.	Yes.	Yes.	Constitution of Chile, 1980, Art. 19(7)(c). <sup>37</sup>
Colombia	36 hours.	Yes.	Yes.	Código de Procedimiento Penal,

<sup>35</sup> Canadian Civil Liberties Association and Education Trust, *Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention*, 25 (2014) (“The Criminal Code requires individuals detained by the police to be brought before a justice without unreasonable delay, or in any event before a justice within 24 hours where one is available. All jurisdictions studied have established procedures to fulfill this obligation outside of regular court hours, usually by providing a telephone appearance with a justice. This first bail appearance, while a crucial guard against arbitrary detention and police abuse of authority, is not necessarily functioning as a meaningful review of whether or not a person should be released from custody. The impact this first appearance has on individuals from remote communities may be particularly profound. In Manitoba, rural defence counsel report that a person who is adjourned and returned to police cells after their first appearance by telephone could wait up to a week before transportation is available to fly them to the provincial court for a continuation of their bail hearing. Since the RCMP holding cells were not designed for long-term detention, researchers were told that the conditions can be quite bad: ‘I guess the cells are not very comfortable – they’re not prison cells, [and] some of them don’t have mattresses I’m told. The toilet is right out in the open there . . . .’”) (citations omitted), [http://ccla.org/dev/v5/\\_doc/CCLA\\_set\\_up\\_to\\_fail.pdf](http://ccla.org/dev/v5/_doc/CCLA_set_up_to_fail.pdf)

<sup>36</sup> Criminal Code of Canada, last amended July 2015, Art. 503 (1) (“A peace officer who arrests a person with or without warrant or to whom a person is delivered under subsection 494(3) or into whose custody a person is placed under subsection 163.5(3) of the *Customs Act* shall cause the person to be detained in custody and, in accordance with the following provisions, to be taken before a justice to be dealt with according to law:

(a) where a justice is available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period, and

(b) where a justice is not available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice as soon as possible,

unless, at any time before the expiration of the time prescribed in paragraph (a) or (b) for taking the person before a justice,

(c) the peace officer or officer in charge releases the person under any other provision of this Part, or

(d) the peace officer or officer in charge is satisfied that the person should be released from custody, whether unconditionally under subsection (4) or otherwise conditionally or unconditionally, and so releases him.”),

<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-306.html#h-164>.

<sup>37</sup> Constitution of Chile, 1980, Art. 19(7)(c) (“Nadie puede ser arrestado o detenido sino por orden de funcionario público expresamente facultado por la ley y después de que dicha orden le sea intimada en forma legal. Sin embargo, podrá ser detenido el que fuere sorprendido en delito flagrante, con el solo objeto de ser puesto a disposición del juez competente dentro de las veinticuatro horas siguientes.

Si la autoridad hiciere arrestar o detener a alguna persona, deberá, dentro de las cuarenta y ocho horas siguientes, dar aviso al juez competente, poniendo a su disposición al afectado. El juez podrá, por resolución fundada, ampliar este plazo hasta por cinco días, y hasta por diez días, en el caso que se investigaren hechos calificados por la ley como conductas terroristas.”), [http://www.oas.org/juridico/mla/sp/chl/sp\\_chl-int-text-const.pdf](http://www.oas.org/juridico/mla/sp/chl/sp_chl-int-text-const.pdf)

<sup>38</sup> Código de Procedimiento Penal, Art. 2 (2004) (“Artículo 2º. *Libertad*. Toda persona tiene derecho a que se respete su libertad. Nadie podrá ser molestado en su persona ni privado de su libertad sino en virtud de mandamiento escrito de autoridad judicial competente, emitido con las formalidades legales y por motivos previamente definidos en la

				Art. 2, <sup>38</sup> Constitution, Art. 28. <sup>39</sup>
Costa Rica	24 hours.	Yes.	Yes.	Constitution, Art. 37. <sup>40</sup>
<b>Cuba</b>	<b>No, one week.<sup>41</sup></b>	<b>Not clear.</b>		<b>Ley No. 5, Código de Procedimiento Penal, Art. 245, 246, 247<sup>42</sup></b>

ley. El juez de control de garantías, previa solicitud de la Fiscalía General de la Nación, ordenará la restricción de la libertad del imputado cuando resulte necesaria para garantizar su comparecencia o la preservación de la prueba o la protección de la comunidad, en especial, de las víctimas. Igualmente, por petición de cualquiera de las partes, en los términos señalados en este código, dispondrá la modificación o revocación de la medida restrictiva si las circunstancias hubieren variado y la convirtieren en irrazonable o desproporcionada. En las capturas en flagrancia y en aquellas en donde la Fiscalía General de la Nación, existiendo motivos fundados, razonablemente carezca de la oportunidad de solicitar el mandamiento escrito, el capturado deberá ponerse a disposición del juez de control de garantías en el menor tiempo posible sin superar las treinta y seis (36) horas siguientes.”)

[http://www.oas.org/juridico/MLA/sp/col/sp\\_col-int-text-cpp-2005.html](http://www.oas.org/juridico/MLA/sp/col/sp_col-int-text-cpp-2005.html)

<sup>39</sup> Constitución de Colombia, Art. 28 (“La persona detenida preventivamente será puesta a disposición del juez competente dentro de las treinta y seis horas siguientes, para que éste adopte la decisión correspondiente en el término que establezca la ley.”), [http://www.oas.org/juridico/mla/sp/col/sp\\_col-int-text-const.pdf](http://www.oas.org/juridico/mla/sp/col/sp_col-int-text-const.pdf)

<sup>40</sup> Constitución de Costa Rica, Art. 37 (“Nadie podrá ser detenido sin un indicio comprobado de haber cometido delito, y sin mandato escrito de juez o autoridad encargada del orden público, excepto cuando se tratase de reo prófugo o delincuente infraganti; pero en todo caso deberá ser puesto a disposición de juez competente dentro del término perentorio de veinticuatro horas.”), [http://www.oas.org/juridico/mla/sp/cri/sp\\_cri-int-text-consol.pdf](http://www.oas.org/juridico/mla/sp/cri/sp_cri-int-text-consol.pdf)

<sup>41</sup> Human Rights Watch, *Cuba’s Repressive Machinery: Human Rights Forty Years After the Revolution*, Ch. III (1999) (“Cuba’s Criminal Procedure Code allows the police and prosecutorial authorities to hold a suspect for a week before any court reviews the legality of the detention. This violates international norms requiring that a court review any detention ‘without delay.’ During the first week after an arrest, the police may detain the suspect for up to twenty-four hours. The prosecutorial investigator (*instructor*) then may keep the suspect in custody for an additional seventy-two hours, while deciding whether to pass custody of the suspect to the prosecutor (*fiscal*) or release him or her. The law grants the prosecutor an additional seventy-two hours to send the accused to jail, release him or her, or impose less-severe restrictions. Only if the prosecutor chooses to imprison the accused or impose other restrictions does a court review the legality of the detention.”) (emphasis added) (citations omitted), [http://www.hrw.org/reports/1999/cuba/Cuba996-03.htm#P576\\_78223](http://www.hrw.org/reports/1999/cuba/Cuba996-03.htm#P576_78223)

<sup>42</sup> Ley No. 5, Código de Procedimiento Penal, Art. 245, 246, 247 (“ARTICULO 245. La Policía no podrá mantener una persona detenida por más de veinticuatro horas. Dentro de ese término estará obligada a adoptar alguna de las decisiones siguientes:

- 1) Poner en libertad al detenido;
- 2) imponerle alguna de las medidas cautelares previstas en la Ley, excepto la de prisión provisional, que sólo podrá aplicarse por el Fiscal que corresponda;
- 3) dar cuenta al Instructor con el detenido y las actuaciones.

La aplicación de la medida cautelar impuesta al acusado le será notificada de inmediato por la Policía, mediante la propia resolución que la dispuso, teniéndose por efectuada dicha notificación con la consignación en la resolución de la fecha y las firmas del actuante y el acusado.

ARTICULO 246. El Instructor, una vez recibidas las actuaciones que le remite la Policía o conocido directamente el hecho, adoptará en un término que no exceda de setenta y dos horas alguna de las decisiones siguientes:

- 1) Dejar sin efecto la detención;
- 2) imponer alguna de las medidas cautelares no detentivas, o revocar o modificar la que haya dispuesto la Policía;
- 3) proponer al Fiscal la imposición de la medida cautelar de prisión provisional.

ARTICULO 247. El Fiscal, recibida la propuesta del Instructor respecto a la imposición de la medida cautelar de prisión provisional, adoptará, dentro del término de setenta y dos horas, la decisión que corresponda, mediante auto fundado, estando facultado para aplicar cualesquiera de las medidas cautelares previstas en la Ley o disponer la libertad del acusado.”), [http://www.wipo.int/wipolex/es/text.jsp?file\\_id=245899](http://www.wipo.int/wipolex/es/text.jsp?file_id=245899)

Dominica	72 hours.	Yes.	Yes.	Constitution of the Commonwealth of Dominica 1978, art. 3(3). <sup>43</sup>
Dominican Republic	48 hours (constitutional); 24 hours (statutory).	Yes.	Yes.	Constitution of the Dominican Republic, 2010, Art. 40(5). <sup>44</sup> Código de Procedimiento Penal, Art. 224, 225. <sup>45</sup>
Ecuador	24 hours.	Yes.	Yes.	Código de Procedimiento Penal 2000, Art. 161,164,

<sup>43</sup> Constitution of the Commonwealth of Dominica 1978, art. 3(3) (“Any person who is arrested or detained-  
*a.* for the purpose of bringing him before a court in execution of the order of a court; or  
*b.* upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Dominica,

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention.”), [http://www.oas.org/juridico/mla/en/dma/en\\_dma-int-text-const.doc](http://www.oas.org/juridico/mla/en/dma/en_dma-int-text-const.doc)

<sup>44</sup> Constitution of the Dominican Republic 2010, Art. 40(5). (“Toda persona privada de su libertad será sometida a la autoridad judicial competente dentro de las cuarenta y ocho horas de su detención o puesta en libertad. La autoridad judicial competente notificará al interesado, dentro del mismo plazo, la decisión que al efecto se dictare.”), <http://pdba.georgetown.edu/Constitutions/DomRep/vigente.html>

<sup>45</sup> Código de Procedimiento Penal, Art. 224, 225 (“Art. 224. Arresto. . . . Si se trata de una infracción que requiere la instancia privada, es informado inmediatamente quien pueda presentarla y, si éste no presenta la denuncia en el término de veinticuatro horas, el arrestado es puesto en libertad. La autoridad policial que practique el arresto de una persona debe ponerla, sin demora innecesaria, a la orden del ministerio público, para que éste, si lo estima pertinente, disponga directamente su puesta en libertad o solicite al juez una medida de coerción. La solicitud del ministerio público debe formularse luego de realizar las diligencias indispensables y, en todo caso, dentro de las veinticuatro horas contadas a partir del arresto. Art. 225. Orden de arresto. . . . El arresto no puede prolongarse más allá del agotamiento de la diligencia o actuación que lo motiva. Si el ministerio público estima que la persona debe quedar sujeta a otra medida de coerción, así lo solicita al juez en un plazo máximo de veinticuatro horas, quien resuelve en una audiencia. En caso contrario, dispone su libertad inmediata.”),

[http://www.oas.org/juridico/mla/sp/dom/sp\\_dom-int-text-cpp.pdf](http://www.oas.org/juridico/mla/sp/dom/sp_dom-int-text-cpp.pdf)

<sup>46</sup> Código de Procedimiento Penal 2000, Art. 161,164, 165, 209 (“Art. 161.- Detención por delito flagrante. . . . Dentro de las veinticuatro horas desde el momento en que ocurrió la detención por delito flagrante, el fiscal solicitará al juez de garantías penales que convoque a audiencia oral en la que realizará o no la imputación, y solicitará la medida cautelar que considere procedente, cuando el caso lo amerite. Art. 164.- Detención.- Con el objeto de investigar un delito de acción pública, a pedido del Fiscal, el juez de garantías penales podrá ordenar la detención de una persona contra la cual haya presunciones de responsabilidad. Esta detención se ordenará mediante boleta que contendrá los siguientes requisitos:

1. Los motivos de la detención;
2. El lugar y la fecha en que se la expide; y,
3. La firma del juez de garantías penales. Para el cumplimiento de la orden de detención se entregará dicha boleta a un agente de la Policía Judicial.

Art. 165.- Limite.- La detención de que trata el artículo anterior no podrá exceder de veinticuatro horas. Dentro de este lapso, de encontrarse que el detenido no ha intervenido en el delito que se investiga, inmediatamente se lo pondrá en libertad. En caso contrario, de haber mérito para ello, se dictará auto de instrucción Fiscal y de prisión preventiva si fuere procedente. Art. 209.- Deberes y atribuciones de la Policía Judicial. 3. Proceder a la detención de las personas sorprendidas en delito flagrante, y ponerlas dentro de las veinticuatro horas siguientes a órdenes del juez de garantías penales, junto con el parte informativo para que el juez de garantías penales confirme o revoque la

				165, 209. <sup>46</sup>
El Salvador	72 hours.	Yes.	Yes.	Constitution of El Salvador, 1983, Art. 13 <sup>47</sup>
<b>Grenada</b>	<b>No, 15 days.</b> <sup>48</sup>	<b>Unclear.</b>	<b>Yes.</b>	
Guatemala	24 hours.	Yes.	Yes.	Código Processal Penal, Art. 87. <sup>49</sup>
Guyana	72 hours, though police may apply for an extension.	Yes.	Yes.	Constitution of the Co-operative Republic of Guyana Art. 139(4). <sup>50</sup>
Haiti	48 hours.	Yes.	Yes.	Code D'Instruction Criminelle, C.h. 197 Art. 199. <sup>51</sup>
<b>Honduras</b>	<b>6 hours for</b>	<b>No.</b>	<b>No.</b>	<b>Codigo de</b>

detención de lo cual informará en forma simultánea al Fiscal.”), [http://www.oas.org/juridico/mla/sp/ecu/sp\\_ecu-int-text-cpp.pdf](http://www.oas.org/juridico/mla/sp/ecu/sp_ecu-int-text-cpp.pdf)

<sup>47</sup> Constitution of El Salvador, 1983, Art. 13 (“La detención administrativa no excederá de setenta y dos horas, dentro de las cuales deberá consignarse al detenido a la orden del juez competente, con las diligencias que hubiera practicado. La detención para inquirir no pasará de setenta y dos horas y el tribunal correspondiente estará obligado a notificar al detenido en persona el motivo de su detención, a recibir su indagatoria y a decretar su libertad o detención provisional, dentro de dicho término.”), [http://www.oas.org/juridico/mla/sp/slv/sp\\_slv\\_CONSTITUCION\\_DE\\_LA\\_REPUBLICA\\_DE\\_EL\\_SALVADOR\\_\(1983\).doc](http://www.oas.org/juridico/mla/sp/slv/sp_slv_CONSTITUCION_DE_LA_REPUBLICA_DE_EL_SALVADOR_(1983).doc)

<sup>48</sup> United States Department of State, *2014 Country Reports on Human Rights Practices – Grenada*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>49</sup> Código Processal Penal, Art. 87 (“Si el sindicado hubiere sido aprehendido, se dará aviso inmediatamente al juez de primera instancia o al juez de paz en su caso, para que declare en su presencia, dentro del plazo de veinticuatro horas a contar desde su aprehensión. El juez proveerá los medios necesarios para que en la diligencia pueda estar presente un defensor.”), [http://www.oas.org/juridico/mla/sp/gtm/sp\\_gtm-int-text-cpp.pdf](http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-cpp.pdf)

<sup>50</sup> Constitution of the Co-operative Republic of Guyana Art. 139(4) (“Any person who is arrested or detained—  
a. for the purpose of bringing him or her before a court in execution of the order of a court; or  
b. upon reasonable suspicion of his or her having committed or being about to commit a criminal offence, and who is not released, shall be brought before a court within seventy-two hours of arrest or detention, but the police may apply to the High Court for extensions of time; and if any person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonable necessary to ensure that he or she appears a tater dated for trial or for proceedings preliminary to trial.”), <http://parliament.gov.gy/constitution.pdf>

<sup>51</sup> Code D'Instruction Criminelle, C.h. 197 Art. 199 (“Vingt-quatre heures, au plus tard, après la translation de l'accusé dans la maison de justice, le commissaire du gouvernement transmettra les pièces de l'affaire au Doyen du tribunal criminel. Dans le cas où le prévenu serait, dès le début de l'instruction, écroué dans la maison de justice, la transmission des pièces au Doyen aura lieu huit jours au moins avant l'ouverture des assises. Le Doyen ou l'un de ses suppléants interrogera l'accusé dans les vingt-quatre heures de la réception du dossier.- Inst. crim. 79, 187.”), [http://www.oas.org/juridico/mla/fr/hti/fr\\_hti\\_mla\\_instruction.html](http://www.oas.org/juridico/mla/fr/hti/fr_hti_mla_instruction.html)

	<b>police to inform judge of arrest in flagrante.</b>			<b>Procedimientos Penales, Art. 156, 175.<sup>52</sup></b>
Jamaica	24 hours.	Yes, generally.	Yes.	Bail Act, Art. 22. <sup>53</sup>
Mexico	48 hours, generally.	Yes.	Yes.	DECRETO por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos. Artículo 16. <sup>54</sup>
Nicaragua	48 hours.	Yes.	Yes.	Código Penal de la República de Nicaragua, Art. 369. <sup>55</sup>
Panama	24 hours.	Yes.	Yes.	Constitución Política de la República de

<sup>52</sup> Código de Procedimientos Penales, Art. 175 (“La persona aprehendida será entregada inmediatamente a la autoridad más próxima. ... Dentro de las seis (6) horas siguientes al momento de la aprehensión, la autoridad policial que la haya practicado o a la que le haya sido entregada la persona sorprendida in fraganti, dará cuenta del hecho al Ministerio Público y al juez competente”),

<http://www.poderjudicial.gob.hn/juris/Leyes/CODIGO%20PROCESAL%20PENAL.pdf>

<sup>53</sup> Bail Act, Art. 22 (“Where a person who is arrested or detained is not charged within twenty-four hours after such arrest or detention, he shall be brought forthwith before a Resident Magistrate or a Justice of the Peace who shall order that the person be released or make such other order as the Resident Magistrate or the Justice of the Peace thinks fit, having regard to the circumstances: Provided that where an identification parade is required in relation to that person, the person shall not be brought before a Resident Magistrate or a Justice of the Peace but the matter shall be referred to a Resident Magistrate or a Justice of the Peace who shall make any such order in the absence of that person.”), [http://moj.gov.jm/sites/default/files/laws/Bail%20Act\\_0.pdf](http://moj.gov.jm/sites/default/files/laws/Bail%20Act_0.pdf)

<sup>54</sup> DECRETO por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, Art. 16 (“Ningún indiciado podrá ser retenido por el Ministerio Público por más de cuarenta y ocho horas, plazo en que deberá ordenarse su libertad o ponerse a disposición de la autoridad judicial; este plazo podrá duplicarse en aquellos casos que la ley prevea como delincuencia organizada.”)

[http://perso.unifr.ch/derechopenal/assets/files/legislacion/l\\_20080630\\_01.pdf](http://perso.unifr.ch/derechopenal/assets/files/legislacion/l_20080630_01.pdf)

<sup>55</sup> Código penal de la República de Nicaragua, Art. 369 (“Abusa de autoridad: . . . 5° El funcionario o empleado público que prolonga la detención de un individuo por más de veinticuatro horas, sin ponerlo a disposición del juez competente, o siéndolo, no inicia el proceso correspondiente dentro del mismo término.”),

[http://perso.unifr.ch/derechopenal/assets/files/legislacion/l\\_20080616\\_65.pdf](http://perso.unifr.ch/derechopenal/assets/files/legislacion/l_20080616_65.pdf)

<sup>56</sup> Constitución Política de la República de Panamá, Art. 21 (“Nadie puede ser privado de su libertad, sino en virtud de mandamiento escrito de autoridad competente, expedido de acuerdo con las formalidades legales y por motivo previamente definido en la Ley. Los ejecutores de dicho mandamiento están obligados a dar copia de él al interesado, si la pidiere. El delincuente sorprendido in fraganti puede ser aprehendido por cualquier persona y debe ser entregado inmediatamente a la autoridad. Nadie puede estar detenido más de veinticuatro horas sin ser puesto a ordenes de la autoridad competente. Los servidores públicos que violen este precepto tienen como sanción la pérdida del empleo, sin perjuicio de las penas que para el efecto establezca la Ley. No hay prisión, detención o arresto por deuda u obligaciones puramente civiles.”), <http://www.ilo.org/dyn/travail/docs/2083/CONSTITUTION.pdf>

				Panamá, Art. 21. <sup>56</sup>
Paraguay	24 hours.	Yes.	Yes.	Codigo Procesal Penal de Paraguay, Art. 240. <sup>57</sup>
Peru	24 hours, generally.	Yes.	Yes.	Código de procedimientos penales de Perú, Art. 85. <sup>58</sup>
Saint Kitts and Nevis	72 hours.	Yes.	Yes.	The Saint Christopher and Nevis Constitution Order (1983), Art. 5(3). <sup>59</sup>
Saint Lucia	72 hours.	Yes.	Yes.	Constitution of Saint Lucia. (1979), Art. 3(3), 3(4). <sup>60</sup>
<b>Saint Vincent and the Grenadines</b>	<b>48 hours.<sup>61</sup></b>	<b>Unclear.</b>	<b>Unclear whether judicial hearing is mandatory or simply available.</b>	
<b>Suriname</b>	<b>7 days.<sup>62</sup></b>	<b>Yes.</b>	<b>Yes.</b>	<b>Law of 20 February</b>

<sup>57</sup> Codigo Procesal Penal de Paraguay, Art. 240 (“En todos los casos, la persona que haya sido detenida será puesta a disposición del juez en el plazo de veinticuatro horas para que resuelva, dentro del mismo plazo, sobre la procedencia de la prisión preventiva, aplique las medidas sustitutivas o decrete la libertad por falta de mérito.”), [http://www.pj.gov.py/ebook/libros\\_files/Coleccion\\_de\\_Derecho\\_Penal\\_TomoIII.pdf](http://www.pj.gov.py/ebook/libros_files/Coleccion_de_Derecho_Penal_TomoIII.pdf)

<sup>58</sup> Código de procedimientos penales de Perú, Art. 85 (“La declaración inductiva deberá ser tomada o cuando menos comenzada por el Juez Instructor, antes de que se cumplan veinticuatro horas de la detención.”), [http://perso.unifr.ch/derechopenal/assets/files/legislacion/l\\_20080616\\_78.pdf](http://perso.unifr.ch/derechopenal/assets/files/legislacion/l_20080616_78.pdf)

<sup>59</sup>The Saint Christopher and Nevis Constitution Order (1983), Art. 5(3) (“Any person who is arrested or detained—  
a) for the purpose of bringing him before a court in execution of the order of a court; or  
b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after his arrest or detention.”), <http://pdba.georgetown.edu/Constitutions/Kitts/kitts83.html#constitution>

<sup>60</sup>Constitution of Saint Lucia. (1979), Art. 3(3), 3(4) (“(3) Any person who is arrested or detained—  
a) for the purpose of bringing him before a court in execution of the order of a court; or  
b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law

and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention. (4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.”), [https://www.oas.org/juridico/mla/en/lca/en\\_lca-int-text-const.pdf](https://www.oas.org/juridico/mla/en/lca/en_lca-int-text-const.pdf)

<sup>61</sup> United States Department of State, *2014 Country Reports on Human Rights Practices – Saint Vincent and the Grenadines*, <http://www.state.gov/documents/organization/236928.pdf>

<sup>62</sup> The Republic of Suriname, Report to UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Third periodic reports of States parties due in 2008*, ¶ 79 (2008), (“Suriname brought its legislation in conformity with Article 9, paragraph 3, of the Covenant. This is recently done through the enactment of the Law of 20 February 2008, amending the Surinamese Code of Criminal Procedure (S.B. 2008 no. 21). The warrant of custody is effective for up to seven days (Art. 49(2)). In exceptional instances it can be extended for up to 30 days by the public prosecutor (Art. 50(1)). Pursuant to Article 53, after a suspect is arrested

				<b>2008, amending the Surinamese Code of Criminal Procedure (S.B. 2008 no. 21), Art. 49, 50, 53, 54<sup>63</sup></b>
The Bahamas	48 hours, though police can	Yes.	Yes.	Statute Law of the Bahamas, Chapter 91, Criminal Procedure

within 6 hours a decision must be made on whether custody will follow. Article 54a gives the suspect immediately after his custody the opportunity to challenge the custody order before a judge. The custodian must be heard immediately by the investigating judge. Article 54a(1) is complemented *inter alia* with the instruction norm that the suspect must be brought before the investigating judge within 7 days from the arrest, to review the lawfulness of the custody. Now after his arrest, the period of 44 days before a detainee was brought for the first time before a Judge was reduced to within 7 days. The warrant of detention in police custody under article 49(1) of the Code of Criminal Procedure shall be granted in case of an offense for which custody is permitted.”),

[http://www.cprcentre.org/doc/2014/01/CCPR\\_C\\_SUR\\_3\\_6324\\_E-2.doc](http://www.cprcentre.org/doc/2014/01/CCPR_C_SUR_3_6324_E-2.doc) and

[http://www.gov.sr/media/878096/final\\_bupo\\_report\\_2013.pdf](http://www.gov.sr/media/878096/final_bupo_report_2013.pdf)

<sup>63</sup> Law of 20 February 2008, amending the Surinamese Code of Criminal Procedure (S.B. 2008 no. 21), Art. 49, 50, 53, 54 (“Art. 49. Gevallen en termijn van in verzekeringstelling 1. Het bevel tot in verzekeringstelling wordt slechts verleend in geval van een strafbaar feit waarvoor voorlopige hechtenis is toegelaten. Indien het onderzoek der zaak op de terechtzitting in eerste aanleg is aangevangen, kan zodanig bevel niet meer worden verleend. 2. Het bevel tot in verzekeringstelling is gedurende ten hoogste zeven dagen van kracht. 3. De termijnen gaan in op het ogenblik ter tenuitvoerlegging. Zij lopen niet gedurende de tijd dat de verdachte zich aan verdere tenuitvoerlegging van het bevel heeft onttrokken.

Art. 50. Verlenging in verzekeringstelling 1. Bij dringende noodzakelijkheid kan de in verzekeringstelling door de vervolgingsambtenaar worden verlengd en wel eenmaal worden verlengd met ten hoogste dertig dagen. Bevindt de verdachte zich buiten het stadsdistrict dan kan de verlenging ook worden bevolen door de hulpofficier van justitie, die het bevel tot in verzekeringstelling heeft verleend, doch slechts na overleg met de vervolgingsambtenaar.

Art. 53 Ophouden voor verhoor 1. Wordt de verdachte noch overeenkomstig artikel 48 in verzekering gesteld, noch overeenkomstig artikel 52 voor de rechter-commissaris geleid, dan wordt hij, na te zijn verhoord, dadelijk in vrijheid gesteld. 2. In geen geval mag de verdachte langer dan zes uren voor het verhoor worden opgehouden, met dien verstande dat de tijd tussen 10 des namiddag en zeven uur des voormiddags niet wordt mede gerekend.

Art. 54. a Verzoek invrijheidstelling tijdens in verzekeringstelling Uiterlijk binnen zeven dagen, te rekenen vanaf het tijdstip van in verzekeringstelling, wordt de verdachte ten einde te worden gehoord, voor de rechter-commissaris geleid. Onverminderd het bepaalde in de eerste volzin van 6 dit lid, kan de verdachte onmiddellijk na zijn in verzekeringstelling de rechter-commissaris om zijn invrijheidstelling te verzoeken. De rechter-commissaris bepaalt na daartoe van de vervolgingsambtenaar of de verdachte of diens raadsman een verzoek heeft ontvangen, onverwijld tijd en plaats van het verhoor en geeft hiervan kennis aan de vervolgingsambtenaar, de verdachte en de raadsman. In het geval bedoeld in de tweede volzin van lid 1 van dit artikel wordt de verdachte binnen vierentwintig uur nadat het verzoek ter kennis van de rechter-commissaris is gebracht, gehoord althans daartoe opgeroepen. In daartoe aangewezen gevallen kan de rechter-commissaris bij dringende noodzakelijkheid de termijn van vierentwintig uur verlengen. De verdachte is bevoegd zich bij het verhoor door een raadsman te doen bijstaan. De raadsman wordt bij het verhoor in de gelegenheid gesteld de nodige opmerkingen te maken. De vervolgingsambtenaar is bevoegd het verhoor bij te wonen en daarbij de nodige opmerkingen te maken. Na de verdachte te hebben gehoord, beslist de rechter-commissaris zo spoedig mogelijk over de rechtmatigheid van de in verzekeringstelling. In de beschikking worden door de rechter-commissaris bepaaldelijk de redenen opgegeven die tot zijn oordeel hebben geleid met betrekking tot de rechtmatigheid of onrechtmatigheid van de in verzekeringstelling. Indien de rechter-commissaris de in verzekeringstelling onrechtmatig oordeelt beveelt hij de onmiddellijke invrijheidstelling van de verdachte. In het andere geval wordt het verzoek van de verdachte afgewezen.”),

[http://surinaamsepolitiebond.com/index\\_htm\\_files/index\\_htm\\_files/Wetboek%20van%20Strafvordering.pdf](http://surinaamsepolitiebond.com/index_htm_files/index_htm_files/Wetboek%20van%20Strafvordering.pdf)

	apply for 48 hour or longer extension, if they demonstrate necessity.			Code, Art. 18, 19 (2001). <sup>64</sup>
Trinidad and Tobago	48 hours.	Yes.	Yes.	Criminal Procedure Act, Ch. 12:02, Art. 23(2). <sup>65</sup>
United States	48 hours, generally.	Yes, generally.	Yes.	County of Riverside v. McLaughlin, 500 U.S. 44 (1991). <sup>66</sup>
Uruguay	24 hours.	Yes.	Yes.	Constitución de la República Oriental del

<sup>64</sup> Statute Law of the Bahamas, Chapter 91, Criminal Procedure Code, Art. 18, 19 (2001) (“Art. 18. A peace officer making an arrest without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate’s court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act.

Art. 19. (1) Notwithstanding section 18 or any other law, a police officer of at least the rank of inspector may make an ex parte application to a magistrate, to have any person arrested for any offence specified under the First Schedule to the Bail Act detained for a further period not exceeding forty-eight hours where the inquiry into that offence is incomplete and where the police officer -

- (a) has to secure or preserve evidence relating to the offence;
- (b) has reasonable grounds for believing that the person arrested will interfere with or harm the evidence connected with the offence or interfere with or cause physical injury to other persons;
- (c) has reasonable ground for believing that the person arrested will interfere with or harm the evidence connected with the offence or interfere with or cause physical injury to other persons;
- (d) has reasonable grounds for believing that the person arrested will hinder the recovery of any property obtained as a result of the offence.

(2) Subject to subsection (1), where further detention is authorized the person arrested -

- (a) shall be told the reason for such further detention; and
- (b) the reason shall be noted on his custody record.”),

[http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0038/CriminalProcedureCodeAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0038/CriminalProcedureCodeAct_1.pdf)

<sup>65</sup> United States Department of State, *2014 Country Reports on Human Rights Practices – Trinidad Tobago*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>66</sup> County of Riverside v. McLaughlin, 500 U.S. 44 (1991) (“Where an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. The fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends. A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest.”),

<https://www.law.cornell.edu/supct/html/89-1817.ZO.html>; See also Gerstein v. Pugh, 420 U.S. 103 (1975).

				Uruguay, 1967, Ch. I, Art. 16. <sup>67</sup>
Venezuela	24 hours, generally.	Yes.	Yes.	Organic Penal Code Procedure. Supreme Decree 9,042 of June 12, 2012, Art. 116, Art. 132, & 234. <sup>68</sup>

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<sup>67</sup> Constitución de la República Oriental del Uruguay, 1967, Ch. I, Art. 16 (“En cualquiera de los casos del artículo anterior, el Juez, bajo la más seria responsabilidad, tomará al arrestado su declaración dentro de veinticuatro horas, y dentro de cuarenta y ocho, lo más, empezará el sumario. La declaración del acusado deberá ser tomada en presencia de su defensor. Este tendrá también el derecho de asistir a todas las diligencias sumariales.”),

<http://pdba.georgetown.edu/Constitutions/Uruguay/uruguay67.html>

<sup>68</sup> Organic Penal Code Procedure. Supreme Decree 9,042 of June 12, 2012, Art. 116 & Art. 132 (“Artículo 116. Los órganos de policía en los plazos que se les hubieren fijado, comunicarán al Ministerio Público o al tribunal que lo hubiere solicitado, el resultado de las diligencias practicadas. En ningún caso, los funcionarios o funcionarias policiales podrán dejar transcurrir más de doce horas sin dar conocimiento al Ministerio Público o al tribunal si fuere el caso, de las diligencias efectuadas.

Artículo 132. . . Si el imputado o imputada ha sido aprehendido o aprehendida, se notificará inmediatamente al Juez o Jueza de Control para que declare ante el o ella, a más tardar en el plazo de doce horas a contar desde su aprehensión; este plazo se prorrogará por otro tanto, cuando el imputado o imputada lo solicite para nombrar defensor o defensora.

Artículo 234. . . En estos casos, cualquier autoridad deberá, y cualquier particular podrá, aprehender al sospechoso o sospechosa, siempre que el delito amerite pena privativa de libertad, entregándolo o entregándola a la autoridad más cercana, quien lo pondrá a disposición del Ministerio Público dentro de un lapso que no excederá de doce horas a partir del momento de la aprehensión”),

[http://perso.unifr.ch/derechopenal/assets/files/legislacion/l\\_20130508\\_01.pdf](http://perso.unifr.ch/derechopenal/assets/files/legislacion/l_20130508_01.pdf)