
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 309 **Hearing Date:** April 11, 2023
Author: Cortese
Version: February 6, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Correctional facilities: religious accommodations*

HISTORY

Source: Council on American-Islamic Relations, California

Prior Legislation: None known

Support: ACLU California Action; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Women Prisoners; California Immigrant Policy Center; California Public Defenders Association; Church State Council; Ella Baker Center for Human Rights; National Association of Social Workers, California Chapter; Sikh Coalition; St. Vincent De Paul Sacramento, Exodus Project

Opposition: None known

PURPOSE

The purpose of this bill is to: 1) add the right to exercise religious freedom, including accommodations for grooming and prescribed religious clothing and headwear, to the list of codified civil rights held by individuals incarcerated in state prison and county jail for realigned felonies; 2) establish the right of an individual in custody of a state or local detention facility to religious accommodation with respect to grooming, clothing, and headwear, at all times and throughout the facility except in furtherance of a compelling state interest in an immediate threat or specific demonstrable security risk to the facility, staff, or others in custody; 3) permit the denial of religious grooming, clothing, and headwear accommodations only when doing so would be the least restrictive means of achieving these interests; 4) mandate specific procedures during booking and searches related to religious grooming and garments; and 5) require each sheriff to develop and implement a religious grooming, clothing, and headwear policy consistent with the mandates outlined in the bill.

Existing federal constitutional law provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const., 1st Amend.)

Existing federal law, the Religious Land Use and Institutionalized Persons Act, provides that no government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined, even if the burden results from a rule of general

applicability, unless the government demonstrates that imposition of the burden on that person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest. (42 U.S.C. § 2000cc-1.)

Existing law provides that a person sentenced to imprisonment in a state prison or to imprisonment pursuant to Section 1170 subdivision (h) may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600, subd. (a).)

Existing law provides that each person sentenced to imprisonment in a state prison or to imprisonment pursuant to Section 1170 (h) has the following civil rights:

- To inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment, except as provided. However, CDCR may restrict or prohibit sales or conveyances that are made for business purposes, to the extent authorized under the law.
- To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.
- To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office, except as specified.
- To initiate civil actions, as specified.
- To marry.
- To create a power of appointment.
- To make a will.
- To receive specified benefits. (Pen. Code, § 2601, subd. (a)-(h).)

Existing law declares that it is the intent of the Legislature that all incarcerated individuals confined in local detention facilities be afforded reasonable opportunities to exercise religious freedom. Defines “local detention facility” as any city, county, or regional facility used for the confinement of prisoners for more than 24 hours. (Pen. Code, § 4027.)

Existing law declares that it is the intent of the Legislature that all incarcerated individuals confined in the state prisons be afforded reasonable opportunities to exercise religious freedom. (Pen. Code, § 5009.)

This bill adds the following to the list of codified civil rights: exercise religious freedom, including accommodations for grooming and prescribed religious clothing and headwear.

This bill provides that an individual in custody of a state or local detention facility has the right to religious accommodation with respect to grooming, religious clothing, and headwear in observance of their sincerely held religious belief, at all times and throughout the facility. Provides an exception if the limitation is in furtherance of a compelling state interest in an immediate threat or specific demonstrable security risk to the facility, staff, or others in custody. Authorizes the denial of religious grooming, clothing, and headwear accommodations only when doing so would be the least restrictive means of achieving these interests.

This bill requires that a state or local facility do all of the following:

- Ask each individual during the initial booking, intake, and classification process whether the individual practices a sincerely held religious belief that requires accommodation with respect to grooming, religious clothing, or religious headwear.
- Requires the facility to provide the individual with a facility-issued religious garment or, if unavailable, allow the individual to retain their personal religious garment until a facility-issued garment becomes available. Allows the cost to be charged to the individual in custody when the facility provides the individual with a facility-issued religious garment.
- Prohibits the facility from requiring an individual's hair or beard be trimmed or cut during the booking, intake, or classification process and requires that the individual in custody be allowed to maintain their hair and beard length according to their sincerely held religious beliefs.

This bill requires the facility to do all of the following when an individual in custody wearing a religious garment is searched:

- Requires that staff offer the individual in custody the opportunity to have this search conducted in a private space out of view of members of the opposite gender.
- Requires the search, if requested, to be conducted in a private area by staff of the same gender.
- Requires staff to provide the individual with a facility-issued garment following the search.
- Permits the individual to retain their personal religious garment if a facility-issued garment is unavailable.

This bill requires that the individual be provided access to facility-issued garments that fully cover their arms and legs if the religion of an individual in custody requires that their arms and legs be covered.

This bill includes the following definitions:

- "Individual in custody" means a person confined to a state or local detention facility, including, but not limited to, a person in the booking process; in temporary holding pending release, transfer, or appearance in court; during or awaiting trial proceedings; awaiting arraignment; sentenced to imprisonment; and imprisoned upon conviction.
- "Local detention facility" means any city, county, or regional facility used for the confinement of prisoners for more than 24 hours.
- "Religious grooming" includes all forms of head, facial, and body hair that are part of an individual religious observance, and shall be construed broadly.
- "Religious clothing and headwear" includes, but is not limited to, a hijab, kufi, scarf, yarmulke, patka, turban, bandana, and modesty belief with regard to fully covering the arms and legs.

This bill provides that the above listed mandates apply without regard to whether the facility is operated pursuant to a contract with a private contractor and without regard to whether the individual in custody has been charged with or convicted of a crime.

This bill declares that it is the intent of the Legislature that all individuals confined in local detention facilities and state prisons be afforded religious grooming, clothing, and headwear accommodations as outlines above.

This bill requires the sheriff of each county or the administrator of each local detention facility to develop and implement a religious grooming, clothing, and headwear policy for individuals in the custody of a local detention facility, including, but not limited to, county jails and holding facilities on or before January 1, 2025.

This bill requires that the policy meet the minimum requirements outlined above and be in accordance with accepted best practices.

This bill defines “local detention facility” to mean any city, county, or regional facility used for the confinement of prisoners for more than 24 hours, consistent with the definition found in Section 4027.

COMMENTS

1. Need For This Bill

According to the author:

We have an opportunity, with this bill, to stop incidents of religious persecution in prison. Californians still maintain their basic civil rights when they become incarcerated. We know from research that inmates who are allowed to freely exercise religious practice and dress are less likely to be involved in violent incidents while they are serving their sentence, and less likely to return to jail or prison after their term is completed. In five communities in California, correctional facilities have had to change their policies related to religious practice following lawsuits. Unfortunately, jail officials have forcibly removed religious headscarves after taking people into custody. Currently, each local detention facility in California is left to adopt its own policies and procedures. SB 309 would create a uniform state policy providing clear guidelines on religious clothing, headwear, and grooming. Muslims, Sikhs, Jews and other religious minorities should preserve their right to religious dress and practice without harm or disruption. This is about preserving dignity and preserving civil rights. When a member of a religious minority is serving time, they should always have the protection to observe their religion.

2. Codified Civil Rights

Penal Code section 2601 provides that each person serving a sentence in state prison or county jail for a realigned felony has specified civil rights, including the right to inherit, own, sell, or convey real or personal property, the right to correspond confidentially with any member of the State Bar or public office, the right to marry, and the right to make a will, among others. Penal Code section 2600 provides that a person serving a sentence in state prison or county jail for a realigned felony may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.

This bill adds the right to exercise religious freedom, including accommodations for grooming and prescribed religious clothing and headwear to the list of enumerated civil rights.

3. Reasonable Opportunities to Exercise Religious Freedom

Penal Code section 5009 declares the intent of the Legislature that all individuals incarcerated in the state's prisons be afforded reasonable opportunities to exercise religious freedom. Similar language is codified in Penal Code section 4027 which pertains to local detention facilities defined as "any city, county, or regional facility used for the confinement of prisoners for more than 24 hours."

This bill declares the intent of the Legislature that all individuals incarcerated in the state's prisons and local detention facilities be afforded religious grooming, clothing, and headwear accommodations, as outlined in other provisions of the bill.

4. Existing CDCR Regulations

Religious Property

Current CDCR regulations outline the department's policies regarding religious property. (Cal. Code of Regs., tit. 15, § 3190.) Incarcerated individuals are generally permitted to possess in their quarters or living area, state-issued property items, and authorized personal and religious property items which is based upon privilege group, assigned security level, and/or institution mission. (Cal. Code of Regs., tit. 15, § 3190, subd. (a).) The Religious Personal Property Matrix (RPPM) identifies a list of allowable personal religious property. (Cal. Code of Regs., tit. 15, § 3190, subd. (c).) Regulations specify that local exceptions to the RPPM shall also be identified. (*Id.*)

The RPPM applies to all incarcerated individuals. (CDCR, *Religious Personal Property Matrix* (Revised Jan. 1, 2023), p. 1 available at <https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2022/12/Religious_Personal_Property_Matrix_11.28.22.pdf>.) The RPPM specifies that religious texts, including but not limited to the Torah, Bible, Quran, and Vedas are authorized for an individual to possess. (*Ibid.*) The RPPM indicates that incarcerated individuals are permitted to wear personal religious clothing, as specified, but includes several prohibitions, including from possessing, using, creating, or wearing personal religious clothing with hoods, pictures, zippers, inside pockets, wearing items with any design, sign, or symbol associated with a security threat group, and wearing items which are obscene. (*Ibid.*) All items are required to be gray or white, and multicolored items must have gray or white as the predominant color. (*Ibid.*)

While not an exhaustive list, incarcerated individuals in Privilege Group A, B, or C are each permitted to possess: two of an item of religious headgear such as a scarf, hijab, yarmulke, or kufi, among others; one altar cloth; two bowls, chalices, or handwashing cups; one prayer shawl; four ounces of prayer oils; one prayer rug or mat; and one set of a religious medallion and chain. (*Id.* at pp. 3-5.)

Individuals incarcerated in specialized housing units, such as Administrative Segregation, face additional restrictions with respect to which religious items they may possess and the number of items they may possess. (*Ibid.*) However, determinations concerning religious personal property for these individuals may be made on a case-by-case basis, based on the individual's behavior,

mental health status, and safety or security needs. (*Id.* at p. 2.) Ultimately, the institution head retains the authority to remove or restrict use of an approved religious item based on a serious threat to facility security or to the safety of the incarcerated population or staff. (*Ibid.*)

Grooming Standards

Regulations require that an incarcerated individual's hair and facial hair be clean, neatly styled, and groomed, when the person is away from the immediate area of the person's quarters. (Cal. Code of Regs., tit. 15, § 3062, subd. (a).) Regulations further specify that an incarcerated individual's hair or facial hair may be any length but is prohibited from extending over the eyebrows or covering the person's face. (Cal. Code of Regs., tit. 15, § 3062, subd. (e).) If hair or facial hair is long, it is required to be worn in a neat, plain style, which does not draw undue attention to the individual. (*Ibid.*)

5. New Provisions of Law Related to Religious Grooming, Garments, and Headwear

This bill adds a new section to the Penal Code which applies to state and local detention facilities, including those operated by a private contractor. This bill establishes the right of an individual in the custody of a state or local detention facility to religious accommodation with respect to grooming, clothing, and headwear in observance of their sincerely held religious belief, at all times and throughout the facility, except in furtherance of a compelling state interest in an immediate threat or specific demonstrable security risk to the facility, staff, or others in custody. This bill permits the denial of religious grooming, clothing, and headwear accommodations only when doing so would be the least restrictive means of achieving these interests.

This bill additionally requires that a state or local facility do all of the following:

- Ask each individual during the initial booking, intake, and classification process whether the individual practices a sincerely held religious belief that requires accommodation with respect to grooming, religious clothing, or religious headwear.
- Provide the individual with a facility-issued religious garment or, if unavailable, allow the individual to retain their personal religious garment until a facility-issued garment becomes available.
- Prohibits the facility from requiring an individual's hair or beard be trimmed or cut during the booking, intake, or classification process and requires that the individual in custody be allowed to maintain their hair and beard length according to their sincerely held religious beliefs.

This bill further requires the facility to do all of the following when an individual in custody wearing a religious garment is searched:

- Requires that staff offer the individual in custody the opportunity to have this search conducted in a private space out of view of members of the opposite gender.
- Requires the search, if requested, to be conducted in a private area by staff of the same gender.
- Requires staff to provide the individual with a facility-issued garment following the search.

- Permits the individual to retain their personal religious garment if a facility-issued garment is unavailable.

This bill also requires that the individual be provided access to facility-issued garments that fully cover their arms and legs if the religion of an individual in custody requires that their arms and legs be covered. This bill includes the following definitions:

- “Individual in custody” means a person confined to a state or local detention facility, including, but not limited to, a person in the booking process, in temporary holding pending release, transfer, or appearance in court, during or awaiting trial proceedings, awaiting arraignment, sentenced to imprisonment, and imprisoned upon conviction.
- “Local detention facility” means any city, county, or regional facility used for the confinement of prisoners for more than 24 hours.
- “Religious grooming” includes all forms of head, facial, and body hair that are part of an individual religious observance, and must be construed broadly.
- “Religious clothing and headwear” includes, but is not limited to, a hijab, kufi, scarf, yarmulke, patka, turban, bandana, and modesty belief with regard to fully covering the arms and legs.

Finally, this bill requires the sheriff of each county or the administrator of each local detention facility to develop and implement a religious grooming, clothing, and headwear policy for individuals in the custody of a local detention facility that is consistent with the mandates outlined above. The policy must be developed and implemented by January 1, 2025.

6. Argument in Support

ACLU California Action writes:

Currently, California does not have a consistent or codified statewide policy for state and local correctional and detention facilities that ensures the right to religious clothing, grooming, and headwear accommodations for individuals in their custody. While the California Department of Corrections and Rehabilitation (CDCR) policies and regulations touch on the right to certain religious clothing and headwear, it is limited to state-run facilities and does not meet the heightened protections as provided under federal law. The Board of State and Community Corrections (BSCC) provides no guidance for local detention facilities on religious accommodations, leaving it to the discretion of each local detention facility, city, or county to adopt their own policies. As a result, there are inconsistent policies for religious clothing, headwear and grooming from one facility to another leaving many of those incarcerated unprotected and stripped of their right to practice this dimension of their faith.

The U.S. Constitution and the Federal law, the Religious Land Use and Institutionalized Persons Act (RLUIPA) protects the incarcerated right to practice their religion. Under RLUIPA, a prison or jail cannot substantially burden the right to practice religion unless it can demonstrate that it has a compelling interest that cannot be achieved through any other less restrictive means. This bill will provide California the opportunity to align the state law with these heightened protections.

Religious clothing, headwear and grooming are integral aspects of religious expression for many faith communities and being denied this right is a harmful and deeply violating experience. ... Comprehensive policies protecting religious clothing and headwear for those in custody have already been adopted in several cities and counties in California including Long Beach, Orange County, Riverside County, Santa Clara County, San Bernardino County and Ventura County.

SB 309 will create a comprehensive and uniform policy on religious clothing, headwear and grooming ensuring the dignity and right to religious exercise of those incarcerated and in custody of California's prisons, jails, and other detention facilities.

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