

HOUSE BILL NO. 5716

May 07, 2024, Introduced by Reps. Farhat, Aiyash, Puri, MacDonell, Byrnes and Arbit and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding section 25c to chapter IV.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER IV

1
2 Sec. 25c. (1) Subject to subsection (4), if an individual who
3 is wearing religious garb that covers the individual's hair or face
4 is arrested and is being taken into custody, the individual must be
5 allowed to continue wearing and retain the religious garb so long
6 as the individual does not pose an immediate threat to the

1 individual's self or to others. If the individual poses an
2 immediate threat to the individual's self or to others, the
3 arresting law enforcement officer shall attempt to reach a law
4 enforcement officer of the same sex immediately to be present while
5 the individual removes the individual's religious garb.

6 (2) Subject to subsection (4), the law enforcement officer of
7 the same sex shall conduct the removal of any religious garb in an
8 area that is as private as is practical under the circumstances,
9 taking all steps reasonably necessary to ensure that individuals of
10 the opposite sex are not present during the removal.

11 (3) The following conditions apply to the taking of a law
12 enforcement booking photograph of an individual who is arrested
13 while wearing religious garb that covers the individual's hair or
14 face:

15 (a) Subject to subsection (4), an officer of the same sex as
16 the arrested individual shall take the booking photographs as
17 follows:

18 (i) For an individual who is wearing religious garb that covers
19 only the individual's hair and not the individual's face, the
20 officer shall take 2 photographs, front and profile, with the
21 religious garb on. These photographs must be conducted without the
22 removal of any religious garb that covers the individual's hair,
23 unless upon visual inspection by the law enforcement officer, an
24 identifying mark or characteristic exists that would not be visible
25 with the religious garb on. If an identifying mark or
26 characteristic exists, the law enforcement officer shall take
27 photographs of that mark or characteristic.

28 (ii) For an individual who is wearing religious garb that
29 covers both the individual's face and the individual's hair, the

1 officer shall take 2 photographs, front and profile, with the
2 religious garb on, and 2 photographs, front and profile, removing
3 only the piece of religious garb that covers the individual's face.
4 The photographs that require the removal of the religious garb that
5 covers the individual's face must be conducted without the removal
6 of any hair covering, unless upon visual inspection by the law
7 enforcement officer, an identifying mark or characteristics exists
8 that would not be visible with the religious garb on. If an
9 identifying mark or characteristic exists, the law enforcement
10 officer shall take photographs of that mark or characteristic.

11 (b) Any photographs taken under subparagraphs (i) and (ii) that
12 include the arrested individual without the individual's religious
13 garb are confidential and are exempt from disclosure under the
14 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

15 (4) All reasonable efforts must be made to ensure that a law
16 enforcement officer of the same sex undertakes searches incident to
17 arrest and the taking of booking photographs under this section.
18 However, if reasonable efforts have been made and a law enforcement
19 officer of the same sex cannot be made available or if the
20 particular circumstances present a danger to the safety of a law
21 enforcement officer or the arrested individual, the requirement
22 that an officer of the same sex perform these duties does not
23 apply.

24 (5) If an individual wearing religious garb is not to be
25 released immediately and the individual was required to remove the
26 religious garb under subsection (1) because the individual posed an
27 immediate threat of harm to the individual's self or others, the
28 individual must be provided replacement religious garb that is
29 designed in a manner that it covers the individual's hair but is

1 not capable of being used by the individual for self-harm. If an
2 individual has been allowed to retain and wear the individual's
3 religious garb under subsection (1), the individual must be allowed
4 to retain and wear the individual's own religious garb for the time
5 period the individual is in custody so long as the retention and
6 wearing of the individual's religious garb does not pose an
7 immediate threat to the individual's self or to others.

8 (6) A booking photograph taken in violation of this section
9 must be destroyed and retaken in compliance with this section.