

SUBSTITUTE FOR
HOUSE BILL NO. 5716

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:

1 CHAPTER IV

2 Sec. 25c. (1) Subject to subsection (4), if an individual who
3 is wearing religious garb that covers the individual's hair in
4 whole or in part, head, face, ears, or neck is arrested and is
5 being taken into custody, and the individual requests an
6 accommodation, based on a sincerely held religious belief, from the
7 arresting law enforcement officer regarding removal of the
8 religious garb in front of a law enforcement officer or any other
9 individual of the opposite sex, the arresting law enforcement

1 officer shall immediately attempt to reach a law enforcement
2 officer or law enforcement staff member of the same sex to be
3 present while the individual removes the individual's religious
4 garb. Subject to subsection (4), if the removal of the religious
5 garb in a nonprivate location would violate the individual's
6 religious beliefs, the individual's booking photographs must be
7 taken by a law enforcement officer or law enforcement staff member
8 of the same sex as the arrested individual and in a location where
9 only the law enforcement officer or law enforcement staff member
10 taking the booking photographs may see the individual.

11 (2) Subject to subsection (4), if subsection (1) applies, the
12 law enforcement officer or law enforcement staff member of the same
13 sex shall conduct the removal of any religious garb in an area that
14 is as private as is practical under the circumstances, taking all
15 steps reasonably necessary to ensure that individuals of the
16 opposite sex of the individual being arrested are not present
17 during the removal.

18 (3) If subsection (1) applies, the following conditions apply
19 to the taking of a law enforcement booking photograph of an
20 individual who is arrested while wearing religious garb that covers
21 the individual's hair in whole or in part, head, neck, ears, or
22 face:

23 (a) Subject to subsection (4), an officer or staff member of
24 the same sex as the arrested individual shall take the booking
25 photographs as follows:

26 (i) For an individual who is wearing religious garb that covers
27 only the individual's hair in whole or in part, head, neck, or ears
28 and not the individual's face, the officer shall take 2
29 photographs, front and profile, with the religious garb on. These

1 photographs must be conducted without the removal of any religious
2 garb that covers the individual's hair in whole or in part, head,
3 neck, or ears, unless on visual inspection by the law enforcement
4 officer or law enforcement staff member, an identifying mark or
5 characteristic exists that would not be visible with the religious
6 garb on. If an identifying mark or characteristic exists, the law
7 enforcement officer or law enforcement staff member shall
8 separately take photographs of that mark or characteristic.

9 (ii) Except as provided in subparagraph (iii), for an individual
10 who is wearing religious garb that covers both the individual's
11 face and the individual's hair in whole or in part, head, neck, or
12 ears, the law enforcement officer or law enforcement staff member
13 shall take 2 photographs, front and profile, with the religious
14 garb on, and 2 photographs, front and profile, removing only the
15 piece of religious garb that covers the individual's face. The
16 photographs that require the removal of the religious garb that
17 covers the individual's face must be conducted without the removal
18 of any hair, head, neck, or ear covering, unless on visual
19 inspection by the law enforcement officer or law enforcement staff
20 member, an identifying mark or characteristics exists that would
21 not be visible with the religious garb on. If an identifying mark
22 or characteristic exists, the law enforcement officer or law
23 enforcement staff member shall separately take photographs of that
24 mark or characteristic.

25 (iii) If all of the following circumstances apply with respect
26 to an individual who is wearing religious garb that covers both the
27 individual's face and the individual's hair in whole or in part,
28 head, neck, or ears who is being booked into a county jail, the
29 individual may have a front and profile booking photograph taken in

1 which the individual's face, neck, hair, head, and ears are
2 exposed:

3 (A) The individual is under arrest for a felony.

4 (B) The individual is going to be lodged in a county jail.

5 (C) The county sheriff's office performing the booking of the
6 individual has a written policy requiring photographs be taken as
7 provided under this subparagraph.

8 (b) Any photographs taken under subdivision (a) that include
9 the arrested individual without some or all of the individual's
10 religious garb are confidential, must not be made public, and are
11 exempt from disclosure under the freedom of information act, 1976
12 PA 442, MCL 15.231 to 15.246.

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

24 (5) If an individual wearing religious garb is to be released
25 immediately, the individual may retain the individual's own
26 religious garb. If an individual wearing religious garb is not
27 released immediately, the individual must be provided replacement
28 religious garb in a reasonable time frame. Religious garb provided
29 under this subsection must be designed in a manner that it covers

1 the individual's hair and complies with the rules and restrictions
2 of the jail, lockup, or other holding facility to which the
3 individual is being sent or in which the individual will be housed.

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

6 (7) As used in this section:

7 (a) "Law enforcement officer" means that term as defined in
8 section 2 of the Michigan commission on law enforcement standards
9 act, 1965 PA 203, MCL 28.602. Law enforcement officer also includes
10 a local corrections officer.

11 (b) "Law enforcement staff member" means an individual
12 employed by or under contract with a law enforcement agency who is
13 not a law enforcement officer.

14 (c) "Local corrections officer" means that term as defined in
15 section 2 of the local corrections officers training act, 2003 PA
16 125, MCL 791.532.