

ALLOW RELIGIOUS HEAD COVERINGS IN POLICE BOOKING PHOTOGRAPHS

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House Bill 5716 as introduced
Sponsor: Rep. Alabas A. Farhat
Committee: Judiciary
Complete to 12-4-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5716 would amend the Code of Criminal Procedure to prohibit law enforcement agencies from requiring the removal of certain *religious head coverings*¹ when taking booking photographs, subject to certain exceptions. Currently, the code does not contain any provisions regulating the removal of an individual's religious garb by a law enforcement agency.

The bill would require arresting law enforcement agencies and officers to make all reasonable efforts to ensure that, if an individual is arrested while wearing religious garb that covers the individual's hair or face, an officer of the same sex undertakes searches of the individual incident to the arrest and the taking of booking photographs. However, this requirement would not apply if the particular circumstances present a danger to the safety of a law enforcement officer or the arrested individual, or if after reasonable efforts a law enforcement officer of the same sex cannot be made available.

The bill would also require the arresting agency to allow an individual wearing religious garb to retain and continue wearing the religious garb when they are taken into custody, as long as the arrestee does not pose an immediate threat to themselves or others. If the individual poses an immediate threat to themselves or others, the bill would require all of the following:

- That the arresting law enforcement officer must immediately attempt to reach an officer of the same sex as the individual to be present while the individual removes the religious garb.
- That the removal of the religious garb be conducted in an area as private as is practical under the circumstances.
- That the arresting law enforcement agency and officers take all steps reasonably necessary to ensure that individuals of the opposite sex from the individual are not present during the removal of the religious garb.
- If an individual required to remove religious garb is not to be released immediately, that the individual is provided replacement religious garb that is designed in a manner that it covers the individual's hair but is not capable of being used for self-harm.²

¹ The bill would define a *religious head covering* as a piece of religious garb that covers an individual's face and/or hair. This would include hijabs, niqabs, turbans, chadors, veils, head scarves, yarmulkes (or kippahs), kapps, spodik, and dastars.

² The bill would allow individuals *not* determined to be a threat to themselves or others to retain and wear their own religious garb while in custody.

The bill would also create the following requirements for booking photographs of individuals wearing religious garb:

- If an individual is wearing religious garb that covers the individual's hair (but not their face), the bill would require the taking of both a front and profile photograph *with* the religious garb on.
- If an individual is wearing religious garb that covers both the individual's hair and face, the bill would require the taking of a front and profile photograph with the religious garb on and a front and profile photograph with *only* the piece of religious garb that covers the individual's hair (following the removal of the portion that covers the individual's face).

In either of the above circumstances, a law enforcement officer could take additional photographs of any identifying marks or characteristics that the officer determines would not be visible with the religious garb on.

The bill would require that booking photographs taken in violation of the above requirements be destroyed and retaken, and would exempt any photographs taken of an arrested individual without the individual's religious garb from disclosure under the Freedom of Information Act.³

The bill would take effect 90 days after being enacted.

Proposed MCL 764.25c

FISCAL IMPACT:

House Bill 5716 would have no fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

³ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-442-of-1976.pdf>