SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 309 (Cortese) - Correctional facilities: religious accommodations

Version: February 6, 2023
Urgency: No
Hearing Date: April 24, 2023
Policy Vote: PUB. S. 5 - 0
Mandate: Yes
Consultant: Matthew Fleming

Bill Summary: SB 309 would provide that an individual in custody of a state or local detention facility shall have 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, except as specified.

Fiscal Impact:

- CDCR: Staff notes potentially significant, ongoing costs to the Department of Corrections and Rehabilitation (CDCR), possibly in the high hundreds of thousands to low millions of dollars in order to provide religious clothing and headwear to those who desire them cannot afford them (General Fund).

- Local Detention Facilities: Unknown, potentially reimbursable costs to local sheriffs and jail administrators in order to provide inmates with religious clothing, headwear and garments, as well as accommodations for traditional religious hairstyles and facial hair (local funds, General Fund). General Fund costs will depend on whether SB 309 creates a reimbursable state mandate as determined by the Commission on State Mandates.

Background: Existing law 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. Existing law further states that 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.

Current CDCR regulations outline the department's policies regarding religious property. 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. The Religious Personal Property Matrix (RPPM) identifies a list of allowable personal religious property. Regulations specify that local exceptions to the RPPM shall also be identified.

The RPPM applies to all incarcerated individuals and specifies that religious texts, including but not limited to the Torah, Bible, Quran, and Vedas are authorized for an individual to possess. 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. All items are required to be gray or white, and multicolored items must have gray or white as the predominant color.

Depending on where person is housed and their level of privilege, a person is permitted to possess religious clothing and items such as a scarf, hijab, yarmulke, or kufi, altar cloth, bowls, chalices, or handwashing cups, a prayer shawl, prayer oils, a prayer rug or mat, or a religious medallion and chain. Incarcerated persons in specialized housing units face additional restrictions and determinations concerning religious personal property for these individuals may be made on a case-by-case basis.

Proposed Law:

- Adds the exercise religious freedom, including accommodations for grooming and prescribed religious clothing and headwear to the list of prisoner's civil rights.

- 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.

- 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.

- 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.

- 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.
- 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.
- Defines terms for purposes of the bill.

Related Legislation:

- SB 1008 (Becker) Ch. 827, Stats. 2022, required each state prison and youth detention facility, county jail, city jail, and county youth detention facility to offer free voice communication services, imposed a daily 60-minute access to voice communication requirement, and prohibited government agencies from generating revenue from those communication services contracts.
- SB 1371 (Bradford, 2022) would have required CDCR to adopt a five-year implementation schedule to increase the wages of individuals incarcerated in the state's prisons. SB 1371 was vetoed.
- ACA 3 (Kamlager, 2022) would have removed language in the state Constitution that allows involuntary servitude as punishment for a crime. ACA 3 failed passage on the Senate Floor.

Staff Comments: SB 309 would require CDCR and local detention facilities to inquire whether an inmate has a sincerely held religious belief, and if so, whether they request an accommodation for religious clothing, headwear, or grooming. If the person claims such a belief and requests a clothing or headwear accommodation, then the facility must either provide a facility-issued garment or allow the person to retain their own garment until one becomes available. Current regulations provide for specific inmate attire and require religious items to be purchased at the expense of the individual requestor. Given that this bill adds religious clothing accommodations to the list of prisoner's civil rights, it may require CDCR to provide the items, even if the person is unable to pay for them. Similarly, local detention facilities may be required to provide clothing and religious items for individuals who are indigent. A number of legislative

measures that illuminate the financial difficulties of incarcerated persons, particular those in state prison, have been recently introduced (see Related Legislation, above).

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