

## Senate Bill No. 309

### CHAPTER 388

An act to amend Sections 4027 and 5009 of, and to add Sections 2607 and 4027.5 to, the Penal Code, relating to correctional facilities.

[Approved by Governor October 7, 2023. Filed with Secretary of State October 7, 2023.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 309, Cortese. Correctional facilities: religious accommodations.

Under existing law, a person sentenced to imprisonment in a state prison or in a county jail for a felony offense, as specified, may during that period of confinement be deprived of only those rights as is reasonably related to legitimate penological interests. Existing law enumerates certain civil rights of these prisoners, including the right to purchase, receive, and read newspapers, periodicals, and books accepted for distribution by the United States Post Office.

This bill would include the right to exercise religious freedom, including accommodations for religious grooming, clothing, and headwear, as specified. The bill would allow these rights to be denied only when in furtherance of a compelling governmental interest with regard to institutional security that may impact the facility, staff, the individual, or others in custody. The bill would require a facility to accommodate these rights in specified ways, including, among others, by allowing the individual to purchase or access facility-issued, or Department of Corrections and Rehabilitation-approved, religious clothing and headwear or, if unavailable, allowing the individual to retain their personal religious clothing and headwear until a facility-issued, or department-approved, clothing or headwear can be accessed or purchased. If purchased by an individual in custody, the bill would require the price of facility-issued, or department-approved, religious clothing and headwear to not exceed the purchase price and normal taxes of the items. The bill would authorize the department to promulgate regulations necessary to implement these religious rights, as specified. The bill would require the sheriff of each county or the administrator of each local detention facility to develop and implement a policy following these requirements on or before January 1, 2025. By imposing duties on local jails, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement

for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2607 is added to the Penal Code, to read:

2607. (a) 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 if in furtherance of a compelling governmental interest with regard to institutional security that may impact the facility, staff, the individual, or others in custody. Religious grooming, clothing, and headwear accommodations shall only be denied when doing so would be the least restrictive means of furthering these governmental interests. This subdivision applies to each provision throughout this section.

(b) A facility shall do all of the following:

(1) (A) During the initial booking, intake, and classification process, facility staff shall ask each individual entering into their custody whether the individual practices a sincerely held religious belief that requires accommodation with respect to grooming, religious clothing, or religious headwear.

(B) The facility shall allow the individual in custody to purchase facility-issued, for local facilities, or department-approved, religious clothing and headwear or provide access, as defined in subdivision (c). If unavailable, the facility shall allow the individual to retain their religious clothing and headwear unless subdivision (a) applies, until facility-issued, for local facilities, or department-approved, religious clothing and headwear can be accessed or purchased. If purchased by an individual in custody, the price of facility-issued religious clothing and headwear shall not exceed the purchase price and normal taxes of the items.

(C) The facility shall not require an individual's hair or beard be trimmed or cut during the booking, intake, or classification process and shall allow the individual in custody to maintain their hair and beard length according to their sincerely held religious beliefs.

(2) Unless exigent circumstances exist, when an individual in custody wearing religious clothing or headwear is searched, the facility shall do all of the following:

(A) Staff shall offer the individual in custody the opportunity to have this search conducted by members of the same gender and out of view of members of a differing gender.

(B) Following the search, staff shall return to the individual in custody, any religious clothing or headwear purchased, accessed, or retained pursuant to subparagraph (B) of paragraph (1), unless there is reason to confiscate the item due to a security risk, which shall be documented.

(c) For purposes of this section, the following definitions apply:

(1) (A) For local facilities, “access” means making available religious clothing and headwear received through facility-approved vendors, outside donations, or items already issued or provided by the facilities.

(B) For state facilities, “access” means making available religious clothing and headwear received through department-approved vendors.

(2) “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.

(3) “Local detention facility” has the same meaning as defined in subdivision (b) of Section 4027.

(4) “Religious grooming” should be construed broadly to include all forms of head, facial, and body hair that are part of an individual religious observance.

(5) “Religious clothing and headwear” includes a hijab, kufi, scarf, yarmulke, patka, turban, bandana, and modesty belief with regard to fully covering the arms and legs.

(d) This section applies 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.

(e) The Department of Corrections and Rehabilitation may promulgate regulations necessary to implement this section, including, but not limited to, establishing standards for department-approved items, expanding the items included in religious clothing and headwear, restricting locations, and establishing any additional limitations.

(f) An incarcerated person who believes their request for a religious accommodation as described in this section has been denied has the right to pursue relief pursuant to Chapter 21C (commencing with Section 2000cc) of Title 42 of the United States Code, known as the Religious Land Use and Institutionalized Persons Act.

SEC. 2. Section 4027 of the Penal Code is amended to read:

4027. (a) (1) It is the intent of the Legislature that all prisoners confined in local detention facilities shall be afforded reasonable opportunities to exercise religious freedom.

(2) It is the intent of the Legislature that all prisoners confined in local detention facilities shall be afforded religious grooming, clothing, and headwear accommodations in accordance with Section 2607.

(b) As used in this section “local detention facility” means any city, county, or regional facility used for the confinement of prisoners for more than 24 hours.

SEC. 3. Section 4027.5 is added to the Penal Code, to read:

4027.5. (a) On or before January 1, 2025, the sheriff of each county or the administrator of each local detention facility shall 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. The policy shall meet the minimum requirements of Section 2607 and be in accordance with accepted best practices.

(b) For purposes of this section, “local detention facility” means any city, county, or regional facility used for the confinement of prisoners for more than 24 hours, as defined in subdivision (b) of Section 4027.

(c) This section applies without regard to whether the facility is operated pursuant to a contract with a private contractor and without regard to whether the inmate has been charged with or convicted of a crime.

SEC. 4. Section 5009 of the Penal Code is amended to read:

5009. (a) (1) It is the intent of the Legislature that all prisoners shall be afforded reasonable opportunities to exercise religious freedom.

(2) It is the intent of the Legislature that all prisoners shall be afforded religious grooming, clothing, and headwear accommodations in accordance with Section 2607.

(b) (1) Except in extraordinary circumstances, upon the transfer of an inmate to another state prison institution, any member of the clergy or spiritual adviser who has been previously authorized by the Department of Corrections and Rehabilitation to visit that inmate shall be granted visitation privileges at the institution to which the inmate is transferred within 72 hours of the transfer.

(2) Visitations by members of the clergy or spiritual advisers shall be subject to the same rules, regulations, and policies relating to general visitations applicable at the institution to which the inmate is transferred.

(3) A departmental or volunteer chaplain who has ministered to or advised an inmate incarcerated in state prison may, voluntarily and without compensation, continue to minister to or advise the inmate while they are on parole, provided that the departmental or volunteer chaplain so notifies the warden and the parolee’s parole agent in writing.

(c) Nothing in this section limits the department’s ability to prohibit a departmental chaplain from ministering to a parolee, or to exclude a volunteer chaplain from department facilities, if either is found to be in violation of any law or regulation and that violation would ordinarily be grounds for adverse action or denial of access to a facility or person under the department’s custody.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.