

December 24, 2013

Richard W. Stanek  
Hennepin County Sheriff  
350 – South 5<sup>th</sup> Street, Room 6  
Minneapolis, Minnesota 55415

Dear Sheriff Stanek:

The Council on American-Islamic Relations, Minnesota (CAIR-MN) is a civil rights and legal advocacy organization that advocates on behalf of Minnesota Muslims and other racial, religious and ethnic minorities who face discrimination. We have worked with you in the past and you have spoken previously at our Community Leadership Briefing. We are writing to bring an important matter to your attention.

Our organization received a complaint from a Muslim woman who was booked and incarcerated in the Hennepin County Adult Detention Center (also known as the Hennepin County Jail) located at 401 South 4<sup>th</sup> Avenue, Suite 100, Minneapolis, Minnesota 55415 in August, 2013. She has sincerely held religious beliefs that support her wearing a hijab (religious headscarf). While she was in the Hennepin County Adult Detention Center, she was ordered to remove her hijab for the booking photograph and was not allowed to wear the hijab while she was in jail. She was given two t-shirts to cover her head and arms which she appreciated but did not adequately substitute for a hijab.

The Hijab is not an accessory. Muslim women who wear the hijab sincerely believe it is a religious obligation. To a Muslim woman, asking her to remove her hijab can be equated to asking her to remove her shirt. Hennepin County jail should establish policies that would allow Muslim women inmates and inmates of other religions to follow their religion and balance the safety of those inmates, other inmates and county employees.

### **Federal and State Law**

Both federal and state laws prohibit discrimination against incarcerated individuals based upon religion.

The First Amendment of the U. S. Constitution guarantees freedom of religion. Title VI of Civil Rights Act of 1964 prohibits discrimination based upon religion by any law enforcement agency that receives any federal financial assistance.

The Religious Land Use and Incarcerated Persons Act (RLUIPA), 42 U.S.C. §2000cc-1 (a) protects the religious rights of people confined to institutions, including county jails. RLUIPA specifically states:

“No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, . . . unless the government demonstrates that imposition of the burden on that person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

In **Khatib v. County of Orange**, 639 F. 3d 898 (9th Cir. 2011) (denied cert., 132 S. Ct. 115 (2011)), the Ninth Circuit Court of Appeals held that RLUIPA applied to the Orange County Santa Ana Courthouse holding facility which is the equivalent of the Hennepin County jail. The case was sent back to the federal district court. The parties reached a settlement in 2012 that included Orange County changing its policies regarding hijabs. Inmates are now allowed to wear them and the county employees received training on the religious rights of inmates.

The Minnesota Human Rights Act (Minn. Stat. 363A.) also prohibits discrimination based on religion in any public service including police and jail services.

All of these laws prohibit discrimination against inmates of the Hennepin County jail based upon their sincerely held religious beliefs. To Muslim female inmates, those beliefs include their wearing of the hijabs.

### **Policies Allowing Hijabs to be Worn in Jail**

There is nothing in the Hennepin County Sheriff’s Office Admissions/ Booking Process Policy 12 – 100 about accommodation for religious head coverings. In the Sallyport section of the policy, there is a provision that states that “[p]ersonal clothing items that may be cultural in nature will be subject to removal as determined by a custody supervisor based on the safety, security, and good order of the facility.” Presently under these policies, inmates are not allowed to wear hijabs during the booking photograph or while incarcerated. Providing alternative means of covering an inmate’s head such as the t-shirts our client was given, appears to be an unwritten discretionary policy.

We believe that there are other ways to address these issues. Hennepin County can have policies that allow inmates to follow their religion and still satisfy safety concerns. Many other county jails around the country have looked at these issues and have developed written policies that satisfy the religious and safety requirements. A few of these policies are enclosed.

**First Recommendation – Allow inmates to wear their own hijab while in the jail**

After a woman’s head is searched under her hijab by a female officer, there is no longer any danger, unless the inmate has special issues such as being suicidal or dangerous to others. The policy could provide for procedures for those situations.

The Canton, Michigan Public Safety Department has a policy with these components. Enclosed is that incarceration policy. The **Prisoner Incarceration Lock Up Policy** is that a prisoner will be able to wear their own head covering unless the prisoner is a suicide threat, the prisoner uses the head cover as a weapon against someone, or the on-duty shift commander determines that they should not be allowed to do so for other reasons. See L:01 – C Religious Head Covers, Page 2 and 3 of 7

**Alternative Recommendation - Issue approved hijabs to inmates to wear while incarcerated**

An alternative policy would be to provide inmates with hijabs that have been approved for safety and religious issues. The hijabs would be made of a material that could not be used by the inmate to hurt herself or others.

The King County, Washington State (the county with Seattle) has this type of policy. (Chapter 5, A. Processing (12)) This policy is also enclosed. It states that “. . . inmates will be able to wear their personally owned religious head covering until a jail uniform is issued. At this time, the inmate will be provided a department issued religious head covering.”

Orange County, California’s Sheriff’s Department has a similar policy which is also enclosed. That policy states that “. . . “after reasonably ensuring their hair is free of contraband, weapons and drugs, provide them with an approved temporary Orange County Jail issued head covering.” (Policy 2015 – Religious Head Coverings).

**Second Recommendation – Treat people respectfully when searching religious head coverings and if it involves females wearing hijabs, only allow female personnel to be present when the woman inmate’s head is searched and uncovered.**

The Orange County policy specifically states (d) “Only staff members of the same gender as the inmate/detainee shall be present during the removal of the head covering. When the inmate’s/detainee’s head is uncovered it will be done out of the view of the opposite gender.”

The Canton, Michigan policy C. (1) states that:

“When processing prisoners who are wearing religious head covering, the booking officer should:

- a. Show respect
- b. Conduct search in as much privacy as is practical.
- c. Searches should be conducted by members of the same sex.”

**Third Recommendation – Allow inmates to wear hijabs when their booking photographs are taken.**

Women are allowed to wear their hijabs for other identifying photographs including Minnesota driver’s licenses and United States passports. They should also be able to wear them for booking photographs.

The booking photograph policies for inmates wearing hijabs has been changed in two counties recently. Richland County, South Carolina and Boulder County, Colorado both received complaints from inmates that were ordered to remove their hijabs. Both counties now allow inmates to wear the hijab for the photographs. In Boulder County, the Sheriff just required that the scarf be pushed back far enough to expose the hairline and ears.

Booking photos of female Muslim inmates are often posted in the media, and are accessible to male officers, attorneys, judges, and other personnel of the justice system. For a Muslim woman, posting a picture of her without her hijab is equivalent to posting a picture without her shirt.

**Conclusion**

We encourage you to review the enclosed policies and to consider changing the policies that are used in the Hennepin County jail. There are more Muslims in Hennepin County than there have been in the past and the issue of religious accommodation for religious dress will likely be an issue in the future. Hennepin County has an opportunity to research and establish policies that will allow Muslim women and others to follow their faith while incarcerated. By dealing with this now, your county can avoid potential claims and lawsuits in the future.

Please let us know by February 1, 2014, what you plan to do in response to this letter. We are available to meet with you to discuss this important matter further. Thank you for your consideration of these issues.

Sincerely,

Ellen Longfellow, Esq.  
Civil Rights Attorney

Saly Abd Alla, Esq.  
Civil Rights Director