

HOUSE BILL NO. 498

INTRODUCED BY E. KERR-CARPENTER, D. HAWK, A. BUCKLEY, L. BISHOP, M. BINKLEY, J. GILLETTE,
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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MENSTRUAL EQUITY FOR ALL ACT;
REQUIRING THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR DISTRIBUTING MENSTRUAL
PRODUCTS IN STATE AND LOCAL CORRECTIONAL FACILITIES; REQUIRING THE DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE MENSTRUAL PRODUCTS TO SCHOOLS AND
HOMELESS SHELTERS; PROHIBITING RETAIL BARRIERS TO PURCHASING MENSTRUAL PRODUCTS;
PROVIDING REMEDIES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING
SECTIONS 7-32-2222, 50-1-206, AND 53-1-203, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Menstrual Equity
for All Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 9] is to improve the well-
being, dignity, and quality of life of Montanans by eliminating barriers to purchasing menstrual products and
ensuring access to free, quality menstrual products to individuals in correctional facilities operated by the state
and local governments, in schools, and in homeless shelters.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 9], the following definitions
apply:

- (1) "Correctional facility" means:
 - (a) a detention center as defined in 7-32-2241; and
 - (b) a prison as defined in 53-30-101.
- (2) "Menstrual product" means any product designed specifically for absorption or containment of

1 menses that meets applicable industry standards. At a minimum, the term includes pads, pantliners, and
2 tampons.

3
4 **NEW SECTION. Section 4. Retail sale of menstrual products.** (1) A retail establishment that sells
5 menstrual products of any type may not prohibit the sale of the products to an individual or establish barriers to
6 the purchase of the products, including but not limited to requiring the individual to show identification or
7 demonstrate proof of age for the purchase.

8 (2) (a) Violation of this section is an unlawful practice as defined in 30-14-103 and is subject to the
9 investigation process provided for in Title 30, chapter 14, part 1.

10 (b) A retailer that is found in violation of this section shall provide a free menstrual product to any
11 consumer aggrieved by the violation.

12
13 **NEW SECTION. Section 5. Provision of menstrual products in correctional facilities.** (1) (a)
14 Each correctional facility in the state must have a written policy and procedure for providing menstrual products
15 at no cost to a defendant or offender:

- 16 (i) when admitted to the facility;
- 17 (ii) routinely, on at least a monthly basis; and
- 18 (iii) on request.

19 (b) The department of corrections provided for in 2-15-2301 shall develop the policy for each
20 correctional facility it operates and shall ensure that any correctional facility under contract with the state follows
21 the department of corrections' policy on providing menstrual products.

22 (c) Each county that operates a correctional facility shall develop a policy meeting the
23 requirements of this section.

24 (d) The written policy required under this subsection (1) must specify how menstrual products will
25 be made available to individuals who are unable to access the products in general population areas. The policy:

- 26 (i) may not require that the individuals make an affirmative request for the products; and
- 27 (ii) must provide a means to make the products readily available in an appropriate quantity.

28 (2) A correctional facility center must:

- 1 (a) have a supply of menstrual products sufficient to meet the needs of the facility's population at
2 all times;
- 3 (b) provide each defendant or offender with the individual's choice of menstrual products from
4 among the products available at the facility; and
- 5 (c) maintain records on the number and types of products provided annually by the facility.
6

7 **NEW SECTION. Section 6. Correctional facility notice requirements.** A correctional facility shall
8 provide the policy and written procedures required under [section 5] to defendants and offenders in the
9 following ways:

- 10 (1) on admission to the facility;
- 11 (2) by including the materials in any handbook provided to individuals; and
- 12 (3) by posting the policy and procedures in any areas of the facility where notices are commonly
13 posted, in common housing areas, and in medical care units.
14

15 **NEW SECTION. Section 7. Provision of menstrual products in schools and homeless shelters.**

16 (1) The department of public health and human services provided for in 2-15-2201 shall make menstrual
17 products available, in a quantity sufficient to meet needs, to:

- 18 (a) public schools described in 20-6-501; and
19 (b) homeless shelters.

20 (2) The department shall distribute menstrual products on a regular basis to each public school
21 and to operators of homeless shelters in a quantity identified by the school or shelter.

22 (3) The department shall notify the schools and homeless shelters of the manner in which they
23 may request the products and the schedule for distributing the products to the schools and shelters.

24 (4) A school or a homeless shelter shall make menstrual products available in all restrooms for all
25 students or residents who menstruate.
26

27 **NEW SECTION. Section 8. Cause of action.** (1) An individual in a correctional facility who is denied
28 menstrual products in violation of [sections 1 through 9] may bring a cause of action for relief under law against

1 the facility if the individual has exhausted all available administrative processes. The action must be filed within
2 3 years of the incident or within 2 years of the individual's release from the facility.

3 (2) A facility found to have violated a provision of [sections 1 through 9] is civilly liable to the
4 individual denied menstrual products. A court may award punitive damages for each violation and may award
5 attorney fees, litigation costs, and compensatory damages.

6 (3) Nothing in this section prevents an individual harmed by a violation of [sections 1 through 9]
7 from filing a complaint under any other provision of federal or state law.

8

9 **NEW SECTION. Section 9. Procurement of menstrual products.** The department of corrections
10 and department of public health and human services shall:

11 (1) use the cooperative purchasing provisions of Title 18, chapter 4, part 4, to obtain menstrual
12 products for distribution under [sections 1 through 9]; and

13 (2) offer each county that operates a correctional facility with the opportunity to participate in the
14 cooperative purchasing effort.

15

16 **Section 10.** Section 7-32-2222, MCA, is amended to read:

17 **"7-32-2222. Health and safety of inmates.** (1) Each detention center shall comply with:

18 (a) state and local fire codes for correctional occupancy and with sanitation, safety, and health
19 codes; and

20 (b) the provisions of [sections 1 through 9].

21 (2) Designated exits must permit prompt evacuation of inmates and detention center staff in an
22 emergency.

23 (3) When there is good reason to believe that the inmates may be injured or endangered, the
24 detention center administrator shall remove them to a safe and convenient place and confine them there as
25 long as necessary to avoid the danger."

26

27 **Section 11.** Section 50-1-206, MCA, is amended to read:

28 **"50-1-206. Regulation of schools in matters of health.** (1) The department shall adopt regulations:

1 (a) providing for the distribution of menstrual products to school districts as required under [section
2 7]; and

3 (b) prescribing the requirements for school sites, water supply, sewage and waste disposal, and
4 any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who
5 frequent schools.

6 (2) The department shall furnish to the districts copies of ~~such~~the regulations."

7

8 **Section 12.** Section 53-1-203, MCA, is amended to read:

9 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
10 shall:

11 (a) subject to subsection (6), adopt rules necessary:

12 (i) for the siting, establishment, and expansion of prerelease centers;

13 (ii) for the expansion of treatment facilities or programs previously established by contract through
14 a competitive procurement process;

15 (iii) for the establishment and maintenance of residential methamphetamine treatment programs;

16 and

17 (iv) for the admission, custody, transfer, and release of persons in department programs except as
18 otherwise provided by law;

19 (b) subject to the functions of the department of administration, lease or purchase lands for use by
20 correctional facilities and classify those lands to determine those that may be most profitably used for
21 agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that
22 can be grown or produced on the lands and the relative value of agricultural programs in the treatment or
23 rehabilitation of the persons confined in correctional facilities;

24 (c) contract with private, nonprofit Montana corporations or, pursuant to the Montana Community
25 Corrections Act, with community corrections facilities or programs or local or tribal governments to establish
26 and maintain:

27 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are
28 approaching parole eligibility or discharge for release into the community, providing an alternative placement for

1 offenders who have violated parole or probation, and providing a sentencing option for felony offenders
2 pursuant to 46-18-201. The centers shall provide a less restrictive environment than the prison while
3 maintaining adequate security. The centers must be operated in coordination with other department correctional
4 programs. This subsection does not affect the department's authority to operate and maintain prerelease
5 centers.

6 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
7 provided for in 46-18-201 or 46-18-202 and any other sections relating to alternative sentences for persons
8 convicted of possession of methamphetamine. The department shall issue a request for proposals using a
9 competitive process and shall follow the applicable contract and procurement procedures in Title 18.

10 (d) use the staff and services of other state agencies and units of the Montana university system,
11 within their respective statutory functions, to carry out its functions under this title;

12 (e) propose programs to the legislature to meet the projected long-range needs of corrections,
13 including programs and facilities for the custody, supervision, treatment, parole, and skill development of
14 persons placed in correctional facilities or programs;

15 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
16 education of felony offenders;

17 (g) encourage efforts within the department and at the local level that would develop housing
18 options and resource materials related to housing for individuals who are released from the Montana state
19 prison or community corrections programs;

20 (h) maintain data on the number of individuals who are discharged from the adult correction
21 services listed in 53-1-202 into a homeless shelter or a homeless situation;

22 (i) administer all state and federal funds allocated to the department for delinquent youth, as
23 defined in 41-5-103;

24 (j) collect and disseminate information relating to youth who are committed to the department for
25 placement in a correctional facility as defined in 41-5-103;

26 (k) maintain adequate data on placements that it funds in order to keep the legislature properly
27 informed of the specific information, by category, related to delinquent youth in out-of-home care facilities;

28 (l) provide funding for youth who are committed to the department for placement in a correctional

1 facility as defined in 41-5-103;

2 (m) administer correctional facilities as defined in 41-5-103; ~~and~~

3 (n) use to maximum efficiency the resources of state government in a coordinated effort to:

4 (i) provide for delinquent youth committed to the department; and

5 (ii) coordinate and apply the principles of modern correctional administration to the facilities and
6 programs administered by the department; and

7 (o) comply with the provisions of [sections 1 through 9].

8 (2) The department may contract with private, nonprofit or for-profit Montana corporations to
9 establish and maintain a residential sexual offender treatment program. If the department intends to contract for
10 that purpose, the department shall adopt rules for the establishment and maintenance of that program.

11 (3) The department and a private, nonprofit or for-profit Montana corporation may not enter into a
12 contract under subsection (1)(c) or (2) for a period that exceeds 20 years. The provisions of 18-4-313 that limit
13 the term of a contract do not apply to a contract authorized by subsection (1)(c) or (2). Prior to entering into a
14 contract for a period of 20 years, the department shall submit the proposed contract to the legislative audit
15 committee. The legislative audit division shall review the contract and make recommendations or comments to
16 the legislative audit committee. The committee may make recommendations or comments to the department.
17 The department shall respond to the committee, accepting or rejecting the committee recommendations or
18 comments prior to entering into the contract.

19 (4) The department of corrections may enter into contracts with nonprofit corporations or
20 associations or private organizations to provide substitute care for delinquent youth in correctional facilities.

21 (5) The department may contract with Montana corporations to operate a day reporting program as
22 an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-
23 1015. The department shall adopt by rule the requirements for a day reporting program, including but not
24 limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of
25 compliance with any conditions of probation, such as drug testing.

26 (6) Rules adopted by the department pursuant to subsection (1)(a) may not amend or alter the
27 statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment,
28 and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,

1 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
2 at any location without community support. The prerelease siting, establishment, and expansion must be
3 subject to, and the rules must include, a reasonable mechanism for a determination of community support for or
4 objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting,
5 establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

6 (7) The department shall ensure that risk and needs assessments drive the department's
7 supervision and correctional practices, including integrating assessment results into supervision contact
8 standards and case management. The department shall regularly validate its risk assessment tool."
9

10 NEW SECTION. Section 13. Codification instruction. [Sections 1 through 9] are intended to be
11 codified as a new part in Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1
12 through 9].
13

14 NEW SECTION. Section 14. Effective date. [This act] is effective July 1, 2023.
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