



Legislative Testimony

Oregon Criminal Defense Lawyers Association

January 31, 2019

The Honorable Representative Jennifer Williamson, Chair
House Judiciary Committee, Members

Re: Testimony in Support of HB 2515

Dear Chair Williamson and Members of the Committee:

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

Thank you for the opportunity to submit the following comments in support of HB 2515.

HB 2515 seeks to create new provisions and amend several statutes in an effort to make broad changes to standards at juvenile and correctional facilities. The bill would require incarceration facilities to provide tampons and sanitary napkins to female persons in custody adult and juvenile facilities at no charge, and to maintain a sufficient supply of these products.

OCDLA is broadly in support with the overall goals of this bill, but we do have several concerns regarding the language of the bill. **Our concerns and recommendations are as follows:**

Requiring Incarceration Facilities to Provide a Sufficient Amount of Free Menstrual Hygiene Products

The American prison system was designed to accommodate cisgender male inmates. But with the rising rate of female incarceration, gender disparities in the prison system are becoming more apparent. The Federal Bureau of Prisons recently addressed one of the most glaring issues facing female inmates—access to menstrual hygiene products. OCDLA firmly believes that the adequate provision of free sanitary products for incarcerated persons who menstruate is foundational to the very dignity of said persons. Menstrual hygiene products are not a luxury to

be purchased, but a necessity to be provided. Inmates should no longer be forced into dehumanizing situations in which they do not have access to basic sanitary necessities. OCDLA is in support of this bill which would bring Oregon prisons in line with the Federal Bureau of Prisons and several other states which now guarantee free menstrual pads and tampons for incarcerated persons. That being said, we have two concerns with the language in this section of the bill.

First, we are concerned with the use of the term “females.” Recent statistics tell us that nearly one in six transgender people have been incarcerated at some point in their lives. This disproportionate rate of incarceration cannot be ignored when drafting new legislation affecting inmates which utilizes gendered language. Inmates who were assigned female at birth who now identify as male are in need of equal access to a sufficient amount of free sanitary products, but the language of the bill risks excluding these persons. We suggest that the word “females” be changed to “persons” or “persons who menstruate.”

Second, we are concerned with the phrase “sufficient supply.” The bill seeks to require facilities to maintain “a sufficient supply of menstrual hygiene products,” but does not define the meaning of “sufficient supply.” As mentioned previously, OCDLA believes that menstrual hygiene products are not a luxury to be bought, but should be provided to inmates when in need. OCDLA suggests that the language be modified or a definition be provided to clarify in no uncertain terms that menstrual hygiene products will be maintained at a supply level that allows for inmates access to the amount of menstrual hygiene products necessary to meet their body’s needs. Further, OCDLA is concerned that the language of the bill does not clearly prohibit facilities from limiting the number of free menstrual hygiene products per inmate.

The duration of menstruation and amount of menstrual fluid lost varies person by person, with the average person losing between 10 mL to 30 mL a cycle. As a “regular” pad or tampon holds approximately 5 mL, a normal cycle might take anywhere between one to seven “regular” tampons or pads. But there are many people who fall outside of this “normal cycle” and lose up to 80 mL of menstrual fluid, which would require sixteen “regular” tampons or pads. People who fall into this range are in need of tampons and pads that absorb more than 5 mL, such as “super” pads and tampons which absorb 10 mL. OCDLA believes the bill must ensure that all inmates, regardless of their body’s mechanics, have equal access to the amount and type of free menstrual hygiene products necessary to meet their body’s needs. With this in mind, OCDLA recommends adding the words “of every size and type, and without limit.” The language would then read, “provide tampons, sanitary napkins and undergarments of every size and type, and without limit . . .”

Thank you for the opportunity to submit the following comments in support of HB 2515 with the above suggested amendments.

For the reasons outlined above, OCDLA strongly urges a “support” to HB 2515. Thank you for your consideration.

For questions or comments contact Mary A. Sofia, OSB # 111401
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