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AB-1810 Incarcerated persons: menstrual products. (2023-2024)

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Assembly Bill No. 1810

CHAPTER 939

An act to amend Sections 3409 and 4023.5 of the Penal Code, and to amend Section 221 of the Welfare and Institutions Code, relating to incarcerated persons.

[Approved by Governor September 29, 2024. Filed with Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1810, Bryan. Incarcerated persons: menstrual products.

Existing law requires a person who is incarcerated in state prison or confined in a local detention facility, or a state or local juvenile facility, and who menstruates or experiences uterine or vaginal bleeding to, upon request, have access to, be allowed to use, and continue to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and tampons.

This bill would require the person to have ready access to these menstrual products without having to request them. By imposing additional duties on local detention facilities, this bill would impose 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3409 of the Penal Code is amended to read:

3409. (a) A person incarcerated in state prison who menstruates or experiences uterine or vaginal bleeding shall, without needing to request, have ready access to, and be allowed to use, materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and tampons, at no cost to the person. A person incarcerated in state prison who is capable of becoming pregnant shall, upon request, have access to, and be allowed to obtain, contraceptive counseling and their choice of birth control methods, subject to the provisions of subdivision (b), unless medically contraindicated.

(b) (1) Except as provided in paragraph (2), all birth control methods and emergency contraception approved by the United States Food and Drug Administration (FDA) shall be made available to incarcerated persons who are capable of becoming pregnant,

with the exception of sterilizing procedures prohibited by Section 3440.

(2) The California Correctional Health Care Services shall establish a formulary that consists of all FDA-approved birth control methods and that shall be available to persons specified in subdivision (a). If a birth control method has more than one FDA-approved therapeutic equivalent, only one version of that method shall be required to be made available, unless another version is specifically indicated by a prescribing provider and approved by the chief medical physician at the facility. A person shall have access to nonprescription birth control methods without the requirement to see a licensed health care provider.

(c) (1) Any contraceptive service that requires a prescription, or any contraceptive counseling, provided to incarcerated persons who are capable of becoming pregnant, shall be furnished by a licensed health care provider who has been provided with training in reproductive health care, including contraceptive care and counseling, and shall be nondirective, unbiased, and noncoercive. These services shall be furnished by the facility or by any other agency that contracts with the facility. Except as provided in paragraph (2), health care providers furnishing contraceptive services shall receive training in the following areas:

(A) The requirements of this section.

(B) Providing nondirective, unbiased, and noncoercive contraceptive counseling and services.

(2) Providers who attend an orientation program for the Family Planning, Access, Care, and Treatment Program are deemed to have met the training requirements described in paragraph (1).

(d) Any incarcerated person who is capable of becoming pregnant shall be furnished by the facility with information and education regarding the availability of family planning services and their right to receive nondirective, unbiased, and noncoercive contraceptive counseling and services. Each facility shall post this information in conspicuous places to which all incarcerated persons who are capable of becoming pregnant have access.

(e) Contraceptive counseling and family planning services shall be offered and made available to all incarcerated persons who are capable of becoming pregnant at least 60 days, but not longer than 180 days, prior to a scheduled release date.

(f) This section does not limit an incarcerated person's access to any method of contraception that is prescribed or recommended for any medically indicated reason.

SEC. 2. Section 4023.5 of the Penal Code is amended to read:

4023.5. (a) A person confined in a local detention facility shall be allowed to continue to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, including, but not limited to, sanitary pads and tampons, at no cost to the incarcerated person. A person confined in a local detention facility shall, upon request, be allowed to continue to use materials necessary for birth control measures as prescribed by a physician, nurse practitioner, certified nurse-midwife, or physician assistant.

(b) A person confined in a local detention facility shall be furnished by the county with information and education regarding the availability of family planning services.

(c) Family planning services shall be offered to a person confined in a local detention facility at least 60 days prior to a scheduled release date. Upon request, a person shall be furnished by the county with the services of a licensed physician or they shall be furnished by the county or by any other agency that contracts with the county with services necessary to meet their family planning needs at the time of the person's release.

(d) For the purposes of this section, "local detention facility" means a city, county, or regional facility used for the confinement of any prisoner for more than 24 hours.

SEC. 3. Section 221 of the Welfare and Institutions Code is amended to read:

221. (a) A person confined in a state or local juvenile facility shall, without needing to request, be allowed to continue to use materials necessary for personal hygiene with regard to the person's menstrual cycle and reproductive system. A person confined in a state or local juvenile facility shall, upon request, be allowed to continue to use materials necessary for birth control measures as prescribed by the person's physician.

(b) A person confined in a state or local juvenile facility shall, upon the person's request, be furnished by the confining state or local agency with information and education regarding prescription birth control measures.

(c) Family planning services shall be offered to a person confined in a state or local juvenile facility at least 60 days prior to a scheduled release date. Upon request, a person shall be furnished by the confining state or local agency with the services of a licensed physician, or the person shall be furnished by the confining state or local agency or by any other agency which contracts

with the confining state or local agency, with services necessary to meet the person's family planning needs at the time of the person's release.

(d) For the purposes of this section, "local juvenile facility" means a city, county, or regional facility used for the confinement of juveniles for more than 24 hours.

This section shall become operative on January 1, 1988.

SEC. 4. 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.