

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4903

FISCAL  
NOTE

BY DELEGATE S. BROWN

[Introduced February 11, 2020; Referred to the  
Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §15A-4-13 of the Code of West Virginia, 1931, as amended; to  
 2 amend said code by adding thereto a new section, designated §28-5C-3; and to amend  
 3 and reenact §49-2-906 of said code, all relating to requiring that free feminine hygiene  
 4 products be provided to female prisoners in jails, regional jails or state correctional  
 5 facilities and female juveniles in juvenile detention.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC  
 SAFETY.**

**ARTICLE 4. CORRECTIONS MANAGEMENT.**

**§15A-4-13. Charges assessed against inmates for services provided by state.**

1 (a) The commissioner is authorized to assess inmates serving a sentence in any state jail,  
 2 penal, or correctional facility reasonable charges for health care and treatment services provided  
 3 to them by the state. The charges assessed against an inmate may be deducted directly from the  
 4 inmate’s trustee account without the inmate’s consent. The inmate shall be notified of the amount  
 5 deducted and the charges to which it has been applied.

6 (b) As used in this section, a “reasonable charge” may not exceed the sum of \$25 for any  
 7 billable service. Inmates shall be notified of the fee schedule, billable services, and exempt  
 8 services. Services initiated by the inmate shall be assessed a fee, except that no charge may be  
 9 assessed for: (1) a specific health care service required under the law of this state, including, by  
 10 way of illustration, tuberculin testing; (2) an emergency service following a traumatic injury other  
 11 than a self-induced injury, or necessary to prevent death or severe or permanent disability; (3)  
 12 diagnosis and treatment of communicable diseases, including, by way of illustration, tuberculosis  
 13 or hepatitis; (4) treatment of diagnosed severe mental illness; (5) treatment of specific chronic  
 14 conditions identified by the commissioner, including, by way of illustration, heart disease and  
 15 diabetes; (6) staff-initiated care, including follow-up and referral visits; (7) preventive services that

16 the commissioner determines are to be provided or made available to all inmates, including  
17 services related to disease prevention and promotion of proper health habits; or (8) other services  
18 as may be exempted by rule of the commissioner. No inmate may be denied any necessary  
19 billable medical service because of inability to pay the charge.

20 (c) Any inmate who intentionally ingests, inhales, injects, absorbs, applies, or otherwise  
21 exposes himself or herself to, in any manner whatsoever not otherwise specified herein, an illegal  
22 drug, a drug not legally prescribed to him or her, a drug in quantities above that recommended by  
23 a prescribing physician, a synthetic intoxicant, or any substance for the purpose of causing an  
24 excited, euphoric, or stupefied state, or altered perception, including hallucinations or delusions,  
25 and the inmate requires medical treatment due to the ingestion, inhalation, injection, absorption,  
26 application, or exposure shall reimburse the cost of the medical treatment to the division.

27 (d) Each inmate shall be afforded an opportunity at least quarterly to review all deposits  
28 into, withdrawals from, and balance remaining in the inmate's trustee account during the  
29 preceding three months.

30 (e) Female inmates shall be provided, at no cost, with their choice of feminine hygiene  
31 products as soon as practicable upon request but, in any case, no longer than eight hours later.  
32 For the purposes of this subsection "feminine hygiene products" means tampons and sanitary  
33 napkins for use in connection with the menstrual cycle.

34 ~~(e)~~ (f) The commissioner shall promulgate interpretive rules implementing this section  
35 pursuant to §29A-3-1 *et seq.* of this code prior to making any assessment under this section. The  
36 policy directive rules may establish the fee schedule and list of billable services and further define  
37 services to be exempted.

## **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

### **ARTICLE 5C. IMPRISONMENT OF FEMALE FELONS.**

#### **§28-5C-3. Feminine hygiene products to be provided.**

1           (a) For the purposes of this section “feminine hygiene products” means tampons and  
2 sanitary napkins for use in connection with the menstrual cycle.

3           (b) Female inmates shall be provided, at no cost, with their choice of feminine hygiene  
4 products as soon as practicable upon request but, in any case, no longer than eight hours later.

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-906. Medical and other treatment of juveniles in custody of the division; consent;  
service providers; medical care; pregnant inmates; claims processing and  
administration by the department; authorization of cooperative agreements.**

1           (a) Notwithstanding any other provision of law to the contrary, the director, or his or her  
2 designee, is hereby authorized to consent to the medical or other treatment of any juvenile in the  
3 legal or physical custody of the director or the division.

4           (b) In providing or arranging for the necessary medical and other care and treatment of  
5 juveniles committed to the division's custody, the director shall use service providers who provide  
6 the same or similar services to juveniles under existing contracts with the Department of Health  
7 and Human Resources. In order to obtain the most advantageous reimbursement rates, to  
8 capitalize on an economy of scale and to avoid duplicative systems and procedures, the  
9 department shall administer and process all claims for medical or other treatment of juveniles  
10 committed to the division's custody.

11           (c) In providing or arranging for the necessary medical and other care and treatment of  
12 juveniles committed to the division's custody, the director shall assure that pregnant inmates will  
13 not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy.  
14 However, if the inmate, based upon her classification, discipline history or other factors deemed  
15 relevant by the director poses a threat of escape, or to the safety of herself, the public, staff, or  
16 the unborn child, the inmate may be restrained in a manner reasonably necessary. Additionally,

17 that prior to directing the application of restraints and where there is no threat to the safety of the  
18 inmate, the public, staff or the fetus, the director or designee shall consult with an appropriate  
19 health care professional to assure that the manner of restraint will not pose an unreasonable risk  
20 of harm to the inmate or the fetus.

21 (d) Female juveniles committed to the division's custody shall be provided, at no cost, with  
22 their choice of feminine hygiene products as soon as practicable upon request but, in any case,  
23 no longer than eight hours later. For the purposes of this subsection "feminine hygiene products"  
24 means tampons and sanitary napkins for use in connection with the menstrual cycle.

25 ~~(d)~~ (e) For purposes of implementing the mandates of this section, the director is hereby  
26 authorized and directed to enter into any necessary agreements with the Department of Health  
27 and Human Resources. An agreement will include, at a minimum, for the direct and incidental  
28 costs associated with that care and treatment to be paid by the Division of Juvenile Services.

NOTE: The purpose of this bill is to require that free feminine hygiene products be provided to female prisoners in all jails, regional jails or state correctional facilities and female juveniles in juvenile detention.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.