

Menstrual Equity

A Legislative Toolkit

Prepared by:
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Section I: Overview

Dear Reader,

If you're here, you probably already know that lack of access to menstrual products can be a significant barrier for people across the United States.

Menstrual equity is the relatively new phrase, and frame, for the burgeoning U.S. policy agenda to address this issue. The term was coined by Jennifer Weiss-Wolf in 2015 to offer a winning approach for engaging policymakers. In her 2017 book, "Periods Gone Public," she explains, "In order to have a fully equitable and participatory society, we must have laws and policies that ensure menstrual products are safe and affordable and available for those who need them."¹ The equity framework is intended to acknowledge the far-reaching societal importance of and need for public policy to address the safety, affordability, and availability of menstrual products for everyone who needs them.

This toolkit provides you with key arguments and materials for advancing menstrual equity in your state. It includes sample legislative and policy language; talking points; responses to common arguments; a primer on the "tampon tax"; a template for a legislative letter; model op-eds and links to other articles; tips for managing social media and "viral moments"; a [briefing paper on menstrual equity](#); and an interview with an on-the-ground advocate.

We've focused on a few specific areas: those that have gained the most traction in recent years, namely, ending the "tampon tax" and ensuring access to menstrual products in public schools, government-funded homeless shelters, and correctional institutions. The specific policies included in the toolkit were chosen due to their popularity in many U.S. jurisdictions already – at local, municipal, state, and federal levels alike.

The nonprofit Period Equity brings distinct expertise as the group that launched the national tampon tax

campaign in 2015 and for its foresight in spearheading the nation's first comprehensive menstrual equity legislation in New York City in 2016. The initial focus on access at the city's shelters, school, and jails – at the urging of impacted New Yorkers and commitment of the corresponding city agencies – has since spurred a national movement.

A number of ACLU state affiliate offices, as well as the National Prison Project of the ACLU, have successfully fought for menstrual equity. For example, the ACLU of Colorado worked with legislators to convince the state's Department of Corrections to make menstrual products freely available to incarcerated people in their custody. They also worked with formerly incarcerated advocates to pass legislation to ensure access in local jails. The ACLU affiliates in California released a policy reform tool, after conducting a comprehensive review of reproductive health behind bars, that included recommending access to free menstrual products in jails. That recommendation is now the law in California.

The areas that we and other advocates have already pursued are not the only public arenas in which menstrual equity can and should be advanced. We urge readers to be creative in their application of this toolkit, and to work with local leaders to determine what other agencies and budgets can be tapped to ensure access for all (think public transportation hubs, libraries, clinics and food pantries, for example).

Period Equity and others also work to advance laws and policies to ensure safe, environmentally healthy menstrual products – a key component of menstrual equity. And they promote myriad ways in which the government can make menstrual products more affordable and accessible, from inclusion in nutritional benefits programs and federal tax incentives, to access in federal detention facilities. They also advocate that menstrual equity be folded into other gender equality advocacy, including workplace and pregnancy discrimination laws, and the renewed campaign for the Equal Rights Amendment. The book *Periods Gone Public* is the go-to resource for these proposals, and so many more. Please do check it out if you're looking to learn more about the history and future of menstrual equity policy in America.

¹ JENNIFER WEISS-WOLF, PERIODS GONE PUBLIC: TAKING A STAND FOR MENSTRUAL EQUITY xvi (2017).

This toolkit is intended to be just the start, a first crack at the resources needed to get you started. We hope that the materials in this toolkit will help you advance menstrual equity in the ways that are meaningful in your state. Stay tuned for many more resources to follow!

Additional Resources

For more information about legislative campaigns to ensure incarcerated people, homeless people, and public school students are provided with menstrual products, please contact **Jennifer Weiss-Wolf**, co-founder of Period Equity (www.periodequity.org) and author of “Periods Gone Public: Taking a Stand for Menstrual Equity” (Arcade Publishing, 2017). She can be reached at jennifer@periodequity.org or (646) 292-8323.

Please let us know if you will be advancing this legislative strategy so we can keep you updated on the latest developments.

If you wish to focus on menstrual equity in jails, prisons, juvenile detention centers or immigration detention, please contact **Amy Fettig**, Deputy Director of the National Prison Project at afettig@aclu.org or (202) 548-6608.

Section II: Model Legislation

The highlighted and bracketed fields throughout this **model bill** will need to be adjusted to the specifics of your state. It is important to review the laws and regulations in your state that govern the relevant departments in order to draft a bill consistent with overall practices.

Footnotes appear throughout the bill for your information and support, but should be removed entirely before sharing with legislators.

The provisions in this bill provide flexible opportunities for advocates, depending on the needs and challenges in your state. Provisions of the bill regarding incarcerated people, homeless people, or public students can be introduced individually, combined for an omnibus menstrual equity bill, or introduced as part of other legislative reforms centered on one or more of those populations.

You may also consider using the model provisions as a model for other menstrual equity legislation, such as ensuring access in other public buildings.

Section 1. Title

This Act shall be known and may be cited as the Menstrual Equity for All Act.

Section 2. Findings

[Note: Only include findings if they will be persuasive for your legislature. The order and structure of these findings, if you include them, may need to be modified to suit your state.]

Menstrual products are vital for the health, well-being and full participation of women and girls. Inadequate menstrual support is associated with both health and psycho-social issues, particularly

among low-income women.² A lack of access to menstrual products can cause emotional duress, physical infection and disease.³

Access to menstrual products has proven to be limited for vulnerable populations. Currently the cost of these products is not included in health insurance⁴ or flexible spending accounts or health savings accounts,⁵ nor in public benefits programs such as the Supplemental Nutrition Assistance Program (SNAP)⁶ or Women, Infants, and Children (WIC) benefits.⁷

Although some homeless shelters voluntarily distribute menstrual products to their residents, such products remain unfunded and can be more difficult to source from public donors than other toiletries.⁸ Increased access to menstrual products in public schools may also increase attendance for poor students.⁹

Access to menstrual products in the prison and jail systems is also limited. Throughout the U.S., prisoners and detainees earn low or no wages and struggle to afford menstrual products from in-facility commissaries. Often, the products sold at commissaries are of poor quality, limited in quantity, and expensive, which results in some prisoners having to use products for longer than intended, reusing pads, or even going without and bleeding through their clothes and in their living spaces. Improper and extended use of menstrual products can be unsanitary and dangerous, leading to discomfort, infections, and susceptibility to infertility and cancer. Lack of access to menstrual products can also take a severe emotional toll, especially if prisoners are too embarrassed to take part in daily life within the prison.

There are [NUMBER] prisoners or detainees in women’s facilities in state custody as of [DATE].

The purpose of this Act is to improve the well-being, dignity, and quality of life of the people in [STATE] by (1) requiring that the [Department of Corrections/Department of Public Safety] provide free, quality menstrual products to prisoners and detainees in the State’s correctional facilities; (2) requiring that the [Sheriffs/County Supervisors] provide free, quality menstrual products to prisoners and detainees in all local correctional facilities, jails, and detention centers; (3) eliminating the tax on menstrual products; (4) requiring that the [Department of Education] provide free, quality menstrual products to public middle and high school students; and (5) requiring that the [Department of Health & Human Services] provide free, quality menstrual products to individuals in need who access homeless shelter services in [State].

2 Sumpter, Colin & Torondel, Belen, “A Systematic Review of the Health and Social Effects of Menstrual Hygiene Management,” *PLOS One* 8, no. 4 (2013): 1. <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0062004&type=printable>.

3 Weiss-Wolf, Jennifer. *Time* “America’s Very Real Menstrual Crisis,” Aug. 11, 2015, <http://time.com/3989966/america-menstrual-crisis/>.

4 “Mandatory & Optional Medicaid Benefits.” Cents. for Medicare & Medicaid Services. Accessed Sept. 11, 2019. <https://www.medicaid.gov/medicaid/benefits/list-of-benefits/index.html>.

5 “The Complete HSA Eligibility List.” HSA Store. Accessed Sept. 11, 2019. <https://hsastore.com/HSA-Eligibility-List/T.aspx>.

6 “What Can SNAP Buy?” Food and Nutrition Service, U.S. Dep’t of Agric. Accessed Sept. 11, 2019. <https://www.fns.usda.gov/snap/eligible-food-items>.

7 Weiss-Wolf, Jennifer. *The New York Times*. “Helping Women and Girls. Period.,” Jan. 28, 2015, <https://kristof.blogs.nytimes.com/2015/01/28/helping-women-and-girls-period>.

8 De Bode, Lisa. *Al Jazeera America Media Networks*. “Hygiene and heartache: Homeless women’s daily struggle to keep clean,” Jan. 13, 2015, <http://america.aljazeera.com/articles/2015/1/13/-scared-to-walk-thestreet.html>.

9 O’Connor, Meg. *Gotham Gazette*. “Council to Hear Bills on Providing Tampons at Shelters, Prisons & Schools,” May 27, 2016, <http://www.gothamgazette.com/index.php/city/6362-council-to-hear-bills-on-providing-tampons-at-shelters-prisons-schools>.

Section 3. Definitions

For the purposes of this Act:

- a. “Menstrual product” is defined as defined as pads, pantliners, tampons, menstrual cups, or any product designed specifically for absorption or containment of menses OR “menstrual product” includes but is not limited to: pads, pantliners, tampons, and menstrual cups.
- b. The Institution shall ensure that the menstrual products provided under this section meet applicable industry standards.
- c. The menstrual product provision requirements of this Act shall apply to all menstruating individuals regardless of gender or gender presentation.

Section 4. Provision of Menstrual Products in Detention Facilities

- a. Each prison, jail, and juvenile detention center shall have a written policy and procedure in place requiring menstrual products to be provided at no cost to a prison/detainee upon:
 1. Admission to the facility;
 2. A routine basis no less than monthly; and
 3. Request.
- c. Prisoners/detainees shall be provided their choice of menstrual products.
- d. The [Director of the Department of Corrections/Sheriff/Director of Juvenile Justice] shall ensure that each Institution has a sufficient supply of menstrual products available to meet the needs of the prisoner/detainee population at all times.
- e. Each Institution shall maintain records on the provision and availability of menstrual products to prisoners/detainees.
- f. All products shall be made freely available in bathrooms and living areas.
- g. The written policy must include provision of menstrual products to prisoners/detainees who are unable to access menstrual products in general population areas. These individuals include, but are not limited to, people in segregated housing, people in medical isolation, and people with disabilities. The policy must not require these individuals to make an affirmative request for menstrual products but instead make them freely available in an appropriate quantity.

Section 5. State sales tax¹⁰

The sales and use tax shall not apply to consumer purchases of pads, tampons, menstrual sponges, menstrual cups, or other similar menstrual products. These products should be exempted in all cases.

Sales and use taxes imposed by localities, including counties and cities, may not apply to the consumer purchases listed above.

Section 6. Homeless shelters and public schools¹¹

(a)(1) The Department [of Health and Human Services] shall make available to:

- (i) service providers and local administering agencies for service providers a supply of menstrual products sufficient to meet the needs of residents in shelters; and
- (ii) county boards of education a supply of menstrual products sufficient to meet the needs during the normal school year of all menstruating students.

(2) The menstrual products provided under Section 3 shall be made available free to:

- (i) service providers, local administering agencies for service providers, and female residents in shelters; and
- (ii) county boards of education and public school students.

(3) Menstrual products shall be provided in both all restrooms in shelters and public schools and shall be made available to all qualifying individuals who menstruate.

Section 7. Enforcement

NOTE: Having as many of these enforcement options in the bill as possible is preferred.

OPTION 1: Private Right of Action

- a. Notwithstanding any relief or claims afforded by federal or state law, any person who has been denied menstrual products in violation of this Act may file a complaint within **[2 years]** of the incident. If the complainant is no longer in the custody of the correctional institution, has exhausted the department's established grievance procedures or protocols, or the correctional institution has not responded to a complaint within **[120 days]**, the complainant may institute suit in **[Superior Court, or whatever lowest level trial court in your state]**.
- b. Any correctional institution found to have violated any provision of this Act or any rule or regulation adopted under this Act shall be civilly liable to the person denied menstrual

¹⁰ Md. Code Ann., Tax-Gen. § 11-211(c) (West 2018).

¹¹ Md. Code Ann., House & Cmty Dev. § 4-2401 (West 2017).

products in violation of this Act. A court or adjudicatory body may award punitive damages per incident. A court or adjudicatory body may further award attorneys' fees, litigation costs, and compensatory damages.

- c. Nothing in this section shall prevent a person harmed under this Act from filing a complaint under any other relevant provision of federal or state law.

OPTION 2: Notice to Prisoners and Detainees

- a. Within 30 days of the effectiveness of this Act, all correctional institutions in [State] shall develop rules pursuant to this Act.
- b. Correctional institutions shall inform prisoners and detainees of the rules developed pursuant to subsection (a) upon admission to the correctional institution, include policies and practices pursuant to this Act in the prisoner handbook, and post policies and practices pursuant to this Act in locations in the correctional institution where such notices are commonly posted, including common housing areas and medical care facilities.
- c. Within 60 days of the effectiveness of this Act, correctional institutions shall inform prisoners and detainees within the custody of the correctional institution of the rules developed pursuant to subsection (a).

OPTION 3: Annual Report

- a. No later than 30 days before the end of each fiscal year, the [Director of the Department of Corrections] and the [corrections official] of each municipal and county correctional institution where women prisoners or detainees are held shall produce a report containing: the number of [prisoners or detainees] held in such facility; the number of tampons, pads, and other menstrual products purchased that year; and any grievances or other complaints about lack of access to or quality of menstrual products. Such reports shall be made available for public inspection.

Section 8. Effective date.

This Act takes effect upon becoming law.

Section III: Messaging

The **message box**, **talking points**, and **responses** to common arguments can guide your advocacy in the legislature and press, as well as your public education efforts.

Menstrual Equity Talking Points

Menstrual equity is a basic equity issue. Just as we have regulated the provision of toilet paper and paper towels in public restrooms, so too should we do the same for menstrual products. Menstruation is a natural monthly occurrence, experienced by over half the population for much of their lives, and should not be treated differently than any other basic bodily function. It's unhygienic not to have access to menstrual products, no less so than to lack access to toilet paper.

Menstrual equity is a serious issue for marginalized populations. People living in poverty are most affected by lack of access to menstrual products. These individuals often cannot afford sufficient menstrual products and so disproportionately suffer the medical and psychological impact of reusing products, using products for longer than indicated, or not using any products at all. These individuals are also more likely to have to suffer the societal effects of lack of access including problems with attendance at work or school and the appearance of being unprofessional or unhygienic. Nobody in this country should have to miss school or work simply because they cannot afford menstrual products.

Menstrual equity is desperately needed in prisons, jails, juvenile detention centers, and other detention facilities. Incarcerated people are in the custody of the state and rely entirely on prison/jail staff to meet their medical and hygiene needs. When correctional officers withhold menstrual products, the people in their custody are subject to the humiliation and health concerns caused by lack of access. They may have to beg correctional officers for additional products or risk bleeding through clothes that they must continue to re-wear until laundry day. Additionally, some correctional officers have used access to menstrual products to coerce women in their

HOW TO RESPOND TO COMMON ARGUMENTS

ARGUMENT: It costs too much to provide menstrual products in [shelters/schools/correctional facilities]

RESPONSE: The cost of menstrual products is negligible when compared to the cost of actually running the facilities. The government already pays for other necessities, such as toilet paper, and nobody suggests that it stop doing that simply because it would be cheaper not to. People have the right to menstruate in public, and they even have a constitutional right to basic human needs like menstrual products if they are incarcerated, and so the government has an obligation to act even if there is some cost involved.

ARGUMENT: Everything is taxed

RESPONSE: Items deemed “necessary” are generally exempted from otherwise broadly-applicable state sales taxes. Those items are often far less necessary than menstrual products. For example, states exempt items such as Pixy Stix, golf club memberships, arcade game tokens, garter belts, and gun club memberships from state sales taxes.¹ State governments can make up the shortfall through taxing online sales or removing some of these less-necessary exemptions.

ARGUMENT: Free provision of menstrual products would present a security issue in prison/jail/juvenile justice facilities

RESPONSE: Access to freely available menstrual products does not present a security issue. Specifically, the Office of the Inspector General interviewed a number of federal prison staff and none could articulate any security concerns; among institutions that have freely available products, no security concerns have arisen.²

1. Weiss-Wolf, Jennifer. *Periods Gone Public: Taking a Stand for Menstrual Equity*. (New York: Arcade, 2017).
2. *Review of the Federal Bureau of Prisons' Management of Its Female Inmate Population*. 2018, <https://oig.justice.gov/reports/2018/e1805.pdf>.

care into sex. People who are incarcerated should not have to beg for basic hygiene supplies or risk abuse or even rape simply due to menstruation.

Menstrual equity is a public health concern. The potential medical issues facing individuals without access to menstrual products, including infections that can cause susceptibility to cervical cancer and infertility, are serious. The fact that these issues primarily affect vulnerable communities, especially along income lines, should move and motivate public health advocates. Greater access to menstrual products through elimination of sales tax and free availability in places accessed by vulnerable communities can have a real impact on the health of these communities for a relatively low investment.

Menstrual equity is a gender equality issue. Lack of access to menstrual products – whether the result of policies that do not consider the needs of people who menstruate in homeless shelters, schools, or carceral facilities or the result of unnecessary sales taxes – is a clear form of gender-based exclusion and oppression. Failure to consider menstrual needs is a form of sex-based discrimination and disproportionately affects women. Furthermore, lack of access can be particularly harmful to nonbinary people and transgender men who have disproportionate rates of poverty and may have high incarceration rates as well.

Menstrual equity is part of reproductive justice. The heart of reproductive justice is the right to “maintain personal bodily autonomy.”¹² Reproductive justice advocates work to “understand and eradicate ... gendered, sexualized, and racialized acts of dominance that occur on a daily basis.”¹³ People who lack consistent access to menstrual products may be subjected to gendered and sexualized acts of dominance because they may be made to feel embarrassed or told they are unprofessional if they attempt to move through the world with blood-stained clothes. They may be forced to reuse products or use them for too long, resulting in dangerous medical conditions that could impact their reproductive possibilities. Without consistent access to

sufficient menstrual products, people who menstruate may ultimately lack the ability to participate fully in civic society.

Section IV: Advocacy Materials

Included in this section are materials that can assist your legislative advocacy:

- A Tampon Tax primer – for key basics about the issue, a summary of the advocacy campaign to date, and a preview of the new legal intervention being spearheaded by Period Equity, accompanied by a feature in *The New York Times* and an op-ed in the *Los Angeles Times*.
- When asking for the support of legislators or the Governor, the **model legislative letter** can be easily adapted for your state.
- **Op-eds** written in support of providing free menstrual products to prisoners and summarizing the impact of gender-based pricing and the tampon tax and a resource page linking to other op-eds and articles.
- The **ACLU National Prison Project – Period Equity Briefing Paper on Menstrual Equity** provides an excellent primer on the issue for affiliates, coalition partners, and legislators.
- An advocacy tool, “How to Respond to Viral Moments,” to advise on creating high-level public discourse.
- The book *Periods Gone Public: Taking a Stand for Menstrual Equity* (Arcade Publishing, 2017) is an essential resource for the menstrual equity movement. The Period Equity website (<http://www.periodequity.org/>) catalogs all media and related commentary on menstrual equity issues.

¹² “Reproductive Justice.” SisterSong. Accessed Sept. 11, 2019. <https://www.sistersong.net/reproductive-justice/>.

¹³ *Id.*

Tampon Tax

The tampon tax is regular sales tax or value-added tax applied to menstrual products — or, conversely, the failure of the state to otherwise exempt these products from sales tax by placing them in the category of necessity.

The arguments for taking on — and taking down — the tampon tax are four-fold: It would lift a small financial burden; challenge laws that are archaic, unfair, and discriminatory; help inch toward a model of economic parity and gender equity; and offer a gateway for enabling people to talk and think about the wider implications of menstruation — social, economic, and otherwise — in our policy making.

The Basics. Here’s a comprehensive primer setting forth the mechanics of the U.S. tampon tax, excerpted from *Periods Gone Public* and updated accordingly:

Sales tax is primarily a state issue. Sales tax is legislated and levied state by state. Each state decides what items to exempt, at what rate items will be taxed, and if/how sub-bodies like counties or municipalities can do the same. Prior to 2015, there were five states that already exempted menstrual products — Maryland, Massachusetts, Minnesota, New Jersey, and Pennsylvania — though not as a result of a concerted campaign. Another five states — Alaska, Delaware, Montana, New Hampshire, and Oregon — collect no sales tax at all, and therefore don’t tax these items. By 2019, Connecticut, Florida, Illinois, Nevada, New York, and Rhode Island, as well as Washington, D.C. and the cities of Chicago and Denver, permanently eliminated the tampon tax. That leaves 34 states that still tax menstrual products.

A “luxury” tax? The tax itself is not a special or additive levy. Rather, it is regular sales tax applied to menstrual products, ranging from roughly 4 to 10 percent depending on the state tax code. Generally, and as a matter of historical practice since sales taxes were first implemented in the U.S. in the 1930s, states exempt food and other items deemed necessities of life, such as medicine and prescription drugs, from sales tax.

Nor is it a “luxury” tax, a common misnomer. The term is a by-product of the vernacular of the European Union’s value-added tax, a consumption tax that, at its highest rate categories, applies to “non-essential luxury items.”

What is a necessity? Lack of consistent classification of “medical necessities” has resulted in a complicated and often inconsistent array of recommendations and outcomes. Food generally is tax exempt. Prescription drugs — ranging from the life-saving (insulin) to the life-enhancing (Rogaine and Viagra) — also receive tax exemptions. So too are incontinence pads, dandruff shampoo, and lip balm under this classification. Meanwhile, items that seem comparable to menstrual supplies and that may also be deemed basic (if not medical) necessities, are often taxed — toilet paper, soap, and bandages among them.

The costs. A year’s supply of tampons and pads for a person costs in the range of \$70 to \$120, depending on where one lives, how heavy one’s flow is, and the ability to take advantage of cost-cutting measures. (Reusable alternatives like menstrual cups, absorbent underwear, and cloth pads often have high upfront costs but are more cost-effective over time.) The amount of annual tax revenue states collect on the sale of these products is based on the number of menstruating people in the state, ranging from \$1 million in Utah to \$20 million in California, for example.

It is worth noting that periods are costlier for those who have the least means, and often pay considerably more for the exact same items because they’re subject to the inflated prices charged at convenience stores or they can’t afford the cost benefit of buying in bulk. Sales taxes are also inherently regressive, causing a greater relative burden to low-income consumers.

Is the “tampon tax” the same as the “pink tax”? The phrase “pink tax” is a popular euphemism for the phenomenon where goods or

services marketed for women often cost more than the men’s equivalent for no reason other than price gouging. This is different from the tampon tax, but nonetheless a challenge posed by gender-based pricing. A 2015 New York City Department of Consumer Affairs study, “From Cradle to Cane: The Cost of Being a Female Consumer,” cited the following examples: shampoo and conditioner in the women’s aisle cost an average of 48 percent more than that in the men’s; women’s jeans are 10 percent more expensive; dry cleaning bills for women’s shirts run an average of \$4.95 as compared to \$2.86 for men’s.¹⁴ These findings were bolstered by a 2018 report from the U.S. Government Accountability Office, “Gender-Related Price Differences for Goods and Services,” which found gender-based pricing discrepancies 50 percent of the time.¹⁵

Policy Progress in the United States. Among its most distinct characteristics in the U.S., the tampon tax argument has unusually strong trans-partisan appeal. There are persuasive perspectives from all sides – left, right, libertarian – focused on social justice and gender equity, or tax relief, or limiting the scope of government reach. One unique challenge: Because there is no national sales tax in the U.S., but instead a multitude of municipal- and state-specific tax codes, there is not the simplicity of organizing one overarching nationwide campaign.

Starting in January 2016 and through the present, proposals to exempt menstrual products from sales tax have been introduced or debated in legislatures in Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Nevada, New York, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin – as well as the District of Columbia, Denver, and Chicago.¹⁶

Among the victories:

- City ordinances:
 - Chicago was the first jurisdiction in 2016 to eliminate the tampon tax; Denver is the other major municipality that has done so (in 2019).
 - The Washington, D.C. Council exempted menstrual products from sales tax in 2016. It took two years for the benefit to reach consumers, however, since Mayor Muriel Bowser failed to fund the provision in the budget effective immediately. The exemption began in October 2018.
- State legislation:
 - New York and Illinois unanimously passed laws in 2016 that were signed by those states’ respective governors – in New York, a Democrat, in Illinois, a Republican – demonstrating bipartisan commitment to the issue.
 - Florida successfully passed a tax exemption for menstrual products in 2017, signed by a Republican governor. Connecticut became the next state to eliminate the tax by legislation in 2018, signed by a Democrat.
- State ballot measures:
 - On Election Day 2018, Nevada voters approved the first-ever ballot measure on the tampon tax. Starting January 1, 2019, the state’s 6.85 percent sales tax on menstrual products will be lifted. The lawmakers who proposed the measure made clear their intention that the state should not be funding its needs “on the backs of women.”¹⁷ Given the unnecessary hurdles that have emerged in several state legislatures, some detailed below, ballot measures are an important lever for making

¹⁴ Bessendorf, Anna. “From Cradle to Cane: The Cost of Being a Female Consumer: A Study of Gender Pricing in New York City.” New York City Department of Consumer Affairs. December 2015, <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf>.

¹⁵ U.S. Gov’t Accountability Off., GAO-18-500, Consumer Protection: Gender-Related Price Differences for Goods and Services (2018), <https://www.gao.gov/assets/700/693841.pdf>.

¹⁶ “Tax Free. Period.,” www.taxfreeperiod.com (last visited Sept. 11, 2019).

¹⁷ Kasperkevic, Jana. *Marketplace*. Nevada’s “Tampon Tax” Ballot Initiative Brings Up Questions about Fairness and Gender Equality,” Nov. 1, 2018, <https://www.marketplace.org/2018/11/01/elections/nevada-s-tampon-tax-ballot-initiative-brings-questions-about-fairness-and>.

change, and a strategy to replicate going forward.

Leveraging Litigation. Policy advocacy has been a demonstrably productive path to achieving legal change. Now the courts may be the next frontier to nationwide repeal.

Litigation was first undertaken as a method for seeking tax relief in 1989 when a group of Chicago women brought a lawsuit, *Geary v. Dominick's Finer Foods*, against a retailer as well as the City of Chicago and the city, county, and state tax authorities. The plaintiffs successfully argued that the city should follow the statewide classification of tampons and pads as “medical appliances.” But in 2009, the Illinois legislature reclassified tampons as “grooming and hygiene products,” effectively reversing the outcome.

A second lawsuit was initiated nearly twenty years later by Period Equity as a coordinated intervention to bolster policy advocacy. In March 2016, a class-action lawsuit was filed in New York State, *Seibert v. New York State Department of Taxation & Finance*, charging that the tampon tax violates New York State Tax Law, the U.S. Constitution’s Fourteenth Amendment, and the New York Constitution’s Equal Protection Clause. The primary impetus for the lawsuit was to pressure the governor to assert that he would act once the legislature passed a law for him to sign – which it did, just one week later. Once the bill was signed into law, the suit was voluntarily dismissed.¹⁸

Now, Period Equity has launched a nationwide legal initiative to connect state advocates and attorneys with national experts to join forces on mobilizing legal action to challenge the tampon tax. Please visit TaxFreePeriod.com for more information and to join the campaign.

For further reading, please see:

Karen Zraick, *22 States Considered Eliminating the Tampon Tax This Year: Here’s What Happened.*,

N.Y. TIMES (July 12, 2019), <https://www.nytimes.com/2019/07/12/us/tampon-tax.html>.

Jennifer Weiss-Wolf & Erwin Chemerinsky, *Taxing Tampons Isn’t Just Unfair, It’s Unconstitutional*, L.A. TIMES (July 11, 2019), <https://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-weiss-wolf-tampons-tax-20190711-story.html>.

¹⁸ Similar lawsuits have been filed making comparable (and additional) legal claims in California, Florida, and Ohio. Like New York, the Florida case was voluntarily withdrawn when legislation passed. The California case was dismissed on procedural grounds pertaining to the standing of the plaintiff. The only current live case is in Ohio, which argues on Equal Protection grounds, as well as that menstrual products should be classified as medical devices (under federal law, as per the FDA) or “durable medical equipment” (under state law), and therefore tax exempt; that case is pending appeal.

[Name]
[Street Address]
[City, State, Zip]

[Date]

Dear [Legislator/Governor/etc.],

If individual: My name is [Your Name] and I live in your district at [Street Address] in [Your State]. I urge you to support [Bill number or name] to help provide free, quality menstrual products to [incarcerated people]/[people who are homeless]/[public school students]. By supporting this bill, you show that you care about providing basic healthcare and safety to the [incarcerated people]/[people who are homeless]/[public school students] in [State] who currently suffer from inadequate access to menstrual products.

If organization: On behalf of the [American Civil Liberties Union (ACLU)/other organization name], we write to urge you to support and cosponsor the [Bill number or name]. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. With more than 1.5 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law

[Bill number or name] is a comprehensive initiative that promotes common goals:

- **Gender Equality:** Lack of access to menstrual products is a form of gender-based oppression. Menstrual products are essential to reproductive health and should be deemed as such. Lack of access can be particularly harmful to nonbinary people and transgender men.
- **Public Health:** The medical issues facing individuals without access to menstrual products, including preventable infections that can cause susceptibility to cervical cancer and infertility, are life-threatening.
- **Basic Hygiene:** Just as we all expect toilet paper and paper towels to be readily available in public restrooms, we can and should expect the same of menstrual products. Menstruation is a natural occurrence, experienced by over half the population throughout their lives, and should not be treated differently.

[Bill number or name] recognizes that access to menstrual products is integral to health and safety. For your reference, here are some of the challenges people who cannot access menstrual products face:

- **Medical Consequences:** Lack of access to menstrual products can cause physical infection and disease and can lead to cervical cancer.
- **Civic Consequences:** People who lack access to menstrual products may choose not to attend [work/school/family or attorney visits] in order to avoid having to use products incorrectly or wear stained articles of clothing in public. People who menstruate deserve to participate fully in public life, and therefore they deserve access to menstrual products.

- **Safety and Abuse [if the bill includes incarcerated people]:** Incarcerated people rely entirely on correctional staff to meet their medical needs. When correctional officers withhold menstrual products, the people in their custody who menstruate are subject to the humiliation and health concerns caused by lack of access. Additionally, some correctional officers have used access to menstrual products to coerce women into sex. **Incarcerated people should have full access to menstrual products. Furthermore, they should not face threats of abuse or assault when seeking access to menstrual products and reproductive care.**

If individual: I care about access to menstrual products because ... [here is where you may include a personal story. Tell your representative why the issue is important to you and how it affects you, your family member(s) and/or your community. If you choose not to include a personal statement, you may delete this paragraph.]

[NOTE: If your organization has advocated on behalf of an impacted person, you may consider sharing their story here.]

[I/we] urge you to support [Bill number or Name] to help improve the lives of [incarcerated people]/ [people who are homeless]/[public school students] in [Your State]. [I/we] welcome you to contact [me/us] with any additional questions you may have. [I/we] look forward to your response.

Sincerely,
[Your Name]

[Extras to include, if necessary:

Why You Should Do It:

Menstrual equity legislation presents the opportunity to proactively advocate for a civil liberties issue that cuts across traditional reproductive, women's, and prisoners' rights.

Legislation that advocates for menstrual equity centers marginalized populations. "Our society will not be free until the most vulnerable people are able to access the resources and full human rights to live self-determined lives without fear, discrimination, or retaliation"

– *Sister Song: Women of Color Reproductive Justice Collective.*

It is a constitutional right to stand up and speak out against injustice. Direct communication with legislators about those injustices is the most effective way to see that they are acted upon.

Op-Ed: Taxing tampons isn't just unfair, it's unconstitutional

By Erwin Chemerinsky, Jennifer Weiss-Wolf

JULY 11, 2019 3:05 AM

If the government were to require that only men or only women had to pay a tax of several hundred dollars a year solely because of their sex, that would be an unconstitutional denial of equal protection under the 14th Amendment. Yet that is exactly the effect of the so-called tampon tax.

Currently, residents of 35 states must pay sales tax on purchases of tampons and pads because they are not deemed necessities worthy of an exemption. And that's in addition to the roughly \$5 to \$10 for these products that women have to shell out each month. States collectively profit upwards of \$150 million a year from taxing menstrual products. In California alone, women pay \$20 million annually.

Although many states considered creating tax exemptions this spring, only one permanent exemption was approved. Over the holiday weekend, Rhode Island Gov. Raimondo signed a new state budget, which included a provision approved by the Legislature to make menstrual products sales tax exempt starting in October.

The issue also became a matter of fiscal negotiations in California. Back in May, Gov. Gavin Newsom wrote the cost of implementing a tax exemption for menstrual products into his proposed budget. The catch: It would last only for the duration of the budget, for two years. That move was backed by the Legislature, which had been trying unsuccessfully to pass a permanent exemption into law since 2016. The governor signed the budget on June 27.

Eliminating the discriminatory tampon tax isn't a legislative nicety or a budgetary option. It is a legal mandate. Period.

Temporary expenditure lines — subject to the whim of the state's leadership — are not enough. The sales-tax-exempt status of menstrual products must be made permanent in California and adopted into law in every state.

The issue is gaining traction globally. Back in 2015, Canada eliminated its national goods and services tax on menstrual products. Similar exemptions have since passed in diverse nations and economies, including Australia, India, Malaysia and South Africa.

In the United States, where sales taxes are levied by each state, bills have been introduced in 32 legislatures since 2016 to exempt menstrual products from sales tax. Five succeeded: Connecticut, Florida, Illinois and New York passed laws. Additionally, citizens of Nevada approved a 2018 ballot measure to accomplish the same. Another 10 states don't tax menstrual products — either because they collect no sales tax at all, or because they're included under general exemption categories.

In 2019, tampon tax bills were introduced in 22 states with bipartisan and overwhelming public support. And yet, the legislative sessions ended with a dismal scorecard. In Tennessee, legislators added insult to injury: After a tampon tax bill died there this year, a subsequent budget surplus was used to eliminate a gun ammunition tax, enabling the state to save its “hunters and shooters \$500,000 annually across the state,” as one state representative explained to his constituents.

As a matter of policy, compassion and common sense, most states explicitly exempt “necessities of life” from sales tax, with food and medicine at the top of the list. In some states, necessity exemptions include things such as bingo supplies, cotton candy, erectile dysfunction pills, gun club memberships and tattoos. Menstrual products certainly rank as a necessity for most women, for much of their lives. They are essential for attending school, working and functioning in society.

But as a matter of law, the argument extends far deeper. The tampon tax amounts to sex-based discrimination in violation of the equal protection clause, both under state and federal constitutions — making it more than merely unfair or inequitable, but unconstitutional and therefore illegal.

In 2016, five plaintiffs brought a class-action lawsuit against the New York State Department of Taxation making these arguments. The case was withdrawn after the Legislature and Gov. Andrew Cuomo quickly responded to public outcry and passed legislation.

But the central argument advanced in that case is valid, and it is one increasingly being made by legal scholars. It should be raised again in the courts. A law that affects only one sex — or one race, or one religion — is inherently discriminatory. U.S. Supreme Court Justice Antonin Scalia once famously remarked that a tax on yarmulkes is a tax on Jews (interestingly, in a case about abortion clinic blockades). In the same vein, a tax on a product used only by women, and used by all (or the vast majority of) women for much of their lives, is a tax on women.

At the very least, equal protection requires that all actions that treat some differently from others have a rational basis. There is no reasonable justification to tax menstrual products given the exemptions that exist in every state for the necessities (and even non-necessities) of life.

Eliminating the discriminatory tampon tax isn't a legislative nicety or a budgetary option. It is a legal mandate. Period.

Erwin Chemerinsky is dean of the UC Berkeley Law School. Jennifer Weiss-Wolf is co-founder of Period Equity and author of "Periods Gone Public: Taking a Stand for Menstrual Equity."

For Women in Prison, Tampons Should Be Free

By Jennifer Weiss-Wolf And Chandra Bozelko

JULY 13, 2017



Sen. Elizabeth Warren and Sen. Cory Booker introduce the Dignity for Incarcerated Women Act at the Capitol. Credit Gabriella Demczuk for The New York Times

The Dignity for Incarcerated Women Act, introduced on Tuesday by Senators Cory Booker (D-N.J.) and Elizabeth Warren (D-MA), is a bold move to improve the care and treatment of the nearly 13,000 female inmates locked up in federal prisons. Among the bill's critical provisions, it would ban shackling pregnant women or placing them in solitary confinement. And it would help incarcerated mothers maintain close ties to their children by easing visitation restrictions and allowing for free phone calls.

It also acknowledges that for those behind bars, there are unnecessary hurdles to coping with menstruation and managing periods in a healthy and hygienic way. The bill includes a directive to distribute quality pads and tampons to inmates, free of charge.

The proposal seems so sensible — and the alternative so inhumane — that one might wonder why it hasn't been raised as a legislative priority before.

It has been raised on the local and state level: New York City passed a law last summer requiring the same in all of its correction facilities (shelters and public schools, too). Earlier this year, Colorado mandated funding

for tampons in its state prisons; and Los Angeles County did in its juvenile detention centers.

What none of these proposals regarding menstruation fully addresses, though, is the reality that the availability of sanitary products isn't simply a matter of budget lines and purchasing orders. It has little to do with stock, supply, or actual need.

Rather, it has everything to do with power.

In correction facilities across the country, from county jails to federal penitentiaries, the varied ways in which menstruating prisoners are disregarded or disrespected is staggering. When access to basic hygiene supplies is withheld, it is often the direct result of an abusive culture — one that many facilities tolerate and few laws can adequately address.

In 2016, a Kentucky judge was stunned to find a defendant appear in court for arraignment wearing no pants and menstruating. She explained that correctional officers refused to give her pads or a change of clothes when she told them she had her period, despite repeated requests. Footage from the courtroom went viral — an intense scene in which the outraged judge called the jail staff from the bench, demanding an explanation and shouting to the courtroom, “Am I in the *Twilight Zone*? What is happening here?”

Unfortunately, menstruating prisoners rarely receive such dogged intervention. Instead they get peppered with intrusive questions and insults: “Didn't I give you one yesterday?” Or, “Damn, girl, you must have a heavy flow.” At one New York state prison (which has since been closed), inmates reportedly had to save and show their used, blood-soaked pads as proof more were needed. These inquiries and stunts are outlawed under the overarching prohibition of “undue familiarity” between staff and inmates — rules that regulate interactions that are too intimate, ranging from sexual relations to performing personal favors — but those rules aren't widely enforced either.

The Dignity for Incarcerated Women Act offers a smart starting place for shining the national spotlight on an otherwise hidden problem and establishing baseline expectations. But, truly, at the heart of the matter is

the inherent power imbalance, coupled with rampant misogyny, to which incarcerated women are subject.

We urge the bill's sponsors to factor in clear-cut guidance for treatment of menstruating inmates, leaving as little room as possible for subjectivity and discretion as to the manner in which products are distributed. This includes limiting interactions among or between inmates and staff — especially where the ability to exert dominance or reinforce stigma looms. At last year's New York City Council hearings, for example, activists testified that pads should be centrally placed near toilets or in a common location so inmates can simply take what's needed without having to seek permission or intervention. That would be a small accommodation that could yield tremendous benefit.

Kudos to Senators Booker and Warren for declaring that the ability to manage menstruation is not a bonus, a reward, an entitlement, or a favor to be begged or bargained for. Even if this bill doesn't get the attention it deserves this Congress, it has highlighted the fact that this is a core human need, even and most especially for those in government custody. And should be treated as such. Period.

Other Op-eds and Articles

Karen Zraick, *Twenty-Two States Considered Eliminating the “Tampon Tax” This Year. Here's What Happened.*, N.Y. TIMES (July 12, 2019), <https://www.nytimes.com/2019/07/12/us/tampon-tax.html>.

Jessica Wakeman, *Pink Tax: The Real Cost of Gender-Based Pricing*, HEALTHLINE (Aug. 2, 2018), <https://www.healthline.com/health/the-real-cost-of-pink-tax#1>.

Harnessing Viral Moments in the Fight for Menstrual Equity

For better or for worse, menstruation-related news stories have a tendency to grab headlines and garner outsized attention. It happens with astonishing regularity — whether it is a celebrity, a world leader, or a little-known local legislator weighing in. Traditional media and social media channels, replete with catchy hashtags, are both ripe for tapping. The goal, of course, is to shift the discourse toward destigmatizing menstruation and point to viable policies that promote menstrual equity.

What’s a Viral Moment? There are a variety of factors that determine what is a viral moment: namely, the number of views and the rapidity with which a story is shared. One of the key reasons viral moments can be so impactful is that they enable advocates to shape and redirect public discourse while capitalizing on the pre-existing reach. Viral moments can also help inspire actionable moments for your audience: if something has already moved someone to share or engage, they will be more likely to act and respond to your call to arms.

There are many ways to respond to viral moments. Here we propose two key outlets for change: op-eds and social media.

Why Op-Eds? When you think of a standard op-ed, you might think of a syndicated column in a national newspaper. However, there are increasingly more opportunities to get an op-ed placed, especially in blogs with national audiences and local newspapers. Op-eds are a great way to make a public argument, connect with everyday readers, and attract the attention of elected officials. To build the credibility of your op-ed, consider finding an organizational partner or local leader to sign on.

See: [How to Place an Op-Ed in Your Local Newspaper](#)

Why Social Media? Integral to the success of many effective social movements, from the Civil Rights Movement to #BlackLivesMatter to #MeToo, is an effective outreach strategy that activists should employ

With hashtag activism comes visibility, as well as community. It catalyzes conversation that can lead to action, especially for issues or groups that have been deliberately stifled. In the case of menstruation, even simple tweets like “Hey @realDonaldTrump, I had my period last week and was still 1000x more awesome than you the whole time” (an actual tweet by an actual awesome user) not only allow the messenger to revel in her own moment of empowerment but also to convey confidence to countless others who just may be inspired to abandon their shame and silence, too.

— *Periods Gone Public: Taking a Stand for Menstrual Equity*

to broadcast their cause. Social media (Facebook, Instagram, Twitter, and other platforms) enables reach to audiences at a previously unimaginable scale. This document will detail ways that you can use these platforms to harness viral moments (both good and bad) and redirect it to promote core menstrual equity talking points.

See: [8 Massive Moments Hashtag Activism Really, Really Worked](#)

When responding to viral moments, particularly negative remarks, acknowledge the source, and then respond in a thought-provoking way that effectively and efficiently knocks down their argument. Even if someone says something positive that you don’t fully agree with, you can build on that moment by acknowledging and redirecting towards your key platform points.

Additionally, it’s important to empower your audience. Viral activism becomes most effective when it includes a strong, doable call to action, ranging from “share and comment” to “call your elected representative” to “donate menstrual products to your local shelter.” A call to action not only propels the message, but also strengthens the community and encourages express engagement with the issue.

Some examples of viral moments that helped propel menstrual equity into the mainstream:

The good ... YouTuber Ingrid Nilsen's 2016 live interview with President Obama during which she asked him about the tampon tax, and he responded with an impromptu reflection on how the lack of women in government impacts full representation. An amazing talking point to run with!

The bad ... In early 2019, Maine Rep. Richard Pickett suggested that jail would be like "a country club" if incarcerated women were given access to free pads and tampons. The remark was reported on in the national media and met with deep criticism. Local activists flooded the Maine Legislature with testimony about what menstrual equity means to them. Pickett's comments raised the salience of the issue and helped spur the Maine legislature (and other states) to debate and pass related menstrual equity legislation that session.

And the ugly ... #PeriodsAreNotAnInsult was unleashed in 2015 after President Trump, then a contender for the Republican ticket, complained about a female debate moderator (the well-known Megyn Kelly), taunting that she had "blood coming out of her wherever." In response, Amber Gordon of Femsplain, a feminist storytelling platform, created the hashtag, urging women to live-tweet their period stories at Trump.

Shortly thereafter, then-Gov. Mike Pence signed a law imposing strict limitations on abortions for Indiana women. An anonymous Indiana woman (who has since identified herself as an activist named Laura Shanley) responded by starting a Facebook page called Periods for Pence, inviting women to call Pence's office daily about their periods as a means of protesting the law and the attack on reproductive rights. The correlating #PeriodsForPence hashtag also went viral.

And for a dose of inspiration ... Although #TheHomelessPeriod was not built from a singular viral moment, it provides a valuable lesson in how to best uplift stories about at-risk populations. It has been especially effective in enabling women to share their stories, in their own words, in an easy-to-grasp frame.

It encourages a people-first frame (and language) — also key. Other noteworthy hashtag campaigns: #JustATampon featured selfies of prominent Brits holding, yes, a tampon. RACKET, a New York City-based collection drive, organized Broadway stars to pose with pads using #PeriodsWithoutShame. In India, #HappyToBleed was formed to counter the centuries-old ban on women in Hindu temples. #FreeTheTampons makes the case for all private businesses and public restrooms to provide tampons and pads as they do toilet paper and soap.

Section V: Model Policy

I. Detention Facilities¹⁹

Section 1. Policy

It is the policy of [institution] that menstrual products shall be provided to all inmates free of charge according to need.

Section 2. Definitions

- d. The term “menstrual products” includes but is not limited to: tampons, regular or super-size; pads with wings, regular or super size; and panty liners.

Section 3. Housekeeping Officer

1. The facility shall designate one correctional officer as the Housekeeping Officer.
2. The Housekeeping Officer shall be responsible for maintaining an inventory of each menstrual product and ensuring that adequate product is kept on hand.
3. The Housekeeping Officer shall be responsible for bringing menstrual products to all inmates who are unable to pick up such products themselves, including but not limited to those confined to bed or in restrictive housing. Each instance shall be documented in writing in a unit log book or equivalent contemporaneous record.

Section 4. Procedures

Menstrual products, including both tampons and pads, shall be readily available to prisoners/detainees in the bathroom area. The Housekeeping Officer will ensure daily that each bathroom is stocked with menstrual products at all times.

Section 5. Enforcement

The warden or designee shall inspect each restroom in the facility on a weekly basis to ensure that menstrual products are readily available to all prisoners/detainees. This inspection shall be documented in writing.

¹⁹ This policy is adapted from the Alabama Julia Tutwiler Prison for Women. This section does not include model language for homeless shelter or public school policies because advocates have generally not pursued policy change for access there. However, this model language could be adapted for homeless shelters, public schools, or other publically funded buildings.

Section VI: Case Study

Kimberly Haven is the Coalition and Policy Director for Reproductive Justice Inside, a Maryland organization that works for legislative reform to further the rights of people incarcerated in women’s facilities. Kimberly got involved in this work because of her personal experience being incarcerated. During her incarceration, she was in cancer-induced menopause and therefore did not need to have access to menstrual products. When she had a major bleeding incident, she was waved off by custody officers and unable to access proper medical care. She was told that it was “normal,” and yet she was quite literally bleeding through three pads at a time. Additionally, she had to beg for menstrual products from officers, an experience she found both humiliating and demeaning.

Desperate, Kimberly was forced to make her own tampons out of whatever materials she could find. As a result, she was diagnosed with toxic shock syndrome and had to undergo an emergency hysterectomy. As a result of these traumatic experiences, after Kimberly returned to the community she knew she had to help women who were still on the inside. Her groundbreaking work with Reproductive Justice Inside has led to legislation that requires prisons, jails, and juvenile detention centers to provide free and accessible menstrual products and she was a leading voice in the passage of a law in 2019 that ended the practice of placing pregnant and postpartum people involuntarily in solitary confinement/restrictive housing.

Below are excerpts from our interview:

On one of the most powerful reasons that menstrual products are necessary: “Women would turn down visits with their children, would call their families and say, don’t ‘come see me today,’ would turn down visits with their attorneys when they were on their periods. They would do this because they knew that when you finish with your visit, you get strip-searched. After every visit you are standing there, you’ve got to completely get naked, spread your butt cheeks, squat, cough, the whole nine yards. And there’s a bloody pad to throw away. You are not going to want to put that back up against your body and then walk

back to your housing unit. You’re not allowed to have anything on your person so you can’t bring a pad for replacing before you head back to your housing unit. So there’s the fear of bleeding through your uniform or your street jeans. Imagine bleeding through your clothes and only having one laundry day. You have to wash your uniform in the sink, or the “hopper” (toilet)—and not having access to a dryer so you have to let them air dry. It was just, a slap in the face to the dignity of women.”

On what she would do to get policymakers’ attention on menstrual equity: “I would show people what a handmade tampon looked like, they would just be appalled. I would hold one up and ask them, ‘Is this something that you would want your wife, your daughter, your sister, your friend to put up inside her?’ Or, when I would tell them that women would tell their family, ‘don’t come see me,’ and turn down a visit with their attorney, that was really hard for people to hear.”

On her coalition group, Reproductive Justice Inside: Convened in 2017, Reproductive Justice Inside (RJI) is a statewide coalition advocating for increased access to quality sexual and reproductive healthcare for women and girls in Maryland’s correctional and detention facilities. RJI aims to increase public awareness of healthcare issues in Maryland’s correctional systems and address conditions of confinement where systems-involved individuals are not in complete control of their reproductive futures and freedom.

It is “a coalition made up of advocates, formerly incarcerated, directly impacted people, attorneys, students, and social workers. It’s a really robust coalition.”

On how RJI centers impacted people and decides what issues to pursue: “Ideally we’d like to tackle everything but we can’t. We tackle the things that we can, the things that are most important to us and the women we advocate with and for and optimally, where we think we’re going to have a win. In using our lived experiences, we go to the larger coalition and say, ‘This is what the leadership circle would like the coalition to work on and focus on.’ It’s an informed coalition, and it’s also an empowered coalition. We can’t address

everything, but we focus on the things that will have the greatest impact on the way women do their time, the dignity with which they are treated or not treated, the equality issues and barriers they face. Those are the things that we prioritize in our work moving forward.”

On framing the menstrual equity narrative: “It’s not something that would require redefining laws or in some way causing an upheaval, this is just basic human dignity and decency. Honestly, menstrual hygiene products are something that people don’t want to think about, they don’t want to talk about, and they don’t want to have it in their face. That worked in our favor. I love going into a room of male legislators and going, ‘I know this is squishy and it’s gonna make you squirm and I don’t care. This is a dignity issue, and a health imperative.’”

On the need for robust institutional reforms, including menstrual equity, that center women and others incarcerated in women’s facilities: “Truthfully, our prisons are designed for men, our policies are designed for men, our practices are designed for men, and women have been correctional afterthoughts for so long that anything that demands change is like turning the Titanic in a canal. However, this goes to the very heart and essence of dignity and how we treat the people that are in our care, custody and control. 95 percent of the people we incarcerate come home. What we do to them, what we don’t do for them or with them is what they bring back to our community. It had to be all or nothing. And that was my only focus – it had to be all or nothing.”

On gathering allies and media support: “There was bipartisan support for the bill. Even the [Republican] governor. Our bill sponsors were strong. We started getting attention when we were doing our forums where I would be standing in front of a room full of people and in front of me on the podium I would have a homemade tampon. People would be alternatively fascinated by and also completely creeped out by it. And all I’d have to do is hold it up and tell them what it was. It was a great visual. And then I did the same thing when I went to Annapolis and the Associated Press picked up the story. The day after the Associated Press story ran, the story ran in 76 different areas across the country and so that was effective. People wanted to know more about

the issue and in Maryland how they could help support the legislation. Sharing the lived experiences and why it was so important and framing it through the justice lens is what really garnered the attention.”

On the importance and risks of centering lived experiences for people who’ve suffered trauma: In the forums and hearings, “it was impacted people who were telling their story, whether it was me telling my story, or other women who had gone through similar things telling their story. There was a mother who was there talking about her daughter and the frustrations that her daughter faced with accessing these products. That was effective. When we were in Annapolis testifying during bill hearings, it was the women’s stories and again it was the visual of that handmade tampon that really helped.

“I would offer one caveat to asking people to share their stories. When you’re asking about menstrual hygiene or talking about some of the other issues women are facing while they’re incarcerated, you have to be prepared to help them manage the trauma that it may open up again. Legislators thrive on hearing the stories and so we tried to do a very delicate balance, getting people to tell their stories in a way that gives them the ability to work through their stories, to be effective at telling their stories, to use their story to help shape the narrative but also being very clear that we recognize that it might come at a cost to them and we have to be very aware and tuned into that.”

On the reforms that were needed after the bill passed: “Our bill went into effect October 1 of last year. And there are still problems. There is no reporting piece to it. In April, women were still having to buy tampons off of commissary, and women are paying street prices for less than street quantity and indigent women can’t afford it. If [they] don’t have money, if people aren’t putting money on [their] book, [they] might be working in the institution, but [they] still have to choose between stamps to write to [their] kids, soap, shampoo, or menstrual hygiene products. No. That was not the intent of the bill. The bill mandated free and accessible products.

“And the bill include[s] all menstrual hygiene products, not just sanitary pads but tampons, pantliners, and so on.

“In doing scans of our local jurisdictions, which are also impacted by this legislation and are also mandated to do this, some of them make tampons available. And then there are other jurisdictions that say, we make sanitary pads available to them and all they have to do is ask for them. This is not what the bill language says — and we are concerned about the access issues and how women obtain them.”

On facilities that say they can’t afford menstrual products: “No woman who is in the care, custody, and control of an institution of a state should have to pay for these products, and honestly, I wish I could say to a facility if you can’t afford to give them what they need, you have to let them go. Facilities have the resources to provide these things — they just need to do the right thing.”

On how to follow up when the law is implemented without a reporting requirement: Kimberly is emphatic that passing a law is not enough — advocates also need to monitor implementation. She advises that one way to monitor is to get public records from the facilities. “What happens is that administrations may tell us one thing, then we hear something different from someone who is incarcerated and the truth is somewhere in the middle. For us the information we would want is the daily population broken out by age, the amount of products that are ordered, and how often they’re ordered, to figure out if they’re actually ordering enough, and what products are actually there. Is it just sanitary pads or are institutions starting to look at pantliners and tampons? We need to get those facts and actually get public safety in every county, jurisdiction to report out on those numbers. Once we have that, then we have a clear vision of exactly what’s happening around this one particular issue and what reforms need to happen, what education needs to happen.”

On what she wishes she’d known about the difficulty of getting information about compliance: “We have a bill, so now it’s just a question of ensuring compliance and that’s going to require transparency and reporting. That’s the next stage of that bill that we’re getting ready to embark on here in Maryland. Had I known that it was going to be this problematic with getting information and making sure that it actually happened, I would have fought harder for a reporting bill. Now it’s had almost a year to be in play. Now there’s no excuse for [them] to not be” following the law.”

On what she wishes she’d known before the bill passed: “That it was going to be so difficult to make sure that the local jurisdictions are compliant. Counties are a very different breed. They believe that they can operate in their own world, but our bill applies to them as well. There’s not a coordinated effort to ensure their compliance and I wish I had known that getting them to be compliant would be as much of a problem as it is.”

On what advocates need to know: “Be as comprehensive as [you] possibly can. Look at the states, whether it’s Maryland or any of the other states that have passed similar dignity legislation. Talk to the advocates on the ground there, to get their best practices, to get their lessons learned, and messaging. Keep the people with the lived experience shaping the narrative.”

On what’s next for menstrual equity in Maryland: “A menstrual equity for all bill, and the strategy for that is going to be that in buildings and agencies that get state funding, they also have to make these menstrual hygiene products free and accessible to women. So women who are going to social services, who are going to courthouses, who are going to county office buildings and city office buildings and state office buildings, they have to make these products available to them as well, and that includes our public schools. We’re going to do something here in the city of Baltimore and then pilot it in some jurisdictions across the state and depending on how that pilot program goes, then we’ll probably be introducing state-wide legislation around menstrual equity for all in 2021. I’d love to do it in 2020, to be perfectly honest, but that’s just the fighter in me.”