

Tampons Are Subject to Predatory Pricing in Jails. This Lawyer Is Leading a Crusade to Change That

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Criminal defense attorney, Paula Canny, photographed on October 29th, 2018 inside the Maple Street Correctional Center in Redwood

City, California. Photograph by Gabriela Hasbun for Money

In February 2018, attorney Paula Canny was meeting a new client at the San Mateo County Jail. Christine Kolba, 41, had been arrested and charged with a nonviolent crime—her first time entering the criminal justice system.

As soon as the two women sat down together, Kolba became emotional—but not for the reasons Canny expected.

“I’m like, ‘Are you okay?’” Canny says now, retelling the story eight months later at her office in Burlingame, California, just south of San Francisco. Kolba was not; she had her period, she said, and jail personnel would not issue her tampons—only sanitary napkins. But upon arriving at the jail, all of her clothing had been confiscated (per standard procedure), and she

was wearing paper underwear that was far too large.

“She's like, ‘These underpants don't keep the pad on,’” says Canny, “so I've got blood coming down my leg.””

Canny took action. She arranged to have tampons provided to Kolba, then made a few phone calls to her personal contacts within the jail system. After two days, she'd convinced the sheriff—who has authority over policies such as distribution of hygiene products—to offer women free tampons in addition to pads.

“Nothing happens immediately in these types of institutions,” says Kolba, “so the speed with which this started to roll out, it was remarkable.”

But California is home to 58 counties total, and 57 county jails (El Dorado County Jail serves

both El Dorado County and Alpine County).

Canny suspected that if hygiene products were being denied to female inmates in San Mateo, they were likely being denied to female inmates elsewhere—and she was right. The issue is widespread across the state, with tampons only available to some women, in some jails—and even then, they’re often only accessible at a steep cost through the jails’ commissaries.

“It’s predatory pricing,” Canny says of the sheriffs’ insistence on high-ticket menstruation products, “and they get to do that because they can.”

Canny and her staff have since clocked hundreds of hours of their free time in an effort to ensure that female inmates have access to free tampons as well as pads. And they’re far from finished—

by the end of this year, Canny plans to file a class-action lawsuit.

“This is insane,” says Canny. “This is ridiculous. I can't even believe I have to spend my time advocating for something that should just be so basic and human, but here I am. Because enough is enough.”



Criminal defense attorney, Paula Canny, photographed on October 29th, 2018 outside the Maple Street Correctional Center in

Redwood City, California. Paula believes women should have the right to access tampons in all the county jails for free and is suing all of the California Jails who will not grant women free access to tampons. Photograph by Gabriela Hasbun for Money

Paula Canny is no stranger to issues of social justice. After receiving her law degree from the University of San Francisco School of Law in 1980, she was the first attorney to gain an acquittal in a three-strikes case in the state of California. In addition to her legal work, she assists an organization that works with rural families in Nepal to help prevent their daughters from being trafficked into brothels.

Her latest fight is to ensure that basic hygiene products are made available to female inmates across the state.

The problem begins, Canny explains, with a two-word phrase: “and/or”. That phrase lives in

Section 1265 of Title 15, a series of policies issued by the state of California's Board of State and Community Corrections in April 2017 that set forth the minimum standards for local detention facilities. Section 1265, titled "Issue of Personal Care Items," states that "Each female inmate shall be issued sanitary napkins and/or tampons as needed."

To Canny, that language means each inmate has the choice of which menstruation product she would prefer. But many sheriffs throughout the state interpret the phrase to mean that law enforcement has the right to decide which product to offer, and may do so at will, without explanation or exception.

"It's super punitive," says Canny, "and it's like, 'I'm in charge, and I do it this way.'"

Withholding options can feel like a power play: “They refuse to do the right thing just to show how powerful they are.”

In practice, the sheriffs’ read of Section 1265 means that the vast majority of jails choose to issue only pads. In some county jails, tampons are available for purchase at the commissary, a shop at which inmates can purchase drugstore-type items once a week. Aside from the problem of restrictive timing—“last time I checked, periods don’t wait for commissary,” says Canny—tampons are priced at exorbitantly high rates. In El Dorado County Jail, for instance, the cost per tampon breaks down to 40¢ each, according to Canny and her staff’s calculations. In San Mateo, prior to Canny’s phone calls, tampons were 69¢ each. And in Del Norte, they’re 33¢

apiece. By comparison, at the time of this writing, Tampax brand tampons are available on Amazon.com for 19¢ each.

Not having access to tampons can be detrimental to a woman's mental health as well, especially during a high-stress time filled with other, more pressing concerns.

“It's embarrassing, it's humiliating, it's not sanitary, it doesn't smell nice,” says Kolba of her experience. “It actually put me in a mental state where I was not even able to discuss my case with Paula any more, because I was so involved in my basic self care.”

After her initial meeting with Kolba, Canny began conducting painstaking outreach to every county jail in California. She first sent request

letters for public records, demanding to see the jails' written policies on menstruation products, including whether inmates were permitted to choose between sanitary napkins and tampons. Canny also requested to know whether inmates were charged for tampons through the commissary, and if so, how much.

She then directed each sheriff's attention to Section 1265 of Title 15, writing "I hope that the Policy that you provide to me comports" with said section.

A handful of the sheriffs' offices returned Canny's correspondence. Some agreed to change their policy on the spot, agreeing with Canny's read of Section 1265. But many didn't respond at all. And still more confirmed receipt of her letter,

but replied that they were standing by their policy of providing only pads.

One such response came from Kings County. In a letter dated July 17, 2018, a representative for the county replied to Canny's letter, stating that the "and/or" in Section 1265 was "clear on its face" and meant that county jails had the prerogative to choose which menstruation products to provide for free, and which to charge for in the commissary.

"The Kings County Jail provides female inmates with sanitary napkins without charge," they wrote. "This policy is in compliance with Section 1265...The Sheriff will retain his current policy." (The Kings County sheriff's office did not respond to a request for comment.)

In Canny's view, that's a violation of equal protection under the Constitution; she is charging that under federal law, female inmates are required to be given their choice of menstrual product, free of charge. Additionally, she believes it's unfair that female inmates in California are treated differently depending on where they get arrested.

“It shouldn't be that your life is a million times worse because you get in trouble in King County instead of another county,” says Canny.

The sheriff's read on Section 1265 also appears to violate the original intent of the authors of Title 15. Canny reached out to the State Board of Community Corrections—the group responsible for the policy—and says they were astounded by interpretations like the one in Kings County.

“People in the State Board of Community Corrections said, ‘When we wrote that, we just assumed that any reasonable person would believe that the sheriff is obligated to freely provide sanitary napkins, or [tampons], or both, at the choice of the woman,’” says Canny.

As of this writing, 33 counties still had either not provided Canny with their policies, or refused to change them. In response, Canny is taking a more pointed action: She plans to file a class-action lawsuit against the counties, insisting that they change their written policy with regards to this issue. She plans to file this week, and to tell county officials that "All I want for Christmas is a tampon for female inmates.”

Kolba, who was released from county and is still working with Canny on her case, says that Canny's crusade has let female inmates know that someone cares enough about their well-being to help—and that effort goes a long way.

“Knowing that people care about you, it makes a big difference,” she says. “It makes life more humane.”

In Canny's view, she's just standing up for what she believes is right. Back in her office, a signed photograph of Muhammad Ali hangs on the wall.

“I like him because he stood up for a principle,” Canny says of Ali, “and even if I don't agree with your principle, I respect people who walk their talk.”