



COMMONWEALTH of VIRGINIA

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FROM: Phillip O. Figura
Chief Prosecutor
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DATE: July 23, 2018

SUBJECT: Proposed fast track regulation 6 VAC 15-40 which requires feminine hygiene items to be provided at no charge to female inmates

In response to a request from the Board of Corrections, I reviewed the proposed regulation, 6 VAC 15-40 which would require that feminine hygiene items be provided at no charge to female inmates. The proposed regulation would amend 6 VAC 15-40-770¹ and is mandated by Acts of Assembly Chapter 815 (2018 Session of the General Assembly).²

Sections 53.1-5 and 53.1-68 of the Code of Virginia mandate that the Board of Corrections prescribe regulations to govern the administration and operation of local correctional facilities. Section 53.1-5 of the Code of Virginia requires that the Board of Corrections adopt and promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), as may be necessary to carry out the provisions of Title 53.1 and other laws of the Commonwealth. Section 2.2-

¹ 6 VAC 15-40-770 requires that feminine hygiene items (as defined by facility policy) be provided upon reasonable request to each female inmate assigned to the general population.

² "The State Board of Corrections shall adopt and implement a standard to ensure the provision of feminine hygiene products to female inmates without charge."

4012.1 of the Code of Virginia permits fast track promulgation of regulations which are expected to be non-controversial.

Upon review, I find the proposed regulation to be constitutional, consistent with the statutory authority granted by Acts of Assembly Chapter 815 (2018 Session of the General Assembly), appropriate for the fast track regulatory process,³ and in conformity with existing statutory provisions.

Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that a certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.

³ Facilities throughout the Commonwealth are currently implementing the actions required by Acts of Assembly Chapter 815 (2018 Session of the General Assembly) and proposed in 6 VAC 15-40.