

LEGAL SERVICES

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MEMORANDUM

March 18, 2015

SUBJECT: Department of Corrections liability
(CSSB 23(); Work Order No. 29-LS0058\W)

TO: Senator Johnny Ellis
Attn: Amory Lelake

FROM: Megan A. Wallace 
Legislative Counsel

You have asked for an opinion as to whether the Department of Corrections would benefit from the provisions of CSSB 23() if enacted.

As an initial matter, please note that AS 09.50.250 governs civil claims brought against the state. The state is immune under AS 09.50.250 for failure to exercise or perform a discretionary function. Accordingly, as it relates to administering an opioid overdose drug, the Department of Corrections may benefit from the discretionary immunity enjoyed by the state.

Under CSSB 23(), an employee working for the Department of Corrections would be able to obtain and administer an opioid overdose drug if the employee successfully completes the training program approved by the Department of Health and Social Services. (See sec. 1, AS 17.23.010.) Furthermore, in addition to the discretionary immunity potentially available under AS 09.50.250, if an employee working for the Department of Corrections successfully completes the training program approved by the Department of Health and Social Services, a claim may not be brought against that individual for an act or omission relating to the administration of an opioid overdose drug in good faith in an emergency situation.¹ (See sec. 1, AS 17.23.040(a).) An employee working for the Department of Corrections would not be immune from a claim for gross negligence or reckless or intentional misconduct. (See sec. 1, AS 17.23.040(c).)

In summary, so long as the Department of Corrections employees are trained under the training program approved by the Department of Health and Social Services, its employees would benefit from the provisions of CSSB 23() if enacted.

¹ A claim may also not be brought against an individual for an act or omission relating to prescribing or providing the opioid overdose drug under specified circumstances. (See sec. 1, AS 17.23.040(b).)

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If you have any additional questions, please advise.

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