

SENATE BILL NO. 309

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATORS WAGONER, Elton

Introduced: 2/9/04

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to testing the blood of prisoners and those in custody for bloodborne**
2 **pathogens."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 18.15 is amended by adding new sections to read:

5 **Article 6B. Blood Testing of Prisoners for Bloodborne Pathogens.**

6 **Sec. 18.15.400. Bloodborne pathogen testing of prisoners and correctional**
7 **officers; required disclosures to and consent of prisoners and correctional**
8 **officers.** (a) When requested by a correctional officer who may have received a
9 significant exposure from a prisoner, a correctional facility shall follow the testing
10 procedures of AS 18.15.400 - 18.15.450 if

11 (1) a physician licensed under AS 08 determines that a significant
12 exposure to the correctional officer has occurred;

13 (2) the physician for the correctional officer needs the prisoner's
14 bloodborne pathogens test results to begin, continue, modify, or discontinue treatment

1 in accordance with the most current guidelines of the United States Public Health
2 Service, because of possible exposure to a bloodborne pathogen; and

3 (3) the correctional officer consents to providing a blood sample for
4 testing for a bloodborne pathogen.

5 (b) Before employing the testing procedures of AS 18.15.400 - 18.15.450 or
6 disclosing any information about the prisoner or correctional officer, the correctional
7 facility shall inform the

8 (1) prisoner that

9 (A) the prisoner's bloodborne pathogens test results, without
10 the prisoner's name or other uniquely identifying information, shall be reported
11 to the correctional officer if requested and that test results collected are for
12 medical purposes and may not be used as evidence in any criminal proceedings
13 or civil proceedings;

14 (B) the prisoner may refuse to provide a blood sample and that
15 the prisoner's refusal may result in a request for a court order to require the
16 prisoner to provide a blood sample; and

17 (C) the correctional facility will advise the correctional officer
18 of the confidentiality requirements and penalties before the officer's health care
19 provider discloses any test results;

20 (2) correctional officer of the confidentiality requirements of
21 AS 18.15.440 and that the correctional officer may be subject to penalties for
22 unauthorized release of test results about the prisoner.

23 (c) If the disclosures have been made, the correctional facility shall ask the
24 prisoner if the prisoner has ever had a positive test for a bloodborne pathogen. The
25 correctional facility must first attempt to get existing test results under this subsection
26 before taking any steps to obtain a blood sample or to test for bloodborne pathogens.
27 The correctional facility shall disclose the prisoner's existing bloodborne pathogens
28 test results to the correctional officer without the prisoner's name or other uniquely
29 identifying information.

30 **Sec. 18.15.410. Consent for testing; court order for testing; exception.** (a)
31 When a correctional officer has made a request under AS 18.15.400, except as

1 provided in (b) or (c) of this section or in AS 18.15.420, before collecting and testing
 2 the blood of a prisoner, the correctional facility must first obtain the consent of the
 3 prisoner or the prisoner's representative if the prisoner is unable to provide the
 4 consent.

5 (b) Consent of a prisoner's representative is not required if the correctional
 6 facility has made reasonable efforts to locate the prisoner's representative and the
 7 representative cannot be found within 24 hours after a significant exposure. If testing
 8 of available blood occurs without consent because the prisoner is unconscious or
 9 unable to provide consent, and a representative cannot be located, the correctional
 10 facility shall provide the information required in AS 18.15.400 to the prisoner or
 11 representative whenever it is possible to do so.

12 (c) If a prisoner dies before an opportunity to consent to blood collection or
 13 testing, consent is not required, and the prisoner's blood may be collected and tested.

14 (d) If the prisoner or the prisoner's representative, if appropriate, consents and
 15 a sample of the prisoner's blood

16 (1) is available, the correctional facility shall have the blood tested for
 17 bloodborne pathogens;

18 (2) is not available, the correctional facility shall collect a sample and
 19 have the blood sample tested for bloodborne pathogens.

20 (e) A correctional facility may not withhold care or treatment on the
 21 requirement that the prisoner consent to testing for bloodborne pathogen.

22 **Sec. 18.15.420. Testing without consent.** (a) When a correctional officer has
 23 made a request under AS 18.15.400 and a sample of the prisoner's blood is available,
 24 but the prisoner does not consent to testing for bloodborne pathogens, the correctional
 25 facility shall have the sample tested for bloodborne pathogens if all of the following
 26 criteria are met:

27 (1) the correctional officer and correctional facility have documented
 28 the officer's exposure to blood or body fluids during performance of the officer's work
 29 duties;

30 (2) a licensed physician has determined that a significant exposure has
 31 occurred and has documented that bloodborne pathogens test results are needed for

1 beginning, modifying, continuing, or discontinuing medical treatment for the
2 correctional officer as recommended by the most current guidelines of the United
3 States Public Health Service;

4 (3) the correctional officer has provided a blood sample for testing for
5 bloodborne pathogens;

6 (4) the correctional facility has asked the prisoner to consent under
7 AS 18.15.410, and the prisoner does not consent;

8 (5) the correctional facility has provided the correctional officer and
9 the prisoner with the disclosures required under AS 18.15.400; and

10 (6) the correctional facility has informed the correctional officer of the
11 confidentiality requirements of AS 18.15.440 and the penalties for unauthorized
12 release of prisoner information.

13 (b) When a correctional officer has made a request under AS 18.15.400 and a
14 sample of the prisoner's blood is not available, the correctional facility shall file a
15 petition in the superior court for a court order requiring the prisoner to provide a blood
16 sample for testing for bloodborne pathogens. The correctional facility shall serve the
17 petition on the prisoner at least 48 hours before a hearing on the petition. The petition
18 must include the following information supported by affidavit:

19 (1) a statement that the correctional facility followed the procedures in
20 AS 18.15.400 - 18.15.450 and attempted to obtain bloodborne pathogens test results
21 according to those sections;

22 (2) a statement that a physician licensed under AS 08 and
23 knowledgeable about the most current recommendations of the United States Public
24 Health Service has determined that a significant exposure has occurred to the
25 correctional officer; and

26 (3) a statement that a physician has documented that the correctional
27 officer has provided a blood sample and consented to testing for bloodborne
28 pathogens, and bloodborne pathogens test results are needed for beginning,
29 continuing, modifying, or discontinuing medical treatment for the correctional officer.

30 (c) A court shall order a prisoner to provide a blood sample for bloodborne
31 pathogen testing if the court finds that

1 (1) there is probable cause to believe that a significant exposure to the
2 correctional officer from the prisoner has occurred;

3 (2) the court may impose appropriate safeguards against unauthorized
4 disclosure by specifically identifying the persons to have access to the test results and
5 the uses of the test results;

6 (3) a licensed physician for the correctional officer needs the test
7 results for beginning, continuing, modifying, or discontinuing medical treatment for
8 the correctional officer;

9 (4) a compelling need for the testing and test results exists; in making
10 this finding, the court shall consider the need for the test against the privacy or other
11 interests of the prisoner.

12 (d) After testing is completed under this section, the correctional facility shall
13 inform the prisoner whose blood was tested of the results. The correctional facility
14 shall inform the correctional officer's physician of the prisoner's test results without
15 the prisoner's name or other uniquely identifying information.

16 **Sec. 18.15.440. Confidentiality; penalties for unauthorized disclosure;**
17 **immunity.** (a) Bloodborne pathogens test results of a prisoner are confidential and
18 may not be disclosed except as provided in AS 18.15.400 - 18.15.450 and as needed
19 for the treatment or medical care of a prisoner specific to a bloodborne pathogen-
20 related illness.

21 (b) A prisoner may bring a civil action against a person who releases the
22 prisoner's name or other uniquely identifying information with the test results or
23 otherwise releases the test results, except as provided in AS 18.15.400 - 18.15.450.

24 (c) A correctional facility, physician, and designated health care personnel are
25 immune from liability in any civil, administrative, or criminal action relating to the
26 disclosure of test results of a prisoner to a correctional officer and the testing of a
27 blood sample from a prisoner for bloodborne pathogens if a good faith effort has been
28 made to comply with AS 18.15.400 - 18.15.450.

29 **Sec. 18.15.450. Definitions for AS 18.15.400 - 18.15.450.** In AS 18.15.400 -
30 18.15.450,

31 (1) "bloodborne pathogens" means pathogenic microorganisms that are

1 present in human blood and can cause disease in humans; these pathogens include
2 hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus
3 (HIV);

4 (2) "correctional facility" has the meaning given in AS 33.30.901;

5 (3) "correctional officer" means an employee of the Department of
6 Corrections or of an agent or contractor of the department working in a correctional
7 facility;

8 (4) "prisoner" has the meaning given in AS 33.30.901;

9 (5) "significant exposure" means contact likely to transmit a
10 bloodborne pathogen, in a manner supported by the most current guidelines and
11 recommendations of the United States Public Health Service at the time an evaluation
12 takes place, that includes

13 (A) percutaneous injury, contact of mucous membrane or
14 nonintact skin, or prolonged contact of intact skin; and

15 (B) contact, in a manner that may transmit a bloodborne
16 pathogen, with blood, tissue, or potentially infectious body fluids.