

**HOUSE CS FOR CS FOR SENATE BILL NO. 309(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/19/04

Referred: Judiciary

Sponsor(s): SENATORS WAGONER, Elton, Dyson, Lincoln

REPRESENTATIVE Holm

**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, the department 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 department  
7 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 department will advise the correctional officer of the  
18 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 department shall ask the prisoner if  
24 the prisoner has ever had a positive test for a bloodborne pathogen. The department  
25 must first attempt to get existing test results under this subsection before taking any  
26 steps to obtain a blood sample or to test for bloodborne pathogens. The department  
27 shall disclose the prisoner's existing bloodborne pathogens test results to the  
28 correctional officer without the prisoner's name or other uniquely identifying  
29 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 department must first obtain the consent of the prisoner or  
 3 the prisoner's representative if the prisoner is unable to provide the consent.

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

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

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

15 (1) is available, the department shall have the blood tested for  
 16 bloodborne pathogens;

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

19 (e) The department may not withhold care or treatment on the requirement that  
 20 the prisoner consent to testing for bloodborne pathogen.

21 **Sec. 18.15.420. Testing without consent.** (a) When a correctional officer  
 22 has made a request under AS 18.15.400 the department shall file a petition in the  
 23 superior court for a court order requiring the prisoner to provide a blood sample for  
 24 testing for bloodborne pathogens. The department shall serve the petition on the  
 25 prisoner at least 48 hours before a hearing on the petition. The petition must include  
 26 the following information supported by affidavit:

27 (1) a statement that the department followed the procedures in  
 28 AS 18.15.400 - 18.15.450 and attempted to obtain bloodborne pathogens test results  
 29 according to those sections;

30 (2) a statement that

31 (A) the correctional officer and department have documented

1 the officer's exposure to blood or body fluids during performance of the  
2 officer's work duties;

3 (B) the department has asked the prisoner to consent under  
4 AS 18.15.410, and the prisoner does not consent;

5 (C) the department has provided the correctional officer and the  
6 prisoner with the disclosures required under AS 18.15.400; and

7 (D) the department has informed the correctional officer of the  
8 confidentiality requirements of AS 18.15.440 and the penalties for  
9 unauthorized release of prisoner information.

10 (3) a statement that a physician licensed under AS 08 and  
11 knowledgeable about the most current recommendations of the United States Public  
12 Health Service has determined that a significant exposure has occurred to the  
13 correctional officer; and

14 (4) a statement that a physician has documented that the correctional  
15 officer has provided a blood sample and consented to testing for bloodborne  
16 pathogens, and bloodborne pathogens test results are needed for beginning,  
17 continuing, modifying, or discontinuing medical treatment for the correctional officer.

18 (b) A court shall order a prisoner to provide a blood sample for bloodborne  
19 pathogen testing if the court finds that

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

22 (2) a licensed physician for the correctional officer needs the test  
23 results for beginning, continuing, modifying, or discontinuing medical treatment for  
24 the correctional officer; or

25 (3) a compelling need for the testing and test results exists; in making  
26 this finding, the court shall consider the need for the test against the privacy or other  
27 interests of the prisoner.

28 (c) The court may impose appropriate safeguards against unauthorized  
29 disclosure by specifically identifying the persons to have access to the test results and  
30 the uses of the test results when ordering a test under (b) of this section.

31 (d) After testing is completed under this section, the department shall inform

1 the prisoner whose blood was tested of the results. The department shall inform the  
 2 correctional officer's physician of the prisoner's test results without the prisoner's name  
 3 or other uniquely identifying information.

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

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

12 (c) The department, a physician, and designated health care personnel are  
 13 immune from liability in any civil, administrative, or criminal action relating to the  
 14 disclosure of test results of a prisoner to a correctional officer and the testing of a  
 15 blood sample from a prisoner for bloodborne pathogens if a good faith effort has been  
 16 made to comply with AS 18.15.400 - 18.15.450.

17 **Sec. 18.15.450. Definitions for AS 18.15.400 - 18.15.450.** In AS 18.15.400 -  
 18 18.15.450,

19 (1) "bloodborne pathogens" means pathogenic microorganisms that are  
 20 present in human blood and can cause disease in humans; these pathogens include  
 21 hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus  
 22 (HIV);

23 (2) "correctional officer" means an employee of the Department of  
 24 Corrections or of an agent or contractor of the department working in a correctional  
 25 facility;

26 (3) "department" means the Department of Corrections;

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

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

- 1 (A) percutaneous injury, contact of mucous membrane or  
2 nonintact skin, or prolonged contact of intact skin; and  
3 (B) contact, in a manner that may transmit a bloodborne  
4 pathogen, with blood, tissue, or potentially infectious body fluids.