

SENATE CS FOR CS FOR HOUSE BILL NO. 210(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/3/05

Referred: Rules

Sponsor(s): REPRESENTATIVES MCGUIRE, Dahlstrom, Gara, Olson, Gatto, Hawker, Stoltze, Chenault, Anderson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to blood testing of certain persons alleged to have committed certain
2 offenses directed toward peace officers or emergency workers."

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

4 * **Section 1.** AS 18.15.400 is amended to read:

5 **Sec. 18.15.400. Bloodborne pathogen testing of prisoners, certain adult or**
6 **juvenile offenders, and public safety [CORRECTIONAL] officers; required**
7 **disclosures [TO] and consent [OF PRISONERS AND CORRECTIONAL**
8 **OFFICERS].** (a) When requested by a **public safety** [CORRECTIONAL] officer
9 who may have received a significant exposure from **an adult or juvenile offender or**
10 a prisoner, the **employing agency** [DEPARTMENT] shall follow the testing
11 procedures of AS 18.15.400 - 18.15.450 if

12 (1) a physician licensed under AS 08 determines that a significant
13 exposure to the **public safety** [CORRECTIONAL] officer has occurred;

14 (2) the physician for the **public safety** [CORRECTIONAL] officer

1 needs the **adult or juvenile offender's or** prisoner's bloodborne pathogens test results
 2 to begin, continue, modify, or discontinue treatment in accordance with the most
 3 current guidelines of the United States Public Health Service, because of possible
 4 exposure to a bloodborne pathogen; and

5 (3) the **public safety** [CORRECTIONAL] officer consents to
 6 providing a blood sample for testing for a bloodborne pathogen.

7 (b) Before employing the testing procedures of AS 18.15.400 - 18.15.450 or
 8 disclosing any information about the **adult or juvenile offender or** prisoner or **public**
 9 **safety** [CORRECTIONAL] officer, the **employing agency** [DEPARTMENT] shall
 10 inform the

11 (1) **adult or juvenile offender or** prisoner that

12 (A) the **adult or juvenile offender's or** prisoner's bloodborne
 13 pathogens test results, without the **adult or juvenile offender's or** prisoner's
 14 name or other uniquely identifying information, shall be reported to the **public**
 15 **safety** [CORRECTIONAL] officer if requested and that test results collected
 16 are for medical purposes and may not be used as evidence in any criminal
 17 proceedings or civil proceedings;

18 (B) the **adult or juvenile offender or** prisoner may refuse to
 19 provide a blood sample and that the **adult or juvenile offender's or** prisoner's
 20 refusal may result in a request for a court order to require the **adult or juvenile**
 21 **offender or** prisoner to provide a blood sample; and

22 (C) the **employing agency** [DEPARTMENT] will advise the
 23 **public safety** [CORRECTIONAL] officer of the confidentiality requirements
 24 and penalties before the officer's health care provider discloses any test results;

25 (2) **public safety** [CORRECTIONAL] officer of the confidentiality
 26 requirements of AS 18.15.440 and that the **public safety** [CORRECTIONAL] officer
 27 may be subject to penalties for unauthorized release of test results about the **adult or**
 28 **juvenile offender or** prisoner.

29 (c) If the disclosures have been made, the **employing agency**
 30 [DEPARTMENT] shall ask the **adult or juvenile offender or** prisoner if the **adult or**
 31 **juvenile offender or** prisoner has ever had a positive test for a bloodborne pathogen.

1 The employing agency [DEPARTMENT] shall disclose the adult or juvenile
 2 offender's or prisoner's existing bloodborne pathogens test results to the public safety
 3 [CORRECTIONAL] officer without the adult or juvenile offender's or prisoner's
 4 name or other uniquely identifying information.

5 * **Sec. 2.** AS 18.15.410 is amended to read:

6 **Sec. 18.15.410. Consent for testing; court order for testing; exception.** (a)

7 When a public safety [CORRECTIONAL] officer has made a request under
 8 AS 18.15.400, except as provided in (b) or (c) of this section or in AS 18.15.420,
 9 before collecting and testing the blood of an adult or juvenile offender or a prisoner,
 10 the employing agency shall [DEPARTMENT MUST] first obtain the consent of the
 11 adult or juvenile offender or prisoner or the adult or juvenile offender's or
 12 prisoner's representative if the adult or juvenile offender or prisoner is unable to
 13 provide the consent.

14 (b) Consent of an adult or juvenile offender's or a prisoner's representative
 15 is not required if the employing agency [DEPARTMENT] has made reasonable
 16 efforts to locate the adult or juvenile offender's or prisoner's representative and the
 17 representative cannot be found within 24 hours after a significant exposure. If testing
 18 of available blood occurs without consent because the adult or juvenile offender or
 19 prisoner is unconscious or unable to provide consent, and a representative cannot be
 20 located, the employing agency [DEPARTMENT] shall provide the information
 21 required in AS 18.15.400 to the adult or juvenile offender, prisoner, or representative
 22 whenever it is possible to do so.

23 (c) If an adult or juvenile offender or a prisoner dies before an opportunity
 24 to consent to blood collection or testing, consent is not required, and the adult or
 25 juvenile offender's or prisoner's blood may be collected and tested.

26 (d) If the adult or juvenile offender or prisoner or the adult or juvenile
 27 offender's or prisoner's representative, if appropriate, consents and a sample of the
 28 adult or juvenile offender's or prisoner's blood

29 (1) is available, the employing agency [DEPARTMENT] shall have
 30 the blood tested for bloodborne pathogens;

31 (2) is not available, the employing agency [DEPARTMENT] shall

1 collect a sample and have the blood sample tested for bloodborne pathogens.

2 (e) The **employing agency** [DEPARTMENT] may not withhold care or
3 treatment on the requirement that the **adult or juvenile offender or** prisoner consent
4 to testing for bloodborne pathogens.

5 * **Sec. 3.** AS 18.15.420 is amended to read:

6 **Sec. 18.15.420. Testing without consent.** (a) When a **public safety**
7 [CORRECTIONAL] officer has made a request under AS 18.15.400, the **employing**
8 **agency** [DEPARTMENT] shall file a petition in the superior court for a court order
9 requiring the **adult or juvenile offender or** prisoner to provide a blood sample for
10 testing for bloodborne pathogens. The **employing agency** [DEPARTMENT] shall
11 serve the petition on the **adult or juvenile offender or** prisoner at least 48 hours
12 before a hearing on the petition. The petition must include the following information
13 supported by affidavit:

14 (1) a statement that the **employing agency** [DEPARTMENT] followed
15 the procedures in AS 18.15.400 - 18.15.450 and attempted to obtain bloodborne
16 pathogens test results according to those sections;

17 (2) a statement that

18 (A) the **public safety** [CORRECTIONAL] officer and
19 **employing agency** [DEPARTMENT] have documented the officer's exposure
20 to blood or body fluids during performance of the officer's work duties;

21 (B) the **employing agency** [DEPARTMENT] has asked the
22 **adult or juvenile offender or** prisoner to consent under AS 18.15.410, and the
23 **adult or juvenile offender or** prisoner does not consent;

24 (C) the **employing agency** [DEPARTMENT] has provided the
25 **public safety** [CORRECTIONAL] officer and the **adult or juvenile offender**
26 **or** prisoner with the disclosures required under AS 18.15.400; and

27 (D) the **employing agency** [DEPARTMENT] has informed the
28 **public safety** [CORRECTIONAL] officer of the confidentiality requirements
29 of AS 18.15.440 and the penalties for unauthorized release of **adult or**
30 **juvenile offender or** prisoner information;

31 (3) a statement that a physician licensed under AS 08 and

1 knowledgeable about the most current recommendations of the United States Public
 2 Health Service has determined that a significant exposure has occurred to the **public**
 3 **safety** [CORRECTIONAL] officer; and

4 (4) a statement that a physician has documented that the **public safety**
 5 [CORRECTIONAL] officer has provided a blood sample and consented to testing for
 6 bloodborne pathogens, and bloodborne pathogens test results are needed for
 7 beginning, continuing, modifying, or discontinuing medical treatment for the **public**
 8 **safety** [CORRECTIONAL] officer.

9 (b) A court shall order **an adult or juvenile offender or** a prisoner to provide
 10 a blood sample for bloodborne pathogen testing if the court finds that

11 (1) there is probable cause to believe that a significant exposure to the
 12 **public safety** [CORRECTIONAL] officer from the **adult or juvenile offender or**
 13 prisoner has occurred;

14 (2) a licensed physician for the **public safety** [CORRECTIONAL]
 15 officer needs the test results for beginning, continuing, modifying, or discontinuing
 16 medical treatment for the **public safety** [CORRECTIONAL] officer; or

17 (3) a compelling need for the testing and test results exists; in making
 18 this finding, the court shall consider the need for the test against the privacy or other
 19 interests of the **adult or juvenile offender or** prisoner.

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

23 (d) After testing is completed under this section, the **employing agency**
 24 [DEPARTMENT] shall inform the **adult or juvenile offender or** prisoner whose
 25 blood was tested of the results. The **employing agency** [DEPARTMENT] shall
 26 inform the **public safety** [CORRECTIONAL] officer's physician of the **adult or**
 27 **juvenile offender's or** prisoner's test results without the **adult or juvenile offender's**
 28 **or** prisoner's name or other uniquely identifying information.

29 * **Sec. 4.** AS 18.15.440 is amended to read:

30 **Sec. 18.15.440. Confidentiality; penalties for unauthorized disclosure;**
 31 **immunity.** (a) Bloodborne pathogens test results of **an adult or juvenile offender or**

1 a prisoner are confidential and may not be disclosed except as provided in
 2 AS 18.15.400 - 18.15.450 and as needed for the treatment or medical care of a **an**
 3 **adult or juvenile offender or** prisoner specific to a bloodborne pathogen-related
 4 illness.

5 (b) **An adult or juvenile offender or** a prisoner may bring a civil action
 6 against a person who knowingly, in violation of AS 18.15.400 - 18.15.450, releases
 7 the **adult or juvenile offender's or** prisoner's name or other uniquely identifying
 8 information with the test results or otherwise releases the test results.

9 (c) The **employing agency** [DEPARTMENT], a physician, and designated
 10 health care personnel are immune from liability in any civil, administrative, or
 11 criminal action relating to the disclosure of test results of **an adult or juvenile**
 12 **offender or** a prisoner to a **public safety** [CORRECTIONAL] officer and the testing
 13 of a blood sample from **an adult or juvenile offender or** a prisoner for bloodborne
 14 pathogens if a good faith effort has been made to comply with AS 18.15.400 -
 15 18.15.450.

16 * **Sec. 5.** AS 18.15 is amended by adding a new section to read:

17 **Sec. 18.15.445. Assistance by departments and municipalities.** The
 18 department, the Department of Public Safety, the Department of Corrections, and each
 19 municipality shall assist public safety officers and employing agencies in complying
 20 with the requirements of AS 18.15.400 - 18.15.450.

21 * **Sec. 6.** AS 18.15.450 is amended by adding new paragraphs to read:

22 (6) "adult or juvenile offender" means a person in custody, arrested, or
 23 charged under a criminal complaint or a minor being held or subject to a petition under
 24 AS 47.12;

25 (7) "employing agency" means the

26 (A) department that employs a state employee who is, or
 27 contracts with another person who is or employs, a public safety officer;

28 (B) municipality that employs a municipal employee who is, or
 29 contracts with another person who is or employs, a public safety officer or that
 30 contracts with, sponsors, or accepts the services of a public safety officer who
 31 volunteers for a volunteer fire department or emergency medical services

1 agency;

2 (C) Department of Public Safety for a public safety officer who
3 volunteers for a volunteer fire department or emergency medical services
4 agency that provides services in the unorganized borough outside of a
5 municipality;

6 (8) "public safety officer" means a state or municipal juvenile or adult
7 correctional, probation, or parole officer, a contractor or employee of a contractor in a
8 correctional facility, a juvenile detention or treatment facility staff member, or a peace
9 officer or fire fighter, emergency medical technician, or mobile intensive care
10 paramedic employed by or volunteering for the state or a municipality or volunteer fire
11 department or emergency medical services provider.

12 * **Sec. 7.** AS 18.15.450(2) and 18.15.450(3) are repealed.