

CS FOR HOUSE BILL NO. 24 (HES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/8/91
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES SHARP, Gruenberg, Zawacki, C.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to blood tests for persons charged with violating laws; and providing
2 for an effective date."

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

4 * **Section 1. LEGISLATIVE FINDINGS; INTENT.** (a) The legislature finds that AIDS-related
5 conditions and other communicable diseases pose a major threat to the public health and safety. The
6 legislature also finds that the health and safety of the public, victims of sexual crimes, and peace
7 officers, firefighters, correctional employees, and custodial personnel who may come into contact with
8 infected persons, have not been adequately protected by law.

9 (b) The purpose of this Act is to require that information that may be vital to the health and
10 safety of the public, victims of certain crimes, certain defendants and minors, and custodial personnel,
11 custodial medical personnel, peace officers, firefighters, correctional employees, and emergency medical
12 personnel put at risk in the course of their official duties, be obtained and disclosed in an appropriate
13 manner in order that precautions can be taken to preserve their health and the health of others or in order
14 for these persons to be relieved from groundless fear of infection.

1 * Sec. 2. AS 18.15 is amended by adding new sections to read:

2 ARTICLE 3A. BLOOD TESTS OF CERTAIN DEFENDANTS.

3 Sec. 18.15.250. SEXUAL OFFENSES. (a) A defendant charged in a criminal complaint
4 filed with a magistrate or court with a violation of AS 11.41.410 - 11.41.440 and a minor with
5 respect to whom a petition has been filed in a juvenile court alleging violation of AS 11.41.410 -
6 11.41.440, shall be subject to an order of a court having jurisdiction of the complaint or petition
7 requiring testing as provided in AS 18.15.250 - 18.15.290.

8 (b) An alleged victim listed in the complaint or petition, or the prosecuting attorney at
9 the request of an alleged victim, may petition the court for an order authorized under this section.

10 (c) The court shall promptly conduct a hearing upon a petition filed under (b) of this
11 section. If the court finds that probable cause exists to believe that a possible transfer of blood,
12 saliva, semen, or other bodily fluid took place between the defendant or minor and the alleged
13 victim in an act for which the defendant or minor is charged under (a) of this section, the court
14 shall order that the defendant or minor provide two specimens of blood for testing as provided
15 in AS 18.15.250 - 18.15.290.

16 (d) Copies of the blood test results shall be sent to the defendant or minor, each
17 requesting victim or the victim's designee and, if the defendant or minor is incarcerated or
18 detained, to the officer in charge and the chief medical officer of the facility in which the person
19 is incarcerated or detained.

20 Sec. 18.15.260. ASSAULTS ON CERTAIN PERSONS. (a) A person charged in a
21 criminal complaint filed with a magistrate or court and a minor with respect to whom a petition
22 has been filed in juvenile court, in which it is alleged in whole or in part that the defendant or
23 minor interfered with the official duties of a peace officer, firefighter, correctional employee, or
24 emergency medical person by biting, scratching, spitting, or transferring blood or other bodily
25 fluids on, upon, or through the skin or membranes of a peace officer, firefighter, correctional
26 employee, or emergency medical person shall be subject to an order of a court having jurisdiction
27 of the complaint or petition requiring testing as provided in AS 18.15.250 - 18.15.290.

28 (b) The peace officer, firefighter, correctional employee, emergency medical person or
29 the employing agency, officer, or entity may petition the court for an order authorized under this
30 section.

31 (c) The court shall promptly conduct a hearing upon a petition filed under (b) of this

1 section. If the court finds that probable cause exists to believe that a possible transfer of blood,
2 saliva, semen, or other bodily fluid took place between the defendant or minor and the peace
3 officer, firefighter, correctional employee, or emergency medical person, as specified in this
4 section, the court shall order that the defendant or minor provide two specimens of blood for
5 testing as provided in AS 18.15.250 - 18.15.290.

6 (d) Copies of the test results shall be sent to the defendant or minor, each peace officer,
7 firefighter, correctional employee, and emergency medical person named in the petition and the
8 employing agency, officer, or entity, and if the defendant or minor is incarcerated or detained,
9 to the officer in charge and the chief medical officer of the facility in which the person is
10 incarcerated or detained.

11 Sec. 18.15.270. TESTING; TEST RESULTS. (a) The withdrawal of blood for a test
12 under AS 18.15.250 - 18.15.290 shall be performed in a medically approved manner. Only a
13 physician licensed under AS 08.64, registered nurse, licensed practical nurse, or certified
14 emergency medical technician may withdraw blood specimens for the purposes of AS 18.15.250 -
15 18.15.290.

16 (b) The court shall order that the blood specimens withdrawn under AS 18.15.250 -
17 18.15.290 be transmitted to a licensed medical laboratory and that tests be conducted on them
18 for medically accepted indications of exposure to or infection by the human immunodeficiency
19 virus (HIV) and other communicable diseases for which medically approved testing is readily and
20 economically available as determined by the court.

21 (c) Copies of test results that indicate exposure to or infection by the HIV virus or other
22 communicable diseases shall also be transmitted to the department.

23 (d) The test results shall be sent to the designated recipients with the following
24 disclaimer:

25 The tests were conducted in a medically approved manner
26 but tests cannot determine exposure to or infection by the
27 HIV virus or other communicable diseases with absolute
28 accuracy. Persons receiving this test result should continue
29 to monitor their own health and should consult a physician
30 as appropriate.

31 (e) If the person subject to the test is a minor, copies of the test result shall also be sent

1 to the minor's parents or guardian.

2 (f) The court shall order all persons, other than the test subject, who receive test results
3 under AS 18.15.250 - 18.15.290 to maintain the confidentiality of personal identifying data
4 relating to the test results except for disclosures that may be necessary to obtain medical or
5 psychological care or advice.

6 (g) The specimens and the results of tests ordered under AS 18.15.250 - 18.15.290 are
7 not admissible evidence in a criminal or juvenile proceeding.

8 (h) A person performing testing, transmitting test results, or disclosing information under
9 AS 18.15.250 - 18.15.290 is immune from civil liability for an action undertaken in accordance
10 with the provisions of AS 18.15.250 - 18.15.290.

11 Sec. 18.15.280. PERSONS IN CUSTODY. (a) Medical personnel employed by, under
12 contract to, or receiving payment from the state, an agency of the state, or a municipality to
13 provide service at a state prison, municipal jail, juvenile detention facility, or other facility,
14 including a health facility, in which adults are held in custody or minors are detained, or medical
15 personnel employed, under contract, or receiving payment to provide services to persons in
16 custody or detained at any of these facilities, who receives information as specified in this section
17 that an inmate or minor at the facility has been exposed to or infected by the HIV virus or has
18 a communicable disease, shall communicate this information to the officer in charge of the
19 facility in which the inmate or minor is in custody or detained.

20 (b) Information subject to disclosure under (a) of this section includes the following: a
21 laboratory test that indicates exposure to or infection by the HIV virus or other communicable
22 diseases; a statement by the inmate or minor to medical personnel that the inmate or minor has
23 AIDS or an AIDS-related condition, has tested positive for the HIV virus, has been exposed to
24 the HIV virus, or has any communicable disease; the results of a medical examination or test that
25 indicates that the inmate or minor has tested positive for antibodies to the AIDS virus, has been
26 exposed to the HIV virus, has an AIDS-related condition, or is infected with AIDS or any
27 communicable disease; provided, that information subject to disclosure does not include
28 information communicated to or obtained by a scientific research study under prior written
29 approval expressly waiving disclosure under this section by the officer in charge of the facility.

30 (c) The officer in charge of the facility shall notify all employees, medical personnel,
31 contract personnel, and volunteers providing services at the facility who have or may have direct

1 contact with the inmate or minor in question, or with bodily fluids from the inmate or minor, of
2 the substance of the information received under (a) and (b) of this section so that those persons
3 can take appropriate action to provide for the care of the inmate or minor, the safety of other
4 inmates or minors, and their own safety.

5 (d) The officer in charge and all persons to whom information is disclosed under this
6 section shall maintain the confidentiality of personal identifying data regarding the information,
7 except for disclosure authorized under this section or as may be necessary to obtain medical or
8 psychological care or advice.

9 (e) A person who intentionally discloses personal identifying data regarding information
10 obtained under this section to a person who is not a peace officer or an employee of a federal,
11 state, or local public health agency, except as authorized under this section, by court order, with
12 the written consent of the patient, or as otherwise authorized by law, is guilty of a class A
13 misdemeanor.

14 Sec. 18.15.290. DEFINITIONS. In AS 18.15.250 - 18.15.290,

15 (1) "AIDS" means Acquired Immune Deficiency Syndrome;

16 (2) "HIV" means the Human Immunodeficiency Virus.

17 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).