

HOUSE BILL NO. 109

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOTT

Introduced: 1/29/93

Referred: Health, Education & Social Services, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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 4B. BLOOD TESTS OF PERSONS CHARGED WITH SEX OFFENSES.

6 Sec. 18.15.300. ORDER FOR BLOOD TEST; DISCLOSURE OF RESULTS.

7 (a) A defendant charged in a criminal complaint filed with a magistrate or court with
8 a violation of AS 11.41.410 - 11.41.440 and a minor with respect to whom a petition
9 has been filed in a juvenile court alleging violation of AS 11.41.410 - 11.41.440, is
10 subject to an order of a court having jurisdiction of the complaint or petition requiring
11 testing as provided in AS 18.15.300 - 18.15.350.

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

1 (c) The court shall promptly conduct a hearing upon a petition filed under (b)
2 of this section. If the court finds that probable cause exists to believe that a transfer
3 of blood, saliva, semen, or other bodily fluid took place between the defendant or
4 minor and the alleged victim in an act for which the defendant or minor is charged
5 under (a) of this section, the court shall order that the defendant or minor provide two
6 specimens of blood for testing as provided in AS 18.15.300 - 18.15.350.

7 (d) Copies of the blood test results shall be sent to the defendant or minor,
8 each requesting victim, the victim's designee or, if the victim is a minor or
9 incompetent, the victim's parents or legal guardian. If the defendant or minor is being
10 incarcerated or detained at the time of the blood test or thereafter, the blood test results
11 shall be provided to the officer in charge and the chief medical officer of the facility
12 in which the defendant or minor is incarcerated or detained, including an incarceration
13 or detention ordered as a result of conviction or judgment of delinquency or child in
14 need of aid for an act for which the defendant or minor is charged under (a) of this
15 section.

16 (e) A court may not order a test under this section

- 17 (1) before seven days after the defendant or minor's arrest;
18 (2) after the entry of a disposition favorable to a defendant; or
19 (3) if the defendant is convicted or adjudicated delinquent or in need
20 of aid, after 90 days after the issuance of the judgment and sentence or judgment in
21 a juvenile action.

22 Sec. 18.15.310. TESTING; TEST RESULTS. (a) The withdrawal of blood
23 for a test under AS 18.15.300 - 18.15.350 shall be performed in a medically approved
24 manner. Only a physician licensed under AS 08.64, registered nurse, licensed practical
25 nurse, or certified emergency medical technician may withdraw blood specimens for
26 the purposes of AS 18.15.300 - 18.15.350.

27 (b) The court shall order that the blood specimens withdrawn under
28 AS 18.15.300 - 18.15.350 be transmitted to a licensed medical laboratory and that tests
29 be conducted on them for medically accepted indications of exposure to or infection
30 by the human immunodeficiency virus (HIV) and other communicable diseases for
31 which medically approved testing is readily and economically available as determined

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by the court.

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

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

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

(e) The court shall order all persons, other than the test subject, who receive test results under AS 18.15.300 - 18.15.350 to maintain the confidentiality of personal identifying data relating to the test results except for disclosures by the victim, or if the victim is a minor or incompetent by the victim's parents or legal guardian, as is necessary to obtain medical or psychological care or advice or to ensure the health of the victim's spouse, immediate family, or persons occupying the same household as the victim.

(f) The specimens and the results of tests ordered under AS 18.15.300 - 18.15.350 are not admissible evidence in a criminal or juvenile proceeding.

(g) A person performing testing, transmitting test results, or disclosing information under AS 18.15.300 - 18.15.350 is immune from civil liability for an action undertaken in accordance with the provisions of AS 18.15.300 - 18.15.350.

(h) If the results of a blood test conducted under AS 18.15.300 indicate exposure to or infection by HIV or other communicable diseases for which testing was conducted, the department shall provide (1) free counseling and free testing to a victim for HIV and other diseases reasonably communicable through the offense; and (2) counseling to the alleged perpetrator or defendant upon request of the alleged perpetrator or defendant. If the department delivers a brochure to the victim and to the alleged perpetrator or defendant that conveys the information described under (i)(2)

1 of this section and refers the victim and the alleged perpetrator or defendant to the
2 department for further information, the department's responsibility for counseling under
3 this subsection is considered satisfied.

4 (i) In this section,

5 (1) "AIDS" means acquired immunodeficiency syndrome or AIDS-
6 related complex;

7 (2) "counseling" means providing a person with information and
8 explanations relating to AIDS and HIV that are medically appropriate for that person,
9 including all or part of the following:

10 (A) accurate information regarding AIDS and HIV;

11 (B) an explanation of behaviors that reduce the risk of
12 transmitting AIDS and HIV;

13 (C) an explanation of the confidentiality of information relating
14 to AIDS diagnoses and HIV tests;

15 (D) an explanation of information regarding both social and
16 medical implications of HIV tests;

17 (E) disclosure of commonly recognized treatment or treatments
18 of AIDS and HIV;

19 Sec. 18.15.320. COST OF PERFORMING TEST; REIMBURSEMENT. (a)
20 The cost of performing a blood test under AS 18.15.300 shall be paid by the
21 department.

22 (b) If a defendant for whom a blood test has been ordered under AS 18.15.300
23 is convicted of an offense for which the defendant was charged, and for which a blood
24 test could be ordered under AS 18.15.300, the court shall order the defendant to
25 reimburse the department for the cost of the test and may order the Department of
26 Corrections to deduct the amount of the test from any pay the inmate receives under
27 AS 33.20.201.

28 Sec. 18.15.330. PENALTY. A person who intentionally discloses personal
29 identifying data regarding information obtained under AS 18.15.300 - 18.15.350 to any
30 person who is not authorized to receive data under AS 18.15.300 - 18.15.350, by court
31 order, or with the written consent of the defendant, or as otherwise authorized by law,

1 is guilty of a class A misdemeanor.

2 Sec. 18.15.350. DEFINITIONS. In AS 18.15.300 - 18.15.350,

3 (1) "disposition favorable to defendant" means an adjudication by a
4 court other than a conviction, or if the defendant is a minor not being prosecuted as
5 an adult, that the minor is not adjudicated delinquent or a child in need of aid, for an
6 offense for which a blood test could be ordered under AS 18.15.300;

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

8 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).