

**CS FOR HOUSE BILL NO. 109(HES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered: 2/17/93**

**Referred: Judiciary, Finance**

**Sponsor(s): REPRESENTATIVE KOTT**

**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, indictment, or information filed with  
8 a magistrate or court with a violation of AS 11.41.410 - 11.41.440 that includes sexual  
9 penetration as an element of the offense, or a minor with respect to whom a petition  
10 has been filed in a juvenile court alleging a violation of AS 11.41.410 - 11.41.440 that  
11 includes sexual penetration as an element of the offense, may be ordered by a court  
12 having jurisdiction of the complaint, indictment, information, or juvenile petition to  
13 submit to testing as provided in AS 18.15.300 - 18.15.330.

14 (b) An alleged victim listed in the complaint, indictment, information, or

1 juvenile petition, the parent or guardian, or the prosecuting attorney on the behalf of  
2 an alleged victim, may petition the court for an order authorized under this section.

3 (c) Upon receipt of a petition filed under (b) of this section, the court shall  
4 determine if (1) probable cause exists to believe that a crime for which a test may be  
5 ordered under (a) of this section has been committed, and (2) probable cause exists to  
6 believe that sexual penetration took place between the defendant or minor and the  
7 alleged victim in an act for which the defendant or minor is charged under (a) of this  
8 section. In making the determination, the court may rely on the evidence presented  
9 at a grand jury proceeding or preliminary hearing.

10 (d) If the court finds probable cause exists to believe that (1) a crime for  
11 which a test may be ordered under (a) of this section has been committed, and (2)  
12 sexual penetration described in (c)(2) of this section took place, the court shall order  
13 that the defendant or minor provide two specimens of blood for testing as provided in  
14 AS 18.15.300 - 18.15.330.

15 (e) Copies of the blood test results shall be provided to the defendant or minor,  
16 each requesting victim, the victim's designee or, if the victim is a minor or  
17 incompetent, the victim's parents or legal guardian. If the defendant or minor is being  
18 incarcerated or detained at the time of the blood test or thereafter, the blood test results  
19 shall be provided to the officer in charge and the chief medical officer of the facility  
20 in which the defendant or minor is incarcerated or detained, including an incarceration  
21 or detention ordered as a result of conviction or judgment of delinquency or child in  
22 need of aid for an act for which the defendant or minor is charged under (a) of this  
23 section.

24 (f) A court may not order a test under this section

25 (1) before seven days after the defendant or minor's arrest;

26 (2) after the entry of a disposition favorable to a defendant; or

27 (3) if the defendant is convicted or adjudicated delinquent or in need  
28 of aid, after 90 days after the issuance of the judgment and sentence or the judgment  
29 in a juvenile action.

30 (g) In this section,

31 (1) "disposition favorable to defendant" means an adjudication by a

1 court other than a conviction, or if the defendant is a minor not being prosecuted as  
2 an adult, that the minor is not adjudicated delinquent or a child in need of aid, for an  
3 offense for which a blood test could be ordered under AS 18.15.300;

4 (2) "sexual penetration" has the meaning given in AS 11.81.900(b).

5 Sec. 18.15.310. TESTING; TEST RESULTS. (a) The withdrawal of blood  
6 for a test under AS 18.15.300 - 18.15.330 shall be performed in a medically approved  
7 manner. Only a physician licensed under AS 08.64, physician's assistant registered  
8 under AS 08.64, registered nurse, licensed practical nurse, or certified emergency  
9 medical technician may withdraw blood specimens for the purposes of AS 18.15.300 -  
10 18.15.330.

11 (b) The court shall order that the blood specimens withdrawn under  
12 AS 18.15.300 - 18.15.330 be transmitted to a licensed medical laboratory and that tests  
13 be conducted on them for medically accepted indications of exposure to or infection  
14 by the human immunodeficiency virus (HIV) and other sexually transmitted diseases  
15 for which medically approved testing is readily and economically available as  
16 determined by the court.

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

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

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

26 (e) The court shall order all persons, other than the test subject, who receive  
27 test results under AS 18.15.300 - 18.15.330 to maintain the confidentiality of personal  
28 identifying data relating to the test results except for disclosures by the victim, or if  
29 the victim is a minor or incompetent by the victim's parents or legal guardian, as is  
30 necessary to obtain medical or psychological care or advice or to ensure the health of  
31 the victim's spouse, immediate family, or persons occupying the same household as

1 the victim.

2 (f) The specimens and the results of tests ordered under AS 18.15.300 -  
3 18.15.330 are not admissible evidence in a criminal or juvenile proceeding.

4 (g) A person performing testing, transmitting test results, or disclosing  
5 information under AS 18.15.300 - 18.15.330 is immune from civil liability for an  
6 action undertaken in accordance with the provisions of AS 18.15.300 - 18.15.330.

7 (h) If the results of a blood test conducted under AS 18.15.300 indicate  
8 exposure to or infection by HIV or other sexually transmitted diseases for which  
9 testing was conducted, the department shall provide (1) free counseling and free testing  
10 to a victim for HIV and other sexually transmitted diseases reasonably communicable  
11 through the offense; and (2) counseling to the alleged perpetrator or defendant upon  
12 request of the alleged perpetrator or defendant. The department shall provide referral  
13 to appropriate health care facilities and support services at the request of the victim.

14 (i) In this section,

15 (1) "AIDS" means acquired immunodeficiency syndrome or HIV  
16 symptomatic disease;

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

20 (A) accurate information regarding AIDS and HIV;

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

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

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

27 (E) disclosure of commonly recognized treatment or treatments  
28 of AIDS and HIV;

29 (3) "HIV" means the human immunodeficiency virus.

30 Sec. 18.15.320. COST OF PERFORMING TEST; REIMBURSEMENT. (a)

31 The cost of performing a blood test under AS 18.15.300 shall be paid by the

1 department.

2 (b) If a defendant for whom a blood test has been ordered under AS 18.15.300  
3 is convicted of an offense for which the defendant was charged, and for which a blood  
4 test could be ordered under AS 18.15.300, the court shall order the defendant to  
5 reimburse the department for the cost of the test and may order the Department of  
6 Corrections to deduct the amount of the test from any pay the inmate receives under  
7 AS 33.30.201.

8 Sec. 18.15.330. PENALTY FOR DISCLOSURE. A person who intentionally  
9 discloses personal identifying data regarding information obtained under  
10 AS 18.15.300 - 18.15.330 to any person who is not authorized to receive data under  
11 AS 18.15.300 - 18.15.330, by court order, or with the written consent of the defendant,  
12 or as otherwise authorized by law, may be held in contempt of court.

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