

CS FOR HOUSE BILL NO. 109(JUD) am S
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 1/14/94
Offered: 3/19/93

Sponsor(s): REPRESENTATIVE KOTT

SENATORS Halford, Kerttula, Taylor, Leman, Pearce, Sharp, Lincoln, Donley

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, presentment, or
8 information filed with a magistrate or court with a violation of AS 11.41.410 -
9 11.41.450 that includes sexual penetration as an element of the offense, or a minor
10 with respect to whom a petition has been filed in a juvenile court alleging a violation
11 of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the
12 offense, may be ordered by a court having jurisdiction of the complaint, indictment,
13 information, presentment, or juvenile petition to submit to testing as provided in
14 AS 18.15.300 - 18.15.320.

1 (b) An alleged victim listed in the complaint, indictment, information,
2 presentment, or juvenile petition, the parent or guardian of an alleged victim who is
3 a minor or incompetent, or the prosecuting attorney on the behalf of an alleged victim,
4 may petition the court for an order authorized under this section.

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

12 (d) If the court finds probable cause exists to believe that (1) a crime for
13 which a test may be ordered under (a) of this section has been committed, and (2)
14 sexual penetration described in (c)(2) of this section took place, the court shall order
15 that the defendant or minor provide two specimens of blood for testing as provided in
16 AS 18.15.300 - 18.15.320.

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

26 (f) A court may not order a test under this section
27 (1) before seven days after the defendant or minor's arrest;
28 (2) after the entry of a disposition favorable to a defendant; or
29 (3) if the defendant is convicted or adjudicated delinquent or in need
30 of aid, after 90 days after the issuance of the judgment and sentence or of the
31 judgment in a juvenile action.

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(g) In this section,

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

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

Sec. 18.15.310. TESTING; TEST RESULTS. (a) The withdrawal of blood for a test under AS 18.15.300 - 18.15.320 shall be performed in a medically approved manner. Only a physician licensed under AS 08.64, physician's assistant registered under AS 08.64, registered nurse, licensed practical nurse, or certified emergency medical technician may withdraw blood specimens for the purposes of AS 18.15.300 - 18.15.320.

(b) The court shall order that the blood specimens withdrawn under AS 18.15.300 - 18.15.320 be transmitted to a licensed medical laboratory and that tests be conducted on them for medically accepted indications of exposure to or infection by the human immunodeficiency virus (HIV) and other sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.

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

(d) The test results shall be provided 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 sexually transmitted 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 - 18.15.320 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

1 (1) is necessary to obtain medical or psychological care or advice or to
2 ensure the health of the victim's spouse, immediate family, persons occupying the
3 same household as the victim, or a person in a dating, courtship, or engagement
4 relationship with the victim;

5 (2) is necessary to pursue civil remedies against the test subject; or

6 (3) otherwise permitted by the court.

7 (f) The specimens and the results of tests ordered under AS 18.15.300 -
8 18.15.320 are not admissible evidence in a criminal or juvenile proceeding.

9 (g) A person performing testing, transmitting test results, or disclosing
10 information under AS 18.15.300 - 18.15.320 is immune from civil liability for an act
11 or omission under authority of AS 18.15.300 - 18.15.320. However, this subsection
12 does not preclude liability for a grossly negligent or intentional violation of a provision
13 of AS 18.15.300 - 18.15.320.

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

21 (i) In this section,

22 (1) "AIDS" means acquired immunodeficiency syndrome or HIV
23 symptomatic disease;

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

27 (A) accurate information regarding AIDS and HIV;

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

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

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

3 (E) disclosure of commonly recognized treatment or treatments
4 of AIDS and HIV;

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

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

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

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