

SB

309



d

HOUSE COMMITTEE REPORT

4-19-04

(7)

Date Referred to Committee: March 24, 2004

FURTHER REFERRALS: Judiciary

Date of Committee Action: April 15, 2004

The STATE AFFAIRS Committee considered:

CSSB 309(JUD) am

CS FOR SENATE BILL NO. 309(JUD) am

BLOOD PATHOGENS TESTING OF PRISONERS

"An Act relating to testing the blood of prisoners and those in custody for bloodborne pathogens."

Recommends it be replaced with [] HCS or [ ] CS for CSSB 309 (STA)  
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [] Same Title [ ] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- ISS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
ADM	2			<input checked="" type="checkbox"/>

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
COR	1			<input checked="" type="checkbox"/>

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Beaton	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
	Coghlin				<input checked="" type="checkbox"/>
	LYNN	<input checked="" type="checkbox"/>			
	HOLM	<input checked="" type="checkbox"/>			
Chair:	Weyhrauch			<input checked="" type="checkbox"/>	
Chair:					

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. Jim Holm  
Rep. Dan Ogg  
Rep. Ralph Samuels  
Rep. Leo Gara  
Rep. Max Gruenberg



State Capitol, Room 120  
Juneau, AK 99801-1182  
(907) 465-4990  
Fax (907) 465-6592

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal

**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee

**Date:** April 23, 2004

**Re:** CS Request

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Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1597H, SB 309, incorporating the attached two amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

(HCS CSSB 309 (STA))  
SB 309 version "H"

Amendment #1 - PASSED  
by Rep. Gruenberg

Page 2, Lines 24 - 26

Delete the sentence: "The department must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test for bloodborne pathogens."

(HCS CS 8B 309 (STA))  
8B 309 version "H"

Conceptual Amendment #2 - PASSED  
by Rep. Gruenberg

Page 5, Lines 9-11

Add the requirement of a mental state  
"Knowingly in violation of AS 18.15.400-18.15.450"  
... releases ...

# ALASKA STATE LEGISLATURE



Official Business

## SENATOR THOMAS H. WAGONER

- Co-Chair, Senate Resources Committee
- Co-Chair, Senate Transportation Committee
- Vice-Chair, Senate Community and Regional Affairs Committee
- Member, Legislative Council

Session: January – May

State Capitol, #427

Juneau, AK 99801

Phone: 907-465-2828 Fax: 907-465-4779

Interim: May – December

145 Main Street Loop; Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax 907-283-3075

April 15, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
State Capitol, Room 120  
Juneau, AK 99801

Re: CS FOR CS 309(STA) – Bloodborne pathogen testing of prisoners

Dear Representative McGuire:

CS for CS 309(STA) was moved out of House State Affairs this morning has been referred to the Judiciary Committee. I request that this bill be scheduled at your earliest convenience. I have enclosed a copy of this bill, two zero fiscal notes, sponsors statement, and sectional analysis. Also enclosed is a copy of a recent report by Legislative Research Services.

Should you or your staff have any questions, or need further information, please contact my aide Kurt Olson at 2828.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom".

Senator Tom Wagoner

**HOUSE CS FOR CS FOR SENATE BILL NO. 309(STA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS WAGONER, Elton, Dyson, Lincoln**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to testing the blood of prisoners and those in custody for bloodborne**  
2 **pathogens."**

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 6B. Blood Testing of Prisoners for Bloodborne Pathogens.**

6 **Sec. 18.15.400. Bloodborne pathogen testing of prisoners and correctional**  
7 **officers; required disclosures to and consent of prisoners and correctional**  
8 **officers. (a) When requested by a correctional officer who may have received a**  
9 **significant exposure from a prisoner, the department shall follow the testing**  
10 **procedures of AS 18.15.400 - 18.15.450 if**

11 (1) a physician licensed under AS 08 determines that a significant  
12 exposure to the correctional officer has occurred;

13 (2) the physician for the correctional officer needs the prisoner's  
14 bloodborne pathogens test results to begin, continue, modify, or discontinue treatment

1 in accordance with the most current guidelines of the United States Public Health  
2 Service, because of possible exposure to a bloodborne pathogen; and

3 (3) the correctional officer consents to providing a blood sample for  
4 testing for a bloodborne pathogen.

5 (b) Before employing the testing procedures of AS 18.15.400 - 18.15.450 or  
6 disclosing any information about the prisoner or correctional officer, the department  
7 shall inform the

8 (1) prisoner that

9 (A) the prisoner's bloodborne pathogens test results, without  
10 the prisoner's name or other uniquely identifying information, shall be reported  
11 to the correctional officer if requested and that test results collected are for  
12 medical purposes and may not be used as evidence in any criminal proceedings  
13 or civil proceedings;

14 (B) the prisoner may refuse to provide a blood sample and that  
15 the prisoner's refusal may result in a request for a court order to require the  
16 prisoner to provide a blood sample; and

17 (C) the department will advise the correctional officer of the  
18 confidentiality requirements and penalties before the officer's health care  
19 provider discloses any test results;

20 (2) correctional officer of the confidentiality requirements of  
21 AS 18.15.440 and that the correctional officer may be subject to penalties for  
22 unauthorized release of test results about the prisoner.

23 (c) If the disclosures have been made, the department shall ask the prisoner if  
24 the prisoner has ever had a positive test for a bloodborne pathogen. The department  
25 must first attempt to get existing test results under this subsection before taking any  
26 steps to obtain a blood sample or to test for bloodborne pathogens. The department  
27 shall disclose the prisoner's existing bloodborne pathogens test results to the  
28 correctional officer without the prisoner's name or other uniquely identifying  
29 information.

30 **Sec. 18.15.410. Consent for testing; court order for testing; exception.** (a)  
31 When a correctional officer has made a request under AS 18.15.400, except as

1 provided in (b) or (c) of this section or in AS 18.15.420, before collecting and testing  
2 the blood of a prisoner, the department must first obtain the consent of the prisoner or  
3 the prisoner's representative if the prisoner is unable to provide the consent.

4 (b) Consent of a prisoner's representative is not required if the department has  
5 made reasonable efforts to locate the prisoner's representative and the representative  
6 cannot be found within 24 hours after a significant exposure. If testing of available  
7 blood occurs without consent because the prisoner is unconscious or unable to provide  
8 consent, and a representative cannot be located, the department shall provide the  
9 information required in AS 18.15.400 to the prisoner or representative whenever it is  
10 possible to do so.

11 (c) If a prisoner dies before an opportunity to consent to blood collection or  
12 testing, consent is not required, and the prisoner's blood may be collected and tested.

13 (d) If the prisoner or the prisoner's representative, if appropriate, consents and  
14 a sample of the prisoner's blood

15 (1) is available, the department shall have the blood tested for  
16 bloodborne pathogens;

17 (2) is not available, the department shall collect a sample and have the  
18 blood sample tested for bloodborne pathogens.

19 (e) The department may not withhold care or treatment on the requirement that  
20 the prisoner consent to testing for bloodborne pathogen.

21 **Sec. 18.15.420. Testing without consent.** (a) When a correctional officer  
22 has made a request under AS 18.15.400 the department shall file a petition in the  
23 superior court for a court order requiring the prisoner to provide a blood sample for  
24 testing for bloodborne pathogens. The department shall serve the petition on the  
25 prisoner at least 48 hours before a hearing on the petition. The petition must include  
26 the following information supported by affidavit:

27 (1) a statement that the department followed the procedures in  
28 AS 18.15.400 - 18.15.450 and attempted to obtain bloodborne pathogens test results  
29 according to those sections;

30 (2) a statement that

31 (A) the correctional officer and department have documented

1 the officer's exposure to blood or body fluids during performance of the  
2 officer's work duties;

3 (B) the department has asked the prisoner to consent under  
4 AS 18.15.410, and the prisoner does not consent;

5 (C) the department has provided the correctional officer and the  
6 prisoner with the disclosures required under AS 18.15.400; and

7 (D) the department has informed the correctional officer of the  
8 confidentiality requirements of AS 18.15.440 and the penalties for  
9 unauthorized release of prisoner information.

10 (3) a statement that a physician licensed under AS 08 and  
11 knowledgeable about the most current recommendations of the United States Public  
12 Health Service has determined that a significant exposure has occurred to the  
13 correctional officer; and

14 (4) a statement that a physician has documented that the correctional  
15 officer has provided a blood sample and consented to testing for bloodborne  
16 pathogens, and bloodborne pathogens test results are needed for beginning,  
17 continuing, modifying, or discontinuing medical treatment for the correctional officer.

18 (b) A court shall order a prisoner to provide a blood sample for bloodborne  
19 pathogen testing if the court finds that

20 (1) there is probable cause to believe that a significant exposure to the  
21 correctional officer from the prisoner has occurred;

22 (2) a licensed physician for the correctional officer needs the test  
23 results for beginning, continuing, modifying, or discontinuing medical treatment for  
24 the correctional officer; or

25 (3) a compelling need for the testing and test results exists; in making  
26 this finding, the court shall consider the need for the test against the privacy or other  
27 interests of the prisoner.

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

31 (d) After testing is completed under this section, the department shall inform

1 the prisoner whose blood was tested of the results. The department shall inform the  
2 correctional officer's physician of the prisoner's test results without the prisoner's name  
3 or other uniquely identifying information.

4 **Sec. 18.15.440. Confidentiality; penalties for unauthorized disclosure;**  
5 **immunity.** (a) Bloodborne pathogens test results of a prisoner are confidential and  
6 may not be disclosed except as provided in AS 18.15.400 - 18.15.450 and as needed  
7 for the treatment or medical care of a prisoner specific to a bloodborne pathogen-  
8 related illness.

9 (b) A prisoner may bring a civil action against a person who releases the  
10 prisoner's name or other uniquely identifying information with the test results or  
11 otherwise releases the test results, except as provided in AS 18.15.400 - 18.15.450.

12 (c) The department, a physician, and designated health care personnel are  
13 immune from liability in any civil, administrative, or criminal action relating to the  
14 disclosure of test results of a prisoner to a correctional officer and the testing of a  
15 blood sample from a prisoner for bloodborne pathogens if a good faith effort has been  
16 made to comply with AS 18.15.400 - 18.15.450.

17 **Sec. 18.15.450. Definitions for AS 18.15.400 - 18.15.450.** In AS 18.15.400 -  
18 18.15.450,

19 (1) "bloodborne pathogens" means pathogenic microorganisms that are  
20 present in human blood and can cause disease in humans; these pathogens include  
21 hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus  
22 (HIV);

23 (2) "correctional officer" means an employee of the Department of  
24 Corrections or of an agent or contractor of the department working in a correctional  
25 facility;

26 (3) "department" means the Department of Corrections;

27 (4) "prisoner" has the meaning given in AS 33.30.901;

28 (5) "significant exposure" means contact likely to transmit a  
29 bloodborne pathogen, in a manner supported by the most current guidelines and  
30 recommendations of the United States Public Health Service at the time an evaluation  
31 takes place, that includes

1  
2  
3  
4

(A) percutaneous injury, contact of mucous membrane or nonintact skin, or prolonged contact of intact skin; and

(B) contact, in a manner that may transmit a bloodborne pathogen, with blood, tissue, or potentially infectious body fluids.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 309  
 (S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title "Blood Pathogens Testing of Prisoners..." RDU Administration & Operations  
 Component: Inmate Health Care  
 Sponsor Senator Wagoner, Senator Elton  
 Requester State Affairs, Judiciary Component No. 705

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

At this time the department does not anticipate a fiscal impact with the passage of this legislation.

Provisions of this legislation currently are addressed under the federal Bloodborne Pathogens standards promulgated by OSHA (29 CFR 1910-1030 dated December 1991) and adopted by Alaska OSHA (under 8 AAC 61-1010). The activities outlined and more relating to protection from, documentation of, and response to occupational exposure are essentially in effect under the existing OSHA standards. These tasks currently are addressed by the department and any additional tasks will be accomplished by the existing staff within the Department of Corrections.

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339  
 Division Administrative Services Date/Time 3/3/04 10 47 AM  
 Approved by: Portia C. K. Parker, Deputy Commissioner Date 3/3/2004  
 Agency Department of Corrections

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSB 309(JUD) am  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating testing the blood of prisoners BRU Risk Management  
and those in custody for bloodborne pathogens Component Risk Management  
 Sponsor Senators Wagoner, Elton, Dyson, & Lincoln  
 Requester House State Affairs Component No. 71

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1007 I/A Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Risk Management administers the self insurance program providing workers' compensation protection for all state employees, including injury and illness claims that may be filed by Correctional Officers affected by this legislation.

The self insured worker's compensation claims will realize future savings if this proposed legislation is enacted. As the number reported exposures varies by year, no actual saving can be explicitly presented.

Future Risk Management's workers' compensation assessments to Corrections will reflect any savings realized as premiums charged each agency are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director Phone \_\_\_\_\_  
 Division Risk Management Date/Time 4/7/04 2 16 PM  
 Approved by: Kevin Jardell, Assistant Commissioner Date 4/7/2004  
 Agency Administration



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

*Possible  
Amendts.  
Have a W here  
to verify  
on fiscal  
points*

DEPARTMENT Health & Social Services	DIVISION PH	BILL NUMBER SB 309	SPONSOR WAGONER
SHORT TITLE OF BILL TESTING BLOOD OF PRISONERS FOR BLOODBORNE PATHOGENS			
DEPARTMENT POSITION Support			
PREPARED BY Doug Bruce, Director	DATE 02/19/2004	COMMISSIONER'S SIGNATURE Joel S. Gilbertson	DATE 02/25/2004

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Corrections Department of Law	CONSTITUENT GROUP(S) AFFECTED BY BILL Correctional officers
ORGANIZATIONAL SUPPORT FOR BILL Correctional Officer Unit, Public Safety Employees Association	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Senate Bill 309 adds new sections to AS 18.15 allowing a correctional officer who may have received a "significant exposure" from a prisoner to request, through the officer's physician, testing of the prisoner for bloodborne pathogens. This includes potential exposure to HIV and the hepatitis viruses. The bill details information the correctional facility must share with the prisoner and describes procedures for obtaining test results with and without the prisoner's consent. In addition, the bill describes confidentiality requirements for test results and authorizes a prisoner to bring civil action if test results are improperly released.

ANALYSIS OF BILL/PROGRAM EFFECTS

This bill relates primarily to the Department of Corrections, which would best address the issues noted below.

Within the Department of Health and Social Services, this bill is most applicable to the Division of Public Health, Section of Laboratories, which would perform tests required by the bill. Impact would be very minimal. The Division of Juvenile Justice already has measures in place for the testing of bloodborne pathogens.

Several issues are noted in this version of the bill:

Page 4, Line 13 requires a court order to draw blood if a sample isn't present and the (Continued on Page 2)

AMENDMENTS PROPOSED

BILL ANALYSIS

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. SB 309

Additional Comments

(Continued from Page 1)

prisoner does not consent to the test; however, (a) of the same section (Page 3, Line 22) does not mention the need for a court order if a blood sample is present but the prisoner objects to the test. This appears inconsistent because, whether or not a blood sample is present, in either case the prisoner is objecting to the test.

① →

Page 2, Line 12 indicates that test results "may not be used as evidence in any criminal proceedings or civil proceedings." In some cases, it could be appropriate to charge a prisoner in an institution who has intentionally attempted to infect a staff member. Test results would be necessary evidence.

②

Page 2, Line 25 indicates that the facility "must first attempt to get existing test results under this subsection before taking any steps to obtain a blood sample or to test." This seems unnecessary, as previous test results are most likely irrelevant - current test results are what's needed. And, even current test results could be irrelevant, given that a person could still be infected with HIV, for example, and the test would not show it right away. At minimum, there should be a timeframe associated with the prior test results.

③  
4/10

On Page 5, Line 14, providing test results to the officer's physician without specific identifying information is really not a true safeguard. Obviously, the physician will communicate the results to the officer who will then know the results of the test and who the test is associated with.

Finally, it should be noted the State of Alaska in 8 AAC 61.1010 already has adopted federal Occupational Safety and Health Administration (OSHA) standards to protect workers from bloodborne pathogens. The federal reference is 29 CFR 1910.1030.

*This is additional  
safeguard  
in the bill.  
Is there federal  
recognition?*

# ALASKA STATE LEGISLATURE



Official Business

## **SENATOR THOMAS H. WAGONER**

- Co-Chair, Senate Resources Committee
- Co-Chair, Senate Transportation Committee
- Vice-Chair, Senate Community and Regional Affairs Committee
- Member, Legislative Council

Session: January – May

State Capitol, #427

Juneau, AK 99801

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Interim: May – December

145 Main Street Loop; Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax 907-283-3075

## Sponsor Statement

### **SB 309 - An Act related to the testing of prisoners for bloodborne pathogens.**

During 2003, approximately 40 Alaska correctional officers were potentially exposed to bloodborne pathogens when they came into contact with blood or other bodily fluids from prisoners. In most cases, the contamination was an intentional act.

If blood, bodily fluids or waste from a prisoner or person in custody contaminates a correctional officer, that person cannot be required to submit a blood sample for testing. Most states offer this type of protection to their correctional officers. The 18<sup>th</sup> Legislature moved in this direction by requiring blood tests for persons charged with sex offenses.

Currently, correctional officers who have been exposed may undergo a two-week treatment with a broad range of preventative medication for hepatitis, HIV, and other potential contagions. Reactions to the medication can lead to lost time on the job and a disruption of home life.

I respectfully request the support of my colleagues in providing our correctional officers with a tool to control their potential exposure to life-threatening contamination in their workplace.

# ALASKA STATE LEGISLATURE



Official Business

## SENATOR THOMAS H. WAGONER

- Co-Chair, Senate Resources Committee
- Co-Chair, Senate Transportation Committee
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Session: January – May  
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## Sectional Analysis – SB 309

**Section 1.** Amends AS 18.15 by adding five new sections:

Section 18.15.400 – Authorizes bloodborne pathogen testing of prisoners when requested by a correctional officer who has received significant exposure from a prisoner.

Section 18.15.410 – Consent for testing; from the prisoner or the prisoner's representative.

Section 18.15.420 – Provides provisions for testing without consent. There must be probable cause that a significant exposure has occurred, a licensed physician has to determine that test results are necessary, or a compelling need for testing exists. The court shall consider the need for the test against privacy or other interests of the prisoner.

Section 18.15.440 – Confidentiality provisions apply and results can be disclosed only as needed for treatment.

Section 18.15.450 – Definitions.

# ALASKA STATE LEGISLATURE



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April 15, 2004

The Honorable Lesil McGuire  
Chair, House Judiciary Committee  
State Capitol, Room 120  
Juneau, AK 99801

Re: CS FOR CS 309(STA) – Bloodborne pathogen testing of prisoners

Dear Representative McGuire:

CS for CS 309(STA) was moved out of House State Affairs this morning has been referred to the Judiciary Committee. I request that this bill be scheduled at your earliest convenience. I have enclosed a copy of this bill, two zero fiscal notes, sponsors statement, and sectional analysis. Also enclosed is a copy of a recent report by Legislative Research Services.

Should you or your staff have any questions, or need further information, please contact my aide Kurt Olson at 2828.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom".

Senator Tom Wagoner

# LEGISLATIVE RESEARCH REPORT

MARCH 4, 2004



REPORT NUMBER 04.145

## INVOLUNTARY TESTING OF INMATES FOR BLOODBORNE PATHOGENS

PREPARED FOR SENATOR TOM WAGONER

BY PATRICIA YOUNG, MANAGER

You wished to know the number of states that allow involuntary testing of inmates for bloodborne pathogens and other serious transmissible diseases. You were particularly interested in states that permit testing without consent when an inmate has intentionally or unintentionally exposed a correctional officer to the inmate's blood or other bodily fluids.

Although a number of organizations compile information on state laws requiring testing of inmates for human immunodeficiency virus (HIV) in general, we found no agency having compiled a list of state laws providing for this particular subset of mandatory testing.<sup>1</sup> We searched the statutes of several states that, based on comments in various publications on corrections and testing for transmissible diseases, we thought likely to contain such provisions. By this process, we identified provisions in 15 states.<sup>2</sup> The attached table provides citations and brief descriptions of pertinent parts of those states' laws.

As you will note, in most of these states, if the prisoner refuses to submit to testing, the officer or the officer's employer or representative is authorized to seek a court order compelling the prisoner to submit. In only one of the states we examined (Michigan), is involuntary testing authorized without a court order:

In order to protect the health, safety, and welfare of department employees, the department may test a prisoner . . . whether or not the prisoner consents to the test. The department is not required to give the prisoner an opportunity for a

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<sup>1</sup> We contacted the Association of State Correction Administrators; the American Correctional Association (which publishes *Corrections Compendium*), the American Federation of State, County, and Municipal Employees (an organization that testified in support of the federal Correction Officers Health and Safety Act of 1998, P.L. 105-370); the Law Enforcement Alliance of America; and the National Conference of State Legislatures.

<sup>2</sup> It is very possible that substantially similar provisions exist in other states.

hearing or to obtain an order from a court of competent jurisdiction before administering the test.<sup>3</sup>

Among the states we examined, we note that in Colorado, Ohio, and Wisconsin, intentionally exposing a corrections officer to bodily fluids is, in and of itself, a criminal act.

Not surprisingly, many corrections officials and organizations support provisions that allow for expeditious testing of prisoners who have exposed corrections officials and employees to their bodily substances. To that end, the Law Enforcement Alliance of America offers a model law, the Infectious Disease Testing Act.<sup>4</sup> During the course of our research, we also found that the Council of State Governments included Colorado's "Act to Impose Penalties on Inmates Who Assault Employees of Detention Facilities Through Contact With Substances That May Cause Injury or Disease," in its 1999 volume of *Suggested State Legislation*.<sup>5</sup>

On the federal level, the Correction Officers Health and Safety Act of 1998 (Public Law 105-370), provides for such testing among federal prisoners—both those already sentenced and those detained before trial. Under the provisions of the act, upon "well-founded reason" to believe that a federal prisoner may have intentionally or unintentionally transmitted HIV to any officer or facility employee, the Attorney General "shall cause" that prisoner to be "tested promptly."<sup>6</sup> The law further calls for the Attorney General, in consultation with the Secretary of the Department of Health and Human Services, to provide to states proposed guidelines for the prevention, detection, and treatment of prisoners and personnel who have or may be exposed to infectious diseases in correctional institutions. Although the act specified that the federal administration would provide these proposed guidelines within one year, officials with the Alaska Departments of Corrections and Law are not aware of any such guidelines.<sup>7</sup>

State and federal Occupational Safety and Health Administration (OSHA) regulations nevertheless pertain to all incidents of exposure in correctional settings. According to representatives of the Department of Corrections and representatives of the Section of Epidemiology in the Division of Public Health, on-the-job exposures are routinely evaluated for the likelihood of transmission of diseases, which generally takes a "fairly significant intrusion." As such, public health officials note that not every exposure is significant enough to warrant prophylactic treatment—which itself is intrusive and unpleasant, and which generally must be started as soon as possible after exposure.<sup>8</sup> In cases deemed to present a likelihood of disease transmission, prophylactic treatments are begun long before test results would be available. In that regard, the issue is whether or not to continue the treatment after the test results are known.

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<sup>3</sup> Michigan Compiled Laws § 791.267b.

<sup>4</sup> We include a copy of the Law Enforcement Alliance of America's Infectious Disease Testing Act as Attachment A.

<sup>5</sup> We include the Colorado Act as presented in the Council of State Government's Suggested State Legislation, 1999, as Attachment B.

<sup>6</sup> We include a copy of the Correction Officers Health and Safety Act of 1998, P.L. 105-370, as Attachment C.

<sup>7</sup> We spoke with Portia Parker, deputy commissioner, Alaska Department of Corrections, and John Bodick, assistant attorney general (dealing with Corrections), Alaska Department of Law.

<sup>8</sup> Wendy Craytor, HIV-STD program coordinator, Epidemiology Section, Division of Public Health, Department of Health and Social Services, (907) 269-8058. The state adoption of the federal regulations on bloodborne pathogens is 8 AAC 61-1010. The federal regulation adopted is 29 CFR 1910-1030.

As with the majority of the state laws we examined, the OSHA regulations allow for application to a court for an order compelling testing when a source refuses to submit to a blood sample.

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I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

<b>Testing Prisoners After Exposing Corrections Officers to Bodily Substances, Selected States</b>		
<b>State</b>	<b>Citation</b>	<b>Brief Description</b>
Colorado	18-3-203	Exposing a correctional officer or employee to bodily fluids or toxic, caustic, or hazardous materials with malicious intention is a crime of second degree assault. The court shall order a prisoner bound over for trial for, indicted for, or convicted of such an offense to supply blood or other bodily substances for testing.
Florida	384.287	If the person will not voluntarily submit to screening for sexually transmissible diseases that can be transmitted through a significant exposure, the employee may seek a court order directing the source to be tested.
Iowa	356.48	An inmate who exposes another person to bodily fluids "shall submit" to testing. If the offender refuses, the sheriff or person in charge of the jail may apply to the court for order compelling the source to submit to the testing.
Kansas	65-6009	If while performing official duties, an employee is exposed to another's bodily fluids and the source refuses to submit to testing for infectious diseases, the head of the agency may apply to the court for an order compelling the source to submit to such testing.
Maryland	18-338	An inmate "shall furnish" a blood sample for HIV testing when the inmate has been found guilty of violating institutional regulations, in connection with which violation, that inmate has exposed a correctional officer to bodily fluids, the exposure is confirmed by a health care provider, and the exposed employee has given written notice of the exposure to the managing official of the facility.
Michigan	791.267b	If the Department of Corrections determines that reasonable cause exists to believe that a prisoner's exposure of an employee to the prisoner's bodily fluids is of sufficient severity, the department "shall test" the prisoner for HIV or HBV, or both. "In order to protect the health, safety, and welfare of department employees, the department may test a prisoner...whether or not the prisoner consents to the test. The department is not required to give the prisoner an opportunity for a hearing or to obtain an order from a court of competent jurisdiction before administering the test."
Minnesota	241.331-338, et seq.	If a licensed physician has determination that a "significant exposure" has occurred, and no blood previously collected is available for testing, and the prisoner refuses to provide a blood sample, the facility or employee may petition the court for an order requiring the prisoner to provide the sample.

Testing Prisoners After Exposing Corrections Officers to Bodily Substances, Selected States		
State	Citation	Brief Description
Nevada	441A.195	A law enforcement officer, correctional officer, emergency medical attendant, fireman, or any other criminal justice agency employee who may have been exposed to a contagious disease while performing official duties, or the employer of such a person, may petition the court for an order requiring the testing of the source person for HIV and HBV. The court "shall promptly hear" such a petition.
Ohio	2921.38	The intentional exposure of a law enforcement officer to bodily fluids is harassment—a fifth or third degree felony (third if the person knows he or she is a carrier of HIV, HBV, or TB). "The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests..."
Oregon	433.085	Any law enforcement officer, parole and probation officer, corrections officer, emergency medical technician, firefighter or paramedic who in the performance of official duties comes into contact with the bodily fluids of another person may seek a court order compelling the source to submit to testing for HIV and HBV or HCV. The court "shall hold an ex parte in person or by telephone on the day of receipt of the petition, if possible, or within a reasonable period not to exceed three judicial days." Upon a showing that the petitioner has been exposed and the circumstances create probable cause to conclude that a significant possibility exists that the petitioner has been exposed to HIV, HBV, or HCV, the court shall order the testing of the source person.
South Dakota	23A-35B-1	A victim of "sliming" may request that the source person be tested. A health professional licensed or certified to do so shall take the blood sample.
Texas	81.05	A law enforcement or corrections officer, fire fighter, or emergency medical service employee or paramedic may request a department or health authority to order testing of a person who has exposed that person to bodily fluids if the professional believes the exposure places him or her at risk of a reportable disease including HIV. If the source refuses, the prosecuting attorney representing the state shall petition the court for an order requiring the test. The source person has a right to be represented by an attorney at the hearing.

### Testing Prisoners After Exposing Corrections Officers to Bodily Substances, Selected States

State	Citation	Brief Description
Washington	70.24.340	A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of corrections staff person, jail staff person, or other category of employment at risk of substantial exposure to another's bodily fluids, may request a state or local public health officer to order HIV testing. If the public health official refuses to order testing, the person may petition the court for a hearing, which must be held within 72 hours (exclusive of Saturdays, Sundays, and holidays). The standard of review is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of HIV.
Wisconsin	946.43 968.38	Any prisoner who throws or expels blood or other bodily substances at or toward an officer, employee, or visitor of the facility is guilty of a Class I Felony. If probably cause to believe that the exposure carried a potential for transmitting a communicable disease, the district attorney shall apply to the circuit court for an order requiring the source to submit to testing.

Sources: Various state statutes.

## **Attachment A**

Law Enforcement Alliance of America,  
Infectious Disease Testing Act



# Law Enforcement Alliance of America

*Law Enforcement, Crime Victims and Concerned Citizens... United for Justice!*



## INFECTIOUS DISEASE TESTING ACT

Section 1. This act may be cited as the "Infectious Disease Testing Act."

### A. Definitions. For the purposes of this section:

(1) "transmissible disease" shall include the human immunodeficiency virus (HIV) or any of its derivatives; hepatitis and any of its derivatives; tuberculosis; and any other serious illness which an exposed person could have a reasonable expectation of contracting from a subject.

(2) "exposed person" means a police officer, corrections officer, doctor, nurse, emergency medical technician, paramedic, or other health care provider, or a victim of crime, any part of whose body came into contact with the bodily fluids of an incarcerated person.

(3) "subject" means any person who is incarcerated.

### B. Notification.

(1) If an exposed person notifies the official in charge of an incarceration facility where a subject is incarcerated, in writing, under penalty of perjury, on a form to be developed by the State Health Department, that any part of the exposed person's body came into contact with the bodily fluids of the subject, such official shall, pursuant to subsection (C), cause the subject's blood to be tested for the presence of a transmissible disease.

### C. Duty of Health Official

(1) Notwithstanding any provision of law or regulation, a state, county, or local public health officer designated by the State Health Department shall, upon written request of an official in charge of an incarceration facility, cause a blood test to be administered forthwith to a subject and shall immediately provide to such official a written report specifying the date on which such test was completed and the results thereof.

(2) At the time of communicating the test results to the official in charge of an incarceration facility, such public health officer shall, if the results reveal that the subject has a transmissible disease, also communicate the results to the subject and the exposed person and shall provide the subject and the exposed person with referrals for counseling and appropriate health care and support services. The counseling and services required by this paragraph may be provided by a public health officer associated with the facility where the subject is incarcerated.

Section 2. Requirement for testing arrested person's blood for transmissible diseases.

### A. Definitions. For the purposes of this section:

- (1) "transmissible disease" shall have the same meaning as in section I.
- (2) "exposed person" shall have the same meaning as in section I.
- (3) "subject" means any person who has been arrested.

**B. Arrest of Released Subject.**

If an exposed person notifies a judicial officer, by sworn testimony, after a subject has been released that any part of the exposed person's body came into contact with the bodily fluids of the subject, the judicial officer shall promptly issue an arrest warrant for the subject. Once arrested, the subject shall not be released by a judicial officer until such subject's blood has been tested, pursuant to section I, for the presence of a transmissible disease.

**C. Compliance.**

Any failure to comply with the provisions of this section shall not impair or affect the validity of any of the proceedings conducted by a court with respect to any offense with which the subject is charged or affect the admissibility of the results of the blood test.

## **Attachment B**

"Inmate Assaults with Body Fluids or Other Hazardous Substances"  
Council of State Government's *Suggested State Legislation, 1999*



# SUGGESTED STATE LEGISLATION

1999 Volume 58

Developed by the  
Committee on Suggested State Legislation

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## **Attachment C**

Correction Officers Health and Safety Act of 1998, P.L. 105-370

## Inmate Assaults with Body Fluids or Other Hazardous Substances

This Act directs that inmates commit a crime of assault in the second degree if they throw or expel infected body fluids or other hazardous material at prison employees or others who provide prison services. The law directs that inmates who commit such crimes can be tested for communicable diseases and that the test results can be disclosed to their crime victims.

Submitted as:  
Colorado  
CH 270 (Laws of 1997)  
Enacted into law, 1997.

### Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Impose Pen-  
2 alties on Inmates Who Assault Employees of Detention Facilities Through  
3 Contact With Substances That May Cause Injury or Disease."

1 Section 2. [*Assault in the Second Degree.*]

2 (1) A person commits the crime of assault in the second degree if:

3 (a) While lawfully confined in a detention facility within this state,  
4 a person with intent to infect, injure, harm, harass, annoy, threaten, or alarm  
5 a person in a detention facility whom the actor knows or reasonably should  
6 know to be an employee of a detention facility, causes such employee to  
7 come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit,  
8 or any toxic, caustic, or hazardous material by any means, including but not  
9 limited to throwing, tossing, or expelling such fluid or material.

10 (2) (a) Any adult or juvenile who is bound over for trial for the offense  
11 described in subparagraph (1)(a) of this section, subsequent to a prelimi-  
12 nary hearing or after having waived the right to a preliminary hearing, any  
13 person who is indicted for or is convicted of any such offense, or any person  
14 who is determined to have provided blood, seminal fluid, urine, feces, sa-  
15 liva, mucus, or vomit to a person bound over for trial for, indicted for, or  
16 convicted of such an offense shall be ordered by the court to submit to a  
17 medical test for communicable diseases and to supply blood, feces, urine,  
18 saliva, or other bodily fluid required for the test. The results of such test  
19 shall be reported to the court or the court's designee, who shall then dis-

Inmate Assaults with Body Fluids or Other Hazardous Substances

20 close the results to any victim of the offense who requests such disclosure.  
21 Review and disclosure of medical test results by the court shall be closed  
22 and confidential, and any transaction records relating thereto shall also  
23 be closed and confidential. If a person subject to a medical test for  
24 communicable diseases pursuant this subparagraph voluntarily submits  
25 to a medical test for communicable diseases, the fact of such person's  
26 voluntary submission shall be admissible in mitigation of sentence if  
27 the person is convicted of the charged offense.

28 (b) In addition to any other penalty provided by law, the court may  
29 order any person who is convicted of the offense described in subparagraph  
30 (1)(a) of this section to meet all or any portion of the financial obligations of  
31 medical tests performed on and treatment prescribed for the victim or vic-  
32 tims of the offense.

33 (c) At the time of sentencing, the court may order that an offender  
34 described in subparagraph (2)(b) of this section be put on a period of proba-  
35 tion for the purpose of paying the testing and treatment costs of the victim  
36 or victims; except that the period of probation, when added to any time  
37 served, shall not exceed the maximum sentence that can be imposed for the  
38 offense.

39 (3) (a) As used in this Act, "detention facility" means any building, struc-  
40 ture, enclosure, vehicle, institution, or place, whether permanent or tempo-  
41 rary, fixed or mobile, where persons are or may be lawfully held in custody  
42 or confinement under the authority of this state or any political subdivision  
43 of this state.

44 (b) As used in this Act, "employee of a detention facility" includes  
45 employees of the [Department of Corrections,] employees of any agency or  
46 person operating a detention facility, law enforcement personnel, and any  
47 other persons who are present in or in the vicinity of a detention facility  
48 and are performing services for a detention facility. "employee of a deten-  
49 tion facility" does not include a person lawfully confined in a detention fa-  
50 cility.

1 Section 3. [*Severability.*] [Insert severability clause.]

1 Section 4. [*Repealer.*] [Insert repealer clause.]

1 Section 5. [*Effective Date.*] [Insert effective date.]

Inmate Assaults with Body Fluids or Other Hazardous Substances

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46 person operating a detention facility, law enforcement personnel, and any  
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50 cility.

1 Section 3. [*Severability.*] [Insert severability clause.]

1 Section 4. [*Repealer.*] [Insert repealer clause.]

1 Section 5. [*Effective Date.*] [Insert effective date.]

Public Law 105-370  
105th Congress

An Act

Nov. 12, 1998  
[H.R. 2070]

To amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Correction  
Officers Health  
and Safety Act of  
1998.  
18 USC 4001  
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Correction Officers Health and Safety Act of 1998".

SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

(a) IN GENERAL.—Chapter 301 of title 18, United States Code, is amended by adding at the end the following:

"§ 4014. Testing for human immunodeficiency virus

"(a) The Attorney General shall cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus, as appropriate, after the commencement of that incarceration, if such individual is determined to be at risk for infection with such virus in accordance with the guidelines issued by the Bureau of Prisons relating to infectious disease management.

"(b) If the Attorney General has a well-founded reason to believe that a person sentenced to a term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall—

"(1) cause the person who may have transmitted the virus to be tested promptly for the presence of such virus and communicate the test results to the person tested; and

"(2) consistent with the guidelines issued by the Bureau of Prisons relating to infectious disease management, inform any person (in, as appropriate, confidential consultation with the person's physician) who may have been exposed to such virus, of the potential risk involved and, if warranted by the circumstances, that prophylactic or other treatment should be considered.

"(c) If the results of a test under subsection (a) or (b) indicate the presence of the human immunodeficiency virus, the Attorney General shall provide appropriate access for counselling, health

care, and support services to the affected officer, employee, or other person, and to the person tested.

"(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.

"(e) Not later than 1 year after the date of the enactment of this section, the Attorney General shall issue rules to implement this section. Such rules shall require that the results of any test are communicated only to the person tested, and, if the results of the test indicate the presence of the virus, to correctional facility personnel consistent with guidelines issued by the Bureau of Prisons. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested."

Deadline.  
Regulations.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following new item:

"4014. Testing for human immunodeficiency virus."

(c) GUIDELINES FOR STATES.—Not later than 1 year after the date of the enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services, shall provide to the several States proposed guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees who have, or may be exposed to, infectious diseases in correctional institutions.

Deadline.  
18 USC 4042  
note.

Approved November 12, 1998.

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**LEGISLATIVE HISTORY—H.R. 2070:**

HOUSE REPORTS: No. 105-665 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 144 (1998):

Aug. 3, considered and passed House.

Oct. 20, considered and passed Senate, amended.

Oct. 21, House concurred in Senate amendment.



care, and support services to the affected officer, employee, or other person, and to the person tested.

"(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.

"(e) Not later than 1 year after the date of the enactment of this section, the Attorney General shall issue rules to implement this section. Such rules shall require that the results of any test are communicated only to the person tested, and, if the results of the test indicate the presence of the virus, to correctional facility personnel consistent with guidelines issued by the Bureau of Prisons. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested."

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