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**From:** Macdonald, Randal  
**Sent:** 13 May 2005 14:14  
**To:** Police Bill  
**Cc:** Bramham, Jean  
**Subject:** Blood testing following criminal incidents where there is a risk of infection: Proposals for Legislation

The following response to the Consultation Paper is submitted on behalf of NHS National Services Scotland, of Gyle Square, 1 South Gyle Square, Edinburgh EH12 9EB for publication.

1. While it is accepted that police officers are at the greatest risk of exposure to such infections by reason of the nature of their frequent physical and unplanned contact with individuals, nevertheless there are other public servants who are also so exposed in the normal course of their duties, but not necessarily to the same degree, such as nurses, nursing auxiliaries, hospital porters, paramedical staff (ambulance), prison officers and social workers. It would thus be invidious to restrict the scope of the proposed legislation to police officers only. That said, it would be reasonable to include within the scope of the proposed legislation, as being in accordance with the underlying intention of safeguarding the well-being of the applicant, any member of the public who has sustained a physical injury involving a third party, on a non-voluntary basis - not on a consensual basis i.e., a contact sport. This aspect may however be difficult to sustain in practice in that eye-witness evidence will have to be available to support the applicant's assertion of contact (not assault) with the suspect, as otherwise it is likely that an irresolvable dispute between the two parties will immediately ensue. The same issue could arise with police officers and the public servants to whom I have referred, but the nature of their contact with the suspect, is such that third party evidence from colleagues/other staff is, more likely to be available.
2. The mandatory testing of a suspect, given the seriousness of the issue and the imposition of a possible penalty, should only be ordered by a Sheriff. The original incident may in all probability be the subject of significant emotional responses by both the applicant and the suspect, and therefore a dispassionate and independent consideration of the incident (and any necessary penalty) by a sheriff, would be in the interests of justice.
3. The proposal that the suspect shall have allegedly committed a crime in order to impose mandatory testing, is considered to be impracticable as a general rule in practice, given the short time scales available for testing. The suspect will almost certainly wish to challenge any suggestion that he/she is alleged to have committed an offence. To suggest that an applicant be entitled to seek a mandatory test on the basis of an alleged crime, is considered to be a fundamentally incorrect approach whereas the entitlement to a test on alleged contact is likely to be more acceptable and sustainable in practice to a suspect. Proof of commission or omission of an act giving rise to an offence, normally takes a significant period of time which would preclude necessary testing being carried out timeously. Evidence of the applicant alleging contact with the alleged infected person seems to be the only practicable approach.
4. Given the point that proof of serious or indeed minor physical or sexual assaults will not normally be available with the time frame available for testing, it is suggested that mandatory testing on such a basis, is unworkable.
5. See 3.
6. There is no stateable reason to differentiate between individuals of different ages and therefore it is agreed that the principle of testing should be applied to an individual of any age.
7. In those circumstances where the Procurator Fiscal has a duty to investigate and has undertaken the appropriate investigations, it would be acceptable to permit the disclosure of relevant data on the basis of contact, not the commission of an offence, the reason being that time considerations for testing will preclude this.
8. This is agreed on the basis that it is essential to have a prescriptive procedure in place for access to such records.
9. Agreed.
10. Agreed.
11. Agreed. The current time delay in seeking and obtaining legal aid would preclude the timeous execution of the procedure.
12. It is for the individual to make the necessary application (or with a curator, etc.), as is normal legal practice. Funding and/or support from another organisation should be a private matter.

13/05/2005

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