

CILASGOW ADDICTION SERVICES

BLOOD TESTING FOLLOWING CRIMINAL INCIDENTS WHERE THERE IS A RISK OF INFECTION : PROPOSALS FOR LEGISLATION.

RESPONSE.

QUESTION 1. Do you agree that any legislation giving rights to individuals to apply for information about blood-borne viral infections with which they may have been infected, should apply universally? Or should the protection be restricted to particular groups of people? If the latter, what groups should it be restricted to and what would be the justification for this?

Any proposed legislation should apply universally. There is no justification to restrict this to police officers or healthcare professionals as the potential "psychological or physical harm "is the same for any citizen.

QUESTION 2. Do you agree that mandatory blood testing should only be ordered by a sheriff?

In view of the potential conflicts in terms of Human Rights it is essential that any proposals are subject to rigorous legal scrutiny with safeguards to protect the rights of the individual.

QUESTION 3. Do you agree that mandatory blood testing should not be applied to anyone who has committed no crime but may accidentally have exposed another person to a prescribed blood-borne viral infection, so that such people should be free to decline to give a blood sample?

If the aim of this proposed legislation is to protect police officers and their families from psychological and physical harm then there is no logical reason to discriminate between different groups of people who may have been responsible for the transfer of blood-borne infections as the impact on those potentially infected is the same.

QUESTION 4. Do you agree with the principle of mandatory blood testing for those who commit serious physical or sexual assaults and thereby put the victim of the crime at risk of infection with a prescribed blood-borne virus?

It is important to distinguish between a person suspected of a serious physical or sexual assault and someone convicted of the offence. It is reasonable to require a person convicted of this type of offence to undergo mandatory testing. However this would be a serious infringement of the fundamental rights of the individual if they were subsequently found not guilty of the offence.

QUESTION 5: Do you agree that the provision for mandatory testing should extend to any type of case where the applicant may have been exposed to a prescribed blood-borne viral infection as a result of a crime being committed by the other party?

Whilst disagreeing in principle with the concept of mandatory blood testing, if it is implemented, there is no logical reason to restrict the provisions to specific types of crime as the stated aim is to reduce physical and psychological stresses on the applicant. These stresses remain constant regardless of the original cause of the potentially infecting incident.

QUESTION 6: Do you think there should be any variation in these provisions for cases where the suspect is under age?

If the suspect is underage it is vital to independently ascertain their competency to either comply or refuse to undergo mandatory testing. Parental consent should be sought and other issues of child protection addressed.

QUESTION 7: Do you agree that persons at risk of infection from a criminal incident should be entitled to seek information from the Procurator Fiscal about the prescribed blood-borne viral infection risks they may face?

If the Procurator Fiscal has access to this information then after conviction it should be made available to the victim of a crime. This should only be available after conviction as it is not reasonable to make medical decisions on treatment based on the information of the medical status of an individual who may or may not have been responsible for the infection. Treatment must be based on an assessment of the risks and not rely on a single potentially false negative / positive result.

QUESTION 8: Do you agree with the proposed criteria for mandatory testing orders?

There are insufficient safeguards to protect individual rights. Access to medical records can be obtained by others means. It should be noted that testing after the initial alleged offence may not be relevant to the suspects' viral status at the time of the offence as an infection may have been acquired after the incident.

QUESTION 9: Do you have any comments on the proposed civil application process?

Although it is stated that “individuals subject to a mandatory testing order would not be compelled by force to comply with it” the penalties incurred for non-compliance constitute coercion.

Question 10 : Do you agree that information from mandatory testing orders should be for the sole purpose of benefiting the applicant, and should not be retained by the police?

Yes. There is no purpose in retaining the information as it could not be relied upon at any subsequent date as the status of the individual could alter.

QUESTION 11: Do you agree that the costs of the testing process should fall to the applicant?

No. If the applicant is making this request on the advice of their medical practitioner as a necessary component of a treatment regime then the information should be provided with no costs attached. Ideally the request should initiate from the applicants’ medical practitioner with the results issued to him/her in order to ensure that the correct support systems are available in conjunction with any appropriate treatment for the applicant.

ADDITIONAL COMMENTS.

These proposals lack an evidence base. Although similar proposals have been implemented in other forms in Australia and Canada there is no indication as to whether this has had any impact on the “reduction in physical harm” or has “reduced the mental and psychological trauma to which officers are subjected”.

As the SPF recognises the possibility of false negative and positive results giving misleading information to applicants, it seems that this proposed legislation provides a disproportionate response with no evidence of benefit to those affected.

The potential adverse consequences of these types of incidents should not be underestimated. However there is unlikely to be any reduction in stress and anxiety suffered by officers and their families from the proposals outlined above. For example PEP needs to be administered in situations of risk within hours and there is nothing in these proposals which would alter this requirement.

The proposals contained in this document present serious consequences for the rights of the individual. There needs to be a substantial evidence base of potential benefits before there is any justification for removing the rights of autonomy in relation to health decisions.

No provision has been made in the proposals for pre and post test counselling for those subjected to mandatory blood testing. This would be essential as the effects on their partners and families must also be considered. Mandatory blood-testing should not be undertaken unless adequate provision for appropriate health and social care services are available.

There are serious ethical considerations for healthcare staff involved in collecting blood samples in these circumstances. Although it is stated that "individuals subject to a mandatory testing order would not be compelled by force to comply with it" the incentive to comply is the penalty under the criminal law of a £2,500 fine or 28 days imprisonment. There is doubt about whether there is informed consent to allow the nurse or doctor to take the sample or if the patient is complying under duress

Serious consideration must be given to continuing to develop training programmes and protocols to protect police officers from the risk of exposure to blood-borne viruses and to wider community strategies for reducing the incidence of infection within the population.

As shown from the SPF figures the risk of infection is very rare. (24 officers received PEP against HIV) The one report of infection from an incident is where an officer is presumed to have been infected with hepatitis B. It would be reasonable to propose that to provide increased protection police officers followed a similar procedure to healthcare workers where hepatitis B vaccination is compulsory rather than voluntary.