

**Blood Testing Following Criminal Incidents Where There Is A Risk of Infection
Proposed Legislation**

Response from NHS Grampian (NHSG)

An all-encompassing local consultation on the above document has been conducted. Specifically targeted participants included: Senior Consultants and Physicians within Occupational Health Service, Acute Medicine and Accident and Emergency; Senior Clinical and Service Managers within Accident and Emergency, Acute Medicine, Community (Homeless Service), Mental Health and Learning Disabilities; Specialists within Security Services, Police Partnership Liaison, and Risk Management. The proposed legislation was also made available to all NHSG Managers and staff via a Risk Management Newsletter and NHSG Intranet.

Comments have been less positive from local Health Care Professionals owing to the issues associated with ethics, professional codes of practice, issues related to informed consent and capability, and lack of evidence to suggest situations where mandatory blood testing would change a prescribed course of treatment for any scenario given in the proposal. A great deal of empathy exists for the Scottish Police Federation, however opinions suggest the proposal should be rejected in its entirety and *Mandatory Blood Testing Orders* should not be issued by a Sheriff. Risk assessment and universal precautions exist to address exposure to BBV. Knowing the BBV status of an individual would inform a risk assessment, but would not necessarily change a course of treatment as in cases high risk of exposure, treatment will already have commenced before the status of the individual is known, if indeed it is ever known.

The comments received, being very general, have made it difficult to follow the suggested question template, however, where possible each point will be referenced to sections of the proposal.

- Systems already existing within the legal framework to allow a Procurator Fiscal (PF) to ascertain an alleged perpetrator of a crime's BBV status and if this will aggravate the nature of offence. It is assumed that the PF will determine if this is necessary owing to the nature of the case and risk assessment. It is suggested that existing practice considers victims of crime. It is appreciated that some time may pass before a PF considers each case, however the victim, supported and guided as necessary by the Police and Health Care Professional will have already commenced a course of Post Exposure Prophylaxis should the findings of a risk assessment suggest this as being the most appropriate course of action. (Ref section 4.11)
- Recognition of the possibility of false positive and false negative results strengthen the argument that treatment for exposure, should it be required, should not change under any circumstances. Psychological counselling should be available in all cases for the aforementioned reasons. (Ref. section 2.8)

- It should be mandatory for all Health Care Workers, Social Workers, Ambulance Service and Police to have Hepatitis B vaccination. Mandatory requirements already exist within areas of Health. (Ref. section 2.5)
- Post Exposure Prophylaxis as stated is most effective if commenced within one hour of exposure. Obtaining a Mandatory Blood Sampling Order would create a delay, then a subsequent delay whilst obtaining results. The PEP should already have been commenced therefore treatment for exposure must not change. (Ref. section 2.4)
- Refusal to give a mandatory blood sample will result in criminal charges being brought against the individual. In some cases this may be a deterrent, but would it be in all? In the latter case, there would be no obvious benefit to the applicant. (Ref. section 3.6)
- Alleged perpetrators of crime who are incapacitated due to a learning disability or mental illness may not be able to give informed consent, removing the voluntary aspect of blood sampling, which would then be complicated by not understanding the principle of a mandatory blood sample order. Would an incapacitated adult (when consent has been gained by an appropriate person) be managed by means of control and restraint to obtain a blood sample when failure to provide one presents the prospect of a possible prison term? The act of restraint itself presents significant additional risk to the alleged perpetrator. (Ref. section 3.6)
- The proposed legislation is biased toward criminal activity, when the significant and routine risk of infection exists to the Good Samaritan, Police Officer, Health Care Worker and other members of the Emergency Services through trauma in the field. Treatment for exposure based on risk assessment and sound clinical judgement, taking account of the immediate needs and wishes of the victim must be priority in all cases, as should exposure during criminal activity. Why then is there a need for specific legislation?
- How can it be proven that a victim did not have an existing BBV before an occurrence that instigated the mandatory blood testing of an alleged perpetrator of a crime?
- In a situation where an alleged perpetrator of a crime was found to have no BBV, but the victim did have a BBV, would the accused be told of this where there had been a risk of infection e.g. if the accused had bitten the victim?

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