Terrence Higgins Trust 52-54 Grays Inn Road London WC1X 8JU Tel: 020 7831 0330
Fax: 020 7242 0121 Email: info@tht.org.uk Website: www.tht.org.uk THT Direct Helpline: 0845 12 21 200

The HIV & AIDS charity for life

Police Division1
Scottish Executive Justice Department
Area 1W
St Andrew's House
Regent Road
Edinburgh 3DG

2 June 2005

Proposed blood testing following criminal incidents where there is a risk of infection

Thank you for the opportunity to comment on "Blood testing following criminal incidents where there is a risk of infection. Proposals for legislation". Terrence Higgins Trust is the leading national HIV and sexual health charity for England and Wales. We deliver HIV prevention, health promotions and social care for people with HIV and other STIs and for populations at particular risk, including gay men, African communities and young people. We have been addressing HIV issues and the fear surrounding them since the beginning of the epidemic in the early 1980s. This has included close working relationships with police departments and other public agencies.

While we agree that providers of public health and safety services should receive adequate workplace protection, Terrence Higgins Trust is concerned that the proposal presents problems in three particular areas:

- The perceived risk of blood-borne pathogens by the Scottish Police Federation (SPF) and the need compulsory testing regimens are not supported by the available data.
- The timeframes cited do not incorporate the recommended requirements for the proper administration of Post-Expose Prophylaxis (PEP) for potential HIV infection
- Plans for the protection of the confidentiality of personal medical information are not adequately addressed.

Our concerns are amplified by the Scottish Executive (SE) proposal to extend the proposals for compulsory testing to the general public. Minister for Justice Cathy Jamieson says in the proposal's foreword: "I consider that the threat of such infection could be of concern not only to police officers but also to other frontline workers and indeed to anyone who, as a victim of crime, finds him or herself at risk of contracting a blood-borne viral infection".

Creating a climate in which anyone, either with valid concerns or not, can compel another to submit to HIV testing against their will and is then free to circulate the results is unacceptable. Additionally, there appears to have been no cost analysis for the proposal or the recognition that extending the proposals to cover the general public will likely place a tremendous burden on the existing healthcare and legal systems.

The perceived risk of blood-borne pathogens and the need for compulsory testing is not proportional to the actual risk involved

In the current proposal for legislation, the SE cites 229 incidents in the year 2003-4 in which police officers may have been exposed to blood-borne pathogens (BBPs). Of these, less than one in ten (24) were considered serious enough to have the officer involved begin a course of PEP. In the end, none of these 229 incidents resulted in HIV infection and only one resulted in hepatitis B infection. This hepatitis B infection could have been prevented by routine immunisation which is something that should be reviewed through different channels.

While the SPF submission says police officers are at "special and increasing risk" of BBP infection, these figures underscore the relatively low level of risk of BBP infection actually facing officers in the field. Certainly at greater risk of exposure to HIV are healthcare providers who

Patrons include:
Dr Jane Anderson
Sir Michael Bishop CBE
Sir Richard Branson
Simon Callow CBE
Julian Clary
Martin Clunes
The Rt Hon Robin Cook MP
Dame Judi Dench
Stephen Fry
Paul Gambaccini
Charles Hart
Sir Simon Hornby
Sir Elton John
Sir Archy Kirkwood MP
The Earl of Lichfield
Sir Bill Morris
Reverend Paul Oestreicher
Professor Anthony Pinching
The Rt Hon Dawn Primarolo MP
Caroline Quentin
Danny Rampling
Claire Rayner OBE
Gaby Roslin
Sir Antony Sher KBE
Ned Sherrin CBE
Reverend Nicolas Stacey
Dr Miriam Stoppard
Tony Whitehead MBE

Terrence Higgins Trust and Lighthouse are working together for improved HIV services

Terrence Higgins Trust is a registered charity (reg. no. 288527). Company reg. no. 1778149.

Registered office: 52-54 Grays Inn Road London WC1X 8JU. Registered in England. A company limited by guarantee.

encounter BBPs on a daily basis. Far from supporting legislation similar to that proposed by the SE, healthcare providers in Canada, cited by the SE as a model for the planned legislation, have been largely critical of it. Front line staff, including the Canadian Medical Association, the Canadian Nurses Association and the Canadian Association of Nurses in AIDS Care have all rejected the need for compulsory testing, saying such testing without informed consent is unethical and unjustified.[1]

This position was supported by Dr Colin D'Cunha, Chief Medical Officer of Health for Ontario, the Canadian province that implemented a compulsory testing scheme in 2002 against his recommendation: "This may be seen as a significant violation of personal privacy and bodily integrity and focuses attention on the disease status of a contact, resulting in information of little or no value, rather than focusing on fully assessing the situation of the person who may be at risk".[2]

It is useful to look at the Canadian model cited in the SE proposal to better understand the actual risks associated with exposure to HIV contaminated body fluids. The British Columbia Centre for Excellence in HIV/AIDS estimates that the probability of seroconversion after a single percutaneous needle stick exposure is 0.3% (1 in 300) if the source person is known to be HIV positive; 0.12% (1 in 800) if the source is an injecting drug user; 0.06% (1 in 1600) if the source is a man who has sex with men; and lower still if the source person does not have any risk factors.[3] For HIV in particular, the rate of transmission for mucocutaneous exposure is estimated to be, on average, 0.1% (1 in 1,000) with the rate of transmission from an exposure to skin even lower[4]. More telling, there have been no documented cases of HIV infection due to an exposure involving a small amount of blood on intact skin.[5]

Terrence Higgins Trust also questions the need for introducing compulsory testing in terms of the percentage of people thought likely to refuse voluntary HIV testing. Although the SPF says "accused persons are often asked to submit voluntarily to a blood test to establish whether they are infected but for a variety of reasons they rarely do," available data suggests otherwise. A survey of occupational exposure among police officers in Denver, Colorado reports that 32 out of 34 (94%) identified source persons agreed to be tested for HIV.[6] Similarly, a survey of 38 hospitals in Maryland, where HIV tests cannot be administered without consent, found that 94% of 1350 patients unaware of their HIV status agreed to be tested.[7] The UK Chief Medical Officer's Expert Advisory Group on AIDS also supports the idea that the majority of people asked to take an HIV test in these situations agree, saying "It is understood that consent to HIV testing is rarely withheld in these circumstances, when the approach is made in a sensitive manner."[8]

The SE proposal to allow members of the general public to compel those they accuse of exposing them to BBPs will only add to the problems created by extending that right to the police. Such a move is not supported by any of the available data and cannot be justified on the grounds of either public health or public safety.

---

[1] de Bruyn, T., Testing of Persons Believed to be the Source of an Occupational Exposure to HBV, HCV, or HIV, Canadian HIV/AIDS Legal Network, 2001.
[2] Submission to the Standing Committee on Justice and Social Policy, 2001.
[3] British Columbia Centre for Excellence in HIV/AIDS Therapeutic Guidelines. Section 7: Management of Accidental Exposure to HIV, Appendix s7-2a.
[4] Ibid.
[5] de Bruyn,, T. supra, note 1.
[6] Hoffman, RE et al., Occupational exposure to human immunodeficiency virus (HIV)-infected blood in Denver, Colorado police officers. *American Journal of Epidemiology*, 1994; 139(9): 910-917.
[7] Solomon, L, et al, Occupational exposure and voluntary human immunodeficiency testing: a survey of Maryland hospitals. *Infection Control and Hospital Epidemiology*,1999; 20(6): 430-432.
[8] HIV Post-Exposure Prophylaxis, Guidance from the UK Chief Medical Officers' Expert Advisory Group on AIDS, 2004.

Terrence Higgins Trust 52-54 Grays Inn Road London WC1X 8JU Tel: 020 7831 0330
Fax: 020 7242 0121 Email: info@tht.org.uk Website: www.tht.org.uk THT Direct Helpline: 0845 12 21 200

The SE is overestimating the actual risk faced by officers in the field and the number of people likely to refuse voluntary HIV testing. More needs to be done to educate the public in general, and members of the SPF in particular, about the basic facts surrounding HIV and HIV transmission to reduce the unnecessary levels of stress and anxiety the SPF says their members are experiencing. The SE proposal is not a proportionate response given the low level of risk for transmission and high level of co-operation usually seen by people asked to test for HIV voluntarily.

Timeframes for the proper administration of Post-Exposure Prophylaxis are not adequately addressed.

Terrence Higgins Trust is concerned about the timeframes cited in the proposed legislation and the recommended requirements for effective Post-Exposure Prophylaxis (PEP) administration. The proposal says "victim[s] would typically be able to find out about the blood-borne viral infections carried by the accused within less than a week of the incident". To be effective, PEP must be administered much more quickly, ideally within one hour, and treatment courses must be initiated within 72 hours.[9]

The proposal also fails to consider additional delays due to appeals, which would almost certainly follow in the wake of many compulsory testing orders, and extraordinary circumstances in which the source patient is unconscious or unable to give consent because of mental illness or disability, or in which the source patient is a minor.

To be effective, PEP must be administered within 72 hours. The timeframes put forth in the proposal do not create a situation in which this requirement could be met in many cases. This would unnecessarily create a situation in which people exposed to HIV might not be able to access PEP in time.

Protection of confidential of medical information not adequately addressed

Finally, Terrence Higgins Trust is concerned about the apparent lack of consideration regarding issues of confidentiality. The SE proposal says "The applicant and the suspect would in general be at liberty to pass [test result] information to others." We find this deeply troubling and contrary to the recognised need to maintain confidentiality around HIV status, especially given the broad scope of the proposal that would allow not only police officers, but also members of the public, to force others to undergo testing against their will and then be able to disclose what should be private results.
Others have also raised concerns about the confidential nature of HIV testing in general and compulsory testing in particular. The UK Chief Medical Officer's Expert Advisory Group on AIDS said: "It is important that all information about the [exposed] worker and the source patient is kept confidential."[10] They continued: "If you decide to test without consent, you must inform the patient of your decision at the earliest possible opportunity. In such cases confidentiality is paramount: only the patient and those who have been exposed to infection may be told about the test and its result".[11]

Terrence Higgins Trust agrees with the need to support Scottish police officers and other who might have been exposed to HIV and other BBPs. This need is particularly apparent from some of the examples cited by the SPF in their March 2002 petition which says "We have evidence from our members of a case where the wife of [an officer exposed to a BBP] was so badly affected that she aborted their unborn child. There are cases where officers have been so badly affected by the stress involved that they have had to be medically retired from the force."

Patrons include:
Dr Jane Anderson
Sir Michael Bishop CBE
Sir Richard Branson
Simon Callow CBE
Julian Clary
Martin Clunes
The Rt Hon Robin Cook MP
Dame Judi Dench
Stephen Fry
Paul Gambaccini
Charles Hart
Sir Simon Hornby
Sir Elton John
Sir Archy Kirkwood MP
The Earl of Lichfield
Sir Bill Morris
Reverend Paul Oestreicher
Professor Anthony Pinching
The Rt Hon Dawn Primarolo MP
Caroline Quentin
Danny Rampling
Claire Rayner OBE
Gaby Roslin
Sir Antony Sher KBE
Ned Sherrin CBE
Reverend Nicolas Stacey
Dr Miriam Stoppard
Tony Whitehead MBE

[9] Ibid.
[10] Ibid.
[11] Ibid.

Terrence Higgins Trust and Lighthouse are working together for improved HIV services

Terrence Higgins Trust is a registered charity (reg. no. 288527). Company reg. no. 1778149.

Registered office: 52-54 Grays Inn Road London WC1X 8JU. Registered in England. A company limited by guarantee.

These examples are extremely troubling and point to an apparent lack of understanding about basic HIV facts and HIV transmission. Rather than implementing a compulsory testing programme, Terrence Higgins Trust believes the best approach would be better HIV and BBP education and awareness among the members of the SPF and any other groups that feel they are particularly at risk. We agree with the UK Chief Medical Officer's Expert Advisory Group on AIDS position on HIV risk and exposure: "[T]he most effective means for preventing HIV infection in all settings are those which prevent against HIV exposure."[12]

Problems around confidentiality would be compounded by the proposal allowing members of the public to use the proposed legislation to compel others to test against their will. This clearly opens the door for malicious use of the system. Members of the gay community and minority communities would be placed at increased risk of abuse of this provision simply because someone perceived that they carried a BBP. This would be a step in the wrong direction, both in terms of healthcare and social justice.

The need for confidentiality in HIV testing, care and treatment is well understood. The proposal fails to consider some of the basic elements surrounding HIV confidentiality. In particular, the suggestion that results of compulsory HIV test results could be shared with those not involved in exposure incidents is especially troubling. Extending the right to compel compulsory testing by members of the public will almost certainly result in abuse of the proposal by those employing these rights for malicious purposes.

These are some of the key points we would like to raise about the proposed legislation. I am happy to provide additional comment and supporting evidence as needed.

Yours sincerely,

Nick Partridge, OBE
Chief Executive

---

[12] Ibid.