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AIDS and the law enforcement officer

by Theodore M. Hammett, Ph.D.

AIDS (acquired immune deficiency syndrome) is both an increasingly serious public health problem and an extremely emotional issue that has engendered a great deal of fear and misinformation.

AIDS affects criminal justice professionals in two important ways. First, suspects and offenders are frequently people who engage in behavior that puts them at high risk for AIDS. As a result, many law enforcement officers and corrections workers are concerned that they are at increased risk of acquiring the AIDS virus through contact with these suspects and offenders. Second, law enforcement officers can serve a vital educational function in the community because they come into contact with many people who exhibit high-risk behavior—specifically intravenous drug abusers and prostitutes.

This article summarizes the latest medical information on AIDS, presents the concerns expressed by 35 police departments contacted for the National Institute of Justice by the Police Executive Research Forum (PERF), responds to those concerns, and offers suggestions on how law enforcement agencies can educate and protect their staff.

Law enforcement officers on the job must be careful when they come into contact with blood or other body fluids, but AIDS is not transmitted through casual contact—for example, coughing, sneezing, breathing, touching, handshaking, hugging, or sharing eating utensils.

What is AIDS?

AIDS is caused by a virus known as Human Immunodeficiency Virus (HIV). It infects and destroys certain white blood cells, thereby undermining the body's ability to combat infection. One can be infected with HIV for years without ever developing symptoms of AIDS. However, infected persons can transmit the virus even though they may not have symptoms.

The National Academy of Sciences estimates that 25 to 50 percent of HIV-infected persons will develop AIDS within 5 to 10 years of infection.

AIDS is not a single disease—there is a spectrum of reactions to the AIDS virus. An individual who has the AIDS virus may have no symptoms of illness whatsoever for an extended period following infection. To be diagnosed with AIDS, according to the definition established by the Centers for Disease Control (CDC), a patient must have one or more "opportunistic infections" or cancers in the absence of all other known underlying causes of immune deficiency.

Opportunistic diseases include a particular type of pneumonia, malignancies, and a type of skin cancer. Persons who die from AIDS die from such opportunistic diseases, not from AIDS itself.

Other symptoms include fever, weight loss, diarrhea, and persistingly swollen lymph nodes. Patients with such symptoms, but not meeting the CDC definition of AIDS, are generally considered to have "AIDS-related complex" (ARC). Although the symptoms of ARC may be debilitating, they are generally not life threatening. To date, not all persons who have ARC have developed AIDS.

Most patients who develop end-stage AIDS die within 2 years of diagnosis and very few live more than 3 years. Prospects for a vaccine or cure for the immediate future are not promising.

Testing for antibodies to the AIDS virus

Infection is identified through a blood test (called an ELISA test) that detects antibodies to the AIDS virus. Originally

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Theodore M. Hammett, Abt Associates, Inc., is Project Director and author of several NIJ-sponsored studies on AIDS. This article is condensed from Dr. Hammett's *AIDS and the Law Enforcement Officer: Concerns and Policy Responses*, a part of the Issues and Practices series published by the National Institute of Justice, June 1987.

developed to screen donations to blood banks, it is now the first step in testing individuals for infection. The presence of antibodies indicates that the immune system has attempted to fight off an AIDS-related infection. If the initial ELISA test is positive, a second ELISA test is performed; if that test is also positive, the results should be confirmed using the more accurate "Western Blot" test.

A confirmed positive result means that the individual has been infected, but the test cannot pinpoint the date of infection. Nor can the test predict if the person will develop ARC or AIDS. However, the Centers for Disease Control recommends that persons with positive tests be considered infected and infectious.

How is the AIDS virus transmitted?

The AIDS virus is difficult to transmit and is quite fragile when outside the body. It can be destroyed by heat, many common household disinfectants and bleaches, and by washing with soap and hot water.

As with hepatitis-B, the AIDS virus is transmitted through exposure to contaminated blood, semen, and vaginal secretions. This occurs primarily through sexual intercourse and needle-sharing by intravenous drug abusers. Transmission from infected mother to fetus or infant has also occurred.

Transmission of the AIDS virus has also been traced to blood transfusions and to blood products given to hemophiliacs. However, the Nation's blood supply is now considered safe as a result of universal screening of donated blood and heat treatment of blood products. CDC estimates that only about 100 transfusion-associated infections will occur annually out of a total of 16 million units of blood transfused.

The AIDS virus is not transmitted through casual contact. A number of studies have confirmed that the AIDS virus is not spread, for example, by sneezing, coughing, breathing, hugging, handshaking, sharing eating and drinking utensils, using the same toilet facilities, or other forms of nonsexual contact or activity.

There is no evidence of AIDS virus transmission in schools, offices, churches, or other social settings. There are no documented cases of police officers, paramedics, correctional officers, or firefighters becoming infected with the AIDS virus through performance of their duties.

Except for a very small number of cases of infection in health care workers attributed to accidental needle sticks or other exposure to blood, there are no reports of AIDS infection as a result of occupational contact.

Law enforcement concerns

AIDS is currently an important issue in the law enforcement community. Nearly all (33 of 35) of the police departments surveyed for this report stated that staff had "expressed some concern related to AIDS." Patrol officers—those most likely to have the greatest direct contact with the public—in almost all (94 percent) of the departments reported anxiety about exposure to the virus. However, other law enforcement personnel, including lockup staff, evidence technicians, laboratory staff, and detectives, also are concerned about AIDS.

The level of concern tended to be highest in departments serving jurisdictions with few AIDS cases. This indicates that apprehension—and especially misinformed fear—about AIDS may be inversely related to actual experience with those who have the disease. Knowledge and experience tend to calm unrealistic fears about AIDS.

Assaultive behavior. Law enforcement officers express anxiety about a range of assaultive and disruptive behavior—particularly biting, spitting, and throwing of urine or feces. The fact is that one cannot be infected through biting unless the person who bites has blood in his mouth and that blood comes into contact with the victim's blood. The AIDS virus has been isolated in only very small concentrations in saliva and urine and not at all in feces. There are no known cases associated with transmission through saliva or urine.

Police lockups. Officers working in lockup tend to be concerned about the same issues as officers on the street. However, lockup introduces two additional dimensions—the risk of infection to other prisoners and the threat of violence or intimidation toward infected individuals. The key to an effective lockup policy is careful supervision. Despite difficult logistical problems and limitations of time, staff, and facilities, departments must carefully assess the risks in not providing adequate supervision.

Casual contact. *Despite all the evidence that the AIDS virus is not transmitted through casual contact, fully two-thirds of the law enforcement agencies surveyed report that staff have expressed concern about becoming infected through casual contact in the performance of their duties.*

Only regular and accurate education can counteract irrational fears. The plain fact is that no known cases of AIDS are attributable to casual contact. This is confirmed by studies of families, schools, and workplaces. Departments should keep informed of the latest research on the transmission of the AIDS virus, develop contacts with local medical experts, establish formal programs to monitor AIDS research, and disseminate key findings to staff as they become available.

Teaching the facts

AIDS is a disease of high-risk behavior, not high-risk groups. Far too many people take the potentially dangerous position that the AIDS virus may be transmitted by contact with members of "high-risk groups." In fact, everyone must be concerned with a few well-defined types of activities—specifically unprotected sexual intercourse, sharing of needles, and other activities where blood, semen, or vaginal secretions are exchanged.

If the AIDS training does not convey this information, and if the tone is not properly balanced between caution and reassurance, it may encourage misinformed beliefs that in turn can severely affect the operational effectiveness and service delivery of a law enforcement agency.

It is counterproductive to train staff to wear gloves, gowns, and masks for all contact with persons known or suspected

Who has AIDS?

The Centers for Disease Control's *AIDS Weekly Surveillance Report* recorded more than 40,000 cases of AIDS in adults and children in the United States through August 1987. More than 20,000 persons have died from AIDS.*

Of all persons with AIDS, 90 percent have a history of either homosexual/bisexual activities or intravenous drug abuse.

Homosexual/bisexual males constitute 66 percent of victims; 16 percent are intravenous drug abusers; and 8 percent are both homosexual and IV drug abusers. Table 1 provides a detailed breakdown of AIDS cases by category.

More than one-half (53 percent) of the cases have been located in New York and California. New Jersey, Florida, and Texas collectively account for another 19 percent. AIDS cases are heavily concentrated in cities and major metropolitan areas.

Many public health officials believe that the portion of cases attributed to intravenous drug abuse is likely to grow dramatically in the next few years. Moreover, they believe the greatest potential for significant spread of infection to the heterosexual population is through infection of the sexual partners of intravenous drug abusers.

* Effective September 1, 1987, CDC revised the definition of AIDS. The revision broadens the scope of the definition and will result in significantly increased numbers of reported AIDS cases during the next publishing period.

Table 1.

Confirmed AIDS cases by category

Transmission category	Percent of all cases
Homosexual/bisexual males	66
Intravenous drug abusers	16
Homosexual males and IV drug abusers	8
Transfusion recipients	2
Hemophiliacs	1
Heterosexuals	4
Undetermined[1]	3
Total	100%

[1]Includes patients with incomplete risk information (due to death, refusal to be interviewed, or inability to follow up on initial information), patients still under investigation, men reported only to have had heterosexual contact with a prostitute, and interviewed patients for whom no specific risk was identified. CDC believes that if full information were available it would be possible to assign these cases to other transmission categories.

Source, CDC, *AIDS Weekly Surveillance Report*, August 31, 1987.

to be infected with AIDS or persons who engage in AIDS high-risk behavior. Such precautions are not normally necessary and may encourage the incorrect view that the AIDS virus can be transmitted by casual contact.

On the other hand, statements that complacently suggest that risk is limited to certain groups may seriously undermine the critical educational message that everyone must be careful about certain behavior and exposures.

Law enforcement officers, as well as other people, should be careful about sexual relationships and blood-to-blood contact with *all* persons—whether or not they have AIDS, appear to be ill, or exhibit high-risk behavior.

AIDS training should be keyed to specific law enforcement issues and situations. It is not enough to distribute generic informational materials. Training topics should include arrest procedures, searches, CPR, first aid, evidence handling, transportation of prisoners, crime scene processing, disposal of contaminated materials, lockup supervision, and body removal procedures.

The most effective training programs are those developed jointly by management, staff members, unions, medical experts, and health professionals. If possible, training on AIDS should be provided before staff develop irrational fears of the disease. It should be included in both recruit and regular inservice training.

Training should be conducted by a knowledgeable educator so staff can ask questions and receive accurate answers. Videotapes or slide presentations should be supplemented with question-and-answer sessions.

Law enforcement officers as educators in the community

Once they become knowledgeable about AIDS, law enforcement staff can exert a positive educational influence on their communities. Police officers can tell prostitutes, drug abusers, and those who have no way of hearing media messages about the risk involved in needle sharing and in unprotected sexual intercourse. Moreover, they can convey these important messages in clear, frank language understandable to people on the street.

Police officers can also refer people to appropriate organizations for voluntary testing, diagnosis, medical care, and support services.

A law enforcement agency that invests in high-quality training for its staff invests in the welfare not only of its own people but of the larger community as well.

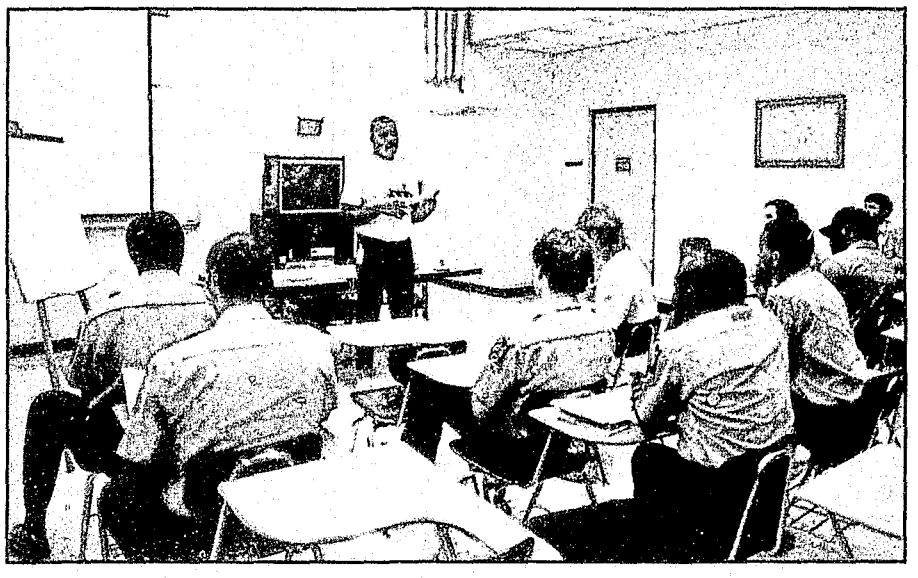
Legal and labor relations issues

More than one-half of the departments surveyed consider AIDS a potentially serious legal issue for law enforcement. Particular questions include the following:

- What are the department's responsibilities to report incidents in which the AIDS virus may have been transmitted?
- What policies should the department establish regarding HIV antibody testing in such cases?
- What would be the department's liability if an officer contracts the AIDS virus in the line of duty?
- What legal or labor relations issues are involved when an officer refuses to perform duties out of fear of AIDS?
- What are the department's responsibilities for protecting the public from infection when dealing with potential carriers of the virus?
- What are the department's responsibilities to prevent AIDS virus transmission in a police lockup?

Officers' obligation to perform their duty. Individuals assume a certain amount of risk when they become law enforcement officers. Their departments cannot be held liable for damages if, for example, they are killed or wounded by a gunshot from a suspect, unless established procedures were violated or the department was negligent. It is reasonable to assume that if an officer contracted the AIDS virus from a suspect or other individual, the situation would be treated in a similar fashion.

Any claim of the department's liability would be further weakened if the officer had been provided accurate, thorough, and regular training on AIDS. For example, consider a case in which an officer had *not* been told to cover open wounds, wear gloves when contact with blood was likely, and wash thoroughly after any contact with blood. If that officer were to develop an infection as a result of *not* taking these precautions, then the department might be held liable. This example underscores the importance not only of training but of documentation of training as well.



A member of the Whitman-Walker health clinic in Washington, D.C., instructs officers at the Montgomery County, Maryland, Detention Center. The most effective training programs are developed jointly by management, staff members, unions, medical experts, and health professionals. Regular and accurate education can counteract irrational fears.

Agencies should make it clear that anxiety about AIDS does not free officers from the obligation to perform their duties. Four of the surveyed departments reported incidents in which officers refused to perform duties out of such fear. These incidents involved transportation of prisoners, searches, and handling of evidence. In almost every incident, the departments took swift and strong action against the officers involved, such as suspension without pay.

It appears that any legal claim supporting an officer's refusal to perform duties based on fear of AIDS would be difficult to sustain on two grounds: first, because the research is so clear on the unlikelihood of viral transmission through the types of contacts likely to be experienced by police officers, assuming standard precautions are taken; and second, because the officer assumes certain risks in accepting the job.

Agency responsibility to prevent transmission. Because legislation and case law are still evolving, it is highly speculative to attempt to assess the legal implication of an agency's potential responsibilities to protect the public from AIDS. Should law enforcement agencies, for example, detain intravenous drug abusers or prostitutes who might spread the virus?

To sustain a legal claim against a department on the basis that the department has responsibility to prevent transmission, a plaintiff would first need to establish that law enforcement agencies legitimately bear such responsibilities and can legitimately be expected to carry them out.

A plaintiff would also need to prove that the infection was not contracted as a result of consensual conduct widely known to pose high risks of transmission. Based on these factors, it would appear very difficult to prove that a law enforcement agency violated its responsibility to protect the public.

However, more is involved in such situations than potential legal liability. In

Figure 1.

Responses to AIDS-related law enforcement concerns

Issue/concern	Educational and action messages
Human bites	Person who bites usually receives the victim's blood; viral transmission through saliva is highly unlikely. If bitten by anyone, milk wound to make it bleed, wash the area thoroughly, and seek medical attention.
Spitting	Viral transmission through saliva is highly unlikely.
Urine/feces	Virus isolated in only very low concentrations in urine; not at all in feces; no cases of AIDS or AIDS virus infection associated with either urine or feces.
Cuts/puncture wounds	Use caution in handling sharp objects and searching areas hidden from view; needle stick studies show risk of infection is very low.
CPR/first aid	To eliminate the already minimal risk associated with CPR, use masks/airways; avoid blood-to-blood contact by keeping open wounds covered and wearing gloves when in contact with bleeding wounds.
Body removal	Observe crime scene rule: Do not touch anything. Those who must come into contact with blood or other body fluids should wear gloves.
Casual contact	No cases of AIDS or AIDS virus infection attributed to casual contact.
Any contact with blood or body fluids	Wear gloves if contact with blood or body fluids is considered likely. If contact occurs, wash thoroughly with soap and water; clean up spills with one part household bleach to nine parts water.
Contact with dried blood	No cases of infection have been traced to exposure to dried blood. The drying process itself appears to inactivate the virus. Despite low risk, however, caution dictates wearing gloves, a mask, and protective shoe coverings if exposure to dried blood particles is likely (e.g., crime scene investigation).

the next few years, more and more departments are likely to face the question of how to deal with prostitutes and others in police custody who may be infected with the AIDS virus. Law enforcement agencies should work with public health officials to develop clearly defined policies on how to handle such situations both to prevent continued transmission of the virus and to protect constitutional rights. Policies should be developed promptly so that they are in place before an incident occurs.

Responsibility to prevent transmission in police lockups. Claims of law enforcement agencies' responsibilities appear to be much more supportable when the conduct resulting in transmission of the AIDS virus was coerced rather than consensual and occurred in a place under the agency's supervision.

While lockups and other correctional facilities differ in significant ways, the experiences of prisons and jails may be instructive. Cases brought by inmates asking for protection from infected inmates are pending in several States. No cases have been filed yet by inmates seeking damages for allegedly contracting the AIDS virus while in a correctional facility.

Correctional systems (and presumably police lockups) have been required by courts to adhere to a standard of reasonable care in protecting inmates. In several cases, correctional systems and their officials have been held liable for damages resulting from homosexual rape and other assaults, on the ground of inadequate supervision.

However, correctional systems have not been held responsible for ensuring the *absolute* safety of persons in their custody. In several cases, for example, courts have held that a correctional system could be liable for damages resulting from assault only if its officials knew—or should have known—of the risk to the particular inmate.

Law enforcement agencies should be aware that they may face more difficulties than correctional facilities do in protecting prisoners from rape and other incidents because of the communal nature of lockups, the rapid population turnover, and the lack of formal prisoner classification. Therefore, adequate supervision becomes essential.

The Assistant Attorney General, Office of Justice Programs, provides staff support to coordinate the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

Suggestions for law enforcement agencies

In addition to conducting regular, authoritative training sessions about AIDS for both new and seasoned personnel, law enforcement agencies are advised to:

- Develop and enforce consistent, rational AIDS policies regarding precautionary measures and protective equipment. Before proposing any precautionary measures, departments should weigh carefully their possible effects on operations and educational programs. (Figure 1 presents actions to take for specific incidents.)
- Ensure careful supervision of lockup areas to prevent sexual contact or needle sharing.
- Keep the department continuously abreast of AIDS research developments and pass all new information on to staff.
- Coordinate the department's AIDS training and policies with local public health departments, hospitals, emergency medical services, fire departments, and community-based AIDS action groups.

AIDS poses a range of complicated and potentially serious problems for law enforcement agencies. However, timely and rational policy choices, regular staff training keyed to specific law enforcement concerns, and careful consideration of possible legal liabilities can go far toward minimizing the effects of these problems on the delivery of police services to the public.

For more information

As part of its continuing commitment to keep pace with the rapidly developing AIDS situation, the National Institute of Justice has established the NIJ AIDS Clearinghouse. Now criminal justice professionals can call a centralized resource with their questions and concerns about AIDS.

An information specialist with a broad knowledge of AIDS issues is available to answer questions, make referrals, and suggest publications pertaining to AIDS as it relates to criminal justice.

The Clearinghouse distributes current information on AIDS developed by NIJ, the Centers for Disease Control, and other agencies of the U.S. Public Health Service and the Department of Justice, as well as materials prepared by professional associations. The Clearinghouse places special emphasis on gathering and disseminating materials and information and making referrals in response to questions criminal justice professionals have about AIDS.

To reach the NIJ AIDS Clearinghouse, call 301–251–5500.

Free single copies of the full NIJ Issues and Practices report *AIDS and the Law Enforcement Officer: Concerns and Policy Responses* (NCJ 105196) may be obtained by checking no. 35 on the order form.

Free single copies of the AIDS Bulletin, *The Cause, Transmission, and Incidence of AIDS* (NCJ 106678) may be obtained by checking no. 38 on the order form.

Testing for antibodies to the AIDS virus

The antibody tests represent the best current means of tracking the infection status of individuals who may have been infected with the AIDS virus. It usually takes 6 to 12 weeks for antibodies to appear. If an officer tests negative immediately following an incident in which infection may have occurred and tests positive 2 months later, and there is no other known source of infection, this would be strong—although not incontrovertible—evidence that infection occurred as a result of that incident.

Because of potential legal liabilities, departments may wish to require, recommend, or make available testing for officers and other individuals involved in incidents. It is probably beneficial to the officer and his or her family to know whether infection has occurred, yet the officer must weigh the potential negative effects in terms of access to insurance, employment, and housing should positive test results become known. Counseling from a qualified health professional must be part of any testing procedure.

More than 70 percent of the departments surveyed for this study have policies for antibody testing after incidents in which infection may have occurred. However, few are clear and consistent. In 84 percent of the agencies, the policies apply only to testing of the staff members involved in the incident. Three departments reported policies that cover testing of both the staff member and the individual suspected of being infected with the AIDS virus.

Department policies on antibody testing should specify the rationale for the policy position and the procedures to be used in any testing program. All policies and procedures must, of course, take into account applicable State and local laws on confidentiality and reporting of results. At a minimum, written policies should address the following questions:

- Who is to be tested?
- What is the purpose of testing?
- Is testing voluntary or mandatory?
- When and where are tests performed?
- What confirmatory tests are to be used?
- Who can and should be notified of the results?
- What are the requirements for pre- and post-test counseling?