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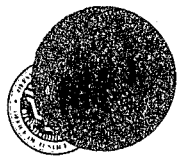

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Legal Issues Affecting Offenders and Staff

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Introduction

AIDS presents crucial and complex legal issues for criminal justice agencies. Policy development requires the careful balancing of competing rights: of HIV-infected and noninfected offenders, of staff members, and of the public at large.

This *AIDS Bulletin* summarizes leading legal developments and their policy implications in the following areas: (1) preventing the spread of HIV (the AIDS virus) within offender populations; (2) rights of offenders with HIV infection or AIDS; (3) legal issues regarding staff; and (4) public safety issues. Future bulletins will provide periodic updates on legal developments as well as discussions of such issues as notification of medical status to spouses, sex partners, victims of sexual assault, and other justice system agency concerns.

Preventing the spread of HIV within offender populations

AIDS education. Preventive education, the most effective weapon currently known against the spread of HIV (and of AIDS-related administrative problems), is not unduly complicated by legal obstacles. It is, in fact, the one policy area in which the interests of staff members, individuals in custody, and the public all coincide.

From the Director

Acquired immunodeficiency syndrome—AIDS—has been called the most serious public health problem in the United States and worldwide today. Since it first appeared in 1981, there has been an enormous amount of uncertainty and fear about this fatal disease. Because they may be in contact with intravenous drug users and others at high risk for the disease, criminal justice professionals understandably are concerned about becoming infected with the AIDS virus while carrying out their duties.

Until a vaccine or cure for AIDS is found, education is the cornerstone of society's response to this deadly disease. Accurate information can help dispel misinformation about the disease and its transmission, thus enabling criminal justice personnel to continue to perform their duties in a safe and professional manner.

Since 1985, the National Institute of Justice has worked with the Centers for Disease Control and other public health officials to provide important authoritative medical information about AIDS to criminal justice professionals.

Two special reports on AIDS—as AIDS relates to corrections and law enforcement agency procedures—have been published and widely disseminated. A third report has just been published that addresses AIDS as it affects probation and parole services.

This *AIDS Bulletin* is part of a new series designed to inform criminal justice professionals about the disease and its implications for criminal justice agencies.

Former President Reagan has said that the AIDS crisis "calls for urgency, not panic... compassion, not blame... understanding, not ignorance." The National Institute of Justice is working to ensure that criminal justice professionals have the accurate information they need to understand and deal with the risks created by AIDS. Until medical science can bring this deadly disease under control, our best defense is a well-informed citizenry.

James K. Stewart
Director

The most compelling reason to implement education and prevention programs for inmates and offender populations under the supervision of criminal justice agencies is, of course, to prevent transmission of the AIDS virus; yet, there are legal considerations as well. Several suits have been filed by prisoners complaining about the lack of education and other preventive measures, with at least one case resulting in a court order to provide educational materials.[1] Additionally, evidence of a failure to provide and document appropriate training and education could prove harmful in a suit filed by an inmate, probationer, or parolee who alleges to have become infected with HIV while in custody or under supervision of a criminal justice agency.

Police lockup security. Police departments must take steps to ensure lockup security. Since it is impossible in most cases to know who is HIV infected, every individual taken into custody should be considered a possible carrier. This increases the importance of continual supervision of any group lockup area, since rape, sexual activity, or needle sharing among arrestees could result in HIV transmission. Although lawsuits based on infection in such circumstances may face causation problems (because of the difficulty of linking infection to a specific incident), it is preferable to prevent incidents that might precipitate lawsuits.

Rapes and assaults. Rape is one of the most serious safety issues in lockup, jail, and prison settings. Even before AIDS became an issue, prisoners successfully brought suit when they could show that prison officials negligently failed to provide adequate protection against rape and other assaults.[2] Although there are currently no cases in which prisoners have established liability for HIV infection based on inadequate protection against rape (due to proof problems, the relative newness of the issue, and improved management practices in many prisons), the possibility cannot be discounted. Indeed, in a recent Indiana case, a correctional system was alleged to be liable for failure to segregate a predatory HIV-positive inmate who later bit another inmate. The case was dismissed without prejudice, and the plaintiff has refiled.[3] This is a potentially important case in shaping the correctional system's responsibility for HIV infection and AIDS. Once again, supervision adequate to protect all individuals in custody, particularly the young or physically weak, should be stressed.

In general, correctional systems have been required by courts to adhere to a reasonable standard of care in protecting inmates. Breaches of this standard may constitute cruel and unusual punishment. However, 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 inmate-on-inmate assault only if its officials knew—or should have known—in advance of the risk to the injured inmate.[4]

Unprotected blood exposure. Because HIV infection can be spread through exchange of blood or other body fluids, any practices that could lead to unprotected blood exposure should be avoided. Clark County, Nevada, for example, has been served with discovery requests preparatory to a possible lawsuit by a former county jail inmate alleging that he was exposed to the AIDS virus through a jail policy requiring that inmates share razors.[5] This lawsuit will undoubtedly face troublesome proof problems because of the difficulty of linking infection to any specific incident. However, this is an example of why some traditional policies may now need to be reconsidered.

Mandatory testing for HIV antibodies. A more controversial policy is the mandatory screening of all offenders for HIV antibodies. While relatively few correctional systems—and no probation or parole systems—presently conduct mass screening, a number of correctional systems are considering this avenue.[6] Some jurisdictions now require testing of selected groups of offenders, such as prostitutes or those convicted of sexual assaults or other sex offenses. (Practical issues associated with testing, including issues of test reliability, are discussed in a separate *AIDS Bulletin*;[7] this discussion focuses on legal issues.)

Most inmate suits regarding testing seek *increased* testing, either on a voluntary basis or, much more commonly, as a systemwide mandatory policy. Many of these suits are pending and also seek segregation and/or work assignment restrictions for HIV-positive inmates.[8] However, a number of suits have been dismissed, including one by the U.S. District Court for Southern Indiana, on the grounds that State legislatures and correctional officials, not Federal courts, can best decide how inmates should be protected from AIDS. In May 1988, the first legal challenge to systemwide mandatory testing was filed by the American Civil Liberties Union's National Prison Project on behalf of a group of Alabama inmates. The suit alleges that the correctional system's program unconstitutionally compels prisoners to undergo testing against their will, fails to advise prisoners as to the "inconclusive and sometimes misleading significance of the results," fails to provide proper counseling and medical care to seropositive inmates, compels them to live in a segregated unit in conditions resembling a "leper colony," and deprives them of programs available to other inmates.[9]

The Assistant Attorney General, Office of Justice Programs, coordinates 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.

Some offenders have sought court protection against individually ordered tests; again, most cases are pending. However, in a Massachusetts case, a trial court judge ruled that an inmate who had allegedly scratched and spit on a correctional officer could not be involuntarily tested to learn if he were infected with HIV.[10] The ruling was based on a State law prohibiting involuntary HIV-antibody testing and disclosure of test results, and took note of the strong medical evidence against HIV transmission through saliva.

Questions closely related to testing include whether and to whom test results may be divulged, and whether offenders who have tested positive may be segregated from others. As these questions necessarily involve the rights of infected as well as uninfected offenders, they are discussed below.

The rights of offenders with HIV infection or AIDS

The right to treatment. HIV-infected individuals include three subgroups: (1) seropositive persons—that is, persons who have tested positive for HIV antibodies but are asymptomatic; (2) persons with a milder set of HIV-related symptoms that may progress to AIDS (this was often termed AIDS-related complex (ARC) in the past, but the term is falling out of favor in the scientific literature); and (3) individuals diagnosed with AIDS. Seropositive persons need no special medical care beyond general guidance regarding nutrition and health, and periodic monitoring of their physical condition. There is currently no known cure for HIV infection, although Azidovudine (AZT) has been shown to prolong life in some AIDS patients and its effectiveness in treating asymptomatic persons is under study. People with AIDS and other manifestations of HIV infection may need extensive medical care, and those who are in custody have the same legal right to treatment as do incarcerated persons with any other disease.

In order to avoid possible liability for inadequate treatment, the medical response to AIDS and HIV infection should be dictated by the medical needs of the patient. Hospitalization, which may seem at first glance a convenient way to segregate persons with AIDS from others, can be medically inappropriate. Because AIDS and HIV infection cause extreme susceptibility to infections, hospitals may create special health risks for persons with AIDS. In a case currently pending in Massachusetts, an inmate with AIDS, whose symptoms are in remission, is contesting his permanent assignment to a hospital, in part based on the increased risk to his health.[11] A key question in deciding this case—and a key issue for administrators who hope to avoid similar suits—will be whether or not the hospital assignment is medically indicated.

Lack of treatment or inadequate treatment may also be a legal risk, particularly if the medical staff is unprepared to meet the often intense medical needs of AIDS patients, or if the staff is hampered by exaggerated fears of AIDS. In this regard, staff education is absolutely necessary. The legal risks of inadequate care may be high: suits now pending in California, Connecticut, Nevada, and Idaho allege inadequate medical attention to HIV-infected inmates.[12]

Confidentiality and notification issues. Once an offender is identified as being HIV infected, the question often arises as to who may be notified of this information without violating the offender's right to privacy. This is particularly true in the case of seropositive persons, who may be infectious without exhibiting any symptoms. The lawsuits that have arisen so far on this issue all involve inmates, but the legal questions clearly affect probationers and parolees as well. Many categories of individuals may have a need for AIDS-related medical information, or assert such a need. These include medical staff, correctional officers, correctional administrators, probation and parole agencies and placements, and the sex partners of seropositive persons.

Although both inmates and correctional staff have asserted legal claims of a right to know test results (based on perceived health risks associated with not knowing), seropositive individuals have conversely asserted claims of a right to privacy. In a recently decided New York case, separate housing of inmates with AIDS, instituted by the correctional department to facilitate medical care, was struck down on the ground that it irremediably labeled the inmates as persons with AIDS, thus violating their right to privacy. A pending Connecticut case challenges the correctional system's practice of maintaining and circulating lists of HIV-seropositive inmates and flagging records of HIV-infected inmates that accompany them when they are transported outside the institution. Indiscriminate circulation of HIV antibody test results, even to staff, offers few benefits—and may entail a risk of liability. Strict and specific procedures are needed to govern disclosure of this information. Indeed, in many States, statutes prohibit disclosure of test results without the consent of the subject.[13]

In this context, it is important to remember that HIV infection is spread only through the exchange of blood or body fluids. Inmates may not reasonably assert a right to sexual or needle-sharing encounters with other inmates, and should face no risk from authorized forms of contact with seropositive inmates. Although inmates might assert a danger of rape by seropositive inmates, they would presumably need to show facts establishing that such attacks were possible and likely. In the absence of such a showing, a court might well view informing inmates of others' antibody test results as a violation of privacy rights without any strong counterbalancing health or safety benefits.

In most cases, staff of criminal justice agencies face no significant risk of HIV transmission from seropositive offenders,

and therefore could not be indiscriminately informed of test results without some risk of liability. Exceptions might include cases in which the seropositive individual was known to be an active intravenous drug user (who might possess needles contaminated with HIV-infected blood, thus posing some risk of infection to staff through accidental needle sticks), or where the individual had in the past exhibited assaultive behavior, such as biting a staff member (potentially posing a very slight risk of infection).

On the other hand, medical staff should be informed of inmates' HIV-antibody status as a general policy, since such information would be helpful in diagnosing and treating any AIDS symptoms that might later appear. However, to minimize the risk of liability, each agency should adopt a written policy specifically requiring a physician (or other health-care provider) to counsel individuals they know to be seropositive regarding their obligation to inform all their sexual partners of their medical condition. According to recent Centers for Disease Control (CDC) guidelines, in the event a seropositive individual refuses to notify his or her sexual partners, the health-care professional has the responsibility to make confidential notification. However, health-care workers should only undertake to notify sexual partners if the seropositive individual refuses to do so.[14] Of course, officials should ensure that any notification policy they adopt is in conformance with all applicable laws regarding confidentiality and disclosure.

Segregation and related constitutional issues. An equally controversial question is whether seropositive inmates and those with AIDS symptoms may or should be segregated from the larger prison population. Some inmates have sued, seeking the segregation of all seropositive inmates.[15] Conversely, HIV-seropositive individuals have alleged their conditions of incarceration to constitute denial of equal protection (principally through segregation, exclusion from work programs, religious services, law libraries, and other facilities and activities), denial of due process, and/or imposition of cruel and unusual punishment.[16] While several cases remain pending, in general courts have *upheld the discretion of correctional officials where the policy* (whether to segregate, avoid segregation, or institute other restrictions) *is held to be based on legitimate health, safety, and institutional security considerations.*

Thus, segregation policies have been upheld in a New York case involving inmates with AIDS[17] and in an Oklahoma case involving segregation of seropositive inmates.[18] Nonsegregation policies were similarly upheld in an earlier New York case,[19] and in an Oregon case.[20] Decisions to restrict the privileges of individuals with HIV infection or AIDS for public health reasons have also been upheld; for example, in a New York case in which the plaintiff was denied conjugal visits, although visits had been allowed before the inmate was known to be infected. On the other hand, the New York State correctional system's exclusion of an inmate with AIDS from a furlough program was overturned. The court rejected the State's contention that the inmate required continuous medical monitoring that would not be available to him while on furlough and concluded that, in this case, the exclusion was not rationally related to a legitimate State purpose—namely, protection of the inmate's health.[21]

A central issue in deciding equal protection claims is whether inmates contesting segregation or other restrictions are "similarly situated" to other inmates who are not so restricted. Under this legal standard, it is impermissible to refuse arbitrarily one person's rights or privileges that are routinely granted to others in circumstances a court would consider similar. However, if the person is in circumstances that a court would consider significantly different—that is, not similarly situated—from those routinely granted the right or privilege, he or she has no legal grounds for complaint.

In upholding segregation of inmates with AIDS in a New York prison hospital, the court found that inmates with AIDS, even when their symptoms were in remission, could not avail themselves of an equal protection argument because they were not similarly situated to healthy inmates.[22] However, in a pending Massachusetts case contesting permanent hospitalization of an AIDS patient, even when his symptoms are in remission, the plaintiff bases his equal protection argument on the current policy of the correctional system that allows ARC patients, but not AIDS patients (who are similarly situated in that both groups are HIV infected and capable of infecting others), to return to the general prison population. This argument did not prevail in this inmate's request for a preliminary injunction, but will be further considered in the Massachusetts case.[23]

It should be stressed that identification and segregation of seropositive individuals are, at best, incomplete strategies for preventing HIV transmission. Even systemwide screening, in States where it is legal, cannot identify all HIV-infected inmates, due both to technical problems with the test and the lag time (usually 3 to 12 weeks, but sometimes longer) between infection and appearance of detectable antibodies. As such, mass screening and segregation of seropositive individuals cannot be considered substitutes for increased inmate education and improved security to minimize high-risk behaviors.

Legal issues regarding criminal justice staff

Duty to train employees and to maintain safe working conditions. To date, there have been no documented cases of job-related HIV infection or AIDS among employees of criminal justice or public safety agencies. This includes correctional officers, law enforcement officers, probation and parole officers, firefighters, and emergency medical technicians. Indeed, since AIDS infection can only be contracted through the exchange of

blood or body fluids, ordinary criminal justice duties do not subject staff members to any significant risk of infection. Nonetheless, staff training and adequate safety guidelines are important both to protect against those few instances that might entail slight risk (such as encountering a contaminated hypodermic needle during a search), and to protect against work disruptions due to misinformation and unfounded rumors about AIDS.

Departments are not legally required to ensure the absolute safety of their employees, but only to adhere to a reasonable standard of care. Just as a department would only be held liable for a gunshot wound incurred in the line of duty if established safety procedures had been violated or the department had been otherwise negligent, so in the case of HIV infection such negligence would also need to be shown. (Of course, worker's compensation might well apply to either case, but would not entail the serious consequences of a finding of departmental liability.) The most obvious form of negligence would be failure to provide adequate training on precautionary measures against HIV infection, or adequate equipment to implement these precautions.

Recommended training and prevention procedures, aimed both at protecting staff and avoiding possible liability, are described in detail in a forthcoming *AIDS Bulletin*.[24] To guard against possible future claims against the department, it is important not only that training be given and safety procedures followed, but that both training and compliance with established precautionary procedures be documented. This documentation could be important evidence in future lawsuits.

Work disruptions due to fear of AIDS. Despite the extremely low risk of HIV infection associated with criminal justice duties, a number of agencies have faced potential work disruptions as staff members have refused to conduct searches, transport prisoners, or handle evidence out of fear of contracting AIDS. Since criminal justice staff have long assumed a wide variety of much greater risks—such as offender assaults, gunshot wounds, high-speed chases and so on—it is clear that administrators must offer leadership in placing this issue in its proper perspective. While appropriate training can do much to allay concern, departments may still face work refusals due to the highly emotional nature of AIDS-related fears, as well prejudice against homosexuals and other groups perceived as being at high risk for HIV infection and AIDS. In most cases, departments have responded to unwarranted work refusals with swift and severe disciplinary action. To minimize their susceptibility to legal challenge, disciplinary guidelines should be clearly specified in writing, should be explicitly based on accurate information about risk factors, and should be consistent with standard department practices.

Thus, for example, the District of Columbia Department of Corrections' guidelines on AIDS emphasize the evidence against transmission by casual contact and state that "employees should not be excused from carrying out their duties when no unusual personal risk is involved."[25] There have been no court challenges to actions taken under the guidelines, and it seems unlikely that such a challenge could prevail.

In Minnesota, however, a corrections officer who was fired for refusing to search inmates was reinstated by an arbitrator, who noted that staff members had been given misleading information regarding AIDS; specifically, a memorandum advising officers that "no one really knows the way AIDS is transmitted, so be careful . . ."[26] The message for administrators is clear: *there should be mandatory AIDS training for all staff; all training materials on AIDS must be clear and accurate; and all employees must be advised that, given such training, they will be subject to disciplinary action if they refuse to perform their duties out of a fear of contracting AIDS.*

Labor considerations for employees with HIV infection or AIDS. Because AIDS is a disease that can affect a wide range of persons, there may eventually be occupation-based cases of AIDS among staff members of criminal justice agencies. Labor and antidiscrimination laws at the Federal and State levels will dictate the proper handling of these cases.

A primary law to consider is the Vocational Rehabilitation Act of 1973,[27] which prohibits Federal contractors and agencies receiving Federal financial assistance from discriminating against handicapped persons in any employment context. The U.S. Supreme Court held, in *School Board of Nassau County, Florida* v. *Arline*,[28] that an infectious disease (tuberculosis) was covered under the Act and a ninth circuit opinion has applied this holding specifically to AIDS. Under these rulings, an employer may not arbitrarily fire, demote, or segregate an employee who does not pose an immediate health risk to others (as an HIV-infected officer would not) while on the job. In addition, the employee must be reasonably accommodated, through reassignment if necessary, if he or she is unable to perform certain job duties due to illness. This decision seems to prohibit all adverse job actions against HIV-infected employees based on their medical condition, except those arising from inability to perform assigned duties.

Confidentiality and privacy concerns are just as important in developing policies for employees as they are for offenders. It is unlikely, for example, that policies mandating HIV-antibody testing as a condition of employment in criminal justice agencies will be upheld. Mandatory recruit testing had been adopted by a Maryland police department, but was ordered halted by the county administration.[29] Clearly reasoned, written policies are essential in limiting dissemination of confidential medical information to those who truly need to have the information—in ordinary circumstances, only subjects and attending physicians would have such a need.

AIDS and public safety

Early release issues. As the number of AIDS patients within jails and prisons has increased—and as increasingly ill persons face the prospect of spending their last days in prison—early release is a consideration. However, there are several areas of concern surrounding early release of persons with AIDS. First, agencies certainly have a moral—and probably a legal—obligation to ensure that such releasees are not simply "dumped" onto the street. There must be careful and comprehensive planning and followup to ensure that released individuals receive the medical benefits and other support services to which they are entitled.

Second, early release programs may raise concern among the public about the future safety of spouses, sex partners, and others with whom the releasee may come into contact. Under New York policies, parole is discretionary, but is not specifically dependent upon a parolee's agreeing to notify, or permit notification of, sex partners or others potentially at risk because of the parolee's medical condition. Since New York State law prohibits disclosure without permission, family members may be unaware of risk factors. The parole board encourages counseling of releasees to encourage them to notify their sex partners. However, the board favors parole only of extremely ill inmates or those with "strong predictions of good behavior." The Federal Bureau of Prisons requires that HIV-infected inmates notify sexual partners prior to parole.

As yet, there have been no claims against parole boards or correctional systems for negligent release leading to infection of a member of the public, but the possibility of such claims is important to consider. To protect against possible liability, early parole should be granted only for humanitarian reasons, should involve careful planning and aftercare, and should be contingent on counseling of the parolee regarding his or her responsibilities to avoid infecting others.

Extended confinement based on risk of HIV transmission. Some correctional administrators consider early release for inmates with AIDS, while some judges and others advocate extended confinement of infected individuals to prevent their infecting others in the outside world. Many States are now considering laws to criminalize willful or reckless acts that could result in HIV transmission. Criminal charges have been brought against infected persons who knowingly engaged in behaviors likely to result in infection of others. In such cases, persons who engaged in intercourse without notifying their partners of their infectious status have been charged with attempted murder or assault with intent to commit great bodily injury;[30] a man who knowingly sold contaminated blood to a blood bank was charged with attempted murder and attempted poisoning;[31] and assaults by biting have been charged as assault with a deadly weapon.[32] However, these cases are not easily proved, in part due to the difficulties of proving intent, and, in some instances, due to medical evidence that the risk of transmission associated with the alleged act is extremely low.[33]

Community supervision. In an effort to protect themselves from the threat of third-party liability, some probation and parole agencies suggest imposing special conditions on HIV-infected releasees. Some advocate conditions that prohibit HIV-infected releasees from engaging in behavior that could spread the virus to others. However, both the Federal parole and probation systems maintain that such conditions may inappropriately extend the role of community corrections from the prevention of crime to the prevention of disease. Moreover, such conditions place the responsibility of monitoring the most intimate behaviors of their clients on officers. As such, they may be unenforceable and serve only to increase the potential liability of probation and parole officers in the event a third party is infected.

Only one State, Georgia, imposes specific prohibitions, such as those above, as a condition of release. Some agencies, such as Tennessee's, require that HIV-infected releasees disclose their status to spouses, prospective sex partners, or other persons in danger of being infected. Again, however, such conditions may violate State laws prohibiting disclosure without consent. The Federal probation system has decided that mandated disclosure by HIV-infected releasees as a condition of supervision is an inappropriate intrusion of the justice system into a public health issue, in the absence of any medical evidence that it would reduce transmission of HIV in the community.[34] As an alternative to mandated disclosure, it may be reasonable to establish a special condition requiring the successful participation of HIV-infected releasees in AIDS education, counseling, and treatment programs.

Pretrial release decisions. Another problem arises when HIV-infected prostitutes or intravenous drug users are arrested. Such persons, if released, might infect others. At one level, it may be argued that needle sharing and patronizing prostitutes are individual voluntary acts that public agencies have no responsibility to prevent. However, at another level, persons infected through their own voluntary acts may, in turn, infect "innocent" parties who did not engage in the high-risk behaviors. As a result, law enforcement agencies may perceive some obligation to "incapacitate" individuals who can infect others.

After the arrest of a Boston prostitute who claimed to be infected with HIV, the city promulgated a policy that allows preventive detention of prostitutes who state that they will return to their trade if released. But prostitutes who promise to desist are to be released immediately.[35] Besides the practical difficulties involved in administering such a policy (which may in some cases punish truthfulness and reward false promises), any form of preventive detention may face serious legal and constitutional challenges[36] and, in any case, such "quarantine" measures could never be permanently imposed on an individual. The Boston policy has not

been challenged because the woman involved said she had been desperately seeking drug treatment for months and would happily quit prostitution to be admitted to a drug treatment program. This is another area in which education, preventive measures, and timely policy development may help law enforcement to obviate a "crisis management" approach that could lead to hasty, ill-considered decisions, and future legal problems.

Conclusion

The development of effective criminal justice policies relating to AIDS involves careful balancing of often competing rights. Courts have given due deference, however, to administrative policies rationally designed to protect offenders and staff. Well-reasoned, written guidelines, and training and education on precautionary measures provide the best protection against the spread of HIV infection and against lawsuits alleging negligence or the deprivation of individual rights.

Notes

1. *LaRocca* v. *Dalsheim*, 467 N.Y.S.2d 302, 310 (App. Div. 1983).

2. *See, e.g., Redmond* v. *Baxley*, 475 F. Supp. 1111 (E.D.Mich. 1979); *Garrett* v. *United States*, 501 F. Supp. 337 (N.D.Ga. 1980); *Saunders* v. *Chatham County*, 728 F.2d 1367 (11th Cir. 1982); *Kemp* v. *Waldron*, 479 N.Y.S.2d 440 (App. Div. 1984); *Thomas* v. *Booker*, 762 F.2d 654 (8th Cir. 1985).

3. *Cameron* v. *Metzcus*, (N.D. Ind.), Civil No. S 88-436, January 31, 1989. Reported in *AIDS Policy in Law*, February 22, 1989, p.5. Refiled February 15, 1989.

4. On reasonable standards of care, *see e.g., Doe* v. *Lally*, 457 F. Supp. 1339 (Md. 1979); *Campbell* v. *Bergeron*, 486 F. Supp. 1246 (M.D.La. 1980), *aff'd* 654 F.2d 719 (5th Cir. 1981); *Streeter* v. *Hopper*, 618 F.2d 1178 (5th Cir. 1980); *Rhodes* v. *Chapman*, 101 S.Ct. 2392 (1981); *Woodhaus* v. *Virginia*, 487 F.2d 889 (4th Cir. 1973). On liability for assaults, *see e.g., Mosby* v. *Mabry*, 699 F.2d 213 (8th Cir. 1982); *O'Quinn* v. *Manuel*, 767 F.2d 174 (5th Cir. 1985).

5. Interview with Attorney Robert Kossack, Las Vegas, Nevada, October 1987.

6. The following States are currently screening all new prison inmates for HIV antibodies: Alabama, Colorado, Georgia, Idaho, Iowa, Missouri, Nebraska, Nevada, New Hampshire, Oklahoma, West Virginia, and Wyoming. Michigan and Rhode Island plan to institute mass screening. The Federal Bureau of Prisons currently screens a 10 percent random sample of new inmates and all releasees.

7. Theodore M. Hammett, *AIDS Bulletin*, "HIV Antibody Testing: Procedures, Interpretation, and Reliability of Results." Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1988.

8. On voluntary testing, *see Telepo* v. *Fauver*, (D.N.J., Civil Action No. 85-1742 [HAA]); *Hook* v. *Fauver* (D.N.J., Civil Action No. 85-5962 [HAA]). On mandatory screening, pending cases include: *Tooze* v. *Sumner* (D.Nev., No. CV-N-87-425-ECR); *Sheppard* v. *Keeney* (D.Ore. filed October 7, 1985); *Malport* v. *Keeney* (D.Ore. filed October 11, 1985); *Lane* v. *Dukakis*, (Norfolk Sup. Ct., Mass., Civil Action No. 87-1129); *Hays* v. *State of Idaho* (4th Dist. Magis. Div., No. HC-2799); *Gilbert* v. *State of Idaho* (4th Dist. Magis. Div., No. HC-2800, 2825); *Brown* v. *Scroggy* (W.D.Ky., No. C86-0306P (J)); *Vincent* v. *State of Louisiana* (19th JDC, Nos. 307, 418); *Mattison* v. *Meachum* (E.D.Okla., No. 87-280-C); *Glick* v. *Henderson*, CA 8 No.87-2376 (8th Cir. 1988), upheld Arkansas's decision not to institute mass screening and segregation of seropositives.

9. *Jarrett* v. *Faulkner*, (S.D.Ind., No. IP85-1569-C). See also *Wiedmon* v. *Rogers* (E.D.N.C., No. C-85-116-G); *Maberry* v. *Martin* (E.D.N.C., No. 86-341-CRT); *Potter* v. *Wainwright* (M.D.Fla., No. 85-1616-CIV-T15); *Stalling* v. *Cave* (2d Cir. De Leon Co.); *McCallum* v. *Staggers* (5th Cir. Lake Co., No. 85-1338-CAOI); *Bailey* v. *Wainwright* (8th Cir. Baker Co.); *Lloyd* v. *Wainwright* (2d Cir. De Leon Co., No. 86-3144); *Harris* v. *Thigpen* (M.D.Ala., No. CA-87-V-1109-N); *Smith* v. *Meachum* (D.Conn. Civil No. H-87-221 (JAC)).

10. *Dean* v. *Bowie*, Suffolk Sup.Ct. (Mass.), Civil Action No. 87-4745.

11. *Johnson* v. *Fair*, (D.Mass., 1987, Civil Action No. 87-0217 Mc.)

12. *Gates* v. *Deukmejian*, (E.D.Ca., No. CIVS 87-1636); *Smith* v. *Meachum*, (D.Conn., Civil No. H-87-221 (JAC)); *Burns* v. *State of Nevada*, (D.Nev., No. CV-S-86-366-HDM); interview with Attorney Robert Kossack, October 1987; *Cartwright* v. *State*, (4th Dist. Magis. Division, No. HC-2805).

13. *Doe* v. Coughlin, (N.D. New York, No.88-CV-964, decided October 14, 1988; *Doe* v. *Meachum* (D. Conn., No.H88-562 (PC D); States with strict confidentiality provisions include Wisconsin, California, Massachusetts, New York, and the District of Columbia.

14. CDC, *Morbidity and Mortality Weekly Report* (MMWR), "Public Health Service Guidelines for Counseling and Antibody Testing to Prevent HIV Infection and AIDS," 1987, August 14, 36:509-515; L.O. Gostin, W.J. Curran, and M.E. Clark, "The Case Against Compulsory Casefinding in Controlling AIDS—Testing, Screening and Reporting," *American Journal of Law and Medicine*, 1987, 12:50.

15. Note 8, *supra*.

16. *E.g., Farmer* v. *Levine*, (D.Md., No. HM-85-4284); *Macke* v. *Cowles* (W.D.Mo., No. 86-4447-CV-C-5); *Hall* v. *Correctional Medical Systems, Inc.* (M.D.Ala., Civil Action No. 85-D-1261-N, decided January 1987); *Williams* v. *Sumner*, 648 F. Supp. 510 (C.D.Nev. 1986); *Howard* v. *Slansky*, (D.Nev., No. CV-R-86-498-HDM); *Smith* v. *Meachum* (D. Conn., Civ. No. H-87-221 (JAC).

17. *Cordero* v. *Coughlin*, 607 F. Supp. 9 (S.D.N.Y., 1984).

18. *Powell* v. *Department of Corrections, State of Oklahoma*, 647 F. Supp. 968 (N.D.Okla. 1986). A similar Oklahoma case, *Morse* v. *Meachum*, (W.D.Okla., No. CIV-86-1309-T), was decided in favor of the Department of Corrections in late December 1986.

19. *LaRocca* v. *Dalsheim*, 467 N.Y.S.2d 302 (App. Div. 1983).

20. *Herring* v. *Keeney*, (D.Ore., filed September 17, 1985, decided July 1987).

21. *Doe* v. *Coughlin*, 71 N.Y.2d 48 (N.Y. App. 1987) (*cert. granted* by U.S. Supreme Court); *Lopez* v. *Coughlin*, (N.Y. Sup.Ct. Albany Co., Calendar No. 10, Index No. 1652/88, decided April 25, 1988).

22. Note 17, *supra*.

23. *Johnson* v. *Fair*, (D.Mass. 1987, Civil Action No. 87-0217 Mc.)

24. Theodore M. Hammett, *AIDS Bulletin*, "Training and Education on AIDS and HIV Infection in Criminal Justice Agencies." Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1989.

25. Government of the District of Columbia, District Personnel Manual Insurance System, *DPM Bulletin No. 20B-1, Acquired Immune Deficiency Syndrome*, February 10, 1986.

26. *AFSCME and State of Minnesota Department of Corrections*, 85 La. 1185 (Gallager, 1985); Government Employee Regulations Reporter 187 (December 1985).

27. 29 U.S.C. Section 1791, *et seq.*

28. 170 S.Ct. 1123 (1987); *Chalk* v. *U.S. District Court, Central District of California*, CA 9, No. 87-6418.

29. "AIDS Tests on Police Recruits Halted," *Baltimore Evening Sun*, September 30, 1987, p. D1.

30. *See, The National Law Journal*, July 20, 1987, 3, 32; "AIDS Criminal Laws, Cases Rise."

31. *See, AIDS Policy and Law*, Vol. 2, No. 16, pp. 11-12; " Robbery Case Complicated by Positive Test for AIDS," Buraff Publications, Inc., August 26, 1987.

32. *See, The New York Times*, June 10, 1987, "New York Police Say Suspect Bit Officer and Claimed To Have AIDS;" *The New York Times*, June 25, 1987, "Deadly Weapon in AIDS Verdict Is Inmates' Teeth."

33. For a thorough discussion of the application of criminal laws to the transmission of HIV, see Martha A. Field and Kathleen M. Sulliven, "AIDS and the Criminal Law," *Law, Medicine and Health Care*, Summer 1987, 15:46-60.

34. For a full discussion of AIDS-related issues in community corrections, see Dana E. Hunt, *AIDS in Probation and Parole*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1988.

35. *See, The Boston Globe*, February 19, 1987, "Prostitution arrest raises questions about AIDS;" *The Boston Globe*, February 21, 1987, "Flynn unveils policy on AIDS;" and *The Boston Globe*, February 22, 1987, "Prostitute seeks help for heroin addiction."

36. The U.S. Supreme Court has recently ruled that preventive detention is permissible in the Federal justice system in certain circumstances (*U.S.* v. *Salerno*, 41 CrL 3207 [1987]). State systems may or may not follow suit.

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For additional information on AIDS-related issues, contact:

- **NIJ AIDS Clearinghouse,** 301–251–5500. This Clearinghouse has publications available to the criminal justice community, such as *AIDS in Correctional Facilities: Issues and Options* and *AIDS in Probation and Parole Services,* that explore the impact of general as well as legal AIDS issues on institutional and community corrections settings.
- **National AIDS Information Clearinghouse,** 301–762–5111. To request any of the several CDC publications that the Clearinghouse is distributing, such as *Understanding AIDS*, call 800–458–5231.

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