Since its initial identification nearly two decades ago, HIV/AIDS has impacted millions of families, creating unprecedented challenges to municipal, state, and federal agencies charged with maintaining public safety and health. Law enforcement's response to these issues has focused primarily on providing awareness training on the epidemiology of the disease; implementing Occupational Safety and Health Administration (OSHA) mandates regulating exposure protocols; testing and ensuring confidentiality of test results; and issuing personal protection equipment and training personnel in its use. Thus, education, awareness, and compliance with established laws, regulations, policies, and procedures have constituted important first steps for the law enforcement community.

Yet, as HIV/AIDS issues approach a third decade, law enforcement managers and subject-matter experts face new questions and concerns centering on the fear factor associated with the disease. Many individuals still react with fear when they hear the words, “I’m HIV positive” or “I have AIDS.” Even individuals schooled in how difficult it is to contract the disease feel at least a momentary uncertainty when hearing those words. Although private citizens remain free to choose how they will react to such admissions, an officer’s response or, in some cases, refusal to respond can create significant liability issues for law enforcement. For example, some officers may feel a strong personal and moral obligation to violate basic laws and policies, supposedly to protect...
themselves and their partners from this potentially deadly virus. At the very least, this scenario can lead to legitimate personnel complaints; worse, it may provide substantial grounds for litigation and erosion of public trust.

To combat these fears, in 1985, the city council in Los Angeles, California, enacted an AIDS antidiscrimination law and, in the following years, created several AIDS workplace policies. In 1990, the city council mandated that every city department have an AIDS coordinator who would report to the city’s AIDS coordinator. This action enabled the Los Angeles Police Department to provide its employees and their families with a variety of information and services about HIV/AIDS issues, allowing the department to respond to individual and organizational needs. The police department’s AIDS coordinator publishes updated information about HIV/AIDS issues germane to the workplace, works with department and city entities responsible for providing medical and psychological services, monitors compliance with OSHA regulations and the city’s bloodborne pathogen protocol, and oversees all department training on HIV/AIDS issues.

However, other areas have evolved over the last two decades that surpass the original issues of concern. These include confidentiality concerns, legal issues, employee assistance considerations, and preventive measures.

CONFIDENTIALITY CONCERNS

Confidentiality concerns permeate every aspect of HIV/AIDS issues. For example, who can tell what to whom? What information can officers include in reports? If officers disclose their HIV status to a partner, can the partner tell others? What can crime victims be told and by whom? The list can go on and on. The main confidentiality concerns involve including HIV information in police reports and having officers disclose their HIV status to their co-workers and supervisors.

Crime and Arrest Reports

Some officers believe they need to include HIV-status information about victims, witnesses, and arrestees when it is neither an element of the crime nor relevant to the investigation. When questioned about this, officers respond that they want others who come in contact with these individuals to know so they can protect themselves. Training focusing on bloodborne pathogens and the universal precautions (i.e., treating all blood, from all individuals, at all times, as potentially toxic) that everyone should practice whenever a potential for exposure exists has not proven sufficient to alter the officers’ beliefs that they have an obligation to go beyond stated policy to protect themselves and others. However, including an offender’s HIV status in a report may violate basic medical information confidentiality laws, as well as specific laws pertaining to HIV, which may vary from community to community.

To address this, departments should train their officers in and provide a comprehensive resource guide for report writing. Further, field supervisors and detectives who approve arrest reports should have the authority to correct reports before duplication and distribution and, thereby, act as the first line of protection against any of these potential confidentiality violations.

Officer Disclosure

Some field enforcement officers, especially those working
patrol, believe that any officers who know they are HIV-positive have a moral obligation to inform their partners and peers. Their rationale is that in a life-threatening situation, they may not stop to put on gloves before rendering aid to a fellow officer. They believe that they should not have to view their colleague’s blood as a potentially toxic agent—partners take care of each other. Not only does the desire to reveal such information conflict with medical confidentiality laws, but universal precautions should eliminate the need for disclosure in many cases, as well.

Officers also should remember that choosing to reveal their HIV status is a painfully difficult decision for anyone, including law enforcement personnel. For example, if officers disclose their HIV status to co-workers, they risk being ostracized and becoming victims of discrimination, which could jeopardize their safety in the field. However, their co-workers may believe that their own safety is jeopardized if affected officers do not disclose their HIV status. Therefore, disclosure stands as a moral dilemma, not a legal one.

LEGAL ISSUES

Prisoner Handling

Sometimes, officers who learn of arrestees’ HIV status (through self-disclosure or other means) isolate these individuals in holding tanks, interrogation rooms, or cells solely on their medical status. Some officers may place a sign on the individual or detention room that identifies the arrestee as HIV-positive. Another form of isolation occurs when officers place face masks on arrestees, even though these individuals have exhibited no behavior (e.g., biting or spitting) that merits such action. Officers should remember that detention, booking, and processing policies dictate how they must handle arrestees. These policies never mention placing signs on arrestees for any reason; HIV is no exception.

In reality, officers only need to isolate arrestees in very limited circumstances—when a bleeding suspect may come in contact with others. In such cases, if officers do not know the HIV status of bleeding suspects, they should isolate these individuals temporarily.

Moreover, the issues of officer safety and a partner’s or co-worker’s right to know bring the potential conflict between legal obligations and moral responsibilities to the forefront. HIV is a bloodborne pathogen; therefore, universal precautions can protect officers from exposure. Usually, only jailers need to know about an arrestee’s HIV status so they can provide the appropriate medical protocol.

ADA Accommodation

Because medical research continues to find new medicines that allow people with HIV/AIDS to stay healthier longer, employees may become more likely to seek accommodation for these health issues within the context of the Americans with Disabilities Act (ADA). For example, employees with HIV/AIDS frequently request to work a specific shift because their prescribed medication disables them during certain hours of the day. In many cases, this constitutes a reasonable accommodation provided that the availability for shift work is not an essential function of the job. However, the agency would not have a duty to reasonably accommodate an employee when the disability poses a direct threat to life or safety.

Whether the request for accommodation comes from sworn or civilian personnel, supervisors often question the reason for such an adjustment, jeopardizing the employees medical confidentiality. However, only the agency’s medical director and the employee’s physician should discuss this information. Supervisors must understand their roles in medical and ADA issues, realizing that medical confidentiality can prohibit them from knowing all of the details.

EMPLOYEE ASSISTANCE CONSIDERATIONS

Exposure to a bloodborne pathogen may precipitate a severe psychological reaction for officers and their family members, whose overall fear for their loved ones’ safety becomes exacerbated by the
possibility that their loved ones could contract a contagious, deadly disease. Partners of officers who may have been exposed also may feel vulnerable, believing that the officers represent a potential threat to their own safety. Moreover, fellow officers and other co-workers may attend all of the required training on bloodborne pathogens but still have difficulty accepting colleagues who have disclosed their disease. Therefore, the agency must offer psychosocial services to anyone impacted by such situations. Assuring officers and family members that their fears are normal and providing a supportive environment in which they can work to lessen the impact of such fears prove more productive than allowing fear to run rampant throughout the family or the organization.

PREVENTIVE MEASURES

Any agency that has not developed and implemented strategies and policies to address these concerns could become extremely vulnerable, both from the standpoint of civil liability, as well as that of effective personnel management. Managers have to lead the way in adhering to and enforcing departmental policies. The absence of such leadership can produce a lack of confidence among agency employees, particularly when dealing with such an emotionally volatile issue.

Just as training academies use situation simulations or role-play scenarios to teach tactical maneuvers, interviewing skills, and other law enforcement techniques, administrators can use the same approach to address HIV/AIDS concerns. Managers and subject-matter experts should meet and discuss "what-if" scenarios, suggesting resolutions that comply with current laws, protocols, and policies. These meetings also provide agencies with excellent opportunities to review their basic medical contingency plans to assess their efficacy for the future and ensure that adequate medical and psychological support is available for their personnel and their families.

What-If Scenarios

1) Cooperating arrestees disclose their HIV-positive status at the scene of the arrest and officers put on gloves, face masks, and goggles, when no bodily fluids are present that can transmit the virus. Officers who overreact demonstrate their lack of knowledge about HIV and universal precautions. If their actions are knowledgeable and intentional, then they are likely discriminatory and could make officers and the agency liable. Further, administrators could consider these types of situations cause for disciplinary action.

2) Members of a work group tell their co-workers that they are HIV-positive. Can the co-workers refuse to work with the infected individuals? Can they request reassignment? Can the infected individuals be reassigned?

Employees can tell their co-workers anything, including their HIV status. Co-workers cannot refuse to work with others because of their HIV status any more than they can refuse to work with individuals because of their national origin, age, race, color, sex, or religion. Agencies have policies on how and when they transfer personnel from one location to another or from one shift to another. Agencies should not
Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 provides federal protection against discrimination for individuals with disabilities and extends this protection to the workplace, public accommodations, transportation, state and local government services, and telecommunications. Strengthening and reaffirming the earlier principles of the Federal Rehabilitation Act of 1973, the ADA provides uniform, forceful, and enforceable federal protections to individuals with disabilities, including persons with AIDS and HIV infection.

Individuals who are in a relationship with a disabled individual also are protected under the ADA. Discrimination against persons with contagious diseases or their partners or relatives based on unsubstantiated perceptions of the threat of infection violates the ADA. The ADA challenges employers to establish workplace policies that encompass the new definition of "disability," which includes not only HIV/AIDS, but other catastrophic illnesses, such as cancer and heart disease, that affect the work environment.

make exceptions to their standard operating procedures to accommodate an employee who refuses to work with an individual with HIV. A refusal to work is just that, and administrators should handle it accordingly. Finally, supervisors cannot reassign, isolate, or change the working conditions of an individual with HIV.3

3) An officer becomes exposed to a bloodborne pathogen and, according to protocol, is tested for HIV. The officer’s spouse calls, demanding to know the test results. Can the department release the results? What if a domestic partner makes the request?

Test results remain confidential. An employer cannot share this information. Although laws vary from state to state, typically no laws require that tested individuals inform their sexual partners of the results. However, agencies should not ignore the spouses and domestic partners of affected officers. They should refer such individuals to the appropriate health agency to receive professional counseling and evaluation.

4) Infected officers tell their immediate supervisors that they want to disclose this information to the entire agency. Should supervisors encourage them to do so? Can supervisors discourage them because of problems that may occur?

Self-disclosure is a personal decision. When an employee informs a supervisor beforehand, the agency has the opportunity to prepare for potential problems. Encouraging or discouraging disclosure represents a personal decision influenced by a variety of factors that will change from agency to agency. However, ordering someone to disclose or keep silent about their HIV status is a poor management decision.

5) Officers know that certain street criminals are HIV-positive, and practicing "selective enforcement," they arrest these individuals to "protect" society.

Selective enforcement because of someone’s known or perceived HIV status is discriminatory. Health officials, not police officers, deal with community health problems, including individuals who have potentially infectious or contagious diseases.

6) First responders refuse to provide lifesaving first aid based on their opinion that the victim belongs to a high-risk group. What if they do not have protective devices readily available?

In California, police officers are considered first responders.
and, by legislative opinion, are expected to provide lifesaving first aid. OSHA requires that all police vehicles carry personal protective equipment. Gloves and masks provide a barrier, but if they are not available, then officers should seek some other sort of protective aid, such as improvising with existing materials at hand. 10

CONCLUSION

The potential for exposure to HIV/AIDS in police work remains minimal. If officers follow universal precautions, the risk decreases further. However, fear still constitutes an important factor to address because it can permeate an organization, from a variety of sources, with lightning speed.

Managers can curtail this fear by responding directly, quickly, and consistently to issues raised by officers’ emotions, moral beliefs, and interpretations of their level of safety. This action provides clear leadership and dispels much of the confusion and speculation that may arise. Additionally, anticipating problems and developing appropriate contingency plans spare administrators from having to say that they never thought a particular situation would happen. What-if discussions can help managers assess their agencies’ preparedness for responding effectively to the next generation of AIDS-related problems. In short, common sense, knowledge, and adherence to established procedures and policies increase the potential for officers to have safe, healthy lives and productive careers while facing HIV/AIDS.

Endnotes

1 HIV (human immunodeficiency virus) causes AIDS (acquired immunodeficiency syndrome). Individuals can test positive for HIV before showing any symptoms of AIDS.

2 Laws permitting the disclosure of an individual’s medical records, including HIV test results, are not exceptions to confidentiality laws, but rather extensions of the umbrella under which certain individuals in specific circumstances are allowed or required to receive information or pass it on to another.


4 The duty to reasonably accommodate a qualifying disability includes modifying some aspects of the job but not the essential functions of the job.

5 In a 1994 landmark case, a federal court ruled under the ADA that the Philadelphia Fire Department had wronged a suspected HIV-infected client when its personnel refused to place him on a stretcher after he had collapsed from chest pains. The court ordered the department to develop and advertise a written policy to prohibit discrimination against individuals with HIV/AIDS and discipline any employee who failed to follow the policy. See Doe v. Borough of Barringon, 729 F. Supp. 576 (E.D. Pa. 1994).

6 Supra note 3.

7 Confidentiality laws may address HIV/AIDS specifically, or they may relate more generally to medical records or an individual’s “right to privacy.”

8 An agency’s mission statement or other written policy also may outline the circumstances, conditions, and responsibilities under which first responders must perform their duties.

9 Rather than stating that a worker has a duty to provide services, the law may encourage the provision of care by limiting the liability of responders, including police and emergency medical personnel, in the event that something goes wrong, barring negligence (e.g., Good Samaritan Laws).

The Bulletin staff is always on the lookout for dynamic, law enforcement-related photos for possible publication sin the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicates, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

Brian Parnell, Art Director, FBI Law Enforcement Bulletin, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.