REPORT OF THE
COMMITTEE ON TRAINING OF
THE CRIMINAL JUSTICE SERVICES BOARD ON

The Committee Studying Contagious Disease Training for Public Safety Personnel

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 15

COMMONWEALTH OF VIRGINIA
RICHMOND
1993

PREFACE

House Joint Resolution No. 184 and Senate Joint Resolution No. 49, adopted by the 1992 Session of the General Assembly, requested the Committee on Training of the Criminal Justice Services Board, in cooperation with the Joint Subcommittee Studying Acquired Immunodeficiency Syndrome (AIDS), the Virginia Fire Services Board and the Virginia Department of Health, Office of Emergency Services, to study certain training and testing issues related to Human Immunodeficiency Virus (HIV) and public safety personnel. The Committee on Training, in conjunction with the above named agencies, established a joint study committee to address the concerns of these two resolutions.

The objectives of this study were: (1) study training for public safety personnel in the prevention of exposure to communicable diseases; (2) develop training standards based on the study results; (3) consider the efficacy of requiring training and certification as emergency medical technicians for appropriate personnel; and (4) examine other issues related to testing for HIV and public safety personnel, including confidentiality, search and seizure, privacy and test effectiveness.

The study was staffed by members of the Department of Criminal Justice Services, Division of Training and Standards. Lead staff for the study were Ronald Bessent, Chief, Training and Development Section and Beth Remington, Drug Training Coordinator. The following individuals served as members of the Committee:

The Honorable Robert L. Simpson. Jr., Judge
Virginia Beach General District Court, Chairman

The Honorable Gary Waters, Sheriff,
City of Portsmouth, Vice Chairman

Master Trooper Dallas Church, President
Virginia State Police Association

Jay Cochran, Executive Director
Virginia Association of Chiefs of Police

Lex T. Eckenrode, Director
Division of Training and Standards
Department of Criminal Justice Services

Gerald Eggleston, Training Manager
Department of Corrections/Academy for Staff Development

Denny Kelly, Chief, Fredericksburg Fire Department
Representing Virginia Fire Services Board

The Honorable Perry Lewis, Sheriff, Prince George County
Representing Virginia State Sheriffs' Association

Susan McHenry, Director, Emergency Medical
Services Office, Virginia Department of Health

John McPherson, Arlington County Fire Department
Representing Virginia Fire Services Board

Samuel E. Weiss, Assistant Director
Hampton Roads Regional Academy of Criminal Justice
Representing Virginia Training Directors Association

Garth Wheeler, President
Virginia State Lodge Fraternal Order of Police

In addition to the Committee members, several individuals provided technical advice and expertise to this study. The following individuals are recognized for providing invaluable assistance toward completion of this study:

Davison M. Douglas, Assistant Professor of Law
Marshall-Wythe School of Law
College of William and Mary

George Elder, Lieutenant
Prince George County Sheriff's Office

Bob Harvey, Chairman, Legislative Committee
Virginia State Lodge Fraternal Order of Police

Linda Lesniak, Director, HIV/AIDS Education
Programs, Medical College of Virginia

Norma Szakal, Senior Attorney
Division of Legislative Services

Clarence Wheeling, Director
Occupational Health Enforcement Division
Department of Labor and Industry

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I. EXECUTIVE SUMMARY

There is a prevailing concern about human immunodeficiency virus (HIV) and hepatitis B virus (HBV) in our society. Public safety personnel are especially apprehensive about these diseases because of their contact with individuals whose behavior may place them at risk for infection with the viruses. Public safety employees and volunteers may be frequently involved in incidents in which there is potential for exposure to HIV, HBV and other communicable diseases.

It is critical that public safety personnel receive accurate, timely and regular information about HIV, HBV and other communicable diseases. Education and training of public safety personnel is the cornerstone to allay these concerns and fears.

Through discussion and extensive research, the study Committee on Contagious Disease Training attempted to address many of these concerns. Utilizing recently passed Occupational Safety and Health Administration (OSHA) and Virginia Occupational Safety and Health (VOSH) regulations on bloodborne pathogens as a guide, the Committee developed several training recommendations as well as a model training outline.

The following recommendations for training public safety personnel in the prevention of exposure to communicable diseases are a culmination of the Committee's efforts.

Recommendation 1

Airborne Pathogens Training:

The Committee recommends that public safety personnel receive training on airborne pathogens disease prevention in addition to the present OSHA/VOSH mandated training on bloodborne pathogens disease prevention.

Recommendation 2

Training Volunteers:

Although VOSH regulations do not specifically require volunteers who are at risk for exposure to be covered under the training mandates, the Committee recommends that these volunteers should receive the same training in the prevention of communicable diseases as provided to paid employees.

Recommendation 3

Model Training Outline:

The Committee recommends that the proposed outline for infectious disease training (see Appendix D) be adopted as a model training outline and used by public safety agencies throughout the Commonwealth when training personnel.

Recommendation 4

Legal Issues:

The Committee recommends that training on legal issues of confidentiality, privacy, search and seizure, Americans with Disabilities Act (ADA), agency and personal liability, workman's compensation, health insurance coverage and life insurance benefits be covered during training on communicable disease prevention as proposed in the model training outline.

Recommendation 5

Testing for Knowledge:

The Committee recommends that persons undergoing initial communicable disease prevention training be tested for knowledge of subject matter content; however, testing of annual update training should be left to the discretion of each agency.

Recommendation 6

Time of Training:

The Committee recommends that communicable disease prevention training be given at the time of initial assignment to any tasks where potential for occupational exposure exists and at least annually thereafter.

Recommendation 7

Local Cooperation:

The Committee recommends that local health and public safety agencies combine their resources to meet the recommendations and requirements of OSHA/VOSH regulations.

Recommendation 8

Coordinating Committee:

The Committee recommends that the General Assembly create a multi-agency coordinating committee to address ongoing issues related to infection control for public safety personnel, including, but not limited to, training, testing, confidentiality and new information on bloodborne and airborne pathogens that present a risk to public safety personnel.

Recommendation 9

EMT Training:

Due to cost and time factors, the Committee recommends that determination of Emergency Medical Technician (EMT) training be left to the discretion of each public safety agency. Local administrators may wish to consider the First Responder Course as a viable alternative.

Recommendation 10

Mandated Training:

Because the OSHA/VOSH mandates already require that certain training be provided, the Committee does not recommend that additional training be mandated by each state public safety agency as part of their training rules/regulations.

Recommendation 11

Post-Exposure Management:

In the event of occupational exposure incidents involving airborne or bloodborne pathogens, the Committee recommends that the opportunity for post-exposure management be provided to public safety personnel in accordance with the most current recommendations of the United States Public Health Service/Centers for Disease Control and OSHA/VOSH. Recommendations for post-exposure management include, but are not limited to, appropriate screening tests, vaccinations, education and counseling services to include the employee's family members and the assurance of confidentiality of all information derived from the provision of such post-exposure follow-up.

II. INTRODUCTION

The Occupational Safety and Health Administration (OSHA) issued its final rule, 29 CFR Part 1910.1030, on occupational exposure to bloodborne pathogens in December 1991. The standard was issued to reduce the occupational transmission of infections caused by microorganisms sometimes found in human blood and certain other potentially infectious materials. Although a variety of harmful microorganisms may be transmitted through contact with infected human blood, hepatitis B virus (HBV) and human immunodeficiency virus (HIV) have been shown to be responsible for infecting workers who were exposed to human blood and certain other body fluids containing these viruses. Transmission of these diseases may occur through routes such as needlestick injuries and by direct contact of mucous membranes and non-intact skin with contaminated blood/materials which may occur during the course of their work. Occupational transmission of HBV occurs much more often than transmission of HIV. Although HIV is rarely transmitted following occupational exposure incidents, the lethal nature of HIV requires that all reasonable measures be used to prevent exposure to workers. OSHA has initiated standards which are designed to protect workers that are at risk by requiring employing agencies to provide protective equipment, develop an exposure control plan and train personnel in prevention techniques.

Virginia is one of twenty three states with their own approved occupational safety and health plans. Virginia has adopted a comparable standard to the federal OSHA standard which became effective on June 1, 1992. Much of the work of this Committee was guided by the regulations set forth by OSHA and Virginia Occupational Safety and Health (VOSH). The major provisions of these standards are provided in section III of this report.

The threat of on-the-job exposure to bloodborne diseases, most notably the human immunodeficiency (HIV) and hepatitis B (HBV) viruses, creates concern among public safety personnel. While the correct and consistent use of universal blood and body fluid precautions minimizes the risk of such exposures, unforeseen circumstances and events occasionally result in incidents that merit conscientious follow-up for the employee at risk.

In response to these growing concerns of public safety personnel in the Commonwealth, two resolutions were introduced during the 1992 Session of the General Assembly calling for the study of training and testing issues related to HIV and public safety personnel. House Joint Resolution 184 and Senate Joint Resolution 49 were approved, thereby establishing this study.

House Joint Resolution 184 and Senate Joint Resolution 49 noted that because public safety personnel are most often first responders to accidents, domestic incidents and complaints of alleged criminal activity, they are significantly concerned about possible exposure to HIV and other communicable diseases. These resolutions also noted that appropriate training in the prevention of exposure to communicable diseases, including, but not limited to, hepatitis and HIV, could substantially resolve these concerns.

As a result of these resolutions, the Committee on Training of the Criminal Justice Services Board was charged with assembling certain designated agencies and organizations into a committee to address the concerns expressed in these resolutions. Representatives serving on the Committee were as follows: the Virginia Fire Services Board, the Virginia Department of Health-Office of Emergency Medical Services, the Fraternal Order of Police, the Virginia State Sheriffs' Association, the

Virginia Association of Chiefs of Police, the Virginia State Police Association and the Virginia Training Directors Association. In addition, the Committee called upon selected experts to consult on medical, legal and VOSH regulatory issues. Utilizing a combination of open committee meetings, constituent canvassing and literature research, the Committee was able to develop comprehensive recommendations on the identified issues.

The Committee's findings are based on OSHA/VOSH standards, a review of current state and federal laws and regulations related to HIV and HBV, current related literature and the technical expertise of Committee members and advisors. Recommendations made by Committee members were intended to appropriately represent the interests of public health and emergency service personnel, while also considering impact on employers.

III. OSHA/VOSH BLOODBORNE PATHOGENS FINAL STANDARD
SUMMARY OF KEY PROVISIONS

Exposure Control Plan: Requires employers to identify, in writing, tasks and procedures as well as job classifications where occupational exposure to blood/body fluids occurs—without regard to personal protective clothing and equipment. The plan must also set forth the schedule for implementing other provisions of the standard and specify the procedure for evaluating circumstances surrounding exposure incidents. It must be accessible to employees and available to VOSH. Employers must review and update it at least annually—more often if necessary to accommodate workplace changes.

Methods of Compliance: Mandates universal precautions, (treating body fluids/materials as if infectious), emphasizing engineering and work practice controls. The standard stresses handwashing and requires employers to provide appropriate facilities and ensure that employees use them following exposure to blood. It sets forth procedures to minimize needlesticks, minimize splashing and spraying of blood, ensure appropriate packaging of specimens and regulated wastes and decontaminate equipment or label it as contaminated before shipping to the servicing facilities.

Employers must provide, at no cost, and require employees to use appropriate personal protective equipment such as gloves, gowns, masks, mouthpieces and resuscitation bags and must clean, repair and replace these when necessary. Gloves are not necessarily required for routine phlebotomies in volunteer blood donation centers but must be made available to employees who want them.

The standard requires a written schedule for cleaning, identifying the method of decontamination to be used, in addition to cleaning following contact with blood or other potentially infectious materials. It specifies methods for disposing of contaminated sharp objects and sets forth standards for containers for these items and other regulated waste. Further, the standard includes provisions for handling contaminated laundry to minimize exposures.

HIV and HBV Research Laboratories and Production Facilities: Calls for these facilities to follow standard microbiological practices and specifies additional practices intended to minimize exposures of employees working with concentrated viruses and reduce the risk of accidental exposure for other employees at the facility. These facilities must include required containment equipment and an autoclave for decontamination of regulated waste and must be constructed to limit risks and enable easy clean up. Additional training and experience requirements apply to workers in these facilities.

Hepatitis B Vaccination: Requires vaccinations to be made available to all employees who have occupational exposure to blood within ten (10) working days of assignment, at no cost, at a reasonable time and place, under the supervision of a licensed physician/licensed healthcare professional and according to the latest recommendations of the U.S. Public Health Service (USPHS). Prescreening may not be required as a condition of receiving the vaccine. Employees must sign a declination form if they choose not to be vaccinated, but may later opt to receive the vaccine at no cost to the employees. Should booster doses later be recommended by the USPHS, employees must be offered these as well.

Post-Exposure Evaluation and Follow-up: Specifies procedures to be made available to all employees who have had an exposure incident plus any laboratory tests must be conducted by an accredited laboratory at no cost to the employee. Follow-up must include a confidential medical evaluation documenting the circumstances of exposure, identifying and testing the source individual if feasible, testing the exposed employee's blood if he/she consents, post-exposure prophylaxis, counseling and evaluation of reported illnesses. Healthcare professionals must be provided specified information to facilitate the evaluation and their written opinion in the need for hepatitis B vaccination following the exposure. Information such as the employee's ability to receive the hepatitis B vaccine must be supplied to the employer. All medical information must remain confidential.

Hazard Communication: Requires warning labels including the orange or orange-red biohazard symbol affixed to containers of regulated waste, refrigerators and freezers and other containers which are used to store or transport blood or other potentially infectious materials. Red bags or containers may be used instead of labeling. When a facility uses universal precautions in its handling of all specimens, labeling is not required within the facility. Likewise, when all laundry is handled with universal precautions within the facility, the laundry need not be labeled. Blood which has been tested and found free of HIV or HBV and released for clinical use, and regulated waste which has been decontaminated, need not be labeled. Signs must be used to identify restricted areas in HIV and HBV research laboratories and production facilities.

Information and Training: Mandates training within ninety (90) days of effective date, initially upon assignment and annually. Employees who have received appropriate training within the past year need only receive additional training in items not previously covered. Training must include making accessible a copy of the regulatory text of the standard and explanation of its contents, general exposure control plan, engineering and work practice controls, personal protective equipment, hepatitis B vaccine, response to emergencies involving blood, how to handle exposure incidents, the post-exposure evaluation and follow-up program, and signs/labels/color-coding. There must be opportunity for questions and answers and the trainer must be knowledgeable in the subject matter. Laboratory and production facility workers must receive additional specialized initial training.

Recordkeeping: Calls for medical records to be kept for each employee with occupational exposure for the duration of the employment plus thirty (30) years, must be confidential and must include name and social security number; hepatitis B vaccination status (including dates); results of any examinations, medical testing and follow-up procedures; a copy of the healthcare professional's written opinion; and a copy of information provided to the healthcare professional. Training records must be maintained for three years from date of training and must include dates, contents of the training program or a summary, trainer's name and qualifications, names and job titles of all persons attending the sessions. Medical records must be made available to the subject employee, anyone with written consent of the employee, VOSH and the National Institute for Occupational Safety and Health (NIOSH). These records are not available to the employer. Disposal of records must be in accordance with existing standards covering access to records.

IV. RECOMMENDATIONS

The Committee concludes that training on communicable diseases, including airborne and bloodborne pathogens, is essential in resolving concerns about possible exposures to public safety personnel. This training should include all paid public safety personnel, as well as volunteers, who are at risk for exposure. It is further concluded that the proposed outline for infectious disease training be adopted as a model outline.

The following are the Committee's recommendations and rationale for training public safety personnel in the prevention of exposure to communicable diseases:

Recommendation 1

Airborne Pathogens Training:

The Committee recommends that public safety personnel receive training on airborne pathogens disease prevention in addition to the present OSHA/VOSH mandated training on bloodborne pathogens disease prevention.

Discussion

In recognition of the increased incidence and prevalence of airborne communicable diseases, such as tuberculosis, in populations served by public safety personnel, the Committee believes that airborne pathogens should be included in communicable disease prevention training. This recommendation is based on the relative ease of transmission and the potential seriousness of the short and long term effects of these diseases. However, it is generally accepted that the effectiveness of prevention strategies and prompt and conscientious post-exposure management could greatly reduce the risk to public safety personnel. Training in this area will provide an added degree of protection and should be included with bloodborne pathogen training.

Recommendation 2

Training Volunteers:

Although VOSH regulations do not specifically require volunteers who are at risk for exposure to be covered under the training mandates, the Committee recommends these volunteers receive the same training in the prevention of communicable diseases as provided by paid employees.

Discussion

Agencies should be required to treat volunteers in the same manner as paid employees as it relates to protection from communicable diseases. Volunteers are an essential part of public safety agencies. The Committee believes that there is a moral and ethical obligation to afford volunteers the same consideration, protection and training as their paid counterparts. Futhermore, the Committee concludes that serious consideration should be given to possible liability problems that may arise from not including volunteers in training.

Recommendation 3

Model Training Outline:

The Committee recommends that the proposed outline for infectious disease training (see appendix D) be adopted as a model training outline and be used by public safety agencies throughout the Commonwealth when training personnel.

Discussion

Utilizing the expertise of the Medical College of Virginia's HIV/AIDS Education Program Unit, the Office of Emergency Medical Services and other outside sources, the Committee has developed a proposed training outline which covers the major areas of concern for public safety personnel. While incorporating the basic requirements for OSHA/VOSH, this outline expands the topic areas to address legal and employee health benefits issues as well. The Committee believes that the expanded training program is necessary in order to provide employees with a comprehensive understanding of all facets of communicable diseases and how it relates to their jobs.

Recommendation 4

Legal Issues:

The Committee recommends that training on legal issues of confidentiality, privacy, search and seizure, Americans with Disabilities Act (ADA), agency and personal liability, workman's compensation, health insurance coverage and life insurance benefits be covered during training on communicable disease prevention as proposed in the model training outline.

Discussion

The Committee reviewed House Bill 568, which was passed during the 1992 Session of the General Assembly, and other related federal and state legislation. The issue of confidentiality, privacy and search and seizure have been addressed by both state legislation (see appendix E) and federal court decisions. In addition, the specifics of these issues are subject to change as laws are amended and court interpretations are developed. In order to afford the most flexibility in dealing with these legal issues, the Committee agreed that they should be addressed through a training program that can be easily changed as new information is developed.

Recommendation 5

Testing for Knowledge:

The Committee recommends that persons undergoing initial communicable disease prevention training be tested for knowledge of subject matter content; however, testing of annual update training should be left to the discretion of each agency.

Discussion

Due to the critical nature of the subject matter, it is imperative that any training conducted have a quality control mechanism included. The Committee believes testing during the initial training is needed to document that learning has taken place, that the instructors are qualified and that each individual is properly trained. Testing at this level of training would also be consistent with other entry-level training received by public safety personnel and serve to ensure that trainees are well versed in this subject prior to performance of their job function.

Recommendation 6

Time of Training:

The Committee recommends that communicable disease training be given at the time of initial assignment to any tasks where potential for occupational exposure exists and at least annually thereafter.

Discussion

After discussion and review of OSHA/VOSH regulations, the Committee concurred with regulations requiring that training be given initially and at least annually thereafter. The Committee determined that the initial training course for communicable disease prevention should include basic principles of infection control, common tasks and situations where an occupational exposure could occur for each public safety personnel, protective methods to reduce or eliminate an occupational exposure, post-exposure follow-up procedures and discussion of legal issues, OSHA regulations and employee health benefits. The annual update course would be shorter in length and should include a general review of communicable diseases, VOSH regulations and pertinent state and federal laws/court cases and new information on prevention, treatment and protocol.

Recommendation 7

Local Cooperation:

The Committee recommends that local health and public safety agencies combine their resources to meet these recommendations and requirements of OSHA/VOSH regulations.

Discussion

In these economically austere times, it seems prudent that the affected agencies form a consortium to support each agency's efforts in this area. For example, if an agency has one or two employees to train, that agency may wish to join together with its local hospitals, health departments, fire departments and/or emergency medical technicians to complete the initial and annual update training on communicable disease prevention. This type of cooperation would help smaller agencies with operating costs and loss of man-hours for training.

Recommendation 8

Coordinating Committee:

The Committee recommends that the General Assembly create a multi-agency coordinating committee to address ongoing issues related to infection control for public safety personnel, including, but not limited to, training, testing, confidentiality and new information on bloodborne and airborne pathogens that present a risk to public safety personnel.

Discussion

Such a committee should include representation from Department of Criminal Justice Services, Department of Fire Programs, Office of Emergency Medical Services and other appropriate agencies and individuals. This coordinating committee would ensure quality control for communicable disease prevention training by updating and reviewing current information on communicable diseases and evaluating the current training. There is a need for this coordination due to the changing nature of some of the diseases involved, the complexity of the issues and the multiplicity of public

safety providers who may respond to any given situation. The Committee believes that it is imperative that the aforementioned agencies maintain ongoing communication in order to support mutual efforts in this area.

Recommendation 9

EMT Training:

Due to cost and time factors, the Committee recommends that determination of Emergency Medical Technician (EMT) training be left to the discretion of each public safety agency.

Discussion

Currently in Virginia, it is not mandated that criminal justice and fire personnel be trained and certified as EMT's. At the present time, the EMT training program is over one hundred hours in length and requires a great deal of resources and manpower. The Committee believes that requiring training for public safety personnel as EMT's would be cost prohibitive and too manpower intensive. In addition, smaller agencies may be unable to afford to release personnel from their normal job functions to attend this added training. While police and fire personnel are often the first on the scene of emergencies, it is felt that their health treatment role is to administer initial first aid until an EMT arrives. Local administrators may wish to consider the First Responder Course as a viable alternative.

Recommendation 10

Mandated Training:

Because the OSHA/VOSH mandates already require that certain training be provided, the Committee does not recommend that additional training be mandated by each Virginia public safety agency as part of their training rules/regulations. However, it is recommended that any training conducted under the OSHA/VOSH guidelines be expanded to include airborne pathogens as set forth by Recommendation 1 and any additional topics as set forth by the training outline proposed in Recommendation 3.

Discussion

Since bloodborne pathogens training is already mandated by OSHA/VOSH, the Committee determined that it is not necessary for each public safety agency to mandate communicable disease training. The Committee also determined that the administrative process of mandating this training would be time consuming and cost-prohibitive. In addition, training for some agencies is mandated by national boards and would be very difficult to change. It was also concluded that if communicable disease training is mandated at entry level, then certain personnel including some of those currently employed would not be included in the mandated training. As a result, any mandates should be left to OSHA/VOSH regulations.

Recommendation 11

Post-Exposure Management:

In the event of occupational exposure incidents involving airborne or bloodborne pathogens, the Committee recommends that the opportunity for post-exposure management be provided to public safety personnel in accordance with the most current recommmendations of the United States Public Health Service/Centers for Disease Control (USPHS/CDC) and OSHA/VOSH. Recommendations for post-exposure management include, but are not limited to, appropriate screening tests, vaccinations, education and counseling services to include the employee's family members and the assurance of confidentiality of all information derived from the provision of such post-exposure follow-up.

Discussion

As new information and treatments of communicable diseases are found, USPHS/CDC and OSHA/VOSH will update their recommendations of post-exposure management accordingly. Currently, when an occupational exposure occurs, and the source case is a hepatitis B carrier, vaccination(s) for hepatitis B prevention may be needed if the employee had not been immunized adequately. Blood tests for HIV infection are recommended for the employee at the time of exposure; subsequent tests are performed at six weeks, twelve weeks and six months, if indeed the source case was found to be HIV positive or unknown.

APPENDICES

HOUSE JOINT RESOLUTION NO. 184

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on February 7, 1992)

(Patron Prior to Substitute—Delegate Van Landingham)

Requesting the Committee on Training of the Criminal Justice Services Board, in cooperation with the Joint Subcommittee Studying the Issues, Policies, and Programs Relating to Infection with Human Immunodeficiency Viruses, the Virginia Fire Services Board and the Virginia Department of Health, Division of Emergency Services, to study certain training and testing issues related to HIV and public safety personnel.

WHEREAS, House Bill No. 1320 of 1991 would have amended § 32.1-45.1 to extend deemed consent to testing for HIV and release of test results to public safety personnel when they are directly exposed to body fluids of certain persons during the scope of their employment; and

WHEREAS, this bill was referred to the Joint Subcommittee Studying Human Immunodeficiency Viruses (HIV) for study by the Senate Committee on Education and Health; and

WHEREAS, because currently licensed tests identify antibodies to HIV, there is a window of nonreactivity of three to six months following infection; and

WHEREAS, this window of nonreactivity means that even though individuals may be infected, this infection may not be identified by the test; and

WHEREAS, public safety personnel are most often the first responders to accidents, domestic incidents, and complaints of alleged criminal activity; and

WHEREAS, law-enforcement officers and other public safety personnel are significantly concerned about possible exposure to human immunodeficiency viruses; and

WHEREAS, law-enforcement officers and other public safety personnel may be more at risk for infection with other contagious diseases, such as hepatitis, than they are for infection with HIV; and

WHEREAS, testing is a mechanism for resolving concerns after an exposure has occurred, and universal precautions are mechanisms for preventing exposure; and

WHEREAS, appropriate training in prevention of exposure to contagious diseases, including, but not limited to, hepatitis and HIV, could substantially resolve these concerns; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Committee on Training of the Criminal Justice Services Board be hereby requested, in the discharge of its responsibilities as the policy-making body responsible to the Board for effecting the provisions of subdivisions 2 through 12 of § 9-170 relating to compulsory minimum entry-level, in-service, and advanced training standards for public safety personnel, in cooperation with the Joint Subcommittee Studying the Issues, Policies, and Programs Relating to Infection with Human Immunodeficiency Viruses, the Virginia Fire Services Board and the Department of Health, Division of Emergency Medical Services, to study appropriate training in the prevention of exposure to contagious diseases, including, but not limited to, appropriate use of universal precautions. In developing these standards, the Committee on Training shall consider the efficacy of requiring training and certification as emergency medical technicians for appropriate personnel. The Committee shall also examine the issues related to testing for HIV and public safety personnel, including confidentiality, search and seizure, privacy, and effectiveness.

In its deliberations, the Committee on Training shall consult with representatives of the Department of Corrections, the Fraternal Order of Police, the Virginia State Sheriffs' Association, the Virginia Association of Chiefs of Police, the Virginia State Police Association, and any other groups deemed appropriate; and, be it

RESOLVED FURTHER, That the Committee shall periodically report its findings and recommendations to the Joint Subcommittee Studying Human Immunodeficiency Viruses during the 1992 interim as deemed necessary.

The Committee shall submit its findings and recommendations to the Governor and the 1993 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

SENATE JOINT RESOLUTION NO. 49

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rules
on February 10, 1992)

(Patron Prior to Substitute—Senator Scott)

Requesting the Committee on Training of the Criminal Justice Services Board, in cooperation with the Joint Subcommittee Studying the Issues, Policies, and Programs Relating to Infection with Human Immunodeficiency Viruses, the Virginia Fire Services Board and the Virginia Department of Health, Division of Emergency Services, to study certain training and testing issues related to HIV and public safety personnel.

WHEREAS, House Bill No. 1320 of 1991 would have amended § 32.1-45.1 to extend deemed consent to testing for HIV and release of test results to public safety personnel when they are directly exposed to body fluids of certain persons during the scope of their employment; and

WHEREAS, this bill was referred to the Joint Subcommittee Studying Human Immunodeficiency Viruses (HIV) for study by the Senate Committee on Education and Health; and

WHEREAS, because currently licensed tests identify antibodies to HIV, there is a window of nonreactivity of three to six months following infection; and

WHEREAS, this window of nonreactivity means that even though individuals may be infected, this infection may not be identified by the test; and

WHEREAS, public safety personnel are most often the first responders to accidents, domestic incidents, and complaints of alleged criminal activity; and

WHEREAS, law-enforcement officers and other public safety personnel are significantly concerned about possible exposure to human immunodeficiency viruses; and

WHEREAS, law-enforcement officers and other public safety personnel may be more at risk for infection with other contagious diseases, such as hepatitis, than they are for infection with HIV; and

WHEREAS, testing is a mechanism for resolving concerns after an exposure has occurred, and universal precautions are mechanisms for preventing exposure; and

WHEREAS, appropriate training in prevention of exposure to contagious diseases, including, but not limited to, hepatitis and HIV, could substantially resolve these concerns; now, therefore, be it

RESOLVED by the Senate, the House concurring, That the Committee on Training of the Criminal Justice Services Board be hereby requested, in the discharge of its responsibilities as the policy-making body responsible to the Board for effecting the provisions of subdivisions 2 through 12 of § 9-170 relating to compulsory minimum entry-level, in-service, and advanced training standards for public safety personnel, in cooperation with the Joint Subcommittee Studying the Issues, Policies, and Programs Relating to Infection with Human Immunodeficiency Viruses, the Virginia Fire Services Board and the Department of Health, Division of Emergency Medical Services, to study appropriate training in the prevention of exposure to contagious diseases, including, but not limited to, appropriate use of universal precautions. In developing these standards, the Committee on Training shall consider the efficacy of requiring training and certification as emergency medical technicians for appropriate personnel. The Committee shall also examine the issues related to testing for HIV and public safety personnel, including confidentiality, search and seizure, privacy, and effectiveness.

In its deliberations, the Committee on Training shall consult with representatives of the Department of Corrections, the Fraternal Order of Police, the Virginia State Sheriffs' Association, the Virginia Association of Chiefs of Police, the Virginia State Police Association, and any other groups deemed appropriate; and, be it

RESOLVED FURTHER, That the Committee shall periodically report its findings and recommendations to the Joint Subcommittee Studying Human Immunodeficiency Viruses during the 1992 interim as deemed necessary.

The Committee shall submit its findings and recommendations to the Governor and the 1993 Session of the General Assembly in accordance with the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

1910.1030

OCCUPATIONAL EXPOSURE TO BLOODBORNE PATHOGENS; FINAL RULE.

Implementation Schedule:

Effective date:	Jun. 1, 1992
Effective date for exposure control plan requirements:	Aug. 1, 1992
Effective date for information, training & recordkeeping:	Sep. 1, 1992
Effective date for engineering, work practice controls, personal protective equipment, housekeeping, HBV vaccine and follow-up. and labels and signs	Oct.. 1. 1992

XI. The Standard

General Industry

Part 1910 of title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The general authority citation for subpart Z of 29 CFR part 1910 continues to read as follows and a new citation for § 1910.1030 is added:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657, Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR part 1911.

* * * * *

Section 1910.1030 also issued under 29 U.S.C. 653.

* * * * *

2. Section 1910.1030 is added to read as follows:

§ 1910.1030 Bloodborne Pathogens.

(a) *Scope and Application.* This section applies to all occupational exposure to blood or other potentially infectious materials as defined by paragraph (b) of this section.

(b) *Definitions.* For purposes of this section, the following shall apply:

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, or designated representative.

Blood means human blood, human blood components, and products made from human blood.

Bloodborne Pathogens means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

Clinical Laboratory means a workplace where diagnostic or other screening procedures are performed on blood or other potentially infectious materials.

Contaminated means the presence or the reasonably anticipated presence of blood or other potentially infectious materials on an item or surface.

Contaminated Laundry means laundry which has been soiled with blood or other potentially infectious materials or may contain sharps.

Contaminated Sharps means any contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.

Decontamination means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designated representative.

Engineering Controls means controls (e.g., sharps disposal containers, self-sheathing needles) that isolate or remove the bloodborne pathogens hazard from the workplace.

Exposure Incident means a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.

Handwashing Facilities means a facility providing an adequate supply of running potable water, soap and single use towels or hot air drying machines.

Licensed Healthcare Professional is a person whose legally permitted scope of practice allows him or her to independently perform the activities required by paragraph (f) Hepatitis B Vaccination and Post-exposure Evaluation and Follow-up.

HBV means hepatitis B virus.

HIV means human immunodeficiency virus.

Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

Other Potentially Infectious Materials means

(1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

Parenteral means piercing mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts, and abrasions.

Personal Protective Equipment is specialized clothing or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.

Production Facility means a facility engaged in industrial-scale, large-volume or high concentration production of HIV or HBV.

Regulated Waste means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps; and pathological and microbiological wastes containing blood or other potentially infectious materials.

Research Laboratory means a laboratory producing or using research-laboratory-scale amounts of HIV or HBV. Research laboratories may produce high concentrations of HIV or HBV but not in the volume found in production facilities.

Source Individual means any individual, living or dead, whose blood or other potentially infectious material may be a source of occupational exposure to the employee. Examples include, but are not limited to, hospital and clinic patients; clients in institutions for the developmentally disabled; trauma victims; clients of drug and alcohol treatment facilities; residents of hospices and nursing homes; human remains; and individuals who donate or sell blood or blood components.

Sterilize means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Universal Precautions is an approach to infection control. According to the concept of Universal Precautions, all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.

Work Practice Controls means controls that reduce the likelihood of exposure by altering the manner in which a task is performed (e.g., prohibiting recapping of needles by a two-handed technique).

(c) *Exposure control*—(1) *Exposure Control Plan.* (i) Each employer having an employee(s) with occupational exposure as defined by paragraph (b) of this section shall establish a written Exposure Control Plan designed to

eliminate or minimize employee exposure.

(ii) The Exposure Control Plan shall contain at least the following elements:

(A) The exposure determination required by paragraph(c)(2),

(B) The schedule and method of implementation for paragraphs (d) Methods of Compliance, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, (g) Communication of Hazards to Employees, and (h) Recordkeeping, of this standard, and

(C) The procedure for the evaluation of circumstances surrounding exposure incidents as required by paragraph (f)(3)(i) of this standard.

(iii) Each employer shall ensure that a copy of the Exposure Control Plan is accessible to employees in accordance with 29 CFR 1910.20(e).

(iv) The Exposure Control Plan shall be reviewed and updated at least annually and whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or revised employee positions with occupational exposure.

(v) The Exposure Control Plan shall be made available to the Assistant Secretary and the Director upon request for examination and copying.

(2) *Exposure determination.* (i) Each employer who has an employee(s) with occupational exposure as defined by paragraph (b) of this section shall prepare an exposure determination. This exposure determination shall contain the following:

(A) A list of all job classifications in which all employees in those job classifications have occupational exposure;

(B) A list of job classifications in which some employees have occupational exposure, and

(C) A list of all tasks and procedures or groups of closely related task and procedures in which occupational exposure occurs and that are performed by employees in job classifications listed in accordance with the provisions of paragraph (c)(2)(i)(B) of this standard.

(ii) This exposure determination shall be made without regard to the use of personal protective equipment.

(d) *Methods of compliance*—(1) *General*—Universal precautions shall be observed to prevent contact with blood or other potentially infectious materials. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

(2) *Engineering and work practice controls.* (i) Engineering and work practice controls shall be used to eliminate or minimize employee exposure. Where occupational exposure remains after institution of these controls, personal protective equipment shall also be used.

(ii) Engineering controls shall be examined and maintained or replaced on a regular schedule to ensure their effectiveness.

(iii) Employers shall provide handwashing facilities which are readily accessible to employees.

(iv) When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, hands shall be washed with soap and running water as soon as feasible.

(v) Employers shall ensure that employees wash their hands immediately or as soon as feasible after removal of gloves or other personal protective equipment.

(vi) Employers shall ensure that employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or other potentially infectious materials.

(vii) Contaminated needles and other contaminated sharps shall not be bent, recapped, or removed except as noted in paragraphs (d)(2)(vii)(A) and (d)(2)(vii)(B) below. Shearing or breaking of contaminated needles is prohibited.

(A) Contaminated needles and other contaminated sharps shall not be recapped or removed unless the employer can demonstrate that no alternative is feasible or that such action is required by a specific medical procedure.

(B) Such recapping or needle removal must be accomplished through the use of a mechanical device or a one-handed technique.

(viii) Immediately or as soon as possible after use, contaminated reusable sharps shall be placed in appropriate containers until properly reprocessed. These containers shall be:

(A) Puncture resistant;

(B) Labeled or color-coded in accordance with this standard;

(C) Leakproof on the sides and bottom; and

(D) In accordance with the requirements set forth in paragraph (d)(4)(ii)(E) for reusable sharps.

(ix) Eating, drinking, smoking, applying cosmetics or lip balm, and handling contact lenses are prohibited in work areas where there is a reasonable likelihood of occupational exposure.

(x) Food and drink shall not be kept in refrigerators, freezers, shelves, cabinets or on countertops or benchtops where blood or other potentially infectious materials are present.

(xi) All procedures involving blood or other potentially infectious materials shall be performed in such a manner as to minimize splashing, spraying, spattering, and generation of droplets of these substances.

(xii) Mouth pipetting/suctioning of blood or other potentially infectious materials is prohibited.

(xiii) Specimens of blood or other potentially infectious materials shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport, or shipping.

(A) The container for storage, transport, or shipping shall be labeled or color-coded according to paragraph (g)(1)(i) and closed prior to being stored, transported, or shipped. When a facility utilizes Universal Precautions in the handling of all specimens, the labeling/color-coding of specimens is not necessary provided containers are recognizable as containing specimens. This exemption only applies while such specimens/containers remain within the facility. Labeling or color-coding in accordance with paragraph (g)(1)(i) is required when such specimens/containers leave the facility.

(B) If outside contamination of the primary container occurs, the primary container shall be placed within a second container which prevents leakage during handling, processing, storage, transport, or shipping and is labeled or color-coded according to the requirements of this standard.

(C) If the specimen could puncture the primary container, the primary container shall be placed within a secondary container which is puncture-resistant in addition to the above characteristics.

(xiv) Equipment which may become contaminated with blood or other potentially infectious materials shall be examined prior to servicing or shipping and shall be decontaminated as necessary, unless the employer can demonstrate that decontamination of such equipment or portions of such equipment is not feasible.

(A) A readily observable label in accordance with paragraph (g)(1)(i)(H) shall be attached to the equipment stating which portions remain contaminated.

(B) The employer shall ensure that this information is conveyed to all affected employees, the servicing representative, and/or the manufacturer, as appropriate, prior to handling, servicing, or shipping so that appropriate precautions will be taken.

(3) Personal protective equipment—(i) Provision. When there is occupational exposure, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time which the protective equipment will be used.

(ii) Use. The employer shall ensure that the employee uses appropriate personal protective equipment unless the employer shows that the employee temporarily and briefly declined to use personal protective equipment when, under rare and extraordinary circumstances, it was the employee's professional judgment that in the specific instance its use would have prevented the delivery of health care or public safety services or would have posed an increased hazard to the safety of the worker or co-worker. When the employee makes this judgement, the circumstances shall be investigated and documented in order to determine whether changes can be instituted to prevent such occurences in the future.

(iii) Accessibility. The employer shall ensure that appropriate personal protective equipment in the appropriate sizes is readily accessible at the worksite or is issued to employees. Hypoallergenic gloves, glove liners, powderless gloves, or other similar alternatives shall be readily accessible to those employees who are allergic to the gloves normally provided.

(iv) Cleaning, Laundering, and Disposal. The employer shall clean, launder, and dispose of personal protective equipment required by paragraphs (d) and (e) of this standard, at no cost to the employee.

(v) Repair and Replacement. The employer shall repair or replace personal protective equipment as needed to maintain its effectiveness, at no cost to the employee.

(vi) If a garment(s) is penetrated by blood or other potentially infectious materials, the garment(s) shall be removed immediately or as soon as feasible.

(vii) All personal protective equipment shall be removed prior to leaving the work area.

(viii) When personal protective equipment is removed it shall be placed in an appropriately designated area or container for storage, washing, decontamination or disposal.

(ix) Gloves. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes, and non-intact skin; when performing vascular access procedures except as specified in paragraph (d)(3)(ix)(D); and when handling or touching contaminated items or surfaces.

(A) Disposable (single use) gloves such as surgical or examination gloves, shall be replaced as soon as practical when contaminated or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised.

(B) Disposable (single use) gloves shall not be washed or decontaminated for re-use.

(C) Utility gloves may be decontaminated for re-use if the integrity of the glove is not compromised. However, they must be discarded if they are cracked, peeling, torn, punctured, or exhibit other signs of deterioration or when their ability to function as a barrier is compromised.

(D) If an employer in a volunteer blood donation center judges that routine gloving for all phlebotomies is not necessary then the employer shall:

(*1*) Periodically reevaluate this policy;

(*2*) Make gloves available to all employees who wish to use them for phlebotomy;

(*3*) Not discourage the use of gloves for phlebotomy; and

(*4*) Require that gloves be used for phlebotomy in the following circumstances:

(*i*) When the employee has cuts, scratches, or other breaks in his or her skin;

(*ii*) When the employee judges that hand contamination with blood may occur, for example, when performing phlebotomy on an uncooperative source individual; and

(*iii*) When the employee is receiving training in phlebotomy.

(x) Masks, Eye Protection, and Face Shields. Masks in combination with eye protection devices, such as goggles or glasses with solid side shields, or chin-length face shields, shall be worn whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials may be generated and eye, nose, or mouth contamination can be reasonably anticipated.

(xi) Gowns, Aprons, and Other Protective Body Clothing. Appropriate protective clothing such as, but not limited to, gowns, aprons, lab coats, clinic jackets, or similar outer garments shall be worn in occupational exposure situations. The type and characteristics will depend upon the task and degree of exposure anticipated.

(xii) Surgical caps or hoods and/or shoe covers or boots shall be worn in instances when gross contamination can reasonably be anticipated (e.g., autopsies, orthopaedic surgery).

(4) *Housekeeping.* (i) General. Employers shall ensure that the worksite is maintained in a clean and sanitary condition. The employer shall determine and implement an appropriate written schedule for cleaning and method of decontamination based upon the location within the facility, type of surface to be cleaned, type of soil present, and tasks or procedures being performed in the area.

(ii) All equipment and environmental and working surfaces shall be cleaned and decontaminated after contact with blood or other potentially infectious materials.

(A) Contaminated work surfaces shall be decontaminated with an appropriate disinfectant after completion of procedures; immediately or as soon as feasible when surfaces are overtly contaminated or after any spill of blood or other potentially infectious materials; and at the end of the work shift if the surface may have become contaminated since the last cleaning.

(B) Protective coverings, such as plastic wrap, aluminum foil, or imperviously-backed absorbent paper used to cover equipment and environmental surfaces, shall be removed and replaced as soon as feasible when they become overtly contaminated or at the end of the workshift if they may have become contaminated during the shift.

(C) All bins, pails, cans, and similar receptacles intended for reuse which have a reasonable likelihood for becoming contaminated with blood or other potentially infectious materials shall be inspected and decontaminated on a regularly scheduled basis and cleaned and decontaminated immediately or as soon as feasible upon visible contamination.

(D) Broken glassware which may be contaminated shall not be picked up directly with the hands. It shall be cleaned up using mechanical means.

such as a brush and dust pan, tongs, or forceps.

(E) Reusable sharps that are contaminated with blood or other potentially infectious materials shall not be stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.

(iii) Regulated Waste.

(A) Contaminated Sharps Discarding and Containment. (*1*) Contaminated sharps shall be discarded immediately or as soon as feasible in containers that are:

(*i*) Closable;

(*ii*) Puncture resistant;

(*iii*) Leakproof on sides and bottom; and

(*iv*) Labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard.

(*2*) During use, containers for contaminated sharps shall be:

(*i*) Easily accessible to personnel and located as close as is feasible to the immediate area where sharps are used or can be reasonably anticipated to be found (e.g., laundries);

(*ii*) Maintained upright throughout use; and

(*iii*) Replaced routinely and not be allowed to overfill.

(*3*) When moving containers of contaminated sharps from the area of use, the containers shall be:

(*i*) Closed immediately prior to removal or replacement to prevent spillage or protrusion of contents during handling, storage, transport, or shipping;

(*ii*) Placed in a secondary container if leakage is possible. The second container shall be:

(*A*) Closable;

(*B*) Constructed to contain all contents and prevent leakage during handling, storage, transport, or shipping; and

(*C*) Labeled or color-coded according to paragraph (g)(1)(i) of this standard.

(*4*) Reusable containers shall not be opened, emptied, or cleaned manually or in any other manner which would expose employees to the risk of percutaneous injury.

(B) Other Regulated Waste Containment.(*1*) Regulated waste shall be placed in containers which are:

(*i*) Closable;

(*ii*) Constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping;

(*iii*) Labeled or color-coded in accordance with paragraph (g)(1)(i) this standard; and

(*iv*) Closed prior to removal to prevent spillage or protrusion of contents during handling, storage, transport, or shipping.

(*2*) If outside contamination of the regulated waste container occurs, it shall be placed in a second container. The second container shall be:

(*i*) Closable;

(*ii*) Constructed to contain all contents and prevent leakage of fluids during handling, storage, transport or shipping;

(*iii*) Labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard; and

(*iv*) Closed prior to removal to prevent spillage or protrusion of contents during handling, storage, transport, or shipping.

(C) Disposal of all regulated waste shall be in accordance with applicable regulations of the United States, States and Territories, and political subdivisions of States and Territories.

(iv) Laundry.

(A) Contaminated laundry shall be handled as little as possible with a minimum of agitation. (1) Contaminated laundry shall be bagged or containerized at the location where it was used and shall not be sorted or rinsed in the location of use.

(2) Contaminated laundry shall be placed and transported in bags or containers labeled or color-coded in accordance with paragraph (g)(1)(i) of this standard. When a facility utilizes Universal Precautions in the handling of all soiled laundry, alternative labeling or color-coding is sufficient if it permits all employees to recognize the containers as requiring compliance with Universal Precautions.

(3) Whenever contaminated laundry is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the laundry shall be placed and transported in bags or containers which prevent soak-through and/or leakage of fluids to the exterior.

(B) The employer shall ensure that employees who have contact with contaminated laundry wear protective gloves and other appropriate personal protective equipment.

(C) When a facility ships contaminated laundry off-site to a second facility which does not utilize Universal Precautions in the handling of all laundry, the facility generating the contaminated laundry must place such laundry in bags or containers which are labeled or color-coded in accordance with paragraph (g)(1)(i).

(e) *HIV and HBV Research Laboratories and Production Facilities.* (1) This paragraph applies to research laboratories and production facilities engaged in the culture, production, concentration, experimentation, and manipulation of HIV and HBV. It does not apply to clinical or diagnostic laboratories engaged solely in the analysis of blood, tissues, or organs. These requirements apply in addition to the other requirements of the standard.

(2) Research laboratories and production facilities shall meet the following criteria:

(i) Standard microbiological practices. All regulated waste shall either be incinerated or decontaminated by a method such as autoclaving known to effectively destroy bloodborne pathogens.

(ii) Special practices.

(A) Laboratory doors shall be kept closed when work involving HIV or HBV is in progress.

(B) Contaminated materials that are to be decontaminated at a site away from the work area shall be placed in a durable, leakproof, labeled or color-coded container that is closed before being removed from the work area.

(C) Access to the work area shall be limited to authorized persons. Written policies and procedures shall be established whereby only persons who have been advised of the potential biohazard, who meet any specific entry requirements, and who comply with all entry and exit procedures shall be allowed to enter the work areas and animal rooms.

(D) When other potentially infectious materials or infected animals are present in the work area or containment module, a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors. The hazard warning sign shall comply with paragraph (g)(1)(ii) of this standard.

(E) All activities involving other potentially infectious materials shall be conducted in biological safety cabinets or other physical-containment devices within the containment module. No work with these other potentially infectious materials shall be conducted on the open bench.

(F) Laboratory coats, gowns, smocks, uniforms, or other appropriate protective clothing shall be used in the work area and animal rooms. Protective clothing shall not be worn outside of the work area and shall be decontaminated before being laundered.

(G) Special care shall be taken to avoid skin contact with other potentially infectious materials. Gloves shall be worn when handling infected animals and when making hand contact with other potentially infectious materials is unavoidable.

(H) Before disposal all waste from work areas and from animal rooms shall either be incinerated or decontaminated by a method such as autoclaving known to effectively destroy bloodborne pathogens.

(l) Vacuum lines shall be protected ith liquid disinfectant traps and high- fficiency particulate air (HEPA) filters r filters of equivalent or superior fficiency and which are checked outinely and maintained or replaced as ecessary.

(J) Hypodermic needles and syringes hall be used only for parenteral ijection and aspiration of fluids from iboratory animals and diaphragm ottles. Only needle-locking syringes or isposable syringe-needle units (i.e., the eedle is integral to the syringe) shall be sed for the injection or aspiration of ther potentially infectious materials. xtreme caution shall be used when andling needles and syringes. A needle iall not be bent, sheared, replaced in ie sheath or guard, or removed from the yringe following use. The needle and yringe shall be promptly placed in a uncture-resistant container and utoclaved or decontaminated before :use or disposal.

(K) All spills shall be immediately ontained and cleaned up by ppropriate professional staff or others roperly trained and equipped to work ith potentially concentrated infectious aterials.

(L) A spill or accident that results in i exposure incident shall be mediately reported to the laboratory rector or other responsible person.

(M) A biosafety manual shall be epared or adopted and periodically viewed and updated at least annually more often if necessary. Personnel iall be advised of potential hazards. iall be required to read instructions on actices and procedures, and shall be quired to follow them.

(iii) Containment equipment. (A) ertified biological safety cabinets lass I, II, or III) or other appropriate mbinations of personal protection or ysical containment devices, such as ecial protective clothing, respirators, ntrifuge safety cups, sealed centrifuge tors, and containment caging for imals, shall be used for all activities ith other potentially infectious aterials that pose a threat of exposure droplets, splashes, spills, or aerosols.

(B) Biological safety cabinets shall be rtified when installed, whenever they e moved and at least annually.

(3) HIV and HBV research boratories shall meet the following iteria:

(i) Each laboratory shall contain a cility for hand washing and an eye ash facility which is readily available ithin the work area.

(ii) An autoclave for decontamination regulated waste shall be available.

(4) HIV and HBV production facilities all meet the following criteria:

(i) The work areas shall be separated from areas that are open to unrestricted traffic flow within the building. Passage through two sets of doors shall be the basic requirement for entry into the work area from access corridors or other contiguous areas. Physical separation of the high-containment work area from access corridors or other areas or activities may also be provided by a double-doored clothes-change room (showers may be included), airlock, or other access facility that requires passing through two sets of doors before entering the work area.

(ii) The surfaces of doors, walls, floors and ceilings in the work area shall be water resistant so that they can be easily cleaned. Penetrations in these surfaces shall be sealed or capable of being sealed to facilitate decontamination.

(iii) Each work area shall contain a sink for washing hands and a readily available eye wash facility. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door of the work area.

(iv) Access doors to the work area or containment module shall be self-closing.

(v) An autoclave for decontamination of regulated waste shall be available within or as near as possible to the work area.

(vi) A ducted exhaust-air ventilation system shall be provided. This system shall create directional airflow that draws air into the work area through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes. The proper direction of the airflow shall be verified (i.e., into the work area).

(5) *Training Requirements.* Additional training requirements for employees in HIV and HBV research laboratories and HIV and HBV production facilities are specified in paragraph (g)(2)(ix).

(f) *Hepatitis B vaccination and post-exposure evaluation and follow-up—(1) General.* (i) The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident.

(ii) The employer shall ensure that all medical evaluations and procedures including the hepatitis B vaccine and vaccination series and post-exposure evaluation and follow-up, including prophylaxis, are:

(A) Made available at no cost to the employee;

(B) Made available to the employee at a reasonable time and place;

(C) Performed by or under the supervision of a licensed physician or by or under the supervision of another licensed healthcare professional; and

(D) Provided according to the recommendations of the U.S. Public Health Service current at the time these evaluations and procedures take place, except as specified by this paragraph (f).

(iii) The employer shall ensure that all laboratory tests are conducted by an accredited laboratory at no cost to the employee.

(2) *Hepatitis B Vaccination.* (i) Hepatitis B vaccination shall be made available after the employee has received the training required in paragraph (g)(2)(vii)(I) and within 10 working days of initial assignment to all employees who have occupational exposure unless the employee has previously received the complete hepatitis B vaccination series, antibody testing has revealed that the employee is immune, or the vaccine is contraindicated for medical reasons.

(ii) The employer shall not make participation in a prescreening program a prerequisite for receiving hepatitis B vaccination.

(iii) If the employee initially declines hepatitis B vaccination but at a later date while still covered under the standard decides to accept the vaccination, the employer shall make available hepatitis B vaccination at that time.

(iv) The employer shall assure that employees who decline to accept hepatitis B vaccination offered by the employer sign the statement in appendix A.

(v) If a routine booster dose(s) of hepatitis B vaccine is recommended by the U.S. Public Health Service at a future date, such booster dose(s) shall be made available in accordance with section (f)(1)(ii).

(3) *Post-exposure Evaluation and Follow-up.* Following a report of an exposure incident, the employer shall make immediately available to the exposed employee a confidential medical evaluation and follow-up, including at least the following elements:

(i) Documentation of the route(s) of exposure, and the circumstances under which the exposure incident occurred;

(ii) Identification and documentation of the source individual, unless the employer can establish that identification is infeasible or prohibited by state or local law;

(A) The source individual's blood shall be tested as soon as feasible and

after consent is obtained in order to determine HBV and HIV infectivity. If consent is not obtained, the employer shall establish that legally required consent cannot be obtained. When the source individual's consent is not required by law, the source individual's blood, if available, shall be tested and the results documented.

(B) When the source individual is already known to be infected with HBV or HIV, testing for the source individual's known HBV or HIV status need not be repeated.

(C) Results of the source individual's testing shall be made available to the exposed employee, and the employee shall be informed of applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual.

(iii) Collection and testing of blood for HBV and HIV serological status;

(A) The exposed employee's blood shall be collected as soon as feasible and tested after consent is obtained.

(B) If the employee consents to baseline blood collection, but does not give consent at that time for HIV serologic testing, the sample shall be preserved for at least 90 days. If, within 90 days of the exposure incident, the employee elects to have the baseline sample tested, such testing shall be done as soon as feasible.

(iv) Post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service;

(v) Counseling; and

(vi) Evaluation of reported illnesses.

(4) *Information Provided to the Healthcare Professional.* (i) The employer shall ensure that the healthcare professional responsible for the employee's Hepatitis B vaccination is provided a copy of this regulation.

(ii) The employer shall ensure that the healthcare professional evaluating an employee after an exposure incident is provided the following information:

(A) A copy of this regulation;

(B) A description of the exposed employee's duties as they relate to the exposure incident;

(C) Documentation of the route(s) of exposure and circumstances under which exposure occurred;

(D) Results of the source individual's blood testing, if available; and

(E) All medical records relevant to the appropriate treatment of the employee including vaccination status which are the employer's responsibility to maintain.

(5) *Healthcare Professional's Written Opinion.* The employer shall obtain and provide the employee with a copy of the evaluating healthcare professional's written opinion within 15 days of the completion of the evaluation.

(i) The healthcare professional's written opinion for Hepatitis B vaccination shall be limited to whether Hepatitis B vaccination is indicated for an employee, and if the employee has received such vaccination.

(ii) The healthcare professional's written opinion for post-exposure evaluation and follow-up shall be limited to the following information:

(A) That the employee has been informed of the results of the evaluation; and

(B) That the employee has been told about any medical conditions resulting from exposure to blood or other potentially infectious materials which require further evaluation or treatment.

(iii) All other findings or diagnoses shall remain confidential and shall not be included in the written report.

(6) *Medical recordkeeping.* Medical records required by this standard shall be maintained in accordance with paragraph (h)(1) of this section.

(g) *Communication of hazards to employees*— (1) *Labels and signs.* (i) Labels. (A) Warning labels shall be affixed to containers of regulated waste, refrigerators and freezers containing blood or other potentially infectious material; and other containers used to store, transport or ship blood or other potentially infectious materials, except as provided in paragraph (g)(1)(i)(E), (F) and (G).

(B) Labels required by this section shall include the following legend:

BIOHAZARD

BIOHAZARD

(C) These labels shall be fluorescent orange or orange-red or predominantly so, with lettering or symbols in a contrasting color.

(D) Labels required by affixed as close as feasible to the container by string, wire, adhesive, or other method that prevents their loss or unintentional removal.

(E) Red bags or red containers may be substituted for labels.

(F) Containers of blood, blood components, or blood products that are labeled as to their contents and have been released for transfusion or other clinical use are exempted from the labeling requirements of paragraph (g).

(G) Individual containers of blood or other potentially infectious materials that are placed in a labeled container during storage, transport, shipment or disposal are exempted from the labeling requirement.

(H) Labels required for contaminated equipment shall be in accordance with this paragraph and shall also state which portions of the equipment remain contaminated.

(I) Regulated waste that has been decontaminated need not be labeled or color-coded.

(ii) Signs. (A) The employer shall post signs at the entrance to work areas specified in paragraph (e), HIV and HBV Research Laboratory and Production Facilities, which shall bear the following legend:

BIOHAZARD

BIOHAZARD

(Name of the Infectious Agent)
(Special requirements for entering the area)
(Name, telephone number of the laboratory director or other responsible person.)

(B) These signs shall be fluorescent orange-red or predominantly so, with lettering or symbols in a contrasting color.

(2) *Information and Training.* (i) Employers shall ensure that all employees with occupational exposure participate in a training program which must be provided at no cost to the employee and during working hours.

(ii) Training shall be provided as follows:

(A) At the time of initial assignment to tasks where occupational exposure may take place;

(B) Within 90 days after the effective date of the standard; and

(C) At least annually thereafter.

(iii) For employees who have received training on bloodborne pathogens in the year preceding the effective date of the standard, only training with respect to the provisions of the standard which were not included need be provided.

(iv) Annual training for all employees shall be provided within one year of their previous training.

(v) Employers shall provide additional training when changes such as modification of tasks or procedures or institution of new tasks or procedures affect the employee's occupational exposure. The additional training may be limited to addressing the new exposures created.

(vi) Material appropriate in content and vocabulary to educational level, literacy, and language of employees shall be used.

(vii) The training program shall contain at a minimum the following elements:

(A) An accessible copy of the regulatory text of this standard and an explanation of its contents;

(B) A general explanation of the epidemiology and symptoms of bloodborne diseases;

(C) An explanation of the modes of transmission of bloodborne pathogens;

(D) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;

(E) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

(F) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;

(G) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;

(H) An explanation of the basis for selection of personal protective equipment;

(I) Information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;

(J) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;

(K) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;

(L) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident;

(M) An explanation of the signs and labels and/or color coding required by paragraph (g)(1); and

(N) An opportunity for interactive questions and answers with the person conducting the training session.

(viii) The person conducting the training shall be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address.

(ix) Additional Initial Training for Employees in HIV and HBV Laboratories and Production Facilities. Employees in HIV or HBV research laboratories and HIV or HBV production facilities shall receive the following initial training in addition to the above training requirements.

(A) The employer shall assure that employees demonstrate proficiency in standard microbiological practices and techniques and in the practices and operations specific to the facility before being allowed to work with HIV or HBV.

(B) The employer shall assure that employees have prior experience in the handling of human pathogens or tissue cultures before working with HIV or HBV.

(C) The employer shall provide a training program to employees who have no prior experience in handling human pathogens. Initial work activities shall not include the handling of infectious agents. A progression of work activities shall be assigned as techniques are learned and proficiency is developed. The employer shall assure that employees participate in work activities involving infectious agents only after proficiency has been demonstrated.

(h) *Recordkeeping—(1) Medical Records.* (i) The employer shall establish and maintain an accurate record for each employee with occupational exposure, in accordance with 29 CFR 1910.20.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) A copy of the employee's hepatitis B vaccination status including the dates of all the hepatitis B vaccinations and any medical records relative to the employee's ability to receive vaccination as required by paragraph (f)(2);

(C) A copy of all results of examinations, medical testing, and follow-up procedures as required by paragraph (f)(3);

(D) The employer's copy of the healthcare professional's written opinion as required by paragraph (f)(5); and

(E) A copy of the information provided to the healthcare professional as required by paragraphs (f)(4)(ii)(B)(C) and (D).

(iii) **Confidentiality. The employer shall ensure that employee medical records required by paragraph (h)(1) are:**

(A) Kept confidential; and

(B) Are not disclosed or reported without the employee's express written consent to any person within or outside the workplace except as required by this section or as may be required by law.

(iv) The employer shall maintain the records required by paragraph (h) for at least the duration of employment plus 30 years in accordance with 29 CFR 1910.20.

(2) *Training Records. (i) Training records shall include the following information:*

(A) The dates of the training sessions;

(B) The contents or a summary of the training sessions;

(C) The names and qualifications of persons conducting the training; and

(D) The names and job titles of all persons attending the training sessions.

(ii) Training records shall be maintained for 3 years from the date on which the training occurred.

(3) *Availability.* (i) The employer shall ensure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee training records required by this paragraph shall be provided upon request for examination and copying to employees, to employee representatives, to the Director, and to the Assistant Secretary in accordance with 29 CFR 1910.20.

(iii) Employee medical records required by this paragraph shall be provided upon request for examination and copying to the subject employee, to anyone having written consent of the subject employee, to the Director, and to the Assistant Secretary in accordance with 29 CFR 1910.20.

(4) *Transfer of Records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1910.20(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least three months prior to their disposal and transmit them to the Director, if required by the Director to do so, within that three month period.

(i) *Dates—(1) Effective Date.* The standard shall become effective on March 6, 1992.

(2) The Exposure Control Plan required by paragraph (c)(2) of this section shall be completed on or before May 5, 1992.

(3) Paragraph (g)(2) Information and Training and (h) Recordkeeping shall take effect on or before June 4, 1992.

(4) Paragraphs (d)(2) Engineering and Work Practice Controls, (d)(3) Personal Protective Equipment, (d)(4) Housekeeping, (e) HIV and HBV Research Laboratories and Production Facilities, (f) Hepatitis B Vaccination and Post-Exposure Evaluation and Follow-up, and (g) (1) Labels and Signs, shall take effect July 6, 1992.

Appendix A to Section 1910.1030—Hepatitis B Vaccine Declination (Mandatory)

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to me.

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INFECTIOUS DISEASE CONTROL TRAINING FOR PUBLIC SAFETY PERSONNEL

I. Definitions:

The following words and terms, when used in these regulations, shall have the following meaning:

A. "Communicable disease" means any disease which may be transmitted directly or indirectly from one individual to another.

B. "Occupational Exposure" means reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

C. "Public Safety Agency" means any sheriff's office and any adult or youth correctional, law enforcement, fire safety organization, Emergency Medical Services or any agency or department that employs persons who have law enforcement authority and which is under the direction and control of the Commonwealth or any local governing body.

D. "Volunteer" means any person who, of his own free will, provides goods or services, without any financial gain, to any agency.

E. "CDPT" means Communicable Disease Prevention Training.

II. Minimum standards for instructors to conduct training in the prevention of exposure to communicable diseases are the following:

A. Instructors should have knowledge of content.

B. Instructors should have knowledge of teaching methods.

C. Instructors should have knowledge of public safety job duties.

III. Public safety personnel to whom these standards shall apply:

A. Public safety personnel and volunteers whose job duties have any potential occupational exposure to communicable diseases.

B. Public safety personnel and volunteers shall receive CDPT before assuming any duties which would put them at risk for exposure to communicable diseases and at least annually thereafter.

IV. Minimum standards for training in the prevention of communicable diseases should comply with all OSHA/VOSH regulations and include any other pertinent information deemed appropriate by the agency.

A. Training courses may be divided into an initial course and an annual update course.

B. The initial course shall provide:

1. A statement of the purpose of this training to include the following:

a. The most effective methods of eliminating or reducing the exposure of public safety personnel to communicable diseases.

b. The most currently available medical and scientifically recognized information about the nature of, and risk of, contracting communicable diseases including, but not limited to HIV, HBV and TB.

c. Information designed to place public safety personnel concerns about contracting communicable diseases in an appropriate perspective so as to avoid the effects of many false public perceptions.

d. To educate public safety personnel about Virginia and federal statutes regulating communicable disease testing, test confidentiality, prohibition of employment discrimination for reasons of contracting a communicable disease, health and life insurance, workman's compensation coverage and OSHA regulations.

e. To educate public safety personnel about the prevalence in Virginia of HIV, HBV, TB and other communicable diseases, including demographics, the presence or non-presence of at-risk populations and the rate of increase or decrease of cases of these diseases.

2. Basic principles of Infection Control

a. Infectious vs. Communicable Diseases

b. Airborne and Bloodborne Diseases

c. The Nature of HIV/AIDS, Hepatitis and Tuberculosis

d. Effectiveness of Specialized Testing for Infection

e. Modes of Transmission

3. Identifying and recognizing common situations and tasks in which occupational exposure could be reasonably predicted for each category of public safety personnel receiving training.

4. A description of the medically and scientifically accepted methods used to minimize or eliminate exposure to communicable diseases such as HIV, HBV and TB to include:

    a. Use of protective barriers

    b. Handwashing

    c. Handling contaminated evidence

    d. Safe work practices

    e. Artificial respiration techniques

    f. General cleanliness

    g. Waste management

    h. Use of warning labels and signs

    i. Decontamination procedures for equipment

    j. Disposal techniques of equipment

5. Post exposure follow-up procedure to include:

    a. Written reports to designated agency representatives

    b. Testing source individuals and results disclosure

    c. Confidentiality

    d. Effectiveness of specialized testing for infection

6. Discussion of legal issues related to:

    a. Confidentiality, Search & Seizure, and Privacy

    b. Testing

    c. Americans with Disabilities Act (ADA) on pre-employment and post-employment testing of public safety personnel

    d. Civil liability

7. Summary of possible health benefits for public safety personnel who might contract HIV and other communicable diseases:

    a. Workman's Compensation

    b. Life and Health Insurance

8. Summary of pertinent OSHA regulations

C. The annual update course shall provide for each of the following:

1. General review of communicable diseases and VOSH regulations

2. New information on prevention, treatment, protocol, etc. 3. Review of pertinent state and federal laws/court cases

V. Training should be delivered as follows:

A. Training should provide for interactive communication between the student and the instructor to include an opportunity for questions and answers.

B. Job descriptions and occupational categories may be grouped so that personnel with common exposure risks can receive training appropriate to their particular needs and risks.

VI. Maintenance of training records shall comply with OSHA/VOSH standards.

Summary of Virginia Statutes Relating to
Human Immunodeficiency Virus
and Other Communicable Diseases

§ 2.1-51.14:1--Requiring the Boards within the Health and Human Resources Secretariat to review regulations and policies related to service delivery in order to ascertain and eliminate any discrimination against individuals infected with HIV (1989).

§ 18.2-62--Provides a mechanism for testing charged and convicted sexual offenders (upon request of the Commonwealth's Attorney and after consultation with any victim) (1990).

§ 18.2-346.1--Requiring testing of convicted prostitutes for HIV (1990).

§ 22.1-271.3--Requiring the Board of Education, in cooperation with the Board of Health, to develop and revise as necessary model guidelines for school attendance. All school boards were required to adopt guidelines for school attendance for HIV infected children by July 1, 1990 (1989).

§ 23-9.2:3.2--Requiring Virginia public colleges and universities, in cooperation with the State council of Higher Education and the Department of Health, to develop and implement education programs for college students on the etiology, effects, and prevention of infection with HIV. Private institutions are encouraged to do so (1989).

§ 32.1-11.1--Establishing the Acquired Immunodeficiency Syndrome Services and Education Grants program, administered by the Board of Health with the advice of a committee of experts (1989).

§ 32.1-11.2--Establishing the regional AIDS resource and consultation centers and two pilot treatment centers (only one has been funded in Lynchburg) (1989).

§ 32.1-36--Relating to reporting of certain disease; Requires all physicians practicing in Virginia to report to the local health department the identity of any patient testing positive to HIV. This law specifically notes that there is no duty on the part of the physician to notify any third party other than the local health department and that no cause of action arises from any failure to notify any other third party (1989).

§ 32.1-36.1--Provides confidentiality protections by declaring all tests for HIV infection to be confidential and providing a list to whom the information may be released, including any person authorized by law to receive the information. This law provides a civil penalty of up to $5,000 per violation and authorizes the subject of the test to sue to recover damages or $100, whichever is greater (also entitles the subject to award of reasonable attorney's fees and court costs, if successful). Again, this statute specifically notes that no duty is created to release the test results where none exists (1989).

§ 32.1-37.1--Requires that, upon transfer of any dead body, funeral directors/embalmers be notified by hospitals, nursing homes, homes for adults, and correctional facilities if the individual was known to have an infectious disease which may be transmitted through exposure to any bodily fluids. The Board of Health identifies those infectious diseases for which notification is required (1988).

§ 32.1-37.2--Requires informed consent for testing for HIV in the form of written or oral explanation of the test's meaning; provides certain exceptions; e.g., anonymous testing sites, seroprevalence studies, and blood donations. This statute also requires the opportunity for face-to-face disclosure and appropriate counseling, except for testing conducted by blood banks and insurance policies (1989).

§ 32.1-39--Authorizes the Board of Health to conduct surveillance and investigation of diseases and epidemics, including contact tracing (1989).

§ 32.1-45.1--Provides for deemed consent to testing and release of test results for health care providers and patients when exposed to the body fluids of any individual in either category in a manner which may, according to the CDC, transmit HIV (1989).

§ 32.1-45.2--Establishes a mechanism for testing for certain blood-borne pathogens when a possible exposure to such pathogens involving public safety employees occurs. Employees of public safety agencies are required to notify immediately their agencies of any possible exposure prone incident. Other persons involved in such possible exposure prone incident may request the agency to review the facts. The agency will then obtain medical consultation and review the facts and determine whether it is reasonable to believe that an exposure prone incident may have occurred. If the agency concludes that an exposure prone incident may have occurred, the person or employee whose body fluids were involved will be requested to consent to testing for hepatitis B virus and human immunodeficiency virus and disclosure of the test results. If the person or employee involved in the possible exposure prone incident is deceased, the agency will request the custodian of the remains to preserve a blood sample and will request consent from the decedent's next of kin. If consent is refused, the agency or the employee or other person may petition the relevant general district court to determine whether an exposure prone incident has occurred and to order testing and disclosure of test results. To order testing, the court must find by a preponderance of the evidence that an exposure prone incident has occurred and must be advised by the Commissioner of Health or his designee in making this finding. The hearing will be closed and the record sealed. The order of the district court may be appealed de novo to the circuit court of the same jurisdiction within ten days. The circuit court must also be advised by the Commissioner of his designee and any order of such court will be final and nonappealable. Disclosure is made to the district health director who is charged with informing the parties of the test results and counseling them as required by § 32.1-37.2. Test results are confidential. This provision also provides that persons known or suspected to be positive for infection with hepatitis B or HIV cannot be refused services for that reason by any public safety agency personnel and that no new duty is created. Definitions of "exposure prone incident" and "public safety agency" are included. Virtually any entity with law enforcement powers, including campus police departments, as well as fire safety organizations, and correctional institutions are included pursuant to the definition of "public safety agency." This provision will expire on July 1, 1994. (HB 568, 1992)

§ 32.1-48.01 through 32.1-48.04--Provides an isolation procedure for certain persons with communicable diseases. Defines terms "appropriate precautions," "At-risk behavior," and "Communicable disease." This statute lays out a due process procedure for isolation of individuals who engage in at risk behavior after having been counseled. Although these laws are generic in application, they were developed in response to the HIV epidemic (1990).

§ 32.1-55.1--Makes anonymous testing sites available throughout the Commonwealth (1989).

§ 32.1-116.3--Provides an elaborate system for notification and reporting of (i) the disease condition and necessary precautions of patients with communicable diseases who are being transported by EMS squads; and (ii) exposures to blood or body fluids of any firefighter, law-enforcement officer, emergency medical services technician or paramedic (1988).

§ 32.1-289.2--Provides a criminal penalty (Class 6 felony) for donating or selling, attempting to donate or sell, or consenting to donate or sell, blood, other body fluids, organs and tissues, when knowing that the donor is, or was (donor may be dead), infected with HIV and that the donated item may transmit HIV (1989).

§§ 38.2-501, 38.2-3100.1, 38.2-3401, 38.2-4319 and 38.2-4509--provide the Bureau of Insurance, within the State Corporation Commission, with the authority to regulate individual and group life and health insurers' practices with regard to AIDS/HIV life, including advertising practices, underwriting practices, policy provisions, claim practices, etc (1989).

§§ 65.1-46.1 and 65.1-52--Extend "Ordinary disease of life" coverage under workers' compensation to all health care workers engaged in direct delivery of health care and provide a special statute of limitations under workers' compensation for HIV of two years after a positive test for infection with HIV (1989).

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July 3, 1992

Honorable Robert L. Simpson, Jr.
Chief Judge, Virginia Beach
General District Court
Municipal Center
Virginia Beach, VA 23456-9057

Dear Judge Simpson:

Pursuant to your letter of June 22, I have attempted to analyze several legal issues that may arise in the context of testing public safety employees for the HIV virus. These issues are as follows: (1) search and seizure and privacy concerns under the United States Constitution; (2) permissibility of testing under the Americans with Disabilities Act; (3) confidentiality and unauthorized disclosure of test results; and (4) other miscellaneous issues. If you have further issues that you would like for me to explore, please let me know. Otherwise, I will look forward to receiving from you a copy of the interim report to which you referred in your June 22 letter.

Constitutional Concerns: Search and Seizure and Privacy

The first question is whether testing public employees for the HIV virus would violate those employees' right under the fourth amendment to be free from unreasonable searches and privacy right to be left alone. Although an employee's rights to be free from an unreasonable search and to privacy are technically two distinct constitutional rights, the courts have generally subsumed the separate privacy right into the fourth amendment analysis and hence I will do the same. My conclusions are that it is a close call, but that the courts would probably find mandatory HIV testing of public safety employees constitutional both when performed on all employees in a given job category in an across-the-board fashion and when performed following a particular incident in which bodily fluids may have been exchanged. Testing that follows a particular incident of exchanged bodily fluids, however, stands a greater chance of being upheld as constitutional than does across-the-board testing of all employees in a particular job category.

The United States Supreme Court has recognized that mandatory blood testing is a search and seizure that must comply with the standards of reasonableness imposed by the fourth amendment.

Schmerber v. California, 384 U.S. 757, 767-68 (1966); Skinner v. Railway Labor Executives' Association, 109 S.Ct. 1384, 1405 (1989). The Court has determined that the reasonableness of such a search depends upon a balance between the government's interest in the information obtained from the search and the privacy interests of the individual resisting the search. O'Connor v. Ortega, 480 U.S. 709, 719 (1987).

The Supreme Court has not determined whether HIV testing of public employees is reasonable within the meaning of the fourth amendment. The Court has determined, however, that mandatory blood testing for the presence of drugs or alcohol of public railroad employees following major train accidents or of motorists suspected of driving while intoxicated are reasonable searches under the fourth amendment. Skinner v. Railway Labor Executives' Association, 109 S.Ct. 1384 (1989); Schmerber v. California, 384 U.S. 757, 767-68 (1966).

I have found three reported lower court decisions in which a court squarely considered the question of whether mandatory HIV testing of public employees is reasonable under the fourth amendment. The courts reached different conclusions. One of the critical issues in assessing the reasonableness of HIV testing in these cases was the medical risk of HIV transmission in the particular occupation in question.

One case that did find HIV testing of public employees to be constitutionally unreasonable was Glover v. Eastern Nebraska Community Office of Retardation, 686 F. Supp. 243 (D. Neb. 1988), aff'd, 867 F.2d 461 (8th Cir.), cert. denied, 110 S.Ct. 321 (1989). In that case, the state of Nebraska required all employees charged with the care of mentally handicapped persons in a state facility to be tested for HIV; the government's articulated interest was to prevent the spread of HIV to the patients. The district court found the employee testing to be an unreasonable invasion of privacy and hence violative of the fourth amendment. In the district court's view, the risk of transmission from the employee to patient was so slight as to not justify the mandatory testing of all employees. 686 F. Supp. at 249. The Eighth Circuit affirmed and the United States Supreme Court denied certiorari. The Solicitor General of the United States, in opposing the petition for certiorari, argued that the Nebraska mandatory testing program was indeed an unreasonable search in violation of the fourth amendment.

A district court in Ohio recently declined to follow Glover in Anonymous Fireman v. City of Willoughby, 779 F. Supp. 402 (N.D. Ohio 1991), a case with facts more similar to our situation involving public safety employees. In that case, the city required HIV testing of firefighters, paramedics and emergency medical technicians as part of an annual medical examination. The city required this testing because of its belief that these employees

were at high risk for contracting and transmitting HIV in the course of their work and that therefore the testing was necessary for the protection of the citizens of the city who might come into contact with these employees. The court found that the mandatory testing was reasonable under the fourth amendment. In so doing, the court noted that these types of employees are heavily regulated in the performance of their jobs and that hence their expectation of privacy is much less than that of other public employees. Moreover, the court concluded that the "medical evidence demonstrates that the risk of HIV transmission in the performance of the duties" of these employees was sufficiently great so as to outweigh the privacy interests of the employees. 779 F. Supp. at 417.

Finally, in Local 1812 v. United States Department of State, 662 F. Supp. 50 (D.D.C. 1987), the court upheld mandatory HIV testing of all foreign service employees subject to overseas employment. Here, the government's interest in mandatory testing was not to protect those persons who might have contact with these foreign service employees, but rather to protect the employees themselves who might be assigned to duty posts far removed from adequate medical care. The court concluded that given the fact that some foreign countries did not have adequate medical care for persons afflicted with AIDS, HIV testing was "closely related to fitness for duty," and hence was reasonable within the meaning of the fourth amendment. 662 F. Supp. at 53.

In each of these three cases, the government required HIV testing of all employees in a certain occupational category. In the Glover and Willoughby cases in particular, the critical factor in the constitutional analysis of the testing was the likelihood of transmission of the virus by the employees in question in the course of their work. The Glover court found the transmission risk among health care workers sufficiently low to justify testing; the Willoughby court found the transmission risk among firefighters, paramedics and EMTs sufficiently great to warrant testing. Given the fact that in our context, the proposed HIV testing is of public safety employees with arguably a higher risk of transmission than other types of workers, a court might well find the testing to be reasonable. As the court noted in the Willoughby case, "firefighters and paramedics are at a higher risk than persons in hospitals for contracting or transmitting the HIV virus because they work in a non-controlled setting." 779 F. Supp. at 412. Nevertheless, a court might find that the mandatory HIV testing of public safety employees in Virginia to be unreasonable under the fourth amendment if it concluded as a matter of fact that the transmission risk -- even for these workers -- is low.

I have found no case that discusses the related question of the permissibility of HIV testing of a public employee following a particular incident in which blood or bodily fluids may have been exchanged with another person. In such a case, the government's

interest in testing is arguably greater than in the situation where the testing is performed on all employees in a particular job category because of the need of both the government and the individuals in question to take appropriate action if there has been an exposure to the HIV virus. The California Court of Appeals considered a related issue -- the permissibility under the fourth amendment of mandatory HIV testing of a private citizen who bit a public employee -- in Johnetta J. v. Municipal Court, 267 Cal. Rptr. 666 (1990). The California court concluded that the mandatory testing of the private citizen was reasonable because even though the risk of HIV transmission from a bite was small, it could not be "categorically ruled out." 267 Cal. Rptr. at 671.

In the case of testing following a particular incident, the government's interest is not general as in across-the-board testing, but specific since there has been an actual incident during which fluids may have been exchanged. The government's interest in that situation is thus probably sufficiently large to outweigh the individual's privacy interests.

Discrimination under the Americans with Disabilities Act

A related question is whether the state can test public safety employees for the HIV virus consistent with the newly enacted Americans With Disabilities Act (ADA). The ADA, which covers state government employers, prohibits -- with certain exceptions -- both pre-employment medical examinations and medical examinations of existing employees for the purpose of determining if a person has a disability. Under a statutory exception, pre-employment medical examinations are permitted for the purpose of assessing an employee's ability to perform "job-related functions," 42 U.S.C. Sec. 12112(c)(2)(B); medical examinations of existing employees are permitted if they are "job-related and consistent with business necessity." 42 U.S.C. Sec. 12112(c)(4)(A). Thus, the question arises as to whether HIV testing of public safety employees runs afoul of the ADA.

The first question is whether testing for the HIV virus is a test to determine whether a person has a disability. Persons infected with the HIV virus have been considered by most courts and by the Department of Justice to be disabled within the meaning of the analogous federal Rehabilitation Act. Ray v. School District, 666 F. Supp. 1524 (M.D. Fla. 1987); Thomas v. Atascadero Unified School District, 662 F. Supp. 376, 379 (C.D. Cal. 1987); Local 1812 v. United States Department of State, 662 F. Supp. 50, 54 (D.D.C. 1987); Department of Justice, Office of Legal Counsel, "Application of Section 504 of the Rehabilitation Act to HIV-infected Individuals," September 27, 1988. Because the definition of disability under the newly enacted ADA is substantially similar to that under the Rehabilitation Act, the courts will likely find a person with the HIV virus to be disabled within the meaning of the

ADA as well. Thus medical examinations of public safety employees to determine whether they are HIV positive are prohibited by the ADA unless the information sought through the testing pertains to the ability of the employee to perform job-related functions.

The application of the ADA to HIV testing turns on whether the seropositive condition of a public safety employee is related to his or her ability to perform the job. This aspect of the ADA does not go into effect until July 26, 1992. It is therefore impossible to say with any certainty at this time how the courts will answer this question. Nevertheless, it is possible to say a few things about how the courts might interpret this provision. This issue will likely turn on how the courts evaluate as a matter of fact the risk of transmission of the HIV virus between public safety employees and the public. The greater the risk of transmission, the more likely that the courts would find testing for the HIV virus to be job related. As noted above in the section of this letter that pertains to the fourth amendment, at least one court (Anonymous Fireman v. City of Willoughby, 779 F. Supp. 402 (N.D. Ohio 1991)) has found the risk of transmission of the virus among public safety employees to be sufficiently great to justify HIV testing notwithstanding fourth amendment claims of unreasonableness. A similar result well might follow in a challenge to HIV testing of public safety employees under the ADA.

A separate ADA issue which I understand to be beyond the scope of this committee's work is what type of action can the state take against employees who test positive for the HIV virus. The statute specifically requires the employer to make reasonable accomodations for disabled workers, and hence the state might be required to move these employees into another position. I note this issue, but make no attempt to resolve it.

Confidentiality and Disclosure of Test Results

If the state decides to test public employees for the HIV virus, it should establish a policy of keeping confidential the test results in order to prevent liability for unauthorized disclosures.

It is open question as to whether disclosure of the test results would violate a constitutionally protected privacy interest of the employee subjecting the party making the disclosure to liability. Some courts have found a privacy right in personal medical information. Doe v. Borough of Barrington, 729 F. Supp. 376 (D.N.J. 1990); United States v. Westinghouse Electric Co., 638 F.2d 570 (3d Cir. 1980); Caesar v. Mountanos, 542 F.2d 1064 (9th Cir. 1976), cert. denied, 430 U.S. 954 (1977). Other courts have found that there is no such privacy right. Borucki v. Ryan, 827 F.2d 836 (1st Cir. 1987); J.P. v. DeSanti, 653 F.2d 1080 (6th Cir. 1981).

Where a privacy right in medical information has been found, at least two courts have found that a public employee could be liable for the unauthorized disclosure of the fact of a person's infection with the HIV virus. Doe v. Borough of Barrington, 729 F. Supp. 376 (D.N.J. 1990); Woods v. White, 689 F. Supp. 874 (W.D. Wis. 1988). Moreover, one court has held a municipality liable for failure to properly train public employees in the need to keep confidential the fact that a person is HIV positive. Doe v. Borough of Barrington, 729 F. Supp. 376 (D.N.J. 1990).

Even though the courts that have found a privacy right in one's personal medical information have conceded that this right is not absolute. Compelling governmental interests in disclosure of medical information to certain persons have been consistently held to outweigh the individual's privacy right in the information. Whalen v. Roe, 429 U.S. 589 (1977); Taylor v. Best, 746 F.2d 220 (4th Cir. 1984). Nevertheless, the disclosure must be carefully circumscribed. Access to the test results should be limited to a small group of supervisors who need access to the information in order to make appropriate employment decisions.

Miscellaneous Issues

There are a number of other issues that could have some bearing on the testing of public safety employees for the HIV virus. There is a potential tort claim against the state (or state employees) that employees might have arising out of a false positive test result for negligence in performing the HIV test (if the test is performed by a state agency) or negligent selection of a testing agency (if the test is performed by a private agency). I know of no reported decision in such cases but I have heard of such negligence suits being brought in other jurisdictions against private employers and private testing agencies.

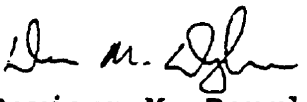
There is also a potential tort claim that private citizens might have against the state (or state employees) arising out of the transmission of the HIV virus from a public safety employee. If the employee's seropositive status was unknown, then liability is unlikely, unless a court were to find that the state assumed the obligation of discovering the HIV status of its employees. On the other hand, if the state was aware of the seropositive status of an employee who then infected a private citizen in the course of his or her work, liability could turn on the foreseeability of the transmission, a question of fact.

Somewhat unrelated to the testing issue is the question of workers compensation and entitlement to continued health benefits for employees found infected with the virus following an on-the-job transmission. The workers compensation issue will have to be resolved under that state statute with the relevant proof problems and the health insurance issue will have to be resolved under the

state's health insurance policies.

If you have any questions with regards to any of this, or would like for me to do additional research, please do not hesitate to give me a call.

Sincerely yours,



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