

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

THE NEED FOR PROCEDURAL POLICY IN DECONTAMINATION OF CRIME SCENES

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by
Lt. Mike Harris

Tom Green County Sheriff's Office
San Angelo, Texas
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ABSTRACT

The reason this research is being done is to see if blood and bodily fluids constitute a hazard to the public when they are left in public areas at the conclusion of a criminal investigation. There is an element of civil liability attached to the governmental entity, agency policy maker and the officer on the scene. Also, there is an obligation to properly train personnel to handle biohazards safely.

The research was conducted through a review of relevant books, available information in medical and law enforcement journals, and case law. Information in medical journals showed a risk in bloodborne pathogens through the transmission of AIDS, HIV and hepatitis B. It was shown in other literature that there are federal regulations in the training of personnel. Case law shows liability may be attached in two ways; a lack of training and general disregard of a known hazard that is in your control with ample time to correct the hazard.

This reveals a need to create policies and methods to alleviate the hazards of bloodborne pathogens. Personnel must also be trained to handle and decontaminate in a safe and consistent manner. Achieving these goals should limit an issue of serious liability and address an issue of serious concern to public safety organizations.

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INTRODUCTION

The purpose of this research is to identify and address the issues relating to residual biohazards left at crime scenes. Items such as syringes, knives, body fluids or other items contaminated with bloodborne pathogens present a biohazard. These biohazards may contain HIV and hepatitis B virus and when left in public areas citizens may come in contact with them.

Police officers are trained to collect evidence at a crime scene for the purpose of a criminal investigation. Due to rising litigation, it has become increasingly important for officers to also be concerned about the threat posed to citizens by hazardous materials left at the crime scene after the police have left the scene. That duty goes beyond the crime scene search. This goes into a general duty to protect the public from perceived dangers. Attention to this threat would greatly reduce, if not eliminate, civil liability in this area.

This information will be gathered for the benefit of the sheriff of Tom Green county and for use by other law enforcement agencies. The goal is to show the need for attention to this issue and set forth directives and guidelines leading to the development of effective policies.

The information used in this research is gathered from law enforcement publications, legal decisions, medical journals and books on related topics. Personal interviews were also conducted. With the need for action clearly established, concise guidelines can be devised and a training program can be developed and put into action.

LEGAL AND THEORETICAL CONTEXT

In law enforcement there are volumes of instructional manuals on the processing of crime scenes for the gathering of evidence. Most of these manuals overlook an important dimension and obligation concerning the safety of the crime scene after the investigation has been completed. A police officer would not knowingly leave a loaded gun or a syringe in a public park where the general public or our children could accidentally harm themselves. Due to lack of training however, he might leave bloodborne pathogens and other biohazards such as body fluids in a public area. These hazards can potentially be just as dangerous.

In leaving biological debris and materials in public areas, are we not knowingly abandoning a hazard that we are in direct control of? In Rolando V. del Carmen's book Civil Liability in

American Policing he writes:

A special duty may be found in a variety of situations such as when the officer has knowledge of impending danger that is obvious, a traffic hazard existed at the time the officer is in direct and immediate control and the officer has ample time and opportunity to correct the situation but fails to do so. (171)

With this in mind, there is a greater need for training and procedures in the treatment and handling of crime scenes prior to the departure of law enforcement personnel. Training must be given in the safe handling and proper disposal of biohazards by the responsible personnel. If proper procedures are not followed, there is a sense of liability attached to the sheriff.

In the case of Marchese v. Lucas (1985) it was found that as the sheriff is the law enforcement arm of the county under state law, the sheriff therefore is considered the official policy maker. A practice of inadequate training of deputies or ratification of unconstitutional conduct by the sheriff is attributable to the county and hence liability attaches (del Carmen 213). The previously cited case shows the existence of liability if there is a lack of training on the safe handling and removal of biohazards. Knowledge that this danger exists places liability not just on the officers but on the sheriff and county

as well.

In his book Civil Liability and Criminal Justice H. E.

Barrineau states:

If it can be shown that an agency has no policy, the agency is in trouble; if it can be shown that the agency has a policy but did not follow it, the agency is in greater trouble. (84)

Del Carmen reinforced the need for adequate police training with this citation:

In a recent case the United States Supreme Court said that inadequate police training may serve as a basis for municipal liability under section 1983 but only if the failure to train amounts to a deliberate indifference to the rights of the person whom the police come into contact with and the deficiency of the training program is closely related to the injury suffered. (City of Canton v. Harris, 57 U.S.L.W..4270 1989)

There is also indications that state courts have looked at tort actions for monetary damages that were due to improper or negligent training (Meistinsky v. City of New York, 140 N.Y.S. 2d 212 1955).

All of this shows the necessity to train personnel and to protect the citizens in your community. Lawsuits are costly to

defend and more costly to lose. That does not even take into account the loss of a life that could be saved by proper actions.

REVIEW OF LITERATURE

Relevant information on this topic is found in the area of AIDS and HIV research. Barry D. Schoub (Director, National Institute of Virology, Witwatersrand Johannesburg, South Africa) states under experimental conditions HIV has been shown to survive in dechlorinated tap water up to eleven days. Schoub continued, saying similar survival times have been observed for the virus in blood specimens kept at room temperature, and also for the virus in bodies of individuals who have died of AIDS (168).

In an article entitled "Minimizing the Risk of Contracting Communicable Diseases", Rachlin states "serious communicable diseases have always been a concern to law enforcement, but over the decades cures have been discovered for most of the more common of those diseases. Today's problem is the dramatically increased problem of incurable or difficult to cure infectious diseases" (60). Kennedy, Homant and Emery (1990) wrote an article about AIDS concerns of crime scene investigators. The authors noted that while human skin and protective garments are barriers

to exposure to the AIDS virus, there are objects and conditions present at the crime scene which may, through abrasion, puncturing or cutting action, provide an avenue for transmission and injection (14).

In the May, 1993 FBI Law Enforcement Bulletin several cases were noted where officers have been infected with the AIDS virus occupationally between 1981 and 1991. The officers in three of the cases absorbed infected blood through cuts, two through needle sticks. In the same time period 31 officers contracted Hepatitis B. Eight of these officers were infected from exposed cuts, and six were infected from contact with infected needles (Bigbee 3). A review of popular crime and criminal investigation books reveals no information or direction regarding crime scene hazards or what condition to leave the crime scene in following the of the on scene work.

OSHA (1991) rules on occupational exposure to bloodborne pathogens mandated that all agencies have an exposure control plan and personnel properly trained by July 6, 1992. The Lenexa, Kansas Police Department, for example, has a nine page directive on infectious disease that has 14 separate sections on procedures. "We instruct officers to be extra careful when in situations where there are bodily fluids", said Lt. John

Browning. For normal spills of blood or body fluids in detention cells, Lenexa officers use a mixture of one part household bleach and ten parts water for decontamination. The mixture is also used for cleaning patrol cars and equipment (61). Lenexa officers also receive periodic training on infectious diseases through the fire department and local hospitals (62). In a validation of the Lenexa Police Department's procedures, Schoub's study indicates that HIV is easily controlled by chemicals used for disinfection (69).

DISCUSSION OF RELEVANT ISSUES

It is incumbent upon law enforcement agencies to develop and enforce employee guidelines and safety procedures regarding communicable diseases. These guidelines should be updated as necessary. This update procedure must be followed to alert officers to potential medical hazards and protect the public as a whole.

A review of research revealed there was a lack of training in the handling of bloodborne pathogens in the workplace and at crime scenes. There is no policy or training in place for the decontamination of crime scenes prior to leaving areas that are open to the public. The OSHA Bloodborne Pathogen Act recognized

bloodborne pathogens as a hazard to humans that may come into contact with them. The existence of this act shows that there is a problem that may or will likely attach civil liability to law enforcement agencies. Liability may attach under any of the three standards set forth in the cases of Marchese v. Lucas, 758 F. 2d 181 (8th Cir 1985), City of Canton v. Harris, 57 U.S.L.W.4270 (1989) and Meistinsky v. City of New York, 140 N.Y.S. 2d 212 (1955).

There is medical research that shows bloodborne pathogens which are present in body fluids can remain hazardous for up to 11 days at optimum conditions. There are reported cases that officers have been infected by these hazards at crime scenes. In one case detailed in the May, 1993 FBI Law Enforcement Bulletin, a twenty-five year old deputy sheriff investigated a homicide that occurred in an AIDS ward at a correctional facility. Two inmates stabbed each other, one fatally. The deputy handled bloody evidence and apparently absorbed HIV-infected blood through the cracks in his hands. This officer died (Bigbee 3).

Law enforcement agencies have an ethical and moral obligation to protect the public against these hazards. Yet we leave these hazards at crime scenes where our children may come in contact with them. There are requirements in place for the

training of personnel in high risk exposure situations. Law enforcement training should describe situations and address the issues that relate to public safety workers. Training should provide specific information relating to viral transmission, departmental procedures and approved methods of decontamination. OSHA recommends that these topics need to be included:

- a. Review of Bloodborne Pathogen Act
- b. Symptoms of bloodborne diseases
- c. Modes of transmission
- d. Explanation of the exposure control plan and how to get a copy
- e. Methods for recognizing task and procedure that may involve exposure
- f. Use and limitations that reduce or limit exposure, including engineering controls, work practices, and protective equipment
- g. Types, selection, removal, proper use, handling, decontamination and disposal of personal protective equipment
- h. Information on hepatitis B vaccine, emergency contacts and procedures
- i. Post exposure procedures
- j. Biohazard labeling

With this mind we need to acknowledge that the cost of implementing procedures and handling and decontaminating crime scenes cannot be compared to the cost of possible lawsuits or unnecessary loss of life.

CONCLUSION

Research has revealed the need for law enforcement personnel to decontaminate before opening them to the public. For this to be done, the need to be well trained in approved procedures must also be addressed. We must have training that sets out guidelines in the way this decontamination takes place and where hazardous materials may be.

The case law shows that civil liability can and will be attached to officers at the scene and to the chief policy maker at the agency for injuries resulting from negligent handling of hazardous materials at the scene. The time has come to reassess our current training procedures and correct our practices before a lawsuit or unintended loss of life occurs. In doing so we can make a difference in a way that can affect many lives. Such action can reinforce the concept that our main mission is to protect the public from hazards that we know to exist and not to ignore our solemn duty.

There is a moral obligation for law enforcement to protect the public. If we do not address this issue of crime scene decontamination quickly and effectively, we might be too late.

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