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# FBI

## Law Enforcement Bulletin

United States Department of Justice  
Federal Bureau of Investigation  
Washington, DC 20535

William S. Sessions, Director

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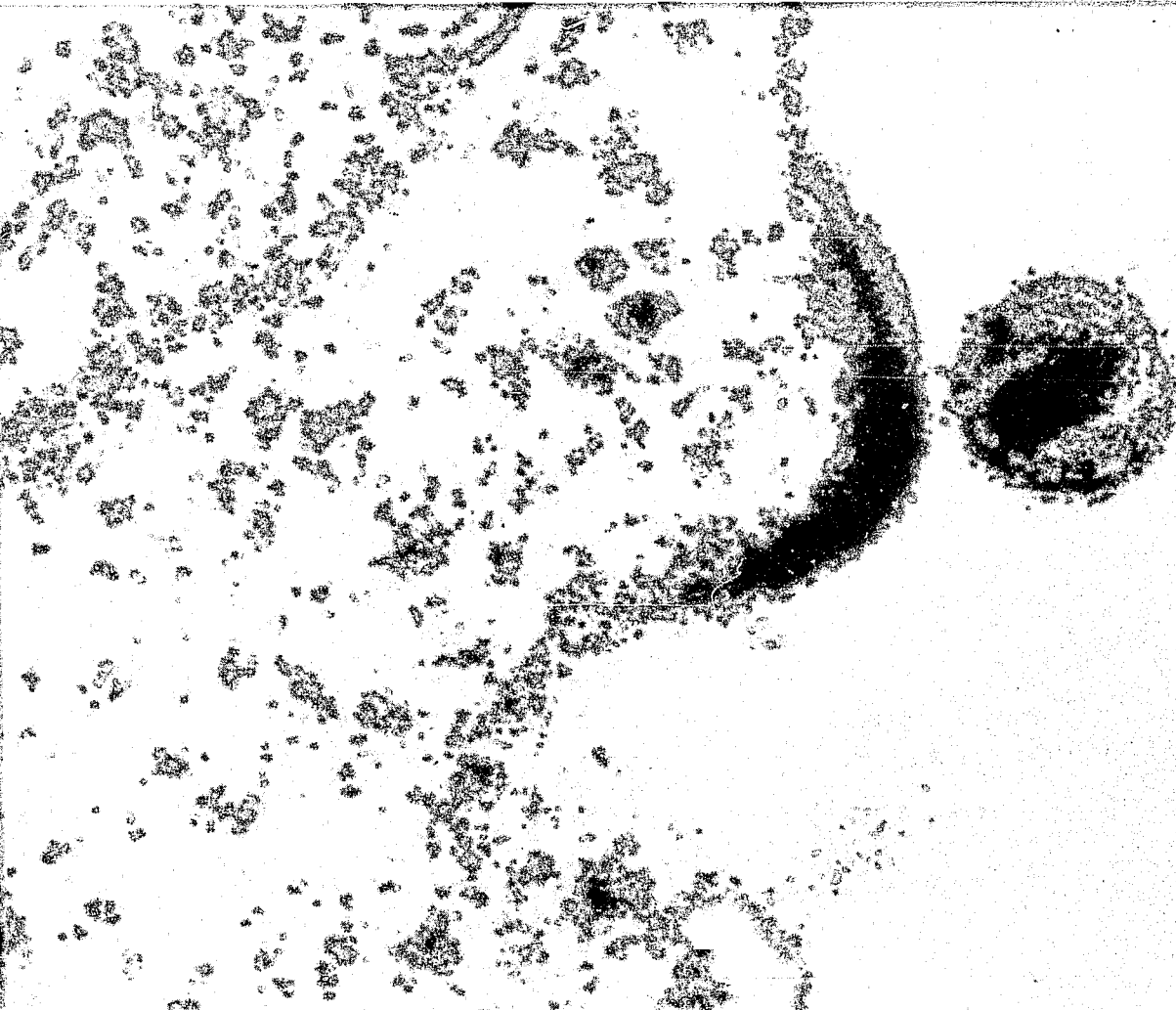
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HIV "budding" from the host cell

118535

## **AIDS/HIV Carriers An Organizational Response**

By  
**MARILYN B. AYRES**  
*Public Information Coordinator  
The National Sheriffs' Association  
Alexandria, VA*

**A**s the 1980s draw to a close, it is clear that among the myriad of issues confronting employers, none is more urgent than the human immunodeficiency virus (HIV). Indeed, this virus, which progressively deteriorates the immune system and causes a condition known as acquired immune deficiency syndrome (AIDS), raises legal, moral, and ethical questions.

When AIDS was first identified in 1981, it was a mysterious, rare disease that became alarmingly common in homosexual

men. Later, it was learned that the virus is transmitted through blood, semen, vaginal secretions, and possibly breast milk.

Today, people are diagnosed as having AIDS if they test positive to HIV *and* have developed any of a few rare opportunistic infections. The most common are Pneumocystis carinii pneumonia and Kaposi's sarcoma, a rare skin cancer. (Opportunistic infections occur when the immune system breaks down.)

Persons infected with HIV move through the disease's various stages. The progression from

initial infection to AIDS can take from 2 to 10 years. During this period, persons may be asymptomatic and exhibit no outward symptoms. Yet, they are capable of transmitting the infection.

As of November 1988, 78,312 cases of AIDS have been reported to the Centers for Disease Control (CDC) in Atlanta, GA. Unfortunately, 44,071 deaths were also reported. Another 1 to 1.5 million Americans are infected with HIV but show no symptoms.<sup>1</sup> In essence, AIDS represents the *first epidemic of immune deficiency in medical history.*

### Mortality Rates to Increase

In the absence of a scientific solution to HIV, the grim reality is that almost all who are infected with HIV will eventually develop AIDS and die.<sup>2</sup> The potential bridges for transmitting the infection leave virtually *no segment* of the U.S. population completely free from the threat of AIDS.<sup>3</sup>

AIDS is primarily a sexually transmitted disease, with alternate modes of transmission through blood and blood products. Therefore, exposure to HIV, rather than membership in a "high-risk group" (blacks, Hispanics, homosexual men or IV drug abusers),<sup>4</sup> is the single most important factor leading to infection.

### Confronting HIV Problems

At some future point, *all* organizations can expect to confront HIV infection among their staff. In fact, according to a survey completed by the American Society of Personnel Administrators, the number of employers experiencing HIV infection or AIDS in their workforce increased

from 9 percent in 1985 to 33 percent in 1987.<sup>5</sup>

Within the criminal justice community, the impact of HIV has been widespread and profound.

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among their staff.**  
”

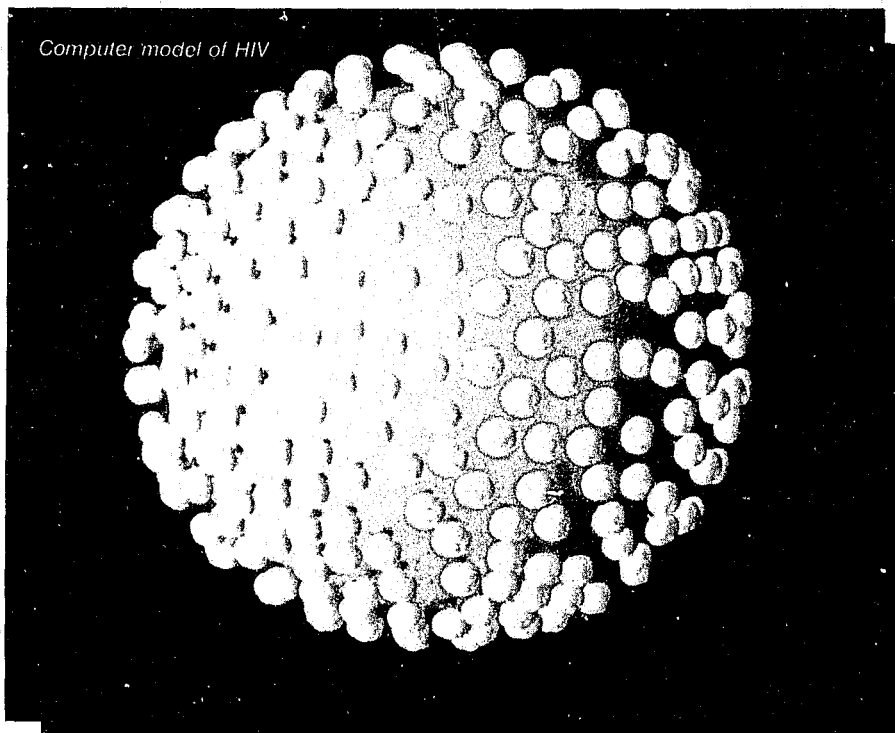
Recently, information on the causes, symptoms, and transmission of HIV has been disseminated throughout the criminal justice profession. Thus, most administrators already recognize the urgent need for preparedness concerning potential contact with HIV-infected offenders. (According to

a survey by the National Sheriffs' Association, under a grant from the Bureau of Justice Assistance, more than 80 percent of State criminal justice training agencies now provide training in the management of persons with AIDS.)

Yet, when dealing with an infected person, many agencies still need *explicitly defined guidelines* outlining their responsibilities. The probability of HIV infection among their own employees in the future is a bleak reality.

### Employee Policies

Extensive research has determined that employees with HIV do not pose a health threat in the workplace. And, with the exception of those with acute symptoms, most are able to carry out normal job responsibilities. However, co-workers perceive those



who are known to have the virus as a threat. This conflict between perception and reality poses difficult policy and practice questions.

The first step to prepare for the possibility of HIV in the workplace is to establish *written guidelines* prior to confronting the first case. These guidelines should clearly define and ensure that:

1) Managers are provided with adequate information, as well as assistance, to carry out their responsibilities appropriately, effectively, and humanely.

2) The staff is provided with sufficient knowledge to eliminate unwarranted fears.

3) Employees infected with HIV retain their civil rights.

Proactive, written policies and guidelines clearly define the organization's expectations. And, when presented by credible trainers, they help foster greater compassion and better treatment for persons with HIV.

### Policy Development

In formulating appropriate policies, employers should anticipate questions or "crisis" incidents which may arise, such as a co-worker's refusal to work with an HIV-infected person. Each of the following areas should be accurately addressed *in writing*: 1) The policy statement, 2) a clear rationale for that policy, and 3) a strategy for implementing the policy. Reference materials supporting the policies should be maintained and updated as necessary.

### Policy Issues

The Federal Rehabilitation Act provides for persons infected with HIV to have a legal right to be treated without discrimination and to not be isolated from the normal work environment, but only if the "program or activity receive[s] Federal financial assistance."<sup>6</sup> At least one court has held that unless the handicapped

employee. Again, there are few precedents on this issue, but one court decision<sup>9</sup> suggests that a police employer is not required to create "light duty" positions. And while employers are not required to find another job for an employee, agencies cannot deny a reasonably available opportunity under existing policies.<sup>10</sup> However, an agency can force an employee to take a medical leave of absence if the employee is no longer able to perform the job.

Employees also have the right to withhold HIV antibody test results, but case law on this issue is mixed. Several court decisions suggest that there may be an affirmative obligation to disclose HIV tests in some situations.<sup>11</sup>

Current Centers for Disease Control guidelines concerning HIV antibody testing as a condition of employment, or of continued employment, do not recommend testing for any particular employment position.<sup>12</sup> Further, several States have passed laws expressly banning testing employees and applicants for AIDS. In a recent case involving a Nebraska State agency, the court held that requiring certain employees in a community-based mental health setting to undergo mandatory testing for HIV violated the fourth amendment.<sup>13</sup> The court found overwhelming medical evidence which confirmed that the risk of HIV transmission in the workplace (even with sometimes violent, mentally ill clients) was "trivial to the point of nonexistence."<sup>14</sup>

The disclosure of health records of persons who carry the HIV virus is also in question.<sup>15</sup> However, if managers disclose the con-

“**The prospect of HIV-infected employees in the workplace represents a significant problem for all organizations ....**”

To understand their responsibilities, administrators must closely follow HIV-related cases and legislation. Also, policy-makers must continue to be flexible as the courts develop greater understanding of this deadly disease.

employee is involved received Federal funds, the Rehabilitation Act does not apply.<sup>7</sup> Also, the act protects only "otherwise qualified" employees, and it is difficult to say confidently that AIDS/HIV carriers are otherwise qualified to be police officers.<sup>8</sup>

The right to work applies only if the employer can "reasonably accommodate" the handi-

dition of an employee with HIV without official reason to do so, they can be subject to administrative penalties. The manager cannot, without the employee's consent, tell staff members if one of their co-workers has tested positive for HIV or has identified himself/herself as having HIV.

“  
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services available for  
all employees.**  
”

If an employee with HIV informs the manager that he or she needs assistance or cannot perform normal duties, the manager may ask the appropriate superiors for specific guidance.<sup>16</sup> Managers and supervisors should also have access to HIV information and to someone with whom they can discuss situations concerning HIV.

Recognizing and dealing effectively with employees who are concerned about or refuse to work with employees with HIV makes more sense than invoking strict disciplinary measures. Managers should take employees' concerns seriously and should provide them with appropriate information and counseling by a representative of psychological support services, an AIDS advisory team, or an outside expert. However, staff members should be expected to continue working with fellow employees who have HIV. The manager

### **Checklist of Procedures for Officers Who Sustain Accidental Exposure to Communicable and Infectious Diseases**

- An officer first reports an exposure incident to his/her first-line supervisor. The supervisor attempts to determine the significance of the exposure, and when necessary, contacts Psychological Services for assistance.
- If the exposure appears significant, the officer fills out a report of injury and makes an appointment at Psychological Services for assistance.
- Officers should be scheduled for pre-test counseling with Psychological Services within 1 working day, unless they prefer to be scheduled later. (Family members may also be counseled.)
- Pre-test counseling focuses on providing accurate information and dealing with the officer's anxiety. It also addresses the following: The significance of the exposure and the need for the required series of blood tests to determine the presence of the HIV antibody; confidentiality of test results (the officer is informed that results are hand-carried to Psychological Services and will be kept in separate confidential files for at least 1 year); and procedures for post-test counseling to discuss the significance of the results following each test (the officer is made to understand that no results are given by telephone).
- The test series includes a baseline test within 2 weeks of exposure, with follow-up testing at regular intervals over 1 year.
- Family Services requires an appointment for the baseline test (a brief physical will also be performed); the officer will present a memo from Psychological Services that authorizes his/her testing. Follow-up testing at 3-month intervals over the next year does not require appointments.
- If the officer is to be tested at the hospital, he or she should take the memo from Psychological Services authorizing the testing, as well as a hospital pre-admissions sheet.

*(Compiled by the Prince George's  
County, MD, Police Department)*

should also explain to employees that starting or spreading rumors concerning an employee's health can cause grave damage.

### Training

Administrators must be knowledgeable of 1) staff concerns, 2) the laws regarding the treatment of persons with AIDS in the workplace, 3) the various employee reactions to a co-worker with AIDS, and 4) the moral and ethical considerations inherent in managing such workers. In addition, both administrators and staff must clearly understand the basic facts about HIV, as well as the agency's related policies.

In particular, it is critical for administrators and staff to know agency procedures concerning an incident of possible transmission: i.e., 1) where there is actual contact with blood or body fluids of an HIV-infected person, such as through a needlestick injury or through other injuries, such as skin cuts, scrapes, rashes, etc.;

and 2) how HIV-contaminated fluids can come in contact with the eyes, nose, or mouth. After the initial infection, it generally takes between 2 and 12 weeks for the body to produce HIV antibodies. And, while the risk of contracting HIV in this manner is extremely low, the following actions are recommended:

- An employee who believes he or she may have been exposed to HIV should report the incident to the supervisor.
- A voluntary, confidential, baseline blood test for HIV antibodies should be performed within 2 weeks of exposure because it must be shown that HIV infection occurred "on the job" in order for the employee to receive workman's compensation benefits.
- If the baseline test is negative, the test should be repeated at 6 weeks and again after 3, 6, 9 and 12 months to determine if transmission has occurred.

- During the retesting period, the exposed person should follow precautions to prevent possible transmission of the virus to others.

### Fostering Employee Understanding

In presenting the facts about AIDS, information should cover such factors as its devastating social and psychological effects. These include depression, concern about body image, finances, loss of control, and facing one's mortality. The facts should also address the behavioral manifestations of AIDS, i.e., the mental impairment seen in 50 to 75 percent of persons during the late stages of HIV infection. Such manifestations can include the slowing of information processing, inattention, confusion, conceptual and problem-solving impairment, learning and memory difficulties, apathy, motor slowness, and clumsiness.<sup>17</sup> Managers should

### Information and Sources

- *AIDS and Our Workplace*  
New York City Police Department, June 1988  
Helpline: 718-271-7777
- *AIDS Education for Emergency Workers*  
American Red Cross  
Post Office Box 160167  
Sacramento, CA 95816  
916-452-6541
- *National Institute of Justice AIDS Bulletin*  
U.S. Department of Justice  
National Criminal Justice Reference Service  
Box 6000  
Rockville, MD 20850  
Toll Free - (800) 851-3420  
Maryland and Washington, DC, metropolitan area  
(301) 251-5000

- *AIDS and the Law Enforcement Officer: Concerns and Policy Responses*  
By Theodore M. Hammett, Ph.D., June 1987  
U.S. Department of Justice  
National Institute of Justice  
Office of Communication and Research Utilization  
Washington, DC 20531  
(202) 272-6001
- *National Institute of Justice Custom Search AIDS and Law Enforcement Document Abstract Concerning AIDS.*  
U.S. Department of Justice  
National Institute of Justice  
(202) 272-6001

learn to recognize such indicators, and when necessary, take appropriate steps to deal with them accordingly.

Many persons who have HIV are targets of harassment and violence. They may also have been evicted from their homes, discharged from military service, and denied health benefits and social services. Therefore, managers should encourage "well" employees to show sensitivity and to provide support and understanding to infected persons who urgently need social, financial, and emotional support and who are, in essence, facing a death sentence.

### Employee Support Services

In addition to ongoing training, there must also be psychological and social support services available for all employees. To the noninfected, those who have experienced an incident of possible transmission, and the HIV-infected, psychological services can play a critical role.

### Conclusion

The prospect of HIV-infected employees in the workplace represents a significant problem for all organizations, including those in the criminal justice community. Even the employer who has had no instances of the disease must now anticipate them and act quickly to ensure that written, clearly defined policies are in place and that managers and staff are trained to support these policies.

Persons with HIV in the workplace do not pose a threat. However, it is critical that employers make the proper preparations. Employers must keep the lines of communication open and disseminate accurate information.



Normal cells

HIV-infected cells

Only through such efforts will employees adequately understand the disease, and thus, treat affected persons with the same compassion they would afford persons with any other life-threatening illness.

FBI

#### Footnotes

<sup>1</sup>Data according to the Centers for Disease Control, November 1988.

<sup>2</sup>Robert Redfield and Donald Burke, "HIV Infection: The Clinical Picture," *Scientific American*, October 1988.

<sup>3</sup>William Heyward and James Curran, "The Epidemiology of AIDS in the U.S.," *Scientific American*, October 1988.

<sup>4</sup>Approximately 66 percent of AIDS cases reported to CDC are homosexual/bisexual males, 16 percent are IV drug abusers, and 8 percent have both of these risks factors. Blacks

and Hispanics together account for 41 percent of the AIDS cases reported to CDC, although these groups comprise only about 18 percent of the U.S. population.

<sup>5</sup>Stuart H. Bompey, "AIDS: An Employment Issue for the Eighties," *Atlantic Information Services, Inc.*, April 1988.

<sup>6</sup>29 U.S.C. 794 provides, in part: "No otherwise qualified individual with handicaps ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ."; *Chalk v. U.S. District Court*, 840 F.2d 701 (9th Cir. 1988) (preliminary injunction issued to enjoin reassignment of AIDS-infected teacher to administrative position since he was likely to prevail on the merits of his Rehabilitation Act claim. The Office of Personnel Management guidelines prohibit adverse employee actions against HIV-infected persons because "the kind of non-sexual, person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission."



# The Bulletin Reports

*Foss v. City of Chicago*, 817 F.2d 34 (7th Cir. 1984) (Rehabilitation Act inapplicable where fire department received Federal funds for programs which had no connection with fireman's employment). Compare, *Arline v. School Board of Nassau County*, 772 F.2d 759 (11th Cir.), *affirmed* 107 S.Ct. 1123 (1987) (not required to show funding affected direct program of handicapped individual).

<sup>8</sup>*Arline*, *ibid.*, at 1131 (determination of "otherwise qualified" must be "based on reasonable medical judgments given the state of medical knowledge about (a) the nature of the risk [how the disease is transmitted], (b) the duration of the risk [how long is the carrier infected], (c) the severity of the risk [what is the potential harm to third parties], and (d) the probability the disease will be transmitted and will cause varying degrees of harm."

<sup>9</sup>*Simon v. St. Louis County*, 735 F.2d 1082 (8th Cir. 1984) (need for unencumbered transfer/rotation policy made reasonable accommodation in police department unavailable).

<sup>10</sup>*Arline*, *supra* note 8, at 1131 n.19.

<sup>11</sup>*Baez v. Rapping*, 680 F.Supp 112 (SDNY 1988) (failure to report findings of prisoner-AIDS test with warning to avoid contact with body fluids may be malfeasance); *People v. Toure*, 523 NYS 2d 746 (N.Y. Sup. Cr. 1988) (rape victims entitled to results of AIDS test); *Shelvin v. Lykos*, 741 S.W. 2d 178 (Tex. App. 1st Dist. 1987) (disclosure of AIDS results to sheriff/jailer not permitted without showing results will be used to operate safe jail).

<sup>12</sup>*AIDS: The Legal Issues*, discussion draft of the American Bar Association AIDS Coordinating Committee. American Bar Association, Washington, DC, 1988. Entities subject to sec. 504 of the Rehabilitation Act of 1973 (the Federal Government, Federal contractors, and recipients of Federal financial assistance) are prohibited from testing applicants or employees for HIV unless it could be shown that such testing was "job related."

<sup>13</sup>*Glover v. ENCOR*, 3 IER Cases 135 (D. Neb. 1988), *affirmed* 867 F.2d 461 (8th Cir. 1989). (AIDS blood testing unreasonable since chance of transmission of disease to public service agency clients or within workplace is "miniscule, trivial, extremely low, extraordinarily low, theoretical and approaches zero.")

<sup>14</sup>*Ibid.*

<sup>15</sup>*Supra* note 11.

<sup>16</sup>U.S. General Accounting Office, "Manager's Guidelines for Dealing with Individual Cases of AIDS," Task force report appendix, U.S. Government Printing Office, December 1987.

<sup>17</sup>Testimony by Dr. Robert Heaton, Department of Psychiatry, University of California at San Diego, before the U.S. Commission on Civil Rights, Washington, DC, May 16-18, October 1988.

## Private Employment of Police

The National Institute of Justice (NIJ) commissioned a Yale University professor, who lectures at the university's law school, to study the important issue of off-duty employment of police officers. *Private Employment of Public Police*, a NIJ *Research in Brief*, summarizes the key findings of the study, which examines many of the factors which impact on this critical law enforcement issue.

The author examines the three major ways in which police departments organize paid details and the varying points of view on department responsibility and liability. The study also considers the impact of uniformed, off-duty officers on the public's perception of safety and on actual public safety. It takes into account the presence and visibility of officers

on paid detail and what effect contracting to supply such services has on the department's ability to muster additional manpower in a crisis.

Further, the study delineates other important considerations—limits on off-duty work, coordination and organization, compensation issues, policy and management issues, conflict of interest, competition with private security firms, and choosing the right model for off-duty police employment.

To obtain a copy of the report, contact the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850 or call toll free (800) 732-3277. In Maryland and the Washington, DC, metropolitan area, the number is (301) 251-5500.

## ABA Guidelines for Drug Testing Programs

*Drug Testing Programs by Public Employers: Suggested Guidelines* is a 12-page pamphlet published by the American Bar Association's (ABA) Section of Urban, State and Local Government. The pamphlet is designed to "set out a reasonably safe method of establishing and implementing a drug testing program." However, it does not identify constitutional limits in this area of the law.

Divided into three sections, the pamphlet addresses considerations to initiate a drug testing program, generally identifies fourth amendment limits on the employer's ability to conduct testing, and suggests how a program should satisfy requirements to observe employee due process rights.

Write to: ABA Order Fulfillment 533, 750 N. Lake Shore Dr., Chicago, IL 60611.