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Getting to Zero? HIV Criminalization and Treatment Adherence Surveillance

Compelled HIV treatment to prevent risk of HIV transmission in the Vancouver Coastal Health vs. David Hynd case

Prepared for Triple-X Workers' Solidarity Association of British Columbia

by Andrew Sorfleet, July 2019

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About Triple-X

Founded in 2012, Triple-X is Canada's first registered Triple-X Workers' labour organization reserving membership exclusively for persons who have agreed to the direct exchange of sexual stimulation for financial compensation. Triple-X also organizes and co-sponsors Vancouver's Red Umbrella March for Sex Work Solidarity, held annually since 2013. As of June 2018, the Triple-X certification mark was registered with Innovation, Science and Economic Development Canada. Section 4 of the Defined Standard for certified workers ensures:

> "… that they are qualified to: a) assess risks for sexually transmitted infections (STIs); and b) ensure best practices in STI prevention are followed appropriate for the service provided according to B.C. Centre for Disease Control guidelines."

In our role to provide education regarding sexual health and safety, Triple-X examines and analyzes federal and provincial public health policies for potential implications on the sex industry.

Preamble: Implications for Sex Workers

The 2017 B.C. Centre for Disease Control (BCCDC) guidelines for Medical Health Officers explicitly states that "exchanging goods or money for sex" is considered a setting and context for high risk of HIV transmission. According to the guidelines, physicians who learn or suspect that a patient may be engaging in behaviour considered high risk, have reason to report that this person may pose a risk of HIV transmission to others. Based on these reports, a Medical Health Officer can compel individuals to be tested for HIV. Testing positive for STIs is also used as evidence of having posed a risk of HIV transmission to others.

In addition, sex workers appear as the only example of persons who may have HIV who may pose a risk to the larger community, and thus non-compliant sex workers are vulnerable to having their name, a description and HIV status published in the media by public health authorities, police and courts as has happened in the past. (Read, "HIV Hooker A Dilemma for Court," *The Province*, June 23, 1996.)

These are harmful assumptions rooted in ignorance and steeped in prejudice. In fact, a sex worker study conducted in Victoria (n=201 adult sex workers aged ≥ 18 years, including 160 female, 36 male and 5 transgender individuals) has shown that condom use with clients among sex workers exceeds 90%, indicating that professional sexual services are performed safely in an occupational setting. (BCCDC's *Estimation of Key Population Size: Final Report, 2016*, p. 13.)

Prejudicial assumptions about providing sexual services are barriers to public health goals for STI and HIV prevention and could discourage sex workers from accessing sexual health services. The 2014 Working Paper by Celia Benoit *et al* from the Canadian Institutes for Health Research reported that 40% of sex workers said their health-care needs were not met in the prior year compared with about 12% of the general population. In addition, 29% of sex workers feared being judged by doctors. Is it possible that public health statements that centre sexual services as a vector for HIV transmission contribute to this?

There is no research that concludes that British Columbia sex workers overall are more likely to be HIV-positive or transmit HIV. In fact, according to the BCCDC's Estimation of Key Population Size report:

> "Historically, it has been assumed that sex work plays an important role in the heterosexual and same-sex transmission of HIV. …the project team requested the BCCDC Surveillance Team to perform an analysis on new HIV diagnoses among men and women in BC from 2006-2015 to determine what proportion of these cases reported sex work as a potential risk factor. We found that the number of women diagnosed with HIV and who reported sex work declined from 22 and 26 individuals in 2006 and 2007 to only two and one individual in 2014 and 2015. Injection drug use was also reported by 33% —100% of these women [who also reported sex work] over the same period."

The 2017 BCCDC Guidelines for Medical Health Officers outlines the steps Medical Health Officers can use to legally compel sex workers to test and be treated for HIV. Sex workers need to be made fully aware of Medical Health Officer powers under the *Public Health Act*, before ever disclosing any information about providing sexual services.

David Hynd's case where court actions were used to compel HIV treatment has been called a legal precedent by Medical Health Officers. Details of that case as they have been made available through the media are presented in this brief. Hynd's case demonstrates how courts are to be used to prevent risk of HIV transmission by compelling HIV treatment under B.C.'s *Public Health Act*.

Anytime anyone gets arrested in a non-criminal context there should be some form of inquiry and review of the case, resulting in a report that the accused can access and publish if they so desire. And, an appeal process to an independent jury.

Not Disclosing HIV Status

At the same time that federal Justice Minister, David Lametti—at a national symposium on HIV criminalization in Toronto organized by the Canadian HIV/AIDS Legal Network—was announcing his Liberal Party platform for a new HIV law should they get re-elected this fall, David Bennett Hynd was being arrested and held in custody by police in Vancouver.

WANTED: David Bennett Hynd
"Not Disclosing HIV Status"
Photo: RCMP, Sept. 2011

Hynd's crime? Failing to comply with Medical Health Officer orders to take his HIV medications. Conditions imposed by B.C. Public Health authorities to prevent the possibility of HIV transmission to others.

On June 14, a parliamentary report on the issue of HIV non-disclosure was released. The Standing Committee on Justice and Human Rights recommended creating a new law to prosecute for "intent to transmit," and "actual transmission of infectious diseases," including but not limited to HIV. "Failure to disclose HIV status" where there is no risk of HIV transmission would no longer be prosecuted as aggravated sexual assault as it had been in the past.

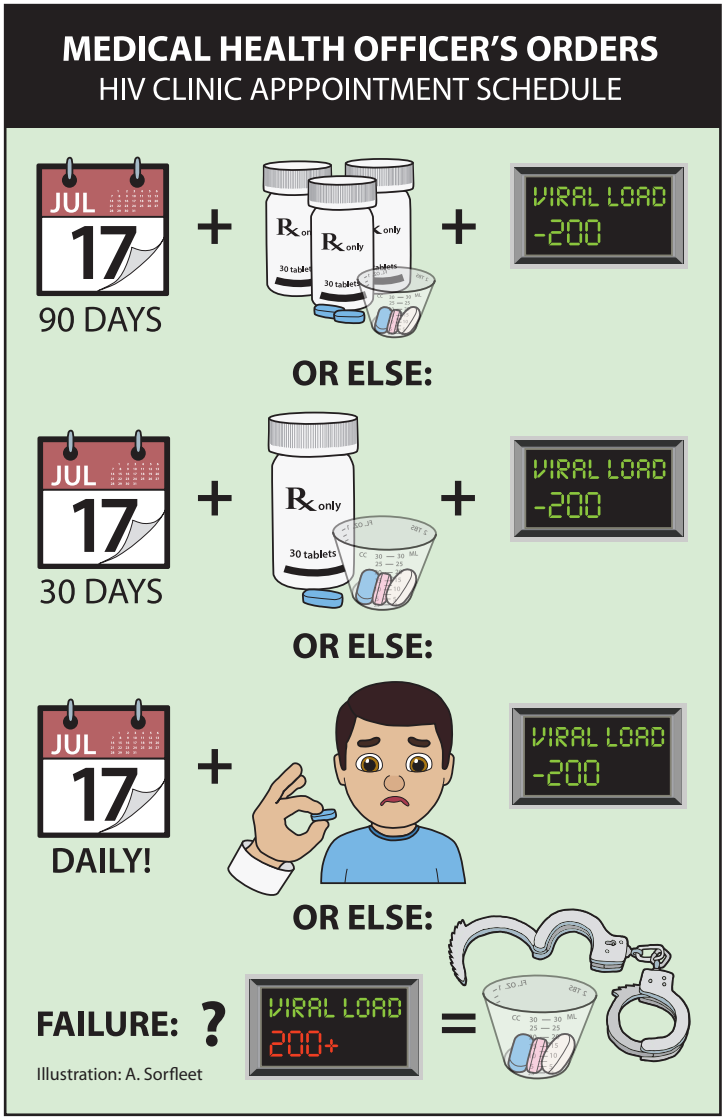
On June 14, following a tip from the public, David Bennett Hynd was arrested and spent the weekend in police custody awaiting his court appearance on June 17.

"This is an individual where it's very unusual," Dr. John Harding, Medical Health Officer from the Vancouver Coastal Health Authority told a press conference. "There's only been a handful of people that we've ever even put orders on. And then this is the only individual whereby we've had to take an extraordinary step to enforce that order," Harding said.

Members of the public had been alerted to Hynd's fugitive status on June 5, when the Vancouver Police released a mugshot of the now-35-year-old Hynd. The photo was taken by the RCMP eight years earlier when he was charged with impaired driving in 2011.

The public learned Hynd was wanted for breach of six probation orders related to HIV medication misadventure. They learned he might have been driving a black Dodge Ram truck with an Alberta licence plate. The public was asked to call the police emergency number 9-1-1, or to call Crime Stoppers, an organization that works in partnership with the media and police to solicit anonymous tips about crime in exchange for cash rewards.

By June 7, multiple news agencies across the region, including CTV and CBC, ran Hynd's photo with such headlines as, "Police release name and photo of HIV-positive man," and, "Not disclosing HIV status."



David Hynd's Probation Order sets out HIV treatment and viral load tests as conditions.

Background: Anomaly or Test Case?

On August 22, 2018, David Bennett Hynd's lawyer filed for a publication ban on details from a court hearing when Hynd was charged with four B.C. *Public Health Act* violations and was released on $500 bail. According to a court document sworn in June 2018, the four *Public Health Act* charges included failure to comply with a Medical Health Officer's HIV treatment order during a nine-month period from August 1, 2017 to April 30, 2018.

On October 30, 2018, David Bennett Hynd pleaded guilty to violating section 99(1)(k) of B.C.'s *Public Health Act*, and was given a suspended sentence with 18-months probation, contingent on 24 probation conditions.

Hynd was arrested on June 14, 2019 for six parole violations, allegedly failing to comply with six of the 24 conditions imposed in October 2018 (see page 17, Appendix A: Sworn Information), namely:

- being late for clinic appointments;
- failing to notify the clinic that he would miss an appointment;
- missing clinic appointments;
- failing to pick up his HIV medication;
- changing his residence without notifying the Medical Health Officer; and finally
- failing to attend daily clinic appointments.

The final condition — daily clinic appointments where clinic staff can watch an offender swallow their medication — had come into force when Hynd failed to have HIV viral load tests. This same condition can also be ordered when an offender's viral load test results read above 200 copies/mL.

Hynd's probation orders also include that he must inform all present and future sexual partners of his HIV-positive status, and that he cannot confirm that he is virally suppressed (if his viral load has not been confirmed by clinic staff, or if his viral load is detectable). In addition, any sexual activity where "discharge of bodily fluids is possible" will only occur if both he and his partners wear condoms **AND** he has been taking his antiretroviral medications as prescribed and has been advised by clinic staff that his viral load test result is "undetectable." (See page 19, Appendix B for Hynd's Probation Order.)

Dr. Reka Gustafson, Medical Health Officer, Vancouver Coastal Health
Photo: CBC

According to Vancouver Coastal Health Medical Health Officer Dr. Reka Gustafson, David Bennett Hynd was the first person her office had ever swore court charges against under the B.C. *Public Health Act* in order to enforce a Medical Health Officer's treatment order. According to Dr. Gustafson, her office has only ever issued a handful of such orders.

However, as Dr. Gustafson told CBC when the original story broke on August 24, 2018, "the order wouldn't be very meaningful if you weren't able to enforce that order with potential support of the courts." CBC ran the story under the headline "Vancouver man charged with ignoring Medical Health Officer's orders for HIV treatment: Charges under B.C.'s *Public Health Act* are the first in the history of region's medical health office."

According to Dr. Harding, Vancouver Coastal Health had tried for years to take other measures to deal with Hynd. The escalation was pursued because of the ongoing risk of HIV transmission to members of the public without their knowledge. "Most people go into treatment both for their own health and for the protection of their partners and the ones around them. In this particular case, it was very challenging to keep this individual on treatment and we used every supportive measure that we had," Dr. Harding told the CBC.

Policy Procedure: "People with HIV/AIDS who may pose a risk of harm to others"

In June 2017, the B.C. Centre for Disease Control released new *Guidelines for Medical Health Officers: Approach to people with HIV/AIDS who may pose a risk of harm to others*. The guidelines outline procedures for Medical Health Officers to follow, within the legal powers vested them by the B.C. *Public Health Act*. It was as if those procedures were tailored to address the specific challenges presented by someone like David Bennett Hynd: what to do if someone deemed to pose a risk of HIV transmission to the public refuses to take HIV treatment medications?

This step-by-step policy became the basis of Hynd's 24 court-imposed probation conditions. The Probation Order creates an escalating scale of HIV treatment surveillance and viral load monitoring, with the penultimate result of the patient being compelled to attend the designated clinic at a designated time on a daily basis to be observed by clinic staff taking his daily medication.

We may never know what compelled the Medical Health Officer to order Hynd to take HIV treatment in the first place. We can assume that non-disclosure of HIV status while posing a risk of HIV transmission to others is at the heart of Hynd's case. But due to restrictions protecting doctor/patient confidentiality and privacy, we have no way of knowing how the Medical Health Officer even knows that Hynd continues to pose a risk of HIV transmission, or to whom.

Is it due to unprotected sexual intercourse or sharing needles? Is he not disclosing his HIV status to any partners beforehand? Is he a risk to the general public? Whom does he choose as sex partners? Why was this information not shared along with his HIV status?

Does David Hynd suffer from mental health disorders? Does he have substance abuse or drug dependency issues? Is his lifestyle unstable? Is David Hynd a sex worker?

Certainly, in the past, police have issued public health warnings in the media with names and mugshots of HIV-positive prostitutes.[1] How did Hynd come to know that he was HIV-positive? Was he tested for HIV as a result of a partner naming him to public health officials?

Perhaps most significant to the HIV community, we also have no idea why Hynd is refusing medical treatment for HIV. First and foremost, HIV treatment should be about maintaining good health and well-being.

"Many HIV-positive folks are not undetectable, and some of our discourse runs the risk of demonizing them for the same virus we all have. There's nothing sinister or predatory about going off meds," Alex Cheves writes in the June 26 issue of *The Body: Resource Center for Living Well with HIV*.

In his article titled, "9 Sex Tips for People Not on HIV Treatment," Cheves suggests alternative sexual options such as avoiding penetrative sex. According to Cheves, "there are so many ways to experience pleasure and intimacy without penetration," listing activities like kissing and passionate touch, non-penetrative kinks and fetishes, using toys or performing oral sex and masturbation.[2]

As Cheves puts it, "you're not barred from penetrative sex, but it's a good idea to talk to your playmates about the fact that you're not on meds. The risk of HIV transmission is higher, so keep them informed." Partners may feel comfortable choosing to use condoms, they may also be HIV-positive and on treatment, or HIV-negative and taking PrEP.

I recently discussed Hynd's case with a colleague who works in Vancouver's Downtown Eastside emergency shelter system, and he had this to offer regarding possible reasons for poor adherence to treatment with antiretroviral (ARV) medications:

> "I couldn't generalize, but the two individuals I know with poor ARV adherence both use drugs (crystal meth or "heroin") and both are diagnosed with mental illness. One has incredible social anxiety and rarely engages — he seems resigned to dying alone in his apartment. The other is outgoing and active, but has various physical ailments that contribute to his inability to keep his meds down.

> "He suffers from frequent nausea, possibly as a result of years of poor adherence and frequent infections (I'm no doctor, this is mere speculation). Frequent drug binges also take a toll on his physical health. He will get an infection and thus get too sick to take his meds, which only reinforces the problem. Combine this with opioid use, poor nutrition, irregular sleep patterns, lack of exercise, *et cetera*, and it compounds the problem while simultaneously making it more difficult to adhere to daily med doses. All of this due to an unstable lifestyle and illness.
>
> "So, I would say it's complicated, and that poor mental and physical health combined are barriers to following a strict medication regime regardless of the prescription."

Under the B.C. *Public Health Act* and similar acts in other provinces and territories, Medical Health Officers possess the power to detain, test, treat and quarantine any person who is deemed to threaten the public health, within carefully defined rules. Nevertheless, Adam Reibin, director of communications with Positive Living B.C. told CTV with certainty, that David Hynd's case is an "anomaly." Reibin also called it a "slippery slope" when courts get involved in individuals' HIV treatment choices. Vancouver Coastal Health called the case "unprecedented."

The Ultimate Public Health Penalty: Arrest and Forced Treatment

According to the House of Commons' Standing Committee on Justice and Human Rights report, *Criminalization of Non-Disclosure of HIV Status*: "The committee strongly believes that the use of criminal law to deal with HIV non-disclosure must be circumscribed immediately and that HIV must be treated as a public health issue."

"To end the epidemic, the committee is of the view that barriers undermining the public health objectives of HIV prevention, testing and treatment need to be removed."

The question is, could a punitive approach, such as using the courts to enforce Medical Health Officer Orders to maintain HIV treatment, be a barrier that undermines public health HIV prevention, testing and treatment objectives?

When Hynd pleaded guilty to charges under the B.C. *Public Health Act* for failing to comply with Medical Health Officer Orders, he was given a suspended sentence, with probation orders to comply with Medical Health Officer Orders to maintain HIV treatment and get viral load tests. When Hynd continually failed to show up for his clinical appointments, his name and his photo, along with his HIV-positive status, were released to the media. A week later, Hynd was arrested, charged with probation violation under the B.C. *Offences*

Act, and held in custody. As a result, Hynd has two charges on a criminal record. If he is found guilty under the B.C. *Offences Act*, Hynd could face a $2,000 fine or six months in prison, or both.

Cheryl Overs, presenting at "PrEP in the Context of Sex Work" national consultation held at the Dala Lana School of Public Health in Toronto, October 2016.
Photo: Guntar Kravis

David Hynd was the first person B.C. health officials had to take to court to compel to seek HIV treatment. "In general, people with HIV do not pose a risk to the public," Dr. Harding told the CBC. So why did the B.C. Centre for Disease Control create whole new policy guidelines to deal with them?

Intentionally causing physical harm including negligence are already crimes under the federal Criminal Code whether it be in an infectious disease context or not. Do HIV-positive people who stop taking medications belong in prison? If it rarely happens, does that make it fine to use provincial criminal charges to compel HIV treatment? Is this not an excessive use of force?

According to Medical Health Officer Dr. Gustafson, charges were sworn under provincial health legislation designed to protect public health as opposed to the Criminal Code. "Criminal prosecution is not appropriate for HIV," she said. "It's not appropriate for communicable diseases — period. It's not appropriate; it's not effective," Dr. Gustafson told the CBC.

> "One of the worst outcomes of taking this step is that the public mistakenly gets the impression that something like this can happen to them either easily or that there isn't due process or fairness or ethics."

When I asked Cheryl Overs, Senior Research Fellow at the Michael Kirby Centre for Public Health and Human Rights in Melbourne, for a comment, she had this to say:

> "I find it interesting the doctor says criminal law isn't appropriate. We agree with that. However, health regulations — like all administrative laws — are complex and can have just as many teeth.

"Typically, administrative law [like B.C.'s health legislation] has lower standards of evidence, proof and judgment, and offers little opportunity for a defense. Crucially, administrative law is not open to the same level of scrutiny as criminal law, unless appealed to judicial review.

"In other words, offices can be more dangerous than courtrooms."

Notes:

1. See "HIV Hooker a Dilemma for Court," *The Province*, June 23, 1996
2. For a table estimating HIV risks for specific sex acts, (e.g. Oral sex with no barrier 0-4 per 10,000 acts), see Appendix II – Estimated Transmission Probabilities of Acquiring HIV from an Infected Source by Route of Exposure, *Guidelines for Medical Health Officers: Approach to people with HIV/AIDS who may pose a risk of harm to others*, June 2017, p. 22 (page 44 in Appendix C of this brief.)

For legal information, see: HIV disclosure: a legal guide for gay men in Canada, Canadian AIDS Treatment Information Exchange (CATIE) May 2013 (https://www.catie.ca/sites/default/files/26081.pdf)

Powers Under Public Health Act to Contain Risk of HIV Transmission

BCCDC Guidelines for Medical Health Officers: Approach to People with HIV/AIDS Who May Pose a Risk of Harm to Others

- The 2017 guidelines are the latest update to the original 1993 guidelines, *Managing Difficult HIV Cases*, and reflect new research on the effectiveness of both treatment as prevention[1] and condoms.[2]
- The guidelines are provided as advice for Medical Health Officers on how to use their powers granted under B.C. *Public Health Act* to control persons with HIV who are considered to pose a risk of HIV transmission to others.
- Standards for sexual partner notification are outlined in "Guidelines for Testing, Follow up and Prevention of HIV" in the B.C. *Communicable Disease Control Manual*.
- All decisions to use the options below are at the judgment and discretion of the Medical Health Officer.

Suspicion of Posing a Risk to Others

- If your doctor knows you engage in activities that he or she feels might pose a risk for HIV transmission, and knows or suspects that you might have HIV, your doctor can report you to the Medical Health Officer.

- You can be suspected of being HIV-positive and posing a risk to others if you are named as a recent contact of someone newly diagnosed with HIV.
- Presentation with or **diagnosis of a sexually transmitted disease is considered clinical evidence** that an HIV-positive person is posing a high risk of HIV transmission.
- If the strain of HIV you are diagnosed with is part of a "phylogenic cluster" (a grouping of HIV diagnoses of the same HIV strain) where the number of new cases is increasing, you can be suspected of possibly transmitting this strain of HIV to others.

Compelling HIV Testing

- Medical Health Officers can search the provincial HIV database, and if your HIV status is unknown, they can compel you to take an HIV test. If you refuse, the Medical Health Officer can order you to take a test. If you do not comply with the order, the Medical Health Officer can go to court and you can be arrested, confined and tested without your consent.

Compelling HIV Disclosure

- In settings or contexts which public health authorities consider to be high risk for HIV transmission—**including exchanging goods or money for sex**, anonymous sex in gay bathhouses, or in a group sharing needles—the guidelines advise that HIV-positive persons cannot be expected to be disclosing their HIV status to each partner.
- Medical Health Officers can inform anybody about your HIV-positive status without your consent if they consider those people to be at risk of HIV transmission from you.
- If the Medical Health Officer decides you are a risk of HIV transmission to a broader community—**sex workers for example**—the Medical Health Officer can disclose your HIV-positive status to the broader community without your consent. However, in this instance, the Medical Health Officer must first seek advice from the Provincial Health Officer and government legal counsel.
- The Medical Health Officer may decide not to disclose your HIV-positive status if you are from a small community and at risk of harm from other community members, for example in prisons or remote First Nations reserves.

Compelling HIV Treatment

- The Medical Health Officer can order you to take HIV treatment. If you do not comply with the order the Medical Health Officer can go to court and you can be arrested. Monitoring of viral load is used as evidence to determine whether or not you are taking your HIV medication.

- If you are found guilty of disobeying Medical Health Officer orders you can be sentenced to a fine or prison. The Medical Health Officer can ask the court to suspend these penalties so long as you are complying with an alternative penalty (such as attending daily clinic appointments) determined by the Medical Health Officer.
- A Medical Health Officer can choose to apply to the court for a detention order or an injunction (such as ordering you to stay away from a place such as a bathhouse or to stay at a place such as a support shelter), instead of laying charges under the B.C. *Public Health Act*. Such court actions only require that more likely than not you have disobeyed a Medical Health Officer Order. In contrast, criminal convictions require proof beyond a reasonable doubt.

Defining Behaviours

- Persons with HIV who may be a risk of HIV transmission are divided into two categories: "Unwilling" and "Unable."
- "Unable" persons are defined as persons who are incapable of changing their behavior, because either they cannot form the intention to prevent transmitting HIV to others, or else they cannot form a reasonable plan of conduct to do so. Or, they may have no understanding that they are HIV-positive. For example, unable persons may have mental illness, developmental disabilities, drug dependencies or may be victims of coercion by or fear of another person, or domestic abuse.
- "Unwilling" persons are defined as persons who are capable of changing their behavior, but refuse to change behaviour and comply with Medical Health Officer measures. Behaviour can include lying to partners about your HIV-positive status.
- If you change your behaviour, but during follow-up check-ups, it is revealed you continue to engage in high-risk activities, Medical Health Officers can consider disclosing your HIV-positive status to anyone who they think may be at risk of HIV transmission from you, without your consent.
- Medical Health Officer can also order treatment for drug or alcohol disorders.

Principles

From the 2017 Guidelines for Medical Health Officers:

- "The mandate of public health is to protect people, not to punish them."
- "Due process and Charter rights must be respected in interventions that are imposed by the state on an individual. This includes advance notice of the intervention, the right to counsel, timely reviews of decisions rendered, the right to a fair hearing and the right to appeal decisions."

Reference

To review all the options available to Medical Health Officers, see page 23, Appendix C: *Guidelines for Medical Health Officers: Approach to people with HIV/AIDS who may pose a risk of harm to others*, B.C. Centre for Disease Control, June 2017.

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About the Author

Andrew Sorfleet has worked in the sex industry for over a decade and has been a sex workers' rights activist since 1990. He was education coordinator and outreach worker at Maggie's (1991-1994), founding representative of the Global Network of Sex Work Projects (1992), and coordinator of the Sex Workers Alliance of Vancouver (1995-2005). He is author of *$WE@&R! The Sex Workers' Workbook* produced for the Law Commission of Canada (2005), and was the official rapporteur for the European Conference on Sex Work, Human Rights, Labour and Migration (Brussels 2005). Currently, Sorfleet is president of the board of Triple-X Workers' Solidarity Association of British Columbia.

Andy Sorfleet, sporting a popular T-shirt from New York

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Appendix A: Sworn Information – Court File No. 2040:254632-1

INFORMATION / DÉNONCIATION

Court Identifier:	2040: PRA
Court File Number:	254632
Type Reference:	B
Inf. Seq Number:	1
Agency File Number:	401:18-248114
DNA: ☐	SOR: ☐ K File: ☐

Suffix added 08 Apr 2019 by JP. S. Wendland

CANADA:
PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

This is the information of / Les présentes constituent la dénonciation de **Graham Doll**, a / un(e) **Peace Officer** (the "Informant" / le "Dénonciateur") of / de **Vancouver, British Columbia / Colombie-Britannique.**

The informant says that the informant has reasonable and probable grounds to believe and does believe that / Le dénonciateur déclare qu'il a des motifs raisonnables et probables et croit effectivement que

Count 1

David Bennett Arthur HYND, on or about the 22nd day of November, 2018, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by the Honourable Judge P L Doherty on October 30, 2018, did without reasonable excuse fail to comply with such order by failing to comply with Condition 10, to wit: When you attend any and all appointments at the Clinic you will not be more than 15 minutes late for each pre-scheduled appointment at the Clinic , contrary to section 89.6(1) of the Offence Act.

Count 2

David Bennett Arthur HYND, on or about the 20th day of December, 2018, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by the Honourable Judge P L Doherty on October 30, 2018, did without reasonable excuse fail to comply with such order by failing to comply with Condition 8, to wit: Commencing from the time of your next scheduled Clinic appointment, for a period of 90 days, with reference to when the Clinic is open, you must attend precisely, every 30 days when the Clinic is open, at the appointment time at the Clinic, for all pre-scheduled appointments with any Clinic physician or his delegate at the Clinic, contrary to section 89.6(1) of the Offence Act.

Count 3

David Bennett Arthur HYND, from the 11th day of November, 2018 to the 22nd day of November, 2018, inclusive, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by the Honourable Judge P L Doherty on October 30, 2018, did without reasonable excuse fail to comply with such order by failing to comply with Condition 4, to wit:You must provide one week's advance written notice to the Vancouver Coastal Health ("VCH") Medical Health Officer responsible for your case, if you intend to change your place of residence, and must provide him or her with your new address and contact information, including phone numbers, contrary to section 89.6(1) of the Offence Act.

Count 4

David Bennett Arthur HYND, from the 18th day of December, 2018 to the 20th day of December, 2018, inclusive, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by the Honourable Judge P L Doherty on October 30, 2018, did without reasonable excuse fail to comply with such order by failing to comply with Condition 11, to wit: if you are unable to attend a pre-scheduled appointment at the Clinic, you must inform the Clinic at least 48 hours in advance in person, or by telephone, or text message, and then you must reschedule a Clinic appointment within one week of the original Clinic appointment time. Appointments may only be rescheduled once, contrary to section 89.6(1) of the Offence Act.

8-APR-2019 2:32PM

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INFORMATION / DÉNONCIATION

Court Identifier:	2040: PRA
Court File Number:	254632
Type Reference:	B.
Inf. Seq Number:	1
Agency File Number:	401:18-248114
DNA: ☐	SOR: ☐ K File: ☐

Suffix added 08MAR2019 by: S. Wendland

CANADA:
PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

Count 5

David Bennett Arthur HYND, from the 20th day of December, 2018 to the 22nd day of December, 2018, inclusive, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by the Honourable Judge P L Doherty on October 30, 2018, did without reasonable excuse fail to comply with such order by failing to comply with Condition 13, to wit: You must pick up all antiretroviral medications prescribed for you within one business day of receiving the prescription. You must adhere to the prescribed treatment schedule without interruption, contrary to section 89.6(1) of the Offence Act.

Count 6

David Bennett Arthur HYND, from the 18th day of November, 2018 to the 2nd day of March, 2019, inclusive, at or near Vancouver, in the Province of British Columbia, while bound by a probation order made by the Honourable Judge P L Doherty on October 30, 2018, did without reasonable excuse fail to comply with such order by failing to comply with Condition 16, to wit:At any time, if your HIV viral load has been tested and determined to be elevated to above 200 copies/mL, or a viral load test has not been performed within the time intervals prescribed by this Order, you must; A. attend daily appointments, as they are given to you by a staff member of the Clinic, at a location directed by a Medical Health Officer or Public Health Nurse, where your daily witnessed ingestion of medication can be monitored. B. continue to attend the daily appointments, taking such medication as may be given to you by a staff member of the Clinic, until the results of your viral load test show that your viral load is acceptably low to a Medical Health Officer, and C. have a care plan in place with the approval of a Medical Health Officer or a Public Health Nurse, contrary to section 89.6(1) of the Offence Act.

THE INFORMATION SWORN ON APRIL 8, 2019 CONTAINS A TOTAL OF 6 COUNTS ON 2 PAGES.

SWORN BEFORE ME / ASSERMENTÉ DEVANT MOI
ON / CE 8TH DAY OF / JOUR DE APRIL, 2019
AT / À VANCOUVER
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE

S. Wendland 2019.04.08 14:15:25 -07'00'

A JUSTICE OF THE PEACE IN AND FOR THE PROVINCE OF BRITISH COLUMBIA /
UN JUGE DE PAIX DANS ET POUR LA PROVINCE DE LA COLOMBIE-BRITANNIQUE

Mon Apr 8 2019 14:15:30

SIGNATURE OF INFORMANT /
SIGNATURE DU DÉNONCIATEUR

David Bennett Arthur HYND: Warrant PROCESS / ACTE DE PROCÉDURE ISSUED

S. Wendland 2019.04.08 14:32:28 -07'00'

A JUSTICE OF THE PEACE IN AND FOR THE PROVINCE OF BRITISH COLUMBIA /
UN JUGE DE PAIX DANS ET POUR LA PROVINCE DE LA COLOMBIE-BRITANNIQUE

8-APR-2019 2:32PM

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Appendix B: Probation Order – Court File No. 2040:251406-1

Probation Order
(Offence Act) (Suspended Sentence)
Form 25
Canada: Province of British Columbia
Ban on Publication CCC 517(1)

☐ Interpreter present

Police File No. 401:17-259310
Court File No. 2040:251406-1
Primary Enf. Agency:
D.O.B.: October 6, 1983
Proceeded: Summarily

On October 30, 2018 at Vancouver, British Columbia,

David Bennett Arthur Hynd

(the "defendant") was convicted or found guilty, as the case may be, upon the following offence(s) and on October 30, 2018 instead of sentencing the defendant to punishment, the court suspended the passing of sentence and directed that the defendant comply with the conditions set out below:

Count 2, between August 1, 2017 and April 30, 2018, at or near Vancouver BC, did commit an offence of failure to comply w/an order of a health officer, contrary to section 99(1)(k) Public Health Act.
SENTENCE: Suspended Sentence; Probation Order: 18 Month(s);

The court ordered that for the period stated above, starting on the date of this order, the defendant must comply with the following conditions:

Condition 1: Keep the peace and be of good behaviour.

Condition 2: Appear before the court as and when required to do so by a justice.

Condition 3: Notify the justice or a person designated by the justice in advance of any change in the defendant's name or address, and promptly of any change in the defendant's employment or occupation.

Condition 4: You must provide one week's advance written notice to the Vancouver Coastal Health ("VCH") Medical Health Officer responsible for your case, if you intend to change your place of residence, and must provide him or her with your new address and contact information, including phone numbers.

Condition 5: You must obtain permission from the VCH Medical Health Officer responsible for your case in writing before leaving the province of British Columbia.

Condition 6: Having consented, you shall comply with directions, assessments, examinations, treatments and counselling given by physicians, nurses, social workers and other staff of the John Ruedy Immunodeficiency Clinic 1081 Burrard Street, Vancouver BC (the "Clinic"), as they relate to your Human Immunodeficiency Virus ("HIV"). This includes complying with the directions as may exist in an Order of the Medical Health Officer made under the Public Health Act, SBC or monitoring by a Medical Health Officer.

Condition 7: Without limiting the generality of the foregoing, you must place yourself, on a continuing basis, under the medical care of any physician at the Clinic in accordance with the conditions outlined below, or as may be otherwise directed by any physician at the Clinic. You shall meet with a Clinic physician, or other clinical staff as directed by a Clinic physician.

Condition 8: Commencing from the time of your next scheduled Clinic appointment, for a period of 90 days, with reference to when the Clinic is open, you must attend precisely, every 30 days when the Clinic is open, at the appointment time at the Clinic, for all pre-scheduled appointments with any Clinic physician or his delegate at the Clinic.

Condition 9: If you attend all pre-scheduled appointments precisely on time for 90 days as outlined in Condition 8, the frequency of such appointments may, in the discretion of any Medical Health Officer or his delegate, be reduced to once every 60 days for the subsequent 180 days. After the expiration of the said 180 day period, if you have promptly attended all pre-scheduled appointments, the frequency of such appointments may, in the discretion of any Medical Health Officer, or his delegate, be further reduced to once every 90 days.

Condition 10: When you attend any and all appointments at the Clinic you will not be more than 15 minutes late for each pre-scheduled appointment at the Clinic.

Probation (Suspended Sentence)

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Condition 11: If you are unable to attend a pre-scheduled appointment at the Clinic, you must inform the Clinic at least 48 hours in advance in person, or by telephone, or text message, and then you must reschedule a Clinic appointment within one week of the original Clinic appointment time. Appointments may only be rescheduled once.

Condition 12: Commencing from the time of your next scheduled Clinic appointment you must have an HIV viral load test and other bloodwork deemed needed by your treating physician at the Clinic, once every 30 days, with reference to when the Clinic is open, for a duration of 90 days. A. However, if your viral load has been demonstrated to be undetectable for 90 days, the frequency of viral load tests may, in the discretion of any Medical Health Officer, be reduced to once every 60 days for a duration of 180 days. B.Additionally, if your viral load has been demonstrated to be undetectable every 60 days during the said 180 day period, the frequency of viral load testing may, in the discretion of any Medical Health Officer, be reduced to not less than one viral load test every 90 days.

Condition 13: You must pick up all antiretroviral medications prescribed for you within one business day of receiving the prescription. You must adhere to the prescribed treatment schedule without interruption.

Condition 14: You must at all times have sufficient antiretroviral medications in your possession to avoid any interruption in your prescribed antiretroviral treatment.

Condition 15: In the event you require emergency supplies of antiretroviral medications, because you have insufficient supplies of such medications, you will immediately attend the St. Paul's Hospital pharmacy, during the times it is open for business, and immediately obtain and use the prescribed emergency medications.

Condition 16: At any time, if your HIV viral load has been tested and determined to be elevated to above 200 copies/mL, or a viral load test has not been performed within the time intervals prescribed by this Order, you must; A. attend daily appointments, as they are given to you by a staff member of the Clinic, at a location directed by a Medical Health Officer or Public Health Nurse, where your daily witnessed ingestion of medication can be monitored. B. continue to attend the daily appointments, taking such medication as may be given to you by a staff member of the Clinic, until the results of your viral load test show that your viral load is acceptably low to a Medical Health Officer, and C. have a care plan in place with the approval of a Medical Health Officer or a Public Health Nurse.

Condition 17: You consent to any Medical Health Officer receiving a copy of this Order, and you consent to provide, and will provide, to any Medical Health Officer copies of your consultation letters and laboratory tests, including information about your viral load, CD4 count and any newly diagnosed sexually transmitted infections.

Condition 18: Having consented, you must inform all present and future sexual partners that you are infected with HIV before you have sexual contact with them. If a viral load test indicates that your viral load is detectable or a viral load test has not been completed at the intervals prescribed by this Order, you must notify sexual partners before you have any sexual contact with them that you 1. are HIV positive and; 2. cannot confirm you are virally suppressed.

Condition 19: Having consented, sexual activity with other persons, where the exchange or discharge of bodily fluids is possible, will only occur under the following circumstances: I.you and any partner(s) wear condoms and you: 1. are having HIV viral load tests at the intervals prescribed by this Order; 2. have been advised by a Medical Health Officer or staff member of the Clinic that your last viral load test indicates your viral load is undetectable; and 3. have been taking antiretroviral medications as prescribed to you, without interruption, since your last examination at the Clinic.

Condition 20: You must not share needles with any person for any purpose, including injection, drug use or tattooing.

Condition 21: You must respond to telephone, email or text communications from a Medical Health Officer or Public Health Nurse within one day of receiving the communication.

Condition 22: You must make yourself available to meet with a Medical Health Officer or Public Health Nurse within one week of being directed to meet with them, or as is otherwise reasonable under the circumstances.

Condition 23: Additionally, you must take all reasonable steps to maintain your physical and mental health so that your HIV condition does not cause a health risk to other individuals.

Probation (Suspended Sentence)

Condition 24: If you are not taking tests and treatment (including prescribed medication) as directed by your attending physicians, you must immediately notify the VCH Medical Health Officer responsible for your case, or his or her designate.

Dated **October 30, 2018** at **Vancouver, British Columbia**
I, the undersigned defendant, acknowledge that:
I have received a copy of the probation order
I have received an explanation of the mandatory and optional conditions made in this Probation Order
- the process for making changes to the order (Offence Act, s. 89.5),
- the consequences for failing to comply with a Probation Order (Offence Act, s. 89.6) and
I understand the terms of this Probation Order and the explanations which I have received.

Other Signer
Wed Oct 31 2018 16:01:5

[redacted]

[redacted]

M. Soo 2018.10.31 16:01:17 -07'00'
A Clerk of the Court on behalf of Judge P L Doherty, in and for the Province of British Columbia

Probation (Suspended Sentence)

PCR941B
Suspended
Sentence
05/2015

File, Police, Crown, Sheriff

Important Information for a Person Placed on Probation

1. Changes to a Probation Order (Offence Act, s. 89.5)

Note: The first three conditions of this Probation Order cannot be changed.

You may apply to the court to vary your probation order. The judge may order any of the following:

- change, add or remove an optional condition,
- relieve you from complying with an optional condition, either absolutely or on terms,
- terminate the order or shorten the length of the probation order.

Note that the prosecutor or a probation officer may also make this application, in which case, you will be required to appear before a judge. The court will issue a warrant or a summons.

If you would like to make an application, ask the Court Registry for an *Application to a Judge* form.

If the court approves any changes to your probation order, you must sign a new order. You will also receive a copy of the new order.

2. Failure to comply with a probation order (Offence Act, s. 4, 89.6 and 90)

If you fail to comply with a condition of your probation order, you may be charged with "breach of probation". If the court finds you guilty of a breach of probation, you may be sentenced to a fine of up to $2 000, imprisonment for up to 6 months, or both.

Your court appearance for a breach charge does not have to be where your probation order was made. You may appear in the court closest to where this offence happened, or where you were found, arrested, or in custody.

If you are convicted of an offence while you are on probation, including the offence of breaching your probation, the prosecutor may ask to have you come back to court, as long as:

- you have decided not to appeal your conviction
- you are out of time to appeal and you have not appealed or
- you appealed your conviction, but the appeal was dismissed or abandoned

In that case, the judge who made the original probation order or a judge in the same territorial division may do any of the following, in addition to fine or imprisonment:

- change, add or remove an optional condition,
- extend the term of the probation order for up to a year,
- relieve you from complying with an optional condition, either absolutely or on terms,
- terminate the order, or
- if your sentence was suspended, revoke the probation order and impose a sentence.

3. Changes to Personal Information

If you change your name or address, you must notify the Court or your probation officer of any change in advance. Any changes to other personal information, including your employment or occupation must be reported to the Court or your probation officer. To report any changes, you should ask the Court Registry or your probation officer for a *Notice of Change of Personal Information* form.

This is an information sheet. In the event of any conflict between this information and any Act(s) or law, the provisions of the Act(s) apply.

Probation (Suspended Sentence)

PCR541B
Suspended
Sentence
05/2015

File, Police, Crown, Sheriff

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Appendix C: BCCDC Guidelines for Medical Health Officers

TABLE OF CONTENTS

1.0 INTRODUCTION

In 1993, the BC Provincial Health Officer released guidelines to assist medical health officers (MHO) when considering how to approach people with Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS) who posed a risk of transmission of HIV to others. These *Public Health Guidelines for Managing Difficult HIV Cases* provided useful information for MHO, and were referenced and adapted by other jurisdictions. In 2010, these guidelines were updated to include advances in HIV/AIDS care, changes in the public health regulatory framework that provides for the collection, use and disclosure of information and legal interventions in relation to communicable diseases. Since 2010, there have been a number of important published studies which have specifically addressed the effect of HIV treatment on reducing the risk of HIV transmission. Furthermore, the US Centers for Disease Control and Prevention have recently published revised estimates of HIV transmission risk[1] and the effectiveness of condoms in terms of preventing HIV transmission in MSM[2]. The current revision includes this new information.

While acknowledging the need for guidelines outlining a public health approach to people with HIV/AIDS who may pose a risk of harm to others, it should be recognized at the outset that such cases occur rarely, and such an approach is only a minor (but necessary) component of the strategies for HIV prevention.

The foundation of a successful HIV prevention strategy is built upon a strong proactive educational, promotional, and supportive community approach. When a community approach is in place, people will be aware of HIV, will understand how to protect themselves and others and will have relevant educational materials and programs available to them. In addition, preventive outreach services will be working with populations with a higher incidence of HIV, supportive resources will be available to assist HIV positive individuals to cope with their infection, and the efforts of health services and community agencies involved will be effectively coordinated, with the needs of the clients paramount.

2.0 APPLICATION

The goal of this document is to guide MHO in the exercise of their powers and duties to protect the public from the spread of communicable diseases, in this case to prevent further transmission of HIV. These guidelines are designed to assist MHO in situations where a person poses a risk to others in consequence of his or her inability or refusal to act to prevent transmission of HIV.

The scope of these guidelines is restricted to advice about measures that are available to MHO[1] under the BC *Public Health Act* (PHA)[3] and regulations when a person with HIV/AIDS is unable and/or refuses to act to prevent further transmission of HIV.[2] They cover the involuntary disclosure of information, the making of Orders, enforcement of Orders, and other actions.

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[1] Note: These guidelines also provide guidance to individuals to whom the MHO has delegated authority in writing; for example, to a public health nurse (under PHA s74).

[2] Note: This guideline is to provide general orientation to the application of the PHA and related legislation for public health officials who are responsible for implementing the PHA and others affected by the PHA. This guideline is not legal advice and individuals should consult with their legal counsel in determining whether or to what extent the PHA may apply to a particular circumstance. In the event of a conflict between the guideline and the PHA, its regulations or related legislation, the latter prevail.

These guidelines do not address the public health practice of partner notification, which involves assisting an HIV-infected person to voluntarily inform sex and/or drug using partners that they may have been exposed to HIV. Such guidelines are found in the Guidelines for Testing, Follow up, and Prevention of HIV in Chapter 5, Section 2 of the BC Communicable Disease Control Manual[4]. Partner notification differs from involuntary disclosure, in that the infected person determines both the information that is communicated, and how it is communicated, to other persons

Nor do these guidelines address the legal responsibility of people with HIV/AIDS to communicate with their partners. There have been a number of high-profile criminal cases that have highlighted the issue of disclosure of HIV/AIDS-related information[5]. These cases have resulted in the imposition of criminal sanctions against individuals who were aware of their HIV status, but failed to inform risk partners, or take measures to protect partners from infection. The standard of disclosure, as it relates to the criminal law, is determined by the *Criminal Code of Canada* and relevant case law. Although the *Criminal Code* provides one source of law regarding HIV/AIDS and disclosure to others, it is the BC *Public Health Act* and its regulations which provide the legal framework for MHO to deal with difficult HIV/AIDS situations, and is the basis for these guidelines.

The purpose of these guidelines is to assist MHO in dealing with situations in which a person who has been diagnosed with HIV proves unwilling or unable to disclose his or her status to, and/or to cease engaging in high-risk behaviour with, a partner or partners. Non-disclosure of HIV status that results in a significant risk of infection for others occurs primarily in the following situations:

- An individual diagnosed with HIV engages in high risk sexual behaviour with partners without informing them about his or her infection and related risk.
- An individual diagnosed with HIV shares needles and/or other drug paraphernalia with other persons without informing them about his or her infection and related risk.

Any steps a person with HIV/AIDS takes to protect others from infection by HIV may be considered by an MHO in deciding whether or not to disclose that person's HIV status to third parties. For example, an infected person's use of latex condoms during sexual intercourse, engagement in effective HIV treatment resulting in a suppressed HIV viral load or refusal to share needles when using injection drugs, may satisfy a MHO that the person does not pose a significant risk of infection to others – in such instances, public health action may not be required.

A person's ability to control actions that may result in harm to others will determine whether he or she is "unwilling" or "unable" to comply with risk reduction strategies. "Unwilling or unable" people have been described as follows:

"Unwilling" people with HIV/AIDS:

- Possess the mental capacity and opportunity to comply with disclosure of their HIV status and have the capacity to pursue measures to protect others from HIV transmission, but choose to do neither, or
- Have been counseled regarding their responsibility to protect others and/or disclose to others concerning their HIV status, and remain unwilling to demonstrate appropriate corresponding behaviour, or
- Have knowingly made false statements regarding their HIV status to partners, or

- Have in the past willfully or knowingly misrepresented their HIV positive status to partners and/or behaved in ways that expose others to a significant or unreasonable risk of HIV infection.

"Unable" people with HIV/AIDS:

- Have a diagnosed psychiatric or cognitive impairment such as organic mental illness, developmental disabilities or head injuries, or
- Have external or environmental reasons such as dependency, coercion by, or fear of other persons, which leads them to continue to engage in high risk behaviours, or
- Have no knowledge that they are infected with HIV.

In general, "unable" people with HIV/AIDS can be characterized as:

- Lacking the capacity to form the intention to prevent the spread of HIV; and/or;
- Lacking the capacity to form and implement a reasonable plan of conduct to prevent the spread of HIV.

To summarize, these guidelines set out a framework to assist MHO in working with people with HIV/AIDS who pose a risk of harm to other people because they are "unable or unwilling" to act to avoid transmitting HIV to others. They are not meant to be prescriptive, directive or exhaustive, but to offer guidance in the exercise of discretion.

3.0 PRINCIPLES AND VALUES

The basic principles and values underlying these public health guidelines are:

- The mandate of public health is to protect people, not to punish them.
- Public health interventions must balance the rights of the individual against the duty to protect the public, and sometimes the risk to public safety may outweigh the rights of the individual.
- The most effective measures for preventing HIV transmission within the population are ongoing participation in voluntary testing and treatment, counseling, education, and health promotion programs, which are intended to reach individuals or groups who may be more likely to acquire HIV.
- Reliance upon punitive measures to prevent the spread of HIV may have the opposite effect if fear of stigmatization, discrimination or punishment discourages participation in voluntary programs for HIV prevention and treatment, such as testing or partner notification.
- HIV prevention strategies adopted in partnership with physicians, other health care providers, and community groups, are considered most likely to succeed.
- All members of the public need to understand how HIV is spread, and how to protect themselves and others.

Basic values and principles that should inform decision-making when working with people with HIV/AIDS who pose a risk of harm to others have been articulated by a number of national and international groups. A national expert panel convened by the Federal / Provincial / Territorial

Advisory Committee on HIV/AIDS[1] has suggested that the following principles should inform the choice of management options, including the involuntary disclosure of information:

- Prevention should be the primary objective. The framework should be based fundamentally on a public health rather than a criminal law approach.
- The "least intrusive, most effective" approach to intervention should be followed.
- The focus should be on the risk of transmission posed by particular behaviours.
- Behaviours should be placed in risk categories.
- The response to the failure to disclose should be proportional to the risk of the particular behaviour.
- Specific measures should not be prescribed; rather, a list or menu ought to be provided to health care providers and public health officials to consider in particular circumstances.
- If a person engages in behaviour considered to pose a high risk for HIV transmission to others and the person discloses his or her HIV status to a sexual or drug injection partner, the health care provider should nonetheless counsel the HIV-infected person to modify the behaviour.
- Due process and Charter rights must be respected in interventions that are imposed by the state on the individual. This includes advance notice of the intervention, the right to counsel, timely reviews of decisions rendered, the right to a fair hearing, and the right to appeal decisions.

Finally, the starting point when dealing with public health related information is the obligation to maintain patient confidentiality. This is fundamental to the patient-health care provider relationship, and means that, except in rare situations, the health care provider must not disclose information without the patient's permission. However, the right to confidentiality is not absolute. In some circumstances, disclosure of information without the permission of the patient may be justified, or even required.

4.0 OVERVIEW OF PROCESS

These guidelines set out a process for use in assessing whether or not a person with HIV might present a significant risk of transmission of HIV to others. As well, they offer options for response to such situations, and include relevant questions and standards to be considered with respect to each option. The application of these guidelines must always be subject to the judgment and discretion of the MHO; accordingly, the interventions are not presented as a strict, step-by-step continuum, but, rather, as options that may or may not be appropriate in particular situations. Further, each option is comprised of a number of elements which may or may not be applicable in any given setting or situation. For convenient reference, a two-page summary of these guidelines is included (see 8.0 – Appendix).

If the MHO is satisfied that the person is not putting, or is no longer likely to put, others unknowingly at risk with his or her behaviour, further intervention may not be warranted. However, other circumstances may indicate that follow up is warranted in order to ascertain whether or not the person's behavior continues to pose a low risk.

5.0 DETERMINATION OF RISK TO OTHERS

Step 1: Receipt of Notification

A MHO may receive reports from physicians, other health professionals, other professionals, or members of the public regarding the risk behaviours of individuals known, or suspected, to be living with HIV/AIDS. Reports may also arise from surveillance or partner notification activities indicating that an HIV positive individual has been named as a recent contact of someone newly diagnosed with HIV or are part of a phylogenetic cluster which is expanding. If such a report suggests that an individual may be placing a third party or parties at ongoing risk of infection with HIV, the MHO has a responsibility to investigate as set out below, and to take action, as appropriate. It should be made clear to an individual reporting a concern that the goal of intervention by an MHO is to prevent the spread of HIV.

The Communicable Disease Regulation (CDR) s6.2[6] describes the notification process for physicians who "reasonably believes that another person may be at risk of harm from an index patient".[3] If a physician comes to believe that a patient poses a risk of transmitting an infection of public health importance to one or more third parties, the physician may provide information about that person to the MHO, in accordance with *Communicable Disease Regulation* (CDR) s6.2.

Relevant matters for the physician to consider in this context include:

i) What is the standard?

[3] In sections of this guideline wording specific to physicians is used (reflecting the wording of the *Communicable Disease Regulation*). In future revisions of the CDR, this wording will change to include all health professionals (as reflected in the *Public Health Act*) and these guidelines will be updated accordingly.

The standard is that the physician "reasonably believes" the actions/behaviours of the person present a risk of infection to others. This is a relatively low standard, requiring that there be a rational basis for the belief that the person poses a risk.

ii) To whom does it apply?

The standard applies to patients that a physician knows or suspects to be infected with HIV. The patient need not have been tested for HIV.

iii) What actions are in question?

The regulation provides a fair degree of scope for the exercise of judgment on the part of the physician who must reasonably believe that "another person" may be "at risk of harm" (the harm being the transmission of the HIV virus). "Another person" may be anyone deemed at risk. For example, there is no requirement that the other person be a cohabitant. Neither is there a need to believe that the other person is definitely, or even likely, at risk of harm. Instead, the standard is only that they "may" be at risk of harm. Factors to consider when assessing the "risk" of behaviour are set out in step 3.

iv) What information may be provided?

The physician may provide the MHO with "relevant information." This is defined broadly as: "any information that may, directly or indirectly, identify the patient." This may include, but is not limited to, the person's name, address, age, and sex. The key is to provide sufficient information to enable the MHO to locate the person and act to prevent harm to others.

It should be noted that the first step for a physician or other health professional, should be to provide risk reduction education and counseling to a person with HIV. Thereafter, if satisfied that the person does not pose a risk to others, further action need not be taken, although ongoing follow up may be warranted.

Step 2: Verification of HIV Status

The CDR s. 6.2 provides for confirmation of the HIV status of a patient by authorizing the physician to disclose information to the MHO, and the MHO to require the person to undergo examination.[4]

Confirmation of HIV status by the MHO is necessary, because a physician may provide information about patients who are infected with HIV, but also about patients whom the physician suspects to be infected with HIV. If the MHO is satisfied that a person is infected with HIV, the MHO should proceed to assess risk, as described below.

[4] Note that MHOs may also receive reports from non-physicians about possible HIV infected individuals. MHOs are obligated to act on this information based on section 73 (2) of the *Public Health Act,* which requires them to monitor the health of the population in the area for which they have been designated. It is implicit in this section that MHOs are authorized to collect, use and disclose information for this purpose. Also relevant in this regard are sections 26, 27 (1) (a.1) and (b), 32 (c) and s.33.1 (1) (e) of the FOIPP Act, which, read together, authorize MHO to indirectly collect and use personal information necessary for the performance of their duties.

If the MHO only suspects that an individual is infected with HIV, the MHO may seek confirmation by:

i) Asking the physician for more information about the person, under CDR s.6.2(2)(b)(i); or

ii) Obtaining information from the regional and provincial communicable disease surveillance databases; or

iii) Obtaining further information from the person: CDR s.6.2(2)(b)(ii). The MHO may request that the person undergo a test for HIV. If the person is not cooperative, the MHO may issue an Order for testing and examination of the person, under PHA s27, 28, 29, or 49 (see Appendix II for sample Order).

iv) (If it is confirmed that a person is infected with HIV, the next step is the assessment of risk. If the MHO is satisfied that the person is not infected with HIV, further action may not be necessary, although counseling about the reduction of behaviours that may increase the transmission of HIV may be warranted.

Step 3: Assessment of Risk

Although the CDR provides that an MHO may disclose a person's HIV status to others if there is risk of harm to those others, it should be noted that there are different levels of risk. The MHO must consider the degree to which a person's actions constitute a risk to the health of others before determining how to proceed.

Working in partnership with other health care professionals (including the reporting physician or health professional, and public health nurses) and the person infected with HIV, the following should be considered by the MHO when assessing the overall degree of risk of harm to others the infected person poses, and the potential for interventions to successfully reduce harm:

i) <u>The risk associated with specific behaviours</u>

Not all actions create the same degree of risk. The United States Centers for Disease Control and Prevention has recently calculated revised estimates for the risk of HIV transmission associated with different types of exposures[1]. These provide a good model which can be used as a guide for assessing the degree of risk associated with certain behaviours (see – Appendix II).

ii) <u>The person's HIV status and management of HIV infection</u>

In addition to assessing the risk of transmission associated with a person's actions, it is also important to take into account the status and management of the person's HIV infection. Research has demonstrated that a person's infectiousness will vary over the course of an HIV infection based on disease stage, HIV viral load counts and antiretroviral treatment. For example, an HIV infected individual who is receiving treatment and has a viral load <200 copies/ mL person has a negligible risk of transmitting HIV to their sexual partners[7]. Likewise, individuals in the acute or early stage of HIV infection and those who have advanced HIV disease or AIDS are more likely to transmit HIV to others because their viral

loads are naturally high at these times[8]. If information about a person's clinical stage of infection, viral load and treatment status is available to the MHO, it is useful to consider these factors in the overall context of assessing the risk of harm posed to third parties.

iii) The physical setting or context in which risk occurs

The setting or context for the behaviour(s) that constitute a risk may also have some bearing on the type of intervention that is considered. For example, it may be reasonable to conclude that individuals within an environment such as a bath house who engage in anonymous sexual intercourse with a number of partners, or individuals exchanging goods or money for sex, are aware of the likely higher prevalence of HIV in these situations, and that the risk of HIV infection is significant. Likewise, participants in group sharing of equipment for drug injection may be assumed to understand that they are putting themselves at risk of HIV infection. In circumstances such as these it may be reasonable to assume that all participants have some understanding that their activities may lead to infection with HIV. Accordingly, it is important that MHO consider whether the individual(s) who are at risk of infection from the infected person may be aware of their risk, even in the absence of explicit disclosure of HIV status on the part of the infected person. Consequently, it may be that in some situations it would be unreasonable to expect the infected person to disclose his or her HIV status to each risk partner, and that any intervention should be focused on the infected person's use of risk reduction techniques.

iv) Epidemiologic context

Information from surveillance or partner notification activities may also suggest an ongoing transmission risk, for example if an HIV positive individual has been named as a contact by one or more individuals who have been newly diagnosed with HIV, or is part of a phylogenetically-defined cluster of HIV-infected individuals which is expanding.

v) The estimated duration of exposure and whether this exposure is ongoing

If the infected individual likely has had longstanding HIV infection potential exposures are limited to a single low-risk partner, then the urgency in applying interventions may be less than for someone with acute infection and multiple partners.

vi) The person's willingness and ability to comply with voluntary measures

The purpose of the risk assessment is to determine the likelihood that the infected person will continue to engage in behaviours that pose a risk for HIV transmission, and also to identify the supports or interventions which should be put in place or used to guide the person to avoid putting others at risk of infection. The person should be consulted in order to assess matters such as:

- Knowledge of HIV/AIDS.
- Awareness of behaviours that increase the risk of HIV transmission.

- Awareness of the measures which can reduce the risk of HIV transmission such as using condoms or seeking HIV treatment.
- Availability of support systems, including access to appropriate medical care.
- Need for education or counseling.
- Presence of medical or psychological conditions that might affect their ability to make informed decisions and take appropriate actions

The MHO should also assess the willingness and ability of the person to comply with voluntary measures to reduce the risk of HIV transmission. The following may indicate that a person is unwilling or unable to act to reduce the risk of infecting others:

- Express or implied refusal to receive counseling.
- Express or implied refusal to take appropriate precautions in behaviour (e.g. refusal to use condoms).
- Express or implied refusal to initiate and maintain effective HIV treatment
- Express or implied refusal to disclose HIV status to sex and/or drug injecting partners.
- Clinical evidence that the person continues to engage in activities that pose a high risk of HIV transmission (e.g. presentation with a sexually transmitted disease after HIV diagnosis and counseling).
- A serious substance use problem that may impair judgment.
- A physician's report containing a clinical opinion that the person is not reducing behaviours that pose a risk of HIV transmission to others.
- A credible report from a third party that the person is not reducing behaviours that pose a risk of HIV transmission to others
- Mental health problems that may influence judgment.

Step 4: Consideration of mitigating and other relevant factors

When assessing activities that may constitute a risk of transmitting HIV, the MHO should be aware of the possibility that other factors may be contributing to the person's ability to take appropriate precautions. In some situations these may militate against a decision to take action related to a person's behavior, or to disclose his or her HIV status.

In particular, the MHO should screen for the possibility that the person is at risk of domestic violence. If the MHO learns that an HIV-infected person is at risk of violence from a partner, disclosure to that partner could pose a threat to the safety of the infected person, his or her children, or others who are close to the person. In such cases, the MHO may consider deferring third party notification.

A person at risk of violence should be referred to relevant counseling and support services, including counseling about practices and behaviours that decrease the risk of HIV transmission. Follow-up should take place to ascertain HIV status and reassess the threat of domestic or other violence. It is always the responsibility of the MHO to balance the competing interests of the third party and the infected person. MHO are encouraged to make such decisions in consultation with the person and the person's physician in order to maximize the safety of the person while assessing when, or if,

concerns about the safety of the person are sufficiently allayed to permit third party disclosure to proceed.

Other situations that may require the MHO to balance competing interests may include, but are not limited to, instances where the infected person is part of a small community and there is a risk that disclosure of HIV status to a partner will result in the community learning about the infection, with the result that the infected person may be put at risk of harm from members of the community. Examples of such situations may include individuals resident within a correctional facility, and individuals living on some First Nations reserves.

6.0 INTERVENTIONS

While it is recognized that it may be very difficult to assess degree of risk because of the difficulty of obtaining reliable information about an infected person's behaviour, the MHO's decision on how to proceed should be based upon a consideration of the results of the assessment of risk and the possible consequences of potential interventions. Proceeding on this basis, the MHO should determine the most appropriate course of action (e.g., education and voluntary measures, involuntary disclosure of the person's HIV status, or issuance or enforcement of a public health Order). The following guidelines may serve to inform this decision-making process:

i) Regardless of risk level, if satisfied that the person has disclosed and will continue to disclose their HIV status to their partners prior to actions that risk transmission of HIV, more intrusive measures are generally not indicated. Counseling and education should continue as appropriate.

ii) If there is negligible risk and no voluntary disclosure, in most circumstances only voluntary risk management measures such as education and counseling should be implemented.

iii) If there is any non-negligible risk and no voluntary disclosure of HIV status, intervention should be considered, with the least intrusive measures utilized first. The urgency in applying the interventions and the nature of the interventions should be proportionate to the assessed risk of transmission.

If at any point the MHO is satisfied that the person has altered his or her behaviour so that others are no longer at risk, further intervention may not be warranted. However, other circumstances may indicate that ongoing support and follow up is warranted to ensure that the person's behavior continues to be low risk.

Option 1: Voluntary Measures

If the MHO believes that the person poses a risk of HIV transmission to others, voluntary measures to address that risk should first be pursued.

Voluntary measures may include, but are not limited to:

i) <u>Education and counseling</u>

It is widely recognized that interventions which are the least intrusive, least restrictive and most readily available are often the most effective in reducing the risk of transmission of HIV. Consequently, MHO should ensure that the infected person is aware of and has been referred to appropriate supports, such as education and counseling. This may take the form of ongoing sessions over an agreed-upon period of time, and should include other health care providers who are aware of the person's HIV status, such as the physician, public health nurse, and, in some instances, mental health care providers.

Education and counseling sessions should address issues such as:

- Provision of information relevant to education about HIV transmission and the factors that increase and decrease the risk of transmission, including the use of HIV treatment.
- Teaching skills to help avoid the transmission of HIV.
- Modeling open and effective communication with third parties who may be at risk of HIV infection.
- Anticipation and preparation for situations that will arise over the course of the person's HIV infection.

During education and counseling, assessment of the need to reinforce safer sex and drug-using practices may take place, and may lead to the implementation of further measures and precautions.

ii) Establishment of an oral or written agreement

Establishing voluntary objectives with the infected person in the form of an oral or written agreement may be another measure used to reduce risk. The objectives should ensure that the person obtains and acts on appropriate education, counseling and other support. These may include an agreement to use condoms and other preventive measures whenever having sexual intercourse and/or to use clean needles and syringes and not sharing injection equipment when using injection drugs. An oral agreement may, if the MHO considers it effective and appropriate, be confirmed and documented through a letter to the person, which would outline the agreed-upon course of action, establish a timeframe for this action, and set out a schedule for follow-up consultations. The MHO may also establish a written agreement with the infected person (pursuant to PHA s38), which would be signed by the person.

iii) Assistance with notification and counseling of partners

If the identity of the infected person's partners or contacts is known to the MHO, the MHO may offer to inform these partners or contacts on behalf of the person (without identification of the person). This is a routine public health practice which is typically followed when a person is first diagnosed with HIV, but which may also be employed in this context.

iv) Assistance with initiation and continuation of appropriate HIV treatment

HIV treatment has been shown to dramatically reduce the risk of HIV transmission. Early initiation of HIV treatment was shown to be 96% effective in reducing genetically-linked HIV infections within HIV serodiscordant couples in a large multicenter randomized trial[9].

Furthermore, in a study of 586 heterosexual and 308 MSM HIV serodiscordant couples where the viral load of the HIV-infected member of the couple was <200 copies/ mL and the couples reported having sex without condoms, no seroconversions have been observed in over 890 person-years of observation[7] As such, initiating HIV treatment and ensuring that a viral load of <200 copies/ mL has been achieved can be viewed as an effective means of reducing onward transmission of HIV. The MHO should ensure that the infected person is aware of the preventive benefits of HIV treatment and has been referred clinical care where the physician is experienced in the medical management of HIV infection.

v) Engaging in treatment for drug or alcohol use disorder(s), if appropriate.

If a substance-use disorder is an important component of the risk posed to sexual or drug using partners of the infected person, then engaging in appropriate treatment may be considered an effective risk reduction mechanism.

In the event that follow-up consultations with the person reveal that he or she has reverted to high-risk behaviour and/or continues to fail to disclose his or her status to partners, and has not initiated HIV treatment with evidence of a suppressed viral load, the MHO should consider the possibility of more intrusive measures such as involuntary disclosure of the person's HIV status to contacts, and MHO orders.

Option 2: Involuntary Disclosure

If the MHO's assessment reveals that the person is engaging in high risk activities and shows no willingness or ability to mitigate the risk by altering these behaviours or informing the person's partners or contacts, and the person does not accept the offer by an MHO to inform these partners on behalf of the person, the MHO should consider more direct intervention to protect third parties who may be at risk. If the MHO knows the identity of the person's partners or contacts, and there is evidence of on-going or recent high risk behaviors involving these individuals, the MHO may consider involuntary disclosure of that person's HIV status to third parties.

There are two possible routes for involuntary disclosure:

i) Without identification of the infected person: Notification of third parties of their possible exposure to HIV without identification of the infected person is desirable in most circumstances.

ii) With identification of the infected person: If disclosure without identifying the person's identity is not practical or possible, the MHO should consider disclosing information about the person's HIV status and identity to those who may be at risk of harm.

Section 6.2(2)(b)(iii) of the CDR authorizes the MHO to disclose private information about a person. This authority is a reflection of the MHO's duty to protect the health of the public, and an exception to the general rule that personal health information is confidential.

The following factors should be considered before involuntary disclosure of a person's HIV status to a third party is considered by a MHO:

- The person's HIV status is established as positive.
- There are reasonable grounds to conclude that the person is engaging in high-risk behaviour.
- The person has been offered support, education and counseling and is unwilling or unable to alter his or her high-risk behaviour.
- The person has been offered ongoing medical care including HIV treatment to ensure that they have effectively reduced their risk of transmitting HIV but is unwilling or unable to do so.
- The person is unwilling or unable to inform a third party who is at risk of HIV transmission about their HIV positive status.
- The person has refused a physician's and/or MHO's offer to inform the third party on behalf of the person.
- There is no mitigating reason to postpone or reconsider informing the third party of the person's HIV-positive status.
- There are reasonable grounds to believe an identifiable third party or third parties is/are at continued risk of HIV transmission because of the infected person's high-risk behavior.
- The third party has no other reasonable way of knowing their risk, or is unable to assess their risk of HIV infection.

Before disclosing to a third party, the MHO should inform, or make reasonable attempts to inform, the infected person of his or her intention to disclose information to a third party without the person's consent[10]. If feasible, and if time permits, this should take the form of a letter to the person, stating that the person has continued to engage in high-risk behaviour despite efforts to educate and counsel the person; stating that the person has not taken voluntary measures to reduce the risk of transmission; reiterating the requirement to alter high-risk behaviour; and referencing CDR section 6.2(2)(b)(iii) (see sample letter in Appendix IV). If a letter is not possible, the person should be orally informed of the MHO's intention to disclose and the reasons for this, and the conversation should be documented.

In some cases, where a person has been assessed as unable to take steps to prevent the transmission of HIV due to cognitive impairment, s.33.1(1)(m) of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) provides an MHO with the authority to consult with and communicate personal information to the infected person's appointed committee, guardian or representative, if the person has one, or with social workers or other professionals involved in their care.

In the case of a person who poses a risk more generally to the community, or to a wider group of people (e.g., a sex worker), the MHO should seek the advice of the Provincial Health Officer and legal counsel with respect to balancing the privacy rights of the person against the public health duty to respond to public health threats and warn about health risks. Other measures, such as providing general education about HIV prevention to the public or community may be appropriate in this scenario.

Option 3: Issuing and Enforcing an Order

Following involuntary disclosure to a third party, or based on other circumstances, if the MHO reasonably believes that the person continues to pose a risk of harm to others, and voluntary and other measures have been exhausted, it may be appropriate to employ other measures available under public health law. The use of these measures should be discussed with the Provincial Health Officer and legal counsel, and advice sought on the content of any Orders being considered, and the legal process to be followed. See Appendix III for a template of an Order.

For example, the MHO may decide that a formal Order under the *Public Health Act* is warranted. The purpose of issuing an Order is to require behaviour change in order to protect others, and to establish the basis for enforcement actions or court ordered detention, should this prove necessary. Such an Order is issued pursuant to PHA sections 27-29, and a wide range of terms may be included, such as requiring the person to:

- Be under the care of a physician.
- Provide the MHO with information about contacts.
- Be examined (including mental health exams) and tested.
- Take preventive measures (e.g. informing contacts of HIV status, using condoms, initiating and continue HIV treatment).
- Provide evidence of compliance with the Order. (e.g.: monitor HIV viral load)
- Take other action the MHO reasonably believes to be necessary to prevent transmission of infection.
- Stay in a place.
- Stay away from a place.

The choice of measure(s) to include in an Order will depend upon the MHO's determination of risk, and the unique circumstances of the individual whose behaviour may pose a risk of harm to others. Legal advice should be obtained on the drafting of the Order, since the ability to take subsequent legal action may depend on the wording of the Order (see Appendix IV for a sample Order). If a recipient of an Order may have difficulty understanding the Order in consequence of low literacy or cognitive impairment, it would be advisable for the person serving the Order to be accompanied by someone who could explain the Order to the recipient in terms the person will understand.

The requirements related to an Order (contents, instructions to other people such as examiners, service of Orders, expiry of Orders) are found in PHA s. 39-46, and the Public Health Inspections and Orders Regulation (PHIOR) sections 3 and 4. An Order should state, with as much specificity as possible, the authority under which it is made. This may be done by listing all the references to legislation at the beginning of the Order, and/or beside each term of the Order. When an Order contains many provisions, it may be easier for the person to whom it is directed if each provision refers to the authorizing legislation.

The PHA permits a person to have an Order reconsidered, reviewed, and reassessed. An Order must contain information about how the person may have the Order reconsidered under PHA s.43, and should contain information about the person's entitlement to seek a review and/or reassessment, if relevant, under PHA s. 44 and 45 and PHIOR s.4. A copy of all relevant

legislative provisions should be provided to a person to whom an Order is directed, including PHA s.42 (duty to comply with Orders).

If the MHO who issues an Order becomes aware that the person has moved residence to another region of BC, he or she should notify the MHO of the new area of residence. It is not necessary to re-issue the Order (see PHA s.42). If the MHO of the new area of residence has information that leads the him or her to believe that a person in their designated area is in violation of an Order made elsewhere in British Columbia, that MHO is the appropriate MHO to take enforcement action. If an MHO becomes aware that the person under an Order has moved residence outside of BC, he or she should inform the Division of STI/HIV Prevention and Control, who will inform the appropriate public health authority of that region, if feasible.

If a person is not complying with an Order, the MHO has discretion about whether to enforce the Order. There are three enforcement options:

i) Laying of charges

Contravention of an Order is an offence and proceedings may be initiated by laying an information under the *Offence Act*, section 25. It should be pointed out that the failure to comply with Orders made under PHA s. 29 (2) (e) to (g), respecting examinations or preventive measure, is excluded from the offence provisions of PHA s. 99 (1) (k), and cannot be the basis for prosecution. Such a failure may, however, provide the basis for seeking an injunction (see below). If a person is found guilty of contravening an Order, the Court may impose alternative penalties (see PHA s.107), a fine, incarceration, or any combination of these. Since it may be difficult to enforce alternative penalties, it may be advisable to seek a combination of penalties and to request the Court to suspend the fine and/or incarceration so long as the person is complying with the alternative penalty.

ii) Applying to the court for an injunction

An application for a mandatory injunction may be made under s.48 of the *Public Health Act,* if a MHO has evidence that a person is failing to comply with an Order. An injunction is sought by way of an application to the Court, supported by affidavits providing evidence of the contravention of an Order, and requesting the Court to require the person to comply with the Order. An application for an injunction gives the MHO more control over the proceedings than does a prosecution, since the MHO retains and instructs his or her own counsel, rather than relying on Crown counsel. Another distinction is that an injunction is a civil remedy which requires proof on a balance of probabilities (more likely than not), as compared to a conviction which requires proof beyond a reasonable doubt. In the event that a mandatory injunction is issued, and the MHO learns that the person is failing to comply with it, the MHO may bring the matter back before the Court on the basis that the person is in contempt. If found guilty of contempt, the person may be fined or incarcerated, or both.

iii) Applying to the Court for a detention Order

In the unlikely event that a MHO decides that a court ordered detention may be warranted to prevent transmission of HIV and to facilitate treatment, education and counseling, an application may be made, with approval of the Provincial Health Officer, to the Provincial Court in accordance with PHA s. 49 and PHIOR s. 5 (which references the appropriate form 3). Evidence will need to be provided to the Court that the person is infected, and either has contravened an Order to stay in a place or not enter a place, or an Order to remain in a place or not enter a place is not practical, and the person is a danger to public health. The application must also provide information about where the person is to be detained, the length of the detention, and any terms which should be included in the Order, such as provisions for examination, treatment and counselling.

7.0 OTHER CONSIDERATIONS

Except in the most extraordinary of circumstances, public health legislation should be sufficient to deal with people with HIV/AIDS who pose a risk of harm to others. Many commentators have reiterated the preference for relying upon public health measures in all but the most intractable situations[11].

It should not be necessary for an MHO to refer a matter to the police for criminal investigation in order to protect the public health from the transmission of HIV, given the broad range of measures in British Columbia's public health laws which are available to MHO. In the unlikely event that an MHO does consider that a referral to the police may be necessary in order to protect the public health, it is strongly recommended that the MHO discuss the matter with the Provincial Health Officer and legal counsel before proceeding to do so.

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APPENDIX I – SUMMARY OF GUIDELINES

KEY CONCEPTS: These guidelines:

- Apply when persons with HIV infection are unable or refuse to act to prevent transmission of HIV and pose a risk to others ("unwilling or unable").
- Are based on a public health approach, and provide a framework for Medical Health Officers (MHO) or delegates based on their powers under the *Public Health Act[3]* and *Communicable Disease Regulation[6]*. Prevention of transmission of HIV infection is the primary objective.
- Are not prescriptive, since MHO must act based on their judgment and discretion, adopting a least intrusive and most effective approach. The guidelines do not set out a step-by-step approach but suggest a series of options for intervention, which may or may not be appropriate in any given case.
- Have two main components: i) determination of risk to others; and ii) suggested interventions once risk is verified.

DETERMINATION OF RISK TO OTHERS (p 6)

Step 1	**Receipt of notification** (p 6) • A physician, with a reasonable belief that a third party may be at risk of infection from someone who has or may have HIV, may forward relevant information to the MHO • A MHO may receive reports from other service providers or members of the general public regarding the risk behaviours of individuals known or suspected to be living with HIV/AIDS • A MHO may receive information that the a person living with HIV has been identified as a sexual or drug-use partner of individuals newly diagnosed with HIV or that they are part of a phylogenetic cluster which is expanding.
Step 2	**Verification of HIV status** (p 7) • HIV status may be confirmed by asking the physician for more information, obtaining information from HIV surveillance databases, asking the person for information, or requesting the person to be tested for HIV
Step 3	**Assessment of risk** (p 8) • In order to gain a reasonable understanding of the degree of harm to others which the person poses, the MHO should assess the following: i) The risks associated with specific behaviours. ii) The person's status and management of HIV infection, especially the use of effective HIV treatment. iii) The setting or context in which risk occurs. iv) Whether the individual has been named as a sexual or drug-use partner of individual(s) newly diagnosed with HIV or other STIs. v) Whether the individual is part of a phylogenetically-defined HIV transmission cluster which is expanding. vi) The estimated duration of exposure and whether this exposure is ongoing. vii) The person's willingness and ability to comply with voluntary measures.
Step 4	**Consideration of mitigating and other relevant factors** (p 10)

	• MHO should consider whether there are any factors that may be contributing to a person's behaviour; such as domestic violence or fear of harm resulting from disclosure. • MHO may consider referral for counseling and support.

INTERVENTIONS (p 10)

- If satisfied HIV status has been disclosed and will be disclosed, intrusive measures are generally not indicated.
- .
- If risk is negligible and no voluntary disclosure of HIV status, in most cases voluntary measures should be implemented.
- If there non- negligible risk and no voluntary disclosure of HIV status, intervention should be informed by the options below, with the least intrusive measures used before more coercive measures are considered. The urgency in applying the interventions and the nature of the interventions should be proportionate to the assessed risk of transmission.
- **If at any point the MHO is satisfied that others are no longer at risk, further public health action may not be warranted**

Option 1	**Voluntary measures** (p 11) • Education and counseling. • Establishment of an oral or written agreement, which may include an agreement to use condoms and other preventive measures whenever having sexual intercourse and/or to use clean needles and syringes and not sharing injection equipment when using injection drugs . • Assistance with notification and counseling of partners. • Initiation and continuation of HIV treatment, along with regular medical monitoring. • • Engaging in treatment for drug or alcohol use disorder(s), if appropriate.
Option 2	**Involuntary disclosure** (p 13) • Refers to involuntary disclosure of a person's HIV status to an identifiable third party, with or without identification of the person. • The following factors should be considered prior to involuntary disclosure: a) Person's HIV status is established as positive. b) Reasonable grounds to conclude continued engagement in high risk behaviour. c) Support, education and counseling have been offered and person is unwilling or unable to alter high risk behaviour. d) The person has been offered to offered HIV treatment and ongoing medical care but is unwilling or unable to do so e) Person is unwilling or unable to inform a third party at risk about their HIV status. f) Person refuses physician or MHO offer to inform third party on behalf of the person. g) No mitigating or other relevant factor identified. h) Reasonable grounds to believe identifiable third party (parties) at continued risk because of ongoing high-risk behaviour.

	i) Third party has no reasonable way of knowing the risk, or is unable to assess the risk. • Prior to disclosure, MHO should inform, or make reasonable attempts to inform, the person of intention to disclose information to third party, without the person's consent
Option 3	**<u>Issuing and enforcing an Order</u>** (p 14) • Other measures have been exhausted and MHO has reasonable belief that person continues to be unable and/or unwilling to prevent further transmission of HIV. • Enforcement powers are provided to MHO by *Public Health Act* for protection of public health. • Use of Orders should be discussed with Provincial Health Officer and legal counsel. • Orders must meet certain requirements (sample Order in Appendix II), including information about how person can have Order reviewed and/or reassessed. • If person is not complying with an Order, enforcement options include: laying of charges; applying to the Court for an injunction; and applying to the Court for a detention Order.

OTHER CONSIDERATIONS (p 17)

- Except in the most extraordinary situations, public health legislation should be sufficient to protect public health.
- In the event that an MHO considers referral to police necessary to protect the public health, prior discussion with the Provincial Health Officer and legal counsel is strongly recommended.

APPENDIX II – ESTIMATED TRANSMISSION PROBABILITIES OF ACQUIRING HIV FROM AN INFECTED SOURCE BY ROUTE OF EXPOSURE

HIV viral load of potential source	Type of act	Use of condoms or other barriers	Estimated risk per 10,000 acts[1]	Level of risk
Unsuppressed (>200 copies/mL)	Sharing needles or syringes when using injection drugs	N.A.	63 (41–92)	High
	Receptive penile-anal intercourse	No barrier	138 (102–186)	High
		With barrier	41 (31 – 56)*	Moderate
	Insertive penile-anal intercourse	No barrier	11 (4–28)	Moderate
		With barrier	3 (1-8)*	Moderate
	Receptive penile-vaginal intercourse	No barrier	8 (6–11)	Moderate
		With barrier	2 (2 – 3)*	Moderate
	Insertive penile-vaginal intercourse	No barrier	4 (1–14)	Moderate
		With barrier	1 (0 – 4)*	Low
	Oral sex (insertive or receptive)	No barrier	N.A. (0–4)	Low
Suppressed (<200 copies/mL)	Any sexual act	With or without a barrier	<1 (0 - 30)[7]	Very Low/ Negligible
	Sharing needles or syringes when using injection drugs	N.A.	No data, but likely very low	Very Low/ Negligible

* 70% reduction in HIV transmission associated with consistent condom use for male-to-male sex (reference [2]) and for heterosexual sex (reference [12]).

APPENDIX III – SAMPLE ORDER (Adapted from Vancouver Coastal Health)

NOTICE TO A PERSON SUSPECTED OR KNOWN TO BE INFECTED WITH A REPORTABLE COMMUNICABLE DISEASE
ORDER OF THE MEDICAL HEALTH OFFICER
(Pursuant to Sections 27, 28 and 29, *Public Health Act*, S.B.C. 2008)

TO: **[name]**
DOB:
ADDRESS:

After reviewing reports and other information provided to or obtained by me in my capacity as
Medical Health Officer, I have concluded that there are reasonable grounds to believe that:

1. You are infected with Human Immunodeficiency Virus (HIV), a reportable communicable disease (the "Communicable Disease") under the Public Health Act, S.B.C. 2008, c28.

2. You have been aware of your HIV status since **[date]**.

3. You have received counseling regarding disclosure of your HIV status and regarding precautions needed to prevent transmission of HIV to others, and

4. You have knowingly exposed others to HIV, and

5. You are a person likely to expose others to HIV.

In order to protect the public from contracting the above named reportable Communicable Disease, I hereby exercise my authority under section 29 of the Public Health Act ("PHA") to order that:

1. You must place yourself under the care of Dr. **[name]** at:

   [clinic name, address & phone number]

   You must attend appointments weekly (once a week) with Dr. **[name]** (or another physician if Dr. **[name]** is not available) at the Clinic until 30 days after your HIV viral load is first demonstrated to be undetectable by a viral load test.

2. You must have an HIV viral load test performed at the Clinic once every 30 days. Once your viral load has been demonstrated to be undetectable for one full calendar year, the frequency of viral load tests can be reduced to no less than one viral load test every 90 days. [PHA s. 29 (2) (d) (f) and (h)]

3. You must pick up all antiretroviral medications prescribed for you, and you must at all times have sufficient antiretroviral medications in your possession to avoid any interruption in your prescribed antiretroviral treatment. [PHA s. 29 (2) (g)]

3. At any time, if your HIV viral load is elevated to above 200 copies/mL, or a viral load test has not been performed within the time intervals prescribed by this Order, you must attend daily appointments at a location directed by a Medical Health Officer or Public Health Nurse where daily witnessed ingestion of medication can be done. You must continue to attend these daily appointments until the results of a viral load test show that your viral load is below 200, and a care plan has been put in place with the approval of a Medical Health Officer or a Public Health Nurse. [PHA s 29 (2) (c) (g) and (i).]

4. Your attending physician, Dr. **[name]**, will be given a copy of this Order, and must provide Dr. **[name of MHO]** with copies of your consultation letters and laboratory tests, including information about your viral load, CD4 count and any newly diagnosed sexually transmitted infections. [PHA s. 40 (1)]

5. You must inform all present and future sexual partners that you are infected with HIV **before** you have sexual contact with them. If a viral load test indicates that your viral load is detectable (is above 200 copies/mL), or a viral load test has not been completed at the intervals prescribed by this Order, you must notify sexual partners **before** you have any sexual contact with them that you are HIV positive **and virally unsuppressed**. [PHA s. 28 (1) (b), and s.29 (2)(b)]

6. You must avoid sexual contact with other people in circumstances where the discharge or exchange of bodily fluids is possible, except where you are wearing a condom or otherwise in the following circumstance:
    a. you are having HIV viral load tests at the intervals prescribed by this Order;
    b. you have been advised by Dr. **[name]** (or another physician at the Clinic) that your last viral load test indicates that your viral load is undetectable; **and**
    c. you have been taking antiretroviral medications as prescribed to you, without interruption, since your last examination at the Clinic.

[PHA s. 28 (1) (b) and s. 29(2)(g)]

7. You must refrain from sharing needles with any person for any purpose, including injection, drug use or tattooing. [PHA s. 28 (1) (b)]

8. You must meet with a Medical Health Officer or Public Health Nurse as directed by a Medical Health Officer. You must respond to telephone or text communications from a Medical Health Officer or Public Health Nurse within one hour of receiving the communication, and you must make yourself available to meet with a Medical Health Officer or Public Health Nurse within one hour of a request from the Medical Health Officer or Public Health Nurse, or as close to one hour as is reasonably possible in the circumstances. [PHA s. 28 (1) (b)]

9. You must provide advance written notice to Dr. **[name of MHO]** at the address listed below if you intend to change your place of residence, and must provide her with your new address and contact information, including phone numbers. [PHA s. 28 (1) (b)]

10. You must obtain permission from Dr. **[name of MHO]** in writing before leaving the province of British Columbia for any length of time.

11. In addition to any other set out in this Order, you must take all reasonable steps to ensure that your HIV does not cause danger to other individuals. If you are not taking tests and treatment as directed by Dr **[name]**, or medication, you must immediately notify Dr. **[name]** (or another physician at the **[clinic name]**) who will report this information to Dr. **[name of MHO]**. If you do not consent to treatment and you are determined to be (or later become) a risk to the public health, additional enforcement actions may be taken against you under the authority of the *Public Health Act* to mitigate that risk.

You may contact the author at:

[name of MHO]
[address of MHO]
[telephone & fax of MHO]

This Order does not expire. I will review the terms of the Order on dd/mm/yyyy .

In accordance with section 43 of the PHA, you may request me to reconsider this Order if you:

1. Have additional relevant information that was not reasonably available to me when this Order was issued,

2. Have a proposal that was not presented to me when this Order was issued but, if implemented, would

    a. meet the objective of the Order, and
    b. be suitable as the basis of a written agreement under section 38 of the PHA.

3. Require more time to comply with the Order.

A review of this Order may be requested under section 44 of the Public Health Act, but only after reconsideration has been made.

You are required by section 42 of the PHA to comply with this Order.

If you fail to comply with this Order, I have the authority to take enforcement action against you
under Part 4, Division 6 of the PHA.

DATED THIS: Month DD, YYYY

SIGNED: _____
Dr. **[name of MHO]**
Medical Health Officer, **[Name of health authority]**

APPENDIX IV – SAMPLE LETTER (Involuntary Disclosure)

<Include copy of relevant sections of legislation>

TO: *< Insert name of person >*
DOB: *< Insert date of birth >*
ADDRESS: *< Insert address >*

After reviewing reports and other information provided or obtained by me in my capacity as Medical Health Officer, I have concluded that there are reasonable grounds to believe that:

1. You are infected with Human Immunodeficiency Virus (HIV), a reportable communicable disease under the *Public Health Act*, S.B.C. 2008, c28.
2. You have been aware of your HIV status since *< Insert date >*.
3. You have received counseling regarding disclosure of your HIV status and regarding precautions needed to prevent transmission of HIV to others, and
4. You have continued to engage in high-risk behaviour and have not taken voluntary measures to reduce the risk of transmission to others.

Under the *Health Act Communicable Disease Regulation* s.6.2, I am authorized to disclose information to a person who may be at risk of harm from you. This is to advise you that *< Insert name of contact >* will be notified by my office that *< he/she >* is in contact with a person who is HIV positive. The purpose of providing this notice is to alert < him/her> that < he/she> should be tested for HIV.

I am requesting that you co-operate with my office in notifying your partner. You may or may not choose to be present when *< Insert name of contact >* is informed. Should you decide not to co-operate with or respond to this request, a public health nurse from my office will contact *< Insert name of contact >* independently and advise *< he/she >* of *< his/her >* possible exposure. The public health nurse *< will / will not >* provide *< insert name of contact >* with your name. I can assure you that public health nurses are skilled in providing support, counseling and guidance to contacts of persons with HIV.

I request that, prior to our notifying *< Insert name of contact >*, you make an appointment to see *< Insert name of MHO or delegate >*, at *< Insert address, telephone number >*. One of our public health nurses will be in attendance at your appointment to provide you with information and answer any questions. I ask that you make this appointment by the following date: *< Insert date >*. If you fail to do so, we will proceed to contact *< Insert name of contact >.*

Please do not hesitate to contact me at the address below if you have any questions about this letter.

DATED THIS: *< Insert day >* day of <Insert month, year>.

SIGNED: _____
< Insert name of Medical Health Officer, credentials>
Medical Health Officer, < Insert Health Authority Name >
< Insert Address, Telephone and Fax number>

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