



People living with HIV who put others at risk – Victoria Police Response

Detective Senior Constable
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Sexual Crimes Squad



Notification to police

- Calls to Crimestoppers (sometimes anonymous)
- Reports made by members of the public directly to a local police station or the Sexual Crimes Squad
- Notifications via the Department of Health (DH)



Police / Dept. Health Protocols

- Police acknowledge that pursuant to the Public Health and Wellbeing Act 2008, the vast majority of persons with HIV who appear to be placing others at risk can be, and are, appropriately managed under the PH&W act by the Dept. Health (from the MOU dated 11/05/2012)



Notifications – the MOU

- Police will notify Dept. Health of ALL cases involving a person who appears to be placing others at risk of HIV infection
- Dept. Health may at it's discretion, notify police of any case at any time, and will notify police of any serious crime.



When police receive a notification

- Liaise with the DH to obtain basic information and confirm the HIV status of the person/s involved in accordance with the Information Privacy Act 2001
- Arrange to meet the complainant and take a formal statement

The police statement

- ◆ The whole story surrounding the 'relationship' between the complainant and the accused
- ◆ Any discussion about HIV status prior to sex
- ◆ The exact nature of the sex – insertive/penetrative, condoms, ejaculation, bleeding, risk factors such as piercings, sores etc.
- ◆ The complainant would not have had unprotected sex had he/she known the accused was HIV positive – they didn't knowingly accept the risk

The police statement

- ◆ The information provided by a complainant may be extremely personal and confidentiality is critical
- ◆ Police will comply with the Information Privacy Act 2001 and the Health Privacy Principles re the disclosure of a person's HIV status
- ◆ The statement will be taken by a detective from the Sexual Crimes Squad or a local Sex Offence and Child Abuse Investigation Team

Statements

- ◆ Eliminate other possible sources of transmission – e.g. discuss any intravenous drug use, obtain details of other sex partners and obtain statements as to their HIV status

Establish what crimes have been committed – The Crimes Act

- Reckless Conduct Endangering Serious Injury – maximum 5 years jail
- Reckless Conduct Endangering Life – 10 years – case law – the threat of death is not immediate
- Recklessly cause serious injury – 15 years

Recklessness

- Conduct is reckless if there is foresight on the part of the accused of the probable consequence of his actions and he displays indifference as to whether or not those consequences occur – R v. Nuri [1990] VR 641

The risk

- There must be 'appreciable' risk
- There's no legislated definition of 'appreciable' – it's up to the reasonable man test – left for a jury to decide
- The chance of HIV transmission per episode of unprotected anal intercourse is estimated at -
- between 1/120 and 1/300 for the receptive partner
- 1/1000 for the insertive partner
- 1/1000 for penis/vagina sex
- County Court trial analogy re 'risk'

The risk

- Use of condoms reduces the risk of transmission to a level where the risk of transmission is not usually considered 'appreciable,' therefore there would be no criminal offence detected

Crimes Act offences (cont.)

- Intentionally cause serious injury - 20 years
- Procure sexual penetration by fraud – 5 years
- Rape - e.g – where there is no consent or consent is withdrawn – 25 years

Crimes Act offences (cont.)

- Intentionally Cause a Very Serious Disease (defined in the act as HIV) 25 years jail
- Attempt to Intentionally Cause a Very Serious Disease – 20 years jail

Intent to infect

- The reporting of these types of cases to police is rare
- Evidence will be required to show the accused intended to infect the complainant

Canvass possible defences

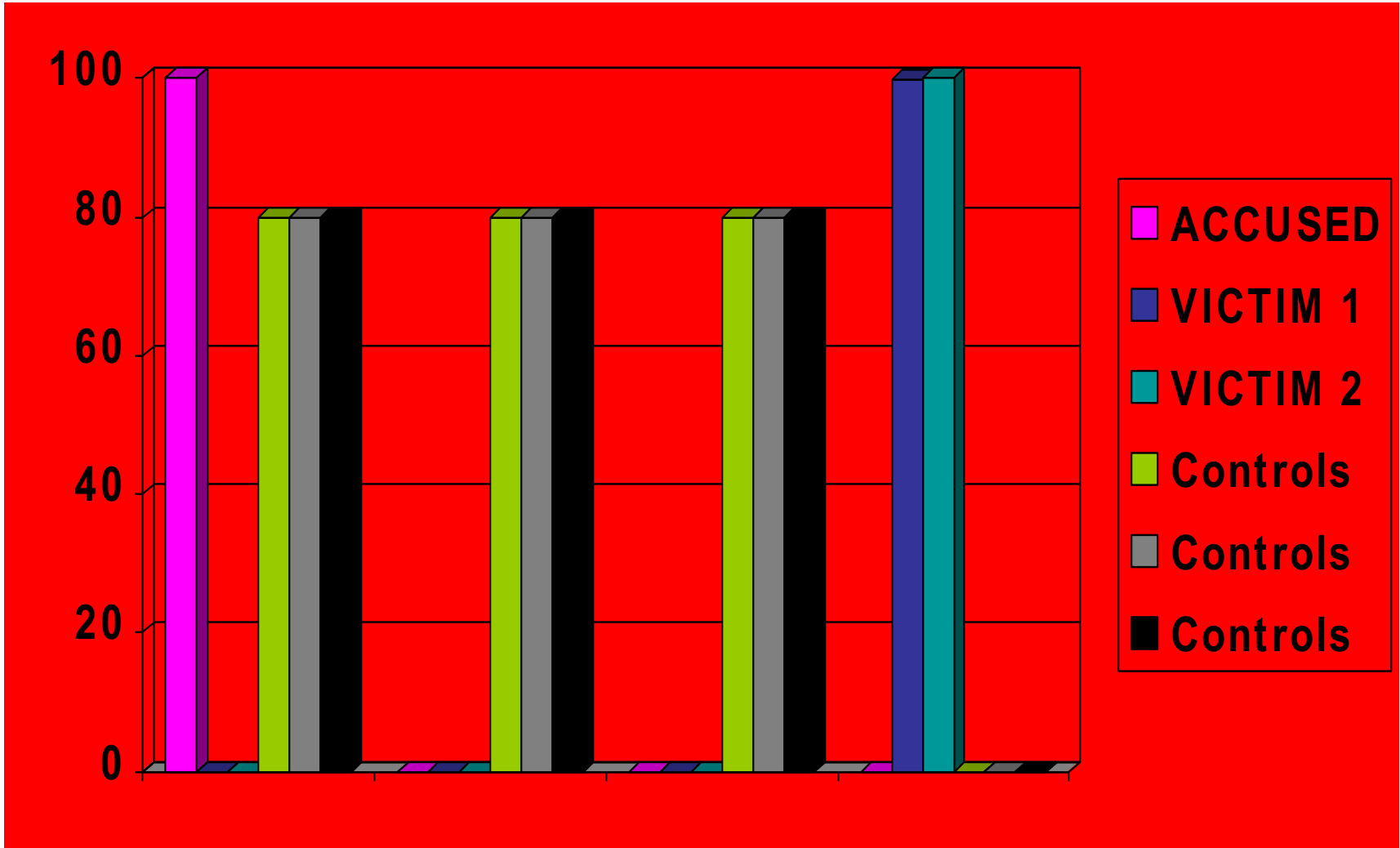
- ‘I didn’t know I was HIV positive.’
- ‘I’ve never met that person.’
- ‘My viral load was undetectable .. I can’t infect anyone.’
- ‘ I always use condoms.’
- ‘ I told him I was HIV positive’
- ‘ I was drunk, I can’t remember.’
- ‘There’s no such thing a the HI virus’

Documentary Evidence

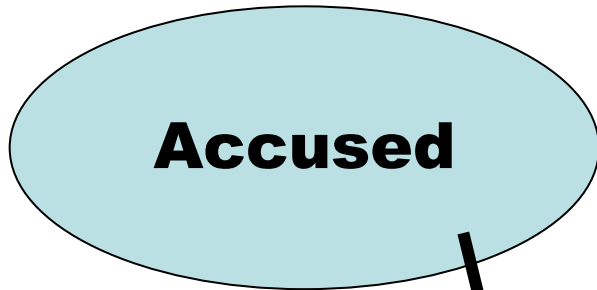
- DH records obtained under a court issued search warrant may include partner notification office records, dates of infection, viral loads, copies of documents served on the accused such as written warnings and Health Orders
- GP/psychologists notes under search warrant

The Victorian Infectious Diseases Reference Laboratory

- VIDRL testing to compare the relatedness of the HIV strains between the accused and the complainant

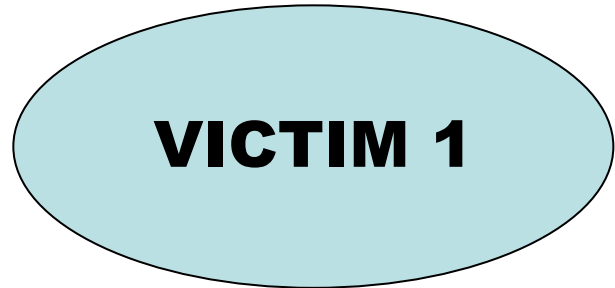
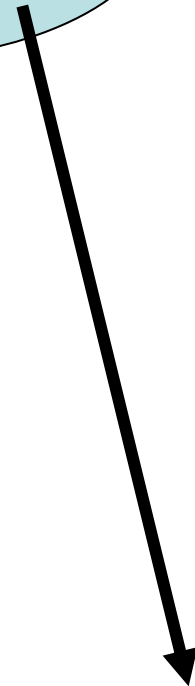


**ANOTHER
POSSIBILITY**

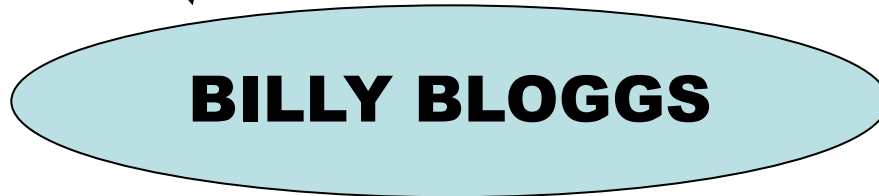
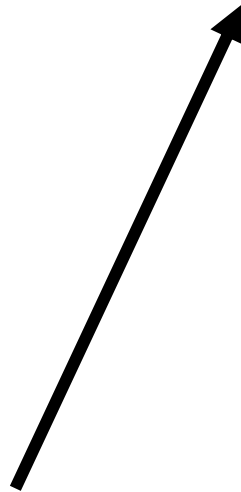


**VIDRL RESULT COULD STILL
SHOW 100% RELATEDNESS TO
THE ACCUSED, THEREFORE WE
CANNOT RELY ON THE VIDRL
TEST TO PROVE THAT THE
ACCUSED INFECTED VICTIM 1.**

**HAS SEX
WITH
AND
INFECTS**



**WHO HAS
SEX WITH
AND
INFECTS**





Other avenues of enquiry prior to arrest

- Electronic surveillance such as telephone intercepts, listening devices
- Physical surveillance
- Profiling of suspect
- Interview and arrest planning
- Corroborate the complainant statement
- Expert evidence – epidemiologists, VIDRL



Arrest and Interview

- The accused is asked to 'tell us all about your relationship with
- The allegations/evidence are put to the accused
- A decision to either charge the accused or proceed by way of summons, depending on the evidence
- If charged, the accused may be brought before a magistrate for a remand application. None of these offences constitute a 'show cause' situation



Court

- Reckless conduct matters may be heard in the Magistrates Court
- Intentionally cause serious injury/disease must go for trial at the County Court
- Police will take steps to care for the witnesses privacy – suppression orders, closed courts, remote witness facilities
- After conviction, the complainant may tender a 'victim impact statement' to the court
- The OPP, W.A.S. and VOCAT applications



Court

- Male convicted of attempting to intentionally infect 2 persons – 8 years jail for each offence, 6 years 6 months concurrent
- He was also convicted of 3 counts of reckless conduct endangering serious injury involving 3 other persons - 2 years jail on each count
- Total sentence 14 years jail with a 9 year non-parole period