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The State of Texas

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ACTION BY Nancy Fuller
COPY TO Ellen Witt

FILE # ML-4492

I.D. # 44926

August 2, 2006

The Honorable Greg Abbott
Attorney General of Texas
PO Box 12548
Austin, TX 78711-2548

RQ-0518-GA

Dear General Abbott:

I am requesting an Attorney General opinion relating to the issue of whether the Texas Department of Criminal Justice may self impose a rule to require mandatory HIV testing of all offenders entering TDCJ.

Currently, the TDCJ policy for testing offenders for HIV upon prison entry states that all inmates "should be tested at intake." It is my understanding that the Department of Criminal Justice is in the process of changing this policy to state that all inmates "shall be tested at intake", but granting inmates a right to refuse testing, on August 29th, 2006.

The Texas Department of Criminal Justice's own safety policies require mandatory HIV testing, without an inmate right of refusal, when an offender exposes a TDCJ staff member to blood or bodily fluids. (Correctional Managed Health Care Policy B-14.5) Last session I was the Senate sponsor of House Bill 43, authored by Representative Yvonne Davis, which required mandatory HIV testing for all offenders prior to the release of an offender in accordance to Sections 501.054(I) and 507.023(b) of the Texas Government Code.

In particular, I am looking for an Attorney General opinion on the following question:

1. May the Texas Department of Criminal Justice adopt a rule or policy requiring mandatory HIV testing for incoming offenders?

Please consider this a formal request for an Attorney General opinion regarding the above questions. Should you need further information with respect to this request, please contact Brandon Dudley in my office at 512-463-0113.

Sincerely,

Rodney Ellis

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