

Attachment 1

to

Application for Interlocutory Appeal By Permission
Pursuant to Rule 9, T.R.A.P.

West v. Ray, No. 10-1675-I,
Amended Complaint for Declaratory
Judgment and Injunctive Relief with
exhibits (filed Oct. 25, 2010)

FILED

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IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

STEPHEN MICHAEL WEST,)
)
 Plaintiff,)
)
)
)
 v.)
)
 GAYLE RAY, in her official capacity as)
 Tennessee's Commissioner of)
 Correction,)
)
 RICKY BELL, in his official capacity as)
 Warden of Riverbend Maximum)
 Security Institution,)
)
 DAVID MILLS, in his official capacity as)
 Deputy Commissioner of Tennessee)
 Department of Correction,)
)
 REUBEN HODGE, in his official capacity)
 as Assistant Commissioner of)
 Operations,)
)
 JOHN DOE EXECUTIONERS 1-100,)
)
 JOHN DOES 1-100,)
)
 Defendants.)

No. 10-1675-I
DEATH PENALTY CASE

EXECUTION DATE: November 9, 2010

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Comes the Plaintiff, Stephen Michael West, and hereby files this Complaint against the above-named defendants, showing the Court as follows:

INTRODUCTION

1. Stephen Michael West is a condemned inmate. At any execution of Mr. West by

lethal injection, the State intends to use a protocol whereby he would be injected with a dose of sodium thiopental, then with a dose of pancuronium bromide (Pavulon), and third with a dose of potassium chloride. The use of this protocol for Mr. West's execution is unconstitutional. The persons responsible for carrying out the protocol lack the training, skill and expertise required to avoid known risks of an unnecessarily painful and prolonged death. Even when the execution is carried out as written in Tennessee's protocol, the sodium thiopental will not sufficiently anesthetize Mr. West and the potassium chloride will not reach the site of action and/or will not reach the site of action in sufficient concentration to stop Mr. West's heart. The use of pancuronium bromide is arbitrary; serves no legitimate interest; and unreasonably risks the infliction of psychological and physical torture by suffocation. Pancuronium bromide causes paralysis and asphyxiation or strangulation. The use of pancuronium bromide offends the dignity of humanity and shocks the conscience: it cannot legally be used in Tennessee to kill a dog. The potassium chloride causes excruciating pain and will not stop the heart. The deliberate use of this mixture of chemicals, with the known risks inherent in Tennessee's protocol creating an unnecessarily painful and prolonged death experienced without total unconsciousness, violates Mr. West's Eighth and Fourteenth Amendment rights to be free from cruel or unusual punishment, as detailed *infra*. Stephen Michael West is a condemned inmate scheduled to be executed by lethal injection on November 9, 2010.

2. TENN.CODE ANN. § 40-23-114 provides:

§ 40-23-114. Capital punishment; electrocution; lethal injection

(a) For any person who commits an offense for which the person is sentenced to the punishment of death, the method for carrying out this sentence shall be by lethal injection.

(b) Any person who commits an offense prior to January 1, 1999, for which the

person is sentenced to the punishment of death may elect to be executed by electrocution by signing a written waiver waiving the right to be executed by lethal injection.

(c) The department of correction is authorized to promulgate necessary rules and regulations to facilitate the implementation of this section.

(d) If lethal injection or electrocution is held to be unconstitutional by the Tennessee supreme court under the Constitution of Tennessee, or held to be unconstitutional by the United States supreme court under the United States Constitution, or if the United States supreme court declines to review any judgment holding lethal injection or electrocution to be unconstitutional under the United States Constitution made by the Tennessee supreme court or the United States court of appeals that has jurisdiction over Tennessee, or if the Tennessee supreme court declines to review any judgment by the Tennessee court of criminal appeals holding lethal injection or electrocution to be unconstitutional under the United States or Tennessee constitutions, all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution. No sentence of death shall be reduced as a result of a determination that a method of execution is declared unconstitutional under the Constitution of Tennessee or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

3. On November 7, 2000, the Tennessee Supreme Court set an execution date for Mr. West on March 1, 2001.

4. On February 13, 2001, Mr. West signed an “Affidavit to Elect Method of Execution” (hereinafter “Old Election Form”), Plaintiff’s Exhibit 1, Affidavit to Elect Method of Execution, as required by Tennessee’s then-existing Execution Protocol (hereinafter “Old Protocol”). Plaintiff’s Exhibit 2, Old Protocol, at Bates P.61 That form required the warden “[t]o assure condemned inmates sentenced prior to January 1, 1999, are given opportunity to select electrocution or lethal injection as legal means of execution within 30 days immediately preceding the scheduled execution date.”

5. Mr. West's March 1, 2001, execution was not carried out.¹

6. On February 1, 2007, Tennessee's Governor Phil Bredesen issued an Executive Order which (a) revoked current [execution] protocols and any related procedures [including the protocol under which Mr. West had been presented with, and signed whether written or otherwise]; (b) instructed the Commissioner of Correction to complete a comprehensive review of the manner in which death sentences are administered in Tennessee; (c) directed the Commissioner to issue new protocols and related procedures by May 2, 2007; and, d) stayed the executions of Michael Joe Boyd a/k/a/ Mika'eel Abdullah Abdus-Samad, Edward Jerome Harbison, Daryl Keith Holton² and Pervis T. Payne.. *See* Plaintiff's Exhibit 3, Executive Order

7. Pursuant to the Executive Order, the Tennessee Department of Corrections issued new execution protocols for both lethal injection and electrocution on April 30, 2007 (hereinafter "Current Protocol"). Plaintiff's Exhibit 4, Current Protocol.

8. The Commissioner also released a Report on Administration of Death Sentences in Tennessee, (Plaintiff's Exhibit 5)(hereinafter "Report"). The Report declares that Tennessee "has retained a three-chemical protocol" (Plaintiff's Exhibit 5, Report p.6).

9. The Current Protocol included among its forms an "Affidavit Concerning Method of Execution" (hereinafter "New Election Form") Plaintiff's Exhibit 4 at Bates P.88. The New Election Form was never presented to Mr. West.

¹Mr. West's execution date was set prior to the expiration of the statute of limitations for the filing of a federal petition for writ of habeas corpus. Mr. West subsequently filed his habeas petition and the execution was stayed by the federal district court.

²Mr. Holton was scheduled for execution by electrocution.

10. On July 15, 2010, the Tennessee Supreme Court set Mr. West's execution for November 9, 2010. On September 30, 2010, Mr. West executed a rescission of his prior Affidavit in an abundance of caution. On October 12, 2010, he presented that rescission to Warden Bell. (Plaintiff's Exhibit 6, Rescission)

11. Notwithstanding that: (a) Governor Bredesen explicitly revoked the Old Election Form signed by Mr. West and all procedures by which it was to be carried out; (b) the Old Election Form, read in the context of the remainder of the Old Protocol, expired upon the passage of Mr. West's then-scheduled March 1, 2001, execution date; (c) the Old Election Form had, out of an abundance of caution, been rescinded by Mr. West; and (d) Mr. West was incompetent at the time he signed the Old Election Form, Defendants stated that they would execute Mr. West by electrocution in violation of TENN.CODE ANN.. § 40-23-114(a), in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and in violation of Tennessee Constitution Article 1, § 16. (Plaintiff's Exhibit 7, Debra Inglis letter of October 15, 2010)

12. On October 20, 2010, Defendants filed a motion in this Court stating affirmatively that they would now accept Mr. West's rescission, that Mr. West was no longer bound by Plaintiff's Exhibit 1, and that they would carry out Mr. West's execution by means of lethal injection.

13. Plaintiff seeks temporary, preliminary, and permanent injunctive relief to prevent the Defendants from executing Plaintiff West by means of lethal injection pursuant to Tennessee's current Protocol. This court should declare the current Protocol is not substantially similar to Kentucky's protocol which was reviewed by the Supreme Court in *Baze v. Rees*, 553

U.S. 35 (2008). This Court should declare the Protocol, as applied to Mr. West, unconstitutional and enjoin its use, as it is cruel or unusual punishment under the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16. This Court should also enter a judgment declaring the use of sodium thiopental, pancuronium bromide, and potassium chloride unconstitutional and enjoining Defendants' intentions to obtain, order, write a prescription, write a physician's order, prescribe, dispense, or in any other manner transfer the three drugs in any form whatsoever to Defendant Bell or any other Defendants involved in the execution process.

JURISDICTION AND VENUE

14. Venue is proper in this Court because Plaintiff is incarcerated at Riverbend Maximum Security Institution, in this county; the Defendants intend to procure and inject Plaintiff with three drugs and execute him in this county; and, the events giving rise to this complaint have occurred and will occur in this county.

15. This action arises under Tennessee Constitution Article 1, § 16 and the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

16. This Court has jurisdiction pursuant to TENN.CODE ANN. §§ 29-14-103, 29-14-113, and is empowered to grant injunctive relief under RULE 65 of the TENNESSEE RULES OF CIVIL PROCEDURE.

17. As to exhaustion of administrative remedies, on May 7, 2007, shortly after Tennessee adopted its current protocols, Mr. West filed a grievance with Defendant Bell objecting to the use of the Current Protocol for his execution. The next day, on May 8, 2007, the grievance was denied based on procedural defenses (Grievance denial, Plaintiff's Exhibit 8). On

July 22, 2010, following the setting of the West's current execution date, West filed another grievance with Defendant Bell again objecting to the use of the current protocol for his execution. This grievance was also denied. (Grievance denial, Plaintiff's Exhibit 9). All administrative remedies are exhausted. Mr. West has further filed a grievance objecting to the deprivation of those rights afforded him by Plaintiff's Exhibit 4, which, though not ruled upon by Defendant Bell as of yet, was denied by virtue of his counsel's representations in Plaintiff's Exhibit 9. On July 15, 2010, the Tennessee Supreme Court scheduled Mr. West's execution for November 9, 2010.

Jurisdiction to Afford Injunctive Relief

18. This Court has questioned whether, and Defendants have previously asserted in relation to Plaintiff's now-withdrawn challenge to the constitutionality of electrocution as a means of punishment that, pursuant to the April 19, 2000, order of the Tennessee Supreme Court in *Coe v. Sundquist et al.*, No. M2000-00897-SC-R9-CV (hereinafter, "*Coe order*"), this Court lacks jurisdiction to enjoin Defendants from carrying out the Tennessee Supreme Court's July 15, 2010, order setting Mr. West's execution date in a manner which violates the Constitutions of the State of Tennessee and the United States of America.

19. As explained *infra*, this Court has such power. If, however, this Court should find lacks the power to prohibit the Defendants from carrying out the Tennessee Supreme Court's order in a manner which is inconsistent with the Tennessee and United States Constitutions, it still has the power to enter an order affirmatively instructing the Defendants to carry out the Tennessee Supreme Court's July 15, 2010, order in a manner consistent with the Tennessee and

United States Constitutions.

20. In *Coe*, the Circuit Court for Davidson County entered an order “enjoining and restraining” Mr. Coe’s execution. *Coe* order at 1. Appropriately enough, the Tennessee Supreme Court held that the Chancery Court, being an inferior state court of Tennessee, was without power or jurisdiction to stay a decree of the Supreme Court. *Id.* (“[A] circuit court is without power or jurisdiction to stay a decree of [the Tennessee Supreme Court].”)

21. Mr. West, however, seeks no such order. Mr. West concedes for the purposes of this action that the Tennessee Supreme Court’s order is lawful and that Defendants are required to carry out that order. Mr. West does not concede, however, that the Tennessee Supreme Court’s order to carry out Mr. West’s execution authorizes, much less orders, Defendants to carry out that order in violation of the laws or constitutions of the State of Tennessee or the United States of America.

22. The order setting Mr. West’s execution date states:

It is, therefore, ordered that the Warden of the Riverbend Maximum Security Institution, or his designee, shall execute the sentence of death as provided by law at 10:00 p.m. on the 9th day of November, 2010

Plaintiff’s Exhibit 10, Order, *State of Tennessee vs. Stephen Michael West*, Case No.

M1987-00130-SC-DPE~DD, Filed: July 15, 2010. (Emphasis supplied).

23. By its own clear terms, Defendants are not to carry out Mr. West’s execution by any means they choose, but only “as provided by law.”

24. The Supreme Court’s Order does not state that the execution shall be carried out in accordance with Tennessee’s New Execution Manual. Neither does it limit the body of law

with which Defendants must act in accord. It does not say, for example, that Defendants may act in accordance with their own rules and regulations, but not in accordance with the constitutions of the State of Tennessee and United States of America. To the contrary, it requires Defendants to act in accordance with “the law.”

25. When Mr. West seeks to enjoin Defendants from carrying out his execution in a manner which violates Tennessee Constitution Article 1, § 16 and the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, he does not ask this Court to “in effect” overrule the order of a superior court. Instead, he asks this Court to enforce the Tennessee and Federal constitutions, an act entirely consistent with, if not implicit in, the Tennessee Supreme Court’s order setting Mr. West’s execution date.

26. A Chancery Court clearly has the jurisdiction to order state officials to follow the law. *See, generally, Southwest Williamson County Community Ass'n v. Saltsman*, 66 S.W.3d 872, 882 (Tenn.Ct.App. 2001). Accordingly, this Court has the jurisdiction to require Defendants to carry out the Tennessee Supreme Court’s order setting Mr. West’s execution date “as provided by law.”

STATUTE OF LIMITATIONS

27. Under Tennessee law, a cause of action accrues, and the statute of limitations begins to run, at the earliest, when the defendant has committed a wrongful or tortious act. *Carvell v. Bottoms*, 900 S.W.2d 23, 28, 30 (Tenn.1995); *Caldonia Leasing v. Armstrong, Allen, Braden, Goodman, McBride & Prewitt*, 865 S.W.2d 10, 13 (Tenn.Ct.App.1992); *Ameraccount Club, Inc. v. Hill*, 617 S.W.2d 876, 878-79 (Tenn.1981). It is simply axiomatic that no cause of

action can have accrued when the defendants have done nothing wrong. Moreover, it does not accrue until, (again at the earliest) the defendant's wrongful act has, or will,³ cause harm to the Plaintiff. *Id.*

28. Tennessee law provides that the proposed execution of Mr. West's death sentence could occur through either electrocution or lethal injection. *See* TENN. CODE ANN. § 40-23-114. Under Tennessee law, the specific method of execution is not established until the Tennessee Department of Corrections (hereinafter TDOC) presents a condemned individual with a form asking him to choose between electrocution and lethal injection. Under either method, Tennessee law leaves it to the TDOC's discretion to fashion, as it sees fit, virtually every facet of implementing an inmate's electrocution or lethal injection. TENN. CODE ANN. § 40-23-114(c). Furthermore, in promulgating the Current Protocol, the Tennessee Commissioner of Corrections announced that the state would "continue with on-going reviews of our protocols and procedures. We will continue to assess best practices, and we will make appropriate revisions and / or recommend improvements, as appropriate." Plaintiff's Exhibit 5, p. 2.

³The question of the immediacy of future harm (*i.e.*, at what point does a condemned inmate know, or should know, that the defendant's conduct in carrying out his execution will result in harm to the inmate), heavily litigated in the federal courts, *see, e.g., Cooney v. Strickland*, 479 F.3d 412 (6th Cir. 2007), is largely irrelevant in this case. Here, Defendants conduct in proceeding with Mr. West's execution under Tennessee's current protocol (*see* Claims I-VII, *infra*) did not become wrongful until there existed facts establishing that Mr. West would be suffocated while conscious and paralyzed that were sufficient to demonstrate an "objectively intolerable risk of harm' that officials may not ignore." *Baze v. Rees*, 553 U.S. 35, 50 (2008). That event did not occur until well within Tennessee's one-year statute of limitations. Moreover, Defendants did not go forward with Mr. West's execution by lethal injection without complying with their own rules and regulations (*see*, Claim VIII, *infra*) until October 20, 2010, when they filed a pleading in this Court indicating that they were, in fact, going to execute Mr. West by means of lethal injection and would not provide him with the form set out at Bates 88 of Plaintiff's Exhibit 4.

29. On July 15, 2010, the Tennessee Supreme Court set November 9, 2010, as the date for Mr. West's proposed execution.

30. On that date, and, in fact, from February 18, 2001, through October 20, 2010, Defendants had no intention to conduct, took no steps toward conducting, and did not take any of the wrongful acts alleged herein in Claims I-VII against Mr. West. During that entire period of time, Defendants were proceeding toward executing Mr. West by means of electrocution. Plaintiff's Exhibit 11, Defendants' Response to Motion for Temporary Injunction, filed October 20, 2010, at Page 2 ("The defendants maintain that the February 13, 2001 Election Affidavit [choosing electrocution as a means of execution] is valid and still effective.").

31. Those actions alleged herein which occurred within that period of time, including those acts alleged relative to the revocation of all existing protocols and related procedures and the creation of a completely new protocol in 2007, did not become wrongful as to Mr. West until Defendants sought to apply those acts to him on October 20, 2010.

32. Furthermore, as to Claims I-VII, the United States Supreme Court's decision in *Baze v. Rees*, 553 U.S. 35 (2008), held that the Eighth Amendment (which is identical to Tennessee Constitution Article 1, § 16) is violated upon two conditions. First, there must be a showing that a State's execution protocol inflicts unnecessary pain and suffering. Second, it must be proved that the State had actual or implicit knowledge that such pain and suffering will result from carrying out its protocol and the State decided to go forward nonetheless.

33. Mr. West's Claims I-VII arose only when both conditions were satisfied. In *Baze*, the Supreme Court found that Kentucky had not committed the constitutional violations alleged

because there was no showing that State officials knew, or had reason to know, that the execution protocol failed to properly anaesthetize condemned inmates. *Baze*, 553 U.S. at 50. Mr. West alleges that it is only upon the accumulation of all of the evidence from recent executions, including, specifically the evidence contained in the autopsy of Steven Henley that Defendants knew, or had reason to know, that Tennessee's lethal injection protocol, even when administered correctly. That evidence became available on March 10, 2010, when the State released the Mr. Henley's autopsy report.

34. Because both October 20, 2010 (the first date following the creation of Tennessee's execution protocol that Defendants proceeded to execute Mr. West by means of lethal injection), and March 10, 2010 (the date upon which Defendants had reason to know that their lethal injection protocol suffocated conscious and paralyzed inmates and, accordingly, inflicted unnecessary pain and suffering, an element of an Eighth Amendment and Article 1 § 16, violation) occurred within Tennessee's one-year statute of limitations, Mr. West's Claims I-VII have been timely filed.

35. As to Claim VIII, challenging Defendants' arbitrary and capricious departure from their own rules and regulations, every act alleged within Mr. West's cause of action occurred on or after October 20, 2010. Accordingly, it too has been timely filed.

PARTIES

36. Plaintiff Stephen Michael West is a United States citizen. He is a death-sentenced prisoner residing in this county at Riverbend Maximum Security Institution, Nashville, Davidson County, Tennessee and in the custody of the Tennessee Department of Corrections.

37. Defendant Gayle Ray is the Commissioner of the Tennessee Department of Corrections. Plaintiff sues Commissioner Ray in her official capacity. Defendant Ray (who was Deputy Commissioner of TDOC at the time) worked on the comprehensive review of the manner in which death sentences are administered in Tennessee (Plaintiff's Exhibit 5 p.4). Defendant Ray was a member of the Committee which created the Current Protocol (hereinafter "the Committee"). Defendant Ray will oversee the administration of Mr. West's execution (Plaintiff's Exhibit 4 p.26). Defendant Ray is a state actor acting under color of state law, and her actions in helping to devise the Protocol and seeking to execute or executing Mr. West under the Protocol as described *infra* violate his constitutional rights, as described *infra*.

38. Defendant Ricky Bell is the Warden of Riverbend Maximum Security Institution, located in Nashville, Tennessee, in this county and where Plaintiff's execution will occur. Plaintiff sues Warden Bell in his official capacity. Defendant Bell was a member of and participated in the Committee's actions which created the Current Protocol to execute Mr. West (Plaintiff's Exhibit 5 p.4). Defendant Bell is directly in charge of executing Plaintiff at Riverbend. His role in Mr. West's execution is described in the Current Protocol (*e.g.*, Plaintiff's Exhibit 4 p.12-13, 32-33, 36, 43, 50, 63-65, 67). Defendant Bell is a state actor acting under color of state law, and his actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate his constitutional rights, as described *infra*.

39. Defendant David Mills is the Deputy Commissioner of TDOC. Plaintiff sues Deputy Commissioner Mills in his official capacity. Defendant Mills is a state actor acting under color of state law. (Plaintiff's Exhibit 5 p.4). Defendant Mills will work directly with Defendant Ray in overseeing Mr. West's execution and perform any assigned duties (Plaintiff's Exhibit 4

p.27). Defendant Mills' actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate his constitutional rights, as described *infra*.

40. Defendant Reuben Hodge is the Assistant Commissioner of Operations. Plaintiff sues Assistant Commissioner Hodge in his official capacity. Defendant Hodge is a state actor acting under color of state law (Plaintiff's Exhibit 5 p.4). Defendant Hodge will participate in Mr. West's execution, as described in the Current Protocol (Plaintiff's Exhibit 4 p.28, 66). Defendant Hodge's actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate his constitutional rights, as described *infra*.

41. Defendants John Doe Physicians 1-100 are any and all medical doctors involved in the prescription, procurement and/or administration of sodium thiopental, pancuronium bromide, and/or potassium chloride for use upon Mr. West without the purpose to heal and without a legitimate medical reason, but to cause Mr. West's death. Procurement and dispensing of the lethal injection chemicals are described in the Current Protocol (Plaintiff's Exhibit 4 p.36). Upon information and belief, the lethal injection chemicals must be prescribed by Defendants John Doe Physicians 1-100 and must be prescribed by a practitioner for a legitimate medical purpose acting in the usual course of his profession and possessing a registration under the Controlled Substances Act. Defendant John Doe Physician 1 consulted with the Committee, will be present at Mr. West's execution and will perform a cut-down procedure, if necessary. (Plaintiff's Exhibit 5 p.5). Defendant John Doe Physician 1 has unlimited discretion to use "a different method to find an IV site" (Plaintiff's Exhibit 4 p.67). Defendant John Doe Physician 1 will participate in Mr. West's execution as described in the Current Protocol (Plaintiff's Exhibit 4 p.20, 63, 65, 67). Defendants John Doe Physicians 1-100 are state actors acting under color of

state law, and their actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate federal law and Mr. West's constitutional rights, as described *infra*.

42. Defendants John Doe Pharmacists 1-100 are any and all persons involved in procuring, prescribing, dispensing, and/or administering sodium thiopental, pancuronium bromide, and/or potassium chloride for use upon Mr. West without the purpose to heal and without a legitimate medical reason, but to cause Mr. West's death. Procurement and dispensing of the lethal injection chemicals is described in the Current Protocol (Plaintiff's Exhibit 4 p.36). Upon information and belief, the procurement, dispensing and administration of the lethal injection chemicals must be pursuant to the prescription of a practitioner issued for a legitimate medical purpose in the usual course of his profession and possessing a registration under the Controlled Substances Act. Such Defendants are state actors acting under color of state law, and their actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate federal law and Mr. West's constitutional rights, as described *infra*.

43. Defendants John Doe Medical Personnel 1-100 are any and all persons involved in using, preparing, or otherwise handling Plaintiff or sodium thiopental, pancuronium bromide, and/or potassium chloride in any attempt to administer sodium thiopental, pancuronium bromide, and/or potassium chloride upon Plaintiff without the purpose to heal and without a legitimate medical reason, but to cause Plaintiff's death. Such Defendants may include EMT-Paramedic 1 and EMT-Paramedic 2 who will participate in Mr. West's execution as described in the Current Protocol (Plaintiff's Exhibit 4 p.32, 40-44, 62-67), Execution Team Members as described in the Current Protocol (Plaintiff's Exhibit 4 p.38-39, 50-51, 62-67), and IV Team Members and

Executioner as described in the Current Protocol (Plaintiff's Exhibit 4 p.21, 41-44, 50-51, 62-67). Such Defendants are state actors acting under color of state law, and their actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate Mr. West's constitutional rights, as described *infra*.

44. Defendants John Doe Executioners 1-100 are any and all persons involved in using, preparing, or otherwise handling Plaintiff or sodium thiopental, pancuronium bromide, and/or potassium chloride in any attempt to administer sodium thiopental, pancuronium bromide, and/or potassium chloride upon Plaintiff without the purpose to heal and without a legitimate medical reason, but to cause Plaintiff's death. Such Defendants may include EMT-Paramedic 1 and EMT-Paramedic 2 who will participate in Mr. West's execution as described in the Current Protocol (Plaintiff's Exhibit 4 p.32, 40-44, 62-67), the Deputy Warden as described in the Current Protocol (Plaintiff's Exhibit 4 p.14), Execution Team Members as described in the Current Protocol (Plaintiff's Exhibit 4 p.36-44, 50-51, 62-67), and IV Team Members and Executioner as described in the Current Protocol (Plaintiff's Exhibit 4 p.21, 36-44, 50-51, 62-67). Such Defendants are state actors acting under color of state law, and their actions in seeking to execute or executing Mr. West under the Current Protocol as described *infra* violate Mr. West's constitutional rights, as described *infra*.

I. PRELIMINARY STATEMENT OF FACTS

45. The State of Tennessee, through Defendants, seeks to execute Mr. West on November 9, 2010, by lethal injection using the Current Protocol described *infra*. The default method of execution prescribed by Tennessee law is lethal injection. TENN. CODE ANN. § 40-23-

114.

A. DEFENDANTS' EXECUTION PROTOCOLS⁴

46. Tennessee's current Protocol, "Tennessee's Execution Procedures for Lethal Injection," dated April 30, 2007, (Plaintiff's Exhibit 4) contains the lethal injection protocol to be used for Mr. West's execution. It replaced the protocol in effect prior to April 30, 2007, which was unilaterally revoked by Governor Bredesen.

47. Tennessee's three-drug protocol consists of using sequential bolus injections of sodium thiopental, pancuronium bromide and potassium chloride. The stated explanation for the use of sodium thiopental is that "[i]t works by depressing the central nervous system, causing sedation or sleep, depending on the dose."⁵ (*Id.* p.35). The stated explanation for the use of pancuronium bromide is that "[i]t will assist in the suppression of breathing and ensure death." (*Id.*). The stated explanation for the use of potassium chloride is that "[a] high dose of potassium chloride administered intravenously causes cardiac arrest and rapid death." (*Id.*).

i. Participants

48. Under the current Protocol, an execution by lethal injection requires the participation of the Commissioner (Defendant Ray), the Deputy Commissioner (Defendant Mills), Assistant Commissioner of Operations (Defendant Hodge), the Warden (Defendant Bell),

⁴When "he" is used as a pronoun in place of the name of an as yet to be determined Defendant, it is gender neutral and may refer to either a male or female defendant.

⁵Sedation is defined as, "the calming of mental excitement or abatement of psychological function, especially by the administration of a drug." Random House Webster's Unabridged Dictionary, New York 1998.

the Deputy Warden (Defendant John Doe Executioner and/or Defendant John Doe), the Lethal Injection Recorder (Defendant John Doe), the Death Watch Supervisor, a Chaplain, MIS Security Systems Technicians, a Physician and associate (Defendants John Doe Physician 1 and 2-100), an Extraction Team, an IV Team (Defendants John Does Medical Personnel and/or Defendants John Does Executioner and/or Defendants John Does), an Executioner (Defendant John Doe Executioner), an Execution Team (Defendants John Does Medical Personnel and/or Defendants John Does Executioner and/or Defendants John Does) (Plaintiff's Exhibit 4 p.2, 63).

ii. Execution Procedures

49. The Current Protocol is silent as to whether the inmate is provided medication before the execution and fails to caution about potential contraindications or reduced effectiveness of the sodium thiopental if such medication is given.

50. The Current Protocol prescribes the sequence of events surrounding an execution as follows: On day one, the condemned inmate is moved to Death Watch and designated personnel check execution-related equipment (closed-circuit TV, telephones, intercom, etc.); on day two, the condemned inmate chooses his last meal, and on day three, the lethal injection chemicals are delivered to the Lethal Injection Room (Plaintiff's Exhibit 4 p.60-62).

51. According to the Current Protocol, on day four, the Warden or Deputy Warden directs the Extraction Team to remove the inmate from the holding cell, place him on the gurney and secure him in restraints. The inmate is then moved to the Execution Chamber. The IV Team establishes IV lines into both arms (Plaintiff's Exhibit 4 p.64). The Warden gives the signal to proceed and the Executioner begins to administer the first chemical. Following the completion

of the lethal injection process, and a five-minute waiting period, the Warden asks the Physician to enter the room to conduct an examination. The Physician reports his findings to the Warden or his designee (Plaintiff's Exhibit 4 p.65).

52. The Current Protocol directs the Execution Team to bring the Lethal Injection Chemicals to the Lethal Injection Room three hours before an execution. Each chemical is prepared for being drawn into syringes. Two sets of eleven syringes are made. (Plaintiff's Exhibit 4 p.38).

53. Under the Current Protocol, the drugs to be used are:

- a. Syringes 1-4 sodium thiopental (5 grams: 5000 mg diluted by 200 cc sterile water)
- b. Syringe 5 Saline (50 cc)
- c. Syringes 6 & 7 pancuronium bromide (50 cc each of 100 mg/mL)
- d. Syringe 8 Saline (50 cc)
- e. Syringes 9 & 10 potassium chloride (50 cc each of 100 mg/mL of 2 mEq/mL)
- f. Syringe 11 Saline (50 cc)

(Plaintiff's Exhibit 4 p.38-39).

54. Under the Current Protocol, the drugs are administered in eleven syringes. *Id.* No time frame is given regarding administration of the drugs (Plaintiff's Exhibit 4 p.43).

55. Under the Current Protocol, ten boxes of 500 mg sodium thiopental are used to

make 5 grams. A member of the Execution Team injects 20 cc of sterile water into the powder. The powder is dissolved into the water. He repeats the process nine more times, using the remaining nine boxes. He then draws the solution into four syringes. (Plaintiff's Exhibit 4 p.38).

56. Under the Current Protocol, the Execution Team Member draws 50 cc of saline solution into a syringe. Then, the Execution Team Member draws 50 cc of pancuronium bromide (100 mg/mL) in each of two syringes. Next, he draws 50 cc of saline solution into a syringe. Then, he draws 50 cc of potassium chloride (100 mL of 2 mEq/mL) into each of two syringes. Next, he draws 50 cc of saline solution into a syringe. The labeled, numbered and color coded syringes are on a tray on the workstation in the Lethal Injection Room. This process is repeated for the second set of eleven syringes (Plaintiff's Exhibit 4 p.38-39).

57. Under the Current Protocol, two IV lines are prepared for simultaneous use. First, the prisoner's arms are securely restrained to the gurney. A tourniquet is placed around the limb or body part above the vein to be used. The Current Protocol does not instruct or designate a person to remove the tourniquet. The IV Team inserts a catheter into the right arm, in the antecubital fossa area, and attaches a Solution Set line from a sodium chloride bag (located in the lethal injection room) to the catheter (Plaintiff's Exhibit 4 p.41-42).

58. The Current Protocol contains other locations for insertion of the catheter if it cannot be inserted into a vein in the antecubital fossa area. The order of the locations is: forearm, wrist, back of the hand, top of the foot, ankle, lower leg, or other locations as determined by the EMTs. (Plaintiff's Exhibit 4 p.41).

59. The Current Protocol directs that if "none of these veins are usable, the physician

is called into the Execution Chamber to perform a cut-down procedure” (Plaintiff’s Exhibit 4 p.41). Prior to this, the Physician waits in the capital punishment garage (Plaintiff’s Exhibit 4 p.20). The Current Protocol alleges that a cut-down is “an ultimate and last option” (Plaintiff’s Exhibit 4 p.20) but also allows the Physician to “choose[] a different method to find an IV site” (Plaintiff’s Exhibit 4 p.67). The Current Protocol is silent as to the Physician’s qualifications, training and experience to perform such functions.

60. The Current Protocol does not recommend the shortest possible length for the IV setup. Instead, it indicates that the Solution Sets are 85 inches long but may be purchased longer or shorter; extensions into the first port should be 18 to 24 inches in length; extensions are added to each end of the Solution Set until it reaches the desired length; the ends should reach from head to toe of the condemned inmate (Plaintiff’s Exhibit 4 p.40).

61. Under the Current Protocol, the IV line is connected to the catheter *via* extensions “added to each end until it reaches the desired length” (Plaintiff’s Exhibit 4 p.40). “The line is taped to the port (where the syringe is inserted) in place. The remainder of the line is placed out of the ports in the window” of the Lethal Injection Room and taped in place (Plaintiff’s Exhibit 4 p.40). Tegaderm transparent dressing is placed over the catheter and the line is taped in place (Plaintiff’s Exhibit 4 p.42).

62. Under the Current Protocol, the process is repeated for the left arm (Plaintiff’s Exhibit 4 p.41-42). Then the inmate’s hands are taped in place, palms up, and the IV Team Members leave the Execution Chamber (Plaintiff’s Exhibit 4 p.43).

63. Under the Current Protocol, the Warden is the only person in the Execution

Chamber with the condemned prisoner.

64. Under the Current Protocol, the Warden gives the signal to proceed with the execution. The Executioner chooses the right or left IV line. The Executioner inserts and twists each syringe into the extension line, until all eleven syringes are injected (Plaintiff's Exhibit 4 p.43-44). The Current Protocol does not provide for a test of the inmate's level of consciousness after the sodium thiopental is injected.

65. The Current Protocol includes a diagram of the "Capital Punishment Unit" (Plaintiff's Exhibit 4 p.9). The diagram shows the Lethal Injection Executioner's Room is separate from the Execution Chamber. *Id.* The window is not as wide as the length of the gurney. *Id.* It appears that the window does not have a direct view of the head and face of the condemned inmate. *Id.* The Current Protocol does not describe the lighting in the Executioner's Room.

66. Under the Current Protocol, after a five minute waiting period, the Warden summons the Physician to determine if the prisoner is dead (Plaintiff's Exhibit 4 p.65). If not, the process is repeated (Plaintiff's Exhibit 4 p.67).

67. The Current Protocol lacks medically necessary safeguards, thus increasing the risk that Mr. West will suffer unnecessary pain and prolonged death during the lethal injection process.

68. The Current Protocol does not provide for qualified personnel and the persons involved in the process lack the qualifications, training and skills necessary to perform the procedure.

69. Under the Current Protocol, the persons involved: the Executioner, the Execution Team Members, and the IV Team Members are not trained to use the three drugs in the manner required by the Current Protocol because any training is conducted with Saline (Plaintiff's Exhibit 4 p.33).

70. The Current Protocol contains no adequate instructions for mixing the sodium thiopental or drawing the drugs into the syringes and administering the drugs to the condemned.

71. Under the Current Protocol, no one except Defendant Bell is present in the Execution Chamber during the administration of the three chemicals. No one is at bedside monitoring the IV lines, the IV drip or the prisoner's vital signs or level of consciousness.

72. Under the Current Protocol, there is no procedure for ensuring that the anesthetic agent is properly flowing into the prisoner, nor any procedures for ensuring that the prisoner is properly sedated prior to the administration of the second and third chemicals (as would be required in any medical or veterinary procedure before the administration of a neuromuscular blocking agent, such as pancuronium bromide, or the administration of a painful, burning potassium chloride overdose).

B. DEMONSTRATED RISKS OF UNNECESSARY PAIN AND SUFFERING

73. Recent evidence from Tennessee, as well as documented evidence concerning lethal injection procedures in other states, shows that the Current Protocol demonstrates a history of multiple risks of unnecessary and severe pain along with lingering death during Mr. West's execution.

i. A History of Unnecessary Pain and Suffering Occurring in States Utilizing

Lethal Injection Protocols.

74. Those Defendants involved in the creation of the Current Protocol knew about the substantial risks involved in execution by lethal injection but disregarded those risks and failed to make changes and incorporate safeguards into the Current Protocol. In developing the Current Protocol, Defendants consulted “corrections professionals,” “legal experts,” and “court opinions in execution protocol cases” from other jurisdictions such as Missouri, Oklahoma, and Virginia (Plaintiff’s Exhibit 5 p.1, 4-5, 12). Defendants referenced Florida’s protocol and a law journal article which describes problems with current protocols around the country and thirty-one botched executions (Plaintiff’s Exhibit 5 p.13).

75. Executions in other states with lethal injection protocols which sometimes afford greater protections than the Current Protocols, have resulted in the unnecessary infliction of pain and suffering, even in jurisdictions where the executioners were far more experienced and/or skilled than those described in the Current Protocols:

a. Charles Brooks, Jr., December 7, 1982, Texas: In what was the first execution by lethal injection, an overdose of sodium thiopental took seven minutes to kill Brooks. Witnesses stated that Brooks "had not died easily."

b. James D. Autry, March 14, 1984, Texas: Autry took ten minutes to die, complaining of pain throughout. Officials suggested that faulty equipment or inexperienced personnel were to blame.

c. Thomas Andy Barefoot, October 30, 1984, Texas: A witness stated that after emitting a “terrible gasp,” Barefoot’s heart was still beating after the prison medical examiner

had declared him dead.

d. Stephen Peter Morin, March 13, 1985, Texas: It took technicians over forty minutes to locate a suitable vein to insert the lethal injection needle, and another eleven minutes for Morin to die.

e. Randy Woolls, August 20, 1986, Texas: Because of his history of drug addiction, Woolls had to assist execution technicians in finding an adequate vein for insertion.

f. Elliot Rod Johnson, June 24, 1987, Texas: Johnson's execution was plagued by repetitive needle punctures and took executioners approximately thirty-five minutes to find a vein.

g. Raymond Landry, December 13, 1988, Texas: Two minutes into the execution, after a lengthy search for an adequate vein, the syringe came out of Landry's vein, "spewing deadly chemicals toward startled witnesses."

h. Stephen McCoy, May 24, 1989, Texas: In a violent reaction to the drugs, which experts attributed to a weak dosage, McCoy "choked and heaved" during his execution.

i. George "Tiny" Mercer, January 6, 1990, Missouri: A medical doctor was required to perform a cutdown on Mercer's groin. The Tennessee Committee purported to review lethal injection litigation in Missouri (Plaintiff's Exhibit 5 p.12), but the Report fails to indicate what, if any guidance it obtained and why it rejected safer, less painful alternatives to a cut-down.

j. Ronald Gene Simmons, June 25, 1990, Arkansas⁶: The administration of the

⁶ The Arkansas lethal injection protocol calls for a 2 gram dose of sodium thiopental, followed by pancuronium bromide and potassium chloride. Using this protocol, the Department

lethal chemicals began at 9:02 p.m. Between 9:02 and 9:04 p.m., according to an eyewitness, Mr. Simmons appeared to nod off into unconsciousness. However, “at 9:05 p.m. he called out ‘Oh! Oh!’ and began to cough sporadically as though he might be having difficulty breathing. During the next two minutes, he coughed slightly, approximately 20 times, each cough heaving his stomach slightly and causing the gurney to shake a little.” See Bill Simmons, *Stoic Murderer Meets His Fate By Quiet Means*, Arkansas Democrat Gazette, June 26, 1990 at 9A, **Plaintiff’s Exhibit 13**. Mr. Simmons became still at 9:07 p.m. after which his face and arm turned first blue and then purple. An ADC employee twice appeared to adjust the IV tube in Mr. Simmons’ arm, and not until 9:19 p.m. was Mr. Simmons pronounced dead by the coroner. *Id.*

k. George Gilmore, August 31, 1990, **Missouri**: According to a witnessing doctor, force was used to stick the needle into Gilmore's arm.

l. Charles Troy Coleman, September 10, 1990, **Oklahoma**: Technicians had difficulty finding a vein and the execution was delayed by ten minutes. The Tennessee Committee purported to review lethal injection litigation in Oklahoma (Plaintiff’s Exhibit 5 p.12) but the Report does not indicate what, if any guidance, was obtained and why the Current Protocol does not provide a pre-execution examination of the prisoner to ameliorate problems associated with locating adequate veins which results in a painful and prolonged execution.

of Corrections there has presided over several executions where “inmates remained conscious and suffered pain during their executions.” See *Nooner v. Norris*, No. 06-00110 (E.D. Ark.), June 26, 2006 Order (granting a preliminary injunction), p.4, Plaintiff’s Exhibit 12. The United States District Court for the Eastern District of Arkansas, stayed executions to allow further investigation into the constitutionality of the lethal injection protocol. See *Nooner, et al. v. Norris*, No. 06-00110 (E.D. Ark.).

m. Charles Walker, September 12, 1990, Illinois: There was some indication that, while appearing calm on the outside due to the paralyzing drugs, Walker suffered excruciating pain. There were reports of faulty equipment and inexperienced personnel.

n. Maurice Byrd, August 23, 1991, Missouri: The machine used to inject the lethal dosage malfunctioned. The Tennessee Committee purported to review lethal injection litigation in Missouri (Plaintiff's Exhibit 5 p.12), but the Report fails to indicate what, if any guidance it obtained and why the Current Protocol fails to anticipate and provide contingencies for malfunctioning equipment.

o. Ricky Ray Rector, January 24, 1992, Arkansas: The execution took 1 hour and 9 minutes. Mr. Rector's hands and arms were punctured no less than 10 separate times searching for a suitable vein. Ultimately, someone on the execution team did a cut-down into his arm. Witnesses could hear his moans as they looked for a vein. *See* Sonja Clinesmith, *Moans Pierced Silence During Wait*, Arkansas Democrat Gazette, January 26, 1992, at 1B, Plaintiff's Exhibit 14; Ron Fournier, *13 Outsiders View Death Of Rector, Witnesses Listen, Wait Beyond Curtain*, Arkansas Democrat Gazette, January 26, 1992, at 4B, Plaintiff's Exhibit 15. Rector talked after 2 minutes and then after 5 minutes his lips were still moving rapidly - as if he was trying to draw shallow breaths. He was not pronounced dead until 10:09 p.m. *See* Joe Farmer, *Rector, 40, Executed for Officer's Slaying*, Arkansas Democrat Gazette, January 25, 1992, at 9A, Plaintiff's Exhibit 16; Fournier, Plaintiff's Exhibit 15.

p. Robyn Lee Parks, March 10, 1992, Oklahoma: Parks had a violent reaction to the drugs used in his execution. Two minutes after the drugs were dispensed the muscles in his jaw,

neck, and abdomen began to react spasmodically for approximately 45 seconds. Parks continued to gasp and violently gag until death came, eleven minutes after the drugs were first administered. A Tulsa World reporter wrote that the execution looked “painful and ugly,” and “scary.” One witness said that his death looked “painful and inhumane.” The Tennessee Committee purported to review lethal injection litigation in Oklahoma (Plaintiff’s Exhibit 5 p.12), but the Report fails to indicate what, if any guidance it obtained and why the Current Protocol does not anticipate a violent reaction to the three drugs and provide procedures to avoid such a reaction.

q. Billy Wayne White, April 23, 1992, **Texas**: White’s death required forty-seven minutes because executioners had difficulty finding a vein that was not severely damaged from years of heroin abuse.

r. Justin Lee May, May 7, 1992, **Texas**: According to a witness, May gasped and reared against his restraints during his nine-minute death.

s. Steven Douglas Hill, May 7, 1992, **Arkansas**: His execution began at 9:02 p.m. His eyes closed one minute later, but shortly afterwards he had what witnesses described as “a ‘seizure’ arching his back with his cheeks popping.” See Andy Gotlieb and Linda Satter, *Hill Dies By Injection for ‘84 Police Killing*, Arkansas Democrat Gazette, May 8, 1992, at 17A, Plaintiff’s Exhibit 17. He was visibly gasping for air, and even though he was strapped down to the gurney, his chest was heaving against the wide belt that covered his chest. The seizure ended at 9:04 p.m. and Mr. Hill was pronounced dead at 9:10 p.m.

t. John Wayne Gacy, May 10, 1994, **Illinois**: Complications caused by a faulty

delivery tube resulted in Gacy's execution lasting eighteen minutes.

u. Emmitt Foster, May 3, 1995, **Missouri**: Foster took twenty-nine minutes to die. Seven minutes after the lethal chemicals began to flow into Emmitt Foster's arm, the execution was halted when the chemicals stopped circulating. With Foster gasping and convulsing, the blinds were drawn so that witnesses could not view the scene. According to the Washington County Coroner who pronounced death, the problem was caused by the tightness of the leather straps that bound Foster to the execution gurney; they were so tight that the flow of chemicals into the veins was restricted. Foster did not die until several minutes after a prison worker finally loosened the straps.

v. Ronald Allridge, June 8, 1995, **Texas**: Allridge's execution was conducted with only one needle, rather than the standard two, because a suitable vein could not be found in his left arm.

w. Richard Townes, Jr., January 23, 1996, **Virginia**: It took twenty-two minutes for medical personnel to find an adequate vein. After unsuccessful attempts to insert the needle through the arms, the needle was finally inserted through the top of Mr. Townes' right foot. The Tennessee Committee purported to review lethal injection litigation in Virginia (Plaintiff's Exhibit 5 p.12), but the Report fails to indicate what, if any, guidance it obtained and why the Current Protocol does not provide for a pre-execution examination of the prisoner to ameliorate problems associated with locating adequate veins which results in a painful prolonged execution.

x. William Bonin, February 23, 1996, **California**: The execution logs of William Bonin's execution also reflect irregularities that may have caused Bonin to die in excruciating

pain. Mr. Bonin was given a second dose of pancuronium bromide for reasons that remain unclear, even though a properly administered initial dose would paralyze an inmate for several hours. *See* Execution Log of William Bonin, Plaintiff's Exhibit 18.

y. Tommie J. Smith, July 18, 1996, **Indiana**: The execution team required a total of thirty-six minutes to find a vein. Officials acknowledged that they had known beforehand that Smith's unusually small veins might cause problems.

z. Luis M. Mata, August 22, 1996, **Arizona**: Mata remained strapped to a gurney with the needle in his arm for one hour and ten minutes while his attorneys argued his case. When injected, his head jerked, his face contorted, and his chest and stomach sharply heaved.

aa. Scott Dawn Carpenter, May 8, 1997, **Oklahoma**: Carpenter gasped and shook for three minutes following the injection. He was pronounced dead eight minutes later. The Tennessee Committee purported to review lethal injection litigation in Oklahoma (Plaintiff's Exhibit 5 p.12), but the Report fails to indicate what, if any, guidance it obtained and why the Current Protocol does not include provisions designed to ameliorate a prolonged execution.

bb. Michael Eugene Elkins, June 13, 1997, **South Carolina**: Liver and spleen problems had caused Elkins's body to swell, requiring executioners to search almost an hour--and seek assistance from Elkins--to find a suitable vein.

cc. Joseph Cannon, April 23, 1998, **Texas**: Cannon's vein collapsed and the needle popped out after the first injection. These events caused him to make a second final statement and be injected a second time behind a closed curtain.

dd. Genaro Ruiz Camacho, August 26, 1998, **Texas**: Camacho's execution was

delayed approximately two hours due to last-minute appeals and problems finding suitable veins in Camacho's arms, which had been damaged by his drug problem.

ee. Roderick Abeyta, October 5, 1998, **Nevada**: The execution team took twenty-five minutes to find a vein suitable for the lethal injection.

ff. Manuel Babbit, May 4, 1999, **California**: A minute after the pancuronium bromide was administered, Mr. Babbit had shallow respirations and brief spasms in his upper abdomen suggesting an attempt to fight against the effects of the pancuronium bromide. Execution Log of Manuel Babbit, Plaintiff's Exhibit 19. Tennessee's Current Protocol does not differ in any material respect from that used in the California executions, including 5 grams of thiopental.

gg. Bennie Demps, June 8, 2000, **Florida**: The execution team had to forfeit the second injection (Florida protocol demands two injections) after a thirty-three minute search failed to locate a suitable second vein. Demps complained of pain and bleeding in his final statement. The Tennessee Committee purported to review the lethal injection process in Florida (Plaintiff's Exhibit 5 p.13) but the report fails to indicate what, if any, guidance it obtained and why the Current Protocol does not minimize the pain and suffering and prolonged death by providing a physical of the condemned and identification of suitable veins before the execution process begins.

hh. Bert Leroy Hunter, June 28, 2000, **Missouri**: In a violent reaction to the drugs, Hunter repeatedly coughed and gasped for air after the lethal chemicals were injected and before he lapsed into unconsciousness. A witness reported that Hunter had "violent convulsions. His

head and chest jerked rapidly upward as far as the gurney restraints would allow, and then he fell quickly down upon the gurney. His body convulsed back and forth ...repeatedly...He suffered a violent and agonizing death.” The Tennessee Committee purported to review the lethal injection process in Missouri (Plaintiff’s Exhibit 5 p.12), but the Report fails to indicate what, if any, guidance it obtained and why the Current Protocol does not anticipate a violent reaction to the three drugs and provide procedures to avoid such a reaction.

ii. Willie Fisher, March 9, 2001, North Carolina⁷: During the lethal injection of Willie Fisher, “Mr. Fisher appeared to lose consciousness around 9:00 p.m. but subsequently began convulsing . . . he looked as though he was trying to catch his breath but could not and his eyes were open as his chest heaved repeatedly.” He was not pronounced dead until 9:21 p.m. *See Brown*, supra at *17. The Tennessee Committee purported to review lethal injection litigation in North Carolina (Plaintiff’s Exhibit 5 p.12) but the Report fails to indicate what guidance, if any, it obtained and why the Current Protocol does not contain procedures to determine the

⁷ In *Brown v. Beck*, No. 06-3018, the District Court of the Eastern District of North Carolina, Western Division, had before it toxicology data following four executions in North Carolina showing low post-mortem levels of sodium thiopental. North Carolina’s protocol calls for a 3 gram dosage of the drug, to be followed by pancuronium bromide and potassium chloride. The toxicology data contradicted the opinion of the State’s experts as to the expected concentration that would be present in a man of average size after having been given a dose of 3000 mg of sodium thiopental. *See Brown v. Beck*, 2006 U.S. Dist. LEXIS 60084 (E.D.N.C. April 7, 2006) (denying preliminary injunction, but conditioning future executions on presence of an anesthesiologist).

Also in *Brown*, the District Court had before it affidavits from attorneys present at recent executions who had witnessed the condemned inmates writhing, convulsing, and gagging when executed. Again, such witness accounts were inconsistent with a sufficient dose of sodium thiopental having been successfully delivered to the brain such that the condemned inmate would not feel pain.

condemned is unconscious before administration of the second and third drugs.

jj. Joseph Martinez High, November 7, 2001, **Georgia**: For twenty minutes, prison technicians attempted unsuccessfully to locate a vein in High's arms. Eventually, they inserted a needle in High's chest, after a doctor cut an incision there, while they inserted the other needle in one of High's hands.

kk. Stephen Wayne Anderson, January 29, 2002, **California**: Witness accounts suggest that Mr. Anderson was not properly anesthetized when he died. The execution took over 30 minutes, and during that time Mr. Anderson's chest and stomach "heaved more than 30 times." *See* Declaration of Margo Rocconi, Plaintiff's Exhibit 20, ¶ 6. The Tennessee Committee purported to review lethal injection litigation in California (Plaintiff's Exhibit 5 p.12) but the Report fails to indicate what guidance, if any, it obtained and why the Current Protocol does not contain procedures to determine the condemned is unconscious before administration of the second and third drugs.

ll. Eddie Hartman, October 3, 2003, **North Carolina**: During the lethal injection of Eddie Ernest Hartman, he appeared to suffer for at least five minutes after the lethal injection. "Eddie's throat began thrusting outward and collapsing inward. His neck pulsed, protruded, and shook repeatedly. Eddie's chest at first pulsated frequently, then intermittently, and at least twice I saw Eddie's chest heave violently Throughout the execution, Eddie's eyes were partly open while his body relentlessly convulsed and contorted." *See Brown, supra* at *16. The Tennessee Committee purported to review lethal injection litigation in North Carolina (Plaintiff's Exhibit 5 p.12) but the Report fails to indicate what guidance, if any, it obtained and why the Current

Protocol does not contain procedures to determine the condemned is unconscious before administration of the second and third drugs.

mm. Timmy Keel, November 7, 2003, North Carolina: During the lethal injection of Timmy Keel, his body was “twitching and moving about for approximately ten minutes” after the injection of the chemical cocktail. *Id.*

nn. John Daniels, November 14, 2003, North Carolina: During the lethal injection of John Daniels, Mr. Daniels convulsed violently after the administration of the chemical cocktail. “He sat up and gagged.” Witnesses “could hear him through the glass.” “A short time later, [Mr. Daniels] sat up and gagged and choked again, and struggled with his arms under the sheet. He appeared to [witnesses] to be in pain. He finally lay back down and was still.” *Id.*

As the District Court there found, “evidence of the problems associated with these executions while, perhaps, not clearly indicative of the protocol, does raise some concerns about the effect of North Carolina’s protocol.” *See Brown, supra* at *18 (concluding “it would be inappropriate to allow Defendants to proceed with Mr. Brown’s execution under the current protocol considering the substantial questions raised”). The Tennessee Committee purported to review lethal injection litigation in North Carolina (Plaintiff’s Exhibit 5 p.12) but the Report fails to indicate what guidance, if any, it obtained and why the Current Protocol does not contain procedures to determine the condemned is unconscious before administration of the second and third drugs.

oo. Joseph Lewis Clark, May 2006, Ohio: Execution team members took over twenty minutes to insert one IV catheter into Mr. Clark’s arm. According to Ohio protocol two catheters

were necessary, but the team proceeded with only one. After the single IV was inserted and the chemicals began to flow, Mr. Clark remained breathing, legs moving, arms strapped down. After minutes, he raised up several times and told executioners, "It's not working, it's not working." Minutes later, Mr. Clark raised up again and said, "can't you just give me something by mouth to end this?" At that point, the team closed the curtain, and witnesses heard groans and moans from Mr. Clark as if he was in agony. Witnesses reported that the cries of pain lasted for about five or ten minutes and were followed by snores from Mr. Clark. Obviously, if the sodium thiopental had worked properly, Mr. Clark would not have been able to cry out in pain, feel pain, or sit up during the execution. See Adam Liptak, *Trouble Finding Inmate's Vein Slows Lethal Injection in Ohio*, New York Times, May 3, 2006, Plaintiff's Exhibit 21. Defendants failed to indicate why they chose not to include a procedure in the Current Protocol to insure the condemned is adequately anesthetized before administration of the second and third drugs. At the time of Clark's execution, Ohio was using a lethal injection protocol that used three drugs. It has since adopted a one-drug protocol. *New Execution Method is Used in Ohio*, New York Times, December 9, 2009, Plaintiff's Exhibit 22. The botched execution of Mr. Clark demonstrates graphically and horrifically how an execution that appeared completely normal and routine at the outset can rapidly go horribly wrong. Ohio's previous protocol called for 2 grams of sodium thiopental, followed by pancuronium bromide and potassium chloride.

pp. Angel Diaz, December 13, 2006, **Florida**: Using a three-drug protocol, Mr. Angel Diaz did not get an effective amount of sodium thiopental because the IV lines were improperly seated in his veins with through and through punctures. As a result, none of the materials injected went to the right place. Instead, the drugs entered his bloodstream first

through his flesh and muscle tissue. This process caused foot-long chemical burns on both arms from the sodium thiopental. During the execution, observers reported that Mr. Diaz moved and tried to mouth words. It took 34 minutes and 14 syringes of chemicals for Mr. Diaz to die, during which he was clearly in pain, struggling for breath and grimacing. See Plaintiff's Exhibit 23, Chris Tisch, *Executed Man Takes 34 Minutes To Die*, www.Tampabay.com, December 13, 2006; Plaintiff's Exhibit 24, Chris Tisch, *Second Dose Needed To Kill Inmate*, www.Tampabay.com, December 14, 2006; Plaintiff's Exhibit 25, Florida Commission Report, p.8-9.

Following the Diaz execution, Governor Bush ordered that all executions be stayed while a committee undertook a review of the Diaz execution and of lethal injection protocols in Florida in general. (Executions remain stayed in Florida under that order. See Florida Commission Report, Plaintiff's Exhibit 25, p.2). The Tennessee Committee purported to review the Florida Commission Report (Plaintiff's Exhibit 5 p.13) but failed to indicate what, if any, guidance it obtained and why any proposal in the Florida Report were rejected and not included in the Current Protocol.

76. In each of the executions described in the preceding paragraphs, the infliction of unnecessary pain and suffering upon the condemned was the direct and proximate result of the inadequate training and/or qualifications of the persons participating in the execution, coupled with the lack of guidance provided by the respective execution protocols.

77. The Current Protocol fails to require the use of persons more qualified than those used in the foregoing executions to carry out Mr. West's execution.

78. The Current Protocol fails to require more training for the persons carrying out Mr. West's execution than the training required for the persons carrying out the foregoing executions.

79. The Current Protocol fails to provide more guidance for the persons carrying out Mr. West's execution than the guidance provided to the persons carrying out the foregoing executions by the protocols guiding such executions.

80. Each of the foregoing incidents of the needless infliction of pain and suffering occurred prior to the adoption of the Current Protocol and was therefore known to Defendants.

81. The nature of the protocols guiding the foregoing executions was known to Defendants prior to the adoption of the Current Protocol. In developing the Current Protocol, Defendants consulted "corrections professionals," "legal experts," and "court opinions in execution protocol cases" from other jurisdictions such as Missouri, Oklahoma, and Virginia (Plaintiff's Exhibit 5 p.1, 4-5, 12). In addition, Defendants referenced Florida's protocol and a law journal article which describes problems with current protocols around the country and thirty-one botched executions (Plaintiff's Exhibit 5 p.13).

ii. Known risks in Tennessee's protocol and known failures of persons carrying out Tennessee's lethal injection protocols.

82. Defendants themselves have experienced problems with collapsed veins, or a blowout, and clogged IV lines during practice sessions with Saline (*Harbison v. Little, et al*, No.3:06-cv-1206,(M.D.Tenn.) DE.63-19, p.2 of 7, Bell Testimony). Such problems result in an insufficient level of anesthesia to prevent the condemned from experiencing the terror of suffocation from the pancuronium bromide and excruciating pain from the potassium chloride.

83. The inability of those persons carrying out Mr. West's execution to properly prepare and/or administer the lethal chemicals with only the amount of guidance and training provided under the Current Protocols, even absent the pressures attendant in actually taking a human life, was known to Defendants prior to the adoption of the Current Protocol.

84. The fact that the failure to properly prepare and/or administer the lethal chemicals will result in the infliction of unnecessary pain and suffering on Mr. West was known to Defendants prior to the adoption of the Current Protocols.

iii. Even if carried out according to the Protocol, Tennessee's lethal injection procedure inflicts unnecessary and wanton pain and suffering.

85. The State of Tennessee has been through a number of executions using methods similar to those put forth in the current protocols. Autopsies and eye-witness observations from these executions show that the protocols create a demonstrated risk of severe pain. Unlike the evidence reviewed by the Supreme Court in *Baze v. Rees*, 553 U.S. 35, 108-10 (2008), where some of the justices concluded that the controversy surrounding the methodology of the *Lancet* study rendered it inadequate to justify judicial intervention in a state's administration of the three-drug protocol, Mr. West is offering evidence of cruel and unusual punishment based on information about Tennessee inmates obtained from autopsies that followed Tennessee's executions. The variables that may have undermined the findings of the *Lancet* article are simply not present here.

Coe Execution

86. Robert Coe was executed by suffocation while inadequately anesthetized. His toxicology report indicated a serum sodium thiopental level of 10.2 mg/l. (*Harbison v. Little, et*

al, M.D. Tenn., No. 3:06-cv-1206, DE.170-1 p.82, #5022). Assuming that Dr. Levy, who conducted the autopsy, correctly recalled that the blood sample was obtained from a peripheral location, *i.e.*, one of his femoral vessels, there is no substantial question but that the toxicology report accurately reflects his serum thiopental level at the time of death.

87. Mr. Coe's autopsy report reveals that the intravenous catheters used for his execution remained properly placed in accordance with the Tennessee Protocol in the superficial blood vessels of the antecubital fossa of both of Mr. Coe's arms (Plaintiff's Exhibit 26, Coe Autopsy Bates p.05). Mr. Coe's autopsy did not describe any signs of infiltration at the injection site. *See also* Dr. Levy testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-01206, DE 142, TR725-26, DE 143, TR903-04.

Workman Execution

88. Philip Workman was executed on May 9, 2007, under the current Tennessee Protocol. The autopsy report was completed on October 24, 2007. (Plaintiff's Exhibit 27, Workman Autopsy Bates p.01).

89. Mr. Workman's post-mortem thiopental level was 18.9 mg/L, (Plaintiff's Exhibit 27, Workman Autopsy Bates p.03, 07), which means he was not fully anesthetized during his execution (Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.5).

90. Mr. Workman's autopsy was not performed, and blood was not drawn, until ten days after his execution (Plaintiff's Exhibit 27, Workman Autopsy Bates p.03). The blood sample used to determine Mr. Workman's level of thiopental was taken from his heart (*Id.* at p.7).

91. Dr. Levy, who performed Mr. Workman's autopsy, testified that thiopental

redistributes from the extremities back to the heart following death, making those levels higher than would be found at the time of death (*Harbison v. Little, et al*, M.D.Tenn., No. 3:06-cv-1206, DE 142, TR733-34; *see also* Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.5).

92. Due to the time lapse and post-mortem distribution, there is an even greater probability that the level of thiopental in Mr. Workman at the time of his death was less than 18.9 mg/L found in the heart blood drawn ten days after his death (Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.5-6).

93. The post-mortem drug level of thiopental measured in Mr. Workman would not be sufficient to produce unconsciousness or anesthesia. This means that during the execution procedure, Mr. Workman was probably awake, suffocating in silence, and feeling the searing pain caused by the intravenous injection of potassium chloride (*Id.* p.6).

94. The reported level of pancuronium bromide in Mr. Workman's blood would be sufficient to cause full paralysis and death by suffocation (*Id.*).

95. Mr. Workman was executed by suffocation while inadequately anesthetized.

96. Mr. Workman's autopsy report reveals that the intravenous catheters used for his execution remained properly placed in accordance with the Tennessee Protocol in the superficial blood vessels of the antecubital fossa of both of Mr. Workman's arms (Plaintiff's Exhibit 27, Workman Autopsy Bates p.05). Mr. Workman's autopsy did not describe any signs of infiltration at the injection site. *See also* Dr. Levy testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 142, TR725-26, DE 143, TR903-04.

Henley Execution

97. Steve Henley was executed on February 4, 2009, under the current Tennessee Protocol. The autopsy report on Mr. Henley was finalized more than a year later on February 17, 2010, and released on March 10, 2010. (Plaintiff's Exhibit 29, Henley Autopsy Bates p.01, 07).

98. Witnesses observed Mr. Henley turn blue to purple in color during the execution process (Plaintiff's Exhibit 30, Affidavit of Stacy Rector & exhibits attached thereto).

99. Mr. Henley's autopsy report reveals his sodium thiopental level was 8.31 mg/L; an amount inadequate to cause Mr. Henley to be unconscious during his execution (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06, 09; Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.6).

100. Mr. Henley's potassium level was not elevated and would have had no effect on his heart (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06; Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.6-7). This is consistent with the observations of witnesses to Mr. Henley's execution that his face began to turn blue to purple approximately seven minutes after the execution because a change of color occurs when non-oxygenated blood is pumped to the extremities by a beating heart (Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.7).

101. Mr. Henley's pancuronium bromide level was far above the level required to cause Mr. Henley's death through suffocation (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06; Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.7).

102. Eyewitness accounts that Mr. Henley turned blue to purple during the execution are consistent with death by suffocation (Plaintiff's Exhibit 28, Affidavit of Dr. Lubarsky p.7).

103. Mr. Henley's death was caused by suffocation induced by pancuronium bromide at a time when he was not adequately anesthetized (*Id.*).

104. Mr. Henley's autopsy report reveals that the intravenous catheters used for his execution remained properly placed in accordance with the Tennessee Protocol in the superficial blood vessels of the antecubital fossa of both of Mr. Henley's arms, (Plaintiff's Exhibit 29, Henley Autopsy Bates p.04), and that all drugs had been fully dispensed in accordance with the Tennessee Protocol (*Id.*). Mr. Henley's autopsy did not describe any signs of infiltration at the injection site.

105. Tennessee has conducted five executions by lethal injection. Of these, no autopsy was done on Sedley Alley or Cecil Johnson. The autopsies of other three, Coe, Workman and Henley, all show that person was executed in a cruel and inhumane way. All three died by suffocation while likely conscious. This shows that Tennessee's protocols, even if properly administered, "create a demonstrated risk of severe pain." *See Baze v. Rees*, 553 U.S. 35, 61 (2008).

iv. Sodium thiopental, as used in the Tennessee Protocol, does not effectively establish unconsciousness.

106. Sodium thiopental is an ultra-short acting barbiturate wherein the induction of anesthesia occurs quickly, but its effect wears off in a matter of minutes.

107. Anesthesia is the process of blocking the perception of pain and other sensations, creating insensibility to pain.

108. There are differing levels of anesthesia, and thus consciousness.

109. The way the human body reacts to various stimuli differs depending upon the level of anesthesia. For example, when a person is administered sodium thiopental, a person will continue to have the following states of consciousness at the following serum levels of pentothal:

- a. 0-13 mg/l: Consciousness
- b. 13-18 mg/l: Loss of purposeful movement in response to verbal stimulation
- c. 23-28 mg/l: Loss of purposeful movement in response to tetanic nerve stimulation
- d. 33-46 mg/l: Loss of purposeful movement in response to trapezius muscle squeeze
- e. 45-57 mg/l: Loss of movement in response to larangoscopy
- f. 63 mg/l >: Loss of movement in response to intubation

Article entitled Thiopental Pharmacodynamics, Plaintiff's Exhibit 31

110. Upon administration of sodium thiopental, EEG brain activity peaks at 13.3 mg/l, after which it drops back to normal activity at 31.2 mg/l, and zero brain waves per second occurs only with serum levels above 50 mg/l.

111. The thiopental level for Mr. Coe was 10.2 mg/L; for Mr. Workman it was 18.9 mg/L; and for Mr. Henley it was 8.31 (Plaintiff's Exhibit 26, Coe Autopsy Bates p.13; Plaintiff's Exhibit 27, Workman Autopsy Bates p.03, 07; Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 09).

112. Every autopsy performed following an execution under the Tennessee Protocol reveals levels of thiopental below those required to induce unconsciousness that would prevent serious harm from the administration of pancuronium bromide and potassium chloride (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.7-8).

113. The use of sodium thiopental under the Tennessee Protocol will not sufficiently anesthetize Mr. West to prevent serious harm from the administration of pancuronium bromide

and potassium chloride.

v. Pancuronium bromide (Pavulon), when administered as intended, is the fatal agent under the Tennessee Protocol.

114. Pancuronium bromide, marketed under the name Pavulon, is a neuromuscular blocking agent which causes paralysis of the skeletal muscles of an individual. While pancuronium bromide paralyzes the diaphragm to prevent breathing, it does not affect the heart muscle.

115. Pancuronium bromide does not affect the brain or nervous system, nor does it block the actual reception of nerve impulses in the brain or the passage of such impulses within the brain. Pancuronium bromide does not affect consciousness or the sensation of pain or suffering. An individual under the influence of pancuronium bromide, though paralyzed, still has the ability to think, to be oriented to where he is, to experience fear or terror, to feel pain, and to hear (*See* Commissioner Little testimony, *Harbison v. Little, et al*, M.D.Tenn., No. 3:06-cv-01206, DE 138, TR50; Levy testimony, DE 142, TR718; Higgins testimony, DE 143. TR953). *See also, Harbison*, 511 F.Supp.2d 872, 883-84 (2007).

116. A lethal level of pancuronium is 0.16 mg/L (Plaintiff's Exhibit 33, Winek Drug & Chemical Blood-Level Data 2001 p.12). Pancuronium bromide, administered by itself as a "lethal dose" will ultimately cause someone to asphyxiate or suffocate to death while still conscious.

117. If an individual is not properly anesthetized when injected with pancuronium bromide, he will consciously experience extreme pain and terror while being completely paralyzed. In this state, the person will undergo the terrorizing and excruciating experience of

suffocation without the ability to move or to express the pain and suffering which he is experiencing as he is being suffocated. *Harbison*, 511 F.Supp.2d at 883-84.

118. Because pancuronium bromide paralyzes all skeletal muscles including facial muscles and those used to speak or communicate through noises, an observer cannot detect, from outward appearance, any expression of pain, horror, or suffering experienced because of the use of pancuronium bromide or suffering from any other source, such as potassium chloride which will activate the nerves of the venous system causing an extreme burning pain.

119. The pancuronium bromide levels in Mr. Coe (4.7 mg/L), Mr. Workman (.630 mg/L), and Mr. Henley (1.6 mg/L), were sufficient to cause paralysis and death by suffocation (Plaintiff's Exhibit 26, Coe Autopsy Bates p.14; Plaintiff's Exhibit 27, Workman Autopsy Bates p.03, 07; Plaintiff's Exhibit 29, Henley Autopsy Bates p.02; Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky, p.4-5, 6, 7).

120. The Tennessee Protocol, when administered as designed, will inject an amount of pancuronium bromide that will paralyze and suffocate Mr. West, causing his death.

vi. Potassium chloride, when administered as intended, by the Tennessee protocol does not induce cardiac arrest.

121. In the Tennessee Protocol, potassium chloride is the stated means for "cardiac arrest and rapid death" (Plaintiff's Exhibit 4, Tennessee Protocol p.35).

122. The administration of potassium chloride activates all the nerve fibers inside the venous system. Because veins are replete with nerve fibers, the administration of potassium chloride into the veins creates extreme pain.

123. It takes a serum concentration of more than 16 mEq/l (16mmol/l) of potassium to arrest the heart (Plaintiff's Exhibit 34, Affidavit of James Ramsey p.6-7 ¶¶XXV & XXVII; See Ramsey testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 139, TR262-64; TR272-78).

124. The autopsy report of Robert Coe demonstrates that his vitreous potassium was 9 mEq/L (9 mmol/L), far short of the required minimum 16.4 mEq/l to cause electro mechanical arrest of the heart (Plaintiff's Exhibit 34, Affidavit of James Ramsey p.8-9 ¶¶XXXI; See Ramsey testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 139, TR262-63). Dr. Higgins testified that a potassium level of nine milliequivalents might not be fatal and a person like Mr. Coe could survive (*Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 143, TR950-51). Dr. Levy testified that the only drug level in Mr. Coe's blood to completely reach a lethal level was the pancuronium bromide (*Id.*, TR920).

125. The autopsy report of Philip Workman indicates his vitreous potassium level was 9 mEq/l (9 mmol/l) (Plaintiff's Exhibit 27, Workman Autopsy Bates p.12). This level is far short of the required minimum 16.4 mEq/l to cause electro mechanical arrest of the heart.

126. The autopsy report of Steve Henley demonstrates that his vitreous potassium was 6 mEq/L (6mmol/L) (Plaintiff's Exhibit 29, Henley Autopsy Bates p.19). The vitreous potassium level was normal, not elevated, and far short of the required minimum 16.4 mEq/L to cause electromechanical arrest of the heart (Plaintiff's Exhibit 34, Ramsey Affidavit p.7¶XXVII; See Ramsey testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 139, TR262-64).

127. Witnesses to the Henley execution observed his skin color turn blue to purple

during his execution (Plaintiff's Exhibit 30, Affidavit of Stacy Rector & exhibits attached thereto).

128. Mr. Henley's change in skin color is consistent with death by suffocation while his heart continued to beat (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.7).

129. One of the main contributing factors to low potassium concentration solutions reaching the heart would be that, given an intravenous injection, the solution would necessarily have to pass through the lungs (which have the surface area of approximately that of a tennis court) during which the potassium concentrations would fall dramatically (Plaintiff's Exhibit 34, Affidavit of James Ramsey p.8 ¶XXX; See Ramsey testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 139, TR257-58).

130. Using an amount of, and a method of administering, potassium chloride which does not arrest the heart is meaningless and arbitrary and without a legitimate or compelling purpose. It will not hasten or effect death. It will only inflict excruciating pain if the condemned is not properly anesthetized. Instead, the killing agent will be the pancuronium bromide meaning death by suffocation or asphyxiation.

131. The Tennessee Protocol, when administered as designed, will inject an amount of potassium chloride that will not cause Mr. West's death but will cause excruciating pain.

C. KNOWN RISK IN TENNESSEE'S THREE-DRUG PROTOCOL

i. Defendants' Procurement Of Drugs For Use Upon Plaintiff

132. To obtain the drugs used to execute Plaintiff, Defendant Bell or Defendant John Doe "Designee" will request them through Defendant John Doe Procurement Officer at RMSI who will request them from Defendant John Doe Procurement Officer at DSNF who will then order the drugs from some pharmacy or source presently unknown to Plaintiff (Plaintiff's Exhibit 4 p.36).

133. A physician's order will be written by one or more of the Defendant(s) John Doe(s) Physician asking for the dispensing of the sodium thiopental, pancuronium bromide, and potassium chloride which Defendants would intend to administer to Plaintiff to cause his death. It is unclear that such "physician's order" is actually written by a practitioner who may prescribe medicine and who possesses a registration under the Controlled Substances Act. *See* 21 U.S.C. §§822, 829; 21 C.F.R. 21211301.11; 1306.04(a). It is clear, however, that such a prescription is not issued for a legitimate medical purpose.

134. One or more of the Defendant(s), Defendant John Doe Procurement Officer at DSNF, Defendant John Doe Procurement Officer at RMSI, Defendant John Doe Execution Team Member, and/or Defendant John Doe "Designee", will then deliver or dispense the drugs to Defendant(s) John Doe Execution Team Member(s), and/or Defendant John Doe Executioner, including Defendant Bell (Plaintiff's Exhibit 4 p.37).

135. The Current Protocol fails to indicate how "the Warden or his designee" chooses

one member from the Execution Team who has access to the Lethal Injection Chemicals during their procurement and storage (Plaintiff's Exhibit 4 p.36). The Current Protocol indicates that "the Warden or his designee" instructs one member of the Execution Team to "check[] the supply of chemicals and expiration dates," to order additional chemicals, to pick up the additional chemicals and deliver them to RMSI, and to "inventory" the chemicals prior to an execution date (Plaintiff's Exhibit 4 p.36). The Current Protocol fails to indicate what qualifications, training, and screening is done to insure that the Execution Team Member who is given this access to the "Lethal Injection Chemicals" (two of which are scheduled narcotics) does not have a criminal background, mental health issues, personnel and disciplinary issues, or drug or alcohol issues. It fails to indicate what screening is done to insure that the Execution Team Member who is given this access to the "Lethal Injection Chemicals" is trained and qualified at procuring, storing and transporting the "Lethal Injection Chemicals."

136. The Current Protocol fails to indicate who prepares, mixes and administers the "Lethal Injection Chemicals" (other than "one member of the execution team") and what training, education, licensing, or screening any member of the Execution Team has in the preparation, mixing and combining of the chemicals, drawing the chemicals into syringes and the administration of the chemicals (Plaintiff's Exhibit 4 p.38). Based on the vague descriptions of the Execution Team, there is no one who has pharmaceutical training or knowledge of drug compounding to mix the drugs. Moreover, the Current Protocol provides only that "another member of the execution team observes and verifies that the procedure has been carried out correctly." *Id.* Again, the Current Protocol fails to indicate what training, education, or licensing, or any screening any Execution Team Member has for observing the mixing of the

“Lethal Injection Chemicals,” drawing them into the syringes and administering the chemicals to make sure it is done correctly. There is no quality control to assure that the chemicals have actually been mixed correctly and at the proper dosage and that they are administered correctly.

ii. Anesthesia And Consciousness With sodium thiopental

137. There are differing levels of anesthesia, and thus consciousness.

138. The way the human body reacts to various stimuli differs depending upon the level of anesthesia. For example, when a person is administered sodium thiopental, they will continue to have the following states of consciousness at the following serum levels of pentothal:

- a. 0-13 mg/l: Consciousness;
- b. 13-18 mg/l: Loss of purposeful movement in response to verbal stimulation;
- c. 23-28 mg/l: Loss of purposeful movement in response to tetanic nerve stimulation;
- d. 33-46 mg/l: Loss of purposeful movement in response to trapezius muscle squeeze;
- e. 45-57 mg/l: Loss of movement in response to larangoscopy;
- f. 63 mg/l >: Loss of movement in response to intubation.

Article entitled Thiopental Pharmacodynamics, Plaintiff's Exhibit 31

139. Upon administration of sodium thiopental, EEG brain activity peaks at 13.3 mg/l, after which it drops back to normal activity at 31.2 mg/l, and zero brain waves per second occurs only with serum levels above 50 mg/l.

140. Anesthesia is the process of blocking the perception of pain and other sensations, creating insensibility to pain.

141. Sodium thiopental is an ultra-short acting barbiturate wherein the induction of anesthesia occurs quickly, but its effect wears off in a matter of minutes.

142. The effectiveness of sodium thiopental differs based on whether it is administered intravenously or *via* inhalation of gas.

143. Sodium thiopental is used as an anesthetic in surgery because it enables an anesthesiologist to quickly awaken a patient should complications arise. It is usually used only during the preliminary phase of anesthesia administration and not for general anesthesia.

144. The Current Protocol uses 5 grams of sodium thiopental, dispensed in four syringes, for the purpose of “general anesthesia” (Plaintiff’s Exhibit 4 p. 35). The Current Protocol fails to educate its readers (the Execution Team) about the rate and time of Sodium Thiopental’s onset, but also about its rapid withdrawal rate and that it is likely to cause pain and inflict burns if the drug is not properly dissolved or infiltrates to surrounding tissue.

145. The Committee which established the use of 5 grams of sodium thiopental to allegedly effect “general anaesthesia” and death by “one lethal 5 gram dose,” *see* Plaintiff’s Exhibit 4 p.35, Plaintiff’s Exhibit 5 p.7, acknowledges that “the effect and required dosage of sodium thiopental [is] less predictable and more variable... .” *See* Plaintiff’s Exhibit 5 p.8. Thus, the Committee has displayed deliberate indifference to the risk of pain and suffering by directing the use of one generic dose of sodium thiopental to supposedly achieve a proper level of anesthesia while at the same time knowing its effect upon the condemned is unpredictable.

146. The use of sodium thiopental by untrained personnel greatly increases the risk that a prisoner would not receive the necessary amount of anesthetic prior to being paralyzed and suffocated by the pancuronium bromide and then experiencing the painful internal burn of the potassium chloride.

147. The Current Protocol fails to address an individual prisoner's weight, medical condition and medical history as related to the dosage of sodium thiopental necessary to effectively anesthetize him, but instead just indicates that a 5 gram dose will be given (Plaintiff's Exhibit 4 p.35).

148. The Current Protocol requires the use of 10 boxes of 500 mg. of thiopental (Plaintiff's Exhibit 4 p.38). The Current Protocol fails to include the proper instructions for mixing sodium thiopental: for example, it fails to identify what the sodium thiopental should be mixed in, whether it is to be mixed all together (10 boxes in one mixing container) or one box at a time, what instrument is to be used to actually mix the solution, how the syringes should be filled, how many syringes should be filled per box of powder, or what precautions are taken to avoid settling or contamination of the sodium thiopental (Plaintiff's Exhibit 4 p.38). Moreover, the requirement that ten boxes of sodium thiopental be used is unnecessary and increases the risk that the sodium thiopental will be improperly mixed, combined and administered. This procedure unnecessarily increases the risk of error regarding proper mixture and effectiveness of the chemical.

149. The Current Protocol directs the Execution Team to practice with saline and not the Lethal Injection Chemicals (Plaintiff's Exhibit 4 p.33). This unnecessarily increases the risk that the sodium thiopental will not be mixed and combined properly. It unnecessarily increases the risk that the three drugs will not be drawn properly into the syringes or properly pushed into the IV line. The result is an unnecessary risk that the condemned will not be properly anesthetized and will unnecessarily suffer a painful and tortuous death by asphyxiation from pancuronium bromide while simultaneously feeling the extreme chemical burn from the injection

of potassium chloride.

150. The Current Protocol for execution by electrocution contains specific instructions for mixing a sodium chloride solution (Plaintiff's Exhibit 4 p.35). Such specific instructions are absent for mixing the sodium thiopental used for lethal injection, thus evincing deliberate indifference to the risk that the sodium thiopental will not be properly mixed and/or properly drawn into the syringes and/or properly administered causing the condemned to not be properly anesthetized and unnecessarily suffer a painful and tortuous death by asphyxiation from pancuronium bromide while simultaneously feeling the extreme chemical burn from the injection of potassium chloride.

151. The Current Protocol requires the Lethal Injection Chemicals to be prepared three hours before an execution (Plaintiff's Exhibit 4 p.38). The sodium thiopental could be sitting in the tray, in solution form, settling and degrading for up to 25 hours and 59 minutes before being used in the execution. This unnecessarily increases the risk that the condemned will not be properly anesthetized and will unnecessarily suffer a painful and tortuous death by asphyxiation from pancuronium bromide while simultaneously feeling the extreme chemical burn from the injection of potassium chloride.

152. Findings made as a result of the autopsy of Robert Coe show that his serum thiopental levels were 10 mg/L. This level is inadequate for unconsciousness (2007 Affidavit of Dr. Lubarsky, p.5-6 ¶20-21, Plaintiff's Exhibit 28). Philip Workman's serum thiopental levels were 18.9 mg/L which means he was not fully anesthetized during his execution (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky, p. 5). Steve Henley's levels were 8.31 mg/L, which

is also inadequate to be fully anesthetized during the execution. (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06, 09; Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p. 6).

153. The Current Protocol fails to provide for any monitoring of anesthetic depth as is necessary when using sodium thiopental (Plaintiff's Exhibit 4 p.43). The only monitoring provided for by the Current Protocol is monitoring of the IV site *via* close-circuit camera, which is inadequate. *Id.* There is no monitoring of the condemned for anesthetic depth. There is no monitoring of the IV lines and tubing during the administration of the drugs. The Current Protocol for execution by electrocution requires monitoring for "visible muscle movement" to determine the effectiveness of the electrocution (Plaintiff's Exhibit 4 p.74). No such monitoring with respect to the sodium thiopental is required. Thus, this procedure evinces deliberate indifference to the risk that the sodium thiopental will not be properly dosed, mixed and/or drawn into the syringes and administered causing the condemned to not be properly anesthetized and unnecessarily suffer a painful and tortuous death by asphyxiation from pancuronium bromide while simultaneously feeling the extreme chemical burn from the injection of potassium chloride.

154. Lack of monitoring, inadequately skilled personnel and the known risk of ineffectiveness of sodium thiopental have caused inadequate anesthetic states in executions in the United States, including jurisdictions considered by the Committee. Such botched executions, meaning inadequate anesthetic states when prison personnel administer sodium thiopental, were known or should have been known to the Committee. Instead, the Committee deliberately ignored this information when it stated that "5 grams of sodium thiopental would render a person unconscious within a few seconds, and its anesthetic depth would continue until death" (Plaintiff's Exhibit 5 p.7).

155. The Current Protocol does not require in the death chamber any personnel to monitor and determine if there is a blockage in the intravenous line or to evaluate whether a prisoner is properly sedated before proceeding with the painful parts of the execution process. The design of the Execution Chamber and the Lethal Injection Room, the restraints, the dressing and tape obscure and/or distort any view of the catheter, surrounding body area and tubing.

156. As a result, Mr. West will be inadequately anesthetized under the Current Protocol, and as shown *infra*, will experience an excruciatingly painful and horrifying death as a result of the conscious asphyxiation caused by the use of pancuronium bromide and the painful internal burn and potential cardiac arrest caused by the introduction of potassium chloride. Past experience of executions by the State of Tennessee shows a demonstrated risk of severe pain.

iii. Pancuronium bromide (Pavulon)

157. Pancuronium bromide, marketed under the name Pavulon, is a neuromuscular blocking agent which causes paralysis of the skeletal muscles of an individual. While pancuronium bromide paralyzes the diaphragm to prevent breathing, it does not affect the heart muscle.

158. Pancuronium bromide does not affect the brain or nervous system, nor does it block the actual reception of nerve impulses in the brain or the passage of such impulses within the brain. Pancuronium bromide does not affect consciousness or the sensation of pain or suffering. An individual under the influence of pancuronium bromide, though paralyzed, still has the ability to think, is still oriented to where he is, and is able to experience fear or terror, to feel pain, and to hear.

159. The Current Protocol uses two syringes containing a total of 100mg/100mL of pancuronium bromide as a “muscle paralytic” that will “assist in the suppression of breathing and insure death” (Plaintiff’s Exhibit 4 p. 35). The use of pancuronium bromide under the Current Protocol to paralyze Plaintiff greatly increases the risk that he will be subjected to a painful and protracted death.

160. Pancuronium bromide, administered by itself as a “lethal dose,” would not result in a quick death; instead, it would ultimately cause someone to asphyxiate or suffocate to death while still conscious.

161. Death by asphyxiation or suffocation constitutes cruel or unusual punishment.

162. If an individual is not properly anesthetized when injected with pancuronium bromide, he will consciously experience extreme pain and terror while being completely paralyzed. In this state, the person will undergo the terrorizing and excruciating experience of suffocation without the ability to move or to express the pain and suffering which he is experiencing as he is being suffocated.

163. Because pancuronium bromide paralyzes all skeletal muscles including facial muscles and those used to speak or communicate through noises, an observer cannot detect, from outward appearance, any expression of pain, horror, or suffering experienced because of the use of pancuronium bromide or suffering from any other source, such as potassium chloride which will activate the nerves of the venous system causing an extreme burning pain. *See infra*.

164. The Current Protocol fails to educate its readers (the Execution Team) regarding the true nature of pancuronium bromide – that its paralytic nature blocks the ability to determine

if someone is in pain (Plaintiff's Exhibit 4 p.35).

165. There is no legitimate penological purpose and no legitimate state interest for the use of pancuronium bromide articulated in the Current Protocol, or otherwise. The use of pancuronium bromide is not narrowly tailored to any compelling state interest articulated in the Current Protocol, or otherwise. *See* Plaintiff's Exhibit 4 p.35; Plaintiff's Exhibit 5 p.7-8. Chancellor Ellen Hobbs Lyle has explained that pancuronium bromide as used in the Current Protocol (as well as the Old Protocol) is unconstitutional: "[T]he use of Pavulon is . . . unnecessary. . . [T]he State [has] failed to demonstrate any reason for its use. The record is devoid of proof that the Pavulon is needed. Thus, the Court concludes that . . . the State's use of Pavulon is . . . in legal terms 'arbitrary.'" *Abdur'Rahman v. Sundquist*, No. 02-2236-III, opinion p. 13 (Tenn. Ch. 20th Jud. Dist. June 2, 2003).

a. The Committee which adopted the three-drug protocol set forth no compelling state interest for the use of pancuronium bromide. It does not speed or contribute to the death process. *See* Plaintiff's Exhibit 5 p.7. The Committee acknowledges that without the use of pancuronium bromide, the condemned would be able to move and communicate if not properly anesthetized. *Id.* at p.7-8. This would allow the condemned to communicate if the sodium thiopental did not properly anesthetize the person. The Committee, instead, arbitrarily attributes any such movement as "involuntary movement which might be misinterpreted as a seizure or an indication of consciousness." *Id.* at p.8. This is especially egregious since the Tennessee Protocol does not provide for any check for consciousness following administration of the sodium thiopental. Thus the Committee has displayed deliberate indifference to assuring that the condemned is properly anesthetized or to account for any contingency planning in the improper

mixing and/or administration of the sodium thiopental thus creating an unnecessary risk of pain and suffering.

b. The Committee noted pancuronium bromide, when properly administered, “prevents involuntary muscular movement” (Plaintiff’s Exhibit 5 p.7). However, using pancuronium bromide to prevent such movement “that *may* interfere with the proper functioning of the IV equipment,” *id.*, is not necessary nor narrowly tailored to meet the stated objective. Under the Current Protocol, the prisoner’s arms are securely restrained to the gurney (Plaintiff’s Exhibit 4 p.64); the catheters are covered with dressing (Plaintiff’s Exhibit 4 p.42); the IV lines are taped in place near the catheter, *id.*; and the prisoner’s hands are taped in place (Plaintiff’s Exhibit 4 p.43). There is a final inspection of the restraint devices to insure the condemned is secure on the gurney (Plaintiff’s Exhibit 4 p.14). These restraining devices are designed to keep the body parts containing catheters and IV lines still; there is no need to also paralyze the prisoner. Moreover, movements observed during actual executions are not caused by proper administration of the first drug, sodium thiopental, which is supposed to place the prisoner under a surgical plane of anesthesia. Movements observed during actual executions are caused when the second drug, pancuronium bromide, suffocates the person and his chest heaves as he gasps for air. Thus, the very drug purportedly used to prevent movements of the body actually induces such movements.

c. The use of pancuronium bromide in the Current Protocol is arbitrary, unreasonable, degrading to human dignity, shocks the conscience and serves no legitimate interest. Because pancuronium bromide causes paralysis, suffocation, and the suffering attendant to such paralysis and suffocation, in 2001, Tennessee declared in the “Nonlivestock Humane

Death Act” (TENN. CODE ANN. § 44-17-301, *et seq.*) that pancuronium bromide cannot be used to euthanize animals, because its use is not humane. Where the use of pancuronium bromide is not “humane” to use on non-humans, it is arbitrary and shocks the conscience to claim that its use is “humane” on humans. Its use on humans to cause death violates basic precepts of human dignity.

166. The Current Protocol fails to insure the proper storage and effectiveness of pancuronium bromide before its use (assuming it is to effect a quicker death). The Current Protocol acknowledges that pancuronium bromide “must be refrigerated at approximately 40 degrees” (Plaintiff’s Exhibit 4 p.36). The Committee Report acknowledges that use of a one-drug protocol would entail less risk because it would “not require refrigeration” (Plaintiff’s Exhibit 4 p.8). However, the Current Protocol directs that three hours before the scheduled execution, the pancuronium bromide, and other Lethal Injection Chemicals, will be moved to the Lethal Injection Room (Plaintiff’s Exhibit 4 p.38). The pancuronium bromide could remain in the Lethal Injection Room, at room temperature or higher, for up to 25 hours and 59 minutes before being used. This procedure and handling of pancuronium bromide demonstrates deliberate indifference to the unnecessary risk of pain and suffering by failing to insure the effectiveness of the drug before its use (assuming it is to effect a quicker death).

167. Death caused by the use of pancuronium bromide is gruesome, horrible, and painful. pancuronium bromide could not lawfully be used alone as the fatal agent because causing death by suffocation violates the Eighth Amendment’s and Tennessee Constitution Article 1, § 16’s prohibition against cruel and unusual punishment.

iv. Potassium chloride

168. In the Current Protocol, potassium chloride is the stated means for “cardiac arrest and rapid death” (Plaintiff’s Exhibit 4 p.35).

169. The administration of potassium chloride activates all the nerve fibers inside the venous system. Because veins are replete with nerve fibers, the administration of potassium chloride into the veins creates extreme pain.

170. In the absence of adequate anesthesia, the introduction of potassium chloride creates extreme and excruciating pain. The Current Protocol fails to educate its readers (the Execution Team) about the true nature of potassium chloride – that it would cause extreme pain in someone who is not properly anesthetized (Plaintiff’s Exhibit 4 p.35).

171. The Current Protocol lacks any provision for ascertaining the level of the prisoner’s anesthetic depth before introduction of the potassium chloride.

172. Under the Current Protocol, 100 mL of 2 mEq/mL, or 100 mg/mL of 2mEq/mL, of potassium chloride is introduced via two syringes into the body through a vein, usually in the arm. This method of administering this amount of potassium chloride is inadequate to stop the heart.

173. It takes a serum concentration of more than 16 mEq/l (16mmol/l) of potassium to arrest the heart (Ramsey Affidavit, Plaintiff’s Exhibit 34, p.6 ¶xxiv, p.7 ¶xxvi).

174. It is a pathophysiological impossibility for the heart to succumb to electro mechanical arrest due to the potassium component of the Current Protocol (Ramsey Affidavit, Plaintiff’s Exhibit 34, p.9 ¶xxxii).

175. The autopsy of Robert Coe, executed in Tennessee, demonstrates that his vitreous potassium was 9 mEq/L (9mmol/l), far short of the required minimum 16.4 mEq/L to cause electro mechanical arrest of the heart (Ramsey Affidavit, Plaintiff's Exhibit 34, p.8 ¶xxx). Steve Henley's potassium level was not elevated and would have had no effect on his heart (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06; Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.6-7).

176. One of the main contributing factors to low potassium concentration solutions reaching the heart would be that, given an intravenous injection, the solution would necessarily have to pass through the lungs (which have the surface area of approximately that of a tennis court) during which the potassium concentrations would fall dramatically (Ramsey Affidavit, Plaintiff's Exhibit 34, p.8 ¶xxix).

177. Using an amount of, and method of administering, potassium chloride which does not arrest the heart is meaningless and arbitrary and without a legitimate or compelling purpose. It will not hasten or effect death. It will only inflict excruciating pain if the condemned is not properly anesthetized. Instead, the killing agent will be the pancuronium bromide meaning death by suffocation or asphyxiation

178. If Mr. West remains conscious during the administration of the potassium chloride, he will suffer excruciating pain. Due to the paralysis induced by the pancuronium bromide, he will have no alternative reasonable and effective means to communicate the fact that he was not properly anesthetized. He will suffer a terrifying and painful death by suffocation.

v. **Death Under Tennessee's Lethal Injection Protocol**

179. The person being lethally injected under the Current Protocol actually dies from the suffocation caused by the pancuronium bromide and the resulting anoxic state, and not from cardiac arrest due to the administration of potassium chloride.

180. Because the person being lethally injected under the Current Protocol is likely inadequately anesthetized, he experiences the sensation and horror of suffocation from the pancuronium bromide, as well the excruciating pain associated with the introduction of potassium chloride.

D. TENNESSEE'S LETHAL INJECTION PROTOCOL IS NOT SUBSTANTIALLY SIMILAR TO THE KENTUCKY PROTOCOL APPROVED BY THE SUPREME COURT IN *BAZE V. REES*, 553 U.S. 35 (2008).

181. Tennessee's protocol is substantially different from Kentucky's protocol approved by the Supreme Court in *Baze v. Rees*, 553 U.S. 35 (2008).

182. The three-drug protocol as implemented in Tennessee contains substantial risk that is compounded by deficiencies and a lack of safeguards not seen in Kentucky.

183. Tennessee's protocol does not include important safeguards recommended by the Committee and adopted by other states. *Harbison*, 511 F.Supp.2d at 895. "[T]he most glaring omission" is a check for consciousness before the pancuronium bromide is administered. *Id.* at 884.

184. "Kentucky's protocol specifically requires the warden to redirect the flow of

chemicals to the backup IV site if the prisoner does not lose consciousness within 60 seconds” and to watch for signs of infiltration. *Baze*, 553 U.S. at 56. The Tennessee Protocol does not.

185. The Tennessee Protocol’s failure to provide a check for consciousness or monitoring for signs of infiltration “greatly increased the risk of pain because the pancuronium bromide would make it impossible for Warden Bell to determine if [the inmate] is suffering.” *Harbison*, 511 F.Supp.2d at 884. Additionally, Warden Bell does not know what signs to look for should infiltration occur. *See Harbison*, 571 F.3d at 540 fn1 (Clay, J., dissenting). These are significant differences from the Kentucky protocol.

186. Tennessee officials recognized and a district court has found, “the failure to check for consciousness greatly enhances the risk that the inmate will suffer unnecessary pain.” *Harbison*, 511 F.Supp.2d at 884. The Kentucky court did not so find.

187. One of the primary reasons that the *Baze* Court concluded Kentucky’s protocol did not present a “substantial” risk of harm from an improper administration of sodium thiopental was this check for consciousness. *Baze*, 128 S.Ct. at 1534 (“it was the explicit measures Kentucky took to ensure the proper administration of sodium thiopental that made the protocol in *Baze* constitutional.”). Again, this critical step is lacking from the Tennessee Protocol.

188. Other shortcomings in Tennessee’s protocol create substantial risks not present in the Kentucky protocol. “The risk created by Tennessee’s decision not to check for consciousness is compounded by Tennessee’s choice of individuals to mix and inject the drugs and monitor the IV lines during executions.” *Harbison*, 511 F.Supp.2d at 886. Similar shortcomings were not found in Kentucky’s protocol or in Kentucky’s personnel.

189. Ralph Baze conceded, and the Kentucky courts found, that “‘if performed properly,’ an execution carried out under Kentucky’s procedures would be ‘humane and constitutional.’” *Baze*, 553 U.S. at 49. West does not so concede. A federal district court found that Tennessee’s Protocol contains inherent, significant risks of error, even when properly followed. *Harbison*, 511 F.Supp.2d at 891 (“This is not a mere ‘risk of negligence’ but a guarantee of accident, written directly into the protocol itself.”); *see also id.* at 880-82.

190. There is an inherent risk that even an initially properly inserted catheter will slip from the vein during the injections of the lethal drugs. There is also a risk that “a person inserting an IV might get ‘false positives’ showing that an IV was inserted properly when, in fact, it was not.” Expert testimony in *Harbison* showed that IV catheters do move “with a fairly high frequency,” from veins into outer tissue even in a clinical setting. *Id.* at 889. Dr. Dershwitz, an expert witness for the State of Tennessee in *Harbison*, stated that “[s]ometimes intravenous catheters fail’ and that if the only individuals who are trained in monitoring IV lines leave the room following insertion of the catheters--which is what the new protocol dictates--he ‘think[s] it is logical to assume that there’s an increased risk.’” *Id.* at 888. The Kentucky court did not make similar findings.

191. A district court has found IV disruption is much more likely to occur under Tennessee’s protocol where untrained executioners administer large amounts of bolus injections, from far away, through long IV lines, “‘without direct visual contact and without tactile contact,’ all of which [are] ‘set-ups for failure and mistakes.’” *Id.* at 889. The Kentucky court did not make similar findings. Accordingly these facts were not present in the Supreme Court’s analysis of the Kentucky protocol.

192. Under Tennessee’s Current Protocol swelling might not occur in surrounding tissue, and other signs of ‘infiltration’ might not be present,” thus, making detection by untrained executioners unlikely. *Id.* at 890. Under the Current Protocol, such errors could not be detected by remote visual observation of the injection site, especially at the antecubital fossa, and that the IV Team members and the Executioners were “largely ignorant” about reliable ways to detect infiltration. *Id.* This is another significant difference from the Kentucky court’s finding that errors in administration of the anesthetic under Kentucky’s protocol could easily be detected by a lay person looking for swelling at the injection site. *Baze*, 553 U.S. at 56.

193. A further important distinction is that, under Kentucky’s protocol, the training level of personnel performing executions was found not to pose a substantial risk of pain to Baze, in light of safeguards included in the protocol. *Id.* In contrast, the Executioners selected under Tennessee’s protocol “received only very limited instruction, and that instruction relates to the tasks of the IV Team Members, not the actions they are actually charged with performing.” *Harbison*, 511 F.Supp.2d at 891. During practice sessions, the Executioners “do not receive any instruction . . . from the paramedics or any other medically qualified individuals. They do not troubleshoot potential problems that might occur, such as catheter infiltration, but simply practice performing their functions with saline solution.” *Id.* at 887.

194. A further factor in this analysis is the fact that “the decision to remove the paramedics from the execution chamber before the administration of the drugs would ‘certainly increase the risk’ of pain.” *Id.* at 889. The *Harbison* Court found “[t]he conclusion that somehow the ‘participation of the certified IV team’ in inserting the catheters and the ‘presence of a doctor,’ who is standing in a garage, somehow makes up for the failure to monitor the

inmate for consciousness before the injection of the two drugs likely to cause pain is entirely unwarranted by the evidence . . .” *Id.* at 900. Thus, “the failure to utilize adequately trained executioners increases the plaintiff’s [Harbison’s] risk of unnecessary pain.” *Id.* at 891. Similar findings were not made about the Kentucky protocol.

195. Experts told Tennessee officials that “with regard to mixing the sodium thiopental (the first drug), ‘[y]ou need someone who knows how to show them how to mix--a pharmacist, a nurse, or an anaesthesiologist.’” *Harbison*, 511 F.Supp.2d at 876; *See* Lubarsky testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 142, TR657; *see* Physician A testimony, *Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 142, TR497, 503-04. Tennessee, instead, selected a person without training in mixing sodium thiopental but who had once watched a Texas executioner perform the same task. *Harbison*, 511 F.Supp.2d at 886-87, 897. The *Harbison* Court found this compounded the risk of harm in the three-drug protocol as implemented in Tennessee. *Id.* Similar findings were not made about Kentucky’s implementation of its protocol.

196. Another factor further distinguishes Tennessee’s protocol from Kentucky’s. The new Tennessee Protocol eliminated a safeguard that existed under the old protocol. *Id.* at 898.

197. The Tennessee Protocol, when performed as written, does not sufficiently anesthetize the condemned prisoner. Evidence from past Tennessee executions shows this. *See* Workman, Coe and Henley autopsies, Plaintiff’s Exhibits 27, 26 and 29. Kentucky’s protocol does.

198. The only drug to reach lethal levels in the inmates executed under Tennessee’s

protocol is pancuronium bromide. This fact was not found under the Kentucky protocol.

199. Finally, in stark contrast to the *Baze* case, Tennessee officials failed to adopt an alternative one-drug protocol which they knew was feasible, was recommended by the Protocol Committee and all of the consulting experts, and which would eliminate the risks of pain inherent in Tennessee's three-drug protocol. The *Harbison* Court found "that Commissioner Little's rejection of the one-drug protocol, and the failure to provide for any of the safeguards considered by the Committee, constitutes deliberate indifference[]" to "a substantial risk of serious harm" *Id.* at 898. Kentucky officials did not adopt a protocol with deliberate indifference to a substantial risk of serious harm.

200. Tennessee's Current Protocol differs in substantial aspects to the Kentucky protocol.

COUNT I

THE HISTORY AND PRACTICE OF EXECUTIONS UNDER TENNESSEE'S CURRENT PROTOCOL IS SUBSTANTIALLY DIFFERENT FROM THE PRACTICE APPROVED IN KENTUCKY BY THE UNITED STATES SUPREME COURT IN *BAZE V. REES*, 553 U.S. 35 (2008). BY ADOPTING AND CONTINUING TO USE THE CURRENT PROTOCOL, DEFENDANTS HAVE SHOWN DELIBERATE INDIFFERENCE TO THE UNNECESSARY AND WANTON INFLICTION OF PAIN AND PROLONGED DEATH AND HAVE CREATED A SUBSTANTIAL RISK OF THE UNNECESSARY AND WANTON INFLICTION OF PAIN IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS AND IN VIOLATION OF TENNESSEE CONSTITUTION ARTICLE 1, § 16 . (DEFENDANTS RAY, BELL, MILLS, AND HODGE,)

201. Plaintiff incorporates the preceding paragraphs in their entirety.

202. Defendants Ray and Bell either participated in, or have been held out as participating in, the drafting and promulgation of the Current Protocols.

203. The Eighth Amendment prohibits executions which "involve the unnecessary and

wanton infliction of pain,” *Gregg v. Georgia*, 428 U.S. 153, 154 (1976), or which “involve torture or a lingering death.” *In re Kemmler*, 136 U.S. 436, 447 (1890) *citing Wilkerson v. Utah*, 99 U.S. 130, 135 (1878); *Gregg*, 428 U.S. at 170. Unnecessary and wanton infliction of pain is defined as the gratuitous infliction of suffering. It is not limited to physical pain, but includes psychological torture as well. *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003). Prolonging a person’s wait for impending death constitutes psychological torture. *Francois v. Wainwright*, 741 F.2d 1275, 1286-1287 (11th Cir. 1984).

204. Defendants Ray and Bell knowingly created the Current Protocol which poses a substantial risk of serious harm, unnecessary and wanton infliction of pain and suffering and lingering death.

205. Defendants are obliged to provide medical care for prisoners and a “deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain [] proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). A “serious medical need” is “one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor’s attention.” *Blackmore v. Kalamazoo County*, 390 F.3d 890, 897 (6th Cir. 2004). There is no question that deprivation of adequate anesthesia before introduction of the second and third drugs causes extreme terror and pain. Proper anesthesia in the lethal injection process is a sufficiently serious medical need. The history and practice of lethal injection under the current Protocol in Tennessee shows that condemned prisoners are inadequately anesthetized and therefore suffer a painful and agonizing death by suffocation.

206. In any execution, issues whether foreseen or unforeseen, may arise. Problems with equipment, personnel, procedures, *etc.*, occur with sufficient regularity. Yet, the Current Protocol fails to include contingency plans when such problems occur.

207. Prison policy in almost all areas, including medical care, routinely specifies contingency plans to be followed when such problems occur. These policies are specific. Tennessee's policy is that "[i]nmates in the physical custody of TDOC shall have timely access to the appropriate level of healthcare on a twenty-four (24) hour a day basis. TDOC Policy Statement, No. 113.30, Sec V (2004). "Appropriate level" of care includes that basic care which prevents significant pain or discomfort.

208. Defendants are required to provide Mr. West with appropriate medical care until the moment of his death, consequently the Eighth Amendment and Tennessee Constitution Article 1, § 16 mandate that the death penalty be administered without "deliberate indifference" to the "unnecessary and wanton infliction of pain."

209. Obvious and unnecessary pain and suffering requires an appropriate level of care under *Estelle, supra*, and TDOC Policy, especially when it occurs as a means of punishment. *Gregg, supra; In re Kemmler, supra*. Failure to ameliorate the known risks of unnecessary pain and lingering death during an execution gives rise to a claim of deliberate indifference. *Horn v. Madison County Fiscal Court*, 22 F. 3d 653, 660 (6th Cir. 1994) (a claim of deliberate indifference attaches when the Plaintiff "demonstrate[s] deliberateness tantamount to intent to punish").

210. The Current Protocol developed by Defendants Ray and Bell and by which

Defendants intend to execute Mr. West does not sufficiently protect him from deliberate indifference as guaranteed by the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16.

211. Claims of deliberate indifference have both an objective and subjective component. *Comstock v. McCrary*, 273 F. 3d 693, 702 (6th Cir. 2001). Satisfaction of the objective component occurs when the Plaintiff alleges a “sufficiently serious” medical need. *Id.* at 703. There is a “sufficiently serious” medical need when “even a lay person would easily recognize the necessity of a doctor’s attention.” *Blackmore v. Kalamazoo County*, 390 F.3d 890, 897 (6th Cir. 2004).

212. “To satisfy the subjective component, [of a deliberate indifference claim] the Plaintiff must allege facts which, if true, would show that the official being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded that risk.” *Id.* Defendants were aware of the risks inherent in the Current Protocol, based on prior lethal injection litigation in Tennessee and ongoing lethal injection litigation in fourteen other states and the District of Columbia, but persisted with deliberate indifference in promulgating a protocol that had been declared unconstitutional by other federal courts and unusable by Governors of other states, and that will cause an excruciatingly painful and horrifying death from the use of these three drugs by untrained personnel. *See* Plaintiff’s Exhibit 5.

213. Defendants knew about the substantial risks involved in execution by lethal injection but disregarded those risks and failed to make changes and incorporate safeguards into

the Current Protocol. Unlike the protocol approved in *Baze v. Rees*, 553 U.S. 35 (2008) Tennessee's Protocol was adopted without including necessary safeguards. Furthermore, unlike Kentucky, Tennessee's experience with its Protocol shows a history of torturous executions, and yet, all Defendants continue to adhere to it.

214. Although it is possible to conduct executions in a constitutionally compliant manner, Defendant Ray and Bell, Committee Members, chose not to do so. By adhering to the Current Protocol despite autopsy results that demonstrate its unconstitutionality, all Defendants are acting with deliberate indifference.

a. The Defendants could choose to use different chemicals that pose a low risk of administration error yet do not cause extraordinarily grave consequences to a condemned inmate if not properly administered. Despite recommendations from the Committee charged with re-working the Protocol, the Defendants deliberately chose not to use a one or two drug protocol, but to continue with a three-drug protocol (Plaintiff's Exhibit 5 p.6-8). Defendants acknowledge the three-drug "procedure is the most complicated of the three protocols" they considered and "presents the greatest difficulty in accounting for the lethal injection chemicals, particularly because pancuronium bromide requires refrigeration" (Plaintiff's Exhibit 5 p.7-8). Defendants knowingly or recklessly chose the three drugs and chose to use those drugs in a manner that poses a high risk of administration error resulting in an unnecessarily painful and lingering death.

b. Defendants have not taken precautions to insure that personnel involved in an execution by lethal injection are not under the influence of intoxicating or mind-altering substances.

c. Defendants have not taken precautions to insure that the personnel who set up the IV lines and insert the catheters have the training, experience, and expertise needed to perform those functions. This is a substantial difference from the Kentucky protocol where no such finding has been made.

d. Defendants have not taken precautions to insure that the personnel who prepare and administer the lethal injection chemicals possess the training, experience, and expertise needed to administer those chemicals properly.

e. Defendants have not taken precautions to insure that the condemned is adequately anesthetized before administering the second and third drugs. Kentucky's protocol contains just such a safeguard. This lack of precaution in Tennessee's Protocol makes it substantially different from that of Kentucky's.

f. Defendants have not adequately provided for contingency plans, personnel and equipment. Furthermore, Tennessee's removal of any trained personnel from the execution chamber means that no one is directly monitoring the inmate for signs of infiltration. This is different from Kentucky where the "protocol specifically requires the warden to redirect the flow of chemicals to the backup IV site if the prisoner does not lose consciousness in sixty seconds." *Baze v. Rees*, 553 U.S. at 56. In addition, no one checks for the possibility of IV slippage. Unlike Kentucky, there is no direct visual or tactile contact with the condemned.

g. Defendants have not incorporated "best practices" from other lethal injection jurisdictions.

215. The person being lethally injected under the Current Protocol actually dies from

the suffocation caused by the pancuronium bromide and the resulting anoxic state, and not from cardiac arrest due to the administration of potassium chloride (Ramsey Affidavit, Plaintiff's Exhibit 34, p.2 ¶vi, p.9 ¶xxxii). The history of executions in Tennessee using lethal injection bears this out.

216. Because the person being lethally injected under the Current Protocol is likely inadequately anesthetized, he experiences the sensation and horror of suffocation from the pancuronium bromide, as well the excruciating pain associated with the introduction of potassium chloride. There is, therefore, a substantial risk of the State inflicting a cruel and unusual punishment.

217. Executing Mr. West by means of the Current Protocol is arbitrary, cruel and done with deliberate indifference. It is a violation of the Eighth and Fourteenth Amendments and a violation of Tennessee Constitution Article 1, § 16 to use an arbitrary, cruel, and/or unreliable method of execution that poses a substantial risk of inflicting unnecessary pain, particularly when this risk of unnecessary pain or lingering death is known and foreseeable.

COUNT II

VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 BY THE USE OF SODIUM THIOPENTAL PURSUANT TO THE CURRENT PROTOCOL (DEFENDANTS RAY, BELL, MILLS, HODGE JOHN DOE PHYSICIANS 1-100, JOHN DOE PHYSICIANS 1-100, JOHN DOE PHARMACISTS 1-100, JOHN DOE MEDICAL PERSONNEL 1-100, JOHN DOE EXECUTIONERS 1-100, JOHN DOES 1-100)

218. Plaintiff incorporates the preceding paragraphs in their entirety.

219. Inducing unconsciousness by correctly administering sodium thiopental is indispensable to preventing the wanton infliction of pain and psychological torture caused by the

use of pancuronium bromide and potassium chloride in a three-drug lethal injection protocol.

Unlike Kentucky, the Tennessee Protocol does not include any check for consciousness to insure that the inmate is adequately anesthetized before the pancuronium bromide is administered.

220. The use of sodium thiopental as administered under the Current Protocol does not cause sufficient anesthesia for the duration of the lethal injection process.

221. As administered under the Current Protocol, the use of sodium thiopental, as opposed to a longer-lasting anesthetic, is arbitrary, unreasonable, irrational, and serves no legitimate or compelling state interest. *See Hill v. McDonough*, 547 U.S. 573, 580 (2006) (the challenged procedure presents a risk of pain the State can avoid). It fails to provide sufficient anesthetic depth to prevent the condemned from experiencing the pain and psychological torture of suffocation caused by pancuronium bromide and it fails to provide sufficient anesthetic depth to prevent the condemned from experiencing excruciating pain from the injection of potassium chloride and its effects, if any, on the heart.

a. Defendants are aware of executions by lethal injection which have taken substantially longer than 2 to 5 minutes after introduction of sodium thiopental.

b. If the intended amount of sodium thiopental fails to reach the condemned's brain (which can occur as a result of an infiltration, leakage, mixing error, or other causes) and the condemned receives a near surgical dose of sodium thiopental, the duration of narcosis will be brief and the prisoner could reawaken during the execution process. Defendants are aware of this problem occurring.

c. In Oregon, which has legalized physician-assisted suicide for the terminally ill,

state doctors prescribe an overdose from a long-acting barbiturate, like pentobarbital.

d. In veterinary medicine, sodium phenobarbital, a somewhat slower-acting but longer-lasting barbiturate, is used for animal euthanasia.

222. As administered under the Current Protocol, the use of a generic dose of sodium thiopental, as opposed to a dosage which accounts for the condemned's health history and physical condition, is arbitrary, unreasonable, irrational, and serves no legitimate or compelling state interest. It fails to provide sufficient anesthetic depth to prevent the condemned from experiencing the pain and psychological torture of suffocation caused by pancuronium bromide and it fails to provide sufficient anesthetic depth to prevent the condemned from experiencing excruciating pain from the injection of potassium chloride and its effects, if any, on the heart.

a. Defendants know "the effect and required dosage of sodium thiopental" as administered under the Current Protocol, is "less predictable and more variable" (Plaintiff's Exhibit 5 p.8), yet no checks for consciousness are done.

b. Mr. Coe's autopsy report shows his thiopental level was 10.2 mg/l, which is inadequate to establish unconsciousness (Plaintiff's Exhibit 26, Coe Autopsy Bates p.13; Plaintiff's Exhibit 28, 2007 Affidavit of Dr. Lubarsky p.4).

c. Mr. Workman's autopsy report shows his sodium thiopental level was 18.9 mg/l, derived from blood drawn from the heart ten days after his execution, which is inadequate to establish unconsciousness (Plaintiff's Exhibit 27, Workman Autopsy Bates p.03, 07; Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.5).

d. According to Dr. Bruce Levy, formerly Tennessee's chief medical examiner, post-

mortem thiopental levels derived from heart blood may be twice as high as the thiopental level at death (*See* Levy testimony, *Harbison v. Little*, M.D. Tenn., No. 3:06-cv-1206, DE 142, TR734; *see also* Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.5). This means that Mr. Workman's actual thiopental level could have been 9 - 10 mg/L, which is even more inadequate to establish unconsciousness.

e. Mr. Henley's autopsy report shows his serum thiopental level was 8.31 mg/l, which is inadequate to establish unconsciousness (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06; Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.6).

f. According to Dr. Levy, the executions of Robert Coe, Philip Workman, and Steve Henley were carried out in the manner intended by the Tennessee Protocol. *See* ¶¶ 50, 59, and 67, *supra/infra*.

g. Accordingly, the Tennessee Protocol as designed, fails to induce unconsciousness prior to the administration of pancuronium bromide and potassium chloride. Regardless of whether Mr. West's death is later caused by the administration of pancuronium bromide or potassium chloride, the Tennessee Protocol, as designed, will result in severe and unnecessary pain in violation of the Eighth Amendment and Tennessee Constitution Article 1, § 16.

h. The Current Protocol fails to account for the fact that body weight must be taken into account when using sodium thiopental as the sodium thiopental reacts differently in the body depending on weight, medical condition and history. *See* Leonardis Koniaris et al, *Lethal Injection For Execution: Chemical Asphyxiation?* PLOS Medicine, Vol. 4, Issue 4, 0651 (April 2007). Several regularly prescribed drugs at RMSI interfere with the ability of sodium thiopental

to act properly as an anesthetic.

i. The Current Protocol fails to take into account a recent study examining toxicology reports from prisoners executed by California and North Carolina, along with reports from witnesses to executions in other states, that confirms that some prisoners remained conscious during the administration of lethal drugs due to the ineffectiveness of sodium thiopental (Leonidas Koniaris, et al, *Inadequate Anesthesia in Lethal Injection for Execution*, 365 Lancet 1412-1414 (2005), Plaintiff's Exhibit 35); *see also* (2007 Lubarsky affidavit, Plaintiff's Exhibit 28, p.3 ¶14).

223. The absence of trained personnel to mix, combine and administer sodium thiopental and insure a prisoner is properly anesthetized before the other chemicals are introduced greatly increases the risk that a prisoner would not receive the necessary amount of anesthetic prior to being paralyzed by the pancuronium bromide and internally burned by the potassium chloride. sodium thiopental is extremely unstable, it must be carefully and properly mixed so that it does not crystallize, a technical task that requires significant training in pharmaceutical calculations. In this respect, Tennessee's Current Protocol is substantially different from Kentucky's where no such lack of training was documented.

a. The method of mixing the sodium thiopental, as described by Defendant Bell, is not medically accepted (2007 Lubarsky affidavit, Plaintiff's Exhibit 28, p.4-5 ¶17). It is not clear that thiopental can be reliably mixed at 100 mg/mL, as described by Defendant Bell. *Id.*

b. The Current Protocol fails to provide comprehensive training or instructions for mixing, combining and administering the sodium thiopental.

c. The Current Protocol unnecessarily requires the use of ten packages of sodium thiopental, which increases the risk of error in reconstituting the sodium thiopental and the risk that the condemned will not be sufficiently anesthetized.

d. Defendants are aware of problems even when a board-certified physician has been used to prepare the three drugs. *See* Plaintiff's Exhibit 5 p.12 *citing Taylor v. Crawford*. The Current Protocol's use of untrained and unqualified persons to prepare the three drugs knowingly heightens the risk of problems with the effectiveness of the sodium thiopental (and other two drugs).

e. The AVMA requires personnel be trained and knowledgeable in anesthetic techniques, and competent in assessing anesthetic depth appropriate for the subsequent administration potassium chloride. The fact that the Current Protocol knowingly uses a short-acting barbiturate and knowingly contains no comparable requirements for the personnel who use the same drug in executing prisoners, (Plaintiff's Exhibit 4 p.8-9), shocks the conscience of a civilized society.

224. The Current Protocol fails to include procedures to ensure that the condemned is unconscious after the administration of sodium thiopental before initiating administration of the second and third drugs. Kentucky's protocol provides this safeguard making it substantially different from Tennessee's.

a. The Tennessee Committee purported to review the Florida Commission Report (Plaintiff's Exhibit 5 p.13) but the Report fails to indicate what, if any, guidance it obtained and why proposals in the report to ensure the condemned reaches a surgical plane of anesthesia

before administering the other two drugs were rejected and not included in the Current Protocol.

Compare Plaintiff's Exhibit 25, Florida Report p.11

b. The failure of the Current Protocol to have qualified and trained personnel monitor the condemned after the administration of sodium thiopental to ensure there has been no IV access issue and to ensure that the inmate has reached an appropriate plane of anesthesia prior to administration of the other two drugs is a critical and unacceptable departure from the standards of medical care and veterinary care, and falls below the lethal injection protocols of other states, including Kentucky's.

c. The Current Protocol prevents proper monitoring of the flow of fluids to insure the sodium thiopental is properly administered. Proper monitoring of the flow of fluids into the vein requires a clear view of the IV site, and also tactile examination of the skin surrounding the IV site. Merely pushing a syringe into an intravenous line is no guarantee that the drug will reach the intended recipient, nor that the recipient will experience the desired effect (Plaintiff's Exhibit 28, 2007 Lubarsky affidavit, p.7 ¶23).

COUNT III

VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 BY THE USE OF PANCURONIUM BROMIDE PURSUANT TO THE CURRENT PROTOCOL (DEFENDANTS RAY, BELL, MILLS, HODGE, JOHN DOE PHYSICIANS 1 - 100, JOHN DOE PHYSICIANS 1-100, JOHN DOE PHARMACISTS 1-100, JOHN DOE MEDICAL PERSONNEL 1-100, JOHN DOE EXECUTIONERS 1-100, JOHN DOES 1-100)

225. Plaintiff incorporates the preceding paragraphs in their entirety.

226. The use of pancuronium bromide, as administered under the Current Protocol, violates Plaintiff's right to be free from cruel and unusual punishment under the Eighth and

Fourteenth Amendments and Tennessee Constitution Article 1, § 16 . Specifically, Plaintiff has a right to be free from arbitrary methods of punishment; from suffering physical pain beyond that inherent in the course of death; from suffering psychological pain; and, from a prolonged death. The use of pancuronium bromide is gratuitous, arbitrary, inhumane, violates the dignity of the human person, and is contrary to the evolving standards of decency and shocks the conscience. See *Hill v. McDonough*, 547 U.S. at 580 (the challenged procedure presents a risk of pain the State can control).

227. The autopsy report of Robert Coe demonstrates his blood level of pancuronium was 4.7 mg/l or 4700 mEq/l (4700 ng/ml)(Plaintiff's Exhibit 26, Coe Autopsy Bates p.14). This level of pancuronium paralyzed and suffocated Mr. Coe (Plaintiff's Exhibit 28, 2007 Affidavit of Dr. Lubarsky p.4-5).

228. The autopsy report of Philip Workman shows his blood level of pancuronium was .630 mg/l (Plaintiff's Exhibit 27, Workman Autopsy Bates p.03, 07). Dr. Levy testified that pancuronium was the only drug to completely reach a lethal level (*See Levy testimony, Harbison v. Little, et al*, M.D. Tenn., No. 3:06-cv-1206, DE 142, TR920). This level of pancuronium paralyzed and suffocated Mr. Workman (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.6).

229. The autopsy report of Steve Henley demonstrates that his blood level of pancuronium was 1.6 mg/l or 1600 mEq/l (1600ng/ml) (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06). This level of pancuronium paralyzed and suffocated Mr. Henley (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.6-7).

230. According to Dr. Levy, the executions of Robert Coe, Philip Workman, and Steve Henley were carried out in the manner intended by the Tennessee Protocol. See ¶¶ 50, 59, and 67, *infra*.

231. Pancuronium bromide could not lawfully be used alone as the fatal agent. It would result in a prolonged death; ultimately causing someone to suffocate or asphyxiate to death. Suffocation is physically painful in that a person feels an unbearable crushing pressure in the chest. Suffocation creates several minutes of psychological terror in that a person, unable to breathe, gasps and heaves in vain for air while anticipating death. Yet, because of the paralyzing effect of the pancuronium bromide, there would be additional torment in that the condemned would be unable to move or communicate the agony. Causing death by suffocation or asphyxiation violates the Eighth Amendment's and Tennessee Constitution Article 1, § 16's prohibition against cruel and unusual punishment.

232. The use of pancuronium bromide is gratuitous. Defendants who adopted the three-drug protocol set forth no compelling state interest for the use of pancuronium bromide. It does not speed or contribute to the death process; it causes excessive physical and psychological pain; and, by masking consciousness of the prisoner, it prevents any remedial acts should the sodium thiopental fail to place the prisoner in a surgical plane of anesthesia. pancuronium bromide serves no legitimate medical purpose during execution.

a. Defendants acknowledged that without the use of pancuronium bromide, the condemned would be able to move and communicate if not properly anesthetized. Defendants instead attributed any such movement as "involuntary movement which might be misinterpreted

as a seizure or an indication of consciousness” without considering that such movements would indicate a lack of anesthetic depth. *See* Plaintiff’s Exhibit 5 p.8. However, without a test for consciousness, there is a substantial risk that the condemned is insufficiently anesthetized. Thus the Defendants have also displayed deliberate indifference to ensuring that the condemned is properly anesthetized or to account for any contingency planning in the improper mixing and/or administration of the sodium thiopental, thus creating an unnecessary risk of pain and suffering. This makes Tennessee’s Current Protocol substantially different from Kentucky’s, where there is monitoring for consciousness before the pancuronium bromide is administered..

b. The Committee noted pancuronium bromide, when properly administered, “prevents involuntary muscular movement” (Plaintiff’s Exhibit 5 p.7). However, using pancuronium bromide to prevent such movement “that *may* interfere with the proper functioning of the IV equipment,” *id.*, is not necessary nor narrowly tailored to meet the stated objective. Under the Current Protocol, the prisoner’s arms are securely restrained to the gurney (Plaintiff’s Exhibit 4 p.64); the catheters are covered with dressing (Plaintiff’s Exhibit 4 p.42); the IV lines are taped in place near the catheter, *id.*; and the prisoner’s hands are taped in place (Plaintiff’s Exhibit 4 p.43). There is a final inspection of the restraint devices to insure the condemned is secure on the gurney (Plaintiff’s Exhibit 4 p.14). These restraining devices are designed to keep the body parts containing catheters and IV lines still; there is no need to also paralyze the prisoner. Moreover, movements observed during actual executions are not caused by proper administration of the first drug, sodium thiopental, which is supposed to place the prisoner under a surgical plane of anesthesia. Movements observed during actual executions are caused when the second drug, pancuronium bromide, begins to suffocate the person and his chest heaves as he

gasps for air. Thus, the very drug purportedly used to prevent movements of the body actually induces such movements.

c. Because the Current Protocol does not provide careful timing of the injections of the drugs, there may not be time for the pancuronium bromide to cause complete paralysis before the potassium chloride is introduced. The movements that might be caused by potassium chloride (those movements Defendants attempt to prevent by paralyzing the prisoner) may still occur. Thus, Defendants have assumed the known risks associated with using pancuronium bromide without any clear instructions to ensure it will prevent movements.

d. The use of pancuronium bromide in the Current Protocol is arbitrary, unreasonable, degrading to human dignity, shocks the conscience and serves no legitimate interest. Because pancuronium bromide causes paralysis, suffocation, and the suffering attendant to such paralysis and suffocation, in 2001, Tennessee declared in the “Nonlivestock Humane Death Act” (TENN. CODE ANN. § 44-17-301, *et seq.*) that pancuronium bromide cannot be used to euthanize animals, because its use is not humane. Where the use of pancuronium bromide is not “humane” to use on non-humans, it is arbitrary and shocks the conscience to claim that its use is “humane” on humans, and its use on humans to cause death violates basic precepts of human dignity.

e. Standard medical practice regarding end of life care eschews the use of neuromuscular blocking agents like pancuronium bromide.

f. The creator of the original three-drug protocol believes pancuronium bromide should be eliminated from the protocol and, if he were to create a protocol today, he would

eliminate it (Plaintiff's Exhibit 36, Cohen, Elizabeth, *Lethal Injection Creator: Maybe It's Time to Change Formula*, www.CNN.com/2007/HEALTH/05/07/lethal.injection/index.html).

233. The Current Protocol specifies the use of "100mg/mL" (Plaintiff's Exhibit 4 p.38).

- a. Pancuronium is not supplied in such a high concentration.
- b. If the concentration of pancuronium bromide listed in the Current Protocol is not an error, then the Current Protocol cannot be followed.
- c. Other jurisdictions use Pancuronium supplied in concentrations of one fiftieth to one hundredth of the amount in the Current Protocol.
- d. If this is an error in the Current Protocol, it demonstrates that unanticipated and undetected errors do occur.

234. The Current Protocol fails to ensure the proper storage and effectiveness of pancuronium bromide before its use (assuming it is to effect a quicker death). The Current Protocol acknowledges that pancuronium bromide "must be refrigerated at approximately 40 degrees" (Plaintiff's Exhibit 4 p.36). However, the Current Protocol directs that three hours before the scheduled execution, the pancuronium bromide, and other Lethal Injection Chemicals, will be moved to the Lethal Injection Room (Plaintiff's Exhibit 4 p.38). The pancuronium bromide could remain in the Lethal Injection Room, at room temperature or higher, for up to 25 hours and 59 minutes before being used. This procedure and handling of pancuronium bromide demonstrates deliberate indifference to the unnecessary risk of pain and suffering by failing to ensure the effectiveness of the drug before its use (assuming it is to effect a quicker death) and by

failing to provide a contingency plan should the execution not occur at the originally scheduled time.

COUNT IV

VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 BY THE USE OF POTASSIUM CHLORIDE PURSUANT TO THE CURRENT PROTOCOL (DEFENDANTS RAY, BELL, MILLS, HODGE, JOHN DOE PHYSICIANS 1 - 100, JOHN DOE PHYSICIANS 1-100, JOHN DOE PHARMACISTS 1-100, JOHN DOE MEDICAL PERSONNEL 1-100, JOHN DOE EXECUTIONERS 1-100, JOHN DOES 1-100)

235. Plaintiff incorporates the preceding paragraphs in their entirety.

236. Under the Current Protocol, “100 mL of 2 mEq/mL” of potassium chloride (Plaintiff’s Exhibit 4 p.39), or “100 mg/mL of 2mEq/mL” (Plaintiff’s Exhibit 4 p.35), is introduced *via* two syringes into the body through a vein, usually in the arm. This method of administering this amount of potassium chloride is inadequate to stop the heart (Plaintiff’s Exhibit 32, 2010 Affidavit of Dr. Lubarsky, p.8-9 ¶xxix - xxxii).

237. The use of 100 milligrams of potassium chloride, as specified in the Current Protocol, would not likely cause death within a minute. If this dosage is an error, it is a significant error in the Current Protocol and further demonstrates Defendants’ inability to understand the dosages of drugs and failures in qualification and skill of those involved in Tennessee’s execution process.

238. It is a pathophysiological impossibility for the heart to succumb to electro mechanical arrest due to the potassium component of the Current Protocol (Plaintiff’s Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.9 ¶xxxii).

239. It takes a serum concentration of more than 16 mEq/l (16mmol/l) of potassium to

arrest the heart. (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky, p.6 ¶xxiv).

240. The autopsy report of Robert Coe reveals that his vitreous potassium was 9 mEq/l (9mmol/l), (Plaintiff's Exhibit 28, Coe Autopsy Bates p.09) far short of the required minimum 16.4 mEq/l to cause electro mechanical arrest of the heart.

241. The autopsy report of Philip Workman reveals only that his vitreous potassium level was at some unspecified level above 9 mEq/l (9mmol/l), (Plaintiff's Exhibit 27, Workman Autopsy Bates p.03, 12), a level far short of the required minimum 16.4 mEq/l to cause electro mechanical arrest of the heart.

242. The autopsy report of Steve Henley demonstrates that his vitreous potassium was 6 mEq/l (6mmol/l) (Plaintiff's Exhibit 29, Henley Autopsy Bates p.02, 06) Mr. Henley's potassium level was normal, not elevated, (*id.*), and far short of the required minimum 16.4 mEq/l to cause electro mechanical arrest of the heart.

243. Further, as to Mr. Henley in particular, witnesses to the Henley execution observed his skin color turn blue to purple during his execution (Plaintiff's Exhibit 30, Affidavit of Stacy Rector p.1).

244. Mr. Henley's change in skin color is consistent with death by suffocation while his heart continued to beat (Plaintiff's Exhibit 32, 2010 Affidavit of Dr. Lubarsky p.7).

245. According to Dr. Levy, the executions of Robert Coe, Philip Workman, and Steve Henley were carried out in the manner intended by the Tennessee Protocol. See ¶¶ 50, 59, and 67, *supra*.

246. Using an amount of, and method of administering, potassium chloride which does

not arrest the heart is gratuitous, meaningless and arbitrary and without a legitimate or compelling purpose. potassium chloride serves no legitimate medical purpose during execution. It will not hasten or effect death. It will only inflict excruciating pain if the condemned is not properly anesthetized. *See Hill v. McDonough*, 547 U.S. at 581 (the challenged procedure presents a risk of pain the State can control). Instead, the killing agent will be the pancuronium bromide meaning death by suffocation or asphyxiation.

247. In the absence of adequate anesthesia, the introduction of potassium chloride creates extreme and excruciating pain. The Current Protocol fails to educate its readers (the Execution Team) about the true nature of potassium chloride – that it would cause extreme pain in someone who is not properly anesthetized (Plaintiff's Exhibit 4 p.35).

248. Unlike the Kentucky protocol approved in *Baze*, the Current Protocol lacks any provision for ascertaining the level of the prisoner's anesthetic depth before introduction of the potassium chloride.

249. If Mr. West remains conscious during the administration of the potassium chloride, he will suffer excruciating pain. The autopsy results from previous Tennessee executions show that, when properly administered, the Current Protocol does exactly that. Due to the paralysis induced by the pancuronium bromide, he will have no alternative reasonable and effective means to communicate the fact that he was not properly anesthetized. He will suffer a terrifying and painful death by suffocation.

COUNT V

VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENT AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 THROUGH ADHERENCE TO THE CURRENT PROTOCOL WHICH FAILS TO PROVIDE ADEQUATE QUALIFICATIONS AND TRAINING OF PERSONNEL TO MINIMIZE THE KNOWN RISKS INVOLVED IN EXECUTION BY LETHAL INJECTION (DEFENDANTS RAY, BELL, MILLS, HODGE, JOHN DOE PHYSICIANS 1 - 100, JOHN DOE PHYSICIANS 1-100, JOHN DOE PHARMACISTS 1-100, JOHN DOE MEDICAL PERSONNEL 1-100, JOHN DOE EXECUTIONERS 1-100, JOHN DOES 1-100)

250. Plaintiff incorporates the preceding paragraphs in their entirety.

251. TDOC asserts that “[t]he method of finding a suitable blood vessel and maintaining a flow through that blood vessel are considered to be medical matters that will be addressed through standard medical methods and procedures.” Accordingly, the execution process, including the IV set-up, location of veins, access to veins, insertion of catheters, monitoring and introduction of the three drug protocol are governed by “standard medical methods and procedures”. The Current Protocol fails to comport with those methods and procedures.

252. In this respect, Tennessee’s Current Protocol is substantially different from Kentucky’s protocol approved in *Baze*, where similar problems were not found.

253. Defendants’ inadequate selection, education, and training of persons involved in the lethal injection process creates the risk of unnecessary pain and suffering; does not conform with evolving standards of decency; and evinces deliberate indifference to minimizing known risks. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

a. The Current Protocol fails to indicate what medical training, education, or licensing the IV Team has, if any, and if any medical training, education, or licensing is required

for their selection for those positions. The Current Protocol does not require that the IV Team Members be qualified in any particular way. *See* Plaintiff's Exhibit 4 p.32. The Current Protocol does not require the IV Team Members to be current with IV access procedures. *Id.* This renders the IV Team unqualified to perform IV access in an execution context.

b. The Current Protocol fails to indicate how persons on the Execution Team are qualified to participate in an execution or what screening, if any, has been done to ensure that these persons do not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues. Plaintiff's Exhibit 4 p.32.

c. The Current Protocol fails to indicate how the Physician is qualified to participate, how he or she is chosen, by whom he or she is chosen, or what screening, if any, has been done to ensure that the medical doctor does not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues. Indeed, the Physician is hardly participating anyway; instead he is physically remote from the procedure, standing in the capital punishment garage.

d. The Current Protocol fails to indicate what instruction the Executioner receives, by whom that instruction is given, and what qualifications, education, training, licensing and screening that individual has to provide any such instruction. The Current Protocol only says that "[t]he Executioner receives initial and periodic instruction from a qualified medical professional" (Plaintiff's Exhibit 4 p.33). The Executioner is not required to be certified in IV training. Moreover the Current Protocol fails to define the role of the Executioner; fails to identify the Executioner; how he or she is chosen; by whom he or she is chosen; what qualifications or

training he or she has; or what screening, if any, has been done to ensure that the Executioner does not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues. Even experienced anesthesiologists sometimes err by holding the syringe in the wrong direction, causing a retrograde injection. The Current Protocol fails to provide for an alternative Executioner in the event the primary Executioner is unable to attend an execution.

e. The Current Protocol fails to indicate how specialized members of the Execution Team identified as “two (2) EMTs - Paramedic - Certified Emergency Medical Technician” are qualified to participate; by whom they were chosen to participate; or what screening, if any, has been done to ensure that these members do not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues. *See* Plaintiff’s Exhibit 4 p.32.

Moreover, the Current Protocol fails to indicate what role these “EMTs - Paramedic - Certified Emergency Medical Technician” play on the execution team. *Id.*

f. The Current Protocol fails to indicate how the “three correctional officers” who “received IV training through the Tennessee Correction Academy by qualified medical professionals” are qualified to participate as part of the IV team; by whom were they chosen to participate; what screening, if any has been done to insure that these specific members do not have a criminal background, mental health issues, personnel and disciplinary issues, drug or alcohol issues; and what screening has been done, if any, to ensure that they can competently perform their duties as part of the IV team. *See* Plaintiff’s Exhibit 4 p.32. The Current Protocol fails to specifically indicate that these “three correctional officers” actually make up the IV team. *See* Plaintiff’s Exhibit 4 p. 21, 32. In addition, the Current Protocol fails to explain or elaborate on the alleged “IV training through the Tennessee Correction Academy by qualified medical

professionals.” *See* Plaintiff’s Exhibit 4 p.32.

254. The Current Protocol fails to indicate what training is required for members of the Execution Team. *See* Plaintiff’s Exhibit 4 p.33. The Current Protocol only indicates that Execution Team members are required to read the manual and that “[t]he Warden or his designee holds a class during which the manual is reviewed and clearly understood by all participants” (Plaintiff’s Exhibit 4 p.33).

a. The Current Protocol does not explain how the Warden insures that the manual is clearly understood by all participants nor does it explain who teaches the science and medical techniques to be utilized in the manual. *See id.*

b. The Current Protocol fails to include photographs of the lethal injection apparatus and its proper set-up. In contrast, the Current Protocol contains detailed pictures of the apparatus used for execution by electrocution and its proper set-up. The failure to provide such photographs, training and instruction for executions by lethal injection, or to even name the technique to be employed, demonstrates deliberate indifference to the proper administration of an execution by lethal injection and heightens the risk of unnecessary infliction of pain and suffering.

c. The Current Protocol fails to provide training and instructions for using the shortest amount of tubing, extensions and junctions for the IV set-up which will reduce problems associated with blockages, kinks, *etc.*, in the lines. The Current Protocol fails to indicate what kind of junctures are used in the tubing, what kind of stopcock is used, or the size of the IV catheter.

d. The Current Protocol fails to provide training and instructions for removing the tourniquet and fails to designate a person to do so. Failure to properly loosen or move the tourniquet will delay or inhibit the delivery of the drugs by the circulation to the central nervous system, thus reducing the effectiveness of any anesthetic properties of the sodium thiopental.

e. The Current Protocol fails to provide training and specific instructions for mixing the sodium thiopental. The method of mixing the sodium thiopental, as described by Defendant Bell, is not medically accepted (Plaintiff's Exhibit 28, 2007 Affidavit of Dr. Lubarsky, ¶17). It is not clear that thiopental can be reliably mixed at 100 mg/mL, as set forth in the Current Protocol.

Id.

f. The Current Protocol fails to provide training and specific instructions regarding the effects of the three Lethal Injection Chemicals and their known risks.

g. Under the Current Protocol, training is conducted with Saline and not the three Lethal Injection Chemicals (Plaintiff's Exhibit 4, p.33). Therefore, the Current Protocol fails to provide training using the three-drug protocol where personnel would prepare the drugs, prepare the syringes and push the drugs through the IV lines.

h. The Current Protocol fails to require, as part of a training program, "a procedure in which each training exercise is critiqued at all levels to address contingencies and the response to those contingencies" (Plaintiff's Exhibit 25, Florida Commission Report p.12).

255. The Current Protocol fails to account for contingency personnel if one or more members of the designated IV Team, Execution Team, Executioner, or the Physician, cannot participate. By contrast, the Current Protocol for execution by electrocution provides for two

electricians to serve as reserves if the designated personnel are unable to perform their duties (Plaintiff's Exhibit 4 p.65). The failure to provide contingency personnel for execution by lethal injection displays deliberate indifference to the qualifications and training of the actual persons performing the execution and the proper administration of the Lethal Injection Chemicals creating unnecessary risk of pain and suffering during the lethal injection process.

COUNT VI

VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENT AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 THROUGH ADHERENCE TO THE CURRENT PROTOCOL WHICH FAILS TO REQUIRE AND INCLUDE, AND FAILS TO COMPORT WITH, ACCEPTED MEDICAL PRACTICES, OR BEST PRACTICES, TO MINIMIZE THE KNOWN RISKS INVOLVED IN EXECUTION BY LETHAL INJECTION (DEFENDANTS RAY, BELL, MILLS, HODGE, JOHN DOE PHYSICIANS 1 - 100, JOHN DOE PHYSICIANS 1-100, JOHN DOE PHARMACISTS 1-100, JOHN DOE MEDICAL PERSONNEL 1-100, JOHN DOE EXECUTIONERS 1-100, JOHN DOES 1-100). IN PARTICULAR, TENNESSEE'S PROTOCOL FAILS TO PROVIDE FOR A CHECK FOR THE INMATE'S LEVEL OF CONSCIOUSNESS AFTER ADMINISTRATION OF SODIUM THIOPENTAL.

256. Plaintiff incorporates the preceding paragraphs in their entirety.

257. The method of finding a suitable blood vessel and maintaining a flow through that blood vessel are considered to be medical matters that must be addressed through standard medical methods and procedures. Accordingly, the execution process including the IV set-up, location of veins, access to veins, insertion of catheters, monitoring and introduction of the three drug protocol are governed by "standard medical methods and procedures. The Current Protocol fails to comport with those methods and procedures.

258. In this respect, Tennessee's Current Protocol is substantially different from Kentucky's, which provides increased protections.

259. The Current Protocol wantonly and/or deliberately lacks specific medical

requirements and best practices identified by other jurisdictions as being necessary to reduce known risks. *Brooks v. Celeste*, 39 F.3d 125, 128 (6th Cir. 1994). Defendants purportedly reviewed the Florida Governor's Commission on Administration of Lethal Injection (Plaintiff's Exhibit 5 p.13) which concluded that "the process does require some qualified medical personnel to successfully accomplish a humane and lawful execution" (Attachment R, Florida Commission Report, p.5) yet failed to include such specific requirements and qualifications.

a. The Current Protocol does not provide appropriate medical qualifications and training for the Executioner. *See* Plaintiff's Exhibit 4 p.33.

b. The Current Protocol does not provide appropriate medical qualifications and training for the Physician. *See* Plaintiff's Exhibit 4 p.20.

c. The Current Protocol does not provide appropriate medical qualifications and training for the IV Team Members. *See* Plaintiff's Exhibit 4 p.32.

d. The Current Protocol does not provide appropriate medical qualifications and training for any other members of the Execution Team.

260. The Current Protocol fails to require drug and alcohol testing for participants in the execution, thus creating a known risk that one or more such participants may be impaired while performing assigned duties. *Compare* Plaintiff's Exhibit 37, Florida Protocol p.5).

261. Under the Current Protocol, two IV lines are established at the same time (Plaintiff's Exhibit 4 p.42-43). Upon information and belief, this practice is outside of acceptable medical standards of care which call for only one IV line at a single time.

262. The Current Protocol fails to indicate what qualifications, training, and screening

is done to insure that the Execution Team Member who is given this access to the “Lethal Injection Chemicals” (two of which are scheduled narcotics) does not have a criminal background, mental health issues, personnel and disciplinary issues, or drug or alcohol issues. It fails to indicate what qualifications, training, and screening is done to insure that the Execution Team Member who is given this access to the “Lethal Injection Chemicals” is trained and qualified at procuring, storing and transporting the Lethal Injection Chemicals.

263. The Current Protocol fails to provide for a physical examination of the prisoner by qualified personnel to determine an appropriate IV site before the prisoner is strapped to the gurney. Defendants failed to provide for this despite awareness that the Florida Governor’s Commission on Administration of Lethal Injection made this recommendation (Plaintiff’s Exhibit 5, Report, p.13; Plaintiff’s Exhibit 25, Florida Commission Report, p.10-11). The Current Protocol fails to indicate what Defendants will do if the inmate has small veins or general venous incompetence and which member of the execution team will make a decision surrounding those issues. Small veins or venous incompetence can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death. Moreover, the Current Protocol fails to identify any execution team member who has medical training in general venous incompetence. Accordingly, no provisions have been made to develop and implement a procedure to insure that unexpected events regarding access to a venous site are identified and corrected. *Compare* Plaintiff’s Exhibit 25, Florida Commission Report, p.11.

264. Under the Current Protocol, if a catheter cannot be successfully inserted into the antecubital fossa area, other locations for insertion are to occur in a specified order, which

includes the wrist as the second preferred location (Plaintiff's Exhibit 4 p.41). Upon information and belief, accepted medical standards and procedures dictate that the wrist is usually the last location considered because it is too shallow. Thus, the choice of locations for insertion was established with deliberate indifference to current medically sound procedures.

265. If venous access is inaccessible, whether from previous intravenous drug use or other reasons, the Current Protocol utilizes a cutdown procedure. A cut-down is an outdated, dangerous surgical procedure. *See Nelson v. Campbell*, 541 U.S. 637 642 (2004). Engaging in a cut-down without first trying the less painful and less invasive method of percutaneous access represents a profound departure from standard medical methods and the standard of care used in executions in other states.

a. The Current Protocol indicates that a cut-down may be used but does not indicate at what point in the procedure the IV Team would resort to this option or who would make the determination that a cutdown is necessary.

b. The Current Protocol is silent as to the Physician's qualifications to perform a cutdown. Only 15% of physicians in the United States are qualified to perform a cutdown. Thus, Defendants display wanton and/or deliberate indifference to this fact when they state, "cut-down procedures are not particularly difficult for physicians to perform" and do not require the Physician to have experience in performing cutdowns (Plaintiff's Exhibit 5 p.9). Defendants failed to indicate why alternative procedures to gain venous access were rejected. *See id.*

c. Any cutdown procedure is a dangerous and antiquated medical procedure that is rarely performed in the practice of medicine.

d. A cutdown procedure involves making a series of sharp incisions through the skin and through several layers of connective tissue, fat, and muscle - all with only local anesthetic - to expose a suitable vein for IV catheterization. The Current Protocol fails to provide for the acquisition, storage and placement of any local anesthetic in the execution chamber.

e. A cutdown is a complicated medical procedure requiring equipment and skill that has a very high probability of not proceeding properly in the absence of adequately trained and experienced personnel, and without the necessary equipment. The Current Protocol fails to provide for persons possessing such training and skill and for the necessary equipment. If done improperly, the cut-down process can result in very serious complications including severe hemorrhage (bleeding), pneumothorax (collapse of a lung which may cause suffocation), improper seating of the catheter resulting in infiltration of the Lethal Injection Chemicals to surrounding tissue and severe pain.

f. Cutdowns are out-dated and are only used in clinical situations that are not pertinent to executions by lethal injection, including emergency scenarios where there has been extensive blood loss, and in situations involving very small pediatric patients and premature infants.

g. Cutdowns have been replaced by the percutaneous technique which is less invasive, less painful, less mutilating, faster, safer, and less expensive than the cut-down technique.

h. The use of a cutdown as a back-up before trying to find percutaneous access is a profound departure from standard medical methods and from the standard of care used in

executions in other jurisdictions.

i. To use a cutdown as the backup method of achieving IV access defies contemporary medical standards and would be a violation of any modern standard of decency.

j. The Current Protocol is silent on the procedures that will be followed by the Physician should a cutdown become necessary. *See* Plaintiff's Exhibit 4 p.41, 67.

k. The Current Protocol gives the Physician complete discretion to "choose a different method to find an IV site" (Plaintiff's Exhibit 4 p.67). The Current Protocol is completely silent on permissible options for finding an IV site and obtaining venous access and whether they are medically sound, constitutional and minimize unnecessary pain. The Protocol is silent as to the Physician's qualifications and training to perform "a different method" of inserting the primary IV line.

266. The Current Protocol fails to indicate which member of the Execution Team, if any, is responsible for loosening the tourniquets or restraining straps. *See* Plaintiff's Exhibit 4 p.41-42. The failure to properly loosen the tourniquets or restraining straps on an inmate can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death. Failure to loosen and remove is a known risk and has occurred in the State of Missouri.

267. The Current Protocol fails to indicate whose responsibility it is, if any, to watch the IV lines for leaks in the tubing, junctions, and valves during the administration of the Lethal Injection Chemicals and what member(s) of the Execution Team should do when a leak is found. *See* Plaintiff's Exhibit 4 p.43. This is substantially different from Kentucky. A leak in the

tubing, junctions, or valves can result in the failure to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death. Problems with IV lines detaching and spilling chemicals is a known risk which has occurred in the State of Texas. The only monitoring prescribed by the Current Protocol during the administration of the Lethal Injection Chemicals is “by watching the monitor in his room which displays the exact location of the catheter(s) by means of a pan-tilt zoom camera” and allows for “monitoring the catheter sites for swelling or discoloration” (Plaintiff’s Exhibit 4 p.43). The person responsible for such monitoring is also responsible for recording time data on the Chemical Administration Record. *See* Plaintiff’s Exhibit 4 p.43. Thus, there is no monitoring of the IV tubing, junctions, valves or the drip chamber during the administration of Lethal Injection Chemicals. Moreover, the monitoring of an IV site from a remote camera is not medically proper. The use of tape over the IV lines and dressing over catheter further obscures view (Plaintiff’s Exhibit 4 p.40-42). In order to insure that an IV does not migrate, infiltrate, move, and is working properly, the IV site must be monitored from the bedside. The Current Protocol does not provide for anyone to monitor the IV site from the bedside, nor is there any qualified medical personnel in the room to do any personal, medical monitoring of the process. *See* Plaintiff’s Exhibit 4 p. 43.

268. The Current Protocol does not remedy the insufficient view from the Lethal Injection Room of the condemned and the lethal injection apparatus. The Supreme court noted that Kentucky’s protocol required direct monitoring for IV problems. *Baze*, 553 U.S. at 56.

269. The Current Protocol does not provide any real time measurement of the prisoner’s body functions and vital signs or any real time measure of anesthetic depth. *Id.* *compare with* Plaintiff’s Exhibit 37, Florida Protocol, p.9.

270. The Current Protocol fails to indicate what medical training, education, or licensing the IV Team, the Execution Team and the Physician have, if any, in taking remedial action in the event of problems with the administration and delivery of the Lethal Injection Chemicals. This is a risk known to Defendants as the Florida Governor's Commission found there were inadequate guidelines, inadequate training, a failure of leadership and a failure in communication when complications arose during the execution of Angel Diaz (Plaintiff's Exhibit 25, Florida Commission Report, p.8-9).

a. The Current Protocol fails to provide instructions for insuring that a successful IV access is maintained throughout the execution. This is a risk known to Defendants which occurred in the execution of Angel Diaz in Florida (Plaintiff's Exhibit 25, p.8-9).

b. The Current Protocol fails to indicate what any member of the Execution Team will do if the catheter migrates during the lethal injection. *See* Plaintiff's Exhibit 4 p.67. The migration of an IV catheter can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death.

c. The Current Protocol fails to indicate what any member of the Execution Team will do if the inmate has a collapsed vein, perforation or leakage of the vein, or a blown vein from the pressure of the syringe plunger. *See* Plaintiff's Exhibit 4 p.41-42,

271. A collapsed, torn, or blown vein can result in an inability to properly administer a full dosage of anesthetic to the inmate, resulting in an excruciatingly painful and horrifying death. Problems with collapsed veins is a known risk which has occurred during training sessions in Tennessee and in the State of Ohio during the Clark execution. *See infra* at p. 35, oo.

d. The Current Protocol fails to indicate the manner in which IV tubing, valves, saline solution, *etc.*, shall be modified or repaired if needed, the minimum qualifications and expertise required of the person(s) who has discretion to decide to attempt such action, and the criteria that shall be used in exercising such discretion.

e. The Current Protocol does not indicate the minimum qualifications and expertise required of the person(s) given the responsibility and discretion to order the staff to divert from the established Protocols if necessary to avoid inflicting severe and unnecessary pain and suffering on the condemned, and the criteria to be used in exercising this discretion. Further the Current Protocol does not indicate the minimum qualifications and expertise required of the person(s) given the responsibility and discretion to insure that appropriate procedures are followed in response to unanticipated problems or events arising during the lethal injection and the criteria that shall be used in exercising this discretion.

272. The Current Protocol fails to indicate the length of time between the administration of each drug. *See* Plaintiff's Exhibit 4 p.43-44. This detail is important to insure that an inmate is adequately anesthetized by the sodium thiopental prior to the introduction of the pancuronium bromide and potassium chloride. Under the Current Protocol it appears that the rate of drug administration and timing between drugs is arbitrary and not designed to insure the prisoner is properly anesthetized.

273. The Current Protocol fails to charge anyone with the essential duty of monitoring the inmate during the administration of the drugs to assure that the sodium thiopental (anesthesia) is working properly before administration of the pancuronium bromide and potassium chloride.

See Plaintiff's Exhibit 4 p. 43-44. *See also* Plaintiff's Exhibit 28, 2007 Affidavit of Dr. Lubarsky, p.6 ¶23. *Compare with* Plaintiff's Exhibit 37, Florida Protocol, p.8. This is a material difference with the Kentucky protocol approved in *Baze*.

274. The Current Protocol fails to indicate the presence of an anesthesiologist or a certified nurse anesthetist who could properly monitor consciousness. *See* Plaintiff's Exhibit 4 p.43-44. There is no member of the Execution Team qualified to monitor the anesthetic depth of the inmate. The Current Protocol fails to indicate the presence of any medical technology that might be used to monitor consciousness. *See* Plaintiff's Exhibit 4 p.43-44. The Current Protocol further fails to provide for any check for consciousness.

275. The Current Protocol fails to include safeguards that would protect the prisoner in the event a stay of execution is entered after the lethal injection process has begun.

a. The Current Protocol does not indicate what training, education, or licensing the IV Team, the Execution Team and the medical doctor has, if any, in reviving the condemned in the event a stay is issued after the execution begins.

b. The Current Protocol does not provide for emergency life saving equipment in the execution chamber. Thus, the Current Protocol fails to provide any protections to prevent a prisoner from being wrongly executed should a reprieve be granted after the process has begun but before death has occurred. Here, the Current Tennessee Protocol is, again, substantially different from Kentucky's, which provides for such a contingency. *Baze*, 553 U.S. at 46.

c. At any time before the potassium chloride is administered, the prisoner could be readily resuscitated if trained personnel and routine resuscitation medication and equipment were

present at the execution site. Even after the potassium chloride is administered, resuscitation would still be possible, although it would be more challenging. Any resuscitation, however, would require the close proximity of the necessary equipment, medication, and properly trained personnel. The omission of such personnel and equipment under the Current Protocol further undermines the constitutionality of the procedure.

COUNT VII

VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 BY THE USE OF AN EXECUTION PROTOCOL WHICH CAUSES DEATH BY THE SUFFOCATION OF A CONSCIOUS INMATE.

276. Plaintiff incorporates the preceding paragraphs in their entirety.

277. In addition to Defendants' violation of the Eighth Amendment and Tennessee Constitution Article 1, § 16 through the choice to use sodium thiopental, pancuronium bromide and potassium chloride, the choice to use such drugs in the combination and method of administration required by the Tennessee Protocol will result in the infliction of unnecessary and severe pain and suffering upon Mr. West if he is executed in the manner required by the Tennessee Protocol.

278. This infliction of unnecessary and severe pain and suffering upon Mr. West will not only occur in the event of the Protocol being administered improperly, but rather when it is administered exactly as set forth in the Current Protocol. This is demonstrated by every autopsy report of an inmate executed under Tennessee's lethal injection protocol.

279. Because, under *Baze v. Rees*, 553 U.S. 35 (2008), a protocol which poses merely a substantial risk of unnecessary severe pain and suffering, violates the Eighth Amendment and

Tennessee Constitution Article 1, § 16, a protocol which does, in fact, cause substantial pain and suffering when carried out in the manner intended must necessarily violate the Eighth Amendment and Tennessee Constitution Article 1, § 16.

280. Moreover, the Defendants' deliberate indifference to using the Tennessee Protocol knowing that the autopsy results prove ineffective the use of sodium thiopental and potassium chloride and that inmates are actually executed by means of suffocation violates the Eighth Amendment and Tennessee Constitution Article 1, § 16.

COUNT VIII

VIOLATION OF THE FOURTEENTH AMENDMENTS AND TENNESSEE CONSTITUTION ARTICLE 1, § 16 BY THE DEFENDANTS' ARBITRARY AND CAPRICIOUS REFUSAL TO AFFORD MR. WEST THE RIGHTS AFFORDED HIM UNDER PAGE 12 OF THE CURRENT PROTOCOL TO HAVE AT LEAST 30 DAYS TO CONTEMPLATE THE MANNER OF HIS DEATH AND TO ALTER SAID MANNER BY ELECTING AN ALTERNATE METHOD OF EXECUTION UP UNTIL 14 DAYS PRIOR TO HIS EXECUTION.

281. Plaintiff incorporates the preceding paragraphs in their entirety.

282. The Tennessee legislature has delegated the power to enact rules and regulations implementing Tennessee's death penalty, *see*, TENN.CODE ANN. § 40-23-114(c), and Defendants have done so by adopting the Current Protocol. Defendants are therefore required by law (and accordingly by the Tennessee Supreme Court's order setting Mr. West's execution date) to comply with the Current Protocol.

283. Those provisions described in this Count are enacted for the benefit of Mr. West and accordingly afford him certain statutory rights.⁸

⁸The suggestion that such provisions are for the benefit of the State of Tennessee is in error. If indeed such provisions were adopted to allow Defendants at least 30 days to prepare to

284. Mr. West has demanded that Defendants comply with those provisions of Page 12 of the Current Protocol, requiring that Defendant Bell assure that he is presented with an opportunity to “waive,” *i.e.*, avoid, the cruel and unusual execution by lethal injection prescribed for him under the current protocol in the manner prescribed at Page 88 of the Current Protocol at least 30 days prior to any execution.

285. Defendants, through counsel, have stated that they will not comply with that request. Defendants have not denied any other similarly situated person such a request. Moreover, Defendants’ denial is arbitrary and capricious and has no rational relationship to any legitimate governmental purpose.

286. Moreover, by arbitrarily and capriciously denying Mr. West those rights without any rational relationship to any legitimate governmental purpose, Defendants have deprived Mr. West of the right to equal protection and due process under the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. *See, Howard v. Grinage*, 82 F.3d 1343, 1349-50 (6th Cir. 1996).

CONCLUSION

287. Because Tennessee’s lethal injection protocol requires no check for consciousness after the administration of sodium thiopental, it is materially and substantially different from Kentucky’s protocol, approved in *Baze v. Rees*, 553 U.S. 35 (2008). More importantly, the three autopsies performed on inmates who have been executed by lethal injection in Tennessee

carry out Mr. West’s sentence of death in the manner required under TENN.CODE ANN. § 40-23-114(a) and (b), they would not allow Mr. West to change his method of execution only 14 days prior to his execution date.

demonstrate that inmates are not being properly anesthetized, and are, therefore, conscious, when the pancuronium bromide and the potassium chloride are being administered. These most important facts, in addition to the others enumerated throughout this Complaint, establish that the issues herein were not resolved by the Supreme Court's ruling in *Baze*. Mr. West's case is materially different and must be fully reviewed.

288. Although it is possible to conduct executions in a constitutionally compliant manner, Defendants have chosen not to do so.

289. Defendants have chosen a method of execution which will cause unnecessary and serious pain and suffering.

290. In every lethal injection execution in Tennessee where an autopsy was conducted the execution was performed according to the protocol.

291. In every lethal injection execution in Tennessee where an autopsy was conducted the condemned inmate was not sufficiently anesthetized.

292. Mr. West will not be sufficiently anesthetized if the Tennessee lethal injection protocol is performed as intended. Accordingly, Mr. West will suffer severe pain from the administration of pancuronium bromide and potassium chloride.

293. Defendants' use of sodium thiopental, pancuronium bromide, and potassium chloride under the Tennessee Protocol causes unnecessary pain and prolonged suffering and/or does not conform with evolving standards of decency. Under the Tennessee Protocol, sodium thiopental will not sufficiently anesthetize Mr. West; pancuronium bromide will paralyze and suffocate Mr. West to death; and, the intravenous injection of potassium chloride will cause Mr.

West severe pain.

294. The Tennessee Protocol is not substantially similar to Kentucky's protocol.

295. The Tennessee Protocol poses a substantial risk of serious harm that Mr. West will suffer unnecessary and serious pain and suffering.

296. Defendants could choose to use a different protocol that will not cause severe and unnecessary pain to Mr. West. *See Harbison*, 511 F.Supp.2d at 879.

297. Defendants enacted the Tennessee Protocol with deliberate indifference to the substantial risk of serious pain.

298. Defendants intend to execute Mr. West under the Tennessee Protocol with knowledge, whether actual or imputed, that the protocol has not sufficiently anesthetized those executed and will not sufficiently anesthetize Mr. West.

299. Defendants intend to execute Mr. West under the Tennessee Protocol with knowledge, whether actual or imputed, that the use of pancuronium bromide under the protocol will not arrest his heart but will cause excruciating pain.

300. Defendants intend to execute Mr. West under the Tennessee Protocol with knowledge, whether actual or imputed, that the Protocol will cause his death by suffocation.

301. Defendants intend to execute Mr. West by arbitrarily denying him those rights afforded him under the Current Protocol.

COMPLAINT FOR EQUITABLE AND INJUNCTIVE RELIEF

302. Administration of the Tennessee Protocol, as written and performed as intended,

will not properly anesthetize Mr. West from the pain caused by the injections of pancuronium bromide and potassium chloride.

303. The use of pancuronium bromide under the Tennessee Protocol to paralyze and suffocate Mr. West will subject him to a painful and protracted death. Moreover, it serves no legitimate penological purpose.

304. If pancuronium bromide is administered, paralyzing Mr. West during the execution procedure, he will have no alternative “reasonable and effective means of communication” to communicate that he was not properly anesthetized.

305. Tennessee’s protocol, as designed, results in execution by suffocation which is constitutionally impermissible. Thus, pancuronium bromide serves no legitimate purpose.

306. Enjoining the use of pancuronium bromide will remove suffocation as the means to effectuate death.

307. Enjoining the use of pancuronium bromide will have no appreciable impact on institutional procedures nor the State’s interest in executing condemned inmates. The State of Tennessee has already determined that a one-drug protocol is a viable option that will be implemented if the three-drug protocol is declared unconstitutional.

308. Conscious internal burning caused by the intravenous administration of potassium chloride under the Tennessee Protocol constitutes unnecessary physical and psychological pain in violation of the Eighth Amendment and Tennessee Constitution Article 1, § 16.

309. Potassium chloride, as used in the Tennessee Protocol, does not arrest the heart. It serves no legitimate penological purpose.

310. Enjoining the use of potassium chloride will have no appreciable impact on the correctional institution nor the State's interest in executing its condemned inmates. The State of Tennessee has already determined that a one-drug protocol is a viable option that will be implemented if the three-drug protocol is declared unconstitutional.

311. Defendants' denial of those rights afforded him under the current protocol is without any rational relationship to any legitimate governmental purpose and is arbitrary and capricious. As a result, Mr. West has been denied both the opportunity to contemplate and elect, and/or refuse to elect the method, of his execution and the right to prepare for his death in the manner by which the state will carry out his execution.

PRAYER FOR RELIEF

WHEREFORE, Mr. West respectfully requests:

312. Declaratory judgment declaring that execution by means of lethal injection in the manner prescribed by Tennessee's Current Execution Protocol, Plaintiff's Exhibit 4, violates Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16.

313. Declaratory judgment declaring that Defendants must comply with those provisions on Pages 12 and 88 of the Current Protocol prior to carrying out his execution.

314. Temporary, preliminary and permanent injunctive relief directing the Defendants, their officers, agents, servants, employees, and all persons acting in concert with them to carry out Mr. West's November 9, 2010, execution in a manner which does not violate Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16, as does execution by means of lethal injection in the manner prescribed by Tennessee's Current Execution Protocol,

Plaintiff's Exhibit 4.

315. Temporary, preliminary and permanent injunctive relief directing the Defendants, their officers, agents, servants, employees, and all persons acting in concert with them to comply with the provisions of Pages 12 and 88 described in Count VIII hereof prior to carrying out Mr. West's November 9, 2010, execution in a manner which does not violates Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16 as does execution by means of lethal injection in the manner prescribed by Tennessee's Current Execution Protocol, Plaintiff's Exhibit 4.

316. Temporary, preliminary and permanent injunctive relief to enjoin the Defendants, their officers, agents, servants, employees, and all persons acting in concert with them from executing Mr. West by lethal injection using the Tennessee three-drug lethal injection protocol.

317. In the event that the Tennessee Protocol is not enjoined in its entirety as violating the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16, temporary, preliminary, and permanent injunctive relief to enjoin Defendants, their officers, agents, servants, employees, and all persons acting in concert with them from administering the short acting barbiturate, sodium thiopental, in the manner prescribed by the Tennessee Protocol, which does not render the inmate unconscious, and thereafter subjects him to a horrifying and excruciatingly painful death through the use of pancuronium bromide and potassium chloride.

318. In the event that the Tennessee Protocol is not enjoined in its entirety as violating the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16, temporary, preliminary, and permanent injunctive relief to enjoin Defendants, their officers, agents, servants,

employees, and all persons acting in concert with them from administering pancuronium bromide during the execution process which serves no legitimate purpose but paralyzes the prisoner and causes suffocation or asphyxiation.

319. In the event that the protocol is not enjoined in its entirety as violating the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16, temporary, preliminary, and permanent injunctive relief to enjoin Defendants, their officers, agents, servants, employees, and all persons acting in concert with them from administering potassium chloride during the execution process which serves no legitimate purpose, does not arrest the heart, but causes excruciating internal burning.

320. In the event that the protocol is not enjoined in its entirety as violating the Eighth and Fourteenth Amendments and Tennessee Constitution Article 1, § 16, temporary, preliminary, and permanent injunctive relief to enjoin Defendants, their officers, agents, servants, employees, and all persons acting in concert with them from allowing personnel who lack sufficient training, credentials, certification, experience, or proficiency to conduct a lethal injection procedure which is materially different from the Kentucky protocol addressed in *Baze* and which thereby needlessly poses a substantial risk of a conscious prisoner experiencing a horrifying and excruciatingly painful death.

321. Any further relief that this Court finds necessary and just.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

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fax: (423) 785-8480
rdickson@millermartin.com

CERTIFICATE OF SERVICE

I, Stephen A. Ferrell, hereby certify that a true and correct copy of the foregoing document was hand delivered to:

Mark A. Hudson
Senior Counsel
Office of Attorney General
425 Fifth Avenue North
P. O. Box 20207
Nashville, TN 37243
Mark.A.Hudson@state.tn.us

this the 25th day of October, 2010.



Stephen A. Ferrell

Plaintiff's Exhibit 1

to

**Complaint for Declaratory Judgment and
Injunctive Relief**

**Affidavit to Elect Method of Execution
Signed By Mr. West on February 13, 2001**

2010 OCT 25 AM 11:06
GLENN & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

FILED

Affidavit to Elect Method of Execution

Under Tennessee law, you have the option of electing electrocution over lethal injection as the method of your execution. The purpose of this affidavit is to allow you to make and record that choice, or to reject that choice. Your decision concerning the method of execution is final. Failure to choose a method of execution will result in the execution being carried out by lethal injection. You will NOT be given another opportunity to make a choice of method of execution.

DAVIDSON COUNTY SHERIFF'S OFFICE
2010 OCT 25 11:11:09 AM
FILED

I, Stephen M. West, TDOC # 11577, make the following choice of execution method:

I waive the right to be executed by lethal injection and choose to be executed by electrocution.

Signature of Inmate

I choose lethal injection as the method of my execution.

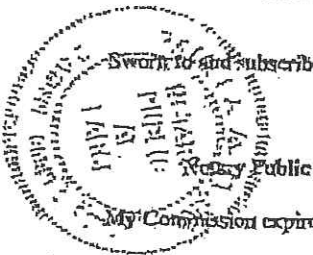
Signature of Inmate

Stephen M. West

I certify that I presented this Affidavit to Elect Method of Execution to inmate Stephen West, TDOC No. 11577, and

The inmate refused to sign.
 I witnessed the inmate sign this affidavit.

Ross E. Bell
Signature of Warden/ Designer



Sworn to and subscribed before me this 13 day of February, 2007

Pamela Ryan

My Commission Expires MAY 28, 2003

Plaintiff's Exhibit 2

to

Complaint for Declaratory Judgment and
Injunctive Relief

**Old Protocol Revoked by
Governor Bredesen**

FILED

2010 OCT 25 AM 11:07

CONFIDENTIAL

CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D.C. & M.

Execution Guidelines
LETHAL INJECTION

This manual contains a summary of the most significant events which will occur during the final week when the Death Watch is in effect. It contains information covering our plans relative to institutional perimeter security prior to, during, and subsequent to an execution and a detailed listing of some of the duties and responsibilities of certain key departmental personnel in carrying out an execution.

It will be used as a guideline for the Warden to assure that operational functions are properly planned with the staff who have designated responsibilities in carrying out an execution.

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DUTIES OF KEY PERSONNEL
PRIOR TO, DURING, AND SUBSEQUENT TO AN EXECUTION

Riverbend Maximum Security Institution

WARDEN

1. To assure that the procedures described by law and as outlined in this operating procedure are carried out, either by personal performance or by delegation.
2. To set the precise hour and minute of execution.
3. To coordinate, by obtaining the approval of the Commissioner, the appointment of staff member(s) to assume and coordinate contacts with news media. To submit names of the witnesses to the execution to the Commissioner.
4. To keep the Deputy Commissioner and Assistant Commissioner of Operations informed of the progress towards and implementation of the execution.
5. To select a person to serve as executioner.
6. To coordinate with Metro Police and THP any additional security forces required.
7. To coordinate with the Medical Examiner for disposition of the body.
8. To read the court order to the condemned inmate just prior to movement to Death Watch.
9. To assure condemned inmates sentenced prior to January 1, 1999, are given opportunity to select electrocution or lethal injection as legal means of execution within 30 days immediately preceding the scheduled execution date.
10. To control activation of closed circuit TV to victim family witness room.
11. To order the executioner, either verbally or by gesture, to proceed with execution.
12. To cause the announcement to significant parties and the public of the fact that the sentence of execution has been carried out.
13. To control any contact between the condemned inmate and other persons.
14. To explain to the inmate the procedures and activities which will take place during Death Watch.
15. To coordinate the notification of official witnesses of the date and time to be at the institution to witness the scheduled execution.

INMATE WITNESS REQUEST

TCA allows the defendant to have relatives present at the execution.

I wish to have the following relatives present:

Witnesses:

1. _____
2. _____
3. _____
4. _____
5. _____

Inmate

Date

Waiver of Witness Attendance:

I fully understand my right to have relatives present at the execution.
I hereby waive my right to request witnesses.

Inmate

Date

Date

Staff Witness

Date

Staff Witness

(S A M P L E)



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND INDUSTRIAL ROAD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 • FAX (615) 350-3400

Date

John Doe, Sheriff
Tennessee County Sheriff's Department
P. O. Box 000
City, TN 37209

Dear Sheriff Doe:

Records of the Tennessee Department of Correction reflect that on _____, 19____, inmate _____ was convicted of First Degree Murder and sentenced to Death regarding _____ County case # _____. An order has been received scheduling inmate _____'s execution for _____. The execution is scheduled for 1:00 a.m. on that date.

Pursuant to TCA 40-23-116, the sheriff of the county in which the crime was committed is entitled to be present at the carrying out of such death sentences.

The Tennessee Department of Correction needs to know if you are interested in viewing the legal execution of inmate _____. In order to expedite this process, please sign and date on the respective line below indicating your intentions. Afterwards, fax the letter with your signature to my office at the Riverbend Maximum Security Institution at 615/350-3400. If you plan to attend, provide a telephone number where you may be contacted day or night. Further, you should be at the Riverbend institution by 12:00 midnight on _____ and bring your notification letter with you, along with a picture ID. Upon arrival at the facility, please present the letter to the Checkpoint officer. If you have any questions regarding this matter, please feel free to contact me by calling 615/350-3100, extension 3103, for further information.

Ricky J. Bell, Warden

RJB/md

I will attend _____ Signature _____ Date _____
Telephone No. _____

I will not attend _____ Signature _____ Date _____

(S A M P L E)



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND INDUSTRIAL ROAD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 • FAX (615) 350-3400

Date

Ms. Mary Jane Smith
P. O. Box 0000
City, TN 37209

Dear Ms. Smith:

Records of the Tennessee Department of Correction reflect that on _____, 19____, inmate _____ was convicted of First Degree Murder and sentenced to Death regarding _____ County case # _____. An order has been received scheduling inmate _____'s execution for _____. The execution is scheduled for 1:00 a.m. on that date.

Pursuant to TCA 40-23-116, members of the condemned inmate's immediate family may be present at the carrying out of such death sentence. Records indicate that you are the _____ of inmate _____; therefore, you are eligible to be present.

The Tennessee Department of Correction needs to know if you are interested in viewing the execution of your _____. In order to expedite this process, please sign and date on the respective line below indicating your intentions. Afterwards, fax the letter with your signature to my office at the Riverbend Maximum Security Institution at 615/350-3400. If you plan to attend, provide a telephone number where you may be contacted day or night. Further, you should be at the Riverbend institution by 12:00 midnight on _____ and bring your notification letter with you. Upon arrival at the facility, please present the letter to the Checkpoint officer, along with a picture I.D. If you have any questions regarding this matter, please feel free to contact me by calling 615/350-3100, extension 3103, for further information.

Ricky J. Bell, Warden

RJB/md

I will attend. _____ Signature _____ Date _____
Telephone No. _____

I will not attend. _____ Signature _____ Date _____

DEPUTY WARDEN

1. Procure a physician to be present at execution.
2. Establish contract with local firm to have ambulance available to remove body.
3. Contact the County Medical Examiner to coordinate autopsy, if needed, and release of the body. If a local hospital is needed, contract with local hospital to receive the body.
4. Obtain cotton clothing and rubber thongs or cloth house shoes for the inmate to wear during execution.
5. Assume the duties of the Warden in the event the Warden is detained, absent, or otherwise incapacitated.
6. Assist the Warden in the carrying out of his duties.
7. Assure the security of the condemned inmate.
8. Supervise, with the condemned inmate, the inventory of the inmate's personal property. Storage shall be in accordance with IDOC policy. Release of personal property shall be in accordance with the written instructions of the inmate.
9. Personally supervise preparation of the Death Watch cell area and execution chamber and of the condemned inmate for execution.
10. Coordinate and/or approve, with assistance by assigned security staff, visits and phone calls permitted to the condemned inmate.
11. Provide final inspection of restraint devices to insure condemned inmate is securely detained on the gurney prior to IV catheters being placed in each arm.
12. Insure that any blinds between the witness room and the execution chamber are closed prior to the witnesses entering and opened after witnesses are seated.
13. Supervise the removal of the body from the execution chamber.
14. Coordinate the release of the condemned inmate's body to the authorized recipient or coordinate burial at State expense in the event no one claims the body.

ADMINISTRATIVE ASSISTANT

1. To coordinate and supervise the movement of the execution team to and from the execution chamber, and aid in maintaining the team's anonymity.
2. To process applications for the selection of news media representatives to attend executions.
3. To assist the Warden in carrying out his duties.

CORRECTIONAL CAPTAIN

1. To aid the Deputy Warden in his duties.
2. To assist in preparing the condemned inmate for execution:
 - a. The inmate will be dressed for the execution event in white scrub pants and shirt.
 - b. Cotton socks or cloth house shoes may be worn.
3. To provide security arrangements for the movement of the condemned inmate from the death watch area to the execution chamber in compliance with the schedule set by the Warden.

DEATH WATCH SUPERVISOR

1. To coordinate all security requirements for the inmate during the death watch and to supervise all Correctional Officers assigned any responsibility for direct supervision of the inmate during death watch, to include preparation of the condemned inmate.
2. To fully rehearse and train all personnel assigned any responsibility for supervising the inmate and/or implementing the execution.
3. To prepare a duty schedule for officers assigned this detail.
4. To review post orders for Correctional Officers to become familiar with all functions of subordinates.
5. To insure that condemned inmate personally inventories his personal property and packs away all items he is not permitted to retain. Death Watch Supervisor, inmate, and one witness will sign property inventory. The sealed property will be retained in storage in Property Room until removed by inmate's designee.
6. To maintain bound ledger of information relative to the activities occurring which concern the death watch. This log will contain a record of all visitors, serving of meals, shaving, handling of mail, inmate behavior, movement, communications, etc.
7. To permit only authorized persons to enter the death watch area. A list of authorized personnel will be provided by Warden.
8. To maintain a sufficient amount of clothing in the inmate's size retained by death watch officers in order to change each time the inmate leaves his cell.
9. To insure that fire extinguisher is readily available and in serviceable condition.
10. To insure that cameras, audio and video equipment is not taken into death watch area or execution chamber at any time during death watch or at time of execution, unless authorized by the Warden.
11. To coordinate movement of witnesses entering and exiting witness rooms during the execution process.
12. To insure closed circuit TV and audio speaker systems are activated and deactivated at the prescribed times during the execution process.
13. To document the events pertaining to the execution by completing the Chronological Execution Report and Execution Recorder Checklist.

INSTITUTIONAL CHAPLAIN

1. To offer and, as indicated, deliver increased chaplaincy services to the condemned inmate and the family concerned.
2. To ask the inmate to specify in writing the preferred funeral arrangements and the preferred recipients of personal property. If a legal will is requested, the Chaplain will coordinate with the IDOC Staff Attorney for preparation and execution.
3. To say a brief prayer of intercession immediately prior to execution.
4. To coordinate the release of the executed inmate's body to the authorized next-of-kin recipient or mortician through the State Medical Examiner.

MIS Security Systems Technicians

To be responsible for assuring that the closed circuit television and audio systems between execution chamber and official witnesses and victims family witnesses rooms are functioning properly at the scheduled time of execution.

MEDICAL PERSONNEL

1. One medical doctor will be present at the precise time of execution and wait in capital punishment garage. The physician will be available to perform the cut-down procedure should the IV technicians be unable to find a vein adequate enough to insert the catheter.
2. At the appropriate time (five-minute wait) after all chemicals have been injected, the blinds and curtain will be closed and the doctor will enter execution chamber and examine the body for vital signs.
3. If inmate is not legally dead, the doctor will notify the Warden and leave the execution chamber. The Warden will order the injection process to be repeated.
4. If no vital signs are present, the doctor will pronounce the inmate dead.

COMMISSIONER

1. Ten minutes prior to the precise hour and minute scheduled for the execution, the Commissioner will establish telephone contact with the Highway Patrol trooper on duty at the Executive Residence.
2. Access to radio communication with the Executive Residence and with the Command Post (see institutional policy re: "Outside Security During Death Watch and Execution") at the institution will be available also.

DEPUTY COMMISSIONER

Work directly with the Commissioner and assume any duties assigned.

ASSISTANT COMMISSIONER OF OPERATIONS

1. To be stationed at the Command Post or location designated by Deputy Commissioner and to assume operational control of the institution during the three hours prior to, during, and for one hour after the execution.
2. To serve as liaison to all support units and to conduct debriefing of all security and procedural personnel after the execution.
3. To maintain telephone and/or radio contact with the Warden and other personnel.

PUBLIC INFORMATION OFFICER

1. To be responsible to coordinate all media operations for the Department and this institution.
2. Will provide assistance to the Warden in obtaining phone communications needed by media representatives.
3. Coordinate all visits by media representatives both prior to and subsequent to an execution. The media will not be allowed access to the execution chamber for at least 72 hours following execution.

STAFF RESPONSIBILITIES AND SPECIAL PROCEDURES
FOR INMATES ON DEATH WATCH

Riverbend Maximum Security Institution

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STAFF RESPONSIBILITIES AND SPECIAL PROCEDURES
FOR INMATES ON DEATH WATCH

Authority: TCA 4-3-603, TCA 4-3-606, TCA 40-23-114, TCA 40-23-117,
TCA39-2-205.

Purpose: The purpose of this operating procedure is to designate staff responsibilities and establish uniform property, privilege and institutional guidelines for condemned inmates with signed court orders for execution.

Application: All inmates who have exhausted all appeals available to them and have an execution date within next four days.

I. Receipt of Court Order, Housing, and Security Assignments

- A. Upon receipt of the court order which authorizes execution, the Warden or his delegate will inform the inmate and permit him to make a phone call.
- B. After the condemned inmate is informed of the signed order, he will be transferred to Building 8 (Capital Punishment). Exceptions will be authorized only by the Warden or Deputy Warden for good and valid reasons.
- C. Correctional officers will be assigned to the housing area in a manner consistent with TDOC Policy 506.16.2, which sets forth the guidelines for the Death Watch Supervisor.

2.

Subsection 2 concerning perimeter security has been redacted.

3. State-Issued Property and Possession Limit

The inmate shall be allowed only the items listed below. Any other item will be considered contraband and confiscated in accordance with institutional policy.

- a. Standard issue of outer clothing
- b. One bed
- c. One mattress, pillow, and standard issue of linens
- d. One toothbrush
- e. One tube of toothpaste
- f. One bar of soap
- g. One disposable razor (to be issued and used under direct supervision only)
- h. Two towels, one washcloth.
- i. Two pairs of shorts and t-shirts (Underwear will be exchanged daily)
- j. Toilet tissue as needed
- k. Stationery - 12 sheets, 3 stamped envelopes, 3 pencils. Pencils will be in possession of officer when not in use.
- l. Religious tracts as issued by institutional chaplain
- m. Legal documents and books and papers as requested
- n. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
- o. One radio outside door in front of cell (state-owned)
- p. One television outside door in front of cell (state-owned)
- q. Newspapers as requested and available (no more than two in cell at a time)
- r. Feminine hygiene items as necessary and appropriate.

4. Commissary Privileges

Commissary privileges to include purchasing and possession limits will be specified in post orders. Glass, aerosol, and metal containers will not be allowed during Death Watch.

5. Disposition of Unauthorized or Contraband Items

Contraband items found in the possession of condemned inmates will be confiscated and disposed of in accordance with institutional policy #506.15-1.

6. Package Permits

Package permit privileges will be suspended for inmates on death watch. Any package already mailed will be received and stored with the inmate's other property, with the exception of consumables.

7. Library, Law Library Services, Periodical Subscriptions

A. The condemned inmate may request in writing to the librarian and receive legal materials from the law library. Such exchanges will be very carefully inspected by the librarian and Death Watch Supervisor. There will be no exchanges or communication with inmate legal clerks and the condemned inmate.

B. The inmate may continue to receive periodical subscriptions, but may not order new subscriptions. Periodicals, newspapers, etc., will not be allowed to accumulate and during the final week only two periodicals and two newspapers may be retained by the inmate.

8. Diet

Three (3) meals per day will be fed to all condemned inmates. Special dietary instructions for medical reasons will be followed. All meals shall be prepared by free-world staff only.

9. Recreation

Recreational activities for inmates on death watch will be suspended.

10. Television and Radio Privileges

Television and radio privileges will be the same as routinely provided, except that during the death watch period, the television/radio will be located outside the inmate's cell.

11. Personal Phone Calls

Should the condemned inmate request personal or legal phone calls, they will be considered on an individual basis by the Warden or Deputy Warden. The Warden or Deputy Warden will coordinate all approved calls with the security staff assigned to this area.

12. Visitation Privileges

A. Social

- 1) Only those individuals on the inmate's approved visiting list shall be allowed visits during the death watch.
- 2) All visits shall be held in the death watch area, and physical contact between the visitor(s) and inmate shall not be permitted. Visits will be between the hours of 8:00 a.m. and 4:00 p.m., and limited to two hours duration.
- 3) The number of visitors allowed to visit at any one time shall be as flexible as circumstances permit, and shall be at the discretion of the Deputy Warden.
- 4) A final visit during which physical contact between the inmate and visitor(s) is permitted may be authorized by the Warden. The Warden's decision shall be based on the individual circumstances of each case.
 - (a) Security procedures, including searches, shall be of the minimum deemed necessary by the Deputy Warden
 - (b) Contact visits shall be supervised by no fewer than two correctional officers chosen by the death watch supervisor with the concurrence of the Deputy Warden.

B. Religious

- 1) Priest(s) or ministers of recognized religious faiths who are of the inmate's recorded religious preference may visit the inmate in the same manner as provided for social visits in 12 (A).
- 2) A final visit by the inmate's personal priest or minister may be permitted by the Warden 10:00 p.m.-1:00 a.m., prior to the execution. This visit shall take place at the front of the inmate's cell.
 - (a) The personal priest or minister will not be permitted to accompany the inmate into the execution chamber.
 - (b) At the inmate's request, a staff chaplain may visit on request and/or accompany the inmate into the execution chamber.

C. Legal Services

- 1) The attorney of record or other Tennessee licensed attorney retained by the inmate may visit up to one (1) hour before the time of execution.
- 2) The attorney shall have telephone contact with the condemned inmate during the last hour prior to execution.
- 3) Visits with attorneys shall be non-contact and will be conducted with provision for the privacy of verbal exchange but under full and continuous observation by at least two correctional officers.

D. Media

- 1) No media interviews shall be held with the condemned after placement on death watch.
- 2) Telephone interviews with media representatives shall not be permitted.
- 3) Representatives of the news media shall not be allowed inside the secure perimeter of the institution during the time of active death watch or during an execution for any purpose whatsoever unless selected as a witness to the execution.

TENNESSEE CODE ANNOTATED

Statutes Relating to Execution

40-23-116. Manner of executing sentence of death - Witnesses.

(a) In all cases in which the sentence of death has been passed upon any person by the courts of this state, it is the duty of the sheriff of the county in which such sentence of death has been passed to remove the person so sentenced to death from such county to the state penitentiary in which the death chamber is located, within a reasonable time before the date fixed for the execution of the death sentence in the judgment and mandate of the court pronouncing the same. On the date fixed for such execution in the judgment and mandate of the court, the warden of the state penitentiary in which the death chamber is located shall cause such death sentence to be carried out within an enclosure to be prepared for that purpose in strict seclusion and privacy. The only witnesses entitled to be present at the carrying out of such death sentence are:

- (1) The warden of the state penitentiary or the warden's duly authorized deputy;
- (2) The sheriff of the county in which the crime was committed;
- (3) A priest or minister of the gospel who has been preparing the condemned person for death;
- (4) The prison physician;
- (5) Such attendants chosen and selected by the warden of the state penitentiary as may be necessary to properly carry out the execution of the death sentence;
- (6) A total of seven (7) members of the print, radio and television news media selected in accordance with the rules and regulations promulgated by the department of correction. Those news media members allowed to attend any execution of a sentence of death shall make available coverage of such execution to other news media members not selected to attend;
- (7) Immediate family members of the victim who are eighteen (18) years of age or older. Such immediate family members shall include the spouse, child (by birth or adoption), stepchild, stepparent, parent, grandparent or sibling of the victim; provided, that members of the family of the condemned prisoner may be present and witness the execution.
- (8) One (1) defense counsel chosen by the condemned person; and
- (9) The attorney general and reporter, or the attorney general and reporter's designee.

(b) No other person or persons than those mentioned in subsection (a) are allowed or permitted to be present at the carrying out of the death sentence. It is a Class C misdemeanor for the warden of the state penitentiary to permit any other person or persons than those provided for in subsection (a) to be present at such legal execution.

(c) (1) Photographic or recording equipment shall not be permitted at the execution site until the execution is completed, the body is removed, and the site has been restored to an orderly condition. However, the physical arrangement of the execution site shall not be disturbed.

(2) A violation of subdivision (c)(1) is a Class A misdemeanor.

(3) The department shall promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a death sentence in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In promulgating such rules, the department shall solicit recommendations from the Tennessee Press Association, the Tennessee Associated Press Managing Editors, and the Tennessee Association of Broadcasters. For each execution of a death sentence, applications for attendance shall be accepted by the department. When the number of applications require lots to select news media representatives will then be drawn by the warden of the state penitentiary at which such death sentence is to be carried out. All such drawings shall be conducted in open meetings and notice shall be properly given in accordance with § 4-5-203.

(d) If the immediate family members of the victim choose to be present at such execution, they shall be allowed to witness the execution from an area that is separate from the area to which other witnesses are admitted. If facilities are not available to provide immediate family members with a direct view of the execution, the warden of the state penitentiary may broadcast the execution by means of a closed circuit television system to the area in which the immediate family members are located.

[Acts 1909, ch. 500, § 1; Shan., § 7253a1; Code 1932, § 11859; T.C.A. (orig. ed.), § 40-3119; Acts 1985 (1st E.S.), ch. 5, § 16; 1989, ch. 591, § 113; 1994, ch. 675, §§ 1-3; 1997, ch. 133, §§ 1, 2; 2000, ch. 744, § 1.]



State of Tennessee

HOUSE BILL NO. 2978

By Representatives Jackson, Newton, Kent, Ralph Cole, Todd

Substituted for: Senate Bill No. 2866

By Senators Springer, Williams

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 23, relative to execution of judgment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-23-114(a), is amended by deleting the language "the court shall direct that the person be put to death by electrocution, and that the body be subjected to shock by a sufficient current of electricity until dead," and substituting instead the language "the method for carrying out this sentence shall be by lethal injection."

SECTION 2. Tennessee Code Annotated, Section 40-23-114(b), is amended by deleting the language "the court shall direct that the person be put to death" and substituting instead the language "the method for carrying out this sentence shall be."

SECTION 3. Tennessee Code Annotated, Section 40-23-114(c), is amended by deleting the language "of subsections (b) and (c)," and by substituting instead the language "of this section."

SECTION 4. Tennessee Code Annotated, Section 40-23-114(d), is amended by deleting the language "lethal injection" and substituting instead the language "electrocution", and by deleting the language "the method of execution in effect at the time the offense was committed," and substituting instead the language "lethal injection."

SECTION 5. Tennessee Code Annotated, Section 40-23-114(e), is amended by deleting the language of the subsection and substituting instead the language: "If lethal injection or electrocution is held to be unconstitutional by the Tennessee Supreme Court under the state constitution, or held to be unconstitutional by the United States Supreme Court under the United States Constitution, or if the United States Supreme Court declines to review any judgment holding lethal injection or electrocution to be unconstitutional under the United States Constitution made by the Tennessee Supreme Court or the United States Court of Appeals that has jurisdiction over Tennessee, or if the Tennessee Supreme Court declines to review any judgment by the Tennessee Court of Criminal Appeals holding lethal injection or electrocution to be unconstitutional under the United States or Tennessee Constitutions, all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution. No sentence of death shall be reduced as a result of a determination that a method of execution is declared unconstitutional under the state constitution or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution."

SECTION 6. Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation.

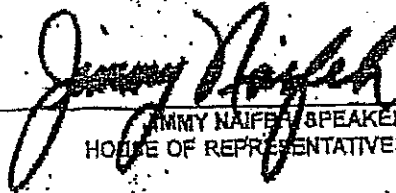
SECTION 7. If any provision of this act, or the application thereof, to any person, entity, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring

it.

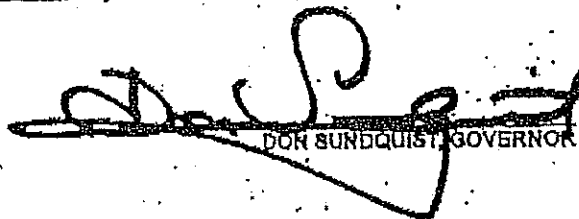
HOUSE BILL NO. 2978

PASSED: MARCH 29, 2000


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 30th day of March 2000


DON SUNDQUIST, GOVERNOR

PUBLIC CHAPTER NO. 333

SENATE BILL NO. 1161

By Hoyt, Cooper

Substituted for House Bill No. 497

By Burchett, Newton

AN ACT To amend Tennessee Code Annotated, Title 40, Chapter 23, relative to executing a sentence of death.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-23-116(a), is amended by adding the following new subdivision:

(1) Immediate family members of the victim who are eighteen (18) years of age or older. Such immediate family members shall include the spouse, child (by birth or adoption), stepchild, stepparent, parent, grandparent or sibling of the victim.

SECTION 2. Tennessee Code Annotated, Section 40-23-118, is amended by adding the following new subsection:

(1) If the immediate family members of the victim choose to be present at such execution, they shall be allowed to witness the execution from an area that is separate from the area to which other witnesses are admitted. If facilities are not available to provide immediate family members with a direct view of the execution, the warden of the state penitentiary may broadcast the execution by means of a closed circuit television system to the area in which the immediate family members are located.

SECTION 3. This act shall take effect July 1, 1997, the public welfare requiring it.

PASSED: April 17, 1997

John S. Wilder
JOHN S. WILDER
SPEAKER OF THE SENATE

Jimmy Naifeh
JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

DEATH WATCH PROCEDURES

Riverbend Maximum Security Institution

DEATH WATCH PROCEDURES

DAY 1

1. Move inmate to Death Watch status in Building 8.
2. A separate log shall be maintained in the Command Post and in the Death Watch Control Room during entire Death Watch period. It shall document all activity unique to the Death Watch and execution. Areas addressed shall include, but not be limited to, inmate's behavior, actions, movement, communications initiated and received concerning Death Watch activities.
3. Notify Department of Correction (Commissioner) of final week.
4. Assign Death Watch Supervisor and cell-front monitor. Supervisor shall be Correctional Lieutenant or higher.
5. Condemned inmate will personally inventory all property and seal his personal property for storage as specified in DOC Policy #504.02.
6. Notify institutional chaplain to visit inmate daily.
7. Visiting status of condemned inmate changes to all non-contact.
8. Telephone check for outside line will be effected from execution chamber by the Deputy Warden.
9. Appoint information liaison officer and advise department's Public Information Officer.
10. Establish communication with TDOC staff attorney for consultation as required.
11. Warden to conduct briefing with Correctional Officers (Death Watch) concerning Death Watch activities.
12. Establish notification list for contacting both TDOC and support personnel; also, sheriff of county from which inmate was convicted.
13. Designated personnel test all execution-related equipment to include closed circuit TV, telephones, intercoms, etc.
14. Measure inmate for clothing.

15. Inmate specified in writing funeral arrangements.
16. Inmate specifies recipient of personal property in writing.
17. Execution team drill.

DAY 2

1. Meeting with support units to coordinate civilian crowd protesters.
2. Food Service Manager advised of meal needs for TDOC and other agency support staff.
3. Deputy Warden tests telephone.
4. MIS tests closed circuit TV system.
5. Waiting area for execution set up by Administrative Lieutenant.
6. Condemned inmate orders last meal.
7. Health Administrator prepares certificate of death; cause: "legal execution by lethal injection."
8. Chaplain confirms funeral arrangements with family.
9. Public Information Officer arrives to handle media inquiry.
10. Security meeting held.

DAY 3

1. MIS personnel tests closed circuit TV system.
2. Clothing delivered to Deputy Warden.
3. Food Service Manager personally prepares and serves last meal. The inmate may request a special meal. The meal shall be provided within reason as determined by the Warden. Cost shall not exceed \$20.00. Eating utensils will be fork and spoon.

DAY 4 - EXECUTION DAY

12:00 a.m.

1. By prior planning, the execution team will be brought in through vehicle gate by Administrative Assistant or designated staff member. They will be taken directly to executioner waiting area in Building 8. Their identities will be known by least number of staff necessary.
2. Beginning at 12:00 a.m., the only staff authorized in the capital punishment complex are:
 - a) Commissioner or designee
 - b) Warden
 - c) Deputy Warden
 - d) Administrative Assistant
 - e) Death Watch Supervisor and assigned officers
 - f) Chaplain
 - g) Medical Doctor and associate
 - h) Executioner (executioner waiting area)
 - i) IV Team
 - j) Extraction Team

Any exceptions to the above must be approved by Warden or Commissioner.

3. Inmate will be dressed in cotton trousers, shirt, cotton socks, or cloth house shoes.
4. Official witnesses will report to the Administration Building conference room no later than 12:00 a.m., be greeted by two designated Department of Correction escort staff, security cleared and moved to the Building 9 Parole Board Room, where they will remain until later escorted to the witness room of the execution chamber.
5. Immediate family members of the victim will report to the Administration Building no later than 12:30 a.m. and be greeted by two designated Department of Correction employees. These witnesses will be security-cleared and escorted to the Building 8 conference room. Viewing of the execution by these witnesses will be provided by means of closed circuit television at the designated time.
6. The Administrative Assistant or designate and physician will report to the execution chamber for preparation. The Administrative Assistant or designate will check the phones in the chamber. The IV Team will ready the equipment and the physician will stand by in the designated waiting area.

12:30 a.m.

1. The Administrative Assistant or designate will establish phone communication with those officials designated by the Warden.
2. Victim family member witnesses will be secured in Building 8 conference room by designated staff member no later than 12:45 a.m.
3. Official witnesses will be secured in the Building 8 Parole Board Room by two designated staff members no later than 12:45 a.m. They will be moved to the capital punishment waiting area at 1:00 a.m. or as directed by Death Watch Supervisor.

12:55 a.m.

1. Beginning at 12:55 a.m., the only staff authorized in the execution chamber are the Warden and those TDOC employees designated by him to carry out the execution.
2. At the command of the Warden or Deputy Warden, the Extraction Team will approach the holding cell and ask the condemned inmate to approach the cell door and be handcuffed. After being handcuffed, he/she will be asked by the Extraction Team Leader to step back and place his/her hands above his/her head on the wall at the rear of the holding cell. (If the condemned inmate refuses to cooperate, the Extraction team will enter the holding cell and remove inmate.)
3. At this point the Extraction Team will unlock the cell door to allow the Extraction Team to enter. The condemned will then be escorted from the cell and placed on the gurney and secured with restraints affixed to gurney.
4. The gurney will be moved to the designated area in the execution chamber and secured in place. The Warden, Deputy Warden and Chaplain will accompany the condemned into the execution chamber. The Extraction Team and Chaplain then leave the execution chamber and return to the holding cell area.
5. The Administrative Assistant or designate will record the time the condemned entered the execution chamber.
6. The IV Technicians will insert a catheter into each arm, attach the tubing, and start an IV consisting of saline solution. The IV team will then leave the execution chamber and return to the holding cell area. The physician will be available in the designated waiting area and will perform a cutdown procedure if the IV technicians are unable to find a vein that is adequate enough to insert the catheter.
7. Official witnesses will be secured in the official witness room.
8. The closed circuit television camera and audio system will be activated.

1:00 a.m.

1. The Warden shall contact the Commissioner to insure that no last minute stay or respite has been granted.
2. The Warden will permit the condemned inmate to make a last statement.
3. The Warden will give the signal to proceed and the injection procedure will continue until all the chemicals have been injected into the condemned and the person is presumed dead.
4. The Administrative Assistant or designate will record the times the injection process begins and ends.
5. Following the completion of the injection process, and a five-minute waiting period, the blinds to the official witness room closed, closed-circuit TV camera disengaged, and privacy curtain closed, the Warden will ask the physician to enter the room to conduct an examination. If the inmate is not dead, the physician will return to the designated waiting area. The curtain will be opened, blinds raised, camera activated, and the Warden shall give the command to repeat the injection procedure. After this procedure is completed, the blinds will once again be closed, closed-circuit TV camera disengaged, and the privacy curtain closed. The Warden will once again ask the physician to enter the room and check for signs of life. The physician shall then report his findings to the Warden or designee.
6. The inmate is pronounced dead. The Administrative Assistant or designate records the time that death is pronounced.
7. The Warden or designate announces that the sentence has been carried out and invites witnesses to exit. "The sentence of _____ has been carried out. Please exit to the rear at this time."
8. The official witnesses will then be escorted from the witness room by designated staff escorts.
9. The Commissioner or designee will notify all appropriate State officials that sentence has been carried out. Media will be so notified by designated information officer.
10. The IV Technicians will disconnect the IV systems.
11. The Extraction Team removes restraint equipment.
12. Ambulance attendants will assist in removal of body and placement in ambulance, which will be in vehicle sallyport of death watch area.
13. The ambulance will be cleared to exit by the Deputy Warden.

EXECUTION TEAM

- I. PURPOSE: The purpose of this operating procedure is to outline the duties and responsibilities of the Execution Team members in carrying out the Death Sentence.
- II. APPLICATION: All members of the Execution Team and their alternates. The Execution Team shall consist of one (1) Officer in Charge, one (1) Assistant Officer in Charge, and seven (7) members. Two of the members will be assigned the Death Watch duties.
- III. EQUIPMENT: Radio/holster, keys, handcuffs.
- IV. POLICY: The Officer in Charge and/or the Assistant Officer in Charge will be responsible to the Deputy Warden for the care and maintenance of the Death Chamber and all appliances and equipment; the training of the Execution Team, and carrying out the execution of the condemned prisoner.
- V. PROCEDURES: The following procedures shall apply:
1. The Officer in Charge and/or the Assistant Officer in Charge shall conduct a training session at least once each month at which time all appliances will be tested.
 2. Four (4) days before a scheduled execution the Officer in Charge and assistant shall assemble the Execution Team in the Death Chamber area to prepare and test all appliances and equipment for the scheduled execution.
 3. Obtain the following items:
 - a). Sheets (4)
 - b). Pillow cases (4)
 - c). Blankets (2)
 - d). Hand towels (12)
 - e). Wash cloths (12)
 4. Upon completion of the preparation stage, the Officer in Charge and/or the Assistant Officer in Charge will make an oral report to the Warden as to the state of readiness of equipment, appliances, and Death Chamber.

5. The Execution Team will carry out the following instructions under the direction of the Deputy Warden:
- A. Assemble all other members of the Execution Team in the Death Chamber before the scheduled execution and review their specific assignments and duties.
 - B. Insure that all equipment is properly placed.
 - C. The inmate will be removed from the holding cell and strapped on the gurney by Extraction Team members previously assigned those duties, under the direction of the Assistant Officer in Charge.
 - D. When the gurney is secured in place in the execution chamber, all members of the Extraction Team will retire to the holding cell area.
 - E. The IV team will place IV catheters in both arms.
 - F. When the injection process has been completed, the Warden/designee will be advised.
 - G. The designee will wait five (5) minutes, then signal the physician in attendance.
 - H. After the physician pronounces the inmate dead, the designee will inform the Commissioner that the sentence has been carried out.
 - I. The body will be removed by the Execution Team and ambulance attendants and placed in the ambulance for transporting. The body will be placed in a body bag.
 - J. The ambulance will exit the prison via vehicle gate and will transport body to State Medical Examiner for further disposition.
 - K. The Execution Team, under the direction of the Officer in Charge, shall clean the equipment and Death Watch area. The holding cell shall be cleaned thoroughly with the mattress and pillow sanitized. Equipment shall be stored in its proper location. An entry shall be made in the post log documenting the completion of these procedures.
 - L. Death Chamber and Death Watch area will be secured. Execution Team shall report to the Warden's Office for additional instructions.

CONFIDENTIAL

PHYSICIAN'S INVENTORY CHECKLIST

- ___(4) 5 cc syringes
- ___(4) small tubes Betadine ointment
- ___(12) pair gloves (sterile), size 7 1/2
- ___(12) pair gloves (sterile), size 8
- ___(2) prep kits
- ___(2) BP cuffs
- ___(2) stethoscopes
- ___(1) flashlight w/batteries
- ___(8) Chux
- ___(4) outdowm trays
- ___(2) Lidocaine 1%
- ___(2) Lidocaine 2% w/Epinephrine
- ___(1) 000 silk sutures
- ___(2) 3-0 chromic sutures
- ___(1) 3-0 ethilon sutures
- ___(2) 4-0 chromic sutures
- ___(2) 4-0 ethilon sutures
- ___(1) 4.0 silk sutures
- ___(2) 5-0 silk sutures
- ___(2) PPE size XL
- ___(1) PPE size XXL
- ___(2) faceshields

CONFIDENTIAL
INJECTION TEAM INVENTORY CHECKLIST

INTRAVENOUS SUPPLIES

- ____ (8) Normal Saline 1000 cc each
- ____ (12) 96" Long IV Tubing With Y Injection Site
- ____ (12) 35" Long Extension Tubing
- ____ (12) J Loops
- ____ (6) Tourniquets--various styles
- ____ (12) 16 Ga. Angiocaths 1 1/2"
- ____ (12) 18 Ga. Angiocaths 1 1/2"
- ____ (12) 20 Ga. Angiocaths 1 1/2"
- ____ (4) 19-Ga. 7/8 Butterfly
- ____ (2) Rolls 1/2" Tape
- ____ (2) Rolls 2" Tape
- ____ (2) Rolls 3" Tape
- ____ (4) Arm Boards
- ____ (3) Tegaderm IV Site

MISCELLANEOUS

- ____ (2) Boxes Alcohol Pads
- ____ (2) Boxes Band-Aids
- ____ (2) Bandage Scissors
- ____ (1) Fanny Pack
- ____ (1) Flashlight w/batteries

CONFIDENTIAL

INJECTION TEAM INVENTORY CHECKLIST

PAGE 2

- ___ (2) Penlight flashlights
- ___ (2) Sharps Containers
- ___ (2) Boxes 4X4's
- ___ (4) Red Biohazard Bags
- ___ (4) Chux
- ___ (2) Boxes Moist Towelettes
- ___ (4) Bed Sheets
- ___ (4) Bath Towels
- ___ (1) Box Labels
- ___ (3) Sets PPE size XL
- ___ (3) Sets PPE size XXL

DEATH WATCH SUPERVISOR

I. INTRODUCTION

The duties and responsibilities of this post are that of observation and supervision of all activities concerning a condemned inmate(s) during pre-execution (Death Watch) monitoring. His duties are the general supervision and control of other security personnel assigned to monitor the condemned inmate during the time under death watch to include preparation of the condemned inmate(s) prior to execution.

II. GENERAL DUTIES AND RESPONSIBILITIES

This officer must be a Correctional Lieutenant or higher. He reports directly to the Warden or Deputy Warden. He will normally assume the administrative shift work schedule, but may be required to work different hours as needed. During off-duty hours he will remain on standby status unless relieved by the Administrative Lieutenant.

III. EQUIPMENT

Radio/hoster; keys; handcuffs.

III. SPECIFIC DUTIES AND RESPONSIBILITIES

A. Immediate Action

1. Upon notification of your assignment (normally when a death watch reaches active stage), prepare to assume the duty schedule reflected above.
2. Your post will be the entrance area leading into the Death Watch area. You will assume authority of all personnel assigned to pre-execution monitoring (Death Watch).
3. You will review the post orders for the Control Officer and Floor Officer to become familiar with all functions of subordinates.
4. There may be one floor officer per shift assigned.
5. You will insure that the condemned inmate upon reaching active death watch status personally inventories and packs away all items he is not permitted to retain. The inmate, yourself, and one witness will sign the property inventory. The inmate will be permitted to retain a copy of the inventory. The sealed property will be retained in storage in Building 8 until ordered removed or surrendered to the inmate's designate.

6. You will be responsible for escorting condemned inmate to Building 8 and placing him in cell after strip searching and exchanging his clothing.

7. You will insure that all significant information is entered on the Supervisor's Log. ALL PERSONS ENTERING THIS AREA FOR ANY PURPOSE WILL SIGN IN AND OUT, and you will keep a record of same.

8. You will insure that sufficient clothing in the inmate's size is retained in the preparation area to accommodate exchange each time the condemned inmate leaves his cell.

B. Subordinate Personnel

1. The Control Officer and the Floor Officer will be a Correctional Officer or rated officer who reports directly to you.

2. Ascertain the phone number and address of all subordinate personnel in order that they may be contacted after hours.

3. Subordinate personnel shall report to you.

4. C.M.O. floor officers will be assigned.

5. Insure that all orders and instructions are read and understood by all subordinate personnel.

C. Routine Security Measures, Checks, Logs

1. Maintain or cause to be maintained (by Control Officer) a "Supervisor's Log" of activities.

2. Personally supervise the feeding of all meals during your shift. Insure that no inmates are utilized in the feeding of any meal during an active death watch, including preparing the trays.

3. Keep all unauthorized personnel out of the area.

4. Insure that the security of the area is reported to the Control Room each half-hour during active death watch.

5. Do not permit anyone to enter the condemned inmate's cell except by order of the Warden, Deputy Warden, or Shift Captain. The only exception is a life-threatening emergency.

6. Insure that the condemned inmate is handcuffed behind at any time he leaves his cell. He will remain handcuffed until he is returned to his cell. (He may be handcuffed in front if a restraint belt is used.
7. Any time the inmate is moved, he will receive a double escort.
8. At least one (1) officer will always remain in the area even if it is temporarily vacant.
9. Insure that the area is kept clean and orderly. The inmate's holding cell shall be cleaned daily by assigned staff. The inmate shall be moved to an adjoining cell while the cleaning process is being accomplished.

D. Telephone Calls

Normally the inmate will receive telephone calls from a special extension plugged in at his cell location. When not in use, you will personally insure its security.

E. Emergencies and Other Contingencies

1. In the event of self-inflicted or other injury, take immediate and decisive action and contact the medical clinic immediately to send assistance.
2. Personally supervise the dispensing of any medication on a single unit dosage basis.
3. Immediately notify the Shift Supervisor, Deputy Warden, or Warden in the event of an emergency.

HOSTAGE STATEMENT

Any person, regardless of rank or position, who is taken hostage immediately relinquishes all authority normally designated to that rank or position and any orders issued by that person shall not be obeyed.

IV. SUMMARY

This post order cannot cover every possible contingency. Apply good judgment when decisions are necessary and time permitting, clarify doubtful or unusual circumstances with the Shift Supervisor, Deputy Warden, or Warden.

DO NOT DISCUSS THESE DUTIES AND RESPONSIBILITIES WITH ANYONE WITHOUT SPECIFIC AUTHORIZATION FROM THE DEPUTY WARDEN OR WARDEN.

CONTROL MONITOR

I. INTRODUCTION

The duties and responsibilities of this post are in effect immediately upon notice of a court order for execution and remain in effect until the order is stayed or the execution is carried out.

At the beginning of the Death Watch, the officer assigned this post will assume his/her duties.

II. DUTIES AND RESPONSIBILITIES

This officer must be a Correctional Corporal or higher. He reports directly to the Death Watch Supervisor, Deputy Warden, or Warden at the beginning of pre-execution monitoring until relieved or until the execution is stayed or carried out.

A. Immediate Action

1. Upon notification, you will assume your duties and responsibilities as described herein and your shift supervisor will be alerted of your assignment.
2. Begin maintenance of Death Watch Supervisor's log insuring the recording of significant detailed information.
3. During pre-execution monitoring the following persons are authorized to enter the area:
 - a) Warden
 - b) Deputy Warden
 - c) Captain/Lieutenant
 - d) Officers to assist in routine functions (i.e., showers, escort, shakedown) as authorized by Death Watch Supervisor.
 - e) Any medical or security personnel you deem appropriate in an emergency situation.
 - f) Prison chaplain.
4. You are responsible for the cleanliness of your area as well as the cell area during pre-execution monitoring.

B. Routine Security Measures, Security Checks and Logs

1. Keep an accurate chronological log of your activities.
2. Keep a sign-in and sign-out log for every person who enters or leaves Death Watch area.
3. Maintain close surveillance of subordinate personnel.
4. Keep all unauthorized personnel out of the area to include inmates, other employees, and visitors.
5. Report the security of your post to the Control Room every thirty minutes.
6. Movement of Inmate: Personally insure that the condemned inmate is handcuffed (behind his back) anytime he leaves his cell. Restraint belt may be used. The handcuffs will not be removed when he is receiving non-contact visits or media interviews, but they may be placed in front.
7. When a condemned inmate is moved, he will be escorted by two officers designated by the Death Watch Supervisor.
8. When the condemned inmate is moved from his cell, he will be searched and placed in different clothing. The same clothing may be reused until soiled so long as it is thoroughly inspected before reissuing it to him.

C. Visiting:

1. Unless otherwise directed, all visiting will be non-contact and will be held in the visiting area next to the Control Room.
2. Escorts for visiting during pre-execution monitoring will be provided by two experienced Correctional Officers assigned by the Death Watch Supervisor.
3. Supervision of visiting for condemned inmates in pre-execution monitoring will be designated by the Death Watch Supervisor.
4. An accurate log of pertinent information to include names of each visitor, time of arrival and departure of each visitor, and inmate will be maintained by the officer assigned to supervise visiting.
 - a. The number of persons authorized and the visiting hours will be in accordance with specific instructions issued by the Warden or Deputy Warden.
 - b. Allowable commissary items will be Section E.

D. State-Issued Property and Possession Limit

The inmate shall be allowed only the items listed below. Any other item will be considered contraband and confiscated in accordance with institutional policy.

- a. Standard issue of outer clothing
- b. One bed
- c. One mattress, pillow, and standard issue of linens
- d. One toothbrush
- e. One tube of toothpaste
- f. One bar of soap
- g. One disposable razor (to be issued and used under direct supervision only)
- h. Two towels, one washcloth
- i. Two pairs of shorts and t-shirts (Underwear will be exchanged daily)
- j. Toilet tissue as needed
- k. Stationery - 12 sheets, 3 stamped envelopes, 3 pencils. Pencils will be in possession of officer when not in use.
- l. Religious tracts as issued by institutional chaplain
- m. Legal documents and books and papers as requested
- n. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
- o. One radio outside door in front of cell (state-owned)
- p. One television outside door in front of cell (state-owned)
- q. Newspapers as requested and available (no more than two in cell at a time)
- r. Feminine hygiene items as necessary and appropriate.

E. Property Items and Privilege

The inmate may order and purchase the following items on the first day of death watch status:

- a. Colas (opened by officer and served in paper cup)
- b. Candy bars
- c. Cookies, crackers, potato chips
- d. Tobacco products (except matches)

(Note: All orders and deliveries inspected and delivered by officer. This includes removal of non-transparent candy wrappers. Care should be taken, however, to avoid handling of contents except with napkin, tissue, etc. Use sanitary disposable gloves that are used in kitchen.)

One state-owned television and radio will be placed outside door in front of cell for use by condemned inmate.

F. Telephone Calls

1. You may expect the condemned inmate to receive authorized telephone calls while in pre-execution monitoring status.
2. Specific instructions for each phone call will be given by the Warden, Deputy Warden, or Death Watch Supervisor, and will be logged (no exceptions). You will insure supervision of each phone call.
3. Normally, the inmate will receive telephone calls from a special extension plugged in at his cell location. When telephone is not in use, you will personally insure its security.

G. Emergencies and Other Contingencies

1. If any employee is taken hostage, he/she is without authority regardless of rank.
2. In the event of self-inflicted or other injury, take immediate and decisive action and contact the medical clinic immediately to send a physician or ranking medical person if he is not available.
3. Immediately notify the Warden, Deputy Warden, Death Watch Supervisor, and Shift Supervisor.

III. SUMMARY

This post order cannot cover every possible contingency. Apply good judgment when decisions are necessary and time permitting, clarify doubtful or unusual situations or circumstances with the Shift Supervisor, Deputy Warden, or Warden.

DO NOT DISCUSS THESE DUTIES AND RESPONSIBILITIES WITH ANYONE WITHOUT SPECIFIC AUTHORIZATION FROM THE WARDEN OR DEPUTY WARDEN.

FLOOR OFFICER MONITOR

I. INTRODUCTION

The duties and responsibilities of this post are in the direct supervision and monitoring of a condemned inmate's activities during the final days of pre-execution monitoring.

II. GENERAL DUTIES AND RESPONSIBILITIES

This officer may be a Correctional Officer or higher. He reports directly to the Control Monitor. He is posted in the area directly in front of the cells. He must remain alert on his post at all times maintaining direct observation of the condemned inmate.

III. EQUIPMENT

Radio/holster; handcuffs

IV. SPECIFIC DUTIES AND RESPONSIBILITIES

A. Immediate Action

Upon notification of your assignment, notify your shift supervisor for relief of your normal post. Follow the instructions of the death watch supervisor and/or control monitor and assume your assigned shift unless otherwise notified.

B. Routine Security Measures, Security Checks and Logs

1. Closely observe the condemned inmate's activities and immediately report to the death watch supervisor or control monitor any unusual circumstances or activities.
2. Insure that all eating utensils and trays are not allowed to remain in the cell when not in use.
3. Remain posted at the cell front, but do not hesitate to enter the condemned inmate's cell if circumstances warrant it.
4. The cell door key(s) will remain in the possession of the control monitor except as needed.

5. You may converse freely with the inmate, but avoid opinionated or inflammatory statements. Do not discuss your personal feelings regarding the Death Penalty. Do not make promises to the inmate. All requests by the inmate not covered herein will be referred to the death watch supervisor.
6. Do not leave your post unless properly relieved.
7. Visually inspect and thoroughly examine all items permitted into or out of the inmate's cell. Examine carefully all clothing sent to you from the clothing room.
8. Do a very thorough strip search of the condemned inmate any time he enters or exits his cell.
9. Exchange the inmate's clothing any time he enters or exits the cell. The same clothing may be reused until it becomes soiled.
10. Insure that the condemned inmate is handcuffed behind any time he leaves his cell. He will remain handcuffed until he is returned to his cell. (He may be handcuffed in front if a restraint belt is used.)
11. Insure that all post orders are being followed. It is expected that all floor officer monitors conduct themselves in a professional manner. A calm, mature atmosphere should be maintained.
12. You will be responsible for the daily cleanliness of your area and the cell areas. Normally the day shift will be responsible for sweeping and mopping the entire area; however, you will insure that the area remains in a state of cleanliness and trash containers are emptied during your tour. All trash is to be personally removed by staff and deposited in the appropriate containers located outside the secure confines of the institution.
13. Maintain or cause to be maintained (by Control Officer) a "Supervisor's Log" of activities.
14. Personally supervise the feeding of all meals during your shift. Insure that no inmates are utilized in the feeding of any meal during an active death watch, including preparing the trays.
15. Keep all unauthorized personnel out of the area.

1. **Sodium Pentothal - Yellow (50 cc)**
2. **Saline - Black (50 cc)**
3. **Pancuronium - Blue (50 cc)**
4. **Pancuronium - Blue (50 cc)**
5. **Saline - Black (50 cc)**
6. **Potassium Chloride - Red (50 cc)**
7. **Potassium Chloride - Red (50 cc)**

CHRONOLOGICAL EXECUTION REPORT

NAME OF INMATE: _____

	<u>Time</u>
1. Inmate entered execution room.	_____
2. Restraints in place on inmate.	_____
3. IV systems in place.	_____
4. Lethal injection chemicals injected.	_____
5. Examined by physician.	_____
6. Pronounced dead.	_____
7. Body removed.	_____
8. Body removed from institution.	_____

Date

Warden

CHRONOLOGICAL EXECUTION REPORT

ELECTROCUTION

NAME OF INMATE _____

	<u>TIME</u>
1. Inmate entered execution room.....	_____
2. Inmate restrained in chair.....	_____
3. Prepared sponge and headgear in place.....	_____
4. Electrical supply cable connected to chair.....	_____
5. Electrical current engaged.....	_____
6. Examined by physician.....	_____
7. Pronounced dead.....	_____
8. Body removed.....	_____
9. Body removed from institution.....	_____

Date

Warden

DAY OF EXECUTION - EXECUTION RECORDER CHECKLIST

- _____ Report to designated area for final briefing.
- _____ Extraction Team, along with IV Team, report to Admin. Lt.'s office. IV Team sets up IV system. Final Briefing.
- _____ Physician in place.
- _____ E.M.T. in place.
- _____ Medical Examiner in place.
- _____ Team leader in place.
- _____ Check blinds and curtains.
- _____ Check gurney and restraints.
- _____ Positioned in Execution Chamber.
- _____ Advise Escort Officer to transport Official Witnesses to Parole Room.
- _____ Advised by Escort Officer that Official Witnesses are in Parole Room.
- _____ Advise Escort Officer (2) to escort Victim's Witnesses to Viewing Room.
- _____ Advised by Escort Officer (2) that Victim's Witnesses are in place.
- _____ Warden or designee checks to insure execution is to proceed.
- _____ Extraction Team enters and secures offender to gurney.
- _____ Advise Escort Officer to transport Official Witnesses to Death Watch vestibule.
- _____ Advised by Escort Officer that Official Witnesses are in the vestibule.
- _____ IV's set - check to insure tubing is out of reach of offender.

CHECKLIST - continued

_____ Advise Escort Officer to "Transport Official Witnesses in place."

_____ Advised by Escort Officer that "Witnesses are in place."

_____ Warden checks with Command Center to proceed.

_____ Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.

_____ Warden asks offender for any last comments.

_____ Warden orders Execution Team to proceed.

_____ "Process completed."

_____ Blinds and curtains closed and closed circuit TV deactivated.

_____ Doctor pronounces death - exact time.

_____ Audio deactivated to witnesses rooms.

_____ Advise Escort Officer (2) to remove Victim's Witnesses.

_____ Advise Commissioner or designee in Command Center that execution is completed.

_____ Physician and E.M.T. departs.

_____ Medical Examiner escorted to chamber to take possession of body. Pictures will be taken of body and execution chamber prior to removal of body.

_____ Advised by Escort Officer (2) Victim's Witnesses are at Checkpoint.

_____ Advise Escort Officer to remove Official Witnesses.

_____ Advised by Escort Officer that Official Witnesses are at Checkpoint.

CHECKLIST - continued

Offender's Comments if any:

Lined area for offender's comments.

DAY OF EXECUTION - EXECUTION RECORDER CHECKLIST

- _____ Report to designated area for final briefing.
- _____ Extraction Team reports to Admin. Lt.'s Office. Final Briefing.
- _____ Physician in place.
- _____ Medical Examiner in place.
- _____ Team leader in place.
- _____ Check blinds and curtains.
- _____ Check restraints.
- _____ Positioned in Execution Chamber.
- _____ Advise Escort Officer to transport Official Witnesses to Parole Room.
- _____ Advised by Escort Officer that Official Witnesses are in Parole Room.
- _____ Advise Escort Officer (2) to escort Victim's Witnesses to Viewing Room.
- _____ Advised by Escort Officer (2) that Victim's Witnesses are in place.
- _____ Warden or designee checks to insure execution is to proceed.
- _____ Extraction Team enters and places restraints on offender.
- _____ Advise Escort Officer to transport Official Witnesses to Death Watch vestibule.
- _____ Advised by Escort Officer that Official Witnesses are in the vestibule.
- _____ Offender secured in chair and all restraints are in place.

CHECKLIST - continued

- _____ Advise Escort Officer to "Transport Official Witnesses in place."
- _____ Advised by Escort Officer that "Witnesses are in place."
- _____ Warden advised that, "Witnesses are in place."
- _____ Warden checks with Command Center to proceed.
- _____ Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.
- _____ Warden advised T.V. and audio are working.
- _____ Warden asks offender for any last comments.
- _____ Helmet and mask placed on offender and electrical cable connected.
- _____ Warden orders Execution to proceed.
- _____ "Process completed."
- _____ Blinds and curtains closed and closed circuit TV deactivated.
- _____ Doctor pronounces death - exact time.
- _____ Audio deactivated to witnesses rooms and Official Witnesses moved to Parole Room.
- _____ Advise Escort Officer (2) to remove Victim's Witnesses.
- _____ Advise Commissioner or designee in Command Center that execution is completed.
- _____ Physician departs.
- _____ Medical Examiner escorted to chamber to take possession of body. Pictures will be taken of body and execution chamber prior to removal of body.
- _____ Advised by Escort Officer (2) Victim's Witnesses are at Checkpoint.
- _____ Advise Escort Officer to remove Official Witnesses.

CHECKLIST - continued

____ Advised by Escort Officer that Official Witnesses are at Checkpoint

Offender's Comments if any:

11

Pages 45-49, Perimeter Security Prior To, During, and Subsequent to an Execution

Redacted

TENNESSEE DEPARTMENT OF CORRECTION POLICIES

Pertaining to Executions



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 506.16.1 Page 1 of 3
Effective Date: May 15, 2000
Distribution: LD
Supersedes: 506.16.1 (6/1/97)
PGN 97-53 (8/1/97)

Approved by: *Donald Campbell*

Subject: EXECUTIONS: FACILITY CONTROL AND ACCESS

UNOFFICIAL
COPY

- I. AUTHORITY: TCA 4-3-603, TCA 4-3-606, TCA 40-23-114 through TCA 40-23-117.
- II. PURPOSE: To establish guidelines for the safe and orderly control of and access to the facility in which the death watch housing area and the death chamber are located prior to, during, and subsequent to an execution.
- III. APPLICATION: All security personnel and staff of the facility in which the death watch housing area and the death chamber are located, and any other assigned staff of the Tennessee Department of Correction (TDOC).
- IV. DEFINITIONS:
 - A. Command Post: The location from which all direct orders for performance or behavior are issued during a specified time.
 - B. Victim's Immediate Family: Family members of the victim who are eighteen (18) years of age or older. This shall include the spouse, children (by birth or adoption), step-children, parents, step-parents, grandparents, or siblings of the victim.
- V. POLICY: Prior to, during, and after an execution, control of and access to the institution in which the death watch housing area and the death chamber are located shall be maintained in accordance with the following security procedures.
- VI. PROCEDURES:
 - A. Command Post
 - 1. A command post shall be established in the administration building. It shall be established prior to or during the days of a death watch, but no later than 24 hours before an execution. It shall remain operational until the execution is over and the debriefing is concluded. During the time of a death watch and execution, the command post will be under the direct authority of the Assistant Commissioner of Operations, warden, or designee.
 - 2. The Assistant Commissioner of Operations shall assume charge of the institution during the immediate time of an execution while the warden is directing the execution.

Effective Date: May 15, 2000	Index # 506.16.1	Page 2 of 3
Subject: EXECUTIONS: FACILITY CONTROL AND ACCESS		

B. Screening Access

1. All checkpoints shall be staffed as ordered by the warden and staff shall screen all vehicular and pedestrian traffic attempting to enter prison property.
 - a. Vehicles occupied by demonstrators or other members of the public will not be permitted on institution property.
 - b. Those desiring to enter prison property for purposes of demonstration or observation will be escorted by institutional staff or law enforcement personnel to a marked observation area to be specified by the warden.
2. Visitors permitted to enter the prison property will be issued individual color-coded identification cards. The cards shall have clips and be displayed by affixing to outer clothing. Different colored cards shall be issued to the following categories of individuals:
 - a. Official visitors, TDOC personnel, Tennessee Highway Patrol, and Metropolitan Davidson County police officials
 - b. Members of the news media.
3. Only official visitors and TDOC personnel displaying proper identification cards shall be permitted to proceed beyond the normal checkpoint area into the institution.
4. The Tennessee Highway Patrol and the Metropolitan Davidson County police shall have the responsibility for controlling demonstrators, members of the news media, and other members of the public as outlined in Policy #506.16.2.
5. Meals and other accommodations for any law enforcement personnel assisting shall be provided by the institution.

C. Observation Areas

1. Areas to be specified by the warden shall be marked and used for the location and containment of demonstrators, representatives of the news media, and observers.
2. If adequate space is not available to provide the victim's immediate family members with a direct view of the execution from an area separate from that to which other witnesses are admitted, the warden shall install equipment that will broadcast the execution to a room in which the immediate family may observe the execution by use of a closed circuit television system.

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Subject: EXECUTIONS: FACILITY CONTROL AND ACCESS

3. The warden will verify and document that individuals who request permission to observe the execution are bona fide members of the victim's immediate family.
4. Audio or video broadcasts of the execution shall not be recorded.

VII. ACA STANDARDS: None.

VIII. EXPIRATION DATE: May 15, 2003.



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index#: 506.16.2	Page 1 of 5
Effective Date: November 1, 2000	
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Supersedes: 506.16.2 (7/1/98)	
PCN 99-107-972-09	
PCN 99-107-99	

Approved by: *Donna Campbell*

Subject: EXECUTIONS: DEATH WATCH

**OFFICIAL
COPY**

- I. AUTHORITY: TCA 4-3-603, TCA 4-3-606, TCA 39-13-206, TCA 40-23-114 through TCA 40-23-117.
- II. PURPOSE: To establish guidelines for maintaining the security and control of a condemned inmate and for maintaining safe and orderly facility operations during the period of time immediately prior to an inmate's scheduled execution.
- III. APPLICATION: The employees of the institution in which the death chamber and death watch housing area are located.
- IV. DEFINITIONS:
 - A. Death Watch: Period of time immediately prior to an execution during which special procedures are implemented in order to ensure that the execution is carried out in a safe and orderly manner.
 - B. Death Watch Supervisor: A correctional officer of sergeant rank or higher appointed by the warden who is responsible for the welfare of the inmate on death watch status.
 - C. Privileged Mail: Correspondence clearly addressed to or from attorneys, law students on behalf of attorneys, courts, court clerks, legal aid clinics or law schools operating such clinics, recognized legal defense funds, and governmental officials or agencies, including the Tennessee Claims Commissioner, provided such correspondence bears the appropriate name and title.
- V. POLICY: Three (3) days prior to an inmate's scheduled execution date, unless otherwise directed by the commissioner, the warden shall implement death watch procedures for any inmate who has completed the automatic appeal to the Tennessee Supreme Court of his/her conviction and sentence of death and has no stay of execution while an appeal is being considered by a court of jurisdiction.
- VI. PROCEDURES:
 - A. Notification:
 - 1. When inmate is placed on death watch, the warden or designee shall immediately notify the following agencies of the current death watch and scheduled execution date:
 - a. Tennessee Highway Patrol
 - b. Metropolitan Davidson County Police
 - c. Tennessee Emergency Management Agency
 - d. Tennessee Department of Corrections Public Information Officer.

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Subject: EXECUTIONS: DEATH WATCH		

2. The warden and TDOC victims rights coordinator shall immediately notify all individuals whose presence is required or permissible in the witness room during the execution when the inmate is placed on death watch.

B. Conditions of Death Watch Confinement:

1. The condemned inmate shall be informed of his/her placement on death watch status.
2. The inmate shall be allowed to have in his/her cell only the items listed below. Any other item will be considered contraband and confiscated in accordance with institutional policy.
 - a. Standard issue of outer clothing
 - b. One bed
 - c. One fire retardant mattress, pillow, and standard issue of linens
 - d. One toothbrush
 - e. One tube of toothpaste
 - f. One bar of soap
 - g. One rechargeable electric razor (to be issued and used under direct supervision only)
 - h. One washcloth
 - i. One pair of shorts and one t-shirt
 - j. Toilet tissue as needed
 - k. Stationery - 12 sheets, 3 stamped envelopes, 1 pencil which will be in the possession of officer when not in use.
 - l. Religious tracts, Bible, Koran, etc., as issued by institutional chaplain
 - m. Legal documents, books, and papers as requested
 - n. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
 - o. One television outside door in front of cell
 - p. Newspapers as requested and available (no more than one (1) in cell at a time)
 - q. Feminine hygiene items as necessary and appropriate

Effective Date: November 1, 2000

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Subject: EXECUTIONS: DEATH WATCH

- r. Cigarettes - When an inmate is moved to death watch, all cigarettes and matches he/she has will be confiscated. If the inmate requests a cigarette, he/she can be issued one cigarette at a time to be issued and lighted under direct supervision. At no time will smokeless tobacco products be issued. The warden may deny the issuance of cigarettes if he/she feels that the security or safety of the inmate or institution could be threatened.
3. Clean laundry shall be provided as needed.
 4. The inmate shall retain all mail privileges except receipt of packages. Any packages received shall be stored with the inmate's personal property after the inmate has been advised of the package contents. All outgoing, non-privileged mail will be read by staff.
 5. Regular meal provision shall occur, with adherence to any special dietary instructions. On the final day, the inmate may request a special meal. This meal shall be provided within reason as determined by the warden.
 6. Recreational activities other than television viewing shall be suspended.
 7. Should the inmate request access to a telephone to make personal or legal assistance calls, the warden or deputy warden may approve such request(s). A portable telephone will be taken to the cell for the inmate's use.
 8. The inmate may request in writing, and receive, legal and other materials from the institutional library. These materials shall be carefully inspected by the staff librarian and death watch supervisor prior to being delivered to the inmate.
 9. The clothing room supervisor shall issue clothing and shoes of appropriate size and appearance for use by the mortician. The inmate's family may, if they choose, provide substitutions for any or all of these items.

C. Visitation Privileges

1. Social:

- a. Only those individuals on the inmate's approved visiting list shall be allowed visits during the death watch.
- b. All visits shall be held in a maximum security area, and physical contact between the visitor(s) and inmate shall not be permitted. Visits will be between the hours of 9:00 a.m. and 4:00 p.m., and limited to two (2) hours duration.
- c. The number of visitors allowed to visit at any one time and number of times a visitor can visit shall be at the discretion of the warden or deputy warden.

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d. A final visit during which physical contact between the inmate and spouse/ immediate family member is permitted may be authorized by the warden. The warden's decision shall be based on the individual circumstances in each case. Contact visits shall be supervised by no fewer than two (2) correctional officers chosen by the death watch supervisor with the concurrence of the deputy warden.

2. Religious:

a. Priest(s) or ministers of recognized religious faiths who are of the inmate's recorded religious preference may visit the inmate in the same manner as provided for social visits in Section VI(C)(1).

b. A final visit by the inmate's personal priest or minister may be permitted by the warden immediately prior to the execution. This visit shall take place at the front of the inmate's cell. This visit shall be limited to one (1) hour duration. The warden shall decide the hours the visit will occur.

(1) The personal priest or minister will not be permitted to accompany the inmate into the execution chamber.

(2) At the inmate's request, a staff chaplain may visit on request and/or accompany the inmate into the execution chamber.

3. Legal Services:

a. The attorney of record or other Tennessee licensed attorney retained by the inmate may visit the inmate up to one (1) hour before the time of execution. One (1) defense counsel chosen by the condemned person, and the State Attorney General and Reporter, or his/her designee may view the execution from the execution chamber witness room.

b. Visits with attorneys shall be non-contact access and will be conducted with provisions for the privacy of verbal exchange but under full and continuous observation by at least two (2) correctional officers.

4. Media Interviews:

a. Inmate interviews with the news media may not be conducted during the death watch period.

b. During death watch, television station "live shots" shall not be permitted inside the secure perimeter of the institution at any time or within other buildings of the institution.

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- c. During death watch, representatives of the news media shall not be allowed inside the secure perimeter of the institution for interviews with any TDOC inmate, or for any other purpose other than those selected to witness the execution, as specified in TCA 40-23-116.

- VII. ACA STANDARDS: None.
- VIII. EXPIRATION DATE: November 1, 2003.



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 507.01

Page 1 of 1

Effective Date: January 1, 2001

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Supersedes: N/A

Approved by:

Ronald Campbell


Subject: VISITATION

POLICY CHANGE NOTICE 00-90

INSTRUCTIONS:

Please add the following to Section VI(F)(1):

"g. Displaying of security threat group (STG) symbols or affiliation."

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	Effective Date: April 15, 2000	
Distribution: B		
Supersedes: N/A		
Approved by: <i>Donald Campbell</i>		
Subject: VISITATION		

POLICY CHANGE NOTICE 00-19

INSTRUCTIONS:

Please change Section VI.(B)(6)(g) to read as follows:

"g. The following will apply for persons with past criminal felony convictions:

- (1) Immediate family members with past felony convictions may apply for visitation status six (6) months after release from confinement. If the person is still on probation/parole, written approval from the probation/parole officer must be provided with the visitation application. Persons on probation are not required to wait six (6) months before applying for visitation status; however, such persons must have written approval from their probation/parole officer.
- (2) Other potential inmate visitors with felony convictions who are not immediate family members may apply for visitation one (1) year after placement on probation/parole or one (1) year after release from confinement. If the person is still on parole/probation, the probation/parole officer must give written approval.
- (3) The warden may disapprove visitation applications of either immediate family or persons who are not immediate family with felony convictions if he/she believes that the security of the institution could be jeopardized."



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
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Distribution: B

Supersedes: N/A

Approved by: *Donald Campbell*

Subject: VISITATION

POLICY CHANGE NOTICE 99-128

INSTRUCTIONS:

Please change Section VI. (B)(6)(b) to read as follows:

- "b. Children under 12 years of age may visit without being on the inmate approved visitor list, provided they are accompanied by their parent, legal guardian, or guardian who is on the inmate's approved visiting list. Identification is not required for children between ages of 12 and 16 years old; however, a CR-2152 with picture must be on file."

Please add to Section VI. (F) the following subparagraph 8:

- "8. In all instances, where an inmate's visits are suspended for any reason, such as drug conviction, sexual misconduct, etc., TOMIS conversation LCD2 will be modified to reflect this action. The reason for the suspension will be properly coded on the "visitor status denial" screen, and the beginning and ending dates will also be entered. This will be completed for each approved visitor on the list. Should the suspension reason be associated with a specific incident, the incident number will also be entered."



ADMINISTRATIVE POLICIES
AND PROCEDURES

State of Tennessee
Department of Correction

Index # 507.01

Page 1 of 13

Effective Date: July 1, 1999

Distribution: B

Supersedes: 507.01 (5/1/98)
PCN 98-82 (10/1/98)
PCN 98-51 (8/1/98)

Approved by:

Donald Campbell

Subject: VISITATION

- I. AUTHORITY: T.C.A. 4-3-603, T.C.A. 4-3-606, T.C.A. 39-16-201.
- II. PURPOSE: To establish departmental guidelines governing the visiting of inmates.
- III. APPLICATION: To the Assistant Commissioner of Operations, institutional employees, employees of privately managed facilities, and inmates, excluding any offender assigned to and actively participating in an S.A.I.U. program or the parole/probation violators program.
- IV. DEFINITIONS:
 - A. Child: Anyone under the age of eighteen (18) years.
 - B. Contraband: Any item which is not permitted by law or is expressly prohibited by Tennessee Department of Correction (TDOC) or institutional policy.
 - C. Guardian: A person authorized by a child's custodial parent or legal guardian to be responsible for a child while visiting a correctional institution. This authorization shall be evidenced by a notarized statement from the custodial parent or legal guardian submitted to the institution for file.
 - D. Immediate Family: Mother, father, husband, wife, children, grandchildren, brother, sister, grandmother, grandfather, half-siblings, son-in-law, daughter-in-law, sister-in-law, brother-in-law, mother-in-law, father-in-law. Step parents in loco parentis may be considered within this definition when it has been verified that the inmate was reared by this individual as a result of death, divorce, desertion, or other absences of a parent.
 - E. Legal Guardian: A person appointed by the court to provide partial or full supervision, protection, and assistance of the person of a minor, as evidenced by a certified copy of a court order.
 - F. Official Visitor: Employees of the TDOC, other governmental agencies, or private sector who are conducting business at the institution.
 - G. Visitor: Person who has completed application/approval process for permission to visit an offender.
- V. POLICY: The TDOC shall allow inmates visitation privileges within the following guidelines.
- VI. PROCEDURES:
 - A. Guidelines
 1. Local rules pertaining to visiting shall be available to all staff, inmates, and visitors.

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- a. In addition to continual posting in an area accessed by visitors, a visitors handbook shall be produced and made available for new applicants who provide a self-addressed stamped envelope with their application. Additional copies will be available at checkpoint.
 - (1) The visitors' handbook shall include the following statement:

"Title VI of the Civil Rights Act of 1964 requires federally assisted programs be free of discrimination and the TDOC also requires that all its services be offered equally to eligible persons regardless of race, color or national origin."
 - (2) The visitors' handbook shall contain information detailing available avenues of complaint regarding alleged Title VI violations, including methods for contacting the local Title VI coordinator, the Tennessee Human Rights Commission, and the U.S. Department of Justice.
 - (3) A poster provided by the Deputy Commissioner's office regarding Title VI compliance and complaint information shall be posted on bulletin boards in visitor areas at each institution.
- b. Whenever possible, visitation policies or procedural changes should be posted on bulletin boards, announced to inmate council, and published in inmate newspapers thirty (30) days in advance.
2. Visitation areas should have facilities accessible to handicapped visitors, including restrooms and entrance ramps to the visitation area.
3. Each institution shall be responsible for providing information to visitors about possible transportation to the institution and directions on how to reach the facility.

B. Approval and List

1. A list of approved visitors shall be recorded during each inmate's initial classification.
2. Blank copies of Visitation Application Form, CR-2152, shall be furnished to all inmates, with written instructions that prospective visitors shall complete and return the forms with a current photograph to the warden within thirty (30) days. Applications should be approved or denied within thirty (30) days of receipt.
3. No visitor shall be admitted for visitation until the application is approved, except for immediate family visitors of newly committed inmates. In such instances, the warden shall cause the names of the inmate's immediate family members to be added to the approved visitors list, until receipt and approval of the visitation application. (No more than 60 days from inmate intake date shall be allowed for this purpose.)

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4. Inmates housed at the reception centers awaiting classification and/or transfer to their assigned institution shall only receive visits from their immediate family members.
5. If the warden's designee approves the applicant visitor, the name shall be entered into TOMIS conversation LCDN and approved on TOMIS conversation LCD2. The warden shall make the final decision when an applicant is initially disapproved by a designated reviewer. The inmate shall receive notification within thirty (30) days of receipt of the application as to whether or not his/her visitor is approved. If disapproved, a reason(s) shall be noted. It shall then be the inmate's responsibility to advise the visitation applicant of the approval or denial. The inmate may appeal a disapproval through the grievance procedure. (See Policy #501.01 or #9501.01 for privately managed facilities.)
6. Approval of visitors shall be at the warden's discretion, in accordance with the following guidelines:
 - a. All immediate family members who apply and eight (8) additional adults may be approved to visit an inmate upon receipt of CR-2152.
 - b. Children under 12 years of age may visit without being on the inmate's approved visitors list, provided that Section VI.(B)(5)(a) is met. Identification is not required for children under 16 years of age but there must be a CR-2152 with picture on file.
 - c. All visitors under 18 years of age must be accompanied by an approved visitor who is either the child's parent, legal guardian, or guardian. (The custodial parent or legal guardian must provide notarized permission for the visitor to bring the child to visit and for the child to be searched.)
 - d. Members of the clergy, as recognized by the chaplain or warden, need not be placed on the Approved Visitors List.
 - e. Attorneys of record need not be placed on the Approved Visitors List.
 - f. Persons the warden determines could have a harmful influence on the inmate and/or may constitute a threat to the security of the institution shall not be approved for visitation.
 - g. Persons with past criminal felony convictions are excluded from visiting except those who are members of the inmate's immediate family. The immediate family may apply for visitation privileges six (6) months after their release from confinement. Written approval must be submitted by the parole officer prior to approval of the application. Persons on probation are not required to wait six (6) months; however, they must have written permission from their probation officer.

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- h. Current or former contract employees, TDOC interns, practicum students, and former TDOC employees may not be approved for visitation unless they are immediate family members and were such prior to their employment with the TDOC or contract agency. Former employees or former contract employees who were on an inmate's approved visitation list on October 1, 1998, shall be grandfathered and allowed to remain on the list.
- i. Any falsification of the CR-2152 by a visitor may be cause to deny approval or to withdraw approval of the visitors.
- j. A person participating as a volunteer or who has participated as a volunteer within the last twelve (12) months shall not be placed on an inmate visitation list.
- k. Visitors may not be placed on more than one (1) inmate visiting list unless the inmates are immediate family members of the visitor and the relationship can be substantiated.
- l. Additions or substitutions to the approved list shall be made no more frequently than every three (3) months throughout the inmate's incarceration by the same application and approval system cited above (i.e., if an inmate makes a change in his/her visitation list on March 1, he/she may not apply for another change until June 1.) Applications received seeking approval to visit an inmate who is not yet eligible for a change to his/her list shall be returned to the applicant with an explanation/note regarding the eligibility date for resubmission.
- m. When a visitor is removed from a non-immediate family inmate's visiting list, there shall be a one (1) year waiting period before that visitor may be placed on another non-immediate family inmate's visiting list.

C. File

- 1. All copies of CR-2152 received from visitor applicants shall be maintained in the visitation file, clearly marked approved or disapproved with the signatures of the warden/designee.
- 2. All of these documents shall subsequently be transferred as a part of the inmate's institutional record whenever the inmate is assigned to a different institution. (See Policy #403.01.1.)
- 3. Each institution shall maintain a record of the names of all visitors admitted to the institution to visit inmates. This record may be maintained together with and/or separate from the inmate's visitation file. In either case, the record of visitors admitted for visits shall remain at the institution where the visit occurred. Visitor arrivals and departures shall be entered into TOMIS conversation L1MM.

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D. Schedule

1. The warden shall establish a routine schedule of visiting which shall include Saturdays, Sundays, and the following holidays that are recognized as being state holidays:

- a. New Year's Day
- b. Martin Luther King's Birthday
- c. President's Day
- d. Good Friday)
- e. Memorial Day . . .
- f. Independence Day (July 4)
- g. Labor Day
- h. Thanksgiving Day *
- i. Christmas Day *

* Visitation on additional days accompanying Thanksgiving/Christmas Day will be determined by the commissioner.

2. Visitation shall also occur one (1) evening per week to ensure visiting privileges for those inmates unable to visit on weekends. This should not be construed as allowing a visitor to visit both on the regularly scheduled weekend/holiday schedule and the special week day visitation. Institutional space and personnel resources and schedule should be the only reasons to limit the number of visitors or length of visits. The warden, or designee, may approve other times for visitation due to unusual circumstances. Hours of visits should not interfere with the inmates' work, education, or vocational training schedule.

3. The warden or designee may approve the following types of special visits for persons on or not on the inmate's approved list. If absolutely necessary, they may be approved for hours other than those regularly scheduled for visitation. Approved/disapproved special visiting requests will be placed in the inmate's visitation file.

- a. Visitors who have traveled 200 miles or more and/or do not visit on a regular basis (at the warden's discretion)
- b. Children, as part of a special program to promote family bonding
- c. Attorneys (See Policy #105.09.) (Privately managed institutions refer to their corporate policy.)

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- d. Prospective employers, sponsors, or parole advisors
 - e. Physicians, psychiatrists, or other health professionals (See Policy #113.30.)
 - f. Persons significant to the inmate for purposes of crisis intervention
 - g. Official visitors
4. A schedule of state holidays shall be posted on a bulletin board that is accessible to visitors.
 5. The visitation schedule for segregated inmates should accommodate the number of visitors, length, and frequency of visits mandated by Policy #506.16 and #9506.16 for privately managed facilities.
 6. Punitively segregated inmates may be allowed visits. At the discretion of the warden, punitively segregated inmates may visit in an area within the segregation unit or may visit as scheduled with the general population.
 7. During an institutional emergency, visitation may be canceled as deemed appropriate by the warden.

E. Security

1. Visitors shall not enter any areas of the institution except for approved visitation areas and approved routes to and from those areas.
2. All visitors shall be searched as specified in Policy #506.06.
3. If contraband is found in the possession of a visitor, the contraband shall be confiscated and the visitor may be detained for law enforcement officials and possible felony prosecution as per T.C.A. 39-16-201. If the visitor refuses to be detained, force should not be used to accomplish this. Vital information such as name, address, phone number, automobile make and model, description, license plate number and state where issued should be documented and forwarded immediately to the officer in charge, who in turn should notify appropriate authorities. An incident report shall be submitted. (See Policy #103.02.)
4. Inmates are not permitted to wear long underwear during visits.

F. Denial, Termination, and Suspension of Visits

1. The intended visit may be denied for any reason including, but not limited to:
 - a. A visitor refuses to show appropriate and bona fide identification

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- b. A visitor refuses to submit to a search
 - c. A visitor appears to be under the influence of drugs or alcohol
 - d. There is insufficient space for visiting
 - e. Possession of contraband
 - f. Inappropriate dress.
2. Visits may only be terminated by the senior shift supervisor upon recommendation by the officer in charge of the visiting area; however, less restrictive measures may be used, such as warning the inmate and/or the visitor(s). Examples of reasons for termination include, but are not limited to:
- a. Inmates or visitors who violate visitation conduct rules
 - b. Visitors who fail to control their children.
3. Whenever a visit is denied or terminated, a detailed written report shall be prepared by the official taking the action. A copy of the report shall be forwarded to the warden. The statement of reasons by the reporting officer shall provide details of the visitor's/inmate's inappropriate actions.
4. Other than as specified in Policy #502.01 (or #9502.01 for privately managed facilities), only the warden can suspend visitation privileges. In addition to the visitor involved in misconduct, the warden may suspend all of the inmate's approved visitors, except attorneys and ministers unless they are personally involved, and the inmate's immediate family who were not involved in the misconduct, for any misconduct involving the inmate and a visitor. Upon determining that visitation shall be suspended, the warden shall provide a written notice to the inmate, visitor, and visitation staff. The statement of reasons may be limited to the extent it would jeopardize the security of the institution or the safety of any individual. Visiting privileges may be suspended for up to six (6) months for any reason, including, but not limited to, the following:
- a. Upon reviewing a denial/termination report, the warden determines suspension is warranted
 - b. The visitor(s) and/or inmate have become intoxicated during the visit
 - c. Visitor repeatedly violated visiting rules
 - d. Visitor continually failed to control children.
 - e. Visitor exhibits other behavior and action which the warden in his/her discretion decides could jeopardize the security of the institution

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- f. Any visitor refusing a search of any type may be permanently restricted from visiting at any TDOC facility.
 - g. Inappropriate sexual contact
5. If the visitor is arrested, his/her visitation privileges shall be suspended pending disposition of the case and may be suspended for:
- a. From one (1) month to permanent suspension
 - b. The duration of any court sentence including terms of probation, incarceration, and parole.
6. The visitor may be required to reapply for visiting privileges in accordance with Section VI.(B) above at the discretion of the warden. However, any visitor who is found to have either drugs or firearms while on state property will be permanently prohibited from visiting at any TDOC location.
7. In all instances where inmates test positive for or are in possession of illegal drugs, or refuse to comply with a request for a drug screen, in addition to appropriate disciplinary actions, the warden shall modify the inmate's visits according to the following:
- a. First Offense - Visits shall be suspended for six (6) months.
 - b. Subsequent Offenses - Visits shall be suspended for one (1) year.
 - c. Attorney and minister visits are not affected by this section.

G. Institutional Clinic

Inmates who are patients in the institutional infirmary shall be allowed visits in a time, place, and manner as scheduled by the warden or his/her designee on a regular basis, provided that the attending physician/health provider allows it.

H. Outside Hospital

1. Inmates who are patients in community hospitals shall not be allowed visits, unless:
- a. The hospitalization exceeds two (2) weeks continuous duration, or
 - b. The inmate is in critical condition, and
 - c. The warden/designee approves the visit.
2. Visitation shall be restricted to two (2) visitations per week unless the inmate is critical and a maximum of one-half hour per day per approved visitor during established hospital visitation hours, unless further restricted by the attending physician.

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3. Hospital visiting rules as well as TDOC rules are to be obeyed.
4. No gifts, food, or packages shall be allowed for inmate patients.
5. Visits shall be subject to termination and/or suspension under the same criteria as with institutional visits.
6. The officer(s) in charge shall maintain a log of names of each visitor, time of arrival, and time of departure. That log shall become part of the record referenced in Section VI.(C)(3) above.

1. Visitation Areas

1. All institution visits shall take place in areas designated by the warden. The area should allow reasonable ease of communication between inmates and their visitors.
 - a. Minimum custody designated inmates shall be given the most flexibility and choices about areas for visitation.
 - b. Maximum and close level 4 custody designated inmates shall be restricted to more secure areas for visiting due to supervision requirements.
 - c. Attorneys and inmate clients shall, upon request, be afforded privacy for their visits.
 - d. Outside visitation areas may be operated from April 1 through October 31 for inmates designated as minimum or medium custody. Cooking may only be permitted the first weekend of each month at those institutions that are rated minimum restricted and above. Minimum security annexes may be allowed to cook each weekend. The warden shall develop local procedures which will specify those food items allowed and amounts on days cooking is permitted. The amount of food permitted must be in proportion to the number of persons visiting the inmate. Inmates convicted of Class A disciplinary infractions shall not be allowed to visit in these areas for a minimum of two (2) months subsequent to the conviction. On weekends cooking is not permitted, only the following items may be allowed:
 - (1) Deli/lunch meats - pre-packaged, unopened, and sealed
 - (2) Sliced cheese - pre-packaged, unopened, and sealed
 - (3) Condiments - single serving individual sealed packages
 - (4) Bread - commercially packaged sliced bread
 - (5) Paper plates, napkins, and plastic eating utensils

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- (6) Soft drinks - cans or plastic bottles only not to exceed two (2) liters in size
- e. At the warden's discretion, the outside visitation area may be operated from November 1 through March 31. No food items, except institutional vending machine food, is approved for consumption on the outside visiting area during this time period.

2. Vending machines may be furnished in visitation areas.

J. Property of Visitors

- 1. Except for privileged official visitors or as specified in Policy #507.02, visitors shall not be allowed to deliver packages, correspondence, money, or printed materials to inmates. All such items shall be mailed.
- 2. Facilities utilizing the debit card system for vending machines will not permit any monies into the visitation area.
- 3. Visitors shall not be allowed to bring any items into visitation areas except:
 - a. Two (2) unopened packages of cigarettes or cigars or pipe tobacco and/or pipe per adult visitor if smoking is permitted in the visitation area.
 - b. Two (2) books of matches per adult
 - c. \$10.00 in coins for the first person, and \$3.00 in coins for each additional person at facilities not utilizing the debit card system
 - d. Baby items (i.e. diapers, formula, unopened sealed baby food, etc.)
 - e. Car keys
 - f. Pagers
 - (1) Visitor will provide information to the warden on CR-2152 regarding the reason for the pager; i.e., employer, likely callers, etc. This information, in addition to the warden's approval or denial, will be maintained in the visitor's file.
 - (2) At each visit, the visitor will:
 - (a) Open pager, remove and replace batteries, and open any other compartments which can be opened without tools
 - (b) Demonstrate that pager is functional. If pager is not functional, visitor will be responsible for leaving pager outside the facility. Staff will not accept custody of the pager.

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- (c) Place pager in "vibrate" mode if so equipped.
 - (d) Wear pager in conspicuous place during visit
 - (e) Upon leaving visitation, open pager, remove and replace batteries, open any other compartments which can be opened without tools, and demonstrate that pager is functional.
- (3) Staff will not be responsible for loss or damage to pager during visitation. This will be included in the visitors handbook.
 - (4) Visitors must retain sole possession of pager during visit.
4. All other items shall be placed by the visitor either in institution lockers, where provided, or in their private cars.

K. Dress Code for Visitors, Official Visitors, and Volunteers

1. Persons entering TDOC facilities should be encouraged to dress comfortably and in casual attire; however, they shall be expected to comply with the following basic dress requirements. Wardens may further define these requirements in local policy.
 - a. Clothing shall fit in an appropriate manner. Clothing appearing to be too large or too small for the wearer, which creates obvious gaps or exposure, or would present a hazard to the wearer will be rejected by the shift supervisor.
 - b. Visitors must wear underwear.
 - c. Appropriate foot wear to provide basic foot protection shall be required while on institutional grounds. Open toe shoes or sandals are permitted, however shower shoes, flip-flops, etc., are not permitted.
 - d. Shorts or skirts are permitted provided the leg is covered to within three (3) inches above the knee in a standing position with the garment worn in the position in which it is intended to be worn.
2. The below listed types of clothing are specifically prohibited:
 - a. Garments manufactured from spandex or spandex-type fabrics.
 - b. Any clothing that is transparent or translucent in nature.
 - c. Sleeveless shirts or dresses or clothing exposing a bare chest or midriff.
 - d. Any camouflage attire.

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e. Clothing with logos that contain pictures, slogans, or vulgarity, or contain signs or symbols of security threat groups (STG), or any clothing determined by the processing officer to be associated with any STG. The association may be made by color combination, designs, or logos affixed to the clothing, or the manner in which the clothing is worn.

3. Visitors may not wear excessive clothing such as two (2) pairs of pants or an extra shirt under their top layer of clothing. This is necessary to prohibit the exchange of clothing between inmates and visitors.

VII. ACA STANDARDS: 3-4149, 3-4162, 3-4164, 3-4165, 3-4255, 3-4440, 3-4441, 3-4442, 3-4445, 3-4446.

VIII. EXPIRATION DATE: July 1, 2002.

Effective Date: July 1, 1999

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Subject VISITATION

PARENTAL CONSENT/RELEASE FOR MINOR'S VISITATION

(For children under eighteen (18) years of age, please fill out completely; have notarized by a notary public, lawyer, or local postal official.)

This form must be completed by the parent/legal guardian and properly notarized for minor children (under 18) to visit an inmate who is an immediate family member of the child, or is a friend of the child and the parent/legal guardian. The child may visit only with the authorized person named below who must also be on the approved visitation list of the inmate they wish to see.

MINOR(S) NAME(S) DATE OF BIRTH RELATIONSHIP TO INMATE

Inmate Relationship to Parent/Legal Guardian:

SIGNATURE OF PARENT/LEGAL GUARDIAN:

STATEMENT OF NOTARY PUBLIC

Subscribed to, and sworn before me on this day of 19

My commission expires on

Notary Public

DO NOT WRITE BELOW THIS LINE

Application for escort privilege for minor(s) have been submitted to and is hereby:

APPROVED (Warden or Designee) DATE

DENIED (Warden or Designee) DATE

Reason(s) for denied visitation:

For Visitation files Inmate CR-2152 (Rev. 3/99) Page 2 (Duplicate-as-needed only)



TENNESSEE DEPARTMENT OF CORRECTION ADULT INSTITUTIONS VISITATION APPLICATION

Form with fields for NAME, ADDRESS, RELATIONSHIP TO INMATE, and SIGNATURE. Includes a large table for inmate information and a signature line for the applicant.

Form with fields for SIGNATURE, DATE, and APPROVED/DENIED status. Includes a section for 'ATTACH RECEIPT PHOTO HERE'.

MATRIX PLANNING - THE EXECUTION PROCESS: MANAGING THE INTERNAL ENVIRONMENT

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
<p>A. Identification of Post Orders/Procedures to be Written:</p> <ol style="list-style-type: none"> 1. Movement of Inmate to Death Watch 2. Death Watch Area 3. Control Room 4. Floor Officer 5. Escort Officer 6. Visitation/ Privilege Officer 7. Post Execution Process 8. Internal Security 9. Logistics & Support 10. Death Watch Supervisor 					
<p>B. Identification/Duties of Key Personnel</p> <ol style="list-style-type: none"> 1. Governor 2. Deputy Commissioner 3. Asst. Commissioner 4. Public Information Off. 5. Warden 6. Admin. Assistant 7. Deputy Warden 8. Shift Supervisor 9. Death Watch Supervisor 10. Death Row Unit Manager 11. Chaplain 12. Case Manager 13. MIS Personnel 					

MATRIX PLANNING - THE EXECUTION PROC. MANAGING THE INTERNAL ENVIRONMENT

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
14. Medical Personnel 15. Psychiatrist 16. Food Service 17. Transportation Training of Staff					
1. Post Orders/ Procedures a. Shift Supervisor b. Death Watch Supervisor c. Death Row Manager d. Administrative Staff e. Execution Team Stress Management a. Identify who is to be trained.					
Implementation					
1. Activation of Death Watch 2. Alert given to staff of Execution 3. Preparation of inmates 4. Activation of Execution Chamber 5. Notification/Communi- cation with News Media 6. Deactivation of Execution Chamber 7. Deactivation of Death Watch 8. Debriefing of Staff					

MATRIX PLANNING - JOB MANUALLY

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
<p>Death Watch Procedures</p> <ol style="list-style-type: none"> 1. Receipt of Order <ol style="list-style-type: none"> a. Who is notified 2. Notification Process <ol style="list-style-type: none"> a. Identify who is to be notified 3. Search of Area <ol style="list-style-type: none"> a. Identify Responsibilities 4. Activation Process <ol style="list-style-type: none"> a. Plan in Place b. Tasks Identification. 5. Role of Staff <ol style="list-style-type: none"> a. Property Supervision of Privileges <ol style="list-style-type: none"> 1. TV/Radio 2. Recreation 3. Personal Phone Calls 4. Reading/Writing Materials 5. Legal Material 6. Mail 7. Commissary 8. Packages 9. Visits <ol style="list-style-type: none"> a. Special b. Religious c. Medical d. Legal e. Psychological f. Media 					

MATRIX PLANNING - THE EXECUTION PROCEDURE

MANAGING THE INTERNAL ENVIRONMENT

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
Execution Process					
1. Procedure for Testing Equipment					
2. Maintenance Procedures					
3. Activation and Deactivation Procedures					
4. Family Last Visit					
5. Preparation of Inmate					
a. Clothes					
b. Preparation of IV Equipment					
c. Strapping of inmate onto gurney					
d. Removal of Body					
6. Transportation out of Institution					
a. Methods					
7. Movement of Exec. Team In/Out of Institution					
8. News Release					
9. Notification Letter To Witness					
Chronological Execution Report					

MANAGING AN EXECUTION: EXTERNAL ISSUES

MEDIA PLAN	POLICY: PLAN OUTLINE	PLAN PARTICIPANTS	DOC. STAFF ASSIGNMENTS	GENERAL STATUTES	SCHEDULE/ TIME TABLE	PREPARATION OF MATERIALS
Policy						
actical Plan ress kits, urs, etc.)						
dia tnesses						
dia Execution an						
st Execution an						

MANAGING AN EXECUTION: EXTERNAL ISSUES

MANAGEMENT OF SPECIAL INTEREST	POLICY: PLAN OUTLINE	PLAN PARTICIPANTS	DOC STAFF ASSIGNMENTS	GENERAL STATUTES	SCHEDULE / TIME TABLE	PREPARATION OF MATERIALS
Policy Identify groups, individuals						
56 Develop strategy						
Complete plan 51						

MANAGING AN EXECUTION: EXTERNAL ISSUES

INTERAGENCY PLAN	POLICY: PLAN OUTLINE	PLAN PARTICIPANTS	DOC STAFF ASSIGNMENTS	GENERAL STATUTES	SCHEDULE/ TIME TABLE	PREPARATION OF MATERIALS
<p>Policy</p> <p>Identify critical components, participants, and focus</p>						
<p>Develop the plan's details</p>						

State of Tennessee

DEPARTMENT OF CORRECTION

News Release

The Department of Correction reports that pursuant to the sentence of the court and in accordance with provisions of TCA, the capital punishment sentence of _____ has been carried out.

Time of execution was _____ A.M./P.M. on

(date)

_____ was pronounced dead by
(Inmate's name)
attending physician at _____ A.M./P.M.

TENNESSEE DEPARTMENT OF HEALTH
CERTIFICATE OF DEATH

STATE FILE NUMBER

TYPE/PRINT
 IN
 PERMANENT
 BLACK INK
 FOR
 INSTRUCTIONS
 SEE HANDBOOK

1. DECEDENT'S NAME (First, Middle, Last) _____ 2. SEX _____ 3. DATE OF DEATH (Month, Day, Year) _____

4. SOCIAL SECURITY NUMBER (of Decedent) _____ 5a. AGE - LAST BIRTHDAY (Years) _____ 5b. UNDER 1 YEAR _____ 5c. UNDER 1 DAY _____ 6. DATE OF BIRTH (Month, Day, Year) _____ 7. BIRTHPLACE (City and State or Foreign Cox) _____

8. WAS DECEDENT EVER IN U.S. ARMED FORCES? 1 Yes 2 No 9a. PLACE OF DEATH (Check only one)
 HOSPITAL: 1 Inpatient 2 ER/Outpatient 3 OOA OTHER: 4 Nursing Home 5 Residence 6 Other (Specify) _____

9b. FACILITY NAME (If not institution, give street and number) _____ 9c. CITY, TOWN, OR LOCATION OF DEATH _____ 9d. COUNTY OF DEATH _____

10. MARITAL STATUS—Married, Never Married, Widowed, Divorced (Specify) _____ 11. SURVIVING SPOUSE (If wife, give maiden name) _____ 12a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) _____ 12b. KIND OF BUSINESS/INDUSTRY _____

13a. RESIDENCE—STATE _____ 13b. COUNTY _____ 13c. CITY, TOWN OR LOCATION _____ 13d. STREET AND NUMBER OR RURAL LOCATION _____

13e. INSIDE CITY LIMITS? 1 Yes 2 No 13f. ZIP CODE _____ 14. WAS DECEDENT OF HISPANIC ORIGIN? (Specify Yes or No—If yes, specify Cuban, Mexican, Puerto Rican, etc.) Yes No Specify, if yes _____ 15. RACE—American Indian, Black, White, etc. (Specify) _____ 16. DECEDENT'S EDUCAT (Specify only highest grade completed) Elementary/Secondary (0-12) Colle _____

17. FATHER'S NAME (First, Middle, Last) _____ 18. MOTHER'S NAME (First, Middle, Maiden Surname) _____

19a. INFORMANT'S NAME (Type/Print) _____ 19b. RELATIONSHIP TO DECEASED _____ 19c. MAILING ADDRESS (Street and Number or Rural Route Number, City or State, Zip Code) _____

20a. METHOD OF DISPOSITION 1 Burial 2 Cremation 3 Removal from State 4 Donation 5 Other (Specify) _____ 20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place) _____ 20c. LOCATION—City or Town, State _____

21a. SIGNATURE OF FUNERAL DIRECTOR _____ 21b. LICENSE NUMBER OF FUNERAL DIRECTOR _____ 21c. SIGNATURE OF EMBALMER _____ 21d. LICENSE NUM OF EMBALMR _____

22a. NAME AND ADDRESS OF FUNERAL HOME _____ 22b. LICENSE NUMBER OF FUNERAL _____

23. REGISTRAR'S SIGNATURE _____ 24. DATE FILED (Month, Day, Year) _____

25a. PHYSICIAN — To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated.
 1 SIGNATURE AND TITLE OF PHYSICIAN _____ 25b. LICENSE NUMBER _____ 25c. DATE SIGNED (Month, D _____

25a. MEDICAL EXAMINER — On the basis of examination and/or investigation, in my opinion, death occurred at the time, and place, and due to the cause(s) and manner as stated.
 2 SIGNATURE AND TITLE OF MEDICAL EXAMINER _____ 25b. LICENSE NUMBER _____ 25c. DATE SIGNED (Month, D _____

27. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR MEDICAL EXAMINER) (Type/Print) _____

28. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, stroke, or heart failure. List only one cause on each line. Approximate Interval Between Onset and D

IMMEDIATE CAUSE (Final disease or condition resulting in death) → a. _____ DUE TO (OR AS A CONSEQUENCE OF): _____

Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST

b. _____ DUE TO (OR AS A CONSEQUENCE OF): _____

c. _____ DUE TO (OR AS A CONSEQUENCE OF): _____

d. _____

PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I _____

29a. WAS AN AUTOPSY PERFORMED? 1 Yes 2 No 29b. WERE AUTOPSY FR AVAILABLE PRIOR T COMPLETION OF C OF DEATH? 1 Yes 2 No

30. MANNER OF DEATH 1 Natural 5 Pending investigation 2 Accident 6 Could not be determined 3 Suicide 4 Homicide

31a. DATE OF INJURY (Month, Day, Year) _____ 31b. TIME OF INJURY _____ 31c. INJURY AT WORK? 1 Yes 2 No 31d. DESCRIBE HOW INJURY OCCURRED _____

31e. PLACE OF INJURY—At home, farm, street, factory, office building, etc. (Specify) _____ 31f. LOCATION (Street and Number or Rural Route Number, City or To _____

NAME OF DECEDENT: For use by physician or institution

DECEDENT

PARENTS

INFORMANT

DISPOSITION

REGISTRAR

CERTIFIER

PHYSICIAN OR MEDICAL EXAMINER EXECUTING CERTIFICATE MUST COMPLETE AND SIGN MEDICAL CERTIFICATION WITHIN 48 HOURS.

SEE INSTRUCTIONS ON OTHER SIDE

CAUSE OF DEATH

INSTRUCTIONS FOR ITEM 28 - CAUSE OF DEATH

Item 28 - Cause of Death

The cause of death means the disease, abnormality, injury, or poisoning that caused the death, NOT the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. In Part I, the immediate cause of death is reported on line (a). Antecedent conditions, if any, which gave rise to the cause are reported on lines (b), (c), and (d). The underlying cause, if any, should be reported on the last line used in Part I. No entry is necessary on lines (b), (c), and (d) if the immediate cause of death on line (a) describes completely the train of events. ONLY ONE C SHOULD BE ENTERED ON A LINE. Additional lines may be added if necessary. Provide the best estimate of the interval between the onset of each condition and death. Do not leave it blank; if unknown, so specify.

In Part II, enter other important diseases or conditions that may have contributed to death but did not result in the underlying cause of death given in Part I.

See examples below.

SEE INSTRUCTIONS ON OTHER SIDE

28. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.					Approximate Interval Between Onset and Death Mins.
IMMEDIATE CAUSE (Final disease or condition resulting in death)	a. Rupture of myocardium DUE TO (OR AS A CONSEQUENCE OF)				Mins.
Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST	b. Acute myocardial infarction DUE TO (OR AS A CONSEQUENCE OF)				6 days
	c. Coronary atherosclerosis DUE TO (OR AS A CONSEQUENCE OF)				5 years
	d.				
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.					29a. WAS AN AUTOPSY PERFORMED 1 <input checked="" type="checkbox"/> Yes 2 <input type="checkbox"/> No
Diabetes, Chronic obstructive pulmonary disease, smoking					29b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? 1 <input checked="" type="checkbox"/> Yes 2 <input type="checkbox"/> No
30. MANNER OF DEATH 1 <input checked="" type="checkbox"/> Natural 5 <input type="checkbox"/> Pending investigation 2 <input type="checkbox"/> Accident 3 <input type="checkbox"/> Suicide 6 <input type="checkbox"/> Could not be determined 4 <input type="checkbox"/> Homicide	31a. DATE OF INJURY (Month, Day, Year)	31b. TIME OF INJURY	31c. INJURY AT WORK? (Yes or no)	31d. DESCRIBE HOW INJURY OCCURRED	
				31e. PLACE OF INJURY—At home, farm, street, factory, office building, etc. (Specify)	
				31f. LOCATION (Street and Number or Rural Route Number, City or Town, State)	

SEE INSTRUCTIONS ON OTHER SIDE

28. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.					Approximate Interval Between Onset and Death 10 mins.
IMMEDIATE CAUSE (Final disease or condition resulting in death)	a. Cerebral laceration DUE TO (OR AS A CONSEQUENCE OF)				10 mins.
Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST	b. Open skull fracture DUE TO (OR AS A CONSEQUENCE OF)				10 mins.
	c. Automobile accident DUE TO (OR AS A CONSEQUENCE OF)				10 mins.
	d.				
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.					29a. WAS AN AUTOPSY PERFORMED 1 <input type="checkbox"/> Yes 2 <input checked="" type="checkbox"/> No
					29b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? 1 <input type="checkbox"/> Yes 2 <input checked="" type="checkbox"/> No
30. MANNER OF DEATH 1 <input type="checkbox"/> Natural 5 <input type="checkbox"/> Pending investigation 2 <input checked="" type="checkbox"/> Accident 3 <input type="checkbox"/> Suicide 6 <input type="checkbox"/> Could not be determined 4 <input type="checkbox"/> Homicide	31a. DATE OF INJURY (Month, Day, Year) 11/15/89	31b. TIME OF INJURY 1 p.	31c. INJURY AT WORK? (Yes or no) No	31d. DESCRIBE HOW INJURY OCCURRED 2-car collision—driver	
				31e. PLACE OF INJURY—At home, farm, street, factory, office building, etc. (Specify) Street	
				31f. LOCATION (Street and Number or Rural Route Number, City or Town, State) Route 4, Nashville, TN	

ADDITIONAL INFORMATION BY PHYSICIAN

FOR OFFICIAL USE ONLY:

Affidavit to Elect Method of Execution

Under Tennessee law, you have the option of electing electrocution over lethal injection as the method of your execution. The purpose of this affidavit is to allow you to make and record that choice, or to reject that choice. Your decision concerning the method of execution is final. Failure to choose a method of execution will result in the execution being carried out by lethal injection. You will NOT be given another opportunity to make a choice of method of execution.

I, _____, TDOC. # _____, make the following choice of execution method:

I waive the right to be executed by lethal injection and choose to be executed by electrocution.

Signature of Inmate

I choose lethal injection as the method of my execution..

Signature of Inmate

I certify that I presented this Affidavit to Elect Method of Execution to inmate _____, TDOC No. _____, and

The inmate refused to sign.

I witnessed the inmate sign this affidavit.

Signature of Warden/ Designee

Sworn to and subscribed before me this _____ day of _____, 19____.

Notary Public

My Commission expires _____

Rulemaking Hearing Rules
of the
Department of Correction
Adult Services Division

Chapter 0420-3-4
Selection of News Media Agency Representatives to Attend
an Execution of a Death Sentence

New Rules

Table of Contents

0420-3-4-.01	Preface	0420-3-4-.04	Application and Selection Process
0420-3-4-.02	Applicability	0420-3-4-.05	Witness Guidelines
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0420-3-4-.01 Preface

Under the authority of T.C.A. § 40-23-116, the Department of Correction is authorized to promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a sentence of death.

Authority: T.C.A. § 40-23-116

0420-3-4-.02 Applicability

Pursuant to the authority of T.C.A. § 40-23-116, these rules shall apply to all news media agencies and their representatives.

Authority: T.C.A. § 40-23-116

0420-3-4-.03 Definitions

- (1) Community Print News Media Agency: A Print News Media Agency other than a Metro Print News Media Agency.
- (2) General Interest and Coverage: The handling of a broad range of spot news such as traffic accidents, fires, disasters, governmental events, as well as economic, business, social, sports, and human interest news.
- (3) Metro Print News Media Agency: A Print News Media Agency which maintains a full-time presence at the state Capitol, covering day-to-day operations of state government.

- (4) News Media Agency: A Print, Radio or Television News Media Agency or The Associated Press.
- (5) News Media Agency Representative: A person Regularly Employed by a News Media Agency and designated by such News Media Agency to attend and witness an execution of a death sentence on behalf of the News Media Agency.
- (6) Print News Media Agency: A newspaper of general circulation, bearing a title or name, regularly issued at least as frequently as once a week for a definite price, having second class mailing privilege, being not less than four (4) pages, published continuously during the immediately preceding one-year period, which is published for the dissemination of news of general interest, coverage and circulation in an area within Tennessee.
- (7) Radio News Media Agency: The Tennessee Radio Network or a radio broadcast station which regularly disseminates news of general interest and coverage and has either its city of license (as determined by the federal government) or broadcast transmitter located in Tennessee.
- (8) Regularly Employed: Employed on a consistent, continuing basis and not solely for the purpose of witnessing an execution of a sentence of death or otherwise on a temporary or short-term basis.
- (9) Television News Media Agency: A television broadcast station which regularly disseminates news of general interest and coverage and has either its city of license (as determined by the federal government) or broadcast transmitter located in Tennessee.
- (10) Warden: Warden of the Riverbend Maximum Security Institution.

Authority: T.C.A. § 40-23-115; § 40-23-116

0420-3-4-.04 Application and Selection Process

- (1) The selection of News Media Agency Representatives shall be by drawing to be held at Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, Tennessee.
- (2) The Public Information Office of the Department of Correction shall notify all News Media Agencies of a scheduled drawing through issuance of an advisory to the Associated Press. An announcement will also be published in the Tennessee Administrative Register; provided, however, in the event the Department has insufficient advance notice of an execution date to meet publication deadlines for the Tennessee Administrative Register, the announcement shall be issued as soon as practicable after the Department receives notice of the execution date.

Page 3 of 6 pages.

- (3) The advisory and announcement shall include the following:
- (a) Deadline date, time and location for receiving applications from a News Media Agency desiring to be included in the open drawing to witness the execution of the death sentence.
 - (b) Date, time, and location where the open drawing will take place.
- (4) To be eligible for the drawing, a News Media Agency shall submit an application on a form provided by the Department of Correction on or before the deadline specified in the advisory and/or notice. The applicant agency shall designate its News Media Agency Representative and the news media pool for which it qualifies under these rules. The Department will accept only one (1) application from each News Media Agency. A person may be named as a News Media Agency Representative on only one (1) application.
- (5) The Warden or designee shall assign an identifying number to each application received. Prior to the commencement of the drawing the Warden or designee shall post a list containing the News Media Agency name, News Media Agency Representative name, number and assigned category of each application which meets the requirements set forth in this rule.
- (6) Procedure for Drawing:
- (a) From those applications received which meet the requirements set forth in this rule, a total of seven (7) News Media Agencies shall be selected. The agencies shall be selected from the following categories in the following order:
 - (i) The Associated Press (one application);
 - (ii) One News Media Agency in the county where the offense occurred;
 - (iii) One Metro Print News Media Agency;
 - (iv) One Community Print News Media Agency;
 - (v) Two Television News Media Agencies; and
 - (vi) One Radio News Media Agency.
 - (b) In the event more than one qualifying application is received for category (a)(ii), the applications not selected in that category shall be reassigned to appropriate categories.

Page 4 of 6 pages.

- (c) If one or more categories cannot be filled due to an insufficient number of qualifying applications in the category, qualifying applications remaining after all other selections have been made shall be combined into one selection pool from which an application shall be drawn to fill each unfilled position.
 - (d) After seven (7) News Media Agency Representatives have been selected through the process set out in (a) through (c), all remaining applications shall be combined into one selection pool from which a first alternate and a second alternate shall be drawn. Alternates shall be allowed, in order of selection, to substitute for a News Media Agency Representative selected as a witness who is unable to attend and witness the execution of a death sentence.
- (7) After the drawing the Department of Correction shall promptly issue an advisory to the Associated Press identifying the News Media Agency Representatives selected.
 - (8) News Media Agency Representatives shall be subject to the approval of the Warden. The Warden may, in the Warden's discretion, disapprove or exclude a witness for reasons of safety or security. No News Media Agency Representative shall be related to the condemned prisoner or the condemned prisoner's victim or victims or have any personal interest in the case. News Media Agency Representatives must be eighteen (18) years of age or older.
 - (9) The Department of Correction will allow no substitution of News Media Agencies or News Media Agency Representatives.
 - (10) In the event the execution does not take place within one (1) year of the date of the drawing, the Commissioner, in the Commissioner's sole discretion, may cancel the result of a drawing and, if necessary, direct that a new drawing be held.

Authority: T.C.A. § 40-23-116

0420-3-4.-05 Witness Guidelines

- (1) No News Media Agency Representative allowed to witness the execution of a death sentence shall have exclusive rights to the story. Immediately after the execution of the death sentence is complete, all News Media Agency Representatives shall make themselves available for a news conference of other news media representatives and shall remain at the news conference until it is completed.
- (2) The news conference shall be held at a location designated by the warden immediately following the execution.
- (3) Photographic or recording equipment are prohibited at the execution site during the execution.
- (4) News Media Agency Representatives shall abide by all departmental and institutional rules and policies, and the directives of authorized staff. Failure of a

Page 5 of 6 pages.

witness to do so may result in the witness being excluded and /or removed from the premises. The News Media Agency Representative and the News Media Agency being represented shall be ineligible to attend future executions without the specific approval of the Commissioner.

Authority: T.C.A. § 40-23-116

Legal Contact and/or party who will approve final copy for publication:

Debra K. Inglis, General Counsel
25th Floor, William R. Snodgrass Building
312 Eighth Avenue North
Nashville, TN 37243-0465
615-741-3087

Contact for disk acquisition:
Marcia Campey, Administrative Secretary
25th Floor, William R. Snodgrass Building
312 Eighth Avenue North
Nashville, TN 37243-0465
615-741-3087

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Debra K. Inglis
Debra K. Inglis
General Counsel
Department of Correction

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Correction on the 6th day of June, 2000.

Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the 27th day of September, 1999 and such notice of rulemaking hearing having been published in the October 15, 1999 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 19th day of November, 1999.

Debra K. Inglis
Debra K. Inglis
General Counsel
Department of Correction

Page 6 of 6 pages.

Subscribed and sworn to before me this the 6th day of June, 2000.

Marcus E. Canty
Notary Public

My commission expires on the 9th day of Sept., 2000.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Paul G. Summers
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 22 day of Nov., 2000, and will become effective on the 6 day of Feb., 2000.

Riley C. Darnell
Riley C. Darnell
Secretary of State

By: [Signature]

RECEIVED
2000 NOV 22 PM 12:38
SECRETARY OF STATE
PUBLICATIONS

APPLICATION FOR NEWS MEDIA REPRESENTATIVE
TO ATTEND AN EXECUTION OF A SENTENCE OF DEATH

Name of Inmate Under Sentence of Death _____

Name of News Media Outlet _____

Name of News Media Representative _____

Mailing Address _____

Phone _____ Fax _____

E-Mail Address _____

Indicate the news media pool to which the applicant news media agency is to be assigned.
(Choose one only)

- _____ Tennessee News Media Representative (print, radio, or television) in the county where the crime was committed
- _____ Associated Press
- _____ Other print Tennessee News Media Representative
- _____ Other radio Tennessee News Media Representative
- _____ Other television Tennessee News Media Representative

PLEASE NOTE: The department will accept only one (1) application from each news media agency. No news media representative selected to witness the execution of a sentence of death shall have exclusive rights to the story. Immediately after the execution of the death sentence is complete, all media representative witnesses shall make themselves available for a news conference for other news media representatives not selected to attend the execution. Submission of an application constitutes acceptance of this condition.

Revised 8/25/99

SCHEDULED EXECUTION

VICTIM/VICTIMS' FAMILY NOTIFICATION

- When the Department of Correction receives official notification that an offender's conviction appeals have been exhausted and the United States Supreme Court has either rejected the offender's appeal or has affirmed the offender's conviction and sentencing, the legal section shall advise the Victim Notification Coordinator (VNC).
- The VNC will then check TOMIS conversation LPDD to obtain the names of any registered victims/victims' immediate family members. If no names are listed on LPDD, the VNC will contact the Victim Liaison, Office of the Attorney General, to obtain information on victims/victims' immediate family members. If that agency does not have information on victims/victims' immediate family members, the VNC will contact the Victim Witness Coordinator with the appropriate District Attorney General's office and obtain available information regarding victims/victims' immediate family members. If no information is available at any level, the VNC will make a statement to this effect to be placed in the offender's file.
- The VNC will notify the victims/victims' immediate family members, in writing (return receipt requested), of the scheduled execution of the offender. (See Attachment A) Included with the letter is a notice of intent form that the victims/victims' immediate family members must complete and return to the VNC indicating their desire to view the offender's execution. (See Attachment B)
- The VNC will review the notice of intent form and, if necessary, call the victims/victims' immediate family members to schedule a Preparation for Execution Class. The VNC will follow-up with a written confirmation of the scheduled class. (See Attachment C)
- The VNC will conduct the Preparation for Execution Class with the victims/victims' immediate family members at least two weeks prior to the scheduled execution. (See Attachment D)
- After conducting the Preparation for Execution Class, the VNC will contact the victims/victims' immediate family members within 72 hours of the scheduled execution to ascertain whether they still wish to view the execution. If so, the VNC will inform the victims/victims' family members of the date, time, and location of the place of assembly. (See Attachment E)

- The VNC will notify RMSI's warden of the name(s) of the victims/victims' family members who will be attending the scheduled execution. (See Attachment F)
- After the execution, the VNC and/or support staff will conduct a short debriefing with victims/victims' immediate family members.

ATTACHMENT A

Date:

Mr. John Q. Public
1000 Anywhere Lane
Somewhere, TN 37243

Dear Mr. Public:

REGARDING: John Doe #125428

Our records show that on January 9, 1976, inmate Doe was convicted of First Degree Murder and sentenced to death regarding Davidson County Case #99999. The Department of Correction has received an order scheduling inmate Doe's execution for July 15, 1999. The execution is scheduled for approximately at 1:00 a.m.

Tennessee Code Annotated § 40-23-116 permits the victim's immediate family members, who are eighteen (18) years of age or older, to be present at the carrying out of the death sentence. Immediate family members are designated as the parent, spouse, child (by birth or adoption), stepchild, stepparent, grandparent or sibling of the victim. A preliminary records check indicates that you are the parent of the victim, Shannon Dale Tweed.

The Department of Correction needs to know if you are interested in viewing the execution of inmate Doe. Please complete the enclosed notice of intent form indicating your decision to view the scheduled execution and return the form to the Department of Correction in the envelope provided. If the Department of Correction does not receive the enclosed form within fifteen (15) calendar days of receipt, we will assume that you are not interested in viewing the scheduled execution and no other attempts to contact you will be made.

If the Department of Correction receives the enclosed form indicating your desire to attend the scheduled execution of inmate Doe, a victim's services staff member will contact you to schedule a pre-execution preparation class. This class is for your benefit. The pre-execution preparation class is designed to inform you of the procedures surrounding the execution process, appropriate dress for attendance at the execution, and to answer any questions you may have regarding the execution.

If you have any questions regarding this matter, please feel free to contact me by calling (615) 741-6898 for further information.

Sincerely,

Connie S. Klein
Victim Notification Coordinator

pc: Operational Support Services File, Doe #125458

ATTACHMENT B
NOTICE OF INTENT

TO: Victim Notification Coordinator
REGARDING: John Doe #125458
VICTIM'S NAME: Shannon Dale Tweed

_____ I will view the scheduled execution of inmate Doe.
_____ I will not view the scheduled execution of inmate Doe.

Full Name (First, Middle, Last)

List any other name(s) you have used in the past, including your maiden name, if applicable

Mailing Address

City/State/Zip

() _____
Telephone Number (Day)

() _____
Telephone Number (Night)

List any other states in which you have resided

Race Sex Date of Birth Social Security Number

I certify by my signature below that I am an immediate family member of the above and am at least eighteen (18) years of age.

Signature

Date

ATTACHMENT C

April 29, 1999

Mr. John Q. Public
1000 Anywhere Lane
Somewhere, TN 37243

Dear Mr. Public:

REGARDING: John Doe #125458

This letter is to confirm our phone conversation of this date. We have scheduled you for a pre-execution preparation class for Thursday, May 7, 1999, at 8:30 a.m., in the 4th Floor Conference Room, Rachel Jackson Building, 320 Sixth Avenue North, Nashville, TN. I have enclosed directions to the Rachel Jackson Building for your convenience. If for some reason you are unable to attend at this time, please call me to reschedule this class:

If you need further assistance in this matter, please feel free to contact me by calling (615) 741-6898.

Sincerely,

Connie S. Klein
Victim Notification Coordinator

pc: Operational Support Services File, Doe #125458

ATTACHMENT D

PRE-EXECUTION PREPARATION CLASS

- Welcome
- Show video of RMSI's execution chamber, victim witness viewing room, and explanation of execution procedures.
- Discuss appropriate dress for viewing execution.
- Give handout of newspaper articles detailing several accounts of victims' family experiences after viewing an execution.
- Give handout regarding victim's rights concerning the news media and explain the department's position concerning news media coverage and victim witness participation.
- Give Victim Handbook - Executions.
- Question and answer session
- Close

ATTACHMENT D-1

TENNESSEE DEPARTMENT OF
CORRECTION

VICTIM WITNESS HANDBOOK

EXECUTIONS

August 1999

Tennessee Code Annotated § 40-23-116 permits victims' immediate family members, who are eighteen (18) years or older, to view the execution of an offender. This statute specifies immediate family members as parent, spouse, child (by birth or adoption), stepchild, stepparent, grandparent or sibling of the victim.

The Victim Notification Coordinator shall contact any known immediate family members of the victim to determine if the immediate family member would care to view the scheduled execution of the offender convicted of harming the victim.

The immediate family members desiring to view the execution of the offender shall participate in a pre-execution preparation class designed to inform them of the procedures that will be followed during the execution process.

Victim family witnesses will meet at a predetermined location at a specified time to assemble for the execution. Victim family witnesses will be transported to the execution site.

Parsons entering TDOC facilities should dress conservatively in accordance with the provisions stipulated in Department of Correction Policy #507.01, *Visitation*.

Upon arrival at the Riverbend Maximum Security Facility (RMSF), where the execution will take place, each witness shall be frisk searched pursuant to the provisions stipulated in Department of Correction Policy #506.06, *Searches*. Intoxicating beverages, drugs, and firearms are prohibited on state property. Violators are subject to arrest and prosecution.

Victim witnesses will be escorted into the victim witness viewing room at a time separate from other witnesses.

Victim witnesses shall refrain from verbal outbursts or any inappropriate action during the execution process.

Once in the viewing room, all witnesses will remain until the process is complete.

Following the execution, victim witnesses will be escorted off the secure confines of the institution and will return to the assembly room for a short debriefing led by the Victim Notification Coordinator and other support staff.

After viewing the execution, a victim witness may experience post-trauma symptoms, such as any one or a combination of the following: sleeping difficulties, nightmares, loss of appetite, anxiety or nervousness, depression, anger, irritability, fatigue, difficulty concentrating, memory problems, guilt, intrusive thoughts, physical problems, marital stress, and parenting difficulties. If a victim witness experiences any of these symptoms, he or she should contact a physician or a competent mental health care provider.

For more information, please contact the Victim Notification Coordinator by calling (615) 741-6898.

Guidelines for Victims Who Choose to Deal With the Media

A brochure published by the National Victim Center in 1987 entitled "Victims' Rights and the Media" offers valuable guidelines to crime victims whose cases are covered by print and broadcast news media. While the "rights" enumerated in this brochure are not mandated by statute or policy, they should be considered guiding principles provided by all service providers to crime victims prior to dealing with the news media:

You have the right:

1. To say "no" to an interview.
2. To select the spokesperson or advocate of your choice.
3. To select the time and location for media interviews.
4. To request a specific reporter.
5. To refuse an interview with a specific reporter even though you have granted interviews to other reporters.
6. To say "no" to an interview even though you have previously granted interviews.
7. To release a written statement through a spokesperson in lieu of an interview.
8. To exclude children from interviews.
9. To refrain from answering any questions with which you are uncomfortable or that you feel are inappropriate.
10. To know in advance the direction the story about your victimization is going to take.
11. To avoid a press conference atmosphere and speak to only one reporter at a time.
12. To demand a correction when inaccurate information is reported.
13. To ask that offensive photographs or visuals be omitted from broadcast or publication.
14. To conduct a television interview using a silhouette or a newspaper

- interview without having your photograph taken.
15. To completely give your side of the story related to your victimization.
 16. To refrain from answering reporters' questions during trial.
 17. To file a formal complaint against a journalist.
 18. To grieve in privacy.
 19. To suggest training about media and victims for print and electronic media in your community.

ATTACHMENT E

July 11, 1999

Mr. John Q. Public
1000 Anywhere Lane
Somewhere, TN 37243

Dear Mr. Public:

REGARDING: John Doe #125458

This letter acknowledges our telephonic conversation of this date affirming your continued interest to view the execution of inmate Doe.

We are scheduled to assemble at 12:30 a.m., July 15, 1999, in the Staff Training Room, Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, TN. I have enclosed directions to RMSI for your use.

If for any reason you are unable to attend, please feel free to contact me by calling (615) 741-6898 before 4:30 p.m., July 14, 1999. You may reach me at RMSI, July 15, 1999, after 12:00 a.m., by calling (615) 350-3100.

Sincerely,

Connie S. Klein
Victim Notification Coordinator

pc: Operational Support Services File, Doe.#125458

ATTACHMENT F

MEMORANDUM

TO: Warden Ricky Bell, RMSI
FROM: Connie S. Klein, Victim Notification Coordinator
DATE: July 11, 1999
SUBJECT: Victim/Victims' Family Members
REGARDING: John Doe #125458

Listed below are the names of the Victim/Victims' Family Members who will be viewing the scheduled execution of inmate Doe:

Mr. John Q. Public - Father of Victim (Shannon Dale Tweed)
Mrs. Jonetta Public - Mother of Victim (Shannon Dale Tweed)
Mr. James Towne - Father of Victim (Melissa Mae Towne)
Mrs. Vickie Towne - Mother of Victim (Melissa Mae Towne)
Mr. David Towne - Brother of Victim (Melissa Mae Towne)

If I may be of further assistance in this matter, please let me know.

pc: Operational Support Services File, Doe #125458
IA Director Darrell Alley

Affidavit to Select Defense Counsel Witness to Execution

Under Tennessee law, TCA 40-23-116, you may select one (1) defense counsel to witness your scheduled upcoming execution. The Department of Correction needs to know who you are selecting to be your witness.

I, _____, TDOC# _____, select the following defense counsel witness: _____

Signature of inmate: _____ Date: _____

I certify that I presented this Affidavit to Select Defense Counsel Witness to Execution to inmate _____, #TDOC # _____, and _____

_____ The inmate refused to sign.
_____ I witnessed the inmate sign this affidavit.

Signature of Warden/Designee

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public _____ My Commission Expires _____

CONFIDENTIAL

Execution Guidelines
ELECTROCUTION

This manual contains a summary of the most significant events which will occur during the final week when the Death Watch is in effect. It contains information covering our plans relative to institutional perimeter security prior to, during, and subsequent to an execution and a detailed listing of some of the duties and responsibilities of certain key departmental personnel in carrying out an execution.

It will be used as a guideline for the Warden to assure that operational functions are properly planned with the staff who have designated responsibilities in carrying out an execution.

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DUTIES OF KEY PERSONNEL
PRIOR TO, DURING, AND SUBSEQUENT TO AN EXECUTION

Riverbend Maximum Security Institution

WARDEN

1. To assure that the procedures described by law and as outlined in this operating procedure are carried out, either by personal performance or by delegation.
2. To set the precise hour and minute of execution.
3. To coordinate, by obtaining the approval of the Commissioner, the appointment of staff member(s) to assume and coordinate contacts with news media. To submit names of the witnesses to the execution to the Commissioner.
4. To keep the Deputy Commissioner and Assistant Commissioner of Operations informed of the progress towards and implementation of the execution.
5. To select a person to serve as executioner.
6. To coordinate with Metro Police and THP any additional security forces required.
7. To coordinate with the Medical Examiner for disposition of the body.
8. To read the court order to the condemned inmate just prior to movement to Death Watch.
9. To assure condemned inmates sentenced prior to January 1, 1999, are given opportunity to select electrocution or lethal injection as legal means of execution within 30 days immediately preceding the scheduled execution date.
10. To control activation of closed circuit TV to victim family witness room.
11. To order the executioner, either verbally or by gesture, to proceed with execution.
12. To cause the announcement to significant parties and the public of the fact that the sentence of execution has been carried out.
13. To control any contact between the condemned inmate and other persons.
14. To explain to the inmate the procedures and activities which will take place during Death Watch.
15. To coordinate the notification of official witnesses of the date and time to be at the institution to witness the scheduled execution.

INMATE WITNESS REQUEST

TCA allows the defendant to have relatives present at the execution.

I wish to have the following relatives present:

Witnesses:

1. _____
2. _____
3. _____
4. _____
5. _____

Inmate

Date

Waiver of Witness Attendance:

I fully understand my right to have relatives present at the execution.
I hereby waive my right to request witnesses.

Inmate

Date

Date

Staff Witness

Date

Staff Witness

(S A M P L E)



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND INDUSTRIAL ROAD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 • FAX (615) 350-3400

Date _____

John Doe, Sheriff
Tennessee County Sheriff's Department
P. O. Box 000
City, TN 37209

Dear Sheriff Doe:

Records of the Tennessee Department of Correction reflect that on _____, 19____, inmate _____ was convicted of First Degree Murder and sentenced to Death regarding _____ County case # _____. An order has been received scheduling inmate _____'s execution for _____. The execution is scheduled for 1:00 a.m. on that date.

Pursuant to TCA 40-23-116, the sheriff of the county in which the crime was committed is entitled to be present at the carrying out of such death sentences.

The Tennessee Department of Correction needs to know if you are interested in viewing the legal execution of inmate _____. In order to expedite this process, please sign and date on the respective line below indicating your intentions. Afterwards, fax the letter with your signature to my office at the Riverbend Maximum Security Institution at 615/350-3400. If you plan to attend, provide a telephone number where you may be contacted day or night. Further, you should be at the Riverbend institution by 12:00 midnight on _____ and bring your notification letter with you, along with a picture ID. Upon arrival at the facility, please present the letter to the Checkpoint officer. If you have any questions regarding this matter, please feel free to contact me by calling 615/350-3100, extension 3103, for further information.

Ricky J. Bell, Warden

RJB/md

I will attend _____

Signature _____ Date _____
Telephone No. _____

I will not attend _____

Signature _____ Date _____

(S A M P L E)



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND INDUSTRIAL ROAD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 • FAX (615) 350-3400

Date _____

Ms. Mary Jane Smith
P. O. Box 0000
City, TN 37209

Dear Ms. Smith:

Records of the Tennessee Department of Correction reflect that on _____, 19____, inmate _____ was convicted of First Degree Murder and sentenced to Death regarding _____ County case # _____. An order has been received scheduling inmate _____'s execution for _____ The execution is scheduled for 1:00 a.m. on that date.

Pursuant to TCA 40-23-116, members of the condemned inmate's immediate family may be present at the carrying out of such death sentence. Records indicate that you are the _____ of inmate _____; therefore, you are eligible to be present.

The Tennessee Department of Correction needs to know if you are interested in viewing the execution of your _____. In order to expedite this process, please sign and date on the respective line below indicating your intentions. Afterwards, fax the letter with your signature to my office at the Riverbend Maximum Security Institution at 615/350-3400. If you plan to attend, provide a telephone number where you may be contacted day or night. Further, you should be at the Riverbend institution by 12:00 midnight on _____ and bring your notification letter with you. Upon arrival at the facility, please present the letter to the Checkpoint officer, along with a picture ID. If you have any questions regarding this matter, please feel free to contact me by calling 615/350-3100, extension 3103, for further information.

Ricky J. Bell, Warden

RJB/md

I will attend _____

Signature _____
Telephone No. _____

Date _____

I will not attend _____

Signature _____

Date _____

DEPUTY WARDEN

1. Procure a physician to be present at execution.
2. Establish contract with local firm to have ambulance available to remove body.
3. Contact the State Medical Examiner to coordinate autopsy and release of the body. If a local hospital is needed, contract with local hospital to receive the body.
4. Obtain cotton clothing and rubber thongs or cloth house shoes for the inmate to wear during execution.
5. Assume the duties of the Warden in the event the Warden is detained, absent, or otherwise incapacitated.
6. Assist the Warden in the carrying out of his duties.
7. Assure the security of the condemned inmate.
8. Supervise, with the condemned inmate, the inventory of the inmate's personal property. Storage shall be in accordance with TDOC policy. Release of personal property shall be in accordance with the written instructions of the inmate.
9. Personally supervise preparation of the Death Watch cell area and execution chamber and of the condemned inmate for execution.
10. Coordinate and/or approve, with assistance by assigned security staff, visits and phone calls permitted to the condemned inmate.
11. Provide final inspection of restraint devices to insure condemned inmate is securely detained in electric chair prior to execution.
12. Insure that any blinds between the witness room and the execution chamber are closed prior to the witnesses entering and opened after witnesses are seated.
13. Supervise the removal of the body from the execution chamber.
14. Coordinate the release of the condemned inmate's body to the authorized recipient or coordinate burial at State expense in the event no one claims the body.

ADMINISTRATIVE ASSISTANT

1. To coordinate and supervise the movement of the execution team to and from the execution chamber, and aid in maintaining the team's anonymity.
2. To process applications for the selection of news media representatives to attend executions.
3. To assist the Warden in carrying out his duties.

CORRECTIONAL CAPTAIN

1. To aid the Deputy Warden in his duties.
2. To assist in preparing the condemned inmate for execution:
 - a. The inmate will be dressed for the execution event in white scrub pants and shirt.
 - b. Cotton socks or cloth house shoes may be worn.
3. To provide security arrangements for the movement of the condemned inmate from the death watch area to the execution chamber in compliance with the schedule set by the Warden.

DEATH WATCH SUPERVISOR

1. To coordinate all security requirements for the inmate during the death watch and to supervise all Correctional Officers assigned any responsibility for direct supervision of the inmate during death watch, to include preparation of the condemned inmate.
2. To fully rehearse and train all personnel assigned any responsibility for supervising the inmate and/or implementing the execution.
3. To prepare a duty schedule for officers assigned this detail.
4. To review post orders for Correctional Officers to become familiar with all functions of subordinates.
5. To insure that condemned inmate personally inventories his personal property and packs away all items he is not permitted to retain. Death Watch Supervisor inmate, and one witness will sign property inventory. The sealed property will be retained in storage in Property Room until removed by inmate's designee.
6. To maintain bound ledger of information relative to the activities occurring which concern the death watch. This log will contain a record of all visitors, serving of meals, shaving, handling of mail, inmate behavior, movement, communications, etc.
7. To permit only authorized persons to enter the death watch area. A list of authorized personnel will be provided by Warden.
8. To maintain a sufficient amount of clothing in the inmate's size retained by death watch officers in order to change each time the inmate leaves his cell.
9. To insure that fire extinguisher is readily available and in serviceable condition.
10. To insure that cameras, audio and video equipment is not taken into death watch area or execution chamber at any time during death watch or at time of execution, unless authorized by the Warden.

INSTITUTIONAL CHAPLAIN

1. To offer and, as indicated, deliver increased chaplaincy services to the condemned inmate and the family concerned.
2. To ask the inmate to specify in writing the preferred funeral arrangements and the preferred recipients of personal property. If a legal will is requested, the Chaplain will coordinate with the TDOC Staff Attorney for preparation and execution.
3. To say a brief prayer of intercession immediately prior to execution.
4. To coordinate the release of the executed inmate's body to the authorized next-of-kin recipient or mortician through the State Medical Examiner.

FACILITY MAINTENANCE SUPERVISOR

1. To be responsible for assuring that the execution apparatus is functioning properly at the scheduled time of execution.
2. After the inmate is seated and strapped in, the Facility Maintenance Supervisor and his assistant will assure that the electrical apparatus is properly connected.
3. During execution the assistant is to be in the examination room. Facility Maintenance Supervisor is to be posted by the intercom on wall behind chair to communicate with executioner to energize system upon direction from Warden.

MEDICAL PERSONNEL

1. One medical doctor will be present at the precise time of execution and wait in capital punishment garage.
2. At the appropriate time (doctor's discretion) after the electrical current ceases, the blinds will be closed and the doctor will enter execution chamber and examine the body for vital signs.
3. If inmate is not legally dead, the doctor will notify the Warden that a second charge is required and leave the execution chamber.
4. If no vital signs are present, the doctor will pronounce the inmate dead.

COMMISSIONER

1. Ten minutes prior to the precise hour and minute scheduled for the execution, the Commissioner will establish telephone contact with the Highway Patrol trooper on duty at the Executive Residence.
2. Access to radio communication with the Executive Residence and with the Command Post (see institutional policy re: "Outside Security During Death Watch and Execution") at the institution will be available also.

DEPUTY COMMISSIONER

Work directly with the Commissioner and assume any duties assigned.

ASSISTANT COMMISSIONER OF OPERATIONS

1. To be stationed at the Command Post or location designated by Deputy Commissioner and to assume operational control of the institution during the three hours prior to, during, and for one hour after the execution.
2. To serve as liaison to all support units and to conduct debriefing of all security and procedural personnel after the execution.
3. To maintain telephone and/or radio contact with the Warden and other personnel.

PUBLIC INFORMATION OFFICER

1. To be responsible to coordinate all media operations for the Department and this institution.
2. Will provide assistance to the Warden in obtaining phone communications needed by media representatives.
3. Coordinate all visits by media representatives both prior to and subsequent to an execution. The media will not be allowed access to the execution chamber for at least 72 hours following execution.

STAFF RESPONSIBILITIES AND SPECIAL PROCEDURES
FOR INMATES ON DEATH WATCH

Riverbend Maximum Security Institution

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STAFF RESPONSIBILITIES AND SPECIAL PROCEDURES
FOR INMATES ON DEATH WATCH

Authority: TCA 4-3-603, TCA 4-3-606, TCA 40-23-114, TCA 40-23-117,
TCA39-2-205.

Purpose: The purpose of this operating procedure is to designate staff responsibilities and establish uniform property, privilege and institutional guidelines for condemned inmates with signed court orders for execution.

Application: All inmates who have exhausted all appeals available to them and have an execution date within next four days.

1. Receipt of Court Order, Housing, and Security Assignments
 - A. Upon receipt of the court order which authorizes execution, the Warden or his delegate will inform the inmate and permit him to make a phone call.
 - B. After the condemned inmate is informed of the signed order, he will be transferred to Building 8 (Capital Punishment). Exceptions will be authorized only by the Warden or Deputy Warden for good and valid reasons.
 - C. Correctional officers will be assigned to the housing area in a manner consistent with TDOC Policy 506.16.2, which sets forth the guidelines for the Death Watch Supervisor.

2.

Subsection 2 concerning perimeter security has been redacted.

3. State-Issued Property and Possession Limit

The inmate shall be allowed only the items listed below. Any other item will be considered contraband and confiscated in accordance with institutional policy.

- a. Standard issue of outer clothing
- b. One bed
- c. One mattress, pillow, and standard issue of linens
- d. One toothbrush
- e. One tube of toothpaste
- f. One bar of soap
- g. One disposable razor (to be issued and used under direct supervision only)
- h. Two towels, one washcloth
- i. Two pairs of shorts and t-shirts (Underwear will be exchanged daily)
- j. Toilet tissue as needed
- k. Stationery - 12 sheets, 3 stamped envelopes, 3 pencils. Pencils will be in possession of officer when not in use.
- l. Religious tracts as issued by institutional chaplain
- m. Legal documents and books and papers as requested
- n. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
- o. One radio outside door in front of cell (state-owned)
- p. One television outside door in front of cell (state-owned)
- q. Newspapers as requested and available (no more than two in cell at a time)
- r. Feminine hygiene items as necessary and appropriate.

4. Commissary Privileges

Commissary privileges to include purchasing and possession limits will be specified in post orders. Glass, aerosol, and metal containers will not be allowed during Death Watch.

5. Disposition of Unauthorized or Contraband Items

Contraband items found in the possession of condemned inmates will be confiscated and disposed of in accordance with institutional policy #506.15-1.

6. Package Permits

Package permit privileges will be suspended for inmates on death watch. Any package already mailed will be received and stored with the inmate's other property, with the exception of consumables.

7. Library, Law Library Services, Periodical Subscriptions

A. The condemned inmate may request in writing to the librarian and receive legal materials from the law library. Such exchanges will be very carefully inspected by the librarian and Death Watch Supervisor. There will be no exchanges or communication with inmate legal clerks and the condemned inmate.

B. The inmate may continue to receive periodical subscriptions, but may not order new subscriptions. Periodicals, newspapers, etc., will not be allowed to accumulate and during the final week only two periodicals and two newspapers may be retained by the inmate.

8. Diet

Three (3) meals per day will be fed to all condemned inmates. Special dietary instructions for medical reasons will be followed. All meals shall be prepared by free-world staff only.

9. Recreation

Recreational activities for inmates on death watch will be suspended.

10. Television and Radio Privileges

Television and radio privileges will be the same as routinely provided, except that during the death watch period, the television/radio will be located outside the inmate's cell.

11. Personal Phone Calls

Should the condemned inmate request personal or legal phone calls, they will be considered on an individual basis by the Warden or Deputy Warden. The Warden or Deputy Warden will coordinate all approved calls with the security staff assigned to this area.

12. Visitation Privileges

A. Social

- 1) Only those individuals on the inmate's approved visiting list shall be allowed visits during the death watch.
- 2) All visits shall be held in the death watch area, and physical contact between the visitor(s) and inmate shall not be permitted. Visits will be between the hours of 8:00 a.m. and 4:00 p.m., and limited to two hours duration.
- 3) The number of visitors allowed to visit at any one time shall be as flexible as circumstances permit, and shall be at the discretion of the Deputy Warden.
- 4) A final visit during which physical contact between the inmate and visitor(s) is permitted may be authorized by the Warden. The Warden's decision shall be based on the individual circumstances of each case.
 - (a) Security procedures, including searches, shall be of the minimum deemed necessary by the Deputy Warden.
 - (b) Contact visits shall be supervised by no fewer than two correctional officers chosen by the death watch supervisor with the concurrence of the Deputy Warden.

B. Religious

- 1) Priest(s) or ministers of recognized religious faiths who are of the inmate's recorded religious preference may visit the inmate in the same manner as provided for social visits in 12 (A).
- 2) A final visit by the inmate's personal priest or minister may be permitted by the Warden 10:00 p.m.-1:00 a.m., prior to the execution. This visit shall take place at the front of the inmate's cell.
 - (a) The personal priest or minister will not be permitted to accompany the inmate into the execution chamber.
 - (b) At the inmate's request, a staff chaplain may visit on request and/or accompany the inmate into the execution chamber.

C. Legal Services

- 1) The attorney of record or other Tennessee licensed attorney retained by the inmate may visit up to one (1) hour before the time of execution.
- 2) The attorney shall have telephone contact with the condemned inmate during the last hour prior to execution.
- 3) Visits with attorneys shall be non-contact and will be conducted with provision for the privacy of verbal exchange but under full and continuous observation by at least two correctional officers.

D. Media

- 1) No media interviews shall be held with the condemned after placement on death watch.
- 2) Telephone interviews with media representatives shall not be permitted.
- 3) Representatives of the news media shall not be allowed inside the secure perimeter of the institution during the time of active death watch or during an execution for any purpose whatsoever unless selected as a witness to the execution.

TENNESSEE CODE ANNOTATED

Statutes Relating to Execution

Analysis

1. Improper transfer.
2. Proper transfer.
3. Improper Transfer.

1. *Improper Transfer.* Conviction raised upon appeal from Convention Procedure Law after appeal from habeas corpus. Defendant was not so hampered, Johnson v. Russell, 4 Tenn. Crim. App. 113, 498 S.W.2d 811 (1971).

2. *Proper Transfer.* More fact that convicted defendant was removed to penitentiary was not sufficient to establish that his right of appeal was thereby handicapped separately when his court appointed attorneys testified that their efforts in appealing the conviction were not so hampered, Johnson v. Russell, 4 Tenn. Crim. App. 113, 498 S.W.2d 811 (1971).

3. *Improper Transfer.* The judge acted properly in ordering removal of convicted inmate for making passing appeal, Johnson v. State, 638 S.W.2d 831 (Tenn. Crim. App. 1976).

40-29-108. Order specifying number of guards for removal of prisoners. — It is the duty of the criminal and circuit judges of this state, at the adjournment of their courts or earlier, if the number of persons convicted justify it, to make an order specifying the number of guards the sheriff shall have in conveying to the supreme court, or to the penitentiary, the person or persons convicted, in case the person so appointed for that purpose by the commissioner of correction fail to remove them as provided by law. (Acts 1975, ch. 29; Impl. am. Acts 1983, ch. 171, § 25; Impl. am. Acts 1985 (C. S.), ch. 7, § 10; Impl. am. Acts 1916, ch. 20, §§ 2, 9; Shan., § 7245; Impl. am. Acts 1919, ch. 39, § 2; Impl. am. Acts 1923, ch. 7, § 45; Code 1932, § 11850; Impl. am. Acts 1935, ch. 103, § 4; T.C.A. (orig. ed.), § 40-3111.]

Order, Release, Failure of official to perform duties, § 89-16-402.

40-35-108. Warrant to summons and removal of prisoners. — The judge or clerk of the court may, by warrant in writing, empower the sheriff charged with the conveyance of the convict, in all counties and places through which he may pass with him, to summon or impress such and so many men, not exceeding two (2) for each convict, except as hereinafter provided, and such conveyances or modes of conveyance as shall be necessary for the safe conveyance of such prisoners which warrant the sheriff is required to execute, and to his commands in virtue thereof all persons are to pay the obedience. (Code 1883, § 8265 (daily); Acts 1829, ch. 38, § 3; Shan., § 7245; mod. Code 1932, § 11851; T.C.A. (orig. ed.), § 40-3112.]

Order, Release, Powers of warden in front of The Williamson County Circuit Court 1819-1820, 82 Vand. L. Rev. 413.

40-29-110. Summons of additional guards. — If, by any attempt to remove a convict on the way or by any other unforeseen danger, it becomes essentially necessary for the safe conveyance of such convict to summon a stronger guard than the sheriff conducting the prisoner may have been authorized to summon, it is lawful for such sheriff to summon such additional guard

or guards as shall be necessary for that purpose. Such additional guard or guards shall be paid as other guards, on the oath of the sheriff that the additional guard or guards were essentially necessary, and the officer making the payment being satisfied with the truth thereof. (Code 1858, § 1267 (daily); Acts 1932, ch. 38, § 4; Shan., § 7246; Code 1932, § 11852; T.C.A. (orig. ed.), § 40-3113.)

Law Review, Justice on the Tennessee Frontier The Williamson County Circuit Court 1818-1820, 82 Vand. L. Rev. 413.

40-35-111. Qualifications of guard. — This additional guard or guards which the sheriff and other officers are authorized to summon to assist in conveying convicts to the penitentiary, or to and from the penitentiary, and to prevent a rescue shall consist of able bodied men, who shall not be under eighteen (18) years of age. (Code 1858, § 5533 (daily); Acts 1895-1896, ch. 83, § 1; Shan., § 7634; Code 1932, § 12283; T.C.A. (orig. ed.), § 40-3114.)

40-23-112. Warrant to assist in taking prisoner to the penitentiary. — The sheriff shall not summon any person as a guard to assist in taking the prisoner to the penitentiary, whom such person, as a juror, convicted. (Code 1852, § 5265; Shan., § 7246; Code 1932, § 11853; T.C.A. (orig. ed.), § 40-3115.)

40-23-113. Report by sheriff to department of correction. — Whenever any person sentenced to the custody of the department of correction has been detained in one (1) or more local jails or workhouses pending arraignment, trial, sentencing or appeal, the sheriff shall prepare and transmit with the defendant at the time of commitment to the department a short report, furnishing such information pertaining to the defendant's behavior while in local custody as may be requested by the department. Notwithstanding any other provision of the law to the contrary, no such person sentenced to the custody of the department shall be committed or conveyed to the department unaccompanied by the completed report required by this section. (Code 1883, § 5265 (daily); Acts 1829, ch. 38, § 1; Shan., § 7238; Code 1932, § 11844; T.C.A. (orig. ed.), § 40-3115; Acts 1985 (1st S.S.), ch. 6, § 28.)

Law Review, Justice on the Tennessee Frontier The Williamson County Circuit Court 1818-1820, 82 Vand. L. Rev. 413.

40-23-114. Death by electrocution. — Whenever any person is sentenced to the punishment of death, the court shall direct that he be put to death by electrocution, and that the body be subjected to shock by a sufficient current of electricity until he is dead. (Acts 1913 (1st E. S.), ch. 36, § 1; Shan., § 7204; 7204a; mod. Code 1932, § 11780; T.C.A. (orig. ed.), § 40-3117.)

Section in Session Reference, This case Chief State v. Barber, 753 S.W.2d 650

Law Review, Defending Life in Tennessee Death Penalty Cases May 2, 1980, 51 Tenn. L. Rev. 581 (1980).

40-23-115

ORIGINAL PROCEDURE
NOTES TO DECISIONS

306

ANALYSIS

1. In general.
2. Power to fix sentence.
3. Crimes committed prior to act.
4. Death sentence for rape.

1. In general.
This section merely changed the method of procedure for execution. State ex rel. Brown v. Bennett, 209 Ind. 1057, 94 S.W.2d 700, 701, 702, 377 U.S. 852, 853 G.C. 1959, 81 L. Ed. 2d 829 (1952).

2. Power to fix sentence.
Under other sections, the power to fix punishment for first degree murder is withheld to the jury, and it is prohibited for the court to fix such punishment. 18B, 293 E.W. 889 (1915).

3. Crimes committed prior to act.
Sentences of hanging for murder committed prior to acts of such character were voidable by the court. 765, L. L. Ed. 2d 983 (1986).

40-23-116. Maintenance of death chamber.—The commissioner of corrections shall ensure that a permanent and suitable death chamber is kept and maintained within a penitentiary of this state as defined in § 41-1-101(b), and that an electrical apparatus, together with all necessary appliances sufficient for the infliction of punishment of death as provided in § 40-23-114, is kept and maintained in the death chamber. (Acts 1913 (1st E.S.), ch. 59, § 2; Bennett v. 720 Stat. mod. Code 1952, § 1-791; T.C.A. (orig. ed.), § 40-51-18; Acts 1985 (1st E.S.), ch. 6, § 181.)

40-23-115. Manner of executing sentence of death.—Witnesses.—
(a) In all cases in which the sentence of death has been passed upon any person by the court of this state, it is the duty of the sheriff of the county in which such sentence of death has been passed to remove the person so sentenced to death from such county to the state penitentiary in which the death chamber is located, within a reasonable time before the date fixed for the execution of the death sentence in the judgment and mandate of the court pronouncing the same. On the date fixed for such execution in the judgment and mandate of the court, the warden of the state penitentiary in which the death chamber is located shall cause such death sentence to be carried out within an enclosure to be prepared for that purpose in a closed section of the penitentiary. The only witnesses entitled to be present at the carrying out of such death sentence are:
(1) The warden of the state penitentiary or his duly authorized deputy;
(2) The sheriff of the county in which the crime was committed;
(3) A priest or minister of the gospel who has been preparing the condemned person for death;
(4) The prison physician; and

was made after date of act. Shupe v. State, 136 Tenn. 411, 132 S.W. 317 (1914).

4. Death sentence for rape.
Failure of legislature to re-enact section 1901 had no bearing on validity of sentence of defendant held for rape and execution of death by electrocution, whose rape had been punishable by death since 1871 and had that this section was enacted in 1871 when the legislature had not re-enacted itself as to rape. 18B, 293 E.W. 889 (1915).
Shupe v. State, 136 Tenn. 411, 132 S.W. 317 (1914).
State ex rel. Brown v. Bennett, 209 Ind. 1057, 94 S.W.2d 700, 701, 702, 377 U.S. 852, 853 G.C. 1959, 81 L. Ed. 2d 829 (1952).

Both the first doctrine and the doctrine of the avoidance of error and void holding state prevent the federal court from holding state habeas authorizing state by execution for rape unconstitutional under the alleged non-implementation of the legislature which was unconstitutional. Brown v. Jones, 227 F.2d 445 (9th Cir. 1957) cert. denied 373 U.S. 831, 84 S. Ct. 765, L. L. Ed. 2d 983 (1963).

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(5) Such attendants chosen and selected by the warden of the state penitentiary as may be necessary to properly carry out the execution of the death sentence; that members of the family of the condemned prisoner may be present and witness the execution.
(b) No other person or persons than those mentioned in subsection (a) are allowed or permitted to be present at the carrying out of the death sentence. It is a Class C misdemeanor for the warden of the state penitentiary (a) to be any other person or persons than those provided for in subsection (a) to be present at such legal execution. (Acts 1909, ch. 500, § 1; Bennett v. 720 Stat. mod. Code 1952, § 11859; T.C.A. (orig. ed.), § 40-51-18; Acts 1985 (1st E.S.), ch. 6, § 16; 1989, ch. 591, § 113.)

Cross-Reference.—Failure of affidavit to verify date. § 40-23-117.

40-23-117. Death sentence stands if not carried out at scheduled time.—When, from any cause a convicted sentence to death has not been executed pursuant to such sentence, the sentence stands in full force and shall be carried into execution by the court in which such convict was tried. (Code 1952, § 5279; Bennett v. 720 Stat. mod. Code 1952, § 11851; T.C.A. (orig. ed.), § 40-51-12.)

Collateral References.—Bills of abolition of capital punishment on procedural rules govern. 71 A.L.R.3d 459.

40-23-118. Warrant for apprehension of condemned convict.—If such convict is at large, the court or any magistrate may issue a warrant for his apprehension, and, if no good reason is shown for his absence, shall commit him to abide the order and sentence of the court. (Code 1952, § 7260; Bennett v. 720 Stat. mod. Code 1952, § 11859; T.C.A. (orig. ed.), § 40-51-12.)

Cross-References.—Persons whose names are set forth in this section are prohibited from leading a secret war against the state. 140-2-103.

40-23-118. Order of execution after arrest of condemned prisoner.—Upon such conviction being brought before the court, it shall require him to the penitentiary, and, if no legal reason exists against the execution of such sentence, shall order the warden of the state penitentiary in which the death chamber is located to execute the defendant on a day to be fixed by the court. (Code 1858, § 5261; Impl. art. Acts 1909, ch. 500, § 1; Bennett v. 720 Stat. mod. Code 1952, § 11859; T.C.A. (orig. ed.), § 40-51-18; Acts 1986 (1st E.S.), ch. 6, § 17.)

An offense involving the illegal distribution or sale of a controlled substance to a minor; or
(6) An offense involving serious bodily injury, as defined in § 39-11-106(a)(38), or death to a victim or bystander. [Acts 1989, ch. 217, § 6; 1992, ch. 838, § 4.]

40-20-206. Release to division of community services upon completion
— Revocation of release.

Section to Section References. This section is referred to in § 41-21-219.

CHAPTER 28

EXECUTION OF JUDGMENT

SECTION
40-23-116. Manner of executing sentence of death — Witnesses.

40-23-104. Sentence to workhouse for felony term — Removal by trial judge.

Attorney General Opinions. Applicability, OAG 90-56 (8/12/90).

40-23-114. Death by electrocution.

Cited: State v. Black, 316 S.W.2d 166 (Tenn. 1951).

40-23-116. Manner of executing sentence of death — Witnesses. —
(a) In all cases in which the sentence of death has been passed upon any person by the courts of this state, it is the duty of the sheriff of the county in which such sentence of death has been passed to remove the person so sentenced to death from such county to the state penitentiary in which the death chamber is located, within a reasonable time before the date fixed for the execution of the death sentence in the judgment and mandate of the court pronouncing the same. On the date fixed for such execution in the judgment and mandate of the court, the warden of the state penitentiary in which the death chamber is located shall cause such death sentence to be carried out within, an enclosure to be prepared for that purpose in strict seclusion and privacy. The only witnesses entitled to be present at the carrying out of such death sentence are:

- (1) The warden of the state penitentiary or the warden's duly authorized deputy;
- (2) The sheriff of the county in which the crime was committed;
- (3) A priest or minister of the gospel who has been preparing the condemned person.

(5) Such attendants chosen and selected by the warden of the state penitentiary as may be necessary to properly carry out the execution of the death sentence; and

(6) A total of seven (7) members of the print, radio and television news media selected in accordance with the rules and regulations promulgated by the department. Those news media members allowed to attend any execution of a sentence of death shall make available coverage of such execution to other news media members not selected to attend; provided, that members of the family of the condemned prisoner may be present and witness the execution.

(b) No other person or persons than those mentioned in subsection (a) are allowed or permitted to be present at the carrying out of the death sentence. It is a Class C misdemeanor for the warden of the state penitentiary to permit any other person or persons than those provided for in subsection (a) to be present at such legal execution.

(c)(1) Photographs or recording equipment shall not be permitted at the execution site until the execution is completed, the body is removed, and the site has been restored to an orderly condition. However, the physical arrangement of the execution site shall not be disturbed.

(2) A violation of subdivision (c)(1) is a Class A misdemeanor.

(3) The department of correction shall promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a death sentence in accordance with the Uniform Administrative Procedure Act, compiled in title 4, chapter 5. In promulgating such rules, the department shall solicit recommendations from the Tennessee Press Association, the Tennessee Associated Press Managing Editors, and the Tennessee Association of Broadcasters. For each execution of a death sentence, applications for attendance shall be accepted by the department. When the number of applications require, lots to select news media representatives will then be drawn by the warden of the state penitentiary at which such death sentence is to be carried out. All such drawings shall be conducted in open meetings and notice shall be properly given in accordance with § 4-5-203 [Acts 1909, ch. 500, § 1; Shan., § 7253a; Code 1932, § 11869; T.C.A. (Orig. ed.), § 40-311-500, § 1; Shan., § 7253a; Code 1982, ch. 591, § 113; 1984, ch. 675, §§ 1-3 Acts 1985 (1st E.S.), ch. 5, § 16; 1989, ch. 591, § 113; 1994, ch. 675, §§ 1-3

Amendment. The 1994 amendment added Cross-Reference Penalty for Class A misdemeanor, § 40-35-111.
(e)(6) and (c).
Effective Date. Acts 1994, ch. 675, § 4.
March 25, 1994.

CHAPTER 24

FINES

SECTION
40-24-105. Collection of fines, costs and litigation fees.
40-24-107. Criminal injury compensation.

fund — County criminal in this compensation reserve.

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PUBLIC CHAPTER NO. 982

PUBLIC CHAPTER NO. 982

HOUSE BILL NO. 2085

By Representatives Newton, Buck, Starps

Substituted for: Senate Bill No. 2477

By Senator Miller

AN ACT to amend Tennessee Code Annotated, Section 39-13-204 and Section 40-23-114, relative to lethal injection as an option for execution of death sentence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-23-114, is amended by deleting the language "Whenever any person is sentenced to the punishment of death," and by substituting instead "For any person who commits an offense prior to January 1, 1999 for which such person is sentenced to the punishment of death,"

40-23-114

SECTION 2. Tennessee Code Annotated, Section 40-23-114, is further amended by designating the existing section as amended by Section 1 of this Act, as subsection (a) and by adding the following new subsection (b):

40-23-114

(b) For any person who commits an offense on or after January 1, 1999 for which such person is sentenced to the punishment of death, the court shall direct that the person be put to death by lethal injection.

40-23-114

SECTION 3. Tennessee Code Annotated, Section 40-23-114, is amended by adding the following new subsection (c):

(c) Any person who commits an offense prior to January 1, 1999 for which such person is sentenced to the punishment of death may elect to be executed by lethal injection by signing a written waiver waiving the right to be executed by the method of execution in effect at the time the offense was committed.

SECTION 4. If the method of execution established by this Act is for any reason determined by a court of competent jurisdiction to be unconstitutional, the law establishing the method of execution as death by electrocution is revived and electrocution shall be the method of execution in this State. All statutory procedures, rules and departmental policy enacted or promulgated to effectuate a sentence of death by electrocution shall also be revived and shall be in full force and effect.

SECTION 5. The Department of Correction is authorized to promulgate necessary rules and regulations to facilitate the implementation of this Act.

SECTION 6. This Act shall take effect upon becoming a law, the public welfare requiring it.

Effective date 5/18/98

PUBLIC CHAPTER NO. 333

SENATE BILL NO. 1161

By Hiram Cooper

Substituted for House Bill No. 487

By Burnett Newton

AN ACT To amend Tennessee Code Annotated, Title 40, Chapter 23, relative to executing a sentence of death.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-23-116(a), is amended by adding the following new subdivision:

(7) Immediate family members of the victim who are eighteen (18) years of age or older. Such immediate family members shall include the spouse, child (by birth or adoption), stepchild, stepparent, parent, grandparent or sibling of the victim.

SECTION 2. Tennessee Code Annotated, Section 40-23-116, is amended by adding the following new subsection:

(1) If the immediate family members of the victim choose to be present at such execution, they shall be allowed to witness the execution from an area that is separate from the area to which other witnesses are admitted. If facilities are not available to provide immediate family members with a direct view of the execution, the warden of the state penitentiary may broadcast the execution by means of a closed circuit television system to the area in which the immediate family members are located.

SECTION 3. This act shall take effect July 1, 1997, the public welfare requiring it.

PASSED: April 17, 1997

John S. Wilder

JOHN S. WILDER
SPEAKER OF THE SENATE

Jimmy Naifeh

JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

DEATH WATCH PROCEDURES

Riverbend Maximum Security Institution.

DEATH WATCH PROCEDURES

DAY 1

1. Move inmate to Death Watch status in Building 8.
2. A separate log shall be maintained in the Command Post and in the Death Watch Control Room during entire Death Watch period. It shall document all activity unique to the Death Watch and execution. Areas addressed shall include, but not be limited to, inmate's behavior, actions, movement, communications initiated and received concerning Death Watch activities.
3. Notify Department of Correction (Commissioner) of final week.
4. Assign Death Watch Supervisor and cell-front monitor. Supervisor shall be Correctional Lieutenant or higher.
5. Condemned inmate will personally inventory all property and seal his personal property for storage as specified in DOC Policy #504.02.
6. Notify institutional chaplain to visit inmate daily.
7. Visiting status of condemned inmate changes to all non-contact.
8. Telephone check for outside line will be effected from execution chamber by the Deputy Warden.
9. Appoint information liaison officer and advise department's Public Information Officer.
10. Establish communication with IDOC staff attorney for consultation as required.
11. Warden to conduct briefing with Correctional Officers (Death Watch) concerning Death Watch activities.
12. Establish notification list for contacting both IDOC and support personnel; also sheriff of county from which inmate was convicted.
13. Designated electrician tests all execution equipment to include emergency generator.
14. Measure inmate for clothing.
15. Inmate specifies in writing funeral arrangements.
16. Inmate specifies recipient of personal property in writing.
17. Execution squad drill.

DEATH WATCH PROCEDURES

DAY 2

1. The Facility Manager tests all execution equipment to include power generator.
2. Meeting with support units to coordinate civilian crowd protesters.
3. Food Service Manager advised of meal needs for IDOC and other agency support staff.
4. Deputy Warden tests telephone.
5. Electrician tests equipment to include generator.
6. Waiting area for execution set up by Administrative Lieutenant.
7. Facility Supervisor makes up ammonium chloride solution and soaks sponges.
8. Condemned inmate orders last meal.
9. Health Administrator prepares certificate of death; cause - "legal execution by electrocution."
10. Chaplain confirms funeral arrangements with family.
11. Public Information Officer arrives to handle media inquiry.
12. Security meeting held.

DEATH WATCH PROCEDURES

DAY 3

1. Facility Manager will test all execution equipment to include phone and generator.
2. Tube of electrode gel will be obtained from infirmary.
3. Clothing will be delivered to Deputy Warden.
4. Food Service Manager will personally prepare and serve last meal. The inmate may request a special meal. The meal shall be provided within reason as determined by the Warden. Cost shall not exceed \$20.00. Eating utensils will be fork and spoon.

DAY 4 - EXECUTION DAY

12:00 a.m.

1. By prior planning, the executioner will be brought in through vehicle gate by Administrative Assistant or designated staff member. He will be taken directly to executioner waiting area in Building 8. His identity will be known by least number of staff necessary.
2. Beginning at 12:00 a.m., the only staff authorized in the capital punishment complex are:
 - a) Commissioner or designee
 - b) Warden
 - c) Deputy Warden
 - d) Administrative Assistant
 - e) Facility Manager
 - f) Facility Maintenance Supervisor
 - g) Death Watch Supervisor and assigned officers
 - h) Chaplain
 - i) Medical Doctor and associate
 - j) Executioner (executioner waiting area)

Any exceptions to the above must be approved by Warden or Commissioner.
3. Inmate will be dressed in cotton trousers, shirt, and cotton socks, flip flops, or cloth house shoes. Trousers and shirt are to be without any metal.
4. Official witnesses will report to the Administration Building no later than 12:00 a.m., be greeted by two designated Department of Correction escort staff, security cleared and moved to the Building 8 Parole Board Room where they will remain until later escorted to the witness room of the execution chamber.
5. Immediate family members of the victim will report to the Administration Building no later than 12:30 a.m. and be greeted by two designated Department of Correction employees. These witnesses will be security-cleared and escorted to the Building 8 conference room. Viewing of the execution by these witnesses will be provided by means of closed circuit television at the designated time.
6. The Administrative Assistant or designee, designated electricians, and physician will report to the execution chamber for preparation. The Administrative Assistant or designee will check the phones in the chamber. The electrician will ready the equipment and the physician will stand by.
7. The Deputy Warden will supervise the shaving of the condemned inmate's head and legs.

DEATH WATCH

DAY 4 - EXECUTION DAY

12:30 a.m.

1. The Administrative Assistant or designate will establish phone communication with those officials designated by the Warden.
2. The Deputy Warden will supervise the application of conducting gel to both ankles, lower legs, and head of condemned inmate.
3. Victim family member witnesses will be secured in Building 8 conference room by designated staff member no later than 12:45 a.m.
4. Official witnesses will be secured in the Building 8 Parole Board Room by two designated staff members no later than 12:45 a.m. They will be moved to the capital punishment waiting area at 1:00 a.m. or as directed by the Death Watch Supervisor.

12:55 a.m.

1. Beginning at 12:55 a.m., the only staff authorized in the execution chamber are the Warden and those TDOC employees designated by him to carry out the execution.
2. The Warden, Deputy Warden, Chaplain, and assigned officers will escort the condemned inmate to the execution chamber. The Administrative Assistant or designate will record the time the inmate entered the chamber. His arms will be secured by mechanical restraining devices.
3. The Deputy Warden and assigned officers will place the condemned inmate in the chair.
4. The Deputy Warden and assigned officers will secure back arm straps and then chest, lap, and ankle straps.
5. When the inmate is secured, the Deputy Warden and assigned officers will remove restraint apparatus and then secure forearm straps.
6. Official witnesses will be secured in the official witness room.
7. The closed circuit television camera and audio speaker system will be activated.

DEATH WATCH

DAY 4 - EXECUTION DAY

1:00 a.m.

1. The Warden shall contact the Commissioner to insure that no last minute stay or respite has been granted.
2. The Warden will permit the condemned inmate to make a last statement.
3. The assigned officers will secure the head set.
4. The Facility Manager will check the electrodes to insure that they are properly attached.
5. The Assistant Facility Manager will proceed to electrical control panel and activate for execution.
6. The Warden will give the signal to the Executioner to engage the automatic rheostat. The Administrative Assistant or designate will record the time the switch is thrown. When current has been on for required time, the rheostat will automatically disengage. Current will be set as directed in manual.
7. Once the cycle runs its course, the Facility Manager indicates the current is off. The Administrative Assistant or designate will record the time the current is disengaged.
8. The Facility Manager will disconnect electrical cables in rear of chair.
9. After a wait of five (5) minutes, the Warden will ask the physician to conduct an examination.
10. If the inmate is not dead, the Warden will direct the Facility Manager to reconnect the electrical cables at the rear of the chair. Steps 7-9 as listed above shall be repeated if required.
11. The inmate is pronounced dead. The Administrative Assistant or designate records the time that death is pronounced.
12. The inmate's body will be removed by the Execution Team and ambulance attendants and placed in a body bag.
13. The ambulance will exit the prison via vehicle gate and will transport body to State Medical Examiner for further disposition.

DEATH WATCH

DAY 4 - EXECUTION DAY

12. The Administrative Assistant or designate announces that the sentence has been carried out and invites witnesses to exit.
"The sentence of _____ has been carried out. Please exit to the rear at this time."
13. The official witnesses will then be escorted from the witness room by the designated staff escorts.
14. The closed circuit television camera will be deactivated.
15. The Commissioner or designee will notify all appropriate State officials that sentence has been carried out. Media will be so notified by designated information officer.
16. The Deputy Warden and Death Watch Supervisor will supervise inmate's removal from chair and his placement in examination room next to execution chamber. Ambulance attendants will assist in removal of body and placement in ambulance, which will be in vehicle sallyport of death watch area.
17. The ambulance will be cleared to exit by the Deputy Warden.

POST EXECUTION

1. The body will be transported to the State Medical Examiner for examination and release of the body.
2. Staff attorney shall be notified so that proper court clerks may be advised that sentence was carried out.
3. After execution has been completed and all civilians have departed from prison property, appropriate debriefings will be conducted with TDOC staff and representatives of other agencies involved. Such debriefings shall be coordinated by the Assistant Commissioner of Operations.

CHRONOLOGICAL EXECUTION REPORT

NAME OF INMATE: _____

TIME

- | | | |
|-----|--|-------|
| 1. | Inmate entered execution room. | _____ |
| 2. | Restraints in place on inmate. | _____ |
| 3. | Console engaged. | _____ |
| 4. | Apparently unconscious. | _____ |
| 5. | Visible muscular movement stopped. | _____ |
| 6. | Respiration apparently stopped. | _____ |
| 7. | Console disengaged. | _____ |
| 8. | Examined by physician. | _____ |
| 9. | Pronounced dead. | _____ |
| 10. | Body removed. | _____ |
| 11. | Body removed from institution. | _____ |

_____ Date

_____ Warden

TENNESSEE DEPARTMENT OF HEALTH
CERTIFICATE OF DEATH

STATE FILE NUMBER

TYPE/PRINT
 IN
 PERMANENT
 BLACK INK
 FOR
 INSTRUCTIONS
 SEE HANDBOOK

1. DECEDENT'S NAME (First, Middle, Last)						2. SEX	3. DATE OF DEATH (Month, Day, Year)	
4. SOCIAL SECURITY NUMBER (of Decedent)		5a. AGE—LAST BIRTHDAY (Month, Day, Year)	5b. MONTH YEAR	5c. MONTH DAY	6. DATE OF BIRTH (Month, Day, Year)		7. BIRTHPLACE (City and State or Foreign Country)	
8. WAS DECEDENT EVER IN U.S. ARMED FORCES? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No			9a. PLACE OF DEATH (Check only one) HOSPITAL: 1 <input type="checkbox"/> Inpatient 2 <input type="checkbox"/> ER/Outpatient 3 <input type="checkbox"/> DOA OTHER: 4 <input type="checkbox"/> Nursing Home 5 <input type="checkbox"/> Residence 6 <input type="checkbox"/> Other (Specify)					
9b. FACILITY NAME (If not institution, give street and number)			9c. CITY, TOWN, OR LOCATION OF DEATH			9d. COUNTY OF DEATH		
10. MARITAL STATUS—Married, Never Married, Widowed, Divorced (Specify)		11. SURVIVING SPOUSE (If wife, give maiden name)		12a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.)		12b. KIND OF BUSINESS/INDUSTRY		
13a. RESIDENCE—STATE		13b. COUNTY		13c. CITY, TOWN OR LOCATION		13d. STREET AND NUMBER OR RURAL LOCATION		
13a. INSIDE CITY LIMITS 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No		13b. ZIP CODE		14. WAS DECEDENT OF HISPANIC ORIGIN? (Specify Yes or No—if yes, specify Cuban, Mexican, Puerto Rican, etc.) Yes <input type="checkbox"/> No <input type="checkbox"/> Specify, if yes		15. RACE—American Indian, Black, White, etc. (Specify)		16. DECEDENT'S EDUCATION (Specify only highest grade as Elementary/Secondary (9-12) College
17. FATHER'S NAME (First, Middle, Last)				18. MOTHER'S NAME (First, Middle, Maiden Surname)				
19a. INFORMANT'S NAME (Type/Print)			19b. RELATIONSHIP TO DECEASED		19c. MAILING ADDRESS (Street and Number or Rural Route Number, City or State, Zip Code)			
20a. METHOD OF DISPOSITION 1 <input type="checkbox"/> Burial 2 <input type="checkbox"/> Cremation 3 <input type="checkbox"/> Removal from State 4 <input type="checkbox"/> Donation 5 <input type="checkbox"/> Other (Specify)			20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place)			20c. LOCATION—City or Town, State		
21a. SIGNATURE OF FUNERAL DIRECTOR			21b. LICENSE NUMBER OF FUNERAL DIRECTOR		21c. SIGNATURE OF EMBALMER		21d. LICENSE NUMBER OF EMBALMER	
22a. NAME AND ADDRESS OF FUNERAL HOME						22b. LICENSE NUMBER OF FUNERAL		
23. REGISTRAR'S SIGNATURE						24. DATE FILED (Month, Day, Year)		
25a. PHYSICIAN — To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner as stated. 1 <input type="checkbox"/> SIGNATURE AND TITLE OF PHYSICIAN								
25b. LICENSE NUMBER						25c. DATE SIGNED (Month, D		
25a. MEDICAL EXAMINER — On the basis of examination and/or investigation, in my opinion, death occurred at the time, and place, and due to the cause(s) and manner as stated. 2 <input type="checkbox"/> SIGNATURE AND TITLE OF MEDICAL EXAMINER								
25b. LICENSE NUMBER						25c. DATE SIGNED (Month, D		
27. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN OR MEDICAL EXAMINER) (Type/Print)								
28. PART I. Enter the diseases, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.								
IMMEDIATE CAUSE (Final disease or condition resulting in death) → a. DUE TO (OR AS A CONSEQUENCE OF):								
Sequentially list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (Disease or injury that initiated events resulting in death) LAST b. DUE TO (OR AS A CONSEQUENCE OF):								
c. DUE TO (OR AS A CONSEQUENCE OF):								
d. DUE TO (OR AS A CONSEQUENCE OF):								
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I						29a. WAS AN AUTOPSY PERFORMED? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No		29b. WERE AUTOPSY FE AVAILABLE PRIOR TO COMPLETION OF C OF DEATH? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No
30. MANNER OF DEATH 1 <input type="checkbox"/> Natural 5 <input type="checkbox"/> Pending Investigation 2 <input type="checkbox"/> Accident 3 <input type="checkbox"/> Suicide 6 <input type="checkbox"/> Could not be Determined 4 <input type="checkbox"/> Homicide			31a. DATE OF INJURY (Month, Day, Year)		31b. TIME OF INJURY	31c. INJURY AT WORK? 1 <input type="checkbox"/> Yes 2 <input type="checkbox"/> No		31d. DESCRIBE HOW INJURY OCCURRED
31e. PLACE OF INJURY—At home, farm, street, factory, office building, etc. (Specify)						31f. LOCATION (Street and Number or Rural Route Number, City or Town)		

NAME OF DECEDENT For use by physician or institution

PARENTS

INFORMANT

DISPOSITION

REGISTRAR

CERTIFIER

PHYSICIAN OR MEDICAL EXAMINER EXECUTING CERTIFICATE MUST COMPLETE AND SIGN MEDICAL CERTIFICATION WITHIN 48 HOURS.

SEE INSTRUCTIONS ON OTHER SIDE

CAUSE OF DEATH

INSTRUCTIONS FOR ITEM 28. CAUSE OF DEATH

Item 28. Cause of Death. Enter the disease, injury, or poisoning that caused the death, NOT the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. The cause of death means the disease, abnormality, injury, or poisoning that caused the death. Antecedent conditions, if any, which gave rise to the cause are reported on lines (b), (c), and (d). The underlying cause, as in Part I, the immediate cause of death is reported on line (a). No entry is necessary on lines (b), (c), and (d) if the immediate cause of death on line (a) describes completely the train of events. ONLY ONE CAUSE SHOULD BE ENTERED ON A LINE. Additional lines may be added if necessary. Provide the best estimate of the interval between the onset of each condition and death. Do not leave any blank, if unknown, so specify. In Part II, enter other important diseases or conditions that may have contributed to death but did not result in the underlying cause of death given in Part I. See examples below.

28. PART I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.					Approximate Interval Between Onset and Death
IMMEDIATE CAUSE (final disease or condition resulting in death)	a.	Rupture of myocardium DUE TO (OR AS A CONSEQUENCE OF)			Mins.
	b.	Acute myocardial infarction DUE TO (OR AS A CONSEQUENCE OF)			6 days
	c.	Coronary atherosclerosis DUE TO (OR AS A CONSEQUENCE OF)			5 years
	d.				
SEQUENTIALLY list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST.					
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.					
Diabetes, Chronic obstructive pulmonary disease, smoking					
29a. WAS AN AUTOPSY PERFORMED					29b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
30. MANNER OF DEATH		31a. DATE OF INJURY (Month, Day, Year)	31b. TIME OF INJURY	31c. INJURY AT WORK (Yes or no)	31d. DESCRIBE HOW INJURY OCCURRED
<input checked="" type="checkbox"/> Natural <input type="checkbox"/> Pending investigation <input type="checkbox"/> Accident <input type="checkbox"/> Could not be determined <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide			M	No	
		31e. PLACE OF INJURY—At home, farm, street, factory, office building, etc. (Specify)		31f. LOCATION (Street and Number or Rural Route Number, City or Town, State)	
		Street		Route 4, Nashville, TN	

SEE INSTRUCTIONS ON OTHER SIDE

28. PART I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line.					Approximate Interval Between Onset and Death
IMMEDIATE CAUSE (final disease or condition resulting in death)	a.	Cerebral laceration DUE TO (OR AS A CONSEQUENCE OF)			10 mins.
	b.	Open skull fracture DUE TO (OR AS A CONSEQUENCE OF)			10 mins.
	c.	Automobile accident DUE TO (OR AS A CONSEQUENCE OF)			10 mins.
	d.				
SEQUENTIALLY list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST.					
PART II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.					
29a. WAS AN AUTOPSY PERFORMED					29b. WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
30. MANNER OF DEATH		31a. DATE OF INJURY (Month, Day, Year)	31b. TIME OF INJURY	31c. INJURY AT WORK (Yes or no)	31d. DESCRIBE HOW INJURY OCCURRED
<input type="checkbox"/> Natural <input type="checkbox"/> Pending investigation <input checked="" type="checkbox"/> Accident <input type="checkbox"/> Could not be determined <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide		11/15/89	1 p.	No	2-car collision—driver
		31e. PLACE OF INJURY—At home, farm, street, factory, office building, etc. (Specify)		31f. LOCATION (Street and Number or Rural Route Number, City or Town, State)	
		Street		Route 4, Nashville, TN	

ADDITIONAL INFORMATION BY PHYSICIAN

FOR OFFICIAL USE ONLY:

State of Tennessee
DEPARTMENT OF CORRECTION

News Release

The Department of Correction reports that pursuant to the sentence of the court and in accordance with provisions of TCA, the capital punishment sentence of _____ has been carried out.

Time of execution was _____ A.M./P.M. on
_____ (date)

_____ was pronounced dead by
(Inmate's name)
attending physician at _____ A.M./P.M.

DEATH WATCH SUPERVISOR

I. INTRODUCTION

The duties and responsibilities of this post are that of observation and supervision of all activities concerning a condemned inmate(s) during pre-execution (Death Watch) monitoring. His duties are the general supervision and control of other security personnel assigned to monitor the condemned inmate during the time under death watch to include preparation of the condemned inmate(s) prior to execution.

II. GENERAL DUTIES AND RESPONSIBILITIES

This officer must be a Correctional Lieutenant or higher. He reports directly to the Warden or Deputy Warden. He will normally assume the administrative shift work schedule, but may be required to work different hours as needed. During off-duty hours he will remain on standby status unless relieved by the Administrative Lieutenant.

III. EQUIPMENT

Radio/hoster; keys; handcuffs.

III. SPECIFIC DUTIES AND RESPONSIBILITIES

A. Immediate Action

1. Upon notification of your assignment (normally when a death watch reaches active stage), prepare to assume the duty schedule reflected above.
2. Your post will be the entrance area leading into the Death Watch area. You will assume authority of all personnel assigned to pre-execution monitoring (Death Watch).
3. You will review the post orders for the Control Officer and Floor Officer to become familiar with all functions of subordinates.
4. There may be one floor officer per shift assigned.
5. You will insure that the condemned inmate upon reaching active death watch status personally inventories and packs away all items he is not permitted to retain. The inmate, yourself, and one witness will sign the property inventory. The inmate will be permitted to retain a copy of the inventory. The sealed property will be retained in storage in Building 8 until ordered removed or surrendered to the inmate's designate.

6. You will be responsible for escorting condemned inmate to Building 8 and placing him in cell after strip searching and exchanging his clothing.

7. You will insure that all significant information is entered on the Supervisor's Log. ALL PERSONS ENTERING THIS AREA FOR ANY PURPOSE WILL SIGN IN AND OUT, and you will keep a record of same.

8. You will insure that sufficient clothing in the inmate's size is retained in the preparation area to accommodate exchange each time the condemned inmate leaves his cell.

B. Subordinate Personnel

1. The Control Officer and the Floor Officer will be a Correctional Officer or rated officer who reports directly to you.

2. Ascertain the phone number and address of all subordinate personnel in order that they may be contacted after hours.

3. Subordinate personnel shall report to you.

4. C.M.O. floor officers will be assigned.

5. Insure that all orders and instructions are read and understood by all subordinate personnel.

C. Routine Security Measures, Checks, Logs

1. Maintain or cause to be maintained (by Control Officer) a "Supervisor's Log" of activities.

2. Personally supervise the feeding of all meals during your shift. Insure that no inmates are utilized in the feeding of any meal during an active death watch, including preparing the trays.

3. Keep all unauthorized personnel out of the area.

4. Insure that the security of the area is reported to the Control Room each half-hour during active death watch.

5. Do not permit anyone to enter the condemned inmate's cell except by order of the Warden, Deputy Warden, or Shift Captain. The only exception is a life-threatening emergency.

6. Insure that the condemned inmate is handcuffed behind at any time he leaves his cell. He will remain handcuffed until he is returned to his cell. (He may be handcuffed in front if a restraint belt is used.
7. Any time the inmate is moved, he will receive a double escort.
8. At least one (1) officer will always remain in the area even if it is temporarily vacant.
9. Insure that the area is kept clean and orderly. The inmate's holding cell shall be cleaned daily by assigned staff. The inmate shall be moved to an adjoining cell while the cleaning process is being accomplished.

D. Telephone Calls

Normally the inmate will receive telephone calls from a special extension plugged in at his cell location. When not in use, you will personally insure its security.

E. Emergencies and Other Contingencies

1. In the event of self-inflicted or other injury, take immediate and decisive action and contact the medical clinic immediately to send assistance.
2. Personally supervise the dispensing of any medication on a single unit dosage basis.
3. Immediately notify the Shift Supervisor, Deputy Warden, or Warden in the event of an emergency.

HOSTAGE STATEMENT

Any person, regardless of rank or position, who is taken hostage immediately relinquishes all authority normally designated to that rank or position and any orders issued by that person shall not be obeyed.

IV. SUMMARY

This post order cannot cover every possible contingency. Apply good judgment when decisions are necessary and time permitting, clarify doubtful or unusual circumstances with the Shift Supervisor, Deputy Warden, or Warden.

DO NOT DISCUSS THESE DUTIES AND RESPONSIBILITIES WITH ANYONE WITHOUT SPECIFIC AUTHORIZATION FROM THE DEPUTY WARDEN OR WARDEN.

CONTROL MONITOR

I. INTRODUCTION

The duties and responsibilities of this post are in effect immediately upon notice of a court order for execution and remain in effect until the order is stayed or the execution is carried out.

At the beginning of the Death Watch, the officer assigned this post will assume his/her duties.

II. DUTIES AND RESPONSIBILITIES

This officer must be a Correctional Corporal or higher. He reports directly to the Death Watch Supervisor, Deputy Warden, or Warden at the beginning of pre-execution monitoring until relieved or until the execution is stayed or carried out.

A. Immediate Action

1. Upon notification, you will assume your duties and responsibilities as described herein and your shift supervisor will be alerted of your assignment.
2. Begin maintenance of Death Watch Supervisor's log insuring the recording of significant detailed information.
3. During pre-execution monitoring the following persons are authorized to enter the area:
 - a) Warden
 - b) Deputy Warden
 - c) Captain/Lieutenant
 - d) Officers to assist in routine functions (i.e., showers, escort, shakedown) as authorized by Death Watch Supervisor.
 - e) Any medical or security personnel you deem appropriate in an emergency situation.
 - f) Prison chaplain.
4. You are responsible for the cleanliness of your area as well as the cell area during pre-execution monitoring.

B. Routine Security Measures, Security Checks and Logs

1. Keep an accurate chronological log of your activities.
2. Keep a sign-in and sign-out log for every person who enters or leaves Death Watch area.
3. Maintain close surveillance of subordinate personnel.
4. Keep all unauthorized personnel out of the area to include inmates, other employees, and visitors.
5. Report the security of your post to the Control Room every thirty minutes.
6. Movement of Inmate: Personally insure that the condemned inmate is handcuffed (behind his back) anytime he leaves his cell. Restraint belt may be used. The handcuffs will not be removed when he is receiving non-contact visits or media interviews, but they may be placed in front.
7. When a condemned inmate is moved, he will be escorted by two officers designated by the Death Watch Supervisor.
8. When the condemned inmate is moved from his cell, he will be searched and placed in different clothing. The same clothing may be reused until soiled so long as it is thoroughly inspected before reissuing it to him.

C. Visiting:

1. Unless otherwise directed, all visiting will be non-contact and will be held in the visiting area next to the Control Room.
2. Escorts for visiting during pre-execution monitoring will be provided by two experienced Correctional Officers assigned by the Death Watch Supervisor.
3. Supervision of visiting for condemned inmates in pre-execution monitoring will be designated by the Death Watch Supervisor.
4. An accurate log of pertinent information to include names of each visitor, time of arrival and departure of each visitor, and inmate will be maintained by the officer assigned to supervise visiting.
 - a. The number of persons authorized and the visiting hours will be in accordance with specific instructions issued by the Warden or Deputy Warden.
 - b. Allowable commissary items will be Section E.

D. State-Issued Property and Possession Limit

The inmate shall be allowed only the items listed below. Any other item will be considered contraband and confiscated in accordance with institutional policy.

- a. Standard issue of outer clothing
- b. One bed
- c. One mattress, pillow, and standard issue of linens
- d. One toothbrush
- e. One tube of toothpaste
- f. One bar of soap
- g. One disposable razor (to be issued and used under direct supervision only)
- h. Two towels, one washcloth
- i. Two pairs of shorts and t-shirts (Underwear will be exchanged daily)
- j. Toilet tissue as needed
- k. Stationery - 12 sheets, 3 stamped envelopes, 3 pencils. Pencils will be in possession of officer when not in use.
- l. Religious tracts as issued by institutional chaplain
- m. Legal documents and books and papers as requested
- n. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
- o. One radio outside door in front of cell (state-owned)
- p. One television outside door in front of cell (state-owned)
- q. Newspapers as requested and available (no more than two in cell at a time)
- r. Feminine hygiene items as necessary and appropriate.

E. Property Items and Privilege

The inmate may order and purchase the following items on the first day of death watch status:

- a. Colas (opened by officer and served in paper cup)
- b. Candy bars
- c. Cookies, crackers, potato chips
- d. Tobacco products (except matches)

(Note: All orders and deliveries inspected and delivered by officer. This includes removal of non-transparent candy wrappers. Care should be taken, however, to avoid handling of contents except with napkin, tissue, etc. Use sanitary disposable gloves that are used in kitchen.)

One state-owned television and radio will be placed outside door in front of cell for use by condemned inmate.

F. Telephone Calls

1. You may expect the condemned inmate to receive authorized telephone calls while in pre-execution monitoring status.
2. Specific instructions for each phone call will be given by the Warden, Deputy Warden, or Death Watch Supervisor, and will be logged (no exceptions). You will insure supervision of each phone call.
3. Normally, the inmate will receive telephone calls from a special extension plugged in at his cell location. When telephone is not in use, you will personally insure its security.

G. Emergencies and Other Contingencies

1. If any employee is taken hostage, he/she is without authority regardless of rank.
2. In the event of self-inflicted or other injury, take immediate and decisive action and contact the medical clinic immediately to send a physician or ranking medical person if he is not available.
3. Immediately notify the Warden, Deputy Warden, Death Watch Supervisor, and Shift Supervisor.

III. SUMMARY

This post order cannot cover every possible contingency. Apply good judgment when decisions are necessary and time permitting, clarify doubtful or unusual situations or circumstances with the Shift Supervisor, Deputy Warden, or Warden.

DO NOT DISCUSS THESE DUTIES AND RESPONSIBILITIES WITH ANYONE WITHOUT SPECIFIC AUTHORIZATION FROM THE WARDEN OR DEPUTY WARDEN.

FLOOR OFFICER MONITOR

I. INTRODUCTION

The duties and responsibilities of this post are in the direct supervision and monitoring of a condemned inmate's activities during the final days of pre-execution monitoring.

II. GENERAL DUTIES AND RESPONSIBILITIES

This officer may a Correctional Officer or higher. He reports directly to the Control Monitor. He is posted in the area directly in front of the cells. He must remain alert on his post at all times maintaining direct observation of the condemned inmate.

III. EQUIPMENT

Radio/holster; handcuffs

IV. SPECIFIC DUTIES AND RESPONSIBILITIES

A. Immediate Action

Upon notification of your assignment, notify your shift supervisor for relief of your normal post. Follow the instructions of the death watch supervisor and/or control monitor and assume your assigned shift unless otherwise notified.

B. Routine Security Measures, Security Checks and Logs

1. Closely observe the condemned inmate's activities and immediately report to the death watch supervisor or control monitor any unusual circumstances or activities.
2. Insure that all eating utensils and trays are not allowed to remain in the cell when not in use.
3. Remain posted at the cell front, but do not hesitate to enter the condemned inmate's cell if circumstances warrant it.
4. The cell door key(s) will remain in the possession of the control monitor except as needed.

5. You may converse freely with the inmate, but avoid opinionated or inflammatory statements. Do not discuss your personal feelings regarding the Death Penalty. Do not make promises to the inmate. All requests by the inmate not covered herein will be referred to the death watch supervisor.
6. Do not leave your post unless properly relieved.
7. Visually inspect and thoroughly examine all items permitted into or out of the inmate's cell. Examine carefully all clothing sent to you from the clothing room.
8. Do a very thorough strip search of the condemned inmate any time he enters or exits his cell.
9. Exchange the inmate's clothing any time he enters or exits the cell. The same clothing may be reused until it becomes soiled.
10. Insure that the condemned inmate is handcuffed behind any time he leaves his cell. He will remain handcuffed until he is returned to his cell. (He may be handcuffed in front if a restraint belt is used.)
11. Insure that all post orders are being followed. It is expected that all floor officer monitors conduct themselves in a professional manner. A calm, mature atmosphere should be maintained.
12. You will be responsible for the daily cleanliness of your area and the cell areas. Normally the day shift will be responsible for sweeping and mopping the entire area; however, you will insure that the area remains in a state of cleanliness and trash containers are emptied during your tour. All trash is to be personally removed by staff and deposited in the appropriate containers located outside the secure confines of the institution.
13. Maintain or cause to be maintained (by Control Officer) a "Supervisor's Log" of activities.
14. Personally supervise the feeding of all meals during your shift. Insure that no inmates are utilized in the feeding of any meal during an active death watch, including preparing the trays.
15. Keep all unauthorized personnel out of the area.

16. Insure that the security of the area is reported to the Control Room each half-hour during active death watch.
17. Do not permit anyone to enter the condemned inmate's cell except by order of the Warden, Deputy Warden, or Shift Captain. The only exception is a life-threatening emergency.
18. Any time the inmate is moved, he will receive a double escort.
19. At least one (1) officer will always remain in the area even if it is temporarily vacant.
20. Insure that the area is kept clean and orderly. The inmate's holding cell shall be cleaned daily by assigned staff. The inmate shall be moved to an adjoining cell while the cleaning process is being accomplished.

C. Telephone Calls, Visits

Follow the instructions of the death watch supervisor or control monitor in each specific incident.

D. Emergencies and Other Contingencies

1. Fire extinguishers are readily available for your use at the control monitor station. In all cases of fire, you are to consider the safety and accountability of all personnel and inmates in your area.
2. Notify the control monitor immediately in the event of a self-inflicted or other injury.
3. In a life-threatening emergency, take decisive action to include leaving your post to enter the condemned inmate's cell if necessary.
4. All prescriptions and other medication will be retained in the possession of the control monitor. Deliver them to the inmate on a unit dosage basis as the prescription directs. Make certain that he does not "fake" swallowing it in order to accumulate a large quantity.

ALL PERSONS, REGARDLESS OF RANK OR POSITION, WHO IS TAKEN HOSTAGE IMMEDIATELY RELINGUISHES ALL AUTHORITY NORMALLY DESIGNATED TO THAT RANK OR POSITION AND ANY ORDERS ISSUED BY THAT PERSON SHALL NOT BE OBEYED.

IV. SUMMARY

This post order cannot cover every possible contingency. Apply good judgment when decisions are necessary and time permitting, clarify doubtful or unusual situations or circumstances with the death watch supervisor. DO NOT DISCUSS THESE DUTIES AND RESPONSIBILITIES WITH ANYONE WITHOUT SPECIFIC AUTHORIZATION FROM THE DEPUTY WARDEN OR WARDEN.

EXECUTION TEAM

I. PURPOSE

The purpose of this operating procedure is to outline the duties and responsibilities of the Execution Team Members in carrying out the Death Sentence.

II. APPLICATION

All members of the Execution Team and their alternates. The Execution Team shall consist of one (1) Officer in Charge, one (1) Assistant Officer in Charge, and seven (7) members. Two of the members will be assigned the Death Watch duties.

III. EQUIPMENT

Radio/holster; keys; handcuffs.

IV. POLICY

The Officer in Charge and/or the Assistant Officer in Charge will be responsible to the Deputy Warden for the care and maintenance of the Death Chamber and all appliances and equipment; the training of the Execution Team and carrying out the execution of the condemned prisoner.

V. PROCEDURES:

The following procedures shall apply:

1. The Officer in Charge and/or the Assistant Officer in Charge shall conduct a training session at least once each month at which time all appliances and electrical circuits will be tested.
2. Four (4) days before a scheduled execution, the Officer in Charge and assistant shall assemble the Execution Team in the Death Chamber area to prepare and test all appliances and equipment for the scheduled execution.
3. Obtain the following items:
 - a) sheets (4)
 - b) Pillow cases (4)
 - c) Blankets (2)
 - d) Hand towels (12)
 - e) Wash cloths (12)

4. Mix 2 1/2 gallons of water and approximately eight (8) 8-oz. cups of Sterling TX-10 Iodized Granulated Salt (by International Salt Co., Clarks Summit PA 18411) until water will not dissolve|absorb any more to form brine.
5. Soak head and leg devices for 8 hours prior to use and wring out damp dry just before use.
6. Upon completion of the preparation stage, the Officer in Charge and/or the Assistant Officer in Charge will make an oral report to the Warden as to the state of readiness of equipment, appliances, and Death Chamber.

Prior to, but not more than 24 hours before the day of the execution, the Execution Team will carry out the following instructions under the direction of the Deputy Warden:

- A. Assemble all other members of the Execution Team in the Death Chamber before the scheduled execution and review their specific assignments and duties.
- B. Insure that all equipment is properly placed.
- C. The Officer in Charge and Facility Manager shall set the electrodes on the chair and test circuitry. The electrodes will be left on the chair upon completion of first circuitry test.
- D. The two members assigned to the head and leg pieces are to place the head and leg pieces in the brine solution 8 hours prior to the execution.
- E. The two team members assigned to the head and leg pieces will remove same from brine, squeeze out excess liquid, and place on drain pan on orders of the Officer in Charge.
- F. The three team members assigned the duties of escorting the condemned prisoner to the chair will do so upon instructions from the Deputy Warden.
- G. The inmate will be escorted to the chair, strapped in the chair, and head and leg pieces and face mask will be secured by team members previously assigned those duties, under the direction of the Assistant Officer in Charge.
- H. When all straps and appliances are secured, all members of the team will dry their hands and retire to the holding cell area.
- I. The Officer in Charge will activate the cycle.

- J. When the cycle has been completed, the Officer in Charge will signal to the designee who will deactivate the circuitry.
- K. The designee will wait five (5) minutes, then signal the physician in attendance.
- L. After the physician pronounces the inmate dead, the designee will inform the Commissioner that the sentence has been carried out.
- M. The body will be removed by the Execution Team and ambulance attendants and placed in the ambulance for transporting. The body will be covered with sheet.
- N. Ambulance will exit the prison via vehicle gate and will transport body to morgue for further disposition.
- O. The Execution Team, under the direction of the Officer in Charge, shall clean the equipment and Death Watch area. The leather components shall be cleaned with soap and water. Afterwards, saddle soap shall be applied to preserve the leather. The holding cell shall be cleaned thoroughly with the mattress and pillow being sanitized. Equipment shall be stored in its proper location. An entry shall be made in the post log documenting the completion of these procedures.
- P. Secure the Death Chamber and Death Watch area. Report to the Warden's office for additional instructions.

Pages 45-49, Perimeter Security Prior To, During, and Subsequent to an Execution

Redacted

TENNESSEE DEPARTMENT OF CORRECTION POLICIES

Pertaining to Executions



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 506.16.1

Page 1 of 3

Effective Date: May 15, 2000

Distribution: LD

Supersedes: 506.16.1 (6/1/97)
PCN 97-53 (8/1/97)

Approved by:

Donald Campbell

Subject: EXECUTIONS: FACILITY CONTROL AND ACCESS

- I. AUTHORITY: TCA 4-3-603, TCA 4-3-606, TCA 40-23-114 through TCA 40-23-117.
- II. PURPOSE: To establish guidelines for the safe and orderly control of and access to the facility in which the death watch housing area and the death chamber are located prior to, during, and subsequent to an execution.
- III. APPLICATION: All security personnel and staff of the facility in which the death watch housing area and the death chamber are located, and any other assigned staff of the Tennessee Department of Correction (TDOC).
- IV. DEFINITIONS:
 - A. Command Post: The location from which all direct orders for performance or behavior are issued during a specified time.
 - B. Victim's Immediate Family: Family members of the victim who are eighteen (18) years of age or older. This shall include the spouse, children (by birth or adoption), step-children, parents, step-parents, grandparents, or siblings of the victim.
- V. POLICY: Prior to, during, and after an execution, control of and access to the institution in which the death watch housing area and the death chamber are located shall be maintained in accordance with the following security procedures.
- VI. PROCEDURES:
 - A. Command Post
 1. A command post shall be established in the administration building. It shall be established prior to or during the days of a death watch, but no later than 24 hours before an execution. It shall remain operational until the execution is over and the debriefing is concluded. During the time of a death watch and execution, the command post will be under the direct authority of the Assistant Commissioner of Operations, warden, or designee.
 2. The Assistant Commissioner of Operations shall assume charge of the institution during the immediate time of an execution while the warden is directing the execution.


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Subject: EXECUTIONS: FACILITY CONTROL AND ACCESS		

3. The warden will verify and document that individuals who request permission to observe the execution are bona fide members of the victim's immediate family.

4. Audio or video broadcasts of the execution shall not be recorded.

VII. ACA STANDARDS: None.

VIII. EXPIRATION DATE: May 15, 2003.

 ADMINISTRATIVE POLICIES AND PROCEDURES State of Tennessee Department of Correction	Index #: 506.16.2	Page 1 of 5
	Effective Date: November 1, 2000	
	Distribution: LD	
	Supersedes: 506.16.2 (7/1/98) PCN 99-107 (9/28/99) PCN 99-5, (2/1/99)	
Approved by: <i>Donald Combs</i>		
Subject: EXECUTIONS: DEATH WATCH		

- I. AUTHORITY: TCA 4-3-603, TCA 4-3-606, TCA 39-13-206, TCA 40-23-114 through TCA 40-23-117.
- II. PURPOSE: To establish guidelines for maintaining the security and control of a condemned inmate and for maintaining safe and orderly facility operations during the period of time immediately prior to an inmate's scheduled execution.
- III. APPLICATION: The employees of the institution in which the death chamber and death watch housing area are located.
- IV. DEFINITIONS:
- A. Death Watch: Period of time immediately prior to an execution during which special procedures are implemented in order to ensure that the execution is carried out in a safe and orderly manner.
 - B. Death Watch Supervisor: A correctional officer of sergeant rank or higher appointed by the warden who is responsible for the welfare of the inmate on death watch status.
 - C. Privileged Mail: Correspondence clearly addressed to or from attorneys, law students on behalf of attorneys, courts, court clerks, legal aid clinics or law schools operating such clinics, recognized legal defense funds, and governmental officials or agencies, including the Tennessee Claims Commissioner, provided such correspondence bears the appropriate name and title.
- V. POLICY: Three (3) days prior to an inmate's scheduled execution date, unless otherwise directed by the commissioner, the warden shall implement death watch procedures for any inmate who has completed the automatic appeal to the Tennessee Supreme Court of his/her conviction and sentence of death and has no stay of execution while an appeal is being considered by a court of jurisdiction.
- VI. PROCEDURES:
- A. Notification:
 - 1. When inmate is placed on death watch, the warden or designee shall immediately notify the following agencies of the current death watch and scheduled execution date:
 - a. Tennessee Highway Patrol
 - b. Metropolitan Davidson County Police
 - c. Tennessee Emergency Management Agency
 - d. Tennessee Department of Corrections Public Information Officer.

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Subject: EXECUTIONS: DEATH WATCH		

2. The warden and TDOC victims rights coordinator shall immediately notify all individuals whose presence is required or permissible in the witness room during the execution when the inmate is placed on death watch.

B. Conditions of Death Watch Confinement:

1. The condemned inmate shall be informed of his/her placement on death watch status.
2. The inmate shall be allowed to have in his/her cell only the items listed below. Any other item will be considered contraband and confiscated in accordance with institutional policy.
 - a. Standard issue of outer clothing
 - b. One bed
 - c. One fire retardant mattress, pillow, and standard issue of linens
 - d. One toothbrush
 - e. One tube of toothpaste
 - f. One bar of soap
 - g. One rechargeable electric razor (to be issued and used under direct supervision only)
 - h. One washcloth
 - i. One pair of shorts and one t-shirt
 - j. Toilet tissue as needed
 - k. Stationery - 12 sheets, 3 stamped envelopes, 1 pencil which will be in the possession of officer when not in use.
 - l. Religious tracts, Bible, Koran, etc., as issued by institutional chaplain
 - m. Legal documents, books, and papers as requested
 - n. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
 - o. One television outside door in front of cell
 - p. Newspapers as requested and available (no more than one (1) in cell at a time)
 - q. Feminine hygiene items as necessary and appropriate

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Subject: EXECUTIONS: DEATH WATCH		

r. Cigarettes - When an inmate is moved to death watch, all cigarettes and matches he/she has will be confiscated. If the inmate requests a cigarette, he/she can be issued one cigarette at a time to be issued and lighted under direct supervision. At no time will smokeless tobacco products be issued. The warden may deny the issuance of cigarettes if he/she feels that the security or safety of the inmate or institution could be threatened.

3. Clean laundry shall be provided as needed.

4. The inmate shall retain all mail privileges except receipt of packages. Any packages received shall be stored with the inmate's personal property after the inmate has been advised of the package contents. All outgoing, non-privileged mail will be read by staff.

5. Regular meal provision shall occur, with adherence to any special dietary instructions. On the final day, the inmate may request a special meal. This meal shall be provided within reason as determined by the warden.

6. Recreational activities other than television viewing shall be suspended.

7. Should the inmate request access to a telephone to make personal or legal assistance calls, the warden or deputy warden may approve such request(s). A portable telephone will be taken to the cell for the inmate's use.

8. The inmate may request in writing, and receive, legal and other materials from the institutional library. These materials shall be carefully inspected by the staff librarian and death watch supervisor prior to being delivered to the inmate.

9. The clothing room supervisor shall issue clothing and shoes of appropriate size and appearance for use by the mortician. The inmate's family may, if they choose, provide substitutions for any or all of these items.

C. Visitation Privileges

1. Social:

a. Only those individuals on the inmate's approved visiting list shall be allowed visits during the death watch.

b. All visits shall be held in a maximum security area, and physical contact between the visitor(s) and inmate shall not be permitted. Visits will be between the hours of 9:00 a.m. and 4:00 p.m., and limited to two (2) hours duration.

c. The number of visitors allowed to visit at any one time and number of times a visitor can visit shall be at the discretion of the warden or deputy warden.

- d. A final visit during which physical contact between the inmate and spouse/ immediate family member is permitted may be authorized by the warden. The warden's decision shall be based on the individual circumstances in each case. Contact visits shall be supervised by no fewer than two (2) correctional officers chosen by the death watch supervisor with the concurrence of the deputy warden.

2. Religious:

- a. Priest(s) or ministers of recognized religious faiths who are of the inmate's recorded religious preference may visit the inmate in the same manner as provided for social visits in Section VI.(C)(1).
- b. A final visit by the inmate's personal priest or minister may be permitted by the warden immediately prior to the execution. This visit shall take place at the front of the inmate's cell. This visit shall be limited to one (1) hour duration. The warden shall decide the hours the visit will occur.
 - (1) The personal priest or minister will not be permitted to accompany the inmate into the execution chamber.
 - (2) At the inmate's request, a staff chaplain may visit on request and/or accompany the inmate into the execution chamber.

3. Legal Services:

- a. The attorney of record or other Tennessee licensed attorney retained by the inmate may visit the inmate up to one (1) hour before the time of execution. One (1) defense counsel chosen by the condemned person, and the State Attorney General and Reporter, or his/her designee may view the execution from the execution chamber witness room.
- b. Visits with attorneys shall be non-contact access and will be conducted with provisions for the privacy of verbal exchange but under full and continuous observation by at least two (2) correctional officers.

4. Media Interviews:

- a. Inmate interviews with the news media may not be conducted during the death watch period.
- b. During death watch, television station "live shots" shall not be permitted inside the secure perimeter of the institution at any time or within other buildings of the institution.

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Subject: EXECUTIONS: DEATH WATCH		

- c. During death watch, representatives of the news media shall not be allowed inside the secure perimeter of the institution for interviews with any TDOC inmate, or for any other purpose other than those selected to witness the execution, as specified in TCA 40-23-116.

VII. ACA STANDARDS: None.

VIII. EXPIRATION DATE: November 1, 2003.

MATRIX PLANNING - THE EXECUTION PROCESS: MANAGING THE INTERNAL ENVIRONMENT

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
<p>A. Identification of Post Orders/Procedures to be Written:</p> <ol style="list-style-type: none"> 1. Movement of Inmate to Death Watch 2. Death Watch Area 3. Control Room 4. Floor Officer 5. Escort Officer 6. Visitation/ Privilege Officer 7. Post Execution Process 8. Internal Security 9. Logistics & Support 10. Death Watch Supervisor 					
<p>B. Identification/Duties of Key Personnel</p> <ol style="list-style-type: none"> 1. Governor 2. Deputy Commissioner 3. Asst. Commissioner 4. Public Information Off. 5. Warden 6. Admin. Assistant 7. Deputy Warden 8. Shift Supervisor 9. Death Watch Supervisor 10. Death Row Unit Manager 11. Chaplain 12. Case Manager 13. Facility Manager 					

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
15. Facility Supervisor 16. Medical Personnel 17. Psychiatrist 18. Food Service 19. Transportation					
Training of Staff					
1. Post Orders/ Procedures a. Shift Supervisor b. Death Watch Supervisor c. Death Row Manager d. Administrative Staff e. Execution Team					
2. Stress Management a. Identify who is to be trained.					
52 Implementation					
1. Activation of Death Watch					
2. Alert given to staff of Execution					
3. Preparation of inmates					
4. Activation of Execution Chamber					
5. Notification/Communi- cation with News Media					
6. Deactivation of Execution Chamber					
7. Deactivation of Death Watch					
8. Debriefing of Staff					

MATRIX PLANNING - THE EXECUTION PROCESS: MANAGING THE INTERNAL ENVIRONMENT

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
<p>Death Watch Procedures</p> <ol style="list-style-type: none"> 1. Receipt of Order <ol style="list-style-type: none"> a. Who is notified 2. Notification Process <ol style="list-style-type: none"> a. Identify who is to be notified 3. Search of Area <ol style="list-style-type: none"> a. Identify Responsibilities 4. Activation Process <ol style="list-style-type: none"> a. Plan in Place b. Tasks Identification. 5. Role of Staff <ol style="list-style-type: none"> a. Property b. Supervision of Privileges <ol style="list-style-type: none"> 1. TV/Radio 2. Recreation 3. Personal Phone Calls 4. Reading/Writing Materials 5. Legal Material 6. Mail 7. Commissary 8. Packages 9. Visits <ol style="list-style-type: none"> a. Special b. Religious c. Medical d. Legal e. Psychological f. Media 					

TITLE	STATUS	COMPLETION PLAN	IMPLEMENTED	TIME FACTORS FOR IMPLEMENTATION	COMMENTS
<p>Execution Process</p> <ol style="list-style-type: none"> 1. Procedure for Testing Equipment 2. Maintenance Procedures 3. Activation and Deactivation Procedures 4. Family Last Visit 5. Preparation of Inmate <ol style="list-style-type: none"> a. Clothes b. Preparation of Inmate c. Preparation of Equipment Apparatus of Execution d. Strapping of inmate into Apparatus e. Removal of Body 6. Transportation out of Institution <ol style="list-style-type: none"> a. Methods 7. Movement of Executioner In/Out of Institution 8. News Release 9. Notification Letter To Witness <p>Chronological Execution Report</p>					

MANAGING AN EXECUTION: EXTERNAL ISSUES

MEDIA PLAN	POLICY: PLAN OUTLINE	PLAN PARTICIPANTS	DOC STAFF ASSIGNMENTS	GENERAL STATUTES	SCHEDULE/ TIME TABLE	PREPARATION OF MATERIALS
Policy Tactical Plan (press kits, tours, etc.)						
Media Witnesses						
Media Execution Plan						
Post Execution Plan						

MANAGING AN EXECUTION: EXTERNAL ISSUES

MANAGEMENT OF SPECIAL INTEREST	POLICY: PLAN OUTLINE	PLAN PARTICIPANTS	DOC STAFF ASSIGNMENTS	GENERAL STATUTES	SCHEDULE/ TIME TABLE	PREPARATION OF MATERIALS
Policy						
Identify groups, individuals						
Develop strategy						
Complete plan						

MANAGING AN EXECUTION: EXTERNAL ISSUES

INTERAGENCY PLAN	POLICY: PLAN OUTLINE	PLAN PARTICIPANTS	DOC STAFF ASSIGNMENTS	GENERAL STATUTES	SCHEDULE/ TIME TABLE	PREPARATION OF MATERIALS
<p>Policy</p> <p>Identify critical components, participants, and focus</p>						
<p>Develop the plan's details</p>						