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**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

**STATE OF IDAHO**

**Plaintiff,**

**V.**

**BRYAN C. KOHBERGER,**

**Defendant.**

**CASE NUMBER CR29-22-2805**

**MOTION TO STRIKE STATE'S  
NOTICE OF INTENT TO SEEK DEATH  
PENALTY ON GROUNDS OF  
VAGUENESS IN BALANCING  
AGGRAVATORS AND MITIGATORS**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, hereby moves this Court, pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; Article I, Sections 1, 6, 7, 8 and 13 of the Idaho Constitution; I.C.R., Rs. 3, 5.1 and

**MOTION TO STRIKE STATE'S NOTICE OF INTENT TO  
SEEK DEATH PENALTY ON GROUNDS OF VAGUENESS  
IN BALANCING AGGRAVATORS AND MITIGATORS**

7; and, I.C., §§ 18-4004, 19-1301-1308 and 1409, 1411 and 1418, and 19-2515 to Strike the State's Notice of Intent to Seek Death Penalty. This Motion is made on the grounds that upon a conviction and sentence of death, the process by which Mr. Kohberger would be put to death in Idaho violates the Eighth and Fourteenth Amendments to the United States Constitution as well as Article I, Sections 6 and 13 of the Idaho Constitution.

### Issues

- I. Constitutional limits on manner of execution
- II. The history of executions in Idaho
- III. Lethal Injection in Idaho is not viable
- IV. The Firing Squad is not and was never constitutional

#### I.

Proceeding with capital murder charges in this case is unconstitutional because executing Mr. Kohberger by means of lethal injection or a gunshot as conceived of by the Idaho Department of Corrections (IDOC) would violate his right to be free from cruel and unusual punishment under the Eighth Amendment and his right to due process under the Fourteenth Amendment of the United States Constitution. *See Trop v. Dulles*, 356 U.S. 86, 100 (1958); *Gregg v. Georgia*, 428 U.S. 153, 173 (1976); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). It would also violate his rights under Article I, Sections 6 and 13 of the Idaho Constitution.

An execution procedure that involves “the unnecessary and wanton infliction of pain” violates the Eighth Amendment. *Gregg*, 428 U.S. at 173. The Eighth Amendment’s prohibition is not static, but is responsive to “evolving standards of decency” and “contemporary values concerning the infliction of a challenged sanction.” *Id.* Execution by lethal injection constitutes cruel and unusual punishment.

Furthermore, the Fourteenth Amendment guarantees that no person may be deprived of

life, liberty, or property without due process of law. A violation of procedural due process requires a showing of: 1) a constitutionally protected interest in life, liberty, or property; 2) governmental deprivation of that right; and 3) constitutional inadequacy of challenged procedures effecting the deprivation. *See Bank of Jackson Cty. v. Cherry*, 980 F.2d 1362, 1366 (11th Cir. 1993). A prisoner sentenced to death has a constitutionally protected interest in life that is not extinguished by the conviction and death sentence. *See Ohio Adult Parole Authority v. Woodward*, 523 U.S. 272 (1998).

The manner of execution is set by the legislature in Idaho. I.C. § 19-2716 was amended just last year. The new version of the statute is:

(1) The punishment of death shall be inflicted by continuous the following methods:

(a) Continuous, intravenous administration of a lethal quantity of a substance or substances approved by the director of the Idaho department of correction until death is pronounced by a coroner or a deputy coroner.; or

(b) Firing squad.

(2) Not later than five (5) days after the issuance of a death warrant, the director of the Idaho department of correction must determine, and certify by affidavit to the court that issued the death warrant, whether execution by lethal injection, as described in subsection (1)(a) of this section, is available.

(3) If the director certifies that lethal injection is available, the method of execution shall be lethal injection.

(4) If the director does not certify that lethal injection is available, fails to file a certification as required pursuant to subsection (2) of this section, or otherwise determines that lethal injection is unavailable, the method of execution shall be firing squad.

(5) If a court holds that lethal injection is unconstitutional, on its face or as applied, or otherwise determines that firing squad is a constitutionally required method of execution, the method of execution shall be firing squad.

(6) The director of the Idaho department of correction shall determine the procedures to be used in any execution.

(7) The provisions of this section shall apply to all executions carried out on and after the effective date of this enactment, irrespective of the date sentence was

imposed.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.

The Idaho Supreme Court has ruled that the word “any” in what is now subsection (6) refers to each and every person to be executed as an individual, rather than a broad policy for all defendants. *See, Pizzuto v. IDOC*, 170 Idaho 94, 97 (2022). The Court held that because of the legal issues with the manner of execution, the director of the IDOC must provide each individual to be executed with the procedures that will be used in their case in advance of the execution so they may be reviewed and challenged. *Id.* at 98.

Thus, one condemned to die in Idaho has no real way to know how they will be killed at least until the death warrant is issued. Still, as things stand, Idaho has no viable method for killing Mr. Kohberger.

## II.

Up until 1978 in Idaho death was imposed by hanging. Kathy Hill, *HANGED: A HISTORY OF IDAHO’S EXECUTIONS*, 4 (2010). The actual structure of hanging was changed more than once because of the difficulty of getting necks to snap as desired leading to a lack of immediacy in the execution.

The last man hanged by the people of Idaho was Raymond Snowden, on October 18, 1957. Hill, at 225. As Kathy Hill tells it:

For the first time, prison officials would use their new execution chamber. Located on the second floor of Cell Block Five, next to death row, the room replaced the outside scaffold used for earlier prison hangings. Throughout the day, guards repeatedly tested the trap door to ensure all would be ready for Snowden. The sound of the door dropping reverberated through the cell block; guards would recall the prisoners were eerily quiet that evening.

Around 11:45 p.m., prison guards arrived at Snowden’s cell. They carried a backboard complete with arm, leg, and foot straps. Snowden balked at first, but with [the prison chaplain’s] assurances, he allowed himself to be strapped in. They delivered him to the execution room and placed him in an upright position. The

hangman's noose dangled directly above his head.

Approximately ten people gathered in the observation room, among them Boise Police Chief Frank Demarest and Ada County Sheriff Pat McCarty, who had so deftly build the case against Snowden. Several newspaper reporters were also at the execution, but all declined to enter the observation room.

With Snowden in place on the trap door, Prison Warden Lou Clapp asked if he had any final words. Snowden, calm and clear, replied, "I do, but I don't know how to say it." Clapp gave him a few more minutes, then placed a black hood over his head. He stepped back and the executioner, who received \$600 for his trouble, stepped forward. He placed the noose around Snowden's neck, pushed the knot close to his spine, and pulled the trap door. The backboard veered a bit, scraping the side of the trap, but the deed was done. Snowden was pronounced dead at 12:20 a.m., October 18, 1957.

Hill, at 235.

Precisely why Idaho gave up on hanging has no simple explanation. Perhaps the guards telling stories of the sounds of the trap door being tested repeatedly in the presence of the doomed man-made people feel uncomfortable with the whole ordeal. Maybe it was the idea of strapping a man onto a board and wheeling him off to kill him with a bag over his face. Whatever it was- the how is relatively simple.

In 1978, as Idaho's legislature tried to devise ways to kill people that would satisfy the demands of the United States Supreme Court, Senators Jim Risch and Mike Black joined forces to amend the law to require lethal injection. Hill, at 4. The senators both claimed lethal injection would be more "humane." Senate Judiciary and Rules Committee, Minutes February 16, 1978 (Exhibit A). When the bill was proposed to the House Judiciary, Rules and Administration Committee:

Warden Anderson appeared in support of the bill, by indicating that it was the desire of the Board of Corrections to take the circus atmosphere out of executions. He said there are weird people who show up at executions and contribute to the circus atmosphere.

Minutes, February 27, 1978. (Exhibit B). It is unclear where Warden Anderson was encountering these circus-like executions, given that the last one in 1957 as describe above was far from it.

However, the new “humane” method of killing people immediately ran into problems. Bona Miller of the Department of Corrections explained to the House Judiciary, Rules and Administration Committee just four years later, “a medical prescription is required to obtain the lethal injection, then a medical doctor or a medically trained person must administer the injection. The prison officials have been unable to find a medically trained person who would carry out such injections.” Minutes, February 19, 1982. (Exhibit C). During that legislative session, the Department of Corrections and the Idaho Medical Association tried to reach a compromise so that killing could happen. Judiciary, Rules & Administration Committee, Minutes, March 11, 1982. (Exhibit D). The firing squad was included essentially as a backup, and one the drafter of the bill thought was likely unlawful. *Id.*

This was the original birth of the firing squad. In 1982, I.C. § 19-2716 permitted the director to use the firing squad whenever lethal injection was “impractical.” The only directive provided for the firing squad was that the director would decides its members.

The original firing squad, however, never got off a shot. In 2009, the firing squad was repealed, with a Statement of Purpose that read:

...This proposed legislation will further amend Idaho Code Section 19-2716 to eliminate death by firing squad as an alternative method of execution. The elimination of the alternative method of death by firing squad is deemed appropriate in light of the United States Supreme Courts [sic] opinion in *Baze v. Rees*, 128 S.Ct. 1520 (2008), in which the Court concluded that a humane lethal injection protocol does not constitute cruel and unusual punishment. There is no similar Supreme Court authority addressing where the firing squad, as a method of execution, would constitute cruel and unusual punishment in violation of the Eighth Amendment. In addition, Idaho is one of only two states that have the firing squad as a method of execution; the rarity of this method of execution could form the basis of an Eighth Amendment claim. Elimination of the firing squad option will allow the state to avoid such challenge.

Statement of Purpose, RS18536 (2009) (Exhibit E). This reasoning was taken from the statements of then deputy attorney general Bill von Tagen and senior deputy attorney general LaMont Anderson. House Judiciary, Rules and Administration, Minutes Feb. 11, 2009 (Exhibit F); House

Judiciary, Rules and Administration, Minutes Mar. 3, 2009 (Exhibit G).

This brings us up to this year, when LaMont Anderson, now Lead Deputy Attorney General for the Capital Litigation Unit, returned to the legislature to ask for the firing squad back. Senate Judiciary & Rules Committee, Minutes, Mar. 13, 2023. (available at [https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/standingcommittees/230313\\_sj&r\\_0100PM-Minutes.pdf](https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/standingcommittees/230313_sj&r_0100PM-Minutes.pdf)). Mr. Anderson told the Senate Judiciary and Rule Committee that the majority opinion in *Glossip v. Gross*, 576 U.S. 863 (2015), found that shooting people was “relatively quick and painless” and that there was an expert opinion in 1983 that said the same thing. *Id.*

The majority in *Glossip* never referred to the firing squad as “quick and painless” except when it quoted Justice Sotomayor’s dissent. *Id.* at 880 (*quoting* SOTOMAYOR, J. dissenting, at 977). It seems clear from the opinion in *Glossip* that the majority was simply pointing out that the dissent’s view that all methods for execution prior to lethal injection had become unconstitutional was a distinction without a difference from the view that it was time to simply stop killing people. *Id.*

And no amount of Google can uncover any experts from 1983 that thought shooting people was humane. In fact, Colman McCarthy wrote an article called “Killing with Kindness” in 1983 that would seem to dispel the idea that that was the heyday of firing squads. THE WASHINGTON POST (June 11, 1983) (available at <https://www.washingtonpost.com/archive/politics/1983/06/11/killing-with-kindness/b96cde68-e284-42b9-9e4d-1a3d6e94a0b5/>).

### III.

Idaho does not have the ability to kill a man with an injection at this point in time and likely will not in the future. This is because of three things: 1. A lack of trained medical personnel willing

to take life, 2. The difficulty in finding drugs that kill without creating unnecessary pain and 3. The difficulty of purchasing those drugs that have been held to be appropriate for killing a person by the courts.

The United States Constitution prohibits deliberate indifference to the known risks associated with a particular method of execution. *Cf. Estelle v. Gamble*, 429 U.S. 97, 106 (1976). There are a number of known risks associated with the lethal injection method of execution, and the State of Idaho has typically failed to take adequate measures to ensure against those risks. The Eighth Amendment safeguards nothing less than a human being's dignity and prohibits methods of execution that involve the unnecessary and wanton infliction of pain. Under *Trop v. Dulles*, 356 U.S. 86, 100 (1958), to comply with constitutional requirements, the State must minimize the risk of unnecessary pain and suffering by taking all feasible measures to reduce the risk of error associated with the administration of capital punishment. *Glass v. Louisiana*, 471 U.S. 1080, 1086 (1985); *Campbell v. Wood*, 18 F.3d 662, 709-11 (9th Cir. 1994) (Reinhardt, J., dissenting); *see also Zant v. Stephens*, 462 U.S. 862, 884-85 (1985) (state must minimize risks of mistakes in administering capital punishment); *Eddings v. Oklahoma*, 455 U.S. 104, 118 (O'Connor, J., concurring).

The most recent document detailing how the director would kill a man is Idaho Department of Correction, Execution Chemicals Preparation and Administration (last updated March 30, 2021). This particular set up was intended for Mr. Pizzuto. *See*, Ruth Brown, *Idaho Inmate Pizzuto's Execution Canceled, State Doesn't Have Lethal Injection Chemicals*, IDAHO REPORTS (Nov. 30, 2022) (available at <https://idahocapitalsun.com/2022/11/30/idaho-inmate-pizzutos-execution-canceled-state-doesnt-have-lethal-injection-chemicals/>).

This Court should review the procedures adopted in 2021 that IDOC could not implement. *See* Idaho Dept. of Correction, Standard Operating Procedure: Execution Procedures (approved



Mar. 30, 2021) (Exhibit H); *and* Idaho Dept. of Correction, Execution Chemicals Preparation and Administration (last updated Mar. 30, 2021) (Exhibit I). It consisted of four different possible methods of death.

1. Method 1 uses Sodium Pentothal to put the man to sleep, and then paralyzes him using Pancuronium Bromide, and finally burns him alive from within via Potassium Chloride. Method 2 uses pentobarbital to put the man to sleep and then also murders them with pancuronium bromide and potassium chloride.

- a. There is no dispute in the scientific and legal community that potassium chloride and pancuronium bromide are extremely painful if a person receives them while conscious. In *Baze v. Rees*, the State conceded that, “failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the administration of pancuronium bromide and pain from the injection of potassium chloride.” 553 U.S. 35, 53, 128 S.Ct. 1520, 1533 (2004). Pancuronium bromide paralyzes the chest wall muscles and diaphragm so that the person can no longer breathe. *Id.* at 44, 527. Potassium chloride causes a cardiac arrhythmia which results in ineffective pumping of blood by the heart and, ultimately, cardiac arrest. *Id.* In *Baze*, the Court found that “proper administration of the first drug ensures that the prisoner does not experience any pain associated with the paralysis and cardiac arrest caused by the second and third drugs.” *Id.* The potential pain from the second and third drugs was also acknowledged in the Court’s opinion in *Glossip v. Gross*. 135 S.Ct. 2726, 2740, 192 L.Ed.2d 761 (2015). Additionally, during oral arguments in *Glossip*, Justice Kagan likened the pain from potassium chloride to being burned alive from the inside. R. Barnes and M. Berman, *Supreme Court Justices Hotly Debate the*

*Use of a Lethal Injection Drug*, The Washington Post, April 29, 2015. Scientific evidence as well as eyewitness accounts from executions establish that that death by lethal injection can be an extraordinarily painful death. *See Id.*

2. Method 3 simply relies on injecting a lot of Sodium Pentothal.
3. Method 4 is the same idea but relies on injecting Pentoarbital instead.
4. Problematically for all these methods: Sodium pentothal is no longer available for killing people. Pam Belluck, *What's in a Lethal Injection Cocktail?*, THE NEW YORK TIMES (2011) available at <https://www.nytimes.com/2011/04/10/weekinreview/10injection.html>. The same became true of pentobarbital shortly thereafter. Lincoln Caplan, *The End of the Open Market for Lethal Injection Drugs*, THE NEW YORKER (2016) available at <https://www.newyorker.com/news/news-desk/the-end-of-the-open-market-for-lethal-injection-drugs>.

The upshot is that lethal injection does not exist in Idaho at this point in time. The director acknowledged as much in his letter to the Board of Correction in November 2022. (Exhibit J). Indeed, he was correct. The botched legal injection of Thomas Creech on February 28, 2024 demonstrates that, even when lethal injection drugs are obtained, lethal injection is not available in Idaho. <https://deathpenaltyinfo.org/executions/botched-executions> (After 58 minute and 8 attempts, the warden finally halted the execution.)

Due to this history, the legislature readopted the firing squad as a possibility in the last legislative session.

#### **IV. Firing Squad**

When considering whether the firing squad in its rebirthed iteration is Cruel and Unusual punishment in violation of the Constitution of both the United States and Idaho, it helps to have an idea of what that will look like. In 2010, Ronnie Lee Gardner volunteered for the firing squad

in Utah.

June 18, 2010-- When a prison official opened a curtain to reveal the death chamber to witnesses early Friday, convicted killer Ronnie Lee Gardner was already strapped to the execution chair.

His eyes darted around the room at a prison in Draper, Utah, but he appeared calm, even at peace, witnesses said. This was a stark contrast from a troubled life marred by drugs, sexual abuse and indiscriminate violence. Asked by a prison official if he wanted to say anything, Gardner responded simply: "I do not, no."

A black hood was slipped over his bald head; a small circular taget attached over his heart. A barely audible countdown was interrupted by two loud bangs in quick succession. It was 12:15 a.m.

After a quarter of a century on death row, Gardner, 49, became the first man to die by firing squad in Utah in 14 years.

"He clenched his fist and then let go," radio talk show host Doug Fabrizio, one of a small group of witnesses, said. "And then he clenched it again."

A medical examiner checked Gardner's pulse on both sides of his neck. When the black hood was lifted to check Gardner's pupils with a flashlight, his ashen face was briefly revealed.

He was pronounced dead at 12:17 a.m.

...

At exactly midnight Friday, the inmate who spent more than half his life behind bars was awakened from a nap for his execution. He was escorted to the nearby execution chamber, where he was strapped to a metallic, winged chair. He wore a dark prison jumpsuit and no shoes. The chair was raised on a small black platform, like a stage. Relatives of his victims and members of the media witnessed the execution in separate rooms nearby.

A team of five anonymous marksmen armed with .30-caliber Winchester rifles, standing just 25 feet away behind a brick wall cut with a gun port, aimed their weapons at Gardner's chest. The Utah law enforcement officers volunteered for the assignment. One rifle was loaded with a blank so no one knew who fired the fatal shot.

Gardner repeatedly rubbed his left thumb and forefinger moments before the shooting. The rifles exploded and four bullets perforated his heart and lungs. The straps held his head up. A metal tray beneath the chair collected his blood.

Sandra Yi, a reporter with KSLTV in Utah, said Gardner fidgeted even after the barrage of gunfire.

"When he was shot, some of us weren't sure if he had passed away because we

could see movement," she said. "He had his fist clenched and we could see his elbow move up and down."

Sheryl Worsley, a reporter with KSL News Radio in Utah, described the moments after the execution as disturbing.

"He moved a little bit and, to some degree, that bothers me," she said. "To some degree that mirrors the last few weeks of his life because he was fighting to stay alive the last few weeks and that seemed to continue on."

Prison officials said Gardner spent his final hours sleeping, reading the spy thriller "Divine Justice," and watching the "Lord of the Rings" film trilogy. He also met with his attorneys and a Mormon bishop. He appeared relaxed. He had fasted after eating his last requested meal -- steak, lobster tail, apple pie, vanilla ice cream and 7-Up -- two days earlier.

"He was at peace," his attorney, Tyler Ayres, told The Salt Lake Tribune. "He even laughed a few times ... and that helped put me at ease."

Outside the prison, members of his family -- some wearing T-shirts displaying his prisoner number, 14873 -- gathered to pay their respects. They were joined by dozens of death penalty protesters. Around the time of the execution, family members cranked up a car stereo playing Lynyrd Skynyrd's "Free Bird."

"He didn't want nobody to see him get shot," said Gardner's brother, Randy Gardner. "I would have liked to be there for him. I love him to death. He's my little brother."

Ray Sanchez, "Ronnie Lee Gardner Executed by Firing Squad in Utah", GMA (June 18, 2010) (available at <https://abcnews.go.com/GMA/Broadcast/convicted-killer-ronnie-lee-gardner-executed-utah/story?id=10949786>). Additionally, Utah's Department of Corrections made a commemorative coin to give all the staff that helped kill Ronnie that day. Geoff Liesik, "Corrections Crating Commemorative Coin for Ronnie Lee Gardner Execution", DESERETNEWS (Apr. 26, 2010) (available at <https://www.deseret.com/2010/4/27/20111327/corrections-creating-commemorative-coin-for-ronnie-lee-gardner-execution>).

There is an eerie similarity between the killing of Snowden by hanging in 1957 and the killing of Gardner in 2010. Men forced to spend years on death row finally taken to be murdered by other men. Men strapped to boards; faces covered by bags. The circus going on outside and

the coins being minted to remember state sanctioned killing. This Court should wonder at why Idaho is choosing to go backward.

The answer to that is the claims of LaMont Anderson and those in his office, suddenly seeing the light at the end of the gun barrel after getting rid of the practice almost fifteen years ago. Their claims rest on a misreading of *Glossip*. The majority in *Glossip* was not considering firing squads as a method for execution- only the dissent did that and did so on a bare record. 576 U.S. at 880-81. Both majority and dissent were of the opinion that *Wilkinson v. State of Utah*, 99 U.S. 130 (1878) held that the firing squad was constitutional. That simply is not true.

*Wilkinson* did not test the constitutionality of shooting people as a means of execution. It tested whether a judge in a territory had the authority to order a shooting after the territory removed from its statute the method of execution. 99 U.S. at 132-33. The Court did mention in dicta that it did not think firing squads were cruel and unusual- but that had nothing to do with the holding, as the Court acknowledged no one was arguing in 1878 that it was cruel or unusual. *Id.* at 137. (“Had the statute prescribed the mode of executing the sentence, it would have been the duty of the court to follow it, unless the punishment to be inflicted was cruel and unusual, within the meaning of the eighth amendment to the Constitution, which is not pretended by the counsel of the prisoner.”)

Since there therefore is no Supreme Court case that has ever actually considered whether it is cruel and unusual to use a firing squad, this Court should look at the ruling of the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina in *Owen v. Stirling*. (Exhibit K). Although ultimately reversed by the Supreme Court of South Carolina in *Owens v. Stirling*, -- S.E.2d --, 2024 WL 3590797 (2024), the court’s analysis was sound.

The Court of Common Pleas found that South Carolina recently brought back the option of the firing squad. The statute has been challenged by people set to be executed. In the Order Granting Injunctive Relief to a challenge of method of execution the court noted that the firing

squad had been around for years and was largely unused, thus the firing squad is not a new method of execution, and it is an unusual form of punishment. *Id.* at 21. “This is so even though firing squads have existed for many years, meaning that it is not a newly created or recently discovered means of execution. Rather, it is a reversion to a historic method of execution that has never before been used by our State and is not used in the overwhelming majority of other states. Thus, execution by firing squad is unusual punishment both nationally and in South Carolina.” *Id.* at 22.

The Court of Common Pleas also found the firing squad to be cruel:

Here, it is clear that the firing squad causes death by damaging the inmate’s chest, including the heart and surrounding bone and tissue. This is extremely painful unless the inmate is unconscious which, according to Drs. Arden and Alvarez, is unlikely. Rather, the inmate is likely to be conscious for a minimum of ten seconds after impact. Moreover, the length of the inmates’ consciousness – and, therefore, his ability to sense pain – could even be extended if the ammunition does not fully incapacitate the heart. During this time, he will feel excruciating pain resulting from the gunshot wounds and broken bones. This pain will be exacerbated by any movement he makes, such as flinching or breathing.

This constitutes torture, a possibly lingering death, and pain beyond that necessary for the mere extinguishment of death, making the punishment cruel.<sup>2</sup> *Id.* at 22.

*Id.* at 22-23.

The Supreme Court of South Carolina has now found that the firing squad is neither cruel nor unusual. 2024 WL at \*15-18. It does so by separating the horrors of what it is contemplating from what it calls the “critical question”, or, as they put it:

Our definition of cruel does not call upon us to analyze what the death chamber looks like after the execution has been carried out. There is no consideration in our analysis of whether a method of execution is “cruel” of the dramatic imagery set forth in the Chief Justice's dissent, the circuit court's order, or the inmates’ brief, such as blood soaked in the inmate's clothing, spattered on the walls, and pooling on the floor, or other physical violence to the body that occurs simultaneous with or subsequent to the cessation of pain. While each of these might have been political concerns addressed by our General Assembly, they are not constitutional concerns. Our definition of cruel defines the critical question and requires us to focus us on the risk of unnecessary and excessive conscious pain.

Having thus turned death into a sort of parlor game, guess at how much pain one might experience after being shot in the heart, the court finds it is not convinced it sounds all that bad and thus cannot qualify as cruel. The only authority it relies upon are the various statements of liberal justices and judges dissenting in various cases. Given that any person chosen at random from the street can probably name a few pleasanter ways to die than being tied up, bagged and shot, it is hard to see this opinion as anything more than a political stunt.

In any case, the Court's eventual decision to decide it is not unusual, despite the fact that almost no one uses the firing squad except when chosen by the condemned, to uphold its use in South Carolina where the law *only permits its use if chosen by the condemned*, makes this opinion of no use to the state of Idaho. *See id.* at 18.

Idaho's statute authorizing the firing squad as punishment is excessive because death by firing squad subjects the human being killed to unnecessary physical pain. Even in the best circumstances, meaning accurate shots fired and hitting the intended target area death is not immediate. Awareness continues and pain exists. Counsel for Mr. Kohberger has attached the article "The Possible Pain Experienced During Execution by Different Methods, by Harold Hillman. PERCEPTION 22, 745-53 (1993) (Exhibit L). It quotes the Royal Commission on Capital Punishment rejecting shooting as "it does not possess even the first requisite of an efficient method, the certainty of causing immediate death." Dr. Barbara Wolf's affidavit also shows that shooting is cruel (Exhibit M).

Idaho's death penalty statute only permits unconstitutional or unavailable methods of death under the United States and Idaho Constitutions, and this Court should declare §§ 18-4004A and 19-2515 unconstitutional and strike the State's Notice of Intent to Seek Death Penalty. There is no humane reason to place Mr. Kohberger into solitary, as described in his Motion to Strike State's Notice of Intent to Seek Death Penalty on Grounds of International Law, with a promise to kill


him just as soon as the people of Idaho can figure out a way that is available, humane, and does not cause a circus outside the prison.

### CONCLUSION

Based upon the foregoing and argument to be presented at the hearing hereon, this Court is respectfully requested to grant this Motion that:

- (a) the State's Notice of Intent to Seek Death Penalty be struck;
- (b) the Court seat a jury which is not "death-qualified";
- (c) the Court preclude the admission of any evidence of aggravating circumstances during the trial of this case; and,
- (d) the Court not instruct the jury on any aggravated punishment.

DATED this   1   day of September, 2024.

BY:   
\_\_\_\_\_  
JAY LOGSDON  
INTERIM CHIEF PUBLIC DEFENDER

### **CERTIFICATE OF DELIVERY**

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same as indicated below on the   5   day of September, 2024, addressed to:

Latah County Prosecuting Attorney –via Email: [paservice@latahcountyid.gov](mailto:paservice@latahcountyid.gov)  
Elisa Massoth – via Email: [legalassistant@kmrs.net](mailto:legalassistant@kmrs.net)

  
\_\_\_\_\_



# EXHIBIT A

(Senate)

MINUTES

JUDICIARY AND RULES COMMITTEE

February 16, 1978

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Chairman Klein called the Judiciary and Rules Committee meeting to order at 2:40 p.m. in Room 426 on Thursday, February 16, 1978.

ROLL CALL All members present except Senator Mitchell.

VISITORS Joe Schreiber, First Security Bank  
Senator Black  
Monroe Gollaher, Insurance Dept.  
Allyn Dingle, Boise Attorney  
Walter Bithell, Boise Attorney

→ S 1539 Death Penalty, Injection - provides for an injection of a lethal substance. Senator Risch and Senator Black agreed that if capital punishment continues an injection of a lethal substance is a more humane approach. Senator Black described the procedure proposed by the bill.

MOTION Senator Risch moved to refer S 1539 out with a DO PASS recommendation; Senator Barker seconded; motion CARRIED.

S 1465 Judgments, Liens, Renewals - provides procedure. Senator Risch briefly reiterated the purpose of S.1465 stating that the method provided by this bill will make the renewal process easier.

MOTION Senator Risch moved to refer S 1465 out with a DO PASS recommendation; Senator McCann seconded; motion CARRIED.

S 1544 Comparative Negligence, Uniform Law - provides for damages awarded to be diminished only by each party's fault. Walt Bithell spoke in favor of S 1544 presenting the history of the negligence law in Idaho and explained why the present law is unworkable. Mr. Bithell informed the committee that following five years of hearings, the Uniform Laws Commission adopted the Uniform Comparative Fault Act from which this legislation is adapted. Mr. Bithell added that the amount of cases would not be affected by S 1544. The only problem pointed out by the Commission is the pure form of comparative negligence (S 1394) would keep nuisance suits out of court.

Monroe Gollaher, Insurance Department, stated that he

# EXHIBIT B

(House)

MINUTES OF THE

JUDICIARY, RULES & ADMINISTRATION COMMITTEE

February 27, 1978

Chairman Stivers called the meeting to order at 4:45 P.M. on February 27, 1978, in Room 406.

PRESENT Stivers McDermott  
Wesche Hosack  
Smith Horvath  
Neibaur  
Harris  
Boyd

EXCUSED Ungricht

INTERNS Shayne Summers, Patty Davis

GUESTS Keith Potter, John Ruebelmann, Greg Bower, Patrick Kole, Barry Stephenson, Tim Brennan, Richard Anderson and Senator Mike Black.

MOTION

Rep. Smith moved that the minutes of February 21 and February 23, be approved as submitted. Motion seconded by McDermott. The motion carried.

H 565

Relating to Aggravated Assault. Greg Bower of the Ada County Prosecutor's office spoke in support of H 565. He indicated that this is a bill that is part of a package of legislation sponsored by the Idaho Prosecuting Attorney's Association. He indicated the purpose of this legislation was to remove aggravated assault from the misdemeanor class. The way the language of the law now reads, Aggravated Assault can either be charged as a misdemeanor or a felony.

After a great deal of discussion by the Committee, Rep. McDermott indicated that the primary problem in this instance is that when a crime can either be classified as a felony or a misdemeanor the Court must use the lesser charge.

Keith Potter, a Boise policeman, representing the police officer's union, indicated that aggravated assault in a policeman's mind is where grievous bodily harm is inflicted, usually requiring hospitalization or stitches but not necessarily using a weapon. A simple fist fight between people is considered simple assault.

MOTION

Rep. McDermott indicated she would be more comfortable with this legislation if she had an opportunity to discuss it with the Prosecuting Attorney in her county. Rep. McDermott moved that H 565 be held in committee until Friday, March 3, 1978. Motion seconded by Rep. Smith. The motion carried.

H 566

Relating to receiving stolen property. Officer Keith Potter spoke in support of this legislation indicating that the present law is quite restrictive now and does not make it a felony to receive stolen property.

Patrick Kole, indicated that under the present law it is almost impossible to arrest someone for receiving stolen property. He indicated that this legislation is very similar to legislation in Oregon and Colorado and will give Judges a great deal of case law to go on.

The Committee expressed concern that a young person might inadvertently or innocently receive stolen property from a friend and be charged with the felony of receiving stolen property. Rep. Stivers indicated that it was his understanding that this legislation is aimed at breaking up large fencing rings that operate in this state and other states and transport and receive large quantities of stolen property.

MOTION

Rep. McDermott moved that H 566 be held until March 3, 1978, Motion seconded by Horvath. Rep. Neibaur offered a substitute motion that HB 566 be sent to the floor with a "do pass" recommendation. Motion seconded by Harris. The substitute motion failed. The original motion carried.

H 575

Increasing the jurisdiction of the Small Claims Court from \$500.00 maximum to \$1,000.00 maximum. Carl Bianchi spoke in opposition to the bill only as far as what the impact on the district court in the form of appeals might be. He indicated that his opposition was "soft".

Speaking in support of the measure were Barry Stephenson, Tim Brennan, of the Retailers Assn., and Ken Thornberg of the Better Business Bureau. Mr. Brennan and Mr. Stephenson supported from the standpoint of businessmen who could use the increased amount to better collect bad debts. Mr. Thornberg supported it from the standpoint of the consumer being better able to collect when he has been "ripped off" by a business.

MOTION

Rep. Neibaur moved that H 575 be sent to the floor with a "do pass" recommendation. Motion seconded by Rep. Boyd. The motion carried.

→ S 1539

Relating to the death penalty. This legislation would provide for the death penalty in Idaho to be by injection of a lethal substance rather than by hanging. Senator Black appeared before the committee to speak in support of this legislation indicating that he considered it a more humane approach to the death penalty. Two other states have death by injection. Those states are Texas and Oklahoma. He indicated that there had been questions as to how a doctor could do such a thing but Senator Black indicated that a person could be trained to do it without any licensing necessary. Warden Anderson appeared in support of the bill, by indicating that it was the desire of the Board of Corrections to take the circus atmosphere out of executions. He said there are weird people who show up at executions and contribute to the circus atmosphere.

MOTION

Rep. McDermott moved that SB 1539 be sent to the floor with a "do pass" recommendation. Seconded by Rep. Harris. The motion carried. Rep. Stivers asked to be recorded as voting "NO".

H 580

Pretrial notice of defense. John Ruelbelman, Gem County Prosecuting Attorney spoke in support of the bill. He indicated that it would require the defendant to give notice to the Prosecution of a defense of alibi and who would be testifying on his behalf as far as establishing an alibi. This would give the Prosecutor time to check on the veracity of the witness and guard against "midnight surprises".

MOTION

Rep. McDermott moved that H 580 be held until Friday, March 3, 1978. Motion seconded by Rep. Harris. The motion carried.

MOTION

Rep. McDermott moved that the meeting be adjourned. Seconded by Rep. Harris. The motion carried.

  
T. W. STIVERS, CHAIRMAN

  
JO ANN ZUMWALT, SECRETARY

# EXHIBIT C

(House)

MINUTES OF THE MEETING OF

JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

February 19, 1982

The meeting was called to order by Chairman Stivers at 1:39 p.m.

PRESENT: Stivers, Chairman McDermott  
Harris Keeton  
Smith  
Paxman  
Montgomery  
Boyd  
Edwards  
Smyser

GUESTS: Lynn Thomas, Deputy Attorney General; Bona Miller, Department of Corrections; Bud Garrett, Department of Corrections; Brian Donesley, Attorney, Department of Corrections

A motion was made by Rep. Keeton, seconded by Rep. Harris, that the minutes of the meetings held February 11, 15, and 17, 1982 be approved as written. The motion carried.

Chairman Stivers reported that the Speaker had waived Rule 24 to allow committees to introduce legislation after the 35th day in order to allow this committee to take action on several routing service bills.

RS 8192

RIGHTS AND DUTIES OF ATTORNEYS.

Chairman Stivers reported that this bill had been drafted to address a problem that exists with the law clinic at the University of Idaho and their faculty which have been bringing lawsuits against state agencies, particularly the Department of Transportation. This proposed bill would add a new section prohibiting attorneys who are employed directly or indirectly by the state or its political subdivisions, and faculty members or law students, from bringing legal actions against the state or its political subdivisions.

Rep. Keeton felt the bill should be broadened further; Rep. Montgomery questioned the effect the bill would have on part-time employees working in the attorney general's office.

MOTION

A motion was made by Rep. Boyd, seconded by Rep. Keeton, that RS 8192 be introduced to print.

AMENDED MOTION

An amended motion was made by Rep. Keeton, seconded by Rep. Harris, that RS 8192 be introduced to print with changes or corrections to the effect that any attorney who works full-time for the state of Idaho, or even part-time for its state departments, or for the university, should not be able to represent private clients in private actions and draw salaries from them and also from the state.

It was suggested that Rep. Keeton be allowed to work out some amendatory language and present it to the committee, and this committee then refer the routing service bill to a germane committee for introduction.

RS 8197  
RS 8201  
RS 8200

RESOLUTION PROVIDING FOR ADOPTION OF REVISED RULES 25, 43 AND 53 OF THE RULES OF THE HOUSE OF REPRESENTATIVES.

Rep. Smyser explained the difference between these three

bills: RS 8197 would revise the permanent rules immediately; RS 8200 revises the temporary rules effective immediately and would require a two-thirds vote; RS 8201 revises the permanent rules effective in the 47th legislative session and would require a simple majority. Depending on how the Speaker rules on RS 8197 (whether an amendment or a change) would determine the vote required-an amendment would require two-thirds, a change a simple majority.

Myron Schlecte, legislative council, explained that the bill had been designed to follow the procedure used in the senate. Chairman Stivers explained that the printing committee had originally been set up before the legislative council was organized to draft legislation, and before the legislative data center was formed to process the bills.

MOTION

A motion was made by Rep. McDermott, seconded by Rep. Montgomery, that RS 8197 be reported back with a "do pass" recommendation. The motion carried. SPONSOR: Rep. Stivers.

→ RS 8166

INFLICTION OF DEATH PENALTY.

Rep. Stivers explained that this legislation had been drafted to alleviate the problem of carrying out the death penalty by lethal injection.

Bona Miller, department of corrections, stated that a medical prescription is required to obtain the lethal injection, then a medical doctor or a medically trained person must administer the injection. The prison officials have been unable to find a medically trained person who would carry out such injections.

MOTION

A motion was made by Rep. Keeton, seconded by Rep. Harris, that RS 8166 be introduced to print. The motion carried.

RS 8194

TESTS FOR DETERMINING INTOXICATION.

Rep. Smyser stated that prosecutors had had cases thrown out of court because the tests for determining intoxication were not performed by methods approved by the Department of Health and Welfare.

MOTION

A motion was made by Rep. McDermott, seconded by Rep. Edwards, that RS 8194 be introduced to print. The motion carried.

RS 8198

RECORDS MAINTAINED BY DEPARTMENT OF LAW ENFORCEMENT.

Rep. Boyd stated that this legislation would restrict motor vehicle records which are now open to the public and being abused by commercial companies to inspection for official, verification, and statistical purposes.

MOTION

A motion was made by Rep. Edwards, seconded by Rep. Smyser, that RS 8198 be introduced to print. The motion carried.

H 638

RS 7605)

IMPERSONATING A PROBATION/PAROLE OFFICER.

Bud Garrett, department of corrections, stated that there had been increased incidences of persons posing as probation or parole officers in order to obtain confidential pre-sentencing information and probation and parole information. This bill provides a penalty for that offense.

MOTION

A motion was made by Rep. Harris, seconded by Rep. Smith, that H 638 be reported back with a "do pass" recommendation. The motion carried. SPONSOR: Rep. Harris.



# EXHIBIT D

(House)

MINUTES OF THE MEETING OF

JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

February 19, 1982

The meeting was called to order by Chairman Stivers at 1:39 p.m.

PRESENT: Stivers, Chairman McDermott  
Harris Keeton  
Smith  
Paxman  
Montgomery  
Boyd  
Edwards  
Smyser

GUESTS: Lynn Thomas, Deputy Attorney General; Bona Miller, Department of Corrections; Bud Garrett, Department of Corrections; Brian Donesley, Attorney, Department of Corrections

A motion was made by Rep. Keeton, seconded by Rep. Harris, that the minutes of the meetings held February 11, 15, and 17, 1982 be approved as written. The motion carried.

Chairman Stivers reported that the Speaker had waived Rule 24 to allow committees to introduce legislation after the 35th day in order to allow this committee to take action on several routing service bills.

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Rep. Keeton felt the bill should be broadened further; Rep. Montgomery questioned the effect the bill would have on part-time employees working in the attorney general's office.

MOTION

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AMENDED MOTION

An amended motion was made by Rep. Keeton, seconded by Rep. Harris, that RS 8192 be introduced to print with changes or corrections to the effect that any attorney who works full-time for the state of Idaho, or even part-time for its state departments, or for the university, should not be able to represent private clients in private actions and draw salaries from them and also from the state.

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MOTION

A motion was made by Rep. McDermott, seconded by Rep. Edwards, that RS 8194 be introduced to print. The motion carried.

RS 8198

RECORDS MAINTAINED BY DEPARTMENT OF LAW ENFORCEMENT.

Rep. Boyd stated that this legislation would restrict motor vehicle records which are now open to the public and being abused by commercial companies to inspection for official, verification, and statistical purposes.

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H 638

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Bud Garrett, department of corrections, stated that there had been increased incidences of persons posing as probation or parole officers in order to obtain confidential pre-sentencing information and probation and parole information. This bill provides a penalty for that offense.

MOTION

A motion was made by Rep. Harris, seconded by Rep. Smith, that H 638 be reported back with a "do pass" recommendation. The motion carried. SPONSOR: Rep. Harris.

# EXHIBIT E

**STATEMENT OF PURPOSE****RS18536**

This proposed legislation will amend Idaho Code Section 19-2716 to eliminate reference to specific lethal injection substances in light of the authority of the director of the department of correction to determine the substance or substances used. This amendment is also consistent with the standard operating procedures for executions, which currently provides for four lethal injection substances, which include an ultra-short-acting barbiturate and a paralytic agent. This amendment will also enable the director to approve alternative substances as necessary to comply with evolving medical and legal standards. This proposed legislation will also amend Idaho Code Section 19-2716 to permit a coroner or deputy coroner, rather than a licensed physician, to pronounce death. This amendment will avoid issues that may arise relating to a physicians ability to participate in an execution in light of medical professional standards and the interpretation of those standards. This proposed legislation will further amend Idaho Code Section 19-2716 to eliminate death by firing squad as an alternative method of execution. The elimination of the alternative method of death by firing squad is deemed appropriate in light of the United States Supreme Courts opinion in Baze v. Rees, 128 S.Ct. 1520 (2008), in which the Court concluded that a humane lethal injection protocol does not constitute cruel and unusual punishment. There is no similar Supreme Court authority addressing whether the firing squad, as a method of execution, would constitute cruel and unusual punishment in violation of the Eighth Amendment. In addition, Idaho is one of only two states that have the firing squad as a method of execution; the rarity of this method of execution could form the basis of an Eighth Amendment claim. Elimination of the firing squad option will allow the state to avoid such a challenge.

**FISCAL NOTE**

This bill would have no fiscal impact on the general fund.

**Contact:**

**Name:** Bill von Tagen

**Office:** Attorney Generals Office

**Phone:** (208) 334-4140

# EXHIBIT F

MINUTES

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

DATE: February 11, 2009

TIME: 1:30 p.m.

PLACE: Room 240

MEMBERS: Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

ABSENT/  
EXCUSED: Representative Wills

GUESTS: Representative Lake; Patricia Tobias, Administrative Director of the Courts; Bill von Tagen, Deputy Attorney General; Hannah Saona, ACLU of Idaho; Erin Armstrong, Lobbyist; LaMont Anderson, Deputy Attorney General

Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review two sets of minutes.

MOTION: **Representative Luker** moved to approve the minutes of the meeting held on February 5, 2009, as written. Motion carried by voice vote.

MOTION: **Representative Bolz** moved to approve the minutes of the meeting held on February 9, 2009, as written. Motion carried by voice vote.

RS18452: Chairman Clark recognized **Representative Lake** to explain the proposed legislation. This bill establishes a standard seven year statute of limitations for procedural and jurisdictional challenges to the creation of governmental districts under Idaho law. This will eliminate unreasonably delayed legal challenges to the procedures used by the County Commission after seven years have passed, the districts are in place and have been relied upon by the citizens and the county.

MOTION: **Representative Luker** moved to introduce RS18452. Motion carried by voice vote.

RS18491: The Chairman recognized **Patricia Tobias**, Administrative Director of the Courts, to explain. This piece of legislation has a long history of legislative support and interest in monitoring the assets of those persons who need protection under a conservatorship or guardianship case filed in the district court. In 2005 the Legislature adopted H 131, which established the Guardianship Pilot Project, requiring annual reports to the Legislature and providing a sunset clause.

Section 1 of this legislation repeals the sunset provision relating to the Guardianship Pilot Project fund, allowing the pilot project fees and funding to go forward after July 1, 2009.

The legislation has a favorable impact on state and county funds. This legislation simplifies last year's bill and makes it easier to understand. Ms. Tobias said she would supply the members with a chart showing all of the charges included in the final fee if this legislation is introduced. In response to further questions, Ms. Tobias said the fee schedule is currently on the web sight, but she would immediately provide a copy to each member on the Committee.

**MOTION: Representative Smith moved to introduce RS18490. Motion carried by voice vote.**

**RS18492:** The Chairman recognized **Ms. Tobias** to explain. This legislation amends Idaho Code, Section 19-2522, addressing the examination of a defendant's mental condition where there is a reason to believe that the condition will be a significant factor in sentencing.

Subsection (1) allows the court to appoint "other professionals" besides a psychiatrist or licensed psychologist to examine the defendant's mental condition, thus providing greater flexibility in conducting examinations. The legislation also clarifies that a report of an examination of the defendant's mental condition that has previously been conducted pursuant to Idaho Code, Section 19-2524, may be used to satisfy the requirements of Section 19-2522 if the court finds that the earlier examination and report are sufficient. The defendant will retain the ability to be examined by an expert of his or her own choice.

**MOTION: Representative Bolz moved to introduce RS18492. Motion carried by voice vote.**

→ **RS18536:**

Bill von Tagen, deputy attorney general, was recognized to explain the legislation. This proposed legislation will amend Idaho Code, Section 19-2716, to eliminate reference to specific lethal injection substances in light of the authority of the director of the department of correction to determine the substance or substances used.

The amendment also enables the director to approve alternative substances as necessary to comply with evolving medical and legal standards. It will permit a coroner or deputy coroner, rather than a licensed physician, to pronounce death. Thus, it will avoid issues that may arise relating to a physician's ability to participate in an execution in light of medical professional standards and the interpretation of those standards.

The legislation also eliminates death by a firing squad as an alternative method of execution. This is deemed appropriate in light of the United States Supreme Court's opinion where the Court concluded that a "humane lethal injection protocol" does not constitute cruel and unusual punishment. Also, Idaho is only one of two states that have a firing squad as a method of execution. With respect to a coroner or deputy coroner, the legislation is realistically talking about the Ada County coroner.

**MOTION: Representative Shirley moved to introduce RS18536. Motion carried by voice vote.**



# EXHIBIT G

## MINUTES

### HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

**DATE:** March 3, 2009

**TIME:** 1:30 p.m.

**PLACE:** Room 240

**MEMBERS:** Chairman Clark, Vice Chairman Smith(24), Representatives Nielsen, Shirley, Wills, Hart, McGeachin, Bolz, Labrador, Luker, Kren, Boe, Burgoyne, Jaquet, Killen

**ABSENT/  
EXCUSED:** Representatives Smith, Burgoyne and Shirley

**GUESTS:** Jessica Lorello, Deputy Attorney General; Bill von Tagen, Deputy Attorney General; LaMont Anderson, senior deputy attorney general; Sheriff Ben Wolfinger; Fred Riggins, citizen; David Navarro, Juliet McMahon, Amber Allen, Courtney Brokaw, Boise State University; Fairy Hitchcock, citizen; Katy Kreller, Idaho Statesman; Judge Barry Wood; Michael Henderson, Idaho Supreme Court; Donna Murphy, intern, Supreme Court; Hannah Saona, ACLU; Katie Killpack, DFM; Jay Kiiha, Aladdin Bail Bonds; Dale Dutt, citizen

Chairman Clark called the meeting to order at 1:30 p.m. and asked the members to review the minutes.

**MOTION:** Representative Bolz moved to approve the minutes of the meeting held on February 25, as written. Motion carried by voice vote.

**H 184:** Chairman Clark recognized **Judge Barry Wood** to explain the bill. Judge Wood said the Bail Bonds Guidelines Committee was formed in 2006, bringing together judges, trial court administrators, prosecutors, defense counsel, sheriffs and representatives of the bail industry. The committee worked over the last two years to draft this bill which eliminates archaic provisions of the existing statutes and directly addresses and clarifies procedures for cash bail, property bonds and commercial bail bonds.

The task of the committee was to try to modernize the existing statute. The Bail Bond Act provides a uniform and comprehensive statewide process for the administration of bail in criminal cases. Any person charged with a crime who is not released on his own recognizance is entitled to bail before a plea or verdict of guilty, except when the offense charged is punishable by death and the proof is evident or the presumption is great.

Definitions are included for bail, bail agent, bail bond, bench warrant, cash deposit and certificate of surrender. Conditions of release, exoneration, forfeiture and order of recommitment are some of the other definitions contained in the bill.

When bail has been posted by cash deposit and remains on deposit at

the time of the judgment, the clerk of the court shall apply the money in satisfaction of fines, fees, costs and restitution imposed in the case and fines, fees, costs and restitution imposed against the defendant in any other criminal action. Any surplus shall be refunded to the person posting the cash deposit. A property bond may be posted on behalf of the defendant.

A question was asked concerning when a third party puts up a cash deposit or property bond and there is a violation of the condition of release, as to what happens to the security deposit. The judge answered if a relative puts up the bond and uses the defendant's name, that would be a problem. When the person posting the bond does so in his own name, that person will get the bail back.

**MOTION:**

**Representative Wills** moved to send H 184 to the floor with a Do Pass recommendation. Motion carried by voice vote. Representative Clark will carry the bill on the floor.

→ **H 107:**

**LaMont Anderson**, senior deputy attorney general, was recognized to explain the bill. This bill will eliminate reference to specific lethal injection substances in light of the authority of the director of the Department of Correction to determine the substance or substances used. The amendment is consistent with the standard operating procedures for executions, which currently provide for four lethal injection substances, which include an ultra-short-acting barbiturate and a paralytic agent. The bill is designed after a similar statute in Kentucky. A United States Supreme Court ruled in a case brought by Kentucky death-row inmates that lethal injections pass constitutional muster.

The legislation will permit a coroner or deputy coroner, rather than a licensed physician, to pronounce death. This will avoid issues that may arise relating to a physician's ability to participate in an execution in light of medical professional standards.

The legislation also eliminates the alternative method of death by a firing squad. Idaho is the only state that has the firing squad as a method of execution. The state of Utah did away with that method in 2004, though it may still be an option for inmates who selected it prior to that date.

This bill will result in a more expeditious means of execution.

**MOTION:**

**Representative Labrador** moved to send H 107 to the floor with a Do Pass recommendation.


In answer to a question, Mr. Anderson said the director has worked with other states to determine what drugs and protocol will mirror those used by the state of Kentucky.

**Motion carried by voice vote.** Representative Labrador will carry the bill on the floor.

**H 178:**

Jessica Lorello, deputy attorney general, was recognized to explain. The bill makes technical amendments and updates to Idaho Code, Sections 18-8303, 18-8304 and 18-8308. Idaho Code section 18-8303(1) is

# EXHIBIT H

Idaho Department of Correction 	<b>Standard Operating Procedure</b>	Title: <b>Execution Procedures</b>		Page: 1 of 34
		Control Number: <b>135.02.01.001</b>	Version: <b>4.0</b>	Adopted: 05/18/1998

**Josh Tewalt, Director of the Idaho Department of Correction, approved this document on 03/30/2021.**

Open to the public:  **Yes**

**SCOPE**

This standard operating procedure (SOP) applies to all Idaho Department of Correction (IDOC) staff members involved in the administration of capital punishment and to persons in IDOC custody sentenced to capital punishment, hereafter referred to as condemned person.

**Note:** This SOP is subject to revision at the discretion of the Director of the IDOC. The Director may revise, suspend, or rescind any procedural steps, at any time, at the Director’s sole discretion.

<b>Revision Summary</b>
<p>Revision date (<u>03/30/2021</u>) version <u>4.0</u>: Reformatted document, updated terminology; revised to comply with changes in statute, regulation, and case law, as applicable; reflects changes in IDOC leadership structure; clarified qualifications for specialty teams, improved media representative and witness selection process; updated forms and removed them as appendices. Associated forms are now found in the forms area of the website.</p>

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**BOARD OF CORRECTION IDAPA RULE NUMBER 135**

Executions

**POLICY CONTROL NUMBER 135**

Executions

**PURPOSE**

The purpose of this SOP is to establish specific procedures for administration of capital punishment in accordance with the Idaho Code and the constitutions of the United States of America and the State of Idaho.

**RESPONSIBILITY**

***Director of the IDOC***

The Director of the IDOC is responsible for:

- Exercising overall control and approval of the administrative policy, SOP, field memoranda, and of the execution process itself.
- Communicating with Idaho Governor’s office, Idaho Board of Correction, legislators, and Idaho Commission of Pardons and Parole.
- Determining execution protocol and ensuring that applicable chemicals are obtained and tested at an accredited lab following United States Pharmacopeia

<b>Control Number:</b> 135.02.01.001	<b>Version:</b> 4.0	<b>Title:</b> Execution Procedures	<b>Page Number:</b> 3 of 34
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or other applicable, nationally recognized or generally accepted testing standards.

- Approving news media representatives for media center access.

#### ***Chief of the Division of Prisons***

The Chief of the Division of Prisons is responsible for:

- Field memoranda, and post orders related to the execution process.
- Contacting and notifying members of the victim's family.
- Contacting and notifying the State of Idaho's witnesses.
- Briefing witnesses before the execution.
- Disseminating briefings as needed to staff following the issuance of a death warrant.

#### ***Deputy Chief of the Division of Prisons***

The Deputy Chief of the Division of Prisons is responsible for:

- Appointing one or more staff member(s) within the division to assist the Idaho Maximum Security Institution (IMSI) Warden.
- Coordinating IDOC activities as the Incident Command System (ICS) command center operations chief at IDOC's South Boise Complex, which includes IMSI, Idaho State Correctional Institution (ISCI), South Idaho Correctional Institution (SICI), and South Boise Women's Correctional Center (SBWCC).
- Activating the following teams and overseeing their activities:
  - ◆ ICS
  - ◆ Correctional Emergency Response Team (CERT)
  - ◆ Maintenance
  - ◆ Critical Incident Stress Management (CISM)
  - ◆ Traffic Control Team
  - ◆ ISCI media center
  - ◆ SICI grounds and perimeter security.

**Note:** IDOC may have more than one Deputy Chief of Division of Prisons, any of whom will share the responsibilities for the position set out by this SOP or individually as assigned by the Director of the IDOC or the Chief of the Division of Prisons.

#### ***Administrative Team***

The Administrative Team consists of the Deputy Chief of the Division of Prisons, the IMSI Warden, the backup to the IMSI Warden for the purpose of serving as the execution director, and any additional IDOC staff the Director or the Chief of the Division of Prisons may appoint.

The Administrative Team is responsible for:

- Providing, planning, directing, and implementing all pre-execution and post-execution activities.
- Coordinating all processes associated with specialty team personnel selection, equipment, supply acquisition, training, rehearsal, and performance.

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- Conducting preparatory steps in order to ensure that the execution process is conducted in accordance with this SOP.
- Reviewing and ensuring that the department adheres to Idaho Code, sections 19-2705, 19-2713, 19-2714, 19-2715, 19-2716, 19-2718, and IDAPA 06.01.01.135.
- Selecting staff for the Escort Team and Medical Team.
- Selecting a licensed physician to be on site during the execution procedure.
- Ensuring that all the equipment such as electrical, plumbing, heating, and cooling units in the execution chamber are in working order.
- Ensuring that an annual training schedule is established and scheduling dates for periodic on-site rehearsal sessions by the Escort Team, Medical Team, and ICS that complies with the requirements of this SOP.

***Idaho Maximum Security Institution (IMSI) Warden***

The IMSI Warden is responsible for:

- Providing notification to the condemned that a death warrant has been issued.
- Assigning an IDOC liaison for the condemned person.
- Creating and maintaining a log documenting the events leading up to the execution date that serves as a permanent record of the execution activities.
- Issuing all the orders to facilitate an execution at IMSI.
- Ensuring all visitors and execution witnesses meet the standard IDOC visitor requirements and any additional requirements implemented by this SOP.

***Idaho Maximum Security Institution (IMSI) Deputy Warden of Security***

The IMSI Deputy Warden of security is responsible for:

- Internal security at IMSI.
- Scheduling staff for regular posts and additional security to begin 48 to 24 hours prior to the execution up to and including a 'level C response' in accordance with the ICS.

***Idaho State Correctional Institution (ISCI) Warden***

The ISCI Warden is responsible for:

- Establishing field memoranda to identify authority and guidelines to coordinate media activity. The Chief of the Division of Prisons must approve the field memoranda.
- Providing logistical and communication support at the IDOC's South Boise Complex.

***South Idaho Correctional Institution (SICI) Warden***

The SICI Warden is responsible for:

- Establishing field memoranda to identify authority and guidelines to coordinate and implement external security measures, including guidelines for other law enforcement and support agencies operating on the IDOC's South Boise Complex. The Chief of the Division of Prisons must approve the field memoranda.



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## **STANDARD PROCEDURES**

### **1. Introduction**

Enforcing capital punishment is one of the most serious and controversial responsibilities of the IDOC. IDOC leadership and staff must be aware of the pressures an execution places on them and the prison population and be prepared and able to meet the situations that might arise. A high regard for the dignity of all individuals involved must be maintained.

All executions, both males and females, will be conducted at IMSI. The condemned person will be transported to IMSI immediately when the death warrant is issued, if not already housed there.

No IDOC staff member or contractor, except as identified by Idaho Code or contract, will be required to participate in an execution and can withdraw from the process at any time and a replacement will be appointed in accordance with Idaho law and this SOP.

The IDOC will make every effort in the planning and preparation of an execution to ensure that the execution process:

- Complies with the Constitution of the United States, the Constitution of the State of Idaho and Idaho law, specifically Idaho Code sections 19-2705, 19-2713, 19-2714, 19-2715, 19-2716, 19-2718, and IDAPA Rule 06.01.01.135.
- Is handled in a manner that minimizes its impact on the safety, security, and operational integrity of the prison in which it occurs.
- Does not cause the condemned person to suffer cruelly during the execution.
- Accommodates the public's right to obtain certain information concerning the execution and strives to minimize the impact on the community and the State of Idaho.
- Respects the privacy interests of families of the victims and of the condemned person.
- Provides contingency planning to identify and address unforeseen problems.
- Maintains lines of communication necessary to receive information regarding stays of execution, commutations, and other circumstances throughout the execution process.
- Provides opportunity for citizens to demonstrate in a lawful manner.
- Ensures there is an appropriate response to unlawful civil disobedience, trespass, and other violations.

### **2. Monitoring Appellate Activities**

The Deputy Chief of the Division of Prisons, in conjunction with the Deputy Attorneys General (DAGs) representing the IDOC, will monitor the appellate process of those under the sentence of death. When it appears an individual may be within one year or less of exhausting appeals, the Deputy Chief of the Division of Prisons will notify the Director of the IDOC, the Chief of the Division of Prisons, and the IMSI Warden of the possibility of the issuance of a death warrant within the next year.

The Administrative Team will begin the planning and preparation process when an inmate is within this one-year timeframe.

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### 3. Staff Conduct and Professionalism

All IDOC staff and contractors must maintain a high degree of professionalism regarding the execution process, to include all IDOC and contract facilities that are not involved in the execution process. Expectations demonstrating professionalism include, but are not limited to, the following:

- Restraint and courtesy when interacting with residents, witnesses, demonstrators, attorneys, news media, law enforcement and any member of the public regarding the implementation of the death penalty.
- Proficient performance of all assigned duties in a respectful manner.
- Conduct that appropriately reflects the gravity of the execution process.

### 4. Attempted Disruption of Execution Process

The IDOC is required by Idaho law to carry out capital punishment sentences from Idaho courts. The IDOC will take those actions necessary to fulfill this requirement and prevent the disruption of an execution or disruption to the safe and orderly operation of its correctional facilities. Prohibited activities include, but are not limited to the following:

- **Filming, taping, recording, broadcasting or otherwise electronically documenting the execution.**
- Trespassing or entering upon IDOC property without authorization.
- Participating in unlawful demonstrations or unlawful attempts to disrupt, prevent or otherwise interfere with an execution.
- Unlawfully threatening, intimidating, or otherwise attempting to influence persons involved in the execution process.

These prohibitions apply to the incarcerated population, contractors, IDOC staff, and the public.

The IDOC will ensure adequate law enforcement is present to ensure the safe control of the public on IDOC property, including officers stationed at the Execution Unit, if necessary. This may include members of the Boise Police Department, the Ada County Sheriff's Department, or the Idaho State Police, and other law enforcement agencies.

### 5. Specialty Teams and Training and Practice Requirements

The execution process requires three specialty teams: The Escort Team, the Medical Team, and the Administrative Team.

The names of the individuals on the Escort Team and Medical Team will be treated with the highest degree of confidentiality. The identity of all individuals (except those Administrative Team members identified by law or rule) participating in or performing any ancillary functions in the execution and any information contained in the records that could identify those individuals is confidential and not subject to disclosure. The identities of Escort Team and Medical Team members are available to the Director of the IDOC, the Chief of the Division of Prisons, and the Administrative Team. See IDAPA 06.01.01.108.04 and 06.01.01.135.

#### ***Escort Team Members – Criteria and Selection Requirements***

Service on the Escort Team is **voluntary**. Staff may withdraw at any time.

Staff must meet the following criteria to be selected for the Escort Team:

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- Demonstrated high degree of professionalism
- Demonstrated ability to maintain confidentiality
- No personnel disciplinary action in the past 12 months
- Current IDOC employee with at least one year of satisfactory employment
- **No blood or legal relationship to the victim or victim's family**
- **No blood or legal relationship to the condemned person or family**

**The Administrative Team** will identify qualified personnel to serve on the Escort Team, verify qualifications, and complete criminal background checks before approving participation on the Escort Team.

**The Deputy Chief of the Division of Prisons** will designate an Escort Team leader and at least one alternate Escort Team leader.

**The Escort Team leader** reports to a designated Administrative Team member and ensures that all Escort Team members understand all provisions of this SOP and are well-trained in the escort procedures.

#### ***Medical Team Members – Criteria and Selection Requirements***

- The Medical Team consists of **volunteers** whose training and experience include administering intravenous (IV) drips. The Medical Team will be responsible for inserting IV catheters, ensuring the line is functioning properly throughout the procedure, mixing the chemicals, preparing the syringes, monitoring the condemned person (including the level of consciousness), and administering the chemicals as described in *Execution Chemicals Preparation and Administration*.

To serve on the Medical Team, individuals must meet the following criteria:

- At least three years of medical experience as an emergency medical technician (EMT), licensed practical nurse (LPN), military corpsman, paramedic, phlebotomist, physician assistant, physician, registered nurse (RN), or other medically trained personnel including those trained in the United States military.
- Have current venous access proficiency, current pharmacodynamics proficiency (i.e., understand medical orders, can read, and understand medical labels, draw medications, and deliver medications through either an injection or IV), and be certified in CPR.
- **No blood or legal relationship to the victim or victim's family.**
- **No blood or legal relationship to the condemned person or family.**

#### ***The Administrative Team***

The Administrative Team will identify qualified persons to serve on the Medical Team; verify their professional qualifications (to include professional licensing and certification), training, and experience; complete criminal background checks; and conduct personal interviews before approving participation on the Medical team.

The Administrative Team will ensure that all Medical Team members understand all provisions of this SOP and are well-trained in the execution procedures.

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**Note:** Licensing and certification, and criminal history reviews will be conducted prior to placement on the Medical Team, annually after placement on the Medical Team and after issuance of a death warrant. Participation on the Medical Team is contingent on passing these reviews.

***The Deputy Chief of the Division of Prisons***

The Deputy Chief of the Division of Prisons will designate a Medical Team leader and at least one alternate Medical Team leader.

***The Medical Team Leader***

The Medical Team leader will have direct oversight of the Medical Team and will report to a designated Administrative Team member.

***Training and Rehearsal Requirements***

The Administrative Team will establish a training schedule for each calendar year that identifies dates for on-site training and rehearsal sessions for the Escort Team, Medical Team, and Incident Command Staff. All training and rehearsal sessions must be documented and submitted to a designated Administrative Team member.

The training schedule will set a minimum of 10 training sessions each year for the Escort and Medical Teams, even if no execution is anticipated in the training year. The Director of the IDOC may, in his discretion, suspend or modify the number of trainings if no execution is anticipated beyond the time required to assemble and adequately train the Escort and Medical Teams.

In order to participate in an execution, Escort Team, Medical Team, and ICS members must participate in a minimum of four training sessions within the twelve months prior to an execution. Training and rehearsal sessions for the Medical Team will include the placement of IV catheters and establishing an IV drip in a minimum of two live volunteers.

After a death warrant is served, the Escort Team, Medical Team, and ICS will train weekly before the scheduled execution date.

In the forty-eight hours prior to the scheduled execution, the Escort Team, Medical Team, and Incident Command Staff members must participate in a minimum of four training sessions and two rehearsals.

***Licensed Physician, Emergency Medical Personnel, and Ambulance Service***

A licensed physician will be on-site at the Execution Unit during the execution to provide any necessary resuscitation effort of the condemned person and first aid emergency care for any person in the immediate area if needed.

The physician must be a medical doctor currently licensed by the Idaho Board of Medicine. The Administrative Team will verify the physician’s professional licensure and will complete a criminal background check upon the issuance of the death warrant.

The on-site physician will not be a member of any execution specialty teams described in this SOP and will not participate in the execution in any way.

The on-site physician’s identity will remain confidential and will be protected from disclosure in the same manner described for the Medical Team and Escort Team members. See IDAPA 06.01.01.108 and 06.01.01.135.

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The on-site physician will have access to an on-site medical crash cart, applicable medications, and defibrillator.

***Emergency Medical Personnel and Ambulance Service***

Emergency medical technicians and ambulance service will be present near the Execution Unit as determined by the Administrative Team to provide emergency medical assistance and transport to anyone requiring such care during the process.

**6. Death Warrant for Pregnant Person**

If there is reason to believe that a condemned person is pregnant, a jury of three physicians will be appointed as required by Idaho Code Section 19-2713 to determine whether the person is pregnant. If pregnant, the facility Warden will immediately notify the prosecuting attorney of the county with jurisdiction, the Idaho governor's office, and the sentencing court. The facility Warden will suspend the execution until the person is no longer pregnant and the sentencing court has appointed a day for execution.

**7. Stay of Execution**

Upon receipt of notification that a court has issued a stay of execution, the Director of the IDOC will advise the Chief of the Division of Prisons, Deputy Chief of the Division of Prisons, and IMSI Warden.

If the stay of execution is received immediately prior to the execution, the IMSI Warden will advise the witnesses that a stay of execution has been issued. If it is anticipated that the stay will be for an extended time, witnesses will be escorted back to their specified staging areas.

Upon notification of a stay of execution, the following will occur:

***Director of the IDOC***

- Notify the Idaho Governor's office.
- Notify the Executive Director of the Idaho Commission of Pardons and Parole.

***Administrative Team***

Ensure that all chemicals and medical supplies are handled in accordance with Execution Chemicals Preparation and Administration.

***Deputy Chief of the Division of Prisons***

- Advise facilities staff that a stay of execution has been issued.
- Begin systematically deescalating the operation and when applicable instruct execution activities and related operations to stand down.
- When appropriate, return all IDOC and contract facilities to normal operations.

***IDOC Public Information Officer (PIO)***

Issue a press release to the media.

***IMSI Warden***

If the stay is anticipated to last more than two hours and the condemned person is in the execution chamber, direct the Medical Team to remove the catheters, if necessary, and move the condemned individual to a designated cell. The Warden **may** direct the return of the condemned person's property.

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## 8. Public Information and Media Access

The PIO is responsible to prepare and release information to the media. The Director of the IDOC will approve each release prior to dissemination.

A media center will be located on-site at the IDOC's South Boise Complex.

The PIO will act as the IDOC's liaison with all media agencies requesting access to the IDOC's South Boise Complex or information regarding the execution. The PIO will notify all news media of the following IDOC rules:

- Media representatives must comply with IDOC visiting standards for access to witness the execution and to have access to the media center. This includes IDOC's prohibition of weapons and tobacco use on IDOC premises.
- **Cameras, video cameras, cellular telephones, and recording devices are not allowed inside IMSI or the execution chamber.**
- Cameras, video cameras, and recording devices are allowed in the media center and at the area(s) designated for media on the IDOC's South Boise Complex.
- Individuals entering IDOC premises are subject to search (metal detector and clothed body search), must arrive at the designated time, and must enter IDOC property as instructed.

### **News Media Representatives**

A news media representative is a person whose primary employment is gathering or reporting news for:

- A newspaper, as defined in Idaho Code Section 60-106.
- A news magazine having a normal circulation being sold by newsstands and by mail circulation to the general public.
- Radio and television news programs of stations holding Federal Communication Commission licenses.
- The Associated Press.

News organizations which distribute content primarily via internet will be admitted on a case-by-case basis. The PIO will verify that each internet-based organization is a bona fide news media. The Director of the IDOC will be the final authority to approve admittance of news media representatives from internet-based news agencies to the media center.

### **Media Representative Witnesses to the Execution**

The IDOC will permit up to four news media representatives to witness the execution. This is subject to change by the Director of the IDOC.

Fourteen days prior to the execution, any news media representative who desires to witness the execution must submit a fully completed [Execution Witness Acknowledgment and Agreement](#) to the PIO for the purposes of undergoing a criminal background check and approval.

The media representative witnesses will be selected as follows:

- The Associated Press will select one media representative witness.

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- One media representative witness will be randomly selected from each of the following groups:
  - ◆ Media organizations that focus on and primarily cover the region in which the county of conviction is located. The Director of the IDOC will determine which media agencies provide substantial coverage to the residents in the county of conviction.
  - ◆ Print and internet news media organizations that focus on and primarily cover and deliver local news to communities in Idaho.
  - ◆ Broadcast news media organizations that focus on and primarily cover and deliver local news to communities in Idaho.

Each media organization may only submit one representative for selection.

### ***Media Representative Witness Selection***

Approximately seven days before the scheduled execution, the PIO will conduct the drawing for three media representative witnesses. A drawing for alternates in each category will be conducted at the same time. Selected media witnesses are not permitted to transfer or delegate their selection to any other individual.

Media representative witnesses must agree to return directly to the media center following the execution and share information and observations with the other news media representatives. The PIO will facilitate that discussion and briefing.

### ***Media Staging***

The Deputy Chief of the Division of Prisons will determine the schedule and location for media vehicle staging and the schedule when news media representatives who are not participating in the witness pool must arrive.

On the day of the execution, media representative witnesses must arrive at the media center at the time designated by the PIO. News media representatives will sign in at the designated media center. IDOC will transport the four media representative witnesses from the media center to IMSI. The news media witnesses will be escorted to the Execution Unit with the state witnesses.

The transport officers will remain in a pre-assigned area at IMSI until the execution is declared completed by the IMSI Warden. The escort officers will then transport the media representatives back to the media center to participate in the news conference.

## **9. External Security**

### ***IDOC's South Boise Complex Security Zones***

The IDOC South Boise Complex will be broken down into four security areas:

- **Inner perimeter zone:** the area within the respective facilities' fences.
- **Controlled perimeter zone:** an extended perimeter around the four facilities listed above.
- **Restricted zones:** areas designated for the media.
- **Extended zones:** areas designated for observers/demonstrators.

At the designated time, the SICI Warden will control access to the South Boise Complex.

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SBWCC will provide security staff as needed to the SICI Warden to help support security of the controlled perimeter zone.

The SICI Warden is responsible for establishing posts at strategic access and checkpoints in the controlled perimeter zone surrounding the facilities.

## **10. Persons Allowed in the Execution Unit During Execution**

The Director of the IDOC will have the discretion to determine the number of persons allowed in the Execution Unit at any time. In exercising this discretion, the Director of the IDOC will consider the safe and orderly operation of IMSI, the interests of the victim's family, and whether multiple death warrants are being executed concurrently.

By permitting individuals to witness the execution, IDOC is not creating any right or privilege that does not already exist. Individual placement of witnesses in the Execution Unit is subject to change at the discretion of the IMSI Warden. Individuals who fail to adhere to the requirements and directives of IDOC may be escorted out of the Execution Unit, IMSI, or IDOC premises.

IDAPA 06.01.01.135.06 provides that in most instances the following persons should be allowed in the execution unit, subject to the discretion of the Director of the IDOC:

- The Administrative Team
- The Escort Team members
- The Medical Team members
- The on-site physician
- The Director of the IDOC
- The Idaho Board of Correction representative
- The Chief of the Division of Prisons or designee
- The IMSI Warden or designee
- The Ada County Coroner
- The prosecuting attorney from the county of conviction
- The sheriff from the county of conviction
- A district judge from the county of conviction
- The Idaho Governor or representative
- The Idaho Attorney General or representative
- Two members of the victim's family
- The spiritual advisor for the condemned person
- Two witnesses selected by the condemned person
- An attorney of record for the condemned person
- Four media representatives



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In addition, the IDOC liaison for victim families and the IDOC liaison for the condemned will be allowed in the execution unit, subject to the discretion of the Director of the IDOC.

The Execution Unit includes two witness areas, the execution chamber, the Medical Team room, and staging areas. The persons permitted in each area are as follows:

***State of Idaho Witness Area***

- One Escort Team member
- The Chief of the Division of Prisons
- Two members of the victim's family
- Four media representatives
- The prosecuting attorney from the county of conviction
- The sheriff from the county of conviction
- A district judge from the county of conviction The Idaho Board of Correction representative
- The Idaho Governor or representative
- The Idaho Attorney General or representative
- IDOC Victim Family Liaison

***Condemned's Witness Area***

- One Escort Team member
- One IDOC liaison
- Two approved visitors selected by condemned person
- One attorney of record for condemned person
- One spiritual advisor

***Execution Chamber***

- The condemned person
- Two Escort Team members
- Interpreter (if necessary)
- The Director of the IDOC
- The IMSI Warden or designee

**Note:** The Ada County Coroner and the on-site physician will be located at a staging area near the execution chamber as determined by the IMSI Warden.

***Medical Team Room***

- Medical Team members
- Administrative Team members

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## 11. General Timeline

The processes described in this SOP are based on a general timeline. The timeline is generally divided into the following stages:

- Upon Service of a Death Warrant
- Thirty to Twenty-one Days Prior to the Execution
- Twenty-one to Seven Days Prior to the Execution
- Seven to Two Days Prior to the Execution
- Two Days Prior to the Execution
- Twenty-Four to Twelve Hours Prior to the Execution
- Final Preparations
- Pronouncement of Death

The timeline is subject to change to accommodate unforeseen events.

**Note:** The procedures for carrying out the execution are found in *Execution Chemicals Preparation and Administration*.

## 12. Upon Service of a Death Warrant

Only the Director of the IDOC can accept service of the death warrant. Once service of the death warrant is accepted, the following steps will be implemented.

### Process Steps

Functional Roles	Step	Tasks
Director of the IDOC	1	<ul style="list-style-type: none"> <li>• Immediately notify the Warden of the facility in which the condemned person is housed and the IMSI Warden.</li> <li>• Immediately forward the death warrant to the Warden of the facility in which the condemned person is housed.</li> </ul>
Director of the IDOC	2	Notify: <ul style="list-style-type: none"> <li>• Idaho Board of Correction</li> <li>• Chief of Prisons</li> <li>• Executive Director of the Idaho Commission of Pardons and Parole</li> <li>• Idaho Governor's office</li> <li>• IDOC PIO</li> <li>• Office of the Attorney General (via the DAGs assigned to IDOC)</li> </ul>
Facility Warden	3	Begin a log to provide a comprehensive chronological history of every aspect of the execution procedure.

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Functional Roles	Step	Tasks
Facility Warden	4	Deliver a copy of the death warrant to the condemned person.
Facility Warden	5	Immediately segregate the condemned person from the general population.
Facility Warden	6	Place the condemned person under constant observation by two staff members for 24 hours a day, seven days a week.
		An observation logbook will be immediately established to record staff's observation of the condemned person's activities and behavior. Entries will be chronological. Each day will be recorded beginning at midnight as MM/DD/YYYY. During the final four hours before the execution, staff will record each entry noting the time in hours and minutes and make entries a minimum of once every 30 minutes.
Facility Warden	7	Notify the facility Health Services Administrator (HSA) and a designated mental health professional that the condemned person has been placed in solitary confinement under a death warrant.
Facility Warden	8	<ul style="list-style-type: none"> <li>• Retain the original death warrant.</li> <li>• Place a copy of the death warrant in the condemned person's central file.</li> <li>• Provide the condemned person with a copy of the death warrant.</li> </ul>
Facility Warden	9	Within 24 hours after the death warrant is served, appoint a staff member (normally an IMSI Deputy Warden) to relieve the Warden of all duties except those duties related to the execution procedure until there is a stay of execution or the execution process has been completed.
Facility Warden	10	<p>Appoint a staff member to serve as liaison between the condemned person, the condemned person's family, and the IMSI Warden (If the condemned person does not speak English, ensure an interpreter is obtained and available to communicate with the condemned person).</p> <p>Appoint a separate staff member to serve as liaison between the victim families and IDOC. In most cases, this will be the IDOC Victim Services Coordinator.</p>

### 13. Briefing and Communication: After the Death Warrant is Served

The facility Warden will ensure that at a minimum, a weekly briefing will occur for all involved staff commencing after the death warrant is served until the facility has returned to normal

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operations. The CISM team members will be available to speak with interested and affected staff, individuals, or groups who have been identified by the facility Warden or other staff.

At a minimum, briefings and communication will be conducted as follows:

- Immediately after the death warrant is served.
- If any changes are made to the established execution timeline.
- As deemed necessary to keep staff well informed during the week prior to the execution.
- The day after the execution.

#### **14. Conditions of Confinement**

Immediately following the service of a death warrant, the condemned person will be moved to a predetermined isolation cell in accordance with Idaho Code §19-2705. The isolation cell will be supplied a fresh mattress and pillow that has been thoroughly inspected, and clean bedding. An unclothed body search will be conducted, and the condemned person will be given clean clothes and different shoes. Any disabilities or needs of the condemned person that require special accommodations will be identified and implemented as necessary.

Until the execution has been stayed or completed, any movement of the condemned person will require escort in full restraints, by two correctional staff.

The condemned person will be placed under 24-hour, constant observation by two uniformed staff members until there is a stay of execution or transfer to the execution chamber.

The condemned person will be allowed daily outdoor exercise, showers, and telephone access as permitted by law.

The condemned person will be provided access to a television set and any electronics previously purchased by the condemned and approved by the IMSI Warden. Some functionality of the electronics may be limited at the direction of the IMSI Warden.

##### ***Property***

The condemned person's personal property will be inventoried. The condemned person will be allowed to keep not more than six cubic feet of legal papers and religious materials, a pencil and paper, books, periodicals, and commissary food items. All remaining property will be boxed, sealed, and removed from the cell. It will be stored pending receipt of written instructions from the condemned person regarding disposition of property or otherwise disposed of as outlined in SOP [312.02.01.001](#), *Death of an Inmate*.

##### ***Commissary***

The condemned person will be allowed to purchase food items from the commissary until the delivery date of commissary is within seven days of the execution. The IMSI Warden has discretion to extend this time frame. Non-food purchases must be approved by the IMSI Warden. The spending limit will be the same as established in SOP [320.02.01.001](#), *Property: State-issued and Resident Personal Property*. However, the IMSI Warden can increase or decrease this amount with approval of the Deputy Chief of the Division of Prisons. The condemned person may retain consumable commissary items as approved by the IMSI Warden until completion of the last meal.

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### ***Last Meal***

For the last meal, the condemned person can select a meal from the established IDOC menu. The last meal will be served at approximately 1900 hours the day prior to the scheduled execution.

### ***Hygiene Items***

The condemned person will receive the following hygiene supplies: bar soap, toothpaste and toothbrush, towel, and washcloth. These items will be exchanged daily.

Clean clothing and bedding will be issued daily.

If requested, shaving supplies will be issued and immediately removed once shaving is finished.

### ***Access to the Condemned Person***

Access to the condemned person will be limited to the following:

- Law enforcement personnel investigating matters within the scope of their duties.
- The condemned person's attorney of record and agents of the condemned person's attorney of record.
- Attending physician and healthcare staff.
- Spiritual advisors selected by condemned person.
- Condemned person's immediate family.

### ***Visiting***

Visiting for the condemned person will be limited to:

- Attorney of record and agents of the attorney of record.
- Spiritual advisors selected by condemned person.
- The condemned person's immediate family is limited to the following:
  - ◆ Mother or father, including stepparents
  - ◆ Siblings of whole or half-blood, by adoption, and stepsiblings.
  - ◆ Legal spouse verified by marriage license or other operation of law.
  - ◆ Natural children, adopted children, and stepchildren.
  - ◆ Grandparents of blood relation.
  - ◆ Grandchildren (adult) of blood relation.

All visits must be in accordance with SOP [604.02.01.001](#), *Visiting*, and the guidelines established in this SOP. Normally, minor children will not be allowed to visit. Any exception must be approved by the Deputy Chief of the Division of Prisons.

The condemned person's attorney of record and agents of the attorney of record will be permitted contact visits under staff visual observation, but so that the staff members cannot hear the conversation.

"Agents of the attorney of record" means employees of the attorney of record including investigators, paralegals, legal interns, and mitigation specialists but does not include retained experts or other independent contractors of the attorney of record.

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Spiritual advisors and immediately family will have non-contact visits until seven days immediately preceding the scheduled execution. Contact visits by spiritual advisors and immediate family may commence in the seven days immediately preceding the execution.

The IMSI Warden will establish the frequency and duration in which visits occur and will have the authority to suspend or deny visits when public safety or the safe, secure, and orderly operation of the prison could be compromised.

**Note:** If there is a stay of execution, the IMSI Warden will determine housing in accordance with SOP [319.02.01.001](#), *Restrictive Housing*, and visiting in accordance with SOP 604.02.01.001, *Visiting*.

### ***Spiritual Advisor***

The condemned person can select spiritual advisors. Spiritual advisors must be approved by the facility Warden for visiting before visits can occur. A spiritual advisor cannot be an IDOC staff member or the staff member of a contract facility. A spiritual advisor may be a contract provider for volunteer and religious activities. Only one spiritual advisor will be permitted to witness the execution.

### ***Healthcare***

The IMSI Warden will request that the facility Health Services Administrator review the condemned person's healthcare record and identify any prescribed medication(s) or health care issues.

Facility healthcare services staff will dispense all medications in unit doses and when available, in liquid form. No medication including over-the-counter medications will be provided or maintained by the condemned person as keep-on-person.

The facility Health Services Administrator will provide the condemned person an opportunity to complete an Idaho Physician Orders for Scope of Treatment form.

Facility healthcare services staff will take necessary steps to maintain the condemned person's health prior to the execution and will respond appropriately to health care issues and emergencies including suicide attempts and will take reasonable steps to revive the condemned person in medical distress at all times prior to the execution, unless the condemned person has a "do not resuscitate" directive on file or in a Physician Orders for Scope of Treatment.

Facility healthcare services staff will monitor the condemned person daily for significant changes in the condemned person's medical or mental health. If the condemned person's health changes, facility healthcare services staff must report the condemned person's condition immediately to the IMSI Warden.

**Note:** All access, visits, etc. will be documented in the constant observation log.

## **15. Thirty to Twenty-One Days Prior to the Execution**

After service of the death warrant until twenty-one days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the Director of the IDOC, Chief of the Division of Prisons, and the Deputy Chief of the Division of Prisons.

Unless a specific timeline is identified, the tasks outlined in this section are not required to be completed in a specific order.

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***Director of the IDOC***

- Continue communication with the Idaho Board of Correction
- Continue communication with the Idaho Governor
- Communicate as needed with the Executive Director of the Idaho Commission of Pardons and Parole
- Meet with the Chief of the Division of Prisons, the Deputy Chief of the Division of Prisons, and other members of the IDOC Leadership Team as needed

***Chief of the Division of Prisons***

- Continue to provide briefings to IDOC staff.
- Send *Witness Notification and Agreement* form to local and state government officials the director of the IDOC has identified as potential witnesses to the execution.
- Monitor planning related to the scheduled execution.

***Administrative Team***

- Communicate with the Ada County Coroner's office regarding the disposition of the body, security for the Ada County Medical Examiner's vehicle, and the custodial transfer of the body.
- Confirm the qualifications of the team member to serve on the escort and medical teams, approve or deny each candidate, review the current specialty team rosters, and make replacements if needed.
- Ensure the assigned Medical Team members physically evaluate the condemned person to predetermine appropriate venous access locations.
- Arrange tests of all equipment and systems such as electrical, audio, plumbing, HVAC units in the execution chamber to ensure they are in working order.
- Contact licensed physician to ensure availability to perform duties as identified herein, including gathering any information necessary for a background check.
- Assign a staff member to test and perform maintenance as needed to all utilities (HVAC units, plumbing, electrical etc.) in the Execution Unit and establish a schedule for testing and reporting unit status during the time leading up to the execution date.
- Ensure the Medical Team room and execution chamber are equipped with one synchronized clock each. The synchronized clocks will be the official time keeping devices for the execution procedures.
- Ensure that execution chemicals have been purchased or that sources have been established. When chemicals are received, immediately start a chain of custody document, secure the chemicals, and monitor to ensure compliance with manufacturer specifications. Access to the chemicals must be limited to the members of the Administrative Team.
- If chemicals are on site, check the expiration dates on each item to ensure they will not expire before the execution date. If any item will expire before the execution date, immediately dispose of it appropriately.

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- Consult with Medical Team members regarding the equipment for the procedure and ensure all equipment and other medical supplies necessary to properly conduct the procedure is on site, immediately available for use, functioning properly and that expiration dates have not been exceeded.
- Ensure that all backup medical equipment, including a backup electrocardiograph (EKG) machine and instruments, crash cart, and defibrillator are on site, immediately available for use, functioning properly, and have current service dates.
- Check applicable sterilization dates on medical supplies to ensure they are useable on the execution date.
- Ensure that the Escort Team, Medical Team, and Incident Command Staff are conducting training as required by this SOP in preparation for the execution.
- Ensure that communication devices with inter-operability capability and restricted frequencies are available and will be on site before the execution date.

***Deputy Chief of the Division of Prisons***

- Notify facility heads at all IDOC correctional facilities of the pending execution and provide instruction to the facility heads regarding staff briefings and expectations.
- Direct all IDOC facility heads to develop incident action plans (IAP) for their respective facilities for facility management during the period leading up to and following the execution. The IAPs must be submitted to the Deputy Chief of the Division of Prisons at least 21 days before the scheduled execution date.
- Contact the IDOC contract monitor and Correctional Alternative Placement Program (CAPP) facility head to discuss the IAP for facility management during the period leading up to and following the execution. The CAPP facility must submit the IAP to the IDOC 21 days before the execution date.
- Identify and assign team leaders and members. Activate the teams.
- Establish the four security areas of the IDOC's South Boise Complex and provide that information to facility heads and other staff as needed.
- Confirm with the IMSI Warden that the training schedule has been activated ensuring that specialty team members have received adequate training, written instruction, and practice, and that all training has been documented.
- Discuss preparations at IMSI with the IMSI Warden.
- Confirm with all IDOC South Boise Complex facility Wardens that the training schedule has been activated ensuring that staff members participating in the execution have received adequate training, written instruction, and practice, and that all training has been documented.
- Contact the CISM team.
- Notify the IDOC Victim Services Coordinator of the issuance of a death warrant.
- If necessary, request through the appropriate authority that the Federal Aviation Administration (FAA) place a 24-hour temporary flight restriction.
- Ensure state and local law enforcement agencies are periodically briefed and prepared for the execution.



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- Establish the agenda, schedule meetings, and lead the discussion with state and local law enforcement and applicable IDOC staff regarding community safety, traffic control, and crowd control.
- Ensure that personnel from law enforcement agencies who have not participated in training sessions or who have not previously been involved in the execution process are briefed and their responsibilities explained.
- Invite state and local law enforcement liaisons to participate in periodic briefings about the execution and its impact on the community including access restrictions, crowd control, additional security precautions that may be warranted, and other pertinent information. Collaborate with each agency to determine each agency's role and each jurisdiction's responsibilities.
- Schedule tabletop and simulation exercises with State of Idaho and local law enforcement, identifying areas and activities for improvement and incorporate the findings into future simulations.
- Contact the applicable manager to discuss potential issues and ensure that appropriate management and/or support plans are developed if it is determined that any IDOC staff member, contractor, volunteer, or other condemned person under IDOC jurisdiction is a family member, has a legal or other significant relationship with the condemned person, the condemned person's family, the victim, or the victim's family.

#### ***IDOC PIO***

- Issue a news release announcing the date and time of the execution.
- Provide *Execution Witness Acknowledgment & Agreement* form to media contacts and as requested and establish a deadline for the return of all forms that provides enough time for background checks to be conducted prior to the execution date.
- Lead and coordinate media representative witness selection process.

#### ***IDOC Victim Services Coordinator***

- Determine if the IDOC has recorded victims or victim's immediate family who have requested notification and obtain contact information. The Victim Services Coordinator will provide the contact information to the Chief of the Division of Prisons. If possible, the Chief of the Division of Prisons will first contact the victims and their family by telephone.
- Provide a copy of the *Execution Witness Acknowledgment & Agreement* form to each victim or victim's family member who expresses interest in witnessing the execution using certified mail with a return receipt or other method that permits delivery tracking. Completed *Execution Witness Acknowledgment & Agreement* forms must be received at least 14 days before the execution.
- Notify the Victim-Witness Coordinator in the county in which the crime originated.
- Serve as liaison to victim families.

#### ***IMSI Warden***

- Once death warrant is served, begin an execution log to be kept in the IMSI Warden's office. This log will provide a comprehensive and chronological history. The

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IMSI Warden will document every aspect of the execution proceeding, including tasks and/or actions assigned to, or completed by an Administrative Team member, until the condemned person has been executed or has received a stay of execution order. When the process has been completed either by execution or stay, the log will be placed in the condemned person's central file.

- Ensure that the facility Health Services Administrator provides the condemned person an opportunity to complete an Idaho Physician Order for Scope of Treatment form.
- Ensure that the facility healthcare service is providing medications in unit doses and when available, in liquid form; that no medication, including over-the-counter medication, is being provided to the condemned person as keep-on-person; and that any medication the condemned person has requested be discontinued is no longer being provided.
- Discuss with the condemned person the options available for the disposition of the condemned person's body and that directions for disposition should be provided seven days before the execution date. If no such direction is provided, the bodily remains will be disposed of in accordance with SOP 312.02.01.001, *Death of an Inmate*. Give the condemned person a copy of SOP312.02.01.001.
- Inform the condemned person regarding ability to select a spiritual advisor and inquire if condemned person desires to request a spiritual advisor.
- Inform the condemned person regarding who they may select as a witness to the execution. This is typically two adults of the condemned person's choosing; one attorney of record; one spiritual advisor. All potential witnesses must meet the IDOC visitor requirements. The condemned person may decline to have any witnesses present.
- Outline how conditions of confinement will be modified over the next 30 days and briefly describe the relevant aspects of the execution process.
- Offer the opportunity to contact the condemned person's attorney of record by phone and to speak with a facility volunteer and religious activity coordinator (VRC) or spiritual advisor.
- Advise the condemned person about requesting a last meal from the IDOC standard food service menu.
- Provide the condemned person with a copy of [Summary of Procedures](#).
- Ensure that the condemned person's file is reviewed thoroughly to determine if there are any IDOC staff members, contractors, or volunteers who are family members, have a legal relationship, or any other significant relationship with the condemned person, the victim, or victim's family; or if there are any condemned persons under IDOC jurisdiction who are family members, have a legal relationship, or any other significant relationship with the condemned person, the victim, or victim's family. If any such persons are identified, relay that information to the Deputy Chief of the Division of Prisons.
- Notify the commissary provider of the restrictions placed on the condemned person's commissary purchases.

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- Contact the condemned person's family by telephone to inform them of the scheduled execution date, the name and contact information of the Warden's liaison, and any other related issues.
- Within two business days of service of a death warrant provide *Execution Witness Acknowledgment & Agreement* form to individuals selected by condemned person as potential witnesses by certified mail or other means which can verify delivery.
- Direct the IDOC Health Services Director to develop a medical emergency response plan that provides adequate emergency response in the Execution Unit.
- Ensure that healthcare services staff obtain the condemned person's current weight and enter that information into the IMSI Warden's execution log.

***IMSI Warden's Liaison to Condemned Person***

Meet with the condemned person at least once each working day and forward all questions and concerns directly to the IMSI Warden.

***IMSI Deputy Warden (Acting as Facility Head)***

- Establish a management plan including staffing, meals, and contingency plans to ensure the safe and orderly operation of the facility during the time leading up to the execution.
- Brief the Deputy Chief of the Division of Prisons on the management plan.
- Monitor IMSI activities and brief the Deputy Chief of the Division of Prisons if any concerns or problems arise.

**16. Twenty-One to Seven Days Prior to the Execution**

Twenty-one to seven days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the Director of the IDOC, Chief of the Division of Prisons, and the Deputy Chief of the Division of Prisons.

Unless a specific timeline is identified, the tasks outlined in this section are not required to be completed in a specific order.

***Chief of the Division of Prisons***

- Continue to provide briefings to IDOC staff.
- Compile a list of State of Idaho and media witnesses and forward all completed *Execution Witness Acknowledgment & Agreement* forms to the Deputy Chief of the Division of Prisons.
- Monitor planning related to the scheduled execution.

***Administrative Team***

- Ensure that the Escort Team, Medical Team, and Incident Command Staff are conducting training in preparation for the execution.
- Contact the Ada County Coroner's office and determine the protocol regarding the transfer of the condemned person's body to the Coroner's possession following the execution and forward that information to the IMSI Warden.
- Take steps to resolve any outstanding equipment and inventory issues.

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***Deputy Chief of the Division of Prisons***

- Brief Director of the IDOC and Chief of the Division of Prisons.
- Continue to conduct tabletop and live exercises with the previously identified teams.
- Review IDOC and CAPP facility IAPs and continue discussion and preparation with facility heads.
- Contact the CISM team leader and ensure the team is making appropriate preparations.
- Convene a meeting with state and local law enforcement agencies to discuss any changes or modifications to crowd control, traffic control, and community safety.

***IDOC PIO***

- Address media-specific inquiries.
- Forward all completed *Execution Witness Acknowledgment & Agreement* forms provided by potential media representative witnesses to the Deputy Chief of the Division of Prisons or designee for a criminal background check.
- Notify members of the media regarding the status of their witness applications.

***IMSI Warden***

- Communicate with the condemned person as needed.
- Retrieve the completed *Execution Witness Acknowledgment & Agreement* forms for the condemned person's identified potential witnesses.
- Ensure the condemned person has provided directions for the handling of their remains. If no information is provided or the information is insufficient or incorrect, the remains will be handled according to SOP 312.02.01.001, *Death of an Inmate*.
- Ensure that the condemned person has had the opportunity to complete an Idaho Physician Orders for Scope of Treatment form.
- Ensure the condemned person has provided directions for the disposition of property and inmate trust fund.
- Meet with the facility Health Services Administrator and IDOC Health Services Director to review plans for coverage and emergency response before and following the scheduled execution.

***IMSI Warden's Liaison to Condemned Person***

- Continue daily contact with the condemned person.
- Stay in contact with the condemned person's family.
- Update the IMSI Warden on any issues, requests, or questions.

***IMSI Deputy Warden (Acting as Facility Head)***

- Ensure that the necessary action steps have been taken regarding the IMSI management plan including staffing, meals, and contingency plans to ensure the safe and orderly operation of the facility during the time leading up to the execution.
- Brief the Deputy Chief of the Division of Prisons on the status of the management plan.

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- Continue to monitor IMSI activities and brief the Deputy Chief of the Division of Prisons if any concerns or problems arise.

## **17. Seven to Two Days Prior to the Execution**

Seven to two days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the Director of the IDOC, the Chief of the Division of Prisons, and the Deputy Chief of the Division of Prisons.

Unless a specific timeline is identified, the tasks outlined in this section are not required to be completed in a specific order.

### ***Chief of the Division of Prisons***

- Continue to provide briefings to IDOC staff.
- Gather the names of those planning to witness the execution.
- Monitor planning related to the scheduled execution.

### ***Administrative Team***

- Ensure that the Escort Team, Medical Team, and Incident Command Staff have completed adequate training sessions required by this SOP.
- Confirm preventive maintenance of the execution chamber is current.
- Test equipment, lighting, audio, HVAC units, etc. in the execution chamber.
- Ensure that audio/video equipment is ready and operational.
- Confirm that the inventory of equipment, necessary supplies, and backup materials are on-site.
- Recheck the medical supplies and chemicals to ensure that each item is ready, expiration dates have not been exceeded, items are properly packaged, and if applicable sterilized.
- At least three days before the scheduled execution date, obtain technical assistance for the purpose of reviewing the lethal substances, review chemical test results and certificate of analysis, the amounts, the methods of delivery and injection, and the condemned person's physical and historical characteristics to evaluate compliance with this SOP. The individual(s) conducting the technical review will observe the Medical Team place IV catheters and establish an IV drip line in a live body. The individual(s) conducting the technical review will meet with the Administrative Team to review the findings. The Director of the IDOC will make the final determination regarding compliance with this SOP.

### ***Deputy Chief of the Division of Prisons***

- Brief Director of the IDOC and Chief of the Division of Prisons.
- Stand up the ICS center.
- Continue tabletop and live exercises as needed.
- Confirm staffing levels and necessary vehicles for regular operations and the execution are appropriate and ready.

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- Ensure state and local law enforcement agencies are fully briefed.
- Gather all information regarding media, potential media witnesses, and those who will be present at the execution and ensure all potential witnesses have completed an *Execution Witness Acknowledgment & Agreement* form and all necessary background checks have been completed or are in process.
- In conjunction with the IDOC Leadership Team, ISCI and IMSI Wardens, finalize the media plan, potential media witnesses, and those who will be present at the execution.

#### ***IDOC PIO***

- Conduct the selection process for media representative witnesses and alternates approximately seven days prior to the execution.
- Complete a list of the media representatives who want to be at or the South Boise Complex or be in the media center, but not present at the execution.
- Forward the lists of media agencies, media staff members, and potential media witnesses to the Director of the IDOC, Chief of the Division of Prisons, Deputy Chief of the Division of Prisons, and IMSI Warden.
- Conduct a preliminary briefing with potential media representative witnesses and media representatives serving as pool reporters.

#### ***Medical Team Leader***

- Ensure serviceability of all medical equipment including EKG machines (to include instruments), the defibrillator, and the availability of graph paper.
- Ensure heart monitor lead lines are sufficient in length.

#### ***IMSI Warden***

- Communicate with the condemned person as needed.
- Address any unresolved questions or issues.

#### ***IMSI Warden's Liaison to Condemned Person***

- Continue daily contact with the condemned person.
- Have the condemned person complete a withdrawal slip for any remaining funds in his or her trust account and designate to whom the funds should be sent.
- Stay in contact with the condemned person's family.
- Update the IMSI Warden on any issues, requests, or questions.

#### ***IMSI Deputy Warden (Acting as Facility Head)***

- Review staffing to ensure there is adequate coverage near the execution date.
- Review use of force inventories, less than lethal weapons and munitions to ensure that adequate supplies are in place if needed for emergency response.
- Brief shift commanders, unit sergeants, and case managers.
- Ensure that proper tool and key control procedures are being followed.

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- Ensure that transportation vehicles that are not assigned to the execution process are available if needed for IMSI operational needs.
- Meet with maintenance staff to review any problems or concerns with infrastructure.
- Meet with the facility Health Services Administrator to ensure that an adequate emergency response plan is in place for the time frame near the execution.
- Brief the IMSI Warden and the deputy chief of the Division of Prisons regarding the emergency plan preparedness and any issues or concerns.

## **18. Two Days Prior to the Execution**

Two days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the Director of the IDOC, Chief of the Division of Prisons, and the Deputy Chief of the Division of Prisons.

Unless a specific timeline is identified, the tasks outlined in this section are not required to be completed in a specific order.

### ***Chief of the Division of Prisons***

- Continue to provide briefings to IDOC staff.
- Monitor planning related to the scheduled execution.

### ***Administrative Team***

- Conduct at least two rehearsal sessions with the Escort Team, Medical Team, and ICS.
- Confirm that Escort and Medical Teams, a licensed physician, emergency medical personnel, and the Ada County Coroner are scheduled and will be on-site at the established time.
- Restrict access to the execution chamber to those with expressly assigned duties.
- Ready the execution chamber for the execution.
- Verify execution inventory and equipment checks are completed and open issues resolved.

### ***Deputy Chief of Division of Prisons***

- Schedule and conduct South Boise Complex simulation exercises, as necessary and modify practices if warranted.
- Ensure that contracted services have planned their activities to coincide with the incident action plans for modified operational status related to the scheduled execution.
- Contact IDOC and CAPP facility heads to monitor their preparation and status.
- Confirm adequate staffing, equipment, and materials are in place for regular operations and the execution.

## **19. Twenty-Four to Twelve Hours Prior To the Execution**

Twenty-four to twelve hours prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the

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responsible party will notify the Director of the IDOC, Chief of the Division of Prisons, and the Deputy Chief of the Division of Prisons.

Unless a specific timeline is identified, the tasks outlined in this section are not required to be completed in a specific order.

***Administrative Team***

- Ensure the final preparation of Execution Unit is complete. Each room receives a final evaluation specific to its functions including security, climate control, lighting, sound, and sanitation.
- Ensure that video monitoring and intercom systems are functioning properly.
- Ensure the Medical Team room and execution chamber clocks are accurately set and working.
- Ensure that appropriate restraints are ready.
- Ensure that communication devices are ready.
- Ensure that the Medical Team leader checks the EKG machine instruments to confirm they are functioning properly.
- Ensure that the crash cart and defibrillator are in place and functioning properly.
- Check medical supply and chemical inventory.

***Deputy Chief of the Division of Prisons***

- Activate the following teams:
  - ◆ Incident Command Team
  - ◆ CERT
  - ◆ Maintenance
  - ◆ CISM
  - ◆ Traffic Control Team
- Ensure CISM is activated state-wide.
- Modify operation of the IDOC's South Boise Complex.
- Contact IDOC and CAPP facility heads to ensure they are prepared to activate their IAPs for modified operation.
- Establish the ICS command center.

***IDOC PIO***

Establish the media center.

***IDOC Health Services Director***

Conduct a review of the condemned person's medical file and healthcare.

***IMSI Warden***

- Ensure that all the condemned person's remaining property, except one religious item, is removed and inventoried, and that there is a completed disposition sheet for personal property.



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- Ensure that both witness areas are in order.
- Ensure that transportation vehicles are ready.
- Ensure that food service is prepared to serve the requested last meal.

***IMSI Deputy Warden (Acting as Facility Head)***

- Activate the IMSI facility management plan.

**Note:** The plan can be activated earlier if activities, behaviors, or other issues indicate it prudent to do so.

- Ensure that detailed staff briefings are provided.
- Ensure that CISM is on-site at IMSI.

**20. Twelve Hours Prior To the Execution**

Twelve hours prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, Chief of the Division of Prisons, and the Administrative Team.

Unless a specific timeline is identified, the tasks outlined in this section are not required to be completed in a specific order.

***Deputy Chief of the Division of Prisons***

Contact IDOC and CAPP facility heads to ensure they have activated their incident action plans for modified operation.

***Restricting Access to IDOC Property***

During the final 12 hours prior to the execution, access to the IDOC's South Boise Complex is limited. Restrictions will remain in effect until normal operations resume after the execution or a stay of execution is issued.

Access is limited to the following:

- On-duty personnel
- On-duty contract personnel
- Volunteers deemed necessary by the facility wardens
- Approved delivery vehicles
- Approved media representative
- Approved execution witnesses
- Law enforcement personnel on business-related matters
- Others as approved by the ICS operations chief

***Incarcerated Population Management***

- The IDOC's South Boise Complex and CAPP facilities will go on secure status as defined and ordered by the ICS Operations Chief at conclusion of a formal count and not less than nine hours prior to the scheduled execution.

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- After the conclusion of the execution or stay of execution, all IDOC and contract prison facilities will return to regular operations at the direction of the ICS Operations Chief.

#### ***Activities of the Condemned Person***

- Ensure the last meal is served by approximately 1900 hours the day prior to the scheduled execution. All eating utensils and remaining food and beverage will be removed upon completion of the meal.
- Telephone calls will be terminated at 2100 hours the day prior to the execution, excluding calls with the attorney of record and others approved by the IMSI Warden.
- Visits will be terminated at 2100 hours the night prior to the execution, excluding visits from the attorney of record and others as approved by the IMSI Warden.
- No later than 2300 hours the night prior to the execution, the facility healthcare services staff will offer the condemned person a mild sedative.
- No later than five hours prior to the execution, the condemned person will be offered a light snack.
- No later than four hours prior to the execution, the facility healthcare services staff will offer the condemned person another mild sedative.

### **21. Final Preparations**

During the final preparations, the IMSI Warden will be unavailable to address issues not directly related to the execution process. All other inquiries will be directed to a member of the Administrative Team.

#### ***Witness Briefing***

Prior to entering the execution witness areas, the Chief of the Division of Prisons will provide briefings of the execution process to the execution witnesses. The victim's family and condemned person's family will receive separate briefings.

#### ***Procedures to Carry out the Execution***

The procedures for carrying out the execution are found in *Execution Chemicals Preparation and Administration*.

**Note:** Total anonymity of personnel in the Medical Team room must be maintained. At no time will the personnel be addressed by name or asked anything that would require an oral response.

### **22. Pronouncement of Death**

Idaho Code section 19-2716 requires that the death of a condemned person be pronounced by the Ada County Coroner or Deputy Coroner.

The Ada County Coroner or Deputy Coroner will be staged in or near the Execution Unit during the execution process. When the execution process has been completed, the coroner will enter the execution chamber, examine the condemned person, and pronounce the condemned person's death. The IMSI Warden will announce that the sentence of death has been carried out as ordered by the court and the execution has been completed.

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### **23. Return of the Death Warrant**

After the execution, the IMSI Warden must complete and return the death warrant, showing the date, time, and manner in which it was executed. The original death warrant will be returned to the sentencing court. Copies of the death warrant with the return information will be filed in the condemned person's central file and forwarded to the DAGs representing IDOC.

### **24. Following the Execution**

#### ***Administrative Team***

- Ensure that the assigned members of the Medical Team will return all unused materials to the safe in the execution chamber.
- Gather all documents, logs, recordings, sequence of chemical forms, EKG machine tape, list of identifiers, etc. and deliver them to the DAG who represents the IDOC.
- Upon completion or long-term stay, inventory the items, complete the chain of custody, and secure the items in the administration safe.
- Retrieve all secured materials.
- Destroy all used materials in accordance with safe disposal practices and document the disposition of each drug on the inventory sheet.

#### ***Deputy Chief of the Division of Prisons***

Contact all facility heads and determine each facilities' status and any issues that were experienced related to the execution process.

#### ***Execution Chamber and Condemned Isolation Cell Cleaning***

Under the supervision of a person designated by the Administrative Team member, the execution chamber and condemned isolation cell will be cleaned and secured. Facility staff trained in infectious diseases preventive practices will utilize appropriate precautions in cleaning the execution chamber.

#### ***Resuming Normal Operations***

ICS command center will determine when the prisons resume normal operations after receiving assessments from all facility wardens.

IDOC staff will be deactivated at the direction of ICS command center.

#### ***Debriefing***

Within 48 hours of the completion of the execution, the Deputy Chief of the Division of Prisons and IMSI Warden will debrief the Director of the IDOC and Chief of the Division of Prisons and other Leadership Team staff as the director deems appropriate regarding the process and if applicable make recommendations to revise the standard operation procedure or other related processes or documents.

### **DEFINITIONS**

None

### **REFERENCES**

*Execution Chemicals Preparation and Administration*

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*Summary of Procedures*

*Execution Witness Acknowledgment & Agreement*

*Execution Chemicals Preparation and Administration*

Idaho Code, Title 19, Chapter 27, Section 19-2705, *Death Sentence or Death Warrant and Confinement There under – Access to Condemned Person*

Idaho Code, Title 19, Chapter 27, Section 19-2713, *Proceedings When Female Supposed to be Pregnant*

Idaho Code, Title 19, Chapter 27, Section 19-2714, *Findings in Case of Pregnancy*

Idaho Code, Title 19, Chapter 27, Section 19-2715, *Ministerial Actions Relating to Stays of Execution, Resetting Execution Dates, and Order of Execution of Judgment of Death*

Idaho Code, Title 19, Chapter 27, Section 19-2716, *Infliction of Death Penalty*

Idaho Code, Title 19, Chapter 27, Section 19-2718, *Return of Death Warrant*

Idaho Code, Title 60, Chapter 1, Section 60-106, *Qualifications of Newspapers Printing Legal Notices*

IDAPA 06.01.01.135, *Executions*

IDAPA 06.01.01.108, *Idaho Public Records Act*

Standard Operating Procedure [312.02.01.001](#), *Death of an Inmate*

Standard Operating Procedure [319.02.01.001](#), *Restrictive Housing*

Standard Operating Procedure [320.02.01.001](#), *Property: State-issued and Resident Personal Property*

Standard Operating Procedure [604.02.01.001](#), *Visiting*

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# EXHIBIT I

**IDAHO DEPARTMENT OF CORRECTION**  
**Execution Chemicals Preparation and Administration**

**A. Modifications to Protocols and Procedures**

There must be no deviation from the procedures, protocols, and chemicals in this procedure without prior consent from the Director of the IDOC. A member of the Administrative Team must monitor and ensure compliance with protocols and procedures related to the preparation and administration of chemicals.

**B. Preparation of Chemicals**

At the appropriate time, the IMSI Warden will transfer custody of the chemicals to the Medical Team leader so the Medical Team can complete chemical and syringe preparation.

The Medical Team leader will supervise the syringe preparation, assigning a Medical Team member to prepare each chemical and the corresponding syringe. The assigned Medical Team members must prepare their designated chemical and syringes for three complete sets of chemicals to be used in the implementation of the death sentence. A third set of syringes must be available and ready for use as backup.

The assigned Medical Team member must be responsible for preparing and labeling the assigned sterile syringes in a distinctive manner identifying the specific chemical contained in each syringe by (a) assigned number, (b) chemical name, (c) chemical amount and (d) the designated color, as set forth in the chemical chart below. This information must be preprinted on a label, with two (2) labels affixed to each syringe to ensure a label remains visible.

There must be sufficient lighting and physical space in the Medical Team room and the execution chamber to enable team members to function properly and to observe the condemned person. The condemned person will be positioned to enable the Medical Team leader to view the condemned person's arms (or other designated intravenous [IV] location) and face with the aid of a color camera and a color monitor.

After the Medical Team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader will place three (3) complete sets of the prepared and labeled syringes in the color-coded and labeled syringe trays in the order in which the chemicals are to be administered. The syringes will be placed in the color-coded and labeled syringe trays in a manner to ensure there is no crowding, with each syringe resting in its corresponding place in the shadow box which is labeled with the name of the chemical, color, chemical amount and the designated syringe number.

The syringes must be placed in such a manner to ensure the syringe labels are clearly visible. Prior to placing the syringes in the color-coded and labeled syringe trays, the flow will be checked by the Medical team leader running saline solution through the line to confirm there is no obstruction.

After all syringes are prepared and placed in color-coded and labeled syringe trays in proper order, the Medical Team leader must confirm that all syringes are properly labeled and placed in the color-coded and labeled syringe trays in the order in which the chemicals are to be administered as designated by the applicable chemical chart. Each chemical must be administered in the predetermined order in which the syringes are placed in the tray.

**C. Approved Chemicals**

The IDOC has four (4) options for lethal injection methods. Which option is used is dependent upon the availability of chemicals.

The Director of the IDOC has approved the following lethal injection chemicals and methods as described in Chemical Chart 1, Chemical Chart 2, Chemical Chart 3, and Chemical Chart 4:

**Method 1**

CHEMICAL CHART 1	
Primary SET A	
Syringe No.	Label
1A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
2A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
3A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
4A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
5A (flush)	60mL Saline, <b>BLACK</b>
6A (complete 6-7)	60mg Pancuronium Bromide, <b>BLUE</b>
7A (complete 6-7)	60mg Pancuronium Bromide, <b>BLUE</b>
8A (flush)	60mL Saline, <b>BLACK</b>
9A (complete 9-10)	120mEq Potassium Chloride, <b>RED</b>
10A (complete 9-10)	120mEq Potassium Chloride, <b>RED</b>
11A (flush)	60mL Saline, <b>BLACK</b>

CHEMICAL CHART 1		CHEMICAL CHART 1	
Backup Set B		Backup Set C	
Syringe No.	Label	Syringe No.	Label
1B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	1C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
2B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	2C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
3B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	3C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
4B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	4C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
5B (flush)	60mL Saline, <b>BLACK</b>	5C (flush)	60mL Saline, <b>BLACK</b>
6B (complete 6-7)	60mg Pancuronium Bromide, <b>BLUE</b>	6C (complete 6-7)	60mg Pancuronium Bromide, <b>BLUE</b>
7B (complete 6-7)	60mg Pancuronium Bromide, <b>BLUE</b>	7C (complete 6-7)	60mg Pancuronium Bromide, <b>BLUE</b>
8B (flush)	60mL Saline, <b>BLACK</b>	8C (flush)	60mL Saline, <b>BLACK</b>
9B (complete 9-10)	120mEq Potassium Chloride, <b>RED</b>	9C (complete 9-10)	120mEq Potassium Chloride, <b>RED</b>
10B (complete 9-10)	120mEq Potassium Chloride, <b>RED</b>	10C (complete 9-10)	120mEq Potassium Chloride, <b>RED</b>
11B (flush)	60mL Saline, <b>BLACK</b>	11C (flush)	60mL Saline, <b>BLACK</b>

**Syringe Preparation (Method 1)**

Syringes 1A, 2A, 3A, 4A, 1B, 2B, 3B, 4B, 1C, 2C, 3C and 4C each contain 1.25 gm/50ml. of sodium pentothal / 1 in 50 ml. of sterile water in four (4) 60 ml. syringes for a total dose of 5 grams of sodium pentothal in each set. Each syringe containing sodium pentothal will have a **GREEN** label which contains the name of chemical, chemical amount, and the designated syringe number.

Syringes 5A, 8A, 11A, 5B, 8B, 11B, 5C, 8C and 11C each contain 60 ml. of a saline solution, at a concentration of 10 units of heparin per milliliter and will have a **BLACK** label which contains the name of the chemical, chemical amount, and the designated syringe number.

Syringes 6A, 7A, 6B, 7B, 6C and 7C each contain 60 mg of pancuronium bromide for a total of 120 mg of pancuronium bromide in each set. Each syringe containing pancuronium bromide will have a **BLUE** label which contains the name of the chemical, chemical amount, and the designated syringe number.

Syringes 9A, 10A, 9B, 10B, 9C and 10C each contain 120 milliequivalents of potassium chloride for a total of 240 milliequivalents of potassium chloride in each set. Each syringe containing potassium chloride will have a **RED** label which contains the name of the chemical, chemical amount, and the designated syringe number.

After the Medical Team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader must ensure the IV setup is completed.

## Method 2

CHEMICAL CHART 2	
Primary SET A	
Syringe No.	Label
1A (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
2A (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
3A (flush)	60mL Saline, <b>BLACK</b>
4A (complete 4-5)	60mg Pancuronium Bromide, <b>BLUE</b>
5A (complete 4-5)	60mg Pancuronium Bromide, <b>BLUE</b>
6A (flush)	60mL Saline, <b>BLACK</b>
7A (complete 7-8)	120mEq Potassium Chloride, <b>RED</b>
8A (complete 7-8)	120mEq Potassium Chloride, <b>RED</b>
9A (flush)	60mL Saline, <b>BLACK</b>

CHEMICAL CHART 2		CHEMICAL CHART 2	
Backup Set B		Backup Set C	
Syringe No.	Label	Syringe No.	Label
1B (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>	1C (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
2B (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>	2C (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
3B (flush)	60mL Saline, <b>BLACK</b>	3C (flush)	60mL Saline, <b>BLACK</b>
4B (complete 4-5)	60mg Pancuronium Bromide, <b>BLUE</b>	4C (complete 4-5)	60mg Pancuronium Bromide, <b>BLUE</b>
5B (complete 4-5)	60mg Pancuronium Bromide, <b>BLUE</b>	5C (complete 4-5)	60mg Pancuronium Bromide, <b>BLUE</b>
6B (flush)	60mL Saline, <b>BLACK</b>	6C (flush)	60mL Saline, <b>BLACK</b>
7B (complete 7-8)	120mEq Potassium Chloride, <b>RED</b>	7C (complete 7-8)	120mEq Potassium Chloride, <b>RED</b>
8B (complete 7-8)	120mEq Potassium Chloride, <b>RED</b>	8C (complete 7-8)	120mEq Potassium Chloride, <b>RED</b>
9B (flush)	60mL Saline, <b>BLACK</b>	9C (flush)	60mL Saline, <b>BLACK</b>

### Syringe Preparation (Method 2)

Syringes 1A, 2A, 1B, 2B, 1C, and 2C each contain 2.5 gm of pentobarbital for a total of 5 grams in each set. Each syringe containing pentobarbital will have a **GREEN** label which contains the name of chemical, chemical amount and the designated syringe number.

Syringes 3A, 6A, 9A, 3B, 6B, 9B, 3C, 6C and 9C each contain 60 ml. of a saline solution and will have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

Syringes 4A, 5A, 4B, 5B, 4C and 5C each contain 60 mg of pancuronium bromide for a total of 120 mg of pancuronium bromide in each set. Each syringe containing pancuronium bromide will have a **BLUE** label which contains the name of the chemical, chemical amount and the designated syringe number.

Syringes 7A, 8A, 7B, 8B, 7C and 8C each contain 120 milliequivalents of potassium chloride for a total of 240 milliequivalents of potassium chloride in each set. Each syringe containing potassium chloride will have a **RED** label which contains the name of the chemical, chemical amount and the designated syringe number.

After the Medical Team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader must ensure the IV setup is completed.



**Method 3**

CHEMICAL CHART 3	
Primary Set A	
Syringe No.	Label
1A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
2A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
3A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
4A (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
5A (flush)	60mL Saline, <b>BLACK</b>

CHEMICAL CHART 3		CHEMICAL CHART 3	
Backup Set B		Backup Set C	
Syringe No.	Label	Syringe No.	Label
1B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	1C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
2B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	2C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
3B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	3C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
4B (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>	4C (complete 1-4)	1.25 g Sodium Pentothal, <b>GREEN</b>
5B (flush)	60mL Saline, <b>BLACK</b>	5C (flush)	60mL Saline, <b>BLACK</b>

**Syringe Preparation (Method 3)**

Syringes 1A, 2A, 3A, 4A, 1B, 2B, 3B, 4B, 1C, 2C, 3C, and 4C each contain 1.25 gm/50ml. of sodium pentothal / 1 in 50 ml. of sterile water in four (4) 60 ml. syringes for a total dose of 5 grams of sodium pentothal in each set. Each syringe containing sodium pentothal will have a **GREEN** label which contains the name of chemical, chemical amount, and the designated syringe number.

Syringes 5A, 5B, and 5C each contain 60 ml. of a saline solution and will have a **BLACK** label which contains the name of the chemical, chemical amount, and the designated syringe number.

After the Medical Team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader must ensure the IV setup is completed.

**Method 4**

CHEMICAL CHART 4	
Primary Set A	
Syringe No.	Label
1A (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
2A (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
3A (flush)	60mL Saline, <b>BLACK</b>

CHEMICAL CHART 4		CHEMICAL CHART 4	
Backup Set B		Backup Set C	
Syringe No.	Label	Syringe No.	Label
1B (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>	1C (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
2B (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>	2C (complete 1-2)	2.5 g Pentobarbital <b>GREEN</b>
3B (flush)	60mL Saline, <b>BLACK</b>	3C (flush)	60mL Saline, <b>BLACK</b>

**Syringe Preparation (Method 4)**

Syringes 1A, 2A 1B, 2B, 1C, and 2C each contain 2.5 gm of pentobarbital for a total of 5 grams in each set. Each syringe containing pentobarbital will have a **GREEN** label which contains the name of chemical, chemical amount and the designated syringe number.

Syringes 3A, 3B, and 3C each contain 60 ml. of a saline solution and will have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

After the Medical Team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader must ensure the IV setup is completed.

**Note:** The chemical amounts as set forth in chemical charts 1, 2, 3, and 4 are designated for the execution of persons weighing 500 pounds or less. The chemical amounts will be reviewed and may be revised as necessary if weight exceeds 500 pounds.

**Note:** The quantities of chemicals prepared and administered may not be changed in any manner without prior approval of the Director of the IDOC.

**Note:** The full dose contained in each syringe must be administered to the condemned person and subsequently documented by the designated recorder. The quantities of the chemicals prepared and administered may not be changed in any manner without prior approval of the Director of the IDOC after consultation with the Medical Team leader. If all electrical activity of the heart ceases prior to administering all of the chemicals, the Medical Team members must continue to follow this protocol and administer all remaining chemicals in the order and amounts set forth in the applicable chemical chart.

#### **IV Setup Procedure**

After all syringes are prepared and placed in proper order, the Medical Team leader must confirm that all syringes are properly labeled and placed in the order in which the chemicals are to be administered as designated by the chemical chart. Each chemical must be administered in the predetermined order in which the syringes are placed in the color-coded and labeled syringe trays.

**Note:** All of the prepared chemicals must be used or properly disposed of no later than 24 hours after the time designated for the execution to occur.

**Note:** Should a stay delay the execution beyond 24 hours of the scheduled execution, another primary set of syringes must be prepared when the execution is rescheduled in accordance with the process set forth in this procedure.

#### **D. Chemical Delivery Procedures**

The Medical Team recorder is responsible for completing the applicable sequence of chemical form (see appendixes 1 through 4). The recorder must document on the form the amount of each chemical administered and confirm that it was administered in the order set forth in the chemical chart. Any deviation from the written procedure must be noted and explained on the form.

#### **E. Preparation, Movement, and Monitoring of the Condemned Person**

Prior to moving the condemned person from the isolation cell to the execution table, the Director of the IDOC will confer with the Idaho Attorney General, or designee, and the Idaho Governor, or designee, to confirm there is no legal impediment to proceeding with the lawful execution.

The condemned person will be offered a mild sedative based on need. The sedative must be provided to the condemned person no later than four hours prior to the execution unless it is determined medically necessary.

The witnesses will be brought into the appropriate witness areas.

At the designated time, the Escort Team will escort the condemned person to the execution chamber. The condemned person will be secured on the table by the prescribed means.

After the condemned person has been secured to the execution table, the Escort Team leader will personally check the restraints which secure the condemned person to the table to ensure they are not so restrictive as to impede the condemned person's circulation, yet sufficient to prevent manipulation of the catheters and IV lines.

Once the condemned person is secured, the Medical Team leader will attach the leads from the electrocardiograph (EKG) monitor to the condemned person's chest and confirm that the EKG monitor is functioning properly and that the proper graph paper is used. A backup EKG monitor must be on site and readily available if necessary.

A Medical Team member must be assigned to monitor the EKG monitor and mark the EKG graph paper at the commencement and completion of the administration of each chemical. The assigned identifier of the Medical Team member monitoring the EKG monitor must be noted at each juncture.

Throughout the procedure, the Medical Team members must continually monitor the condemned person's level of consciousness and EKG monitor readings, maintaining constant observation using one or more of the following methods: direct observation, audio equipment, camera, and television monitor as well as any other medically approved method(s) deemed necessary by the Medical Team leader. The Medical Team leader will be responsible for monitoring the condemned person's level of consciousness.

The assigned Medical Team members will insert the catheters and attach the IV lines at the appropriate time in a manner in which the witnesses may view it.

Once all witnesses are secured in the witness rooms, the IMSI Warden must read aloud a summary of the death warrant.

A microphone will be positioned to enable the Medical Team leader to hear any utterances or noises made by the condemned person throughout the procedure. The Medical Team leader will confirm the microphone is functioning properly, and that the condemned person can be heard in the Medical Team room. The Escort Team members assigned to the witness areas will confirm that the audio of the execution can be heard in both witness areas.

The IMSI Warden must ensure there is a person present in the execution chamber throughout the execution who is able to communicate with the condemned person in their primary language. This person will be positioned to clearly see, hear, and speak to the condemned person throughout the execution. If the IMSI Warden can communicate with the condemned person in their primary language, he may serve in that capacity.

The IMSI Warden will ask the condemned person if he wishes to make a last statement and provide an opportunity to do so.

The IMSI Warden will offer the condemned person an eye covering.

## **F. Intravenous Lines**

The assigned Medical Team members will determine the best sites on the condemned person to insert a primary IV catheter and a backup IV catheter in two separate locations in the peripheral veins utilizing appropriate medical procedures. The insertion sites in order of preference will be arms, hands, ankles, and feet, as determined medically appropriate by the Medical Team leader. Both primary and backup IV lines will be placed unless in the opinion of the Medical Team leader it is not possible to reliably place two peripheral lines. If it is not possible to reliably place two peripheral lines, the Medical Team leader will direct Medical Team members to place an IV catheter in a central line for the purpose of administering the chemicals.

At the discretion of the Medical Team leader, a localized anesthetic may be used to numb the venous access site.

To ensure proper insertion in the vein, the assigned Medical Team members should watch for the flashback of blood at the catheter hub in compliance with medical procedures.

The assigned Medical Team members must ensure the catheter is properly secured with the use of tape or adhesive material, properly connected to the IV line and out of reach of the condemned person's hands. A flow of saline will be started in each line and administered at a slow rate to keep the line open.

The primary IV catheter will be used to administer the chemicals and the backup catheter will be reserved in the event of the failure of the first line. Any failure of a venous access line must be immediately reported to the IMSI Warden.

The IV catheter in use must not be covered and must remain visible throughout the procedure.

The IMSI Warden must physically remain in the execution chamber with the condemned person throughout the administration of the chemicals in a position sufficient to clearly observe the condemned person and the primary and backup IV sites for any potential problems and must immediately notify the Medical Team leader and Director of the IDOC should any issue occur. Upon receipt of such notification, the Director of the IDOC will stop the proceedings and take all steps necessary in consultation with the Medical Team leader prior to proceeding further with the execution.

Should it be determined that the use of the backup IV catheter is necessary, a complete set of backup chemicals will be administered in the backup IV as set forth in the applicable chemical chart.

## **G. Administration of Chemicals Methods 1 and 2**

At the time the execution is to commence and prior to administering the chemicals, the Director of the IDOC will confirm with the Idaho Attorney General, or designee, and the Idaho Governor, or designee, that there is no impediment to proceeding with the execution. Upon receipt of confirmation that there is no impediment, the Director of the IDOC will instruct the IMSI Warden to commence the process to carry

out the sentence of death. If there is an impediment to the execution, the Director of the IDOC must instruct the IMSI Warden to **stop the process** and to notify the condemned person and witnesses that the execution has been stayed or delayed. The IMSI Warden, or designee, will notify the IDOC PIO and other staff as necessary.

Upon receiving the order to commence the execution process from the Director of the IDOC, the IMSI Warden will instruct the Medical Team leader to begin administering the chemicals. The Medical Team leader will instruct the assigned Medical Team member to begin dispensing the first chemical.

Upon direction from the Medical Team leader, the assigned Medical Team member will visually and verbally confirm the chemical name on the syringe and then administer the full dose of either sodium pentothal/or pentobarbital immediately followed by the saline flush. The saline is administered as a secondary precaution to further ensure the line is functioning properly and flushed between each chemical.

After the sodium pentothal/or pentobarbital and saline have been administered and before the Medical Team members begin administering the pancuronium bromide, the Medical Team leader must confirm the condemned person is unconscious by direct examination.. The Medical Team leader, dressed in a manner to preserve anonymity, will enter the execution chamber to physically confirm the condemned person is unconscious by using all necessary medically appropriate techniques such as giving verbal stimulus, soliciting an auditory response, touching the eyelashes, conducting a sternal rub. The Medical Team leader will also confirm that the IV line remains affixed and functioning properly.

No further chemicals will be administered until the Medical Team leader has confirmed the condemned person is unconscious. After three minutes have elapsed since the administration of the sodium pentothal or pentobarbital, the Medical Team leader will assess and confirm that the condemned person is unconscious. The Medical Team leader will verbally advise the IMSI Warden of the condemned person's status.

If the condemned person is conscious the Medical Team must assess the situation to determine the reason, if possible. The Medical Team leader must communicate this information to the IMSI Warden, along with all Medical Team input. The IDOC Director will determine how to proceed, including whether to start the procedure over at a later time or stand down.

If deemed appropriate, the IMSI Warden may instruct the Medical Team to administer an additional 5 grams of sodium pentothal/or pentobarbital followed by the saline flush from backup set B.

Upon administering the sodium pentothal/or pentobarbital and saline from backup set B, the Medical Team leader will again physically confirm the condemned person is unconscious using proper medical procedures and verbally advise the IMSI Warden of the same. Throughout the entire procedure, the Medical Team members and the IMSI Warden will continually monitor the condemned person using all available means to ensure that the condemned person remain unconscious and that there are no complications.

Only after receiving oral confirmation from the Medical Team leader that the condemned person is unconscious and three minutes have elapsed since commencing the administration of the sodium pentothal/or pentobarbital and saline from backup set B, will the IMSI Warden instruct the Medical Team leader to proceed with administering the next chemicals.

When directed by the IMSI Warden, the Medical Team leader will instruct the assigned Medical Team members to begin administering the full doses of the remaining chemicals (pancuronium bromide and potassium chloride), each followed by a saline flush as set forth in the applicable chemical chart.

If after administering the potassium chloride and subsequent saline flush, the electrical activity of the condemned person's heart has not ceased, the additional potassium chloride and saline flush contained in backup set B must be administered.

The full dose contained in each syringe must be administered to the condemned person and subsequently documented by the designated recorder. The quantities of the chemicals prepared and

administered may not be changed in any manner without prior approval of the Director of the IDOC after consultation with the Medical Team leader.

If all electrical activity of the heart ceases prior to administering all the chemicals, the Medical Team members must continue to follow this protocol and administer all remaining chemicals in the order and amounts set forth in the applicable chemical chart.

When all electrical activity of the heart has ceased as shown by the EKG monitor, the Medical Team leader will advise the Ada County Coroner and the IMSI Warden that the procedure has been completed. The Medical Team leader will ensure that the EKG monitor runs a print-out strip for two minutes after the last chemical injection.

**Note:** Backup set C will be used if (1) electrical activity of the heart has not ceased after administration of sets A and B, or (2) either primary set A or backup set B are damaged or otherwise deemed unusable.

The Ada County Coroner will enter the execution chamber to examine and pronounce the death of the condemned person. The IMSI Warden will then announce that the sentence of death has been carried out.

The witnesses will be escorted from the Execution Unit back to the respective staging and exit locations.

#### **H. Administration of Chemicals Methods 3 and 4**

At the time the execution is to commence and prior to administering the chemicals, the Director of the IDOC will confirm with the Idaho Attorney General, or designee, and the Idaho Governor, or designee, that there is no impediment to proceeding with the execution. Upon receipt of confirmation that there is no impediment, the Director of the IDOC will instruct the IMSI Warden to commence the process to carry out the sentence of death. If there is an impediment to the execution, the Director of the IDOC will instruct the IMSI Warden to stop the process, and to notify the condemned person and witnesses that the execution has been stayed or delayed. The IMSI Warden will notify the IDOC PIO and other staff as necessary.

Upon receipt of the Director of the IDOC's order and under observation of the Medical Team leader, the IMSI Warden will advise the Medical Team leader to begin the administration of chemicals. The Medical Team leader will instruct the assigned Medical Team member to begin dispensing the first chemical.

Upon direction from the Medical Team leader, the assigned Medical Team member will visually and verbally confirm the chemical name on the syringe and then administer the full dose of either sodium pentothal/or pentobarbital immediately followed by the saline flush.

If after administering the sodium pentothal/or pentobarbital, subsequent saline flush, and 10 minutes have elapsed, and the electrical activity of the condemned person's heart has not ceased, the additional sodium pentothal/or pentobarbital and saline flush contained in backup set B must be administered.

The full dose contained in each syringe must be administered to the condemned person and subsequently documented by the designated recorder. The quantities of the chemicals prepared and administered may not be changed in any manner without prior approval of the Director of the IDOC after consultation with the Medical Team leader.

If all electrical activity of the heart ceases prior to administering all the chemicals, the Medical Team members must continue to follow this protocol and administer all remaining chemicals in the order and amounts set forth in the applicable chemical chart.

When all electrical activity of the heart has ceased as shown by the EKG monitor, the Medical Team leader will advise the Ada County Coroner that the procedure has been completed. The Medical Team leader will ensure that the EKG monitor runs a print-out strip for two minutes after the last chemical injection.

**Note:** Backup set C will be used if (1) electrical activity of the heart has not ceased after administration of sets A and B, or (2) either primary set A or backup set B are damaged or otherwise deemed unusable.

The Ada County Coroner will enter the execution chamber to examine and pronounce the death of the condemned person. The IMSI Warden will then announce that the sentence of death has been carried out.

The witnesses will be escorted from the Execution Unit back to the respective staging and exit locations.

### **I. Documentation of Chemicals and Stay**

In the event that a pending stay results in more than a two hour delay, the catheter will be removed and the condemned person returned to the isolation cell until further notice.

The Medical Team recorder will account for all chemicals that were not administered and document, in the applicable sequence of chemical form (see appendixes 1 through 4), the chemical name, syringe identification code, amount, date, and the time. Time will be marked based on the approved Medical Team room clock. The Medical Team leader and the Medical Team recorder each will sign the applicable sequence of chemical form (see appendixes 1 through 4). And will give the unused chemicals to a member of the Administrative Team.

All logs, the applicable sequence of chemical forms (see appendixes 1 through 4), the list of identifiers, and the EKG monitor tape will be submitted to the Deputy Attorney General who represents the IDOC for storage.

Upon completion of the execution or when a stay exceeding 24 hours is granted the Administrative Team will be responsible for the appropriate disposal of all medical waste and supplies to include unused, drawn chemicals in accordance with state of Idaho and federal law.

### **J. Contingency Procedure**

A portable cardiac monitor/defibrillator will be readily available on site in the event that the condemned person goes into cardiac arrest at any time prior to dispensing the chemicals; trained medical staff must make every effort to revive should this occur, unless the condemned person has signed a do not resuscitate directive.

Trained medical personnel and emergency transportation, neither of which is involved in the execution process, will be available in proximity to respond to the condemned person should any medical emergency arise at any time before the order to proceed with the execution is issued by the Director of the IDOC.

Any Medical Team member who determines that any part of the execution process is not proceeding according to procedure must advise the Medical Team leader who must immediately notify the IMSI Warden. The IMSI Warden, in consultation with the Director of the IDOC may consult with persons deemed appropriate and will determine to go forward with the procedure, start the procedure over at a later time, or stand down.

**IDAHO DEPARTMENT OF CORRECTION  
Sequence of Chemical Form- Method 1**

Inmate: \_\_\_\_\_ IDOC #: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Chemical Chart 1: PRIMARY SET A</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>2A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>3A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>4A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>5A</b>	60mL Saline, <b>BLACK</b>		
<b>6A</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>7A</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>8A</b>	60mL Saline, <b>BLACK</b>		
<b>9A</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>10A</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>11A</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 1: BACKUP SET B</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>2B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>3B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>4B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>5B</b>	60mL Saline, <b>BLACK</b>		
<b>6B</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>7B</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>8B</b>	60mL Saline, <b>BLACK</b>		
<b>9B</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>10B</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>11B</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 1: BACKUP SET C</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>2C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>3C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>4C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>5C</b>	60mL Saline, <b>BLACK</b>		
<b>6C</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>7C</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>8C</b>	60mL Saline, <b>BLACK</b>		
<b>9C</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>10C</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>11C</b>	60mL Saline, <b>BLACK</b>		



**IDAHO DEPARTMENT OF CORRECTION  
Sequence of Chemical Form- Method 2**

Inmate: \_\_\_\_\_ IDOC #: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Chemical Chart 2: PRIMARY SET A</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1A</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>2A</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>3A</b>	60mL Saline, <b>BLACK</b>		
<b>4A</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>5A</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>6A</b>	60mL Saline, <b>BLACK</b>		
<b>7A</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>8A</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>9A</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 2: BACKUP SET B</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1B</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>2B</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>3B</b>	60mL Saline, <b>BLACK</b>		
<b>4B</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>5B</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>6B</b>	60mL Saline, <b>BLACK</b>		
<b>7B</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>8B</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>9B</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 2: BACKUP SET C</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1C</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>2C</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>3C</b>	60mL Saline, <b>BLACK</b>		
<b>4C</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>5C</b>	60mg Pancuronium Bromide, <b>BLUE</b>		
<b>6C</b>	60mL Saline, <b>BLACK</b>		
<b>7C</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>8C</b>	120mEq Potassium Chloride, <b>RED</b>		
<b>9C</b>	60mL Saline, <b>BLACK</b>		

**IDAHO DEPARTMENT OF CORRECTION  
Sequence of Chemical Form- Method 3**

Inmate: \_\_\_\_\_ IDOC #: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Chemical Chart 3: PRIMARY SET A</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>2A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>3A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>4A</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>5A</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 3: BACKUP SET B</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>2B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>3B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>4B</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>5B</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 3: BACKUP SET C</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>2C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>3C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>4C</b>	1.25 g Sodium Pentothal, <b>GREEN</b>		
<b>5C</b>	60mL Saline, <b>BLACK</b>		

**IDAHO DEPARTMENT OF CORRECTION  
Sequence of Chemical Form- Method 4**

Inmate: \_\_\_\_\_ IDOC #: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Chemical Chart 4: PRIMARY SET A</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1A</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>2A</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>3A</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 4: BACKUP SET B</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1B</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>2B</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>3B</b>	60mL Saline, <b>BLACK</b>		

<b>Chemical Chart 4: BACKUP SET C</b>			
<b>Syringe No.</b>	<b>Label</b>	<b>Time Administered</b>	<b>Comments</b>
<b>1C</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>2C</b>	2.5 g Pentobarbital <b>GREEN</b>		
<b>3C</b>	60mL Saline, <b>BLACK</b>		

# EXHIBIT J

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

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Deputy Attorney General  
Chief, Criminal Law Division

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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

GERALD ROSS PIZZUTO, JR.,	)	CASE NO. 1:22-cv-00452-BLW
	)	
Petitioner,	)	
	)	
vs.	)	NOTICE RE: EXECUTION STATUS
	)	
TIM RICHARDSON, Warden,	)	<b><u>(CAPITAL CASE)</u></b>
Idaho Maximum Security Institution	)	
	)	
Respondent.	)	
	)	

COMES NOW, Respondent, Tim Richardson (“state”), by and through his attorney, L. LaMont Anderson, Deputy Attorney General, Chief, Capital Litigation Unit, and hereby notifies the Court that today, November 30, 2022, the Director for the Idaho Department of Correction (“IDOC”) notified the Board of Correction, the Governor’s Office, and the Idaho Attorney General’s Office that IDOC does not have the necessary chemicals to carry out the execution of

Petitioner Gerald Ross Pizzuto, Jr., on December 15, 2022. (Appendix A). Execution preparation by IDOC will cease and the death warrant will be allowed to expire.

DATED this 30<sup>th</sup> day of November, 2022.

/s/ L. LaMont Anderson  
L. LaMONT ANDERSON  
Deputy Attorney General  
Chief, Capital Litigation Unit

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on or about the 30<sup>th</sup> day of November, 2022, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

Jonah J. Horwitz	<input type="checkbox"/>	U.S. Mail
Federal Defender Services of Idaho	<input type="checkbox"/>	Hand Delivery
702 W. Idaho Street, Suite 900	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Facsimile
<u>Jonah_Horwitz@fd.org</u>	<input checked="" type="checkbox"/>	Electronic Court Filing

Deborah A. Czuba	<input type="checkbox"/>	U.S. Mail
Federal Defender Services of Idaho	<input type="checkbox"/>	Hand Delivery
702 W. Idaho Street, Suite 900	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Facsimile
<u>Deborah_A_Czuba@fd.org</u>	<input checked="" type="checkbox"/>	Electronic Court Filing

/s/ L. LaMont Anderson  
L. LaMONT ANDERSON  
Deputy Attorney General  
Chief, Capital Litigation Unit

**APPENDIX A**





## IDAHO DEPARTMENT OF CORRECTION

*Protect the public, our staff and those within our custody and supervision*

BRAD LITTLE  
Governor

JOSH TEWALT  
Director

---

**Date:** November 30, 2022  
**To:** Board of Correction  
**From:** Josh Tewalt, Director  
**Cc:** Brady Hall, General Counsel, Office of the Governor  
Karin Magnelli, Lead Deputy Attorney General  
**Re:** Execution Update

---

On November 16, 2022, I received the death warrant from 2<sup>nd</sup> District Judge Gaskill scheduling the execution date of Mr. Gerald Pizzuto for December 15, 2022. Upon receipt of the warrant, I announced the IDOC's current difficulties securing the chemicals necessary to carry out the execution, and I suspended implementation of SOP 135.02.01.001, Execution Procedures, except for those portions that ensured Mr. Pizzuto's due process rights remain protected. Our efforts to obtain the necessary chemicals have been unsuccessful to date.

While our efforts to secure chemicals remain ongoing, I have no reason to believe our status will change prior to the scheduled execution on December 15, 2022. In my professional judgement, I believe it is in the best interest of justice to allow the death warrant to expire and stand down our execution preparation. While the warrant remains active, Mr. Pizzuto will be housed in a manner consistent with Idaho Code.

There is no more solemn responsibility than implementing capital punishment, and it is a responsibility this agency approaches with the gravity and care it deserves. Consistent with your direction, we will maintain our readiness to carry out this process with professionalism, dignity, and respect for everyone impacted.

# EXHIBIT K

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**Freddie Eugene Owens; Brad Keith Sigmon;  
Gary Dubose Terry; and Richard Bernard  
Moore,**

Plaintiffs,

v.

**Bryan P. Stirling**, in his official capacity as  
Director of the South Carolina Department of  
Corrections; **South Carolina Department of  
Corrections**; and **Henry McMaster**, in his  
official capacity as Governor of South  
Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2021CP4002306

**ORDER GRANTING DECLARATORY AND  
INJUNCTIVE RELIEF**

These matters came before the Court for a non-jury trial, which began on August 1, 2022, and concluded on August 4, 2022. Plaintiffs did not appear for the trial but were represented by their attorneys, J. Christopher Mills, Esquire; Joshua S. Kendrick, Esquire; Lindsey S. Vann, Esquire; and Hannah Freedman, Esquire. Defendants Stirling and South Carolina Department of Corrections were represented by Daniel C. Plyler, Esquire, and Austin Reed, Esquire. Defendant McMaster was represented by Thomas A. Limehouse, Jr., Esquire, and William Grayson Lambert, Esquire.

Having fully considered all of the arguments, testimony, and evidence presented by the parties, the Court makes the following findings of fact and conclusions of law pursuant to Rule 52(a) of the South Carolina Rules of Civil Procedure.

## FACTUAL AND PROCEDURAL BACKGROUND

### **I. The Parties**

One of the defendants in this action is the South Carolina Department of Corrections (“SCDC”), the state agency charged with implementing and carrying out the policy of the State of South Carolina with respect to its prison system. *See* S.C. CODE ANN. § 24-1-30 (1976, as amended); *see also* S.C. Const. art. XII, § 2 (“The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.”). The remaining defendants are Bryan P. Stirling, the Director of SCDC (“Director Stirling”), and Henry McMaster, Governor of the State of South Carolina (“the Governor”), both of whom are sued in their official capacities only.

Each of the plaintiffs is an inmate at SCDC, having been convicted of committing at least one murder and sentenced to death. Gary Dubose Terry (“Terry”) was convicted of murder in Lexington County and has been on death row since 1997. *State v. Terry*, 339 S.C. 352, 529 S.E.2d 274 (2000). Freddie Eugene Owens (“Owens”) was convicted of murder and sentenced to death in 1999, after he shot and killed a convenience store clerk during the commission of a nighttime robbery. *State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001), *abrogated by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Like Owens, Richard Bernard Moore (“Moore”) was convicted of a murder that he committed during the commission of a nighttime robbery. *State v. Moore*, 357 S.C. 458, 593 S.E.2d 608 (2004). He was sentenced to death in October 2001. *Id.* Brad Keith Sigmon (“Sigmon”) murdered two people in Greenville County in 2002, and a jury subsequently sentenced him to death. *State v. Sigmon*, 366 S.C. 552, 623 S.E.2d 648 (2005).

Between November 2020 and March 2021, the Supreme Court of South Carolina set execution dates for Moore, Sigmon, and Owens after they exhausted their appellate and post-conviction remedies. At that time, South Carolina law provided that any death-sentenced inmate be executed by electrocution or by lethal injection. *See* 1995 S.C. Acts No. 108, § 1 (codified at S.C. CODE ANN. § 24-3-530(A) (2007)). That statutory scheme required that, fourteen days before the scheduled execution, the inmate must choose his method of execution. *Id.* If the inmate made no election, the default method of execution was lethal injection. *Id.*

Before each of Plaintiffs' scheduled execution dates, SCDC informed the Supreme Court that it could not obtain lethal injection drugs to carry out the executions. The Court responded by issuing stays of execution until "[SCDC] advises the Court it has the ability to perform the execution as required by law." *See, e.g.,* Order, *State v. Moore*, No. 2001-021895 (S.C. Nov. 30, 2020).

## **II. S.C. CODE ANN. § 24-3-530**

For many years, SCDC has been unable to obtain or to compound the drugs necessary to carry out lethal injection. This moratorium was due, in part, to the South Carolina legislature declining to pass certain legislation which would facilitate procurement of the drugs. Failures such as these resulted in a *de facto* stay of executions, as inmate after inmate opted for death by lethal injection. *See* S.C. House, Video of Judiciary Subcommittee on Constitutional Laws, 1:45 (Apr. 21, 2021), <https://tinyurl.com/4czcc4yc> (testimony from Director Stirling to a House Judiciary subcommittee that SCDC "cannot carry out an execution by lethal injection because [SCDC] could not obtain the drugs").

In order to address this problem, the South Carolina legislature ("the General Assembly") amended the law regarding executions. Act 43 of 2021 ("the Act") – which was approved by the

General Assembly and ratified by the Governor – amended S.C. CODE ANN. § 24-3-530 to change the default method of execution to electrocution. *See* 2021 S.C. Acts No. 43, § 1 (amending S.C. CODE ANN. § 24-3-530). The Act also added a firing squad as a third option for the method of execution. It provides:

A person convicted of a capital crime and having imposed upon him the sentence of death shall suffer the penalty by electrocution or, at the election of the convicted person, by firing squad or lethal injection, if it is available at the time of election, under the direction of the Director of the Department of Corrections.

S.C. CODE ANN. § 24-3-530(A) (2021). Therefore, if an inmate does not make an election as to his method of execution, or if lethal injection or the firing squad are unavailable, he must die by electrocution. *Id.*

The Act “applies to persons sentenced to death as provided by law prior to and after [its] effective date,” including Plaintiffs. 2021 S.C. Acts No. 43, § 3. In other words, despite Plaintiffs having previously rejected the option death by electrocution, the amended law requires that they die in this manner unless lethal injection or the firing squad is deemed “available” by Director Stirling. With lethal injection remaining unavailable as it has been for many years, Plaintiffs have only two choices: being electrocuted or being shot to death.

### **III. This Lawsuit**

In May 2021, soon after the Act was signed into law, Plaintiffs filed this action. They also filed a Motion for Preliminary Injunction, which was denied by this Court in June 2021. At the same time, Director Stirling advised the Supreme Court that SCDC “has been unable, despite numerous and diligent attempts, to acquire the drugs necessary, in a useable form, to perform lethal injection” and that “SCDC does not currently have the necessary policies and protocols, as required by the statute, for an execution by firing squad.” Letter, Stirling to Shearouse (June 8, 2021), filed in *Sigmon*, No. 2002-024388. The Supreme Court again stayed Plaintiffs’ executions, stating:

According to the Director's response, lethal injection is unavailable due to circumstances outside of the control of the Department of Corrections, and firing squad is currently unavailable due to the Department of Corrections having yet to complete its development and implementation of the necessary protocols and policies.

Under these circumstances, in which electrocution is the only method of execution available, and due to the statutory right of inmates to elect the manner of their execution, we vacate the execution notice. *See* S.C. Code Ann. § 24-3-530 (2021). We further direct the Clerk of this Court not to issue another execution notice until the State notifies the Court that the Department of Corrections, in addition to maintaining the availability of electrocution, has developed and implemented appropriate protocols and policies to carry out executions by firing squad.

Order, *State v. Sigmon & Sigmon v. State*, Nos. 2002-024388, 2021-000584 (S.C. June 16, 2021);

Order, *State v. Owens*, No. 2006-038802 (June 16, 2021).

This prompted SCDC to quickly develop protocols necessary to implement the firing squad as a method of execution. It did so and notified the Supreme Court of its work on March 18, 2022. The Court then set new execution dates for Moore and Sigmon of April 29, 2022 and May 13, 2022, respectively; and Director Stirling submitted an affidavit to the Court certifying that “the only statutorily approved methods of execution available to the Department are electrocution and firing squad.” The Supreme Court stayed those execution notices during the pendency of this action.

After a series of revisions to the original pleadings and the consolidation of related cases into this one, Plaintiffs filed their “Third Amended Complaint for Permanent Injunctive Relief and for a Declaratory Judgment” (“the Complaint”) on April 11, 2022. In it, they assert eight “claims for relief” (labeled as Count I through Count VIII) – (1) that the Act is “retroactive legislation,” which violates their due process rights; (2) that the Act amounts to unconstitutional *ex post facto* legislation; (3) that the execution statute, as amended, is void for vagueness; (4) that the courts must determine the meaning of the word “available” with respect to methods of execution, not

Defendants; (5) that the Act violates the Non-Delegation Doctrine of the South Carolina Constitution; (6) that both electrocution and the firing squad are prohibited by the South Carolina Constitution; (7) that Plaintiffs' right to elect their manner of execution is rendered meaningless by the lack of constitutional choices from which to make that election; and (8) that the statutory methods of execution, as applied to Terry, are unconstitutional.

The trial of this case began on August 1, 2022. At that time, Plaintiffs abandoned and withdrew Count I of the Complaint and consented to sever Count VIII for determination at another time. While six "claims for relief" remain, it appears that the thrust of Plaintiffs' argument is that S.C. CODE ANN. § 24-3-530 (2021) is unconstitutional because both electrocution and the firing squad violate the South Carolina Constitution's prohibition on cruel, unusual, and corporal punishments. The Court heard testimony and received exhibits as to these allegations, culminating in closing arguments on August 4, 2022.

### **FINDINGS OF FACT**

#### **I. Methods of Execution**

The parties largely agree on the mechanics of each method of execution.

##### **A. South Carolina's Firing Squad**

The protocol for South Carolina's firing squad calls for the inmate to be strapped into a backless metal chair. Once the inmate is restrained in the chair, an "aiming point" is placed over his heart by a physician, and his head is covered by a hood. A three-member team is armed with rifles containing .308 Winchester 110-grain TAP urban ammunition. The team is positioned approximately fifteen feet from the inmate. When instructed to do so, the members of the team focus the sights of their rifles on the aiming point. They then fire their rifles at the inmate's chest.



Following the first volley, if the inmate appears unresponsive, a physician is called to check the inmate's vital signs. Vital signs are checked every sixty seconds until none are present, at which time the physician will certify death. However, if vital signs continue to be present after ten minutes, the firing squad team will fire a second volley at the inmate. Altogether, the protocol provides for contingencies for up to three volleys fired at the inmate if he continues to exhibit signs of life.

### **B. Electrocutation**

In 1912, South Carolina became the eighth state to adopt the electric chair as a method of execution. *See* 1912 S.C. Acts. 702, No. 402 § 1 (“*Be it enacted* by the General Assembly of the State of South Carolina, That after the approval of this Act by the Governor all persons convicted of capital crime and have imposed upon them the sentence of death shall suffer such penalty by electrocution within the walls of the State Penitentiary, at Columbia, under the direction of the Superintendent of the Penitentiary instead of by hanging.”). Today, SCDC uses the same electric chair that it purchased in 1912, although some of the components have been replaced. It is a wooden chair equipped with leather straps which are used to restrain an inmate's head, legs, arms, and body.

Once the inmate is restrained, one copper electrode is attached to his right leg and another attached to his head using a copper hat. A sponge, soaked in a conductive solution, is placed between the inmate's scalp and the head electrode. An electric current is then applied to the inmate's body as follows: 2000 volts for 4.5 seconds followed by 1000 volts applied for eight seconds (the rounds of high-voltage current), ending with 120 volts of electric current (i.e., low voltage current) applied for two minutes. This process disrupts the inmate's bodily functions such as respiration and circulation, causes electrical burns, and ultimately results in death.

## **II. Witness Testimony**

Plaintiffs presented the testimony from five witnesses, including two expert witnesses. Defendants offered testimony from three expert witnesses.

### **A. Defendant Bryan Stirling**

Director Stirling testified that he became Interim Director of SCDC in 2013. He was then confirmed by the South Carolina Senate as Director in 2014. Since that time, SCDC has not carried out any executions. Director Stirling stated that he offered testimony before the legislative committees which were tasked with evaluating Act 43 but that he never advocated for or against any particular method of execution.

While the Court found Director Stirling to be a credible witness, he is admittedly not a subject matter expert in executions. Rather, he has a general familiarity with SCDC's protocols for its electric chair and firing squad and relies on experts to advise him on needed updates to the electric chair and the design and processes involved in utilizing the firing squad. Therefore, it is apparent that Director Stirling has very limited firsthand knowledge about many of the legal issues raised in this action.

### **B. Colie Rushton**

Rushton currently serves as the Director of Security and Emergency Operations at SCDC. He has been employed by SCDC in various capacities for forty-nine years and has been in his current position since May 2007. Rushton is familiar with both the electric chair and the newly-implemented firing squad.

According to Rushton, SCDC's current protocols for judicial electrocutions were established before May 2007. Therefore, while he is knowledgeable about the electric chair itself and the voltage and timing applied pursuant to the protocols, he does not know why any specific

voltage or time period was chosen. Rushton testified that while the electric chair is old, the electrical system was built in the late 1980's. Further, he was present when the electrical system was tested by a professional engineer in June 2021 and again in April 2022. That testing confirmed that the system was in proper working order.

Unlike electrocution, the protocol for SCDC's firing squad was developed by Rushton. He testified that he did internet research about historical uses of firing squads and the FBI's testing of certain ammunition. Rushton spoke to officials in the State of Utah regarding their use of a firing squad, and he was the person who ultimately chose the ammunition to be used in such executions. However, Rushton admitted that the protocol was developed without consulting with any doctors, firearms experts, ballistics experts, or any professional who could determine the proper positioning of the target on the inmate's body.

**C. Witness X**

Witness X, another SCDC employee, testified *in camera* pursuant to S.C. CODE ANN. § 24-3-580 (2010). Witness X oversees judicial executions and ensures that security is maintained during those executions. The witness has been present at the capital punishment facility when executions were carried out by SCDC but has never personally observed the body of any inmate after judicial electrocution has occurred. In Witness X's role at SCDC, the witness would be advised if any problems arose during a judicial execution. However, Witness X testified that they are unaware of any problems or anomalies having occurred during any of those executions.

**D. John Peter Wikswo, Jr., Ph.D.**

Dr. Wikswo is a tenured professor of biomedical engineering, molecular physiology and biophysics, and physics at Vanderbilt University. The Court found, based on his education, training, and experience, that he is qualified as an expert in each of those three subjects. Dr.

Wikswow admitted that although he has been studying the electric chair and electrophysiology since 1992, he has no expertise in consciousness, pain, or forensic pathology. He has never attended medical school and has no training in medicine or forensic pathology, but he has studied how the human body responds to stimuli, including electricity. Therefore, Dr. Wikswow's testimony primarily concerned the mechanics of electrocution and its effect on the body.

Dr. Wikswow also explained that electrocution is meant to cause fibrillation, the process by which the heart rate increases until its electrical circuitry is disrupted and it can no longer pump oxygenated blood through the body, resulting in brain death. The heart, however, is capable of spontaneously regaining function after it enters fibrillation, meaning it can resume pumping oxygenated blood without any medical intervention. This is significant because, as Dr. Wikswow testified, the heart has an "upper threshold of vulnerability" beyond which a current will not induce fibrillation. According to Dr. Wikswow, that upper threshold is approximately 1000 volts. South Carolina's protocols call for the application of an initial current equal to or greater than this upper threshold. Therefore, Dr. Wikswow testified, the first 12.5 seconds of the inmate's electrocution is unlikely to induce fibrillation in most people, meaning that most inmates who are electrocuted in South Carolina's electric chair will not die from loss of oxygen to the brain after the first two shocks.

According to Dr. Wikswow, when judicial electrocutions are performed, the hope is that the electric current is first applied to the inmate's brain, but that this scenario is unlikely to actually occur. He testified that the human skull is not a good conductor of electricity. Thus, when the electric current is applied to the inmate's scalp, it spreads into the facial muscles and thoracic portions of the body, with only a small fraction entering the brain. In other words, the electric current primarily travels around the skull before and down the skin and tissues of the neck and

torso before reaching the electrode on the inmate's leg. However, Dr. Wikswo admitted that he cannot quantify the percentage of electric current that reaches the brain and that there is no evidence of how much of the brain is rendered nonfunctional during the process.

Instead, Dr. Wikswo opined that because the human skull is significantly more resistive than the skin, the muscles, and the connective tissue around the head, when current is applied to the top of the head, the vast majority does not enter the brain. Rather, it flows from the head electrode to the leg electrode. It does not cause immediate loss of consciousness but causes severe pain due to the tetany, or full contraction, of the body's skeletal muscles. Dr. Wikswo testified that tetany caused by a judicial electrocution may be forceful enough to cause broken bones. For this reason, Dr. Wikswo explained, the use of a head-to-hoof or head-to-leg arrangement is not even permitted for animal slaughter.

Dr. Wikswo also testified that when electric current flows through the body, it encounters resistance, which generates heat. In the case of the electric chair, the current generates enough heat to cause burning, charring, and arcing – a phenomenon in which electricity jumps through the air, as with a lightning strike or a spark. Arcing can cause burns to appear to on parts of the body that are not touching electrodes. Dr. Wikswo testified that one of the autopsies he reviewed from South Carolina documented that the fleshy portion of the inmate's nose had been burned off, which Dr. Wikswo explained was likely caused by arcing. He also testified that in the autopsies he reviewed from South Carolina and from other states, he observed damage consistent with severe electrical burns, charring, and arcing. Specifically, he testified that multiple of the South Carolina autopsies documented burns so deep that the underlying fat tissue rendered, causing the skin to slip and fall away from the bone. He did, however, admit that he was unable to determine whether the burns and other damage to the body occurred pre- or post-mortem.

In summary, Dr. Wikswo opined that there is no scientific evidence that electrocution – particularly in the manner applied by SCDC – causes painless, instantaneous death, and that he is unable to find scientific rationale to support for South Carolina’s electrocution protocols. In fact, South Carolina’s use of multiple, prolonged shocks is evidence that the first application of current is insufficient to kill the inmate. Further, there are no measurements to prove that the human brain is rendered insensate from the first electrical shock in judicial electrocutions, and that there is a substantial risk that the inmate remains conscious, sensate, and in pain for some period of time. Thus, while it is impossible to determine the exact moment that death occurs during a judicial electrocution, the process is neither instantaneous nor painless.

**E. Dr. Jonathan Arden**

Dr. Arden is a board-certified forensic pathologist. He has worked as a medical examiner in many jurisdictions and is currently a parttime forensic pathologist for the State of West Virginia and the City of San Diego, California. He is also a private consultant. Based on his education, training, and experience, the Court admitted Dr. Arden as an expert in the field of forensic pathology. Dr. Arden offered testimony about the kinds of injuries an inmate suffers when subjected to death by firing squad or by electrocution.

**1. Firing Squad**

According to Dr. Arden, the mechanism that causes death by firing squad is destruction of the heart, causing cessation of circulation. He explained that gunshot wounds to the chest would cause extensive damage, including fractures of the ribs and sternum. This, he testified, would cause excruciating pain as long as the person remained sensate, especially when making any movements such as flinching or breathing. Dr. Arden supported his conclusion that the firing squad would hit and fracture bone by reviewing a report of examination and photographs from a

firing squad execution in Utah. The pathological diagnoses in that execution noted “fragmentation of anterior chest wall,” which Dr. Arden recognized as indicating broken bones in the chest cavity.

Dr. Arden testified that an inmate would remain sensate and able to feel pain for approximately fifteen seconds, assuming the heart was rendered completely unable to circulate blood to the brain. If, however, the heart function was not completely disrupted – either because the bullets were not properly aimed at the heart or because the fragmentation caused the bullet fragments to hit surrounding areas – the inmate would remain sensate for longer. Based on his extensive experience as a pathologist, Dr. Arden testified that it is a scientific fact that a person will not immediately lose consciousness upon disruption of the heart because the remaining blood in the brain will provide sufficient oxygen to maintain consciousness for approximately fifteen seconds even if circulation is completely disrupted.

## **2. Electrocutation**

Dr. Arden testified that he has reviewed more than eighty autopsy reports from electric chair executions in various states and that all of those autopsies showed severe injuries. Specifically, he described severe electrical and thermal burns on inmates’ bodies and “effects on parts of the body, including internal organs, that is the equivalent of cooking.” Some of the burns Dr. Arden observed were classified as third-degree burns, and he testified that if a person were conscious during that process, they would feel “horrific pain.” Like Dr. Wikswo, Dr. Arden testified that when a person is electrocuted, their skeletal muscles tetanize, causing them to contract painfully. The muscles around the chest and lungs, which regulate breathing, also tetanize, meaning a person who is electrocuted is unlikely to be able to breathe. He also opined that the experience of electrocution and the passage of high voltage current through the body “in and of itself would be painful and excruciating.”

According to Dr. Arden, although it is not possible to distinguish between all pre- and post-mortem injuries, it is possible for some injuries. For example, he stated that some of the injuries he observed in the autopsy reports could only have occurred post-mortem, such as subdural hematomas. However, he testified that the presence of subdural hematomas in South Carolina electric chair autopsies is an indication that the inmates were exposed to extreme heat, as in cooking. Other injuries, Dr. Arden testified, could only have happened pre-mortem. Those injuries include bruising corresponding to the configuration of the restraints, for example, which Dr. Arden observed in many of the autopsies he reviewed, including those from South Carolina. According to Dr. Arden, bruising occurs when blunt force trauma causes blood to rush to the area of injury, a process that can only happen when the heart is beating. The presence of bruising, Dr. Arden explained, is a clear signal that a person killed in the electric chair did not die immediately.

Finally, Dr. Arden testified that of the eighty autopsies he reviewed, ten revealed that the executions were “botched,” meaning they did not go according to plan. Dr. Arden testified that some of the botches involved inmates surviving and remaining conscious past the first application of current, as indicated by voluntary movement or breathing. He stated that at least one of the South Carolina autopsies indicated a botched electrocution, as the head electrode appeared to have moved and fallen into the inmate’s eyes. Dr. Arden explained that if the inmate were conscious during any of his electrocution, he would have experienced excruciating pain from having an electrical burn in his eyes. In conclusion, Dr. Arden testified that “[t]here is no proof that judicial electrocutions, botched or not, provide instantaneous death.”

#### **F. Dr. Ronald Wright**

Dr. Wright – deemed by the Court to be an expert in forensic pathology – testified about the electric chair on behalf of Defendants. He largely disagreed with Plaintiffs’ witnesses.



According to Dr. Wright, when a person is electrocuted with very high voltage current, they are rendered instantaneously unconscious and cannot regain consciousness because their brain cells are subject to immediate poration. Poration, Dr. Wright testified, is a phenomenon in which an electrical current punches sub-microscopic holes into tissue, causing irreparable damage. He also stated that even if the brain does not instantly porate, a person will still die very quickly because the human heart tetanizes instantly. For this reason, Dr. Wright opined that “[i]f I had been sentenced to die, that [the electric chair] would be my choice because it doesn’t hurt.” Dr. Wright could not, however, offer any affirmative proof to support this theory of instant poration and insensibility. To the contrary, Dr. Wright acknowledged that a person whose brain has been subject to instant poration would not be capable of breathing, moving, or screaming; and he was unable to explain electrocutions during which inmates breathed, moved, and screamed after the application of electric current.

Dr. Wright also opined that the second application of electric current in South Carolina’s protocol is not necessary, given his view that the first application of high-voltage current causes instantaneous loss of consciousness. As to the third application of current, he testified that low-voltage current – which he described as current of less than 600 volts – is “very dangerous” and that electrocution with low-voltage current is particularly painful. He acknowledged that if a person survived and remained sensate after the first two applications of current in South Carolina’s electric chair, they would experience considerable pain and suffering. Consistent with this, Dr. Wright also acknowledged that electro-convulsive therapy (ECT), a medical treatment for some severe psychiatric illnesses, always involves the administration of anesthesia to induce sedation, followed by a strong muscle relaxant to prevent damage to the musculoskeletal system that can occur when a person’s skeletal muscles tetanize. ECT never involves a heat-to-leg electrode

system, but instead always requires cross-brain electrical current. These measures, Dr. Wright acknowledged, are designed to reduce pain and suffering. Dr. Wright could not explain how a head-to-leg electrode system – as is used by SCDC – is consistent with the goal of reducing pain and suffering.

Additionally, Dr. Wright acknowledged during his testimony that in reaching his opinions, he relied on a meta-analysis of more than fifty other peer-reviewed articles. *See* Hannah McCann, Giampaolo Pisano, & Leandro Beltrachini, *Variation in Reported Human Head Tissue Electrical Conductivity Values*, 32 BRAIN TOPOGRAPHY 825 (2019). Dr. Wright specifically described this article as “very good.” However, when confronted with the fact that the article explicitly details a consensus view among experts that the human skull is significantly more resistant than the scalp, muscles, fat, blood, and the brain, Dr. Wright discounted it and attributed those findings to the studies having used low voltages. He did not explain why a low voltage would impact the resistance measures.

**G. Dr. Jorge Alvarez**

Dr. Alvarez is a cardiologist in San Antonio, Texas, is the medical director of the South Texas Hearth Valve Center, and is the co-medical director of the Methodist Hospital Chest Pain Center. The Court qualified Dr. Alvarez as an expert in cardiology and heard testimony from him regarding the use of a firing squad to cause death.

Dr. Alvarez agreed with other witnesses that when a firing squad is utilized, death is accomplished by disruption of the heart and surrounding vessels, which would stop blood circulation. He also agreed that the heart is located behind a series of bones, including the ribs and the sternum, with the sternum covering between one-third to one-half of the heart.

Regarding consciousness, Dr. Alvarez testified that the ammunition would cause relatively immediate stoppage of blood flow and a rapid decline in consciousness. Based on his experience as a cardiologist, he testified that the loss of consciousness would be relatively quick: less than ten seconds. On cross examination, Dr. Alvarez agreed that the precise location of where the bullet hits could impact how quickly a person would be exsanguinated, possibly increasing the amount of time a person could remain conscious. Finally, while he disagrees with Dr. Arden about precisely how long it takes for unconsciousness of the inmate to occur, they agree that loss of consciousness is not immediate; that accuracy in the administration of the firing squad is a necessary component of a rapid death; and that broken bones and chest cavitation cause pain.

**H. Dr. D'Michelle DuPre**

The final testifying witness was Dr. DuPre, a private consultant and forensic pathologist who has previously been employed as a medical examiner in multiple states. This Court qualified Dr. DuPre as an expert in forensic pathology. She offered testimony concerning the use of the firing squad.

Unsurprisingly, Dr. DuPre agreed with Drs. Arden and Alvarez about the mechanism of death and location of the heart behind bone. She also agreed with Rushton's assessment that the ammunition he selected would cause increased cavitation due to its frangibility. According to Dr. DuPre, each bullet fragment would itself create a temporary cavity in the inmate's body, causing more damage.

Dr. DuPre disagreed with other experts about how long an inmate remains conscious after being shot. Unlike the other experts, Dr. DuPre opined that death by firing squad would be very rapid with unconsciousness occurring "almost immediately." She asserted that it would be so quick that the inmate would not experience pain at all. She based this opinion, in part, on the idea

that the blood loss caused by the gunshot wounds would cause nearly instantaneous unconsciousness. However, Dr. DuPre offered no affirmative evidence to support her opinion that the firing squad causes immediate loss of consciousness.

In addition, Dr. DuPre acknowledged that her opinion about the firing squad was premised on an assumption that it would be carried out properly, with well-trained marksmen who would not miss their targets. She admitted, however, that she did not have any information about the marksmanship training received by the firing squad team and that she was not involved in the design of the protocol. Moreover, Dr. DuPre testified that shooting and killing another person is difficult and that a person with inadequate training or insufficient psychological preparation would be more likely to flinch or hesitate at the last moment, increasing the chances of a botched execution. Thus, it is clear that Dr. DuPre's testimony about the firing squad is based on a series of unsupported assumptions.<sup>1</sup>

#### **CONCLUSIONS OF LAW**

The Uniform Declaratory Judgments Act is an appropriate method to challenge the constitutionality of a statute. See S.C. CODE ANN. § 15-53-20 (1976). It provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” *Id.* “Any person ... whose rights, status, or other legal relations are affected by a statute ... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder.” S.C. CODE ANN. § 15-53-20 (1976); *see also* Rule 57, SCRPC.

“In an action for declaratory relief, the burden of proof rests with the party seeking the declaration...” *SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. 72, 82, 781 S.E.2d

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<sup>1</sup> Here, the Court makes no attempt to discredit Dr. DuPre's testimony. Rather, the Court recognizes that they are premised on assumptions, which are just that – assumptions.

115, 121 (Ct. App. 2015) (citations omitted). Generally, “that party must meet its burden by a greater weight or preponderance of the evidence.” *Id.* (citing *Vt. Mut. Ins. Co. v. Singleton*, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994); *Menne v. Keowee Key Prop. Owners’ Ass’n, Inc.*, 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App.2006)). However, when the action alleges the unconstitutionality of a statute, the same must be proven beyond a reasonable doubt. *See, e.g., Joytime Distribts. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (“A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.”).

The criminal justice “system affords greater protection to the accused [in capital cases] since the imposition of death by public authority is so ‘profoundly different’ from any other sanction.” *State v. Butler*, 277 S.C. 452, 456, 290 S.E.2d 1, 3 (1982), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) (quoting *State v. Shaw*, 273 S.C. 194, 206-07, 255 S.E.2d 799, 805 (1979), *overruled on other grounds by Torrence*, 305 S.C. 45, 406 S.E.2d 315; *Lockett v. Ohio*, 438 U.S. 586, 605 (1978)). However, it remains true that “[a]ll statutes are presumed constitutional and will, if possible, be construed so as to render them valid.” *Davis v. Cnty. of Greenville*, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996). “When the issue is the constitutionality of a statute, every presumption will be made in favor of its validity and no statute will be declared unconstitutional unless its invalidity appears so clearly as to leave no doubt that it conflicts with the constitution.” *State v. Jones*, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001) (citations omitted). “This general presumption of validity can be overcome only by a clear showing the act violates some provision of the constitution.” *Johnson v. Collins Ent. Co.*, 349 S.C. 613, 626, 564 S.E.2d 653, 660 (2002) (citing *Main v. Thomason*, 342 S.C. 79, 535 S.E.2d 918

(2000); *State v. Brown*, 317 S.C. 55, 451 S.E.2d 888 (1994); *Westvaco Corp. v. S.C. Dep't of Revenue*, 321 S.C. 59, 467 S.E.2d 739 (1995)).

**I. Count VI: Both Electrocutation and the Firing Squad are Unconstitutional**

Plaintiffs allege that electrocution and the firing squad are unconstitutional methods of execution. Specifically, Plaintiffs contend that both methods of execution are cruel, unusual, and corporal, in violation of Article I, Section 15 of the South Carolina Constitution. The Court agrees.

The Constitution of the State of South Carolina provides, in relevant part,

All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

S.C. Const. art. I, § 15. Notably, this language offers greater protections than those found in the Constitution of the United States. *See* U.S. Const. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”). This is because the federal constitution “sets the floor for individual rights while the state constitution establishes the ceiling.” *State v. Forrester*, 343 S.C. 637, 643-44, 541 S.E.2d 836, 840 (2001).

The Court rejects Defendants’ argument that the South Carolina Constitution should be analyzed in the same manner as the United States Constitution. South Carolina’s courts have historically reached the same conclusion. *See, e.g., id.* at 644, 541 S.E.2d at 841 (finding that the South Carolina Constitution’s prohibition on “invasions of privacy” provides greater protections than the Fourth Amendment to the United States Constitution); *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993) (holding that the state constitutional right to privacy prohibited the state from forcibly medicating a death row inmate in preparation of his execution); *State v. Brown*, 284 S.C.

407, 326 S.E.2d 410 (1985) (finding that despite being permitted under the federal constitution, castration is a form of mutilation, which is prohibited by Article I, Section 15 of the South Carolina Constitution).

Unlike the federal constitution, South Carolina's constitution uses disjunctives to distinguish the categories of prohibited punishment. Therefore, the Court must account for all three prohibitions – cruel, unusual, and corporal – in determining whether a specific method of execution (i.e., the inmates' punishment) is unconstitutional. This is consistent with our state's tradition of "providing [our] citizens with a second layer of constitutional rights," beyond what is guaranteed by the federal constitution. *See State v. Austin*, 306 S.C. 9, 16 & n.6, 409 S.E.2d 811, 815 & n.6 (Ct. App. 1991).

#### **A. The Firing Squad**

##### **1. The Firing Squad is Unusual**

A review of executions nationally and in South Carolina demonstrates that the firing squad is unusual. The Supreme Court of the United States recognized nearly a century and a half ago that the punishment was used mainly as a military punishment for soldiers, not civilians. *See, e.g., Wilkerson v. Utah*, 99 U.S. 130, 135 (1878), ("Soldiers convicted of desertion or other capital military offences are in the great majority of cases sentenced to be shot."). Later, in ruling the nation's death penalty was unconstitutional in the 1970s, United States Supreme Court Justice Brennan noted that executions by "shooting [had] virtually ceased" following the adoption of supposedly more humane methods of execution including electrocution and lethal gas. *Furman v. Georgia*, 408 U.S. 238, 296-97 (1972) (plurality opinion) (Brennan, J. concurring). Dr. DuPre corroborated this conclusion, testifying that her research confirmed that less than 1% of executions

have been carried out by firing squad, with only thirty-four since 1900, all but one of which were in Utah.

In fact, no one disputes that the State of South Carolina has never before employed a firing squad as a method of execution or non-military punishment and has never carried out such an execution. This is so even though firing squads have existed for many years, meaning that it is not a newly created or recently discovered means of execution. Rather, it is a reversion to a historic method of execution that has never before been used by our State and is not used in the overwhelming majority of other states. Thus, execution by firing squad is unusual punishment both nationally and in South Carolina.

## **2. The Firing Squad is Cruel**

The use of a firing squad to accomplish death is cruel. “Punishments are cruel when they involve torture or a lingering death . . . something more than the mere extinguishment of life.” *In re Kemmler*, 136 U.S. 436, 447 (1890). Here, it is clear that the firing squad causes death by damaging the inmate’s chest, including the heart and surrounding bone and tissue. This is extremely painful unless the inmate is unconscious which, according to Drs. Arden and Alvarez, is unlikely. Rather, the inmate is likely to be conscious for a minimum of ten seconds after impact. Moreover, the length of the inmates’ consciousness – and, therefore, his ability to sense pain – could even be extended if the ammunition does not fully incapacitate the heart. During this time, he will feel excruciating pain resulting from the gunshot wounds and broken bones. This pain will be exacerbated by any movement he makes, such as flinching or breathing.

This constitutes torture, a possibly lingering death, and pain beyond that necessary for the mere extinguishment of death, making the punishment cruel.<sup>2</sup>

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<sup>2</sup> Not only do South Carolina courts acknowledge that such conscious pain and suffering exist prior to death, but our system of justice routinely compensates a person’s heirs for that discomfort. *See, e.g., Welch v. Epstein*, 342 S.C. 279,



### 3. The Firing Squad is Corporal

The firing squad constitutes corporal punishment. “Corporal” is defined as “pertaining or relating to the body.” Merriam-Webster Dictionary (2022), <https://www.merriam-webster.com/dictionary/corporal>. For purposes of interpreting the South Carolina Constitution, “corporal” also refers to mutilation of the human body. *See, Brown, supra*. Thus, a method of punishment which mutilates the human body, such as the firing squad, is violative of the South Carolina Constitution.

The firing squad clearly causes destruction to the human body. Rushton testified that in developing South Carolina’s protocols, he chose frangible ammunition because it would break apart upon impact and inflict maximal damage to the inmate’s body. Rushton opted for specific ammunition which he understood would cause cavitation (a hole in the inmate’s chest) up to six inches in diameter, at a depth of 45 inches into the body. He expects that the ammunition will first hit the bone in front of the inmate’s heart causing it to fragment, as opposed to if it hit only soft tissue and possibly not fragmenting immediately. An inmate is to be struck by three such rounds of ammunition, compounding the damage to his body.

The expected damage is confirmed by the Court’s review of the autopsy photos of the last person executed by firing squad in Utah, which was introduced as an exhibit at trial. Those photos depict multiple entrance wounds in the inmate’s chest and large volumes of blood poured out over his body and clothing. The inmate’s body has been, by any objective measure, mutilated. SCDC certainly anticipates similar carnage, as it created a firing squad chamber that includes a slanted trough below the firing squad chair to collect the inmate’s blood and covered the walls of the

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536 S.E.2d 408 (Ct. App. 2000); *Smalls v. S.C. Dep’t of Education*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000); *Edwards v. SCAPA Waycross, Inc.*, 2022 WL 3050834 (Aug. 3, 2022).

chamber with a black fabric to obscure any bodily fluid or tissues that emanate from the inmate's body.

**B. Electrocutation is Cruel, Unusual and Corporal**

Only three states have ever addressed the constitutionality of death in the electric chair: the Supreme Court of Florida in 1999, the Supreme Court of Georgia in 2001, and the Supreme Court of Nebraska in 2008. *See Provenzano v. Moore*, 744 So.2d 413 (Fla. 1999) (per curiam); *Dawson v. State*, 554 S.E.2d 137 (Ga. 2001); *State v. Mata*, 745 N.W.2d 229 (Neb. 2008). The Georgia and Nebraska courts held that the electric chair violates those states' constitutions, while the Florida court held the opposite in *Provenzano*. However, after *Provenzano* was decided, the Supreme Court of the United States granted certiorari review. In response, the Florida legislature amended the state's method of execution statute to make lethal injection the default method and the Supreme Court dismissed the petition "[i]n light of the representation by the State of Florida, through its Attorney General, that petitioner's 'death sentence will be carried out by lethal injection.'" *See Bryan v. Moore*, 528 U.S. 1133 (2000) (describing "recent amendments to Section 922.10 of the Florida Statutes"). Thus, the decision of the Florida Supreme Court was effectively abrogated when the Florida legislature amended that state's methods of execution statute to remove the possibility of an involuntary execution by electrocution.

In *Dawson*, the Supreme Court of Georgia held that the electric chair violates the Georgia Constitution for three independent reasons. First, the court noted that "the evidence establishes that it is not possible to determine whether unnecessary pain is inflicted in the execution of the death sentence." 554 S.E.2d 142-43. In essence, the court held that the inmate had not satisfied his burden of proof on the question of "unnecessary conscious pain suffered by the condemned inmate." *Id.* at 143. Second, however, the court held that the electric chair violates the Georgia

Constitution because it “unnecessarily mutilate[s] or disfigure[s] the condemned inmate’s body,” regardless of “whether or not the electrocution protocols are correctly followed and the electrocution equipment functions properly.” *Id.* The court noted that the electric chair leaves inmates’ bodies “burned and blistered with frequent skin slippage from the process” and “the brains of condemned inmates are destroyed in a process that cooks them.” *Id.* Third, the court held that the electric chair is cruel and unusual “in light of viable alternatives which minimize or eliminate the pain and/or mutilation.” *Id.* Thus, the court concluded, “death by electrocution, with its specter of excruciating pain and its certainty of cooked brains and blistered bodies, violates the prohibition on cruel and unusual punishment” in the Georgia Constitution. *Id.* at 144.

*Mata*, decided less than a decade later, reached largely the same conclusions, but did so on the basis of a more developed record with the benefit of additional scientific and medical testimony. Unlike *Dawson*, the *Mata* court explicitly held that “death and loss of consciousness is not instantaneous for many condemned inmates” and that the condemned inmate had met his burden of proving that “electrocution inflicts intense pain and agonizing suffering.” 745 N.W.2d at 277-78. The electric chair, *Mata* held, has a “proven history of burning and charring bodies” that is “inconsistent with both the concepts of evolving standards of decency and the dignity of man.” *Id.* at 278. “Examined under modern scientific knowledge, ‘electrocution has proven itself to be a dinosaur more befitting the laboratory of Baron Frankenstein than the death chamber of state prisons.’” *Id.* (quoting *Jones v. State*, 701 So.2d 76, 87 (Fla. 1997)). The Court finds *Mata* to be a relevant and persuasive opinion, given that two of the experts who testified in that case Drs. Wright and Wikswo – also testified in this case and offered essentially the same opinions. *See Mata*, 745 N.W.2d at 273-75 (describing Dr. Wikswo’s and Dr. Wright’s competing theories of how the electric chair accomplishes death).

According to the testimony adduced at trial, there is no evidence to support the idea that electrocution produces an instantaneous or painless death. If the inmate is not rendered immediately insensate in the electric chair, they will experience intolerable pain and suffering from electrical burns, thermal heating, oxygen deprivation, muscle tetany, and the experience of high-voltage electrocution.

South Carolina's electric chair also causes severe damage to an inmate's body, some of which occurs pre-mortem. Because the human skull is significantly more resistant than other parts of the head and upper body, not all of the electrical current applied in the first two rounds of current will enter an inmate's brain. This increases the likelihood that a person will survive the initial shocks in the electric chair, even if the lower voltage third round of current does eventually kill them by fibrillating their heart, cooking their organs, or preventing them from breathing.

There is evidence that inmates executed by electrocution continue to move, breathe, and even scream after the shock is administered. The inmate may also regain heart function and spontaneously resume breathing during the process. These are indications that a substantial percentage of individuals survive and remain sensate long enough to experience excruciating pain and suffering. In fact, the head-to-leg electrode protocol is not designed to reduce pain and suffering. According to expert testimony, there is no scientific or medical justification for the way South Carolina carries out judicial electrocutions. The South Carolina electric chair causes grave damage to the body, but it is unlikely to immediately cause grievous harm to the two organs most important to maintaining consciousness: the brain and the heart. This creates a risk that an inmate will remain conscious and sensate while he is burned, bruised, and suffocated. The human body is largely unpredictable and it is not possible to know with certainty, in advance, how any given person will respond to an electrocution in the electric chair on any given day. As a result of the

inherently unpredictable nature of electrocution and the occurrence of human error, an intolerably high percentage of judicial electrocutions do not go according to plan and cause extreme pain and suffering.

Based on the foregoing findings of fact, the Court holds that the electric chair violates the South Carolina Constitution because it is cruel, it is unusual, and it is corporal. Since 1976, the state has killed just seven men in the electric chair. In multiple of those executions, there is objective evidence, documented in the autopsy reports as bruising, that the condemned likely experienced severe pain and suffering. The punishment is, at a minimum, no longer viewed as a reliable method of administering a painless death, and the underlying assumptions upon which the electric chair is based, dating back to the 1800s, have since been disproven.

As other courts have observed, although “it is not possible to determine conclusively whether unnecessary pain is inflicted [in a judicial electrocution],” the affirmative evidence that does exist strongly indicates that in an intolerably large number of cases, judicial electrocution amounts to torture. *Dawson*, 554 S.E.2d at 142-43; *see also Mata*, 745 N.W.2d at 278. Moreover, the law does not require certainty; even under the most demanding methods-of-execution analysis, “[t]he standard is whether the punishment creates a substantial risk that a prisoner will suffer unnecessary and wanton pain in an execution,” and the electric chair carries that risk. *Id.*

Even if an inmate survived only fifteen or thirty seconds, he would suffer the experience of being burned alive – a punishment that has “long been recognized as ‘manifestly cruel and unusual.’” *Dawson*, 554 S.E.2d at 143 (quoting *In re Kemmler*, 136 U.S. 436, 446 (1890)). Or, in the words of the Supreme Court of Nebraska, the argument that fifteen to thirty seconds “is a permissible length of time to inflict gruesome pain . . . is akin to arguing that burning a prisoner at the stake would be acceptable if we could be assured that smoke inhalation would render him

unconscious within 15 to 30 seconds.” *Mata*, 745 N.W.2d at 278. These risks are even more intolerable in light of the fact that South Carolina authorizes execution by lethal injection, a method that is known to be more humane and less painful when it is properly administered. Simply put, “[e]lectrocution’s proven history of burning and charring bodies is inconsistent with both the concepts of evolving standards of decency and the dignity of man. Other states have recognized that early assumptions about an instantaneous and painless death were simply incorrect and that there are more humane methods of carrying out the death penalty.” *Id.* After more than a century of use, it is time to retire the South Carolina electric chair as a violation of the Article I, section 15 of the South Carolina Constitution.

## **II. Count II: The Statute Violates the Ex Post Facto Clauses of the United States and South Carolina Constitutions**

Plaintiffs allege the amended execution statute operates in violation of the Ex Post Facto Clause because the prior statute provided an inmate would be executed by lethal injection unless he affirmatively chose electrocution, but the new statute sets the default method as electrocution unless firing squad and/or lethal injection are certified as available and the inmate chooses it. Because SCDC has indicated it cannot obtain the drugs to carry out lethal injection, Plaintiffs assert they now face the greater punishment of death by electrocution or firing squad versus lethal injection in violation of the Ex Post Facto Clause. The Court agrees.

Both the Constitutions of the United States and of South Carolina forbid ex post facto legislation. *See* U.S. Const. art. I, § 10 (“No State shall ... pass any ... ex post facto law”); *see also* S.C. Const. art. I, § 4 (“No ... ex post facto law ... shall be passed”). These provisions prohibit legislatures from enacting any “law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.” *Calder v. Bull*, 3 U.S. 386, 390 (1798). Put differently, a law is ex post facto when it “produces a sufficient risk of increasing the measure of

punishment attached to the covered crimes,” *Cal. Dep’t of Corr. v. Morales*, 514 U.S. 499, 509 (1995), or “alters the situation of the party to his disadvantage,” *State v. Malloy*, 95 S.C. 441, 441, 78 S.E. 995, 997 (1913). *See also Jernigan v. State*, 340 S.C. 256, 264–65, 531 S.E.2d 507, 511–12 (2000). Thus, although “a change in law that merely affects a mode of procedure but does not alter substantial personal rights is not ex post facto,” a law that “poses a sufficient risk of increasing the measure of punishment” affects an inmate’s substantial personal rights and is not merely procedural. *Barton v. S.C. Dep’t of Prob. Parole & Pardon Servs.*, 404 S.C. 395, 403, 413, 745 S.E.2d 110, 114, 120 (2013).

Lethal injection is the least severe of the three statutorily authorized punishments, and the amended statute effectively revokes that lesser punishment. When Plaintiffs committed their crimes and received their death sentences, the default method of execution was lethal injection, which is according to the Supreme Court of the United States is “believed to be the most humane [execution method] available.” *Baze*, 553 U.S. at 62. When carried out properly, it can largely eliminate the risk of pain that comes with other methods of execution. *Id.* at 49 (noting that the first drug of the three-drug protocol “eliminates any meaningful risk that a prisoner would experience pain from the subsequent injections”); *see also Barr v. Lee*, 140 S. Ct. 2590, 2591 (2020) (observing that a single-drug protocol is “widely conceded to be able to render a person fully insensate and does not carry the risks of pain that some have associated with other lethal injection protocols” (internal quotations omitted)). As a result, there is a “consensus among the States and the Federal Government that lethal injection is the most humane method of execution.” *Workman v. Bredesen*, 486 F.3d 896, 907 (6th Cir. 2007).

The Supreme Court’s decision in *Malloy v. South Carolina (Malloy II)*, 237 U.S. 180 (1915), finding a change in the execution method from hanging to electrocution did not create an

ex post facto violation, does not undermine this Court’s findings. *Malloy*, decided over a century ago, relied on the then- “well grounded belief that electrocution is less painful and more humane than hanging.” *Id.* at 180; *see also Kemmler*, 136 U.S. at 443-44 (approving electrocution as a method of execution based on the assumption that “application of electricity to the vital parts of the human body . . . must result in instantaneous, and consequently in painless, death”). As Drs. Wikswo and Arden testified, based on review of electrocution procedures and outcomes over the one hundred years since *Malloy II* and *Kemmler*, the assumption that electrocution causes an instantaneous and painless death is a fallacy unsupported by scientific evidence or simulations. Accordingly, the statute’s effect of changing the default method of execution from lethal injection to electrocution constitutes an ex post facto violation.

Defendants assert a change in execution methods cannot violate the Ex Post Facto Clause because it does not change the punishment itself (i.e., death) but is merely a change in the method of carrying out that punishment. They also assert that even if it could, there is no ex post facto violation unless the new punishments also violate the Eighth Amendment. Neither assertion comports with the proper standards for reviewing a statute for ex post facto purposes.

Defendants rely on a concluding sentencing in *Malloy II* stating “[t]he statute under consideration did not change the penalty – death – for murder” for the proposition that a change in the method of execution cannot create an ex post facto violation. *Malloy II*, 237 U.S. at 180. This reliance ignores the next sentence of the opinion: “The punishment was not increased [by adoption of electrocution], and some of the odious features incident to the old method [hanging] were abated.” *Id.* This demonstrates the ex post facto standard requires comparison between the methods of execution to determine if the punishment is increased. Even if the United States Supreme Court did not require such a comparative review, our state’s Supreme Court clearly does.



In reviewing the same change from hanging to electrocution, the Supreme Court of South Carolina conducted a comparative analysis of the two methods, describing “the manner in which an execution by hanging is conducted,” including the adjustments made to ensure “when [the inmate] drops from the scaffold his neck will be broken, thus destroying the structural formation of the body” and instances “where the head is completely severed from the body” and “numerous instances where the neck is not broken, and the convict died of strangulation” and reviewing the *Kemmler* decision to find that the Supreme Court of the United States “clearly . . . regarded electrocution as a more humane method of punishment than that by hanging.” *State v. Malloy (Malloy I)*, 95 S.C. 441, 441, 78 S.E. 995, 998 (1913). Accordingly, comparative review of the methods of execution is appropriate under the state and federal ex post facto clauses and demonstrates that the amended statute subjects Plaintiffs to a greater punishment.

Finally, Defendants’ assertion that there can be no ex post facto violation unless the newly adopted method of execution is itself a violation of the Eighth Amendment to the United States Constitution is incorrect. State and federal courts have reviewed changes in punishment where both the old and new punishments are clearly constitutional under the Eighth Amendment and found the change nevertheless violates the Ex Post Facto Clause by increasing the punishment. *See Lindsey v. Washington*, 301 U.S. 397, 401 (1937) (holding unconstitutional a retroactive law that removed lesser punishments and made the maximum punishment mandatory); *Jernigan v. State*, 340 S.C. 256, 531 S.E.2d 507 (2000) (holding the change from annual to biannual parole review could not be applied retroactively without violating South Carolina’s prohibition on ex post facto punishment). Thus, regardless of whether electrocution and firing squad violate the Eighth Amendment (a question not before this Court), subjecting Plaintiffs to them instead of lethal injection constitutes an ex post facto violation.

Because the amendments to the execution statute are retroactive, S.C. CODE ANN. § 24-3-530(3) (2021), the only question is whether the law “increases the punishment” or whether “its consequences alter[] the situation of a party, to his disadvantage.” *Malloy*, 95 S.C. at 441, 78 S.E. at 997 (quotations and emphasis omitted). As discussed in great detail above, electrocution and firing squad both cause excruciating pain and damage to the body of the condemned inmate. In comparison to lethal injection, these methods of execution “inflict a greater punishment” than lethal injection. *See Calder*, 3 U.S. at 390.

### **III. Counts III, IV, and V: The Use of the Term “Available” Voids the Statute**

Plaintiffs raise three arguments that center on the use of the term “available” in the amended execution methods statute – that it is impermissibly vague; that it must be defined by the courts, not by Defendants; and that its use violates the Non-Delegation Doctrine of the South Carolina Constitution.

#### **A. Count III: Due Process Violation**

First, Plaintiffs assert that the amended execution statute is unconstitutionally vague because it does not define the term “available.” According to Plaintiffs, this renders the term subject to multiple definitions depending on the context and, as such, the statute violates procedural due process. The Court agrees.<sup>3</sup>

Procedural due process, which requires fair notice and proper standards for adjudication, prohibits the state from enforcing a statute that is impermissibly vague. *State v. Houey*, 375 S.C. 106, 113, 651 S.E.2d 314, 318 (2007). “[T]he constitutional standard for vagueness is whether the law gives fair notice to those persons to whom the law applies.” *In re Amir X.S.*, 371 S.C. 380, 391–92, 639 S.E.2d, 144, 150 (2006). Specifically, a statute is unconstitutionally vague “if it

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<sup>3</sup> Plaintiffs also argue that the statute’s failure to address the sequence of events (such as certification and election) renders it invalid. Because the Court finds vagueness as to the meaning of “available,” it need not address these issues.

forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application.” *Curtis v. State*, 345 S.C. 557, 572, 549 S.E.2d 591, 598 (2001).

The amended execution methods statute is unconstitutionally vague because a person of average intelligence must guess as to its meaning. The words “available” and “unavailable” do not have meanings independent of their statutory context. Defendants have asserted that “available” plainly means “present or ready for immediate use,” but the word could also mean “accessible, obtainable,” or “capable of being gotten; obtainable.” MERRIAM-WEBSTER DICTIONARY (2022), <https://www.merriam-webster.com/dictionary/available>; *see also* AMERICAN HERITAGE DICTIONARY (2022), <https://ahdictionary.com/word/search.html?q=available>. The various definitions of “available” demonstrate that the meaning of the word depends on the context in which it originates. Therefore, this is not a case in which “the statute’s language is plain, unambiguous, and conveys a clear, definite meaning,” leaving no room for judicial interpretation.<sup>4</sup> *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm’n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010).

Defendants would have this Court interpret the meaning of “available” in the context of the Legislature amending the statute to allow executions resume despite SCDC’s assertion that it cannot obtain drugs necessary to carry out executions by lethal injection. However, “context,” as

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<sup>4</sup> The Supreme Court’s Orders staying Plaintiffs’ execution dates in June 2021 are persuasive in rejecting the idea that “available” has a plain meaning of “present and ready for immediate use.” As described above, following enactment of the amended execution methods statute, Director Stirling, interpreting the statute, certified that neither lethal injection nor firing squad were “available” and SCDC planned to carry out executions by electrocution. However, after he provided an explanation for why, in his view, the firing squad was “unavailable,” the Supreme Court vacated the execution notices it had previously issued and stayed all executions because “firing squad [was] currently unavailable due to [SCDC’s failure to implement it].” Order, *State v. Sigmon & Sigmon v. State*, Nos. 2002-024388, 2021-000584 (S.C. June 16, 2021); Order, *State v. Owens*, No. 2006-038802 (June 16, 2021). The Supreme Court’s rejection of Director Stirling’s interpretation—at least in that instance—indicates that the meaning of “available” is vague and leaves “a person of common intelligence” to guess as to the meaning of the term in the statute.

a matter of statutory interpretation, is not a broad reference to legislative debate or public opinion. Instead, “context” requires the interpreting court to consider not only “the particular clause being construed, but the undefined word and its meaning with the purpose of the whole statute and the policy of the law.” *S.C. Energy Users Comm.*, 388 S.C. at 492, 697 S.E.2d at 590.

First, the Court notes this is not a case in which the General Assembly “announced a purpose of the Act.” *Contra id.* at 202-03 & n.2, 733 S.E.2d at 906 (noting that the General Assembly expressed its intent in the title of the newly enacted legislation); *S.C. Energy Users Comm.*, 388 S.C. at 494-95, 697 S.E.2d at 592 (relying, in part, on the General Assembly’s own explanation of the challenged law’s purpose). Therefore, the Court looks at the purpose based on the whole statute. Inclusion of the term “if available” to make the election of execution method conditional provides some support for the idea that the intent of the General Assembly was to restart executions despite SCDC asserting it could not obtain lethal injection drugs. However, the choice to retain an election between execution methods (including lethal injection) and adding firing squad as an authorized method of execution indicates that the General Assembly intended to do more than merely restart executions by a method other than lethal injection. What these dual purposes fail to do is provide the Court, Director Stirling, or Plaintiffs with a definition for the term “available” because the General Assembly failed to provide a definition or standards for determining availability and the statute’s purpose leaves the term open to multiple definitions. The statute is, therefore, unconstitutionally vague.

**B. Count IV: Statutory Violation Based on the Meaning of “Available”**

Plaintiffs also contend that “[w]hatever their obligations to make methods of execution available under the statute, Defendants have failed to meet those obligations.” This claim is necessarily dependent on the definition of the term “available” and what obligations that definition

imposes on Defendants. Because this Court has found the statute unconstitutionally vague as to the term “available,” this claim cannot and need not be decided at this time.

**C. Count V: Violation of the Non-Delegation Doctrine**

As a correlate to their claim that the amended execution methods statute is unconstitutionally vague, Plaintiffs allege that by failing to provide standards for the determination of availability, the General Assembly vested unbridled discretion in Director Stirling to decide the methods of execution in violation of the non-delegation doctrine of the South Carolina Constitution. *See* S.C. Const. art. I, § 8. The Court agrees.

Article I, Section 8 of the South Carolina Constitution provides that “the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other.” Specifically, although the General Assembly “may authorize an administrative agency or board ‘to fill in the details’ by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose,” it may not vest “unbridled, uncontrolled, or arbitrary power” in another branch of government. *Bauer v. S.C. State Housing Auth.*, 271 S.C. 219, 232-33, 246 S.E.2d 869, 876 (1978) (quoting *S.C. State Highway Dep’t v. Harbin*, 226 S.C. 585, 593, 86 S.E.2d 466, 470 (1955)).

Although “there is no fixed formula for determining the powers which must be exercised by the legislature itself and those which may be delegated,” the basic guiding principle is that a delegation must not create an area of judicially unreviewable executive action, in light of the statutory purpose. *Id.* at 233, 86 S.E.2d at 876-77. Accordingly, “a statutory delegation is constitutional as long as [the General Assembly] ‘lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.’” *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019) (quoting *Mistretta v. U.S.*, 488 U.S. 361, 372 (1989)); *see also West Virginia v. Env’tl Protection Agency*, 142 S.Ct. 2587, 2617

(2022) (“[T]he framers believed that a republic – a thing of the people – would be more likely to enact just laws than a regime administered by a ruling class of largely unaccountable ‘ministers.’ . . . [B]y vesting the lawmaking power in the people’s elected representatives, the Constitution sought to ensure ‘not only that all power would be derived from the people,’ but also ‘that those entrusted with it should be kept in dependence on the people.’” (quoting *The Federalist* No. 11, p. 85 (C. Rossiter ed. 1961) (A. Hamilton) & *id.*, No. 37, at 227 (J. Madison))).

Without defining “available” or delineating standards for making the determination, Director Stirling’s determination of whether any given method is available is judicially unreviewable. *See Bauer*, 271 S.C. at 233, 246 S.E.2d at 876 (explaining that a delegation is unconstitutional where “the courts, when presented with a challenge of the agency’s actions, would, there being no limitations on the agency’s authority, be unable to judicially review its actions”). For example, if Director Stirling certifies that lethal injection is unavailable, the statute provides no mechanism or standards by which the condemned person can challenge that assessment. Because the statute is silent as to the meaning of “available,” “there is an absence of standards for guidance of the [Director’s] action,” making it “impossible in a proper proceeding to ascertain whether the will of [the Legislature] has been obeyed.” *Mistretta*, 488 U.S. at 379; *see also Harbin*, 226 S.C. at 595, 86 S.E.2d at 470–71 (holding that the General Assembly effectuated an unconstitutional delegation of power when it gave the State Highway Department the authority “to suspend or revoke a license for any cause which it deems satisfactory”). Under the statute as written, Director Stirling might determine that a specific method is not “available” for any reason or for no reason at all.

Defendants’ assertion that the director of SCDC can be presumed to act in good faith does not remedy the non-delegation issue. “The presumption that an officer will not act arbitrarily but

will exercise sound judgment and good faith cannot sustain a delegation of unregulated discretion.” *Harbin*, 226 S.C. at 596, 86 S.E.2d at 471. In this case, Director Stirling testified credibly and in good faith. The constitutional problem, however, is that because the statute leaves it to his sole discretion to decide what “available” means, he can always certify in “good faith” that a given method is or is not “available,” based on his own definition. The intentions of Director Stirling are not in question; the reviewability of his decisions, as an unelected official of the executive, is the issue. The statute’s lack of standards and failure to define the term “available” renders it an unconstitutional delegation of authority.

#### **IV. Count VII: Violation of the Methods-of-Execution Statute**

Finally, the Court notes that even if its legal analysis of the statutory amendments is incorrect, and the statute passes constitutional muster with respect to vagueness and delegation, the statute is still rendered invalid by this Court’s findings on the firing squad and electrocution. Because both methods are unconstitutional, the statute’s creation of an inmate’s right “to elect the manner of their execution” is violated by the fact that an inmate does not have a choice between two constitutional methods of execution. *See* Order, *Sigmon*, No. 2002-024388; *see also* Order, *Owens*, No. 2006-038802. Accordingly, even Plaintiffs are not entitled to relief on Counts III, IV, and V, Plaintiffs are entitled to a declaration that the statute is invalid.

#### **CONCLUSION**

In 2021, South Carolina turned back the clock and became the only state in the country in which a person may be forced into the electric chair if he refuses to elect how he will die. In doing so, the General Assembly ignored advances in scientific research and evolving standards of humanity and decency.

Based on the foregoing, the Court finds that Plaintiffs are entitled to declaratory judgment that (1) carrying out executions by electrocution and by firing squad violates the Constitution of

the State of South Carolina Constitution and its prohibition on cruel, corporal, or unusual punishments; and (2) S.C. CODE ANN. § 24-3-530, as amended in 2021, is unconstitutional and is, therefore, invalid. Plaintiffs are also entitled to a permanent injunction as requested.

IT IS, THEREFORE, ORDERED that Plaintiffs' request for a declaratory judgment is GRANTED.

IT IS FURTHER ORDERED that Defendants are permanently enjoined from forcing Plaintiffs to be executed by electrocution or by firing squad.

AND IT IS SO ORDERED.





Richland Common Pleas

**Case Caption:** Freddie Eugene Owens , plaintiff, et al vs Bryan P Stirling , defendant,  
et al  
**Case Number:** 2021CP4002306  
**Type:** Order/Other

So Ordered

Jocelyn Newman

# EXHIBIT L

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## The possible pain experienced during execution by different methods

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**Abstract.** The physiology and pathology of different methods of capital punishment are described. Information about this physiology and pathology can be derived from observations on the condemned persons, postmortem examinations, physiological studies on animals undergoing similar procedures, and the literature on emergency medicine. It is difficult to know how much pain the person being executed feels or for how long, because many of the signs of pain are obscured by the procedure or by physical restraints, but one can identify those steps which are likely to be painful. The general view has been that most of the methods used are virtually painless, and lead to rapid dignified death. Evidence is presented which shows that, with the possible exception of intravenous injection, this view is almost certainly wrong.

### 1 Introduction

In 1989 execution was carried out by shooting in 86 countries, hanging in 78, stoning in 7, beheading in 6, and electrocution, intravenous injection, and gassing in the United States only (Amnesty International 1989, pp 265-268). These methods are legally prescribed, but a great many more prisoners die of starvation, torture, dehydration, and illness during their incarceration—these deaths will not be dealt with here. Two aspects of execution will be addressed: first the physiology and pathology of the different methods, and second the pain attendant upon each method.

### 2 Physiology and pathology in different methods of execution

#### 2.1 Shooting

This may be carried out either by a single soldier or policeman at short range who fires from behind the condemned person's occiput towards the frontal region, or by a firing squad of up to thirty soldiers who stand or kneel opposite the blindfolded prisoners. Sometimes the soldiers aim at the chest, since this is easier to hit than the head (Amnesty International 1989, page 56). The intention of shooting at short range is to destroy the vital centres of the medulla, as happens when a captive bolt is used for slaughtering cattle. A firing squad aiming at the head produces the same type of lesions as that produced by a single soldier, but bullets fired at the chest rupture the heart, great vessels, and lungs so that the condemned person dies of haemorrhage. A bullet, especially of high velocity, produces a cavity which has a volume several hundred times that of the bullet (Owen-Smith 1981). Cavitation is probably due to the heat dissipated when the impact of the bullet boils the water and volatile fats in the tissue which it strikes. Persons hit by bullets feel as if they have been punched—pain comes later if the victim survives long enough to feel it (Beecher 1949; Melzack et al 1982). The Royal Commission on Capital Punishment (1953, para 710) discussed shooting as a possible alternative to hanging, but rejected it on the grounds, inter alia, that "it does not possess even the first requisite of an efficient method, the certainty of causing immediate death". Those giving evidence to the Commission frequently emphasised their belief that any method of execution that they recommended should be rapid, clean, and dignified.

## 2.2 *Hanging*

This method was last used in Britain in 1964—the death penalty was abolished in 1973. It would probably be used again if Parliament were to vote to reintroduce capital punishment. In execution by hanging the prisoner is weighed the day before the execution, and a rehearsal is done using a sandbag of the same weight as the prisoner. This is to determine the length of 'drop' necessary to ensure a rapid fracture-dislocation of the neck (Royal Commission on Capital Punishment 1953, para 703). Immediately before the execution, the prisoner's hands and legs are pinioned, he or she is blindfolded and the noose is placed around the neck. The execution takes place when a trapdoor is opened and the prisoner falls through. The prisoner's weight causes a rapid fracture-dislocation of the neck, unless the condemned person has strong neck muscles, is very light, the 'drop' is too short, or the noose has been wrongly positioned (Pierrepoint 1974). In all cases the face becomes engorged and then cyanosed. The tongue protrudes and violent movements of the limbs occur which are usually attributed to spinal reflexes. The prisoner may micturate and defaecate. The heart may continue to beat for up to 20 min after the drop (Royal Commission on Capital Punishment 1953, para 714).

This was the procedure used in Britain, but in most other countries hanging is a much less sophisticated procedure—executions are often carried out in front of crowds, and the bodies are often left dangling to deter others contemplating the same misdemeanour (Amnesty International 1989, pages 27–70).

At postmortem the noose under the chin is found to have caused hyperflexion of the neck with rotation, and fracture of the junction between the body and the pedicle of the axis, anterolateral on the side of the noose, and posterolateral on the other side. The spinal cord is transected, the medulla is avulsed, and there are extensive lacerations and bruising of the spinal cord (Wood-Jones 1913; Roaf 1976). Similar lesions are seen in rats killed by cervical dislocation for biochemical experiments—their hearts continue to beat for approximately 7 min after dislocation (Feldman and Hillman 1969).

It is always assumed that fracture-dislocation causes instantaneous loss of sensation. Certainly sensory pathways from below the neck must be ruptured rapidly, but the sensory signals from the skin above the noose and from the trigeminal nerve probably continue to reach the brain until hypoxia blocks them.

If the fracture-dislocation is not rapid, death results from asphyxia. Death by asphyxia is much slower than by fracture-dislocation because in asphyxiation the noose only occludes the jugular veins and carotid arteries but the vertebrae protect the vertebral and spinal arteries which also supply blood to the brain.

## 2.3 *Stoning*

Stoning is used in Iran, Mauritania, Pakistan, Saudi Arabia, Sudan, the United Arab Emirates, and Yemen (Amnesty International 1989, pages 265–268). There is remarkably little literature describing its occurrence, physiology, or pathology, but eight people were executed in this way in Iran in 1986 (Amnesty International 1987). The men or women have their arms and legs bound, and are buried up to their necks in sand. Their heads are covered by sheets. Article 119 of the Islamic Codes of Iran (1980) states "In the punishment of stoning to death, the stones should not be too large, so that a person dies on being hit by one or two of them; they should not be too small either that they could not be defined as stones." (Islamic Codes of Iran 1980). The 'injured parties' and bystanders pelt the prisoners with stones until they judge, by the absence of cries and movements and the blood on the sheets, that the condemned person is dead. He or she is then buried.

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By analogy with serious head injuries sustained in road traffic accidents, it may be supposed that the condemned persons die of massive extracranial and intracranial haemorrhage (Hayward 1980; Vinken et al 1990). In the circumstances of the execution, they are very likely to suffer severe pain, distress, dehydration, and, perhaps, heat exhaustion. This form of execution is likely to result in the slowest death of any of the methods used.

#### 2.4 *Beheading*

Beheading is practiced in Congo, Mauritania, Qatar, Saudi Arabia, the United Arab Emirates, and Yemen (Amnesty International 1989, pages 265–268). It may be done by repeated sword cuts to the neck, by an axe wielded by a strong man, or by the weighted blade of the guillotine. The skin, muscles, and vertebrae of the neck are tough, so that beheading does not always result from a single blow. It may be presumed that the prisoner becomes unconscious within a few seconds, but not immediately after, the spinal cord is severed. The eyes of small rodents move for a few seconds after biochemists have guillotined them (unpublished observations). Anaesthetised sheep lose the flash-evoked responses of their electrocorticographs about 14 s after *both* carotid arteries are severed, and 70 s after one carotid artery and one jugular vein are cut (Gregory and Wotton 1984). Dogs become unconscious 12 s after the blood supply to their brains is occluded (Roberts 1954). It has been calculated that the human brain has enough oxygen stored for metabolism to persist about 7 s after the supply is cut off (McIlwain and Bachelard 1985). However, the brain could well derive some of its energy from substrate in the scalp and facial and neck muscles (Geiger and Magnes 1947). It may be presumed that a beheaded person dies from anoxia consequent upon haemorrhage.

#### 2.5 *Electrocution*

The electric chair was first used in 1890 in New York, after an extensive investigation of the methods then being used in the United States and Europe (Macmillan 1888). The New York Commission was concerned about the indignity and unreliability of the methods in use at that time, and was impressed by the suddenness of death by electrocution in the many cases which had occurred as a result of accidents with the recently introduced domestic electricity (Beichman 1963; Bernstein 1975; Jones 1990).

For execution by the electric chair the prison is shaved. A metal skullcap-shaped electrode is attached to the scalp and forehead over a sponge moistened with saline—the sponge must not be too wet or the saline short-circuits the electric current, nor too dry as it would then have a very high resistance. Additional curved electrodes are moistened with conductive jelly and bound to the prisoner's legs. He or she is strapped into the electric chair and blindfolded. After the witnesses—which include doctors—have withdrawn to the observation room, the warder pulls a handle to connect the power supply. The 'jolt' of 6–12 amps at 2000–3000 volts lasts a few seconds. The current surges and is then turned off, at which the body is seen to relax. The doctors wait a few seconds for the body to cool down and then auscultate the heart. If it is still beating, another 'jolt' is applied (McDonald 1892; Klein 1914; DeParle 1986). The prisoner's hands grip the chair and there is violent movement of the limbs which may result in dislocations or fractures. The tissues swell. Micturition and defaecation occur. Steam or smoke rises and there is a smell of burning (Brennan 1985; Wikberg 1990; Sawyer 1991).

At postmortem, third degree burns with blacking between the electrodes and the skin of the scalp and legs are seen. The swollen tissues may have burst. The brain under the electrode is hot and congested; it may be denatured and it is often charred. The other viscera are hot and reddish. Histology of the brain shows minute circular lesions which are probably bubbles (Spitzka and Radash 1912; Critchley 1914; Hunt

et al 1976). These lesions are similar to those seen after severe accidental burns (Cunningham 1899; Sances et al 1979; Hartford 1983).

Death from electrocution could be due to asphyxia caused by paralysis of respiration, and to ventricular fibrillation (Bernstein 1975). If so, several seconds or minutes could elapse during which the condemned person could be conscious. Death is unlikely to be due to *immediate* denaturation of the respiratory muscles or heart, which are close to the electrode, or of the respiratory centre, which is farther away, since respiration and the heart may restart after the first 'jolt' (Sawyer 1991). One must not confuse electrical conduction of the sensation of pain with conduction of the heat (see below); the former is very rapid but the latter is slow. The electric current only denatures tissue when it heats it.

The electrical conductivity of the skin is very low, and its capacity is high, whereas the deeper tissues have a much higher conductivity (Henriques and Moritz 1947; Lawrence and Bull 1976; Davies 1982). The surface of the brain has been found to be at a temperature of up to 60° 10–12 min after electrocution, and the charring of the brain (McDonald 1892; Spitzka and Radash 1912) makes it likely that the condemned person dies of heat denaturation of the respiratory centre in the medulla. This heat results from the conduction of the current through the highly resistant skin: the current travels along the scalp, partly through the diploic vessels, and through the orbits, nasal cavities, external auditory meatuses, and the foramen magnum—which are all low-resistance pathways—to the vital centres in the medulla (Cohen 1976).

### 2.6 Gassing

This was first used in Nevada in 1921 (Amnesty International Medical Commission and Marange 1989). For execution by this method, the condemned person is strapped to a chair in front of a pail of sulphuric acid, in an airtight chamber. The warders withdraw and the chamber is closed. A lever on the outside of the chamber is used to drop crystals of sodium cyanide into the pail. The prisoner is instructed to "take a whiff". Most prisoners try to hold their breath, and some struggle (Ferretti 1990). It is not known what sensation is felt, but the signs and symptoms of accidental cyanide poisoning are giddiness, headache, dyspnoea, vomiting, ataxia, hyperventilation, and collapse (Arena 1988; National Poisons Treatment Service 1991). Death is due to anoxia, consequent upon inhibition of cytochrome oxidase, which is a key respiratory enzyme (Dixon and Webb 1979).

### 2.7 Intravenous injection

Execution by intravenous injection was first introduced in the United States in 1977 (Amnesty International Medical Commission and Marange 1989). When this method is used the condemned person is bound supine to a trolley and a trained nurse or technician cannulates the vein in the angle of the elbow. If the prisoner's veins are difficult to cannulate, for example if he or she does not cooperate, if there is phlebitis due to injection of addictive drugs, or if there is scarring due to previous attempts to slash the arm, the procedure becomes very fraught. After the cannula has been passed successfully into the vein, three substances are injected: sodium thiopentone—a rapidly acting anaesthetic, pancuronium bromide—a muscle relaxant to paralyse respiration, and potassium chloride—to stop the heart (Amnesty International 1989, page 176; Smith 1983; Paterniti 1985). The subject becomes unconscious within 10–15 s. Death results from anaesthetic overdose and respiratory and cardiac arrest while the condemned person is unconscious. A doctor does not have any part in the execution, but afterwards one will certify that the person is dead, as enjoined by the Declarations of the House of Delegates (American Medical Association 1984), following the recommendations of the World Medical Association (World Medical Association 1981; Cascells and Curran 1982).

### 3 The assessment of pain during execution

There is an extensive literature on the psychiatric aspects of long periods of waiting for execution (Cohen 1954; Bluestone and McGahee 1962; Gallemer and Panton 1972; Johnson 1981) but these aspects will not be considered here.

In everyday life, a person in severe pain shouts or screams, perspires, has dilated pupils, withdraws from the noxious stimulus, moves the limbs violently, contracts the facial muscles, micturates, and defaecates. The ability to detect each of these signs in the circumstances of each of the different methods of execution is indicated in table 1. Examination of this table leads to the following conclusions: (a) it is not known whether or not many of these signs occur and some could not be seen if they did; (b) physical restraint prevents some of them occurring; (c) some of them, such as dilation of the pupils, contraction of the facial muscles, and micturition commonly occur

**Table 1.** Signs of severe pain or distress in persons executed by shooting (Sh), hanging (H), stoning (St), beheading (B), electrocution (E), gassing (G), and intravenous injection (IV). + indicates that the sign is often seen, - that it is not seen, \* that the sign can either not be made or not be seen, and ? that there is no information.

Signs	Method of execution						
	Sh	H	St	B	E	G	IV
Shouting or screams	?	*	+	+	*	+	-
Perspiration	?	?	*	?	+	?	?
Dilated pupils	*	?	*	?	*	?	+
Withdrawal from stimulus	*	*	*	*	*	*	*
Violent movements	?	+	*	*	*	*	-
Contraction of facial muscles	*	+	*	?	*	+/-	-
Micturition	?	+	?	?	+	?	?
Defaecation	?	+	?	?	+	?	?

**Table 2.** Factors occurring in execution which are likely to cause pain. Intensity of likely pain is graded as little (+), moderate (++), severe (+++), or not known (?). The likely duration of the sensations is not known.

Method of execution	Pain		
	Cause	Sensation	Intensity
Shooting	rupture of skin	sting or punch	+ or ++
	fracture of bone	cracking	?
Hanging	stretch of skin	burning, stretching	+++
	fracture-dislocation of vertebrae	dislocation, fracture	+++
	asphyxia	suffocation, distress	+++
Stoning	lacerations of skin of head	sharp pain	+++
	multiple injuries	sensory deprivation, exhaustion	+++
Beheading	stretch of skin prior to cut	burning	+++
	lacerations of skin	sharp pain	+++
Electrocution	heat	heat	+++
	skin burns	burning	+++
	asphyxia	suffocation	+++
Gassing	tracheal irritation	burning	+++
	asphyxia	suffocation	+++
Intravenous injection	missing or going through the vein	intramuscular injection	+

as a result of fear, electrical stimulation, or dying (Hillman 1974), as well as being signs of severe pain. In addition, the extreme stress of the circumstances surrounding execution may well either mask or enhance pain.

A person being stoned shouts and screams, but one cannot know whether any of the other signs occur. Nor does one know for how long and how severely a decapitated head feels. There are substantial areas of ignorance, so that one cannot know for certain the extent of pain in respect of a particular method. However, one can examine the stages at which it is likely to occur (table 2), and the evidence for these predictions (table 3).

It is important to appreciate that reaction times—which include the time that motor signals take to go from the brain to the periphery—are maximally up to 1 s (Chase 1984; Posner 1986), whereas the blood and oxygen supply last several seconds (Geiger and Magnes 1947; Roberts 1954; Gregory and Wotton 1985; McIlwain and Bachelard 1985). Thus there will always be a finite, if variable, number of seconds during which a condemned person feels before he or she becomes unconscious. It is also possible that the pain may be so severe that the person faints from it.

The stages at which pain probably occurs are shown in table 2. It should be noted that—with the exception of intravenous injection—all the methods of execution produce the same sort of lesions as conditions for which patients are rushed to accident and emergency departments, where they may be deemed to require powerful analgesics. With the certain exception of intravenous injection and the possible exception of shooting, all the procedures are likely to produce severe pain; the reasons for believing this are given in table 3. The advocates and practitioners of hanging, electrocution, and gassing believe that these procedures are painless, or that the pain lasts such a short time that the condemned person does not suffer for long, or that he or she deserves such pain for the heinous crime of which the prisoner has been found guilty.

**Table 3.** Evidence for pain being likely during execution.

Method of execution	Evidence
Shooting	Evidence of victims of gunshot wounds (Beecher 1949; Owen-Smith 1981; Melzack et al 1982)
Hanging	Dislocations are painful (Watson-Jones 1976), fractures are painful (Wu 1987)
Stoning	Skin lacerations are painful; operations on skin are carried out under anaesthetic
Beheading	Skin receptors are active until sensory pathways are hypoxic (Donald-Hatcher 1965; Safar et al 1982), amputations are carried out under general anaesthetic
Electrocution	Defibrillation is painful (Kowey 1988), electric burns are painful (Hunt et al 1976; Sances et al 1979; Goodenough and Burke 1983; Hartford 1983), electricity is used for torture (Dylre-Poulsen and Rasmussen 1977; Amnesty International Medical Commission and Marange 1989), an experimenter tried it on himself (Leduc 1903), a survivor of the electric chair felt pain (Francis 1946), domestic electric shocks are painful
Gassing	Symptoms of cyanide poisoning include headache (Arena 1988; National Poisons Treatment Service 1991)
Intravenous injection	No pain reported with successful cannulation



#### 4 Conclusion

All of the methods used for executing people, with the possible exception of intravenous injection, are likely to cause pain. The perceived absence of the normal signs of severe pain is often due to these signs being masked by the procedure, or to the condemned person being physically restrained from demonstrating them, or to their being similar to those seen during dying. Therefore, the absence of signs of severe pain does not provide sufficient evidence for us to decide whether or not it occurs. However, evidence brought to bear from knowledge of physiology, and comparisons with accidental and emergency medicine, that nearly all execution procedures are likely to be attended by pain to the condemned person. Nevertheless, despite the evidence presented above, it is widely asserted that executions are humane and painless (Supreme Court 1890; Purchase 1953; Berns 1980; Sawyer 1991), although no evidence to this effect appears to have been published.

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**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

**STATE OF IDAHO**

**Plaintiff,**

**V.**

**BRYAN C. KOHBERGER,**

**Defendant.**

**CASE NUMBER CR29-22-2805**

**AFFIDAVIT OF BARBARA C. WOLF,  
M.D.**

STATE OF FLORIDA)

: ss.

County of Lake )

1. I am an adult, over the age of 18, and I have personal knowledge of the facts set forth in this Affidavit.
2. I have been a licensed M.D. since 1980 and have been a practicing pathologist since 1985. I am the District Medical Examiner for District 5 and the Interim District Medical

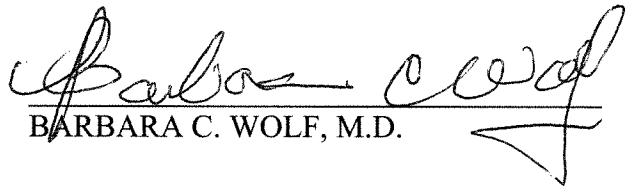
Examiner for District 24 in the State of Florida. I have been board certified in Forensic Pathology since 1994. I currently serve as the Chair of the Florida Medical Examiner's Commission. I also privately contract as an expert.

3. I have been asked to address the subject of conscious pain and suffering experienced by individuals who are executed by firing squads.
4. The intended target in an execution by firing squad is the heart of the condemned individual.
5. Assuming that the shooters are competent marksmen, the condemned individual will be shot in the chest.
6. The bullet will cause injuries to the heart, large blood vessels, bones and possibly the lungs.
7. The mechanism of death will be shock resulting from bleeding due to damage to these organs.
8. Because the head is not the intended target, there will be no injury to the brain or cervical spinal cord and, therefore, loss of consciousness and death are not instantaneous.
9. The dying individual will experience a period of conscious pain and suffering resulting from the physical pain caused by the gunshot wound(s) and may even be capable of purposeful movement.
10. The length of the period of conscious pain and suffering will vary depending on the organs injured. It is well documented in the forensic literature that once blood flow to the brain is completely shut off, an individual will have in the range of 10 seconds or slightly more of consciousness because of the reserve of oxygen in the blood vessels of the brain itself.
11. Documentation of this interval of consciousness has in recent years been gleaned from work of an international research group known as The Working Group on Human Asphyxia. The Working Group on Human Asphyxia has reviewed numerous videos of filmed hangings, the majority being obtained from death scenes of practitioners of autoerotic asphyxia who sometimes film themselves in the processing of hanging. The intent of a practitioner of autoerotic asphyxia, almost always a male, is to induce transient hypoxia (diminished oxygen being delivered to the brain) to enhance sexual arousal and sensations. The most commonly employed method is hanging, with the practitioner intending to release the pressure on the neck before losing unconsciousness. Accidental death results from the failure of the practitioner to release the pressure on the neck, either because the intended escape mechanism fails or because he loses consciousness before realizing that he has reached a dangerous level of hypoxia. The Working Group has published data obtained from filmed hangings pertaining to the agonal sequence in these deaths. The individuals observed hanging lost consciousness in an average period of 10 seconds, plus or minus 3 seconds. This provides evidence for a minimum interval of consciousness when blood flow to the brain is completely cut off.
12. As a result of gunshot wounds to the chest, even with severe damage to the heart, blood flow to the brain does not immediately cease. The heart may continue to pump blood, although not as effectively as it did prior to being shot, until its functioning is precluded by the gunshot damage to the organ. Therefore, there is the potential for a period of conscious pain and suffering longer than the intervals observed in the filmed hangings.


13. There have been well documented cases of individuals who, despite major gunshot damage to the heart, have been able to carry out significant activity. A witness to the 2010 execution of Ronnie Lee Gardner in Salt Lake City, Utah observed Mr. Gardner's hands "gripping and raising, and then coming back down to rest."
14. If the shooters fail to strike the heart or a large blood vessel, the condemned individual may slowly bleed to death, with a much longer period of conscious pain and suffering.
15. When a bullet strikes the body, a temporary cavity is formed along the wound track. Individuals shot in the chest may feel like they have been punched, followed by pain.
16. The strike of a bullet causes rupture of the skin, and, particularly with chest gunshot wounds, often rib fractures. The skin has many nerve fibers, and rib fractures are particularly painful as the ribs move while the individual continues to breathe.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 5<sup>th</sup> day of September, 2024.

  
BARBARA C. WOLF, M.D.

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of September, 2024.

  
Notary Public in and for the State of Florida  
Commission Expires: 6-25-2027

