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Attorney for Governor Otter

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

THE ASSOCIATED PRESS, *et al.*, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
C.L. (BUTCH) OTTER, *et al.*, )  
 )  
Defendants. )

Case No. 1:12-cv-00255-EJL

**DEFENDANTS’ OPPOSITION TO  
PLAINTIFFS’ EXPEDITED MOTION  
FOR PRELIMINARY INJUNCTION,  
DKT. NO. 2**

Defendants (1) Governor C.L. (Butch) Otter, (2) Idaho Board of Correction Members Robin Sandy, Howard G. “J.R.” Van Tassel, and Jay L. Nielsen, (3) Idaho Department of Correction (“IDOC”) Director Brent Reinke, and (4) Idaho Department of Correction Division Chief of Operations Kevin Kempf, collectively Defendants or IDOC, all of whom have been sued in their official capacities, file their Defendants’ Opposition to Plaintiffs’ Expedited Motion for Preliminary Injunction, Dkt. No. 2.

## I. FACTUAL BACKGROUND

For purposes of this Opposition, Defendants accept the following allegations of fact in Plaintiffs' Complaint: On November 18, 2011, the State of Idaho executed a death warrant against Paul Ezra Rhoades. Both before and after that date there was correspondence among IDOC officials and representatives of the news media concerning when in the execution process Mr. Rhoades would become visible to official witnesses. See Complaint Ex. A-F, Dkt. 1-1. IDOC officials met with representatives of the news media on January 24, 2012, to discuss IDOC procedures on that very issue. IDOC and the news media did not come to any agreement.<sup>1</sup> Regarding when an execution will become visible to official witnesses, IDOC has in substance the same procedure used in November 2011 and that is posted on line as most recently reviewed on January 6, 2012. A copy of that procedure, formally known as IDOC Standard Operating Procedure 135.02.01.011 (version 3.6) ("SOP 135"), is Ex. 1 to the Declaration of Jeff Zmuda, Deputy Chief of the Bureau of Prisons of the Idaho Department of Correction ("Zmuda Decl.").

Defendants add the following facts that they believe are uncontested: On May 17, 2012, District Judge Shindurling issued a death warrant for Mr. Richard A. Leavitt to be executed on June 12, 2012. On May 22, 2012, almost five months after the news media met with IDOC officials and twenty-one days before the scheduled execution, Plaintiffs filed suit and moved for a preliminary injunction. Dkt. Nos. 1 and 2. Plaintiffs did not serve the Complaint or the Motion on any Defendant on May 22. It was not until two days later—on May 24, following the District Court's Order to serve the Plaintiffs, Dkt. 5, p. 3, and nineteen days before the scheduled execution—that Plaintiffs first delivered the Complaint and the Motion to the Attorney General's office. The May 22 Complaint and Motion do not challenge any new procedures, but challenge a part of the IDOC witness protocol that has been in place since before the Rhoades execution.

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<sup>1</sup> Complaint ¶ 32, Dkt. 1, states: "Contrary to Defendants' assurances, a review of the execution protocol followed by the IDOC has not occurred. Defendants, in fact, have refused to modify the protocol in any respect." Defendants disagree with the first sentence. IDOC reviewed the protocol and retained it. Zmuda Declaration, ¶ 5. A commitment to review the protocol is not a commitment to change it

## II. GOVERNING LEGAL STANDARDS

### A. Applicable Preliminary Injunction Law

The Brief in Support of Plaintiffs’ Expedited Motion for Preliminary Injunction (“MPI Brief”), Dkt. 2-1, p. 3, cites *Farris v. Seabrook*, — F.3d —, 2012 WL 1194154, \*4 (9th Cir. April 11, 2012), and *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). *Farris* says: “A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor and (4) an injunction is in the public interest.” *Farris*, at \*4. This is black letter preliminary injunction law that Defendants accept.

Plaintiffs then add: “The plaintiffs do *not* have to show that they are likely to succeed if the balance of equities tips sharply in their favor and there are serious questions going to the merits,” citing *Farris* at \*4 (emphasis added). MPI Brief, Dkt. 2-1, p. 3. Plaintiffs’ quotation is faithful to *Farris*, but *Farris* is not faithful to *Winter*. *Winter* says: “A plaintiff seeking a preliminary injunction *must* establish that he is likely to succeed on the merits ... .” 555 U.S. at 20 (emphasis added). *Winter* has no exception for serious questions going to the merits.

### B. Plaintiffs’ Burdens of Proof and Persuasion

Rather than assuming the burden of proof placed upon them by *Farris* (“A plaintiff seeking a preliminary injunction must show ...”), Plaintiffs cite *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011), for the proposition that if they make a colorable claim that their First Amendment rights have been infringed, or are threatened with infringement, the State bears the burden of justifying any law that may restrict First Amendment freedoms. That may be the rule in the ordinary First Amendment case, but this is no ordinary case. This case involves prisons and prison procedures.

As the Ninth Circuit recognized in *California First Amendment Coalition v. Woodford*, 299 F.3d 868 (2002) (*CFAC IV*), prison cases are not analyzed like cases dealing with public meetings or hearings: “Because the executions ... take place within prison walls, are administered by the same individuals who run [the prison] and are staffed by the same personnel who

participate in the daily operations of the prison, our level of scrutiny must be guided by the line of cases addressing constitutional challenges to prison regulations, rather than by those governing access to governmental proceedings.” *Id.* at 877. *CFAC IV* continued that the standard “in reviewing a challenge to a prison regulation that burdens fundamental rights [is] to ask whether the regulation is reasonably related to legitimate penological objectives, or whether it represents an exaggerated response to those concerns.” *Id.* at 878. As *California First Amendment Coalition v. Calderon*, 150 F.3d 976 (9th Cir 1998) (*CFAC III*), explained in reversing and remanding a summary judgment entered without an evidentiary hearing, the burden of proof was on the plaintiff news organizations: “We do not have substantial evidence indicating an exaggerated response here and, therefore, defer to prison officials in this matter. ... [¶] Accordingly, we reverse and remand this action to the district court with instructions to determine whether the Coalition has presented ‘substantial evidence’ that [the California procedure] represents an exaggerated response to [the California Warden’s] security and safety concerns.” 150 F.3d at 983.

Moreover, the press has no right of access to prisons superior to the public in general. “[T]he press has no First Amendment right to view events inside prison walls” as such; the press has “a right [that] is co-extensive with the public’s right to the same information.” *CFAC IV*, 299 F.3d at 874. Thus, Plaintiffs’ rights in this case are no more than the rights of any citizen.

### III. IDOC’S LEGITIMATE PENOLOGICAL OBJECTIVES

#### A. Idaho Does Not Have England’s or California’s Histories

Whatever the history of public executions in England from 1196 to 1868, *CFAC IV*, 299 F.3d at 875, and whatever the history of public witnesses at the gas chamber in California in the twentieth century, *id.* at 876, Idaho has no comparable history that it is stepping back from, and Idaho should not be burdened with either of these histories. Unlike California, which according to *CFAC IV* has by statutes going back to 1858 required at least “twelve respectable citizens” to witness all executions, *id.* at 875-876, the State of Idaho had no comparable statutory policy in the twentieth century. The word “witness” does not appear at all in current Idaho Code Title 19, Chapter 27, which governs execution of a judgment of death. Nor, so far as Defendants can

research the issue in the short time in which their Opposition is due, has Idaho provided by statute for witnesses to an execution at any time since Idaho replaced hanging with lethal injection in 1978 Idaho Session Laws, ch. 170, p. 140.<sup>2</sup>

California's historical practice, which was recited in detail in Part I.B of *CFAC IV's* Analysis, 299 F.3d at 875-876, was an important factor in the Ninth Circuit's decision. The historical practices and traditions in California, including the statutory requirement of witnesses to the execution and the historical practice of witnesses being present to watch the condemned enter the gas chamber, satisfied one of the prongs of the *Richmond Newspaper* test that the Ninth Circuit used to determine that California executions must be open to witnesses from the time the condemned enters the execution chamber. *Id.* at 877. If the Ninth Circuit intended to constitutionalize the consequences of California's practice and history on other States, it did not say so in *CFAC IV*. *Cf. Perry v. Brown*, 671 F.3d 1052, 1096 (9th Cir. 2012) (withdrawal of a previously enjoyed right in one State is on a different constitutional footing than whether other States that have never provided the right at all). Thus, Idaho is entitled to write on a clean slate unencumbered by California's practice and history.

Idaho has administered the death penalty only twice since the 1960s. IDOC has a legitimate penological objective in approaching its administration of the death penalty according to its evolving standards of decency that call for quiet professionalism. In particular, IDOC has a legitimate penological objective in removing the spectacle that accompanied "town square" executions and implementing its own standards of decency.

#### **B. Idaho Provides Affirmative Evidence of Legitimate Penological Objectives for Its Witness Procedure**

Plaintiffs have failed their obligation to offer evidence that the Idaho procedure is an exaggerated response to Idaho's legitimate penological objectives. The Complaint is verified, see Dkt. 1, p. 19, but it does not offer evidence regarding Idaho's penological objectives; rather, it eschews such considerations entirely: "[T]he singular issue before this Court is whether or not

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<sup>2</sup> Defendants will continue to research this issue after filing this Opposition. If this statement is in error, they will promptly notify the Court.

the execution process – including the preparatory phase – should be opened for viewing.” Dkt. 1, pp. 9-10. Further, Plaintiffs provided no declarations or affidavits in support of their Expedited Motion for Preliminary Injunction (the MPI). The absence of evidence alone is reason to deny the MPI and to set this case on a normal timetable for an evidentiary hearing.

Defendants, however, do not stand on their procedural right to demand that Plaintiffs first produce evidence. They affirmatively offer evidence even though they are under no obligation to do so before Plaintiffs step forward. Defendants articulate the following legitimate penological objectives for their witness protocol, none of which were addressed in *CFAC IV*:

**First**, IDOC has a legitimate penological objective in preserving the condemned inmate’s right to privacy during as much as possible of his final conscious moments. Few of us know with certainty when or how we will die. If we did, would we want our full gamut of emotion, or our contemplation of eternity or cessation of existence, or our regret or defiance, on display? Or would we prefer some final, private moments during the arrangements for the execution before the curtain is opened? Defendants cannot say with certainty that each man or woman who will face the death penalty may wish for privacy as they are outfitted with the catheters that will deliver fatal chemicals or await the outcome of a possible delay, but it is legitimate for Idaho to offer them that solace and dignity. See Declaration of Idaho Maximum Security Institution Warden Randy Blades, ¶ 4 (“Blades Decl.”)

Further imagine what would have been on display if the facts of the Rhoades execution last November had changed only slightly. On that day there was a 55-minute delay to await the outcome of a last-minute, State-Court attempt to stop the execution by an attorney who did not even represent Mr. Rhoades. Mr. Rhoades was still in his cell when the delay occurred. This was a period of tension and anxiety for all involved. Blades Decl., ¶ 9. But not long afterward Mr. Rhoades would have been in the execution chamber, where he could have been exposed to all witnesses as he agonized over whether the process would continue or stop.

**Second**, IDOC has a legitimate penological objective in considering how an extended witness period may affect other death row inmates. Warden Blades has participated in discus-

sions with death row inmates and believes that an extended witness period will adversely affect those inmates because they do not want their executions to become sensationalized or to become spectacles themselves. They are concerned about effects of the reporting of their last moments upon their families and friends and upon other Death Row inmates. Blades Decl., ¶¶ 5-6.

*Third*, IDOC has a legitimate penological interest in shielding the family and friends of the condemned inmate from the public suffering that the inmate might incur during extended witness periods or delays in the execution process. The Department has reached out and will reach out to family members of condemned inmates who wish to share visitation in the days leading up to the execution, who wish to witness the execution or to be on site during the execution, or who wish to claim the remains after the execution. Family members have not been convicted of a capital offense, and the Department has an interest in minimizing the public exposure of the condemned inmate that must be endured by their loved ones. Both Mr. Rhoades's and Mr. Leavitt's mothers want their sons to be afforded as much dignity as possible during their final moments and to minimize their time of public scrutiny. Blades Decl., ¶ 7.

*Fourth*, IDOC has a legitimate penological interest in shielding the members of its Medical Team from public exposure as they insert the catheters, etc. It is common human experience that surgical masks do not hide all identifying features. Height, weight, skin and hair color, body types, and other characteristics can be distinctive and increase the chances of identification. Every moment that the Medical Team is on display increases the chances of identification. Medical Team members come from the community. Confidentiality of their identities and their anonymity is of paramount importance to them and to IDOC. Extended public display will increase the difficulty of recruiting or retaining Medical Team members. It will also require a last-minute change in their training, which is already underway. Zmuda Decl., ¶¶ 6, 9.

Further, IDOC has a legitimate penological interest in shielding the Medical Team from possible anxiety and stress of performing an ordinary medical procedure (the insertion of a catheter) before an audience knowing that a delay or mishap will be reported, Blades Decl., ¶ 11, and that a delay or mishap may increase the possibility of Medical Team members being identified.

#### IV. PLAINTIFFS HAVE NOT MET THE STANDARD FOR ISSUANCE OF A PRELIMINARY INJUNCTION

##### A. Plaintiffs Have Not Shown That They Are Likely to Succeed on the Merits

The first prong of the Supreme Court's four-part *Winter* test for issuing a preliminary injunction is that Plaintiffs must show they are likely to succeed on the merits. As noted before, Plaintiffs offer no evidence and thus prove nothing regarding whether IDOC seeks to implement its articulated penological objectives through exaggerated responses. The MPI Brief never further addressed the *Winter* test. Instead, Plaintiffs put all of their eggs in the contra-*Winter* formulation of the balance of equities tipping sharply in their favor and there being serious questions going to the merits. MPI Brief, pp. 3-4.

Defendants are the only parties who have yet produced any evidence regarding IDOC's penological objectives. *CFAC III* gives Plaintiffs the burden of showing that IDOC seeks to implement its legitimate penological objectives through exaggerated responses. Until Plaintiffs produce evidence to that effect, they have *no* likelihood of success. As the Ninth Circuit stated in *CFAC III*: "We do not have substantial evidence indicating an exaggerated response here and, therefore, defer to prison officials in this matter." 150 F.3d at 983.

##### B. Plaintiffs Have Not Shown That They Are Likely to Suffer Irreparable Harm

Plaintiffs' entire argument on the issue of showing irreparable harm without a preliminary injunction is one paragraph containing generalities inapposite to the issues before the Court:

"[A]n alleged constitutional infringement will often alone constitute irreparable harm." *Associated Gen. Contractors of Cal. v. Coalition for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) [*cert. denied* 503 U.S. 985 (1992)] citing *Goldie's Bookstore v. Superior Ct.*, 739 F.2d 466, 472 (9th Cir. 1984). In particular, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" and that "harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as 'timing is of the essence in politics' and '[a] delay of even a day or two may be intolerable.'" *Thalheimer [v. City of San Diego]*, 645 F.3d 1109, 1128 (9th Cir. 2011) (internal citations omitted).

MPI Brief, p. 4, Dkt. 2-1.

Plaintiffs' cases cast little light on the issue before the Court. *Associated General Contractors* involved an equal protection challenge to a city ordinance that preferred minority contractors. 950 F.2d at 1403-1405. The Court stated that allegations of constitutional harm can give rise to a presumption of irreparable harm, but more is needed for a preliminary injunction: "[W]hether or not AGCC would be entitled to such a presumption [of irreparable harm], the organization has not demonstrated a sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a preliminary injunction." *Id.* at 1412. For this and other reasons the Ninth Circuit affirmed denial of a preliminary injunction. *Id.* at 1418.

*Goldie's* involved an equal protection challenge to a State-court proceeding in which a lessee used California's unlawful detainer statutes to evict a sublessee. 739 F.2d at 467-468. While acknowledging that a constitutional infringement may constitute irreparable harm, the Ninth Circuit reversed the District Court's grant of a preliminary injunction to the sublessee for reasons that included the sublessee's failure to produce evidence of harm. *Id.* at 472.

*Thalheimer* was a challenge to a city ordinance limiting the amount of money that could be spent and raised by independent campaign committees. 645 F.3d at 1113-1115. *Thalheimer* dealt with core First Amendment concerns associated with political speech at election time, not with the balance between prison protocols and the general public's access to information about the prison's operations. *Thalheimer* does not apply to the question before the Court.

The cases most directly on point concerning how this Court should view the issue of irreparable injury are *CFAC III* and *CFAC IV*. *CFAC III* reversed the District Court's grant of a final injunction and remanded the matter for trial. 150 F.3d at 983. As *CFAC IV* recounted, the California procedure at issue in *CFAC III* and *IV* remained in effect from the time of *CFAC III's* remand in July 1998 through the District Court's trial on the merits and until the District Court's post-trial issuance of a new injunction in July 2000. During those twenty-four months four executions took place under the procedure that was later enjoined. 299 F.3d at 872. This history is a strong indication that when there are contested issues of fact concerning execution procedures and when those execution procedures are defended as based upon legitimate penological

objectives, Plaintiffs cannot show a likelihood of irreparable harm without meeting their burden of proof at a hearing on the merits.

Further, proof of the likelihood of irreparable harm is required before a preliminary injunction may issue. *Winter* states:

Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the absence of an injunction. ... A preliminary injunction will not be issued simply to prevent the possibility of some remote future injury. Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.

555 U.S. at 22 (citations and internal punctuation omitted).

Nothing in the record now before the Court shows that Plaintiffs are likely to incur irreparable injury. The balance between prison procedures and public access to information within the prison tips in IDOC's favor unless and until Plaintiffs prove that IDOC's procedures are an exaggerated response. Plaintiffs have not even attempted such a showing, so they have not demonstrated a likelihood of irreparable injury.

### **C. The Balance of Equities Is In Defendants' Favor**

Plaintiffs' MPI Brief does not address the balance of equities after it cites the balance as a prong of the *Farris* and *Winter* tests. MPI Brief, Dkt. 2-1, p. 3. There is no equity in entertaining Plaintiffs' eleventh-hour MPI.

Let us recap the events preceding the MPI Motion. IDOC has the same witness protocol used last November 2011. IDOC retained this protocol after meeting with representatives of the media on January 24, 2012, and informing the media on February 1, 2012 that it would retain the protocol. Complaint, Dkt. 1, p. 8. Further, Plaintiffs allege at Complaint ¶¶ 20-21, and Defendants agree, that the issue of the witness protocol is both ripe and not moot.<sup>3</sup> That is because

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<sup>3</sup> Defendants realize that parties cannot confer jurisdiction on the Court by stipulating that an issue is not moot. See *Powell v. McCormack*, 395 U.S. 486, 500, n.15 (1969). Nevertheless, they inform Plaintiffs and the Court that they will not contend under current circumstances that the issue of IDOC's protocol will become moot if Mr. Leavitt is executed as scheduled on June 12, 2012.

there are other Death Row inmates nearing the end of their appeal and habeas processes. Idaho Code § 19-2705(1) (2004) requires a death warrant to be executed within thirty days of issuance. This creates a timeline that is capable of repetition and evading review for issues regarding the witness protocol used to implement the death warrant.

Given that IDOC's letter of February 1, 2012, continued to make the issue of the IDOC's witness protocol both ripe and not moot, there are no equities in Plaintiffs' favor when they delayed filing the Complaint and MPI until May 22, 2012, and further delayed serving them until ordered to do so by the Court on May 24, 2012. *CFAC III* and *CFAC IV* show that California's witness protocol was not enjoined until after a full trial on the merits because the starting point for analysis is that a prison protocol that serves legitimate penological objectives stays in place until a challenger proves that the protocol is an exaggerated response to the objectives. The equities favor Defendants. As the Supreme Court explained in a death penalty case in which a condemned inmate may have unnecessarily delayed bringing a claim against a death penalty protocol, equity must take into account the failure to act promptly, and there is a strong equitable presumption against granting a stay or a preliminary injunction when the claim could have been brought in time to allow consideration of the merits without a stay or preliminary injunction:

A stay is an equitable remedy, and equity must take into consideration the State's strong interest in proceeding with its judgment and attempts at manipulation. Thus, before granting a stay, a district court must consider not only the likelihood of success on the merits and the relative harms to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim. Given the State's significant interest in enforcing its criminal judgments, there is a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.

*Nelson v. Campbell*, 541 U.S. 637, 649-650 (2004) (citations and internal punctuation omitted).

The principle that *Nelson* applied to a prisoner subject to a death penalty protocol should apply no less to Plaintiffs seeking to challenge a witness protocol—there is a strong equitable presumption against granting a preliminary injunction when Plaintiffs' claim could have been

brought in time to allow consideration of the merits without a preliminary injunction.

**D. There Is a Public Interest in Denying the Expedited MPI**

Plaintiffs argue “[t]here is a significant public interest in upholding First Amendment principles.” MPI Brief, p. 4, Dkt. 2-1. That is undoubtedly true, but Plaintiffs put the cart before the horse. *CFAC III* teaches that it takes an evidentiary hearing to determine the balance between First Amendment principles and legitimate penological objectives and that First Amendment principles in the abstract do not trump legitimate penological objectives without a hearing.

Further, there is a strong public interest in States enforcing their criminal judgments. *Nelson*, 541 U.S. at 649-650. Plaintiffs say they do not intend to interfere with that interest: “Plaintiffs are not seeking an injunction delaying the execution itself.” Complaint, ¶ 37, Dkt. 1.

It should also be noted that the request for the preliminary injunction herein does not relate to going forward with the execution, but only to the viewing of the execution in full inclusive of the execution process beginning with entry into the execution chamber. The State of Idaho is going to be hard pressed to argue that some type of irreparable harm is going to occur given the fact that the extent of the request herein is simply that a full viewing of the execution process be allowed.

MPI Brief, p. 3.

Plaintiffs’ statements make it seem that the MPI is completely disconnected from the execution going forward, but they ignore the elephant in the room. At this stage of the process, any change in the execution protocol may invite a challenge from Mr. Leavitt that would delay the execution. *Cf. Lopez v. Brewer*, — F.3d —, 2012 WL 1693926 (9th Cir. May 15, 2012) (lamenting Arizona’s changing death penalty protocols and the litigation that ensued). Defendants have an understandable reluctance to change the protocol at this time and thus to provide a rationale for Mr. Leavitt to challenge it.

Lastly, Plaintiffs refer to the “public interest,” MPI Brief, pp. 4-6, Dkt. 2-1, and assume that their view represents the public interest. Again, they lack any evidentiary basis for that. California had a statute and a historical practice and tradition that in part defined the public

interest in California. See *CFAC IV*, 299 F.3d at 876.<sup>4</sup> Idaho does not have similar statutes or traditions. Plaintiffs offer no evidence that Idaho's different statutes, practices and traditions define the public interest in the same manner as California's. In fact, Idaho's statutes, practices and traditions are inapposite to California's and strongly suggest there is no public interest in changing Idaho's witness protocol. The best indicators of Idaho's public interests are its statutes, practices and traditions. Plaintiffs offer nothing in opposition to them.

**V. SUMMARY: THE EXPEDITED MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED**

Plaintiffs have failed to meet their evidentiary burdens articulated by *CFAC III* to show that Defendants' witness protocol is an exaggerated response to legitimate penological objectives. Plaintiffs have not shown a likelihood of success on the merits, a likelihood of irreparable harm if they do not receive preliminary relief, a balance of equities in their favor, or that the public interest supports their position.

That should be the end of the matter and their MPI should be denied. Further, even if Plaintiffs had made a stronger showing, injunctive relief is always discretionary. There is no right to injunctive relief, particularly to a preliminary injunction, even if a movant may later succeed on the merits. "An injunction is a matter of equitable discretion; it does not follow from

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<sup>4</sup> The Court's enunciation of the public interest in *CFAC IV* was shaped by California statutes, tradition and practice:

... Currently, in addition to the 12 official witnesses who attend California executions, 17 news media witnesses are also invited. Thus, there is a tradition of at least limited public access to executions.

....

... The public and press historically have been allowed to watch the condemned inmate enter the execution place, be attached to the execution device and then die. As we noted in *California First Amendment III*, before California adopted the lethal gas method of execution, witnesses were permitted to view hangings "in their entirety, from the condemned's ascent up the gallows to the fall of the trap door." 150 F.3d at 978. Thereafter, witnesses were also permitted to observe lethal gas executions "from the time the condemned was escorted into the gas chamber until pronouncement of death." *Id.* Accordingly, historical tradition strongly supports the public's First Amendment right to view the condemned as the guards escort him into the chamber, strap him to the gurney and insert the intravenous lines.

299 F.3d at 876.

success on the merits as a matter of course. A federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law.” *Winter*, 555 U.S. at 32. “For the reasons stated [failure to prove likelihood of irreparable harm], we find the injunctive relief granted in this case an abuse of discretion, even if plaintiffs are correct on the underlying merits.” *Id.* at 31, n.5.

This is a good case to take *Winter’s* admonitions to heart. The equitable remedy that Plaintiffs seek should not be given without a fully developed evidentiary record, not one hurriedly put together to meet the timetable of a preliminary injunction hearing in the two weeks between filing this Opposition and the scheduled execution date of June 12, 2012. There will be ample time to develop the record after that; there would have been ample time to develop the record if Plaintiffs had filed in February. Instead, Plaintiffs filed their Complaint and Motion at the eleventh hour, a practice criticized in *Nelson* and lamented in *Lopez*. Even if Plaintiffs were eventually to succeed on the merits (Defendants do not believe that they will), this case, like *Winter*, is a poor one in which to rush to injunctive relief because of the likelihood that it will short circuit the development of an evidentiary record and the likelihood that it will provide more grounds to challenge the underlying execution.

DATED this 29th day of May, 2012.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By /s/ Michael S. Gilmore  
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Deputy Attorney General



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Attorney for Governor Otter

**IN THE UNITED STATES DISTRICT COURT  
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THE ASSOCIATED PRESS, *et al.*, )  
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 Plaintiffs, )  
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 vs. )  
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 C.L. (BUTCH) OTTER, *et al.*, )  
 )  
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 )

Case No. 1:12-cv-00255-EJL

**DECLARATION OF JEFF ZMUDA**

1. I, Jeff Zmuda, am over the age of eighteen (18) years and am competent to testify on the matters herein. I make this Declaration based upon my personal knowledge.

2. I am employed by the Idaho Department of Correction (“IDOC”) as the Deputy Chief of the Bureau of Prisons. I have been employed with the IDOC for approximately 24 years.

3. In my position as the Deputy Chief of the Bureau of Prisons, I work in conjunction with the Idaho Maximum Security Institution (“IMSI”) to manage, plan, prepare, coordinate and implement the IDOC execution procedures.

4. In my position as the Deputy Chief of the Bureau of Prisons I was tasked with overseeing the execution process and developing and implementing the IDOC Standard Operating Procedure regarding execution procedures, Standard Operating Procedure 135.02.01.001 (version 3.6) (“SOP 135”). Attached hereto as Exhibit 1 is a true and correct copy of SOP 135, which is a record of the IDOC maintained in the ordinary course of its regularly conducted business activities. I am also tasked with all the duties related to my position as a member of the Administrative Team as outlined in SOP 135. *See* Ex. 1, pp. 2-3. In addition to being responsible for the aforementioned duties with respect to the execution of Richard Leavitt, scheduled for June 12, 2012; I also had the same responsibilities for the execution of Paul Rhoades on November 18, 2011.

5. Following the execution of Paul Rhoades, I, along with other IDOC employees, was tasked with reviewing SOP 135 and making any necessary revisions to it. As part of the IDOC’s review of SOP 135, a decision was made not to modify the IDOC’s procedures relating to the time frame during which the official witnesses view the execution process.

6. As of the date of this Declaration, the execution of Richard Leavitt is fourteen (14) days away. In order to ensure that the execution is carried out in accordance with state and federal law, and in a dignified and professional manner, the Medical Team is actively training for the execution. Any deviation from SOP 135 with respect to witnesses being present earlier during the execution process would not only require a modification of SOP 135, but would also require a change in the already established training schedule and format.

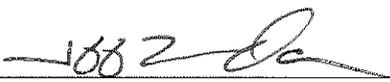
7. Among the duties of the Administrative Team is the recruitment, selection, and retention of the Medical Team members. Ex. 1, p. 10. Medical Team members can be comprised of a variety professional disciplines. *Id.*, p. 9.

8. As part of the debrief following the Rhoades execution, and in subsequent interviews with team members earlier this year, I had conversations with members of the Medical Team regarding the process and their experiences. Based on these conversations, it is my clear understanding that confidentiality and anonymity is of paramount concern to the Medical Team members. Because the Medical Team members are employed in their respective professions in the local community, there is a significant concern that any information leading to their identity could put them at risk professionally.

9. It is also my understanding that if official witnesses are allowed to view the execution process, beginning with the condemned offender entering the execution chamber and including the insertion of the IV catheters, it will greatly impair the IDOC's ability to recruit and retain Medical Team members, and will have a chilling effect on the Medical Team members' willingness to serve on the Medical Team.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
JEFF ZMUDA

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of May, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Charles A. Brown  
Attorney at Law  
[CharlesABrown@cableone.net](mailto:CharlesABrown@cableone.net)

/s/ Michael S. Gilmore  
MICHAEL S. GILMORE  
Deputy Attorney General

**Exhibit 1**  
**Declaration of Jeff Zmuda**  
**IDOC Standard Operating**  
**Protocol 135**

Idaho Department of Correction 	<b>Standard          Operating          Procedure</b>  <b>Operations          Division</b>  <b>General          Administration</b>	<b>Control Number:</b> 135.02.01.001	<b>Version:</b> 3.6	<b>Page Number:</b> 1 of 35
		<b>Title:</b> Execution Procedures		<b>Adopted:</b> 5-18-1998  <b>Reviewed:</b> 1-6-2012  <b>Next Review:</b> 1-6-2014

This document was approved by Kevin Kempf, chief of the Operations Division, on 1/6/12 (signature on file).

Open to the general public:  Yes  No

If no, is there a redacted version available:  Yes  No

## BOARD OF CORRECTION IDAPA RULE NUMBER 135

[Executions](#)

## POLICY CONTROL NUMBER 135

[Executions](#)

## DEFINITIONS

[Standardized Terms and Definitions List](#)

None

## PURPOSE

The purpose of this standard operating procedure (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.

## SCOPE

This SOP applies to all Idaho Department of Correction (IDOC) staff members involved in the administration of capital punishment and to offenders who are under death warrant and the execution of which has not been stayed.

**Note:** This SOP is subject to revision at the discretion of the chief of the Operations Division or the director of the IDOC. Either person may revise, suspend, or rescind any procedural steps, at any time, at his sole discretion.

## RESPONSIBILITY

### *Director of the IDOC*

The director of the IDOC shall be responsible for:

- Exercising overall control of the administrative policy, SOP, field memorandum, and of the execution process itself;
- Communicating with Idaho governor's office, Idaho Board of Correction, legislators, and Idaho Commission of Pardons and Parole;

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- Determining execution method and ensuring that applicable chemicals are obtained; and
- Approving news media representatives for media center access.

#### ***Chief of the Operations Division***

The chief of the Operations Division shall be responsible for:

- Approving all SOPs, field memorandums, and post orders related to the execution process;
- Contacting/notifying members of the victim's family;
- Contacting/notifying the state of Idaho's witnesses;
- Briefing the victim's family, the condemned offender's family, and the state of Idaho's witnesses before the execution; and
- Disseminating briefings as needed to staff following the issuance of a death warrant.

#### ***Deputy Chief of the Prisons Bureau***

The deputy chief of the Prisons Bureau shall be responsible for:

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

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

The Administrative Team consists of the deputy chiefs of the Prisons Bureau, the IMSI warden, and the backup to the IMSI warden for the purpose of serving as the execution director. 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 ([section 5](#)) personnel selection, equipment, supply acquisition, training, rehearsal, and performance;
- Conducting preparatory steps in order to ensure that the execution process is conducted in accordance with this SOP;

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- Reviewing and ensuring that the department faithfully adheres to the letter and intent of Idaho Code, sections 19-2705, 19-2713, 19-2714, 19-2715, 19-2716, 19-2718;
- Selecting staff to serve on the Escort Team and Medical Team;
- Identifying a licensed physician to be on sight during the execution procedure;
- Ensuring that all of the equipment such as electrical, plumbing, heating and cooling units (HVAC) in the execution chamber are tested periodically to ensure they are in working order; and
- Ensuring that an annual training schedule is established and identifying dates for periodic on-site rehearsal sessions by the Escort Team, Medical Team, and command staff.

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

The IMSI warden shall be responsible for:

- Serving the death warrant;
- Assigning to the condemned offender a warden’s liaison;
- Creating and maintaining a log documenting the events leading up to the execution date;
- Issuing all the orders to facilitate an execution at IMSI;
- Approving the spiritual advisor for the offender if one is requested; and
- Creating a permanent record of the execution activities.

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

The IMSI deputy warden of security shall be responsible for internal security at IMSI. In addition to the regular posts, the IMSI deputy warden of security shall be responsible for scheduling staff for 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 shall be responsible for establishing a field memorandum to identify authority and guidelines to coordinate media activity and providing logistical and communication support at the IDOC’s south Boise complex.

**Note:** The chief of the Operations Division must approve the field memorandum.

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

The SICI warden shall be responsible for establishing a field memorandum 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.

**Note:** The chief of the Operations Division must approve the field memorandum.

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## GENERAL REQUIREMENTS

### 1. Introduction

Execution of an offender under sentence of death is one of the most serious responsibilities of the agency and a high regard for the dignity of all involved must be maintained.

An execution generates public debate and attention. IDOC staff must be aware of the pressures an execution places on themselves and offenders. Extra security precautions are necessary and staff must be prepared and able to meet the situations that might arise.

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All execution procedures, for both male and female offenders, will be conducted at IMSI.

No IDOC staff member or contractor, except as identified by Idaho Code or contract, will be forced to participate in an execution and can withdraw from the process at any time without prejudice.

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

- Faithfully adheres to the letter and intent of Idaho Code, sections 19-2705, 19-2713, 19-2714, 19-2715, 19-2716, and 19-2718;
- Is handled in a manner that minimizes its impact on the safety, security, and operational integrity of the prison in which it occurs;
- Reasonably addresses the right of the offender to not 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;
- Reasonably addresses the privacy interests of victims and their families;
- Provides contingency planning to identify and address unforeseen problems;
- Maintains lines of communication for stays of execution, commutations, and other circumstances up to the time that the offender is executed;
- Provides opportunity for citizens to exercise their First Amendment rights to demonstrate for or against capital punishment in a lawful manner; and
- Ensures there is an appropriate response to unlawful civil disobedience, trespass and other violations of the law by any person attempting to impact the execution or the operation of the prison.

## **2. Monitoring Appellate Activities**

The deputy chief of the Prisons Bureau, in conjunction with the deputy attorneys general (DAGs) who represent the IDOC, will monitor the appellate process of those offenders under the sentence of death. When it appears that an offender may be within one year or less of exhausting his appeals, the deputy chief of the Prisons Bureau will notify the director of the IDOC, chief of the Operations Division, 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 offender is determined to be possibly within this one year timeframe.

## **3. Staff Conduct and Professionalism**

All IDOC staff and contractors are responsible to 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 offenders, witnesses, demonstrators, attorneys, news media, state of Idaho and local law enforcement and any member of the public regarding the implementation of the death penalty;

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- All assigned duties are performed proficiently and professionally; and
- Conduct that appropriately reflects the gravity of the execution process.

The names of the individuals serving on the escort and medical teams (see [section 5](#)) and the name of the on-site licensed physician (see [section 6](#)) will be treated with the highest degree of confidentiality. Any staff member who is aware of the identities of the individual team members and/or the on-site physician must maintain strict confidentiality of those identities. Any staff member who discloses the identities of any individual team member or the on-site physician will receive disciplinary action up to and including dismissal. (See SOP [205.07.01.001](#), *Corrective and Disciplinary Action*).

#### 4. Attempted Disruption of Execution Process

The IDOC is required by Idaho Code to carry out the execution of an offender under sentence of death. 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 to include, but not limited to the following:

- Filming, taping, broadcasting or otherwise electronically documenting the execution of an offender;
- Trespassing and otherwise entering upon IDOC property without authorization;
- Participating in unlawful demonstrations or unlawfully attempting to disrupt, prevent and otherwise interfere with an execution; and/or
- Unlawfully threatening, intimidating and otherwise attempting to influence authorized persons involved in the execution process.

These prohibitions apply to the offender population, contractors, IDOC staff, and members of the general public.

The IDOC will ensure that adequate law enforcement officers to include but not limited to the Boise Police Department, Ada County Sheriff's Department, and/or Idaho State Police are present to ensure the safe control of citizens on IDOC property, including officers stationed at the Execution Unit, if deemed necessary.

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

The execution process requires three (3) specialty teams: an Escort Team, a Medical Team, and an Administrative Team. The names of the individuals on the Escort Team and Medical Team will be treated with the highest degree of confidentiality (see [section 3](#)). The anonymity of all individuals (except those Administrative Team members who must participate as required by Idaho Code) participating in or performing any ancillary functions in the execution and any information contained in the records that could identify those individuals must remain confidential and are not subject to disclosure. The identities of escort and medical team members will be limited to the director of the IDOC, the chief of the Operations Division, and the Administrative Team.

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

To serve on the Escort Team is strictly voluntary (staff may withdraw at any time without prejudice). Escort Team members must meet the following criteria:

- Has displayed a high degree of professionalism;
- Has displayed an ability to maintain confidentiality;

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- Has had no personnel disciplinary action in the past 12 months;
- Has at least one year of satisfactory employment with the IDOC;
- Has no blood relationship or legal relationship to the victim's family; and
- Has no blood relationship or legal relationship to the condemned offender or offender's family.

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

**The deputy chief of the Prisons Bureau** will designate an Escort Team leader and at least one alternate Escort Team leader.

**The Escort Team leader** shall (a) report to and take direction from a designated Administrative Team member, and (b) ensure that all team members thoroughly understand all provisions of this SOP and are well-trained in the escort procedures.

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

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

The Medical Team can be comprised of any combination of the following disciplines:

- 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.

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

- Must have at least three (3) years of medical experience as an EMT, LPN, military corpsman, paramedic, phlebotomist, physician assistant, physician, RN, or other medically trained personnel including those trained in the United States military;
- Has no blood relationship or legal relationship to the victim's family; and
- Has no blood relationship or legal relationship to the condemned offender or offender's family.

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**The Administrative Team** shall identify qualified personnel to serve on the Medical Team; verify their professional qualifications (to include professional license[s] and certification[s]), training, and experience; complete criminal background checks; and conduct personal interviews before approving their participation on the team.

**Note:** Licensing and/or certification, and criminal history reviews shall be conducted, prior to entering into an agreement. These reviews shall be conducted annually and upon the issuance of a death warrant.

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

**The deputy chief of the Prisons Bureau** will designate a Medical Team leader and at least one alternate Medical Team leader.

**The Medical Team leader** shall (a) have direct oversight over the Medical Team, and (b) report to and take direction from a designated Administrative Team member

### ***Training and Rehearsal Requirements***

The Administrative Team shall (a) ensure an annual training schedule is established, and (b) identify dates for periodic on-site rehearsal sessions by the Escort Team, Medical Team, and command staff. All training and rehearsal sessions shall be documented and submitted to a designated Administrative Team member. The training schedule shall meet the following criteria:

- The schedule shall include a minimum of 10 annual training sessions for the escort and medical teams;
- After receiving a death warrant, the Escort Team, Medical Team, and command staff will train weekly before the scheduled execution date;
- The Escort Team, Medical Team, and command staff members must participate in a minimum of four (4) training sessions prior to participating in an actual execution;
- Prior to any scheduled execution, the Escort Team, Medical Team, and command staff shall conduct a minimum of two (2) rehearsal sessions during the 48 hours before the scheduled execution; and
- Training and rehearsal sessions for the Medical Team shall include the placing of IV catheters and establishing an IV drip in a minimum of two (2) live volunteers prior to each execution.

**Note:** If no execution is anticipated beyond the time required to assemble and adequately train the escort and medical teams, the director of the IDOC may suspend annual training.

## **6. Licensed Physician on Site during Execution**

A licensed physician will be on-site and staged in or near the Execution Unit. The Administrative Team will verify the physician's professional licensure and will complete a criminal background check.

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

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**Note:** The on-site physician's identity shall remain anonymous and shall be protected from disclosure in the same manner described for the medical and escort team members. (See [section 3](#) and [section 4](#).)

The on-site physician will have access to an on-site medical crash cart, including applicable medications, and defibrillator. The physician must be a medical doctor licensed by the Idaho Board of Medicine.

The on-site physician will provide the following services:

- First Aid: Provide emergency care if needed to any person in the immediate area; and
- Resuscitation: Will assist in any necessary resuscitation effort of the offender should a problem occur with the execution process.

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

Emergency medical technicians and ambulance service will be staged 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.

#### **7. Death Warrants and Pregnant Females**

If there is reason to believe that a female under death warrant is pregnant, the facility warden will require the offender to be examined by three (3) physicians. If the offender is found to be pregnant, the facility warden will immediately notify the prosecuting attorney of the county with jurisdiction, the Idaho governor's office, and the sentencing judge. The facility warden will suspend the execution, until the offender is no longer pregnant and the sentencing court has appointed a day for execution.

#### **8. Stay of Execution**

Upon receipt of notification that the court has issued a stay of execution, the director of the IDOC shall advise the chief of the Operations Division, deputy chief of the Prisons Bureau, 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 period of time, have the witnesses escorted back to their specified staging areas.

##### ***Director of the IDOC***

- Notify the state of Idaho governor's office; and
- Notify the executive director of the Idaho Commission of Pardons and Parole.

##### ***Chief of the Operations Division***

- Provide a briefing to the state of Idaho's witnesses and the condemned offender's witnesses; and
- Provide a briefing to IDOC staff.

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

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

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### ***Deputy Chief of the Prisons Bureau***

- Advise facilities that a stay of execution has been issued;
- Begin systematically deescalating the operation and when applicable instruct execution activities related operations to stand down; and
- 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 issued after the offender has been moved to the execution chamber and IV catheters have been inserted, and the stay is anticipated to be for more than two (2) hours, direct the Medical Team to remove the catheters;
- Direct the Escort Team to remove the offender from the Execution Unit and return him to a designated cell; and
- If applicable, return offender's property.

## **9. General Timelines**

The processes described in this SOP are based on a timeline; however, the timeline is subject to change as needed to accommodate unforeseen events.

The timeline begins with issuance of a death warrant and concludes following the execution or stay of execution. The sequence of events is based on the following timeline:

- Issuance of the death warrant;
- 30 days prior to the execution;
- 21 days prior to the execution;
- Seven (7) days prior to the execution;
- Two (2) days prior to the execution;
- 24 hours prior to the execution;
- 12 hours prior to the execution;
- Execution procedures; and
- Post-execution activities.

## **10. Public Information and Media Access**

The IDOC PIO is responsible to prepare and release information to the media. The IDOC PIO will clear each press release with the deputy chief of the Prisons Bureau before it is released to the media.

The IDOC 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 IDOC PIO will notify all news media of the following IDOC rules that must be adhered to:

- Tobacco is not allowed within any IDOC facility;
- Weapons of any kind are not allowed on IDOC property;

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- 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;
- Are subject to search (metal detector and random pat search);
- Must arrive at the facility at the designated time; and
- Must enter IDOC property as instructed.

### **Media Center**

A media center will be established and will be located on property at the IDOC's south Boise complex.

The term "news media representative" shall be defined as 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 national 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; and
- The Associated Press.

Because advances in information technology have blurred the definition of the term 'news media', resulting in there being no commonly accepted definition of the term, and because IDOC has an obligation to assure the orderly operation of the media center by regulating access to center, news organizations which distribute content primarily via a website will be admitted on a case-by-case basis. The IDOC PIO will verify that each web-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 web-based news agencies.

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

In addition to the media center where news media representatives will be provided information and briefings, the IDOC has allotted four (4) seats for news media representatives to witness the execution. News media organizations wishing to have reporters witness the execution must submit their representatives' names, birth dates and Social Security numbers at least 14 days prior to the scheduled execution for the purposes of undergoing a criminal background check and approval (see appendix B, *Media Notification and Agreement*). The four (4) media seats are comprised as follows:

- One media witness seat is allocated to the Associated Press. The Associated Press will select the reporter.

The following media witness seats are selected by random drawings:

- One media witness seat is allocated to media representing the region that serves the county of conviction. The director of the IDOC will determine which media agencies provide substantial coverage to the residents in the county of conviction for admittance into the pool for this seat;
- One seat is allocated for local print/internet; and

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- One seat is allocated for local broadcast media.

**Note:** Local media is defined as a print/internet or broadcast media whose primary mission is to cover and deliver local news to the residents of Idaho. Each media organization may submit no more than one person as a possible media witness.

### **Random Drawing**

Approximately one week before the scheduled execution, the IDOC PIO will conduct the random drawing for three (3) media seats. The drawing shall include selecting alternative representatives should the primary representative withdraw prior to the execution.

News media representatives requesting access to the media center must complete appendix B, *Media Notification and Agreement*, and agree to return directly to the media center following the execution and share their information with the other news media representatives. The IDOC PIO will facilitate that discussion and briefing.

### **Media Staging**

The deputy chief of the Prisons Bureau 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.

News media representatives who have been selected to witness the execution must arrive at the media center at the time designated by the IDOC PIO, which is approximately three (3) hours before the scheduled execution.

News media representatives will sign in at the designated media center.

ISCI will provide two (2) escort officers and a transport van to transport the news media representatives selected to be present at the execution from the media center to IMSI. The news media witnesses will join the other state of Idaho witnesses to be escorted to the Execution Unit.

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.

## **11. External Security**

### **Temporary Flight Restriction**

In consultation with local law enforcement and home land security, the deputy chief of the Prisons Bureau will assess any security threat or risk posed by air craft. If a security or safety risk involving aircraft is perceived, before the execution the deputy chief of the Prisons Bureau will request through appropriate channels that the Federal Aviation Administration (FAA) place a temporary flight restriction (TFR) surrounding the IDOC's south Boise complex consisting of the following (see [section 16](#)). An example of the TFR airspace would be as follows:

- **Radius:** Three (3) nautical miles
- **Altitude:** 500 feet from the surface

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

The IDOC property south of Boise known as IMSI, ISCI, SICI, and South Boise Women's Correctional Center (SBWCC) will be broken down into four (4) security areas:

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- **Inner perimeter zone:** the respective facilities fences
- **Controlled perimeter zone:** an extended perimeter around the four (4) facilities
- **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 IDOC's south Boise complex to include IMSI, ISCI, SICI, and SBWCC.

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.

## 12. Those Present at Execution

The director of the IDOC (or designee) shall have the discretion to determine the number of persons allowed in the Execution Unit during the execution procedure. In exercising this discretion, the director of the IDOC (or designee) shall consider the safe and orderly operation of IMSI, the interests of the victim's family, and whether multiple death warrants are being executed concurrently. Persons allowed in the Execution Unit are as follows.

**Note:** Individual placement of attendees in the Execution Unit is subject to change at the discretion of the IMSI warden.

- The Administrative Team;
- The Escort Team (up to four [4] members total);
- The Medical Team;
- The on-site physician (one total);
- The director of the IDOC (or designee);
- An Idaho Board of Correction representative (one total);
- The chief of the Operations Division (or designee);
- The IMSI warden (or designee) (one total);
- The Ada County coroner (one total);
- The prosecuting attorney from the county of conviction (one total);
- The sheriff from the county of conviction (one total);
- The sentencing judge (one total);
- The Idaho governor (or his representative) (one total);
- The Idaho attorney general (or his representative) (one total);
- Members of the victim's family (two [2] total);
- A spiritual advisor of the offender's choosing (one total);
- Friends (approved visitors) or members of the offender's family (two [2] total);
- The offender's attorney of record (one total); and

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- Members of the news media (up to four [4] total, see [section 10](#)).

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

***State of Idaho Witness Area***

- An Escort Team member (one total);
- The chief of the Operations Division;
- Members of the victim's family (two [2] total);
- Members of the news media (up to four [4] total in accordance with [section 10](#));
- The prosecuting attorney from the county of conviction (one total);
- The sheriff from the county of conviction (one total);
- The sentencing judge (one total);
- An Idaho Board of Correction representative (one total);
- The Idaho governor (or his representative) (one total); and
- The Idaho attorney general (or his representative) (one total).

***Condemned Offender's Witness Area***

- An Escort Team member (one total);
- IDOC liaison for offender's family;
- Friends (approved visitors) or members of the offender's family (two [2] total);
- The offender's attorney of record (one total); and
- A spiritual advisor of the offender's choosing (one total);

***Execution Chamber***

Other than the offender, the other individuals authorized to be in the execution chamber are:

- Escort Team members (up to two [2] total);
- Interpreter (if necessary);
- The director of the IDOC; and
- The IMSI warden (or designee).

**Note:** The Ada County coroner and the on-site physician (see [section 6](#)) will be located in a staging area near the execution chamber as determined by the IMSI warden.

***Medical Team Room***

- Only the Medical Team; and
- Only the Administrative Team.

**13. Upon Receipt of a Death Warrant**

Upon the receipt of a death warrant by the director of the IDOC, the following steps will be implemented.

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**Note:** If the warrant is delivered to a facility warden instead of the director of the IDOC, the facility warden will implement step 4, and immediately notify the director, the chief of the Operations Division, and the deputy chief of the Prisons Bureau.

Functional Roles and Responsibilities	Step	Tasks
Director of the IDOC	1	<ul style="list-style-type: none"> <li>Immediately notify the warden of the facility in which the offender is housed <b>and</b> the IMSI warden; and</li> <li>Immediately forward the death warrant to the warden of the facility in which the offender is housed.</li> </ul>
Director of the IDOC	2	Notify the: <ul style="list-style-type: none"> <li>Idaho Board of Correction;</li> <li>Executive director of the Idaho Commission of Pardons and Parole;</li> <li>Idaho governor's office; and</li> <li>IDOC PIO.</li> </ul>
Facility Warden	3	Begin a log to provide a comprehensive chronological history of every aspect of the execution procedure.
Facility Warden	4	Serve the death warrant on the offender.
Facility Warden	5	Immediately segregate the offender from the general offender population (see <a href="#">section 15</a> ).
Facility Warden	6	Place the offender under constant observation by two (2) staff members for 24 hours a day, seven (7) days a week. <b>Note:</b> An observation logbook will be immediately established to record staff's observation of the offender's activities and behavior until the offender is executed or a stay of execution is received. Entries will be chronological. Each day will be recorded beginning at midnight as M/DD/YYYY. During the final four (4) hours before the execution, staff shall 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 authority <b>and</b> clinician that the offender has been placed in solitary confinement under a death warrant.
Facility Warden	8	<ul style="list-style-type: none"> <li>Notify the sentencing court that the death warrant has been served;</li> <li>Retain the original death warrant;</li> <li>Place a copy of the death warrant in the offender's central file;</li> <li>Provide the offender with a copy of the death warrant; and</li> <li>Forward a copy of the death warrant to the lead DAG who represents the IDOC.</li> </ul>

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<b>Functional Roles and Responsibilities</b>	<b>Step</b>	<b>Tasks</b>
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 <b>or</b> the execution process has been completed.
Facility Warden	10	Appoint a staff member to serve as liaison between the condemned offender, the offender's family, and the IMSI warden (if the offender does not speak English ensure an interpreter is obtained and available to communicate with offender);

#### **14. Briefing and/or Communication: After the Death Warrant is Served**

The facility warden shall 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 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/or 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; and
- The day after the execution.

#### **15. Conditions of Confinement**

Immediately following the service of a death warrant, the offender will be moved to a predetermined isolation cell in accordance with Idaho Code, section 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 offender will be given clean clothes and different shoes.

Identify any special accommodations that are required if the offender has a disability or other special need.

Until the execution has been stayed or completed, any movement of the offender will require that he be escorted in full restraints, by two (2) correctional staff.

The offender will be placed under 24-hour, constant observation by two (2) uniformed staff members until there is a stay of execution or the offender is transferred to the execution chamber.

The offender will be allowed daily outdoor exercise, showers, and telephone access.

The offender will be provided access to a television set.

#### **Property**

The offender's personal property will be handled as provided in this section.

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The offender's personal property shall be inventoried. The offender will be allowed to keep not more than six (6) cubic feet of legal papers and religious materials, a pencil and paper, books or 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 offender regarding disposition of property or otherwise disposed of as outlined in directive [312.02.01.001](#), *Death of an Inmate*.

### **Commissary**

The offender will be allowed to purchase food items from the commissary until the delivery date of commissary is within seven (7) days of the execution, the IMSI warden can extend this time frame at his discretion. 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 Offender Personal Property*. However, the IMSI warden can increase or decrease this amount with approval of the deputy chief of the Prisons Bureau. The offender may retain consumable commissary items as approved by the IMSI warden until completion of the last meal.

### **Last Meal**

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

### **Hygiene Items**

The offender shall receive limited hygiene supplies (bar soap, toothpaste and toothbrush) and a towel and washcloth. These items will be exchanged on a daily basis.

The offender will be issued a clean set of clothing and bedding daily.

The offender will be provided (issued by staff) a safety razor to shave. Staff will immediately remove the razor from the offender's possession after he has finished shaving.

### **Access to the Offender**

Access will be limited to the following:

- Law enforcement personnel investigating matters within the scope of their duties;
- The offender's attorney of record;
- Agents of the offender's attorney of record; and
- Attending physician/healthcare staff.

Access is defined as those activities that are necessary for official business. Law enforcement personnel, attorneys of record and their agents, and attending physician/healthcare staff are considered as official business and such access will be a contact visit.

### **Visitation**

Visitation will be limited to the following:

- Spiritual adviser of the offender's choosing;
- Approved visitors;
- Members of the offender's immediate family, specifically the offender's:

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- ◆ Mother or father, including step parents;
- ◆ Brothers or sisters of whole or half (½) blood, by adoption or stepbrothers or stepsisters;
- ◆ Lawful spouse verified by marriage license or other operation of law;
- ◆ Natural children, adopted children, or stepchildren;
- ◆ Grandparents of blood relation; and
- ◆ Grandchildren of blood relation.

All visitations must be in accordance with SOP [604.02.01.001](#), *Visiting*, and the guidelines established herein this SOP.

The offender's attorney of record and his agents will be provided contact visits. Such contact visits will be under staff visual observation, but so that the staff members cannot hear the conversation.

**Note:** For the purposes of this section, 'agents of the attorney of record' means employees of the attorneys of record including investigators, paralegals, legal interns and mitigation specialists but does not include retained experts or other independent contractors of the attorneys of record.

Immediate family and approved visitors must be approved in accordance with SOP [604.02.01.001](#), *Visiting*. Normally, minor children will not be allowed to visit and any exception must be approved by the deputy chief of the Prisons Bureau.

Approved visitors and immediate family may be allowed non-contact visits until seven (7) days before the execution date. Any exception to this rule must be approved by the deputy chief of the Prisons Bureau. Between serving the death warrant until seven (7) days before the execution, all visits with immediate family, approved visitors, and spiritual advisor will be non-contact.

In the seven (7) days immediately before the execution, if there is no stay of execution, visits with approved visitors who are not immediate family will cease. This time frame can be extended by the IMSI warden in collaboration with the deputy chief of the Prisons Bureau.

In the seven (7) days immediately before the execution, approved immediate family and spiritual advisor may be granted contact visits with the offender. (The offender's attorney of record will continue to have contact visiting during the seven [7] days immediately before the execution.)

The IMSI warden shall establish the frequency and duration in which visits occur and shall 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 offender can request a spiritual advisor of his choosing. The spiritual advisor must be approved by the facility warden before visitation can occur. The spiritual advisor cannot be an IDOC staff member or the staff member of a contract facility. The spiritual

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advisor will normally be an approved religious volunteer or member of the clergy. The spiritual advisor may be a contract provider for volunteer and religious activities in accordance with the requirement of that contract.

### **Healthcare**

The IMSI warden shall request that the facility health authority review the condemned offender's healthcare record and identify any prescribed medication(s) or health care issues.

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

The facility health authority shall provide the offender an opportunity to complete an Idaho Physician Orders for Scope of Treatment form.

Facility healthcare services staff will take necessary steps to maintain the offender's health prior to the execution and shall respond appropriately to health care issues and emergencies including suicide attempts and will take reasonable steps to revive the offender in medical distress at all times prior to the execution, unless the offender has a "do not resuscitate" request on file.

Facility healthcare services staff will monitor the offender daily for significant changes in the offender's medical or mental health and if the offender's health changes, facility healthcare services staff must report the offender's condition immediately to the IMSI warden.

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

## **16. Thirty (30) to 21 Days Prior to the Execution**

After serving the death warrant until 21 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 Operations Division, and the deputy chief of the Prisons Bureau.

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

### **Director of the IDOC**

- Continue communication with the Idaho Board of Correction;
- Continue communication with the Idaho governor (or his representative);
- Communicate as needed with the executive director of the Idaho Commission of Pardons and Parole; and
- Meet with the chief of the Operations Division, the deputy chief of the Prisons Bureau, and other members of the IDOC Leadership Team as needed.

### **Chief of the Operations Division**

- Continue to provide briefings to IDOC staff;
- Send appendix C, *State Witness Notification and Agreement*, to the following and establish a deadline for the return of all forms:
  - ◆ The Ada County Coroner;

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- ◆ The prosecuting attorney from the county of conviction;
- ◆ The sheriff from the county of conviction;
- ◆ The sentencing judge;
- ◆ The Idaho governor;
- ◆ The Idaho attorney general;
- ◆ The Idaho Board of Correction; and
- Monitor planning related to the scheduled execution.

### ***Administrative Team***

- Finalize arrangements with the Ada County coroner's office for the disposition of the body, security for the Ada County medical examiner's vehicle, and the custodial transfer of the body;
- Evaluate the candidates to serve on the escort and medical teams (see [section 5](#)), 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 offender to predetermine appropriate venous access locations;
- Ensure that all of the equipment such as electrical, audio, plumbing, HVAC units in the execution chamber are tested periodically to ensure they are in working order;
- Contact licensed physician to ensure he is available to perform duties as identified herein;
- 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 and other medical supplies have been purchased and/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 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;
- Consult with Medical Team members regarding the equipment for the procedure and ensure all equipment necessary to properly conduct the procedure is on site, immediately available for use and functioning properly;
- 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 and functioning properly;

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- Check applicable sterilization dates on medical supplies to ensure they are useable on the execution date;
- Ensure that the Escort Team, Medical Team, and command staff are conducting training (see [section 5](#)) in preparation for the execution; and
- 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 Prisons Bureau***

- Notify facility heads at all IDOC correctional facilities of the pending execution and provide instruction to the facility heads regarding staff briefings and expectations;
- Request that all IDOC facility heads 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 Prisons Bureau at least 21 days before the scheduled execution date;
- Contact the IDOC contract monitor and Correctional Alternative Placement Program (CAPP) and Idaho Correctional Center (ICC) facility heads to discuss their respective IAPs for facility management during the period leading up to and following the execution. The CAPP and ICC facilities must submit their IAPs to the IDOC 21 days before the execution date;
- Identify and assign team leaders and members, and activate the teams;
- Establish the four (4) security areas of the IDOC's south Boise complex and provide that information to facility heads and other staff as needed see [section 11](#);
- Confirm with the IMSI warden 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;
- 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 court's issuance of a death warrant;
- If warranted, request through the appropriate authority that the Federal Aviation Administration (FAA) place a 24 hour temporary flight restriction (TFR) surrounding the IDOC's south Boise complex consisting of the following:
  - ◆ **Radius:** Three (3) nautical miles
  - ◆ **Altitude:** 500 feet from the surface
- Ensure state of Idaho and local law enforcement is periodically briefed and adequately prepared for the execution;

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- Establish the agenda, schedule meetings, and lead the discussion with state of Idaho 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 of Idaho 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; and
- If it is determined that any IDOC staff member, contractor, volunteer, or other offender under IDOC jurisdiction is a family member, has a legal or other significant relationship with the condemned offender, the condemned offenders' family, the victim, or the victim's family, contact the applicable manager to discuss potential issues and ensure that appropriate management and/or support plans are developed.

#### **IDOC PIO**

- Issue a news release announcing the date and time of the execution;
- Send appendix B, *Media Notification and Agreement*, to media liaisons and establish a deadline for the return of all forms; and
- Facilitate up to one telephone interview with the offender per day with Idaho media from the day the death warrant is issued until the day before the execution (excluding weekends and state of Idaho and federal holidays). The offender and his attorney of record may select the order in which the interviews occur. The offender may refuse any or all media requests for interviews.

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

Determine if the IDOC has recorded victims who have requested notification. If such victims exist, obtain contact information for each victim (minor children will not be allowed to witness an execution). The victim service coordinator will provide the contact information to the chief of the Operations Division. If possible, the chief of the Operations Division will first make contact with the victim's family by telephone.

- Send each victim who has identified themselves to the IDOC appendix D, *Victim's Family Witness Notification and Agreement* using certified mail with a return receipt;
- The requests to be present at the execution must be received at least 14 days before the execution; and
- Notify the IDOC victim services coordinator in the county in which the crime originated.

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### ***IMSI Warden***

- Begin an execution log to be kept in the IMSI warden's office. This log will provide a comprehensive and chronological history. The 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 offender 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 offender's central file;
- Ensure that the facility health authority provides the offender 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 offender as keep-on-person; and that any medication the offender has requested be discontinued is no longer being provided;
- Discuss with the offender the options available for the disposition of his body after it has been released by the Ada County coroner. Advise the offender that he cannot donate his body for organ donation;
- Inform the offender that he can request a spiritual advisor and ask if the offender would like to request a spiritual advisor now;
- Inform the offender that a total of two (2) adult family members or friends (approved visitors), his attorney of record, and a spiritual advisor may be present at the execution. The offender can decline any of these individuals who want to witness the execution. No minors (see [section 16](#)) or other offenders can witness the execution;
- 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 offender the opportunity to contact his attorney of record by phone and to speak with a facility volunteer and religion coordinator (VRC) or spiritual advisor;
- Advise the offender he may request a last meal. The meal can be his choice from the IDOC standard food service menu;
- Provide the offender with a copy of appendix E, *Summary of Procedures*. (Attach the signed original to the IMSI warden's execution log.);
- Ensure that the offender'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 offender, the victim, or victim's family; or if there are any offenders under IDOC jurisdiction who are family members, have a legal relationship, or any other significant relationship with the condemned offender, the victim, or victim's family. If any such persons are identified, relay that information to the deputy chief of the Prisons Bureau;
- Notify the commissary provider of the restrictions placed on the offender's commissary purchases;
- Contact the condemned offender'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;

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- Within two (2) business days of receiving a death warrant, send appendix F, *Offender's Friend/Family Witness Notification and Agreement*, to the offender's family by certified mail citing the date of execution and informing them of their liaison person. The notification will inform them that if they choose to receive the remains that they are responsible for making arrangements for the offender's burial, or the state of Idaho will have the remains cremated;
- Inform the offender and the offender's family that disposition of remains information must be received seven (7) days before the execution date and that if the offender does not provide information for disposal of his remains, his remains will be disposed of in accordance with directive [312.02.01.001](#), *Death of an Inmate*. (Give the offender a copy of directive [312.02.01.001](#).);
- Request that the IDOC health authority develop a medical emergency response plan that provides adequate emergency response in the Execution Unit; and
- Ensure that healthcare services staff obtain the offender's current weight and enter that information into the IMSI warden's execution log.

#### ***IMSI Warden's Offender Liaison***

Meet with the condemned offender at least once each working day and forward all of the offender's 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 Prisons Bureau on the management plan; and
- Monitor IMSI activities and brief the deputy chief of the Prisons Bureau if any concerns or problems arise.

### **17. Twenty-one (21) to Seven (7) Days Prior to the Execution**

Twenty-one (21) to seven (7) 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 Operations Division, and the deputy chief of the Prisons Bureau.

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 Operations Division***

- Continue to provide briefings to IDOC staff;
- Compile a list of state of Idaho and media witnesses including pool reporters, and submit the list and all completed state witness notification and agreements (appendix C) and media notification and agreements (appendix B) to the deputy chief of the Prisons Bureau; and
- Monitor planning related to the scheduled execution.

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

- Ensure that the Escort Team, Medical Team, and command staff are conducting training (see [section 5](#)) in preparation of the execution;

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- Contact the Ada County coroner's office and determine the protocol regarding the transfer of the offender's body to the coroner's possession following the execution and forward that information to the IMSI warden; and
- Take steps to resolve outstanding equipment and inventory issues.

#### ***Deputy Chief of the Prisons Bureau***

- Brief director of the IDOC and chief of the Operations Division;
- Continue to conduct tabletop and live exercises with the previously identified teams;
- Review IDOC, CAPP, and ICC facility IAPs, and continue discussion and preparation with facility heads;
- Contact the CISM team leader and ensure the team is making appropriate preparations; and
- Convene a meeting with state of Idaho 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 media notification and agreements (appendix B) to the deputy chief of the Prisons Bureau (or designee) for a criminal background check;
- Arrange telephone interviews with the offender up to one day prior to the execution; and
- Notify members of the media regarding the status of their witness applications.

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

- Visit with the condemned offender as needed;
- Retrieve the completed *Offender's Friend/Family Witness Notification and Agreement* (appendix F) and answer any questions the offender may have;
- Ensure the offender has provided directions for the handling of his remains. (If the offender provides no information or the information is insufficient or incorrect, the deceased shall be disposed of in accordance with directive [312.02.01.001](#), *Death of an Inmate.*);
- Ensure that the offender has had the opportunity to complete an Idaho Physician Orders for Scope of Treatment form;
- Ensure the offender has provided directions for the disposition of his property and offender trust fund; and
- Meet with the facility health authority and IDOC health authority to review plans for coverage and emergency response before and following the scheduled execution.

#### ***IMSI Warden's Offender Liaison***

- Continue daily contact with the offender;
- Stay in contact with the condemned offender's family; and
- Update the IMSI warden on any issues, requests, or questions.

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***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 Prisons Bureau on the status of the management plan; and
- Continue to monitor IMSI activities and brief the deputy chief of the Prisons Bureau if any concerns or problems arise.

**18. Seven (7) to Two (2) Days Prior to the Execution**

Seven (7) to two (2) 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 Operations Division, and the deputy chief of the Prisons Bureau.

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 Operations Division***

- Continue to provide briefings to IDOC staff;
- Gather the names of those planning to be present in the Execution Unit; and
- Monitor planning related to the scheduled execution.

***Administrative Team***

- Ensure that the Escort Team, Medical Team, and command staff have completed adequate training sessions (see [section 5](#));
- 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 if needed;
- 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; and
- At least three (3) days before the scheduled execution date, obtain technical assistance for the purpose of reviewing the lethal substances, the amounts, the methods of delivery and injection, and the offender'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 his findings. The director of the IDOC will make the final determination regarding compliance with this SOP.

***Deputy Chief of the Prisons Bureau***

- Brief director of the IDOC and chief of the Operations Division;

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- Stand up the ICS center;
- Continue tabletop and live exercises;
- Confirm staffing levels and necessary vehicles for regular operations and the execution are appropriate and ready;
- Ensure 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
- 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 random drawing, approximately seven (7) days prior to the execution, for three (3) media seats, to include alternate representatives should the primary representative withdraw prior to the execution;
- Complete a list of the media representatives that want to be on or near the IDOC's south Boise complex and/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 Operations Division, deputy chief of the Prisons Bureau, and IMSI warden; and
- Conduct a preliminary briefing with potential media witnesses and media representatives serving as pool reporters.

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

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

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

- Meet with the condemned offender as needed; and
- Address any unresolved questions or issues.

#### ***IMSI Warden's Offender Liaison***

- Continue daily contact with the offender;
- Have the offender complete a withdrawal slip for any remaining funds in his trust account and designate to whom the funds should be sent;
- Stay in contact with the condemned's family; and
- 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;

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- Ensure that proper tool and key control procedures are being followed;
- 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 authority to ensure that an adequate emergency response plan is in place for the time frame near the execution; and
- Brief the IMSI warden and the deputy chief of the Prisons Bureau regarding the emergency plan preparedness and any issues or concerns.

## **19. Two (2) Days Prior to the Execution**

Two (2) 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 Operations Division, and the deputy chief of the Prisons Bureau.

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 Operations Division***

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

### ***Administrative Team***

- Conduct at least two (2) rehearsal sessions with the Escort Team, Medical Team, and command staff (see [section 5](#));
- Confirm that escort and medical teams, a licensed physician (see [section 6](#)), 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 offender; and
- Verify execution inventory and equipment checks are completed and open issues resolved.

### ***Deputy Chief of the Prisons Bureau***

- Schedule and conduct IDOC 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, CAPP, and ICC facility heads to monitor their preparation and status;
- and
- Confirm adequate staffing, equipment, and materials are in place for regular operations and the execution.

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## **20. Twenty-Four (24) to 12 Hours Prior To the Execution**

Twenty-four (24) to 12 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 Operations Division, and the deputy chief of the Prisons Bureau.

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; and
- Check medical supply and chemical inventory.

### ***Deputy Chief of the Prisons Bureau***

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

### ***IDOC PIO***

Establish the media center.

### ***IDOC Health Authority***

Conduct a review of the offender's healthcare.

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**IMSI Warden**

- Ensure that all the offender's remaining property, except one religious item, is removed and inventoried, and that the offender has completed a disposition sheet for his property;
- Ensure that witness areas are in order;
- Ensure that transportation vehicles are ready; and
- Ensure that food service is prepared to serve offender his last meal request.

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

- Activate the IMSI 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; and
- Ensure that CISM is on-site at IMSI.

**21. Twelve (12) Hours Prior To the Execution**

Twelve (12) 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 Operations Division, 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 Prisons Bureau**

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

**Restricting Access to IDOC Property**

During the final twelve hours prior to the execution, access to the IDOC's south Boise complex is limited. Restrictions shall 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;
- Approved execution witnesses;
- Law enforcement personnel on business-related matters; and
- Others as approved by the ICS operations chief.

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### ***Population Management***

- The IDOC's south Boise complex and CAPP and ICC facilities shall go on secure status as defined and ordered by the ICS operations chief at conclusion of a formal count and not less than nine (9) hours prior to the scheduled execution; and
- After the conclusion of the execution or stay of execution, all IDOC and contract prison facilities shall return to regular operations at the direction of the ICS operations chief.

### ***Condemned Offender Activities***

- Ensure the offender receives the last meal by approximately 1900 hours prior to the scheduled execution. (All eating utensils and remaining food and beverage shall be removed upon completion of the meal.);
- Phone calls are concluded by 2100 hours. (Telephone calls shall be terminated at 2100 hours the day prior to the execution, excluding calls with the offender's attorney of record and others approved by the IMSI warden.);
- Visitation shall be terminated at 2100 hours the night prior to the execution, excluding visits from the offender's attorney of record and others as approved by the IMSI warden;
- No later than 2300 hours the night before the execution, the facility healthcare services staff will offer the offender a mild sedative;
- No later than five (5) hours prior to the execution, the offender shall be offered a light snack. (All eating utensils and remaining food, to include any remaining consumable commissary, shall be removed upon completion of the meal.); and
- No later than four (4) hours prior to the execution, the facility healthcare services staff will offer the offender another mild sedative.

## **22. 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 shall be directed to a member of the Administrative Team.

### ***Witness Briefing***

Prior to entering the execution witness area, the chief of the Operations Division will provide briefings of the execution process to those who will be present at the execution. The victim's family and offender's family will receive separate briefings.

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

The procedures for carrying out the execution are found in appendix A, *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.

## **23. Pronouncement of Death**

Idaho Code, section 19-2716, requires that the death of a condemned offender be pronounced by the Ada County coroner (or deputy coroner).

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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 offender, and pronounce the offender's death to the IMSI warden. 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.

#### **24. Return of Service on the Death Warrant**

After the execution, the IMSI warden must complete a return of service of the death warrant, showing the date, time, mode, and manner in which it was executed. The original death warrant will be returned to the sentencing court. A copy of the death warrant with the return of service information will be filed in the offender's central file. A copy of the original death warrant shall be forwarded to the DAG office.

#### **25. 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 (see appendixes A1 thru A4), EKG machine tape, list of identifiers, etc. and deliver them to the DAG who represents the IDOC for storage;
- 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; and
- 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 Prisons Bureau***

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 designated Administrative Team member, the execution chamber and condemned isolation cell shall 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 shall determine when the prisons resume normal operations after receiving assessments from all facility wardens.

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

##### ***Debriefing***

Within 48 hours, the deputy chief of the Prisons Bureau and IMSI warden will debrief the director of the IDOC and chief of the Operations Division 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.

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**REFERENCES**

Appendix A, *Execution Chemicals Preparation and Administration*

Appendix A1, *Sequence of Chemical Form- Method 1*

Appendix A2, *Sequence of Chemical Form- Method 2*

Appendix A3, *Sequence of Chemical Form- Method 3*

Appendix A4, *Sequence of Chemical Form- Method 4*

Appendix B, *Media Notification and Agreement*

- [Appendix B \(Fill-in version\)](#)

Appendix C, *State Witness Notification and Agreement*

- [Appendix C \(Fill-in version\)](#)

Appendix D, *Victim's Family Witness Notification and Agreement*

- [Appendix D \(Fill-in version\)](#)

Appendix E, *Summary of Procedures*

- [Appendix E \(Fill-in version\)](#)

Appendix F, *Offender's Friend/Family Witness Notification and Agreement*

- [Appendix F \(Fill-in version\)](#)

Directive [312.02.01.001](#), *Death of an Inmate*

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*

Standard Operating Procedure [205.07.01.001](#), *Corrective and Disciplinary Action*

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

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

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

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

**A. Modifications to Protocols and Procedures**

There shall 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 shall 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 shall 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 shall prepare their designated chemical and syringes for two (2) complete sets of chemicals to be used in the implementation of the death sentence. A third set of syringes shall be available and ready for use as backup.

The assigned Medical Team member shall 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 shall be preprinted on a label, with two (2) labels affixed to each syringe to ensure a label remains visible.

There shall 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 offender. The offender will be positioned to enable the Medical Team leader to view the offender, the offender'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 shall 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 shall 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 shall be checked by the Medical team leader running heparin/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 shall 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 shall 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 Heparin/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 Heparin/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 Heparin/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 Heparin/Saline, <b>BLACK</b>	5C (flush)	60mL Heparin/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 Heparin/Saline, <b>BLACK</b>	8C (flush)	60mL Heparin/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 Heparin/Saline, <b>BLACK</b>	11C (flush)	60mL Heparin/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 shall 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 heparin/saline solution, at a concentration of 10 units of heparin per milliliter, and shall 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 shall 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 shall 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 shall 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 Heparin/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 Heparin/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 Heparin/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 Heparin/Saline, <b>BLACK</b>	3C (flush)	60mL Heparin/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 Heparin/Saline, <b>BLACK</b>	6C (flush)	60mL Heparin/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 Heparin/Saline, <b>BLACK</b>	9C (flush)	60mL Heparin/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 shall 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 heparin/saline solution, at a concentration of 10 units of heparin per milliliter, and shall 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 shall 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 shall 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 shall 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 Heparin/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 Heparin/Saline, <b>BLACK</b>	5C (flush)	60mL Heparin/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 shall 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 heparin/saline solution, at a concentration of 10 units of heparin per milliliter, and shall 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 shall 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 Heparin/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 Heparin/Saline, <b>BLACK</b>	3C (flush)	60mL Heparin/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 shall 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 heparin/saline solution, at a concentration of 10 units of heparin per milliliter, and shall 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 shall 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 for an offender exceeding this body weight.

**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 shall be administered to the offender 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 shall 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 shall 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 shall 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 shall 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 shall 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 A1 thru A4). The recorder shall 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 shall be noted and explained on the form.

#### **E. Preparation, Movement, and Monitoring of Offender**

Prior to moving the offender 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 and there are no motions pending before a court which may stay further proceedings.

The offender will be offered a mild sedative based on the offender's need. The sedative shall be provided to the offender no later than four (4) hours prior to the execution, unless it is determined medically necessary.

At the designated time, the Escort Team will escort the offender to the execution room secured on the table by the prescribed means with the offender's arms positioned at an angle away from the offender's side.

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

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

A Medical Team member shall be assigned to monitor the EKG machine, 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 machine shall be noted at each juncture.

Throughout the procedure, the Medical Team members shall continually monitor the offender's level of consciousness and EKG machine readings, maintaining constant observation of the offender 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 shall be responsible for monitoring the offender's level of consciousness.

The assigned Medical Team members will insert the catheters and attach the IV lines.

The witnesses will be brought in to the applicable witness areas.

Once all witnesses are secured in the witness rooms, the IMSI warden shall 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 offender throughout the procedure. The Medical Team leader will confirm the microphone is functioning properly, and that the offender can be heard in the Medical Team room.

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

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

The IMSI warden will offer the offender an eye covering.

#### **F. Intravenous Lines**

The assigned Medical Team members shall determine the best sites on the offender to insert a primary IV catheter and a backup IV catheter in two (2) separate locations in the peripheral veins utilizing appropriate medical procedures. The insertion sites in order of preference shall 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 (2) peripheral lines. In the event that it is not possible to reliably place two (2) 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 shall 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 offender's hands. A flow of heparin/saline shall 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 shall be immediately reported to the IMSI warden.

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

The IMSI warden shall physically remain in the execution chamber with the offender throughout the administration of the chemicals in a position sufficient to clearly observe the offender and the primary and backup IV sites for any potential problems and shall 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.

Should it become necessary to use an alternate means of establishing an IV line because, in the opinion of the Medical Team leader, it is not possible to reliably place a peripheral line in the offender, a Medical Team member may utilize a central line catheter if, in the opinion of the Medical Team leader, such a line may be reasonably placed. The Medical Team member responsible for placing a central line

catheter shall have at least one year of regular and current professional experience conducting that procedure. The Medical Team member will place the central line catheter utilizing appropriate medical procedures. The Medical Team member shall 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 offender's hands. This line shall be utilized for the administering of all chemicals.

Upon successful insertion of the catheter into a central line, a Medical Team member will inject a solution of heparin/saline into the catheter to ensure patency of the catheter.

#### **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 reconfirm with the Idaho attorney general (or designee) and the Idaho governor (or designee) that there is no legal impediment to proceeding with the execution. Upon receipt of oral confirmation that there is no legal impediment, the director of the IDOC will instruct the IMSI warden to commence the process to carry out the sentence of death. The IMSI warden will then order the administration of the chemicals to begin. If there is a legal impediment to the execution, the director of the IDOC shall instruct the IMSI warden to **stop the process**, and to notify the offender and witnesses that the execution has been stayed or delayed. The IMSI warden (or designee) shall also notify the IDOC PIO and other pertinent staff.

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 sodium pentothal/or pentobarbital immediately followed by the heparin/saline flush. The heparin/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 heparin/saline have been administered and before the Medical Team members begin administering the pancuronium bromide, the Medical Team leader shall confirm the offender is unconscious by direct examination of the offender. The Medical Team leader, dressed in a manner to preserve his anonymity, will enter into the room where the IMSI warden and offender are located to physically confirm the offender is unconscious by using all necessary medically appropriate techniques such as giving verbal stimulus, soliciting an auditory response, touching the eyelashes, and/or conducting a sternal rub. The Medical Team leader will also confirm that the IV line remains affixed and functioning properly.

No further chemicals shall be administered until the Medical Team leader has confirmed the offender is unconscious. After three (3) minutes have elapsed since the administration of the sodium pentothal/or pentobarbital, the Medical Team leader will assess and confirm that the offender is unconscious. The Medical Team leader will verbally advise the IMSI warden of the offender's status.

In the unlikely event that the offender is conscious, the Medical Team shall assess the situation to determine why the offender is conscious. The Medical Team leader shall communicate this information to the IMSI warden, along with all Medical Team input. The IMSI warden will determine how to proceed or, if necessary, to start the procedure over at a later time or stand down. The IMSI warden may direct the curtains to the witness viewing room be closed, and, if necessary, for witnesses to be removed from the execution unit.

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 heparin/saline flush from backup set B.

Upon administering the sodium pentothal/or pentobarbital and heparin/saline from backup set B, the Medical Team leader will again physically confirm the offender 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 shall continually monitor the offender using all available means to ensure that the offender remains unconscious and that there are no complications.

Only after receiving oral confirmation from the Medical Team leader that the offender is unconscious and three (3) minutes have elapsed since commencing the administration of the sodium pentothal/or pentobarbital and heparin/saline from backup set B, will the IMSI warden instruct the Medical Team leader to proceed with administering the next chemicals.

When instructed, 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 heparin/saline flush as set forth in the applicable chemical chart.

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

The full dose contained in each syringe shall be administered to the offender 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 shall 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 machine, 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 machine runs a print-out strip for two (2) minutes after the last chemical injection.

The Ada County coroner will enter the execution chamber, examine the offender, and pronounce the offender's death to the IMSI warden. The IMSI warden will then announce that the sentence of death as been carried out as ordered by the court.

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

**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.

#### **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 reconfirm with the Idaho attorney general (or designee) and the Idaho governor (or designee) that there is no legal impediment to proceeding with the execution. Upon receipt of oral confirmation that there is no legal impediment, the director of the IDOC will instruct the IMSI warden to commence the process to carry out the sentence of death. The IMSI warden will then order the administration of the chemicals to begin. If there is a legal impediment to the execution, the director of the IDOC shall instruct the IMSI warden to **stop the process**, and to notify the offender and witnesses that the execution has been stayed or delayed. The IMSI warden (or designee) shall also notify the IDOC PIO and other pertinent staff.

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 sodium pentothal/or pentobarbital immediately followed by the heparin/saline flush.

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

The full dose contained in each syringe shall be administered to the offender 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 shall 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 machine, 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 machine runs a print-out strip for two (2) minutes after the last chemical injection.

The Ada County coroner will enter the execution chamber, examine the offender, and pronounce the offender's death to the IMSI warden. The IMSI warden will then announce that the sentence of death as been carried out as ordered by the court.

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

**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.

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

In the event that a pending stay results in more than a two (2) hour delay, the catheter will be removed, if applicable, and the offender shall be returned to the isolation cell until further notice.

The Medical Team recorder shall account for all chemicals that were not administered and document, in the applicable sequence of chemical form (see appendixes A1 thru A4), 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 A1 thru A4). And will give the unused chemicals to a member of the Administrative Team.

All logs, the applicable sequence of chemical forms (see appendixes A1 thru A4), the list of identifiers, and the EKG machine tape shall 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 shall 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 offender goes into cardiac arrest at any time prior to dispensing the chemicals; trained medical staff shall make every

effort to revive the offender should this occur, unless the offender has signed a do not resuscitate (DNR).

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

If at any point any Medical Team members determine that any part of the execution process is not going according to procedure, they shall advise the Medical Team leader who shall 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 within the 24-hour day, or stand down.

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

Offender: \_\_\_\_\_

Number: \_\_\_\_\_

Court Case #: \_\_\_\_\_

Warrant of Death Issued By: \_\_\_\_\_

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

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

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

Appendix A1

135.02.01.001

(Appendix last updated 1/6/12)

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

Offender: \_\_\_\_\_

Number: \_\_\_\_\_

Court Case #: \_\_\_\_\_

Warrant of Death Issued By: \_\_\_\_\_

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

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

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

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

Offender: \_\_\_\_\_

Number: \_\_\_\_\_

Court Case #: \_\_\_\_\_

Warrant of Death Issued By: \_\_\_\_\_

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

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

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

Appendix A3

135.02.01.001

(Appendix last updated 1/6/12)

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

Offender: \_\_\_\_\_ Number: \_\_\_\_\_  
 Court Case #: \_\_\_\_\_  
 Warrant of Death Issued By: \_\_\_\_\_

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

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

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

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Attorney for Governor Otter

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF IDAHO**

THE ASSOCIATED PRESS, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 C.L. (BUTCH) OTTER, *et al.*, )  
 )  
 Defendants. )

Case No. 1:12-cv-00255-EJL

**DECLARATION OF RANDY BLADES**

1. I, Randy Blades, am over the age of eighteen (18) years and am competent to testify on the matters herein. I make this Declaration based upon my personal knowledge.

2. I am employed by the Idaho Department of Correction (“IDOC”) as the Warden of the Idaho Maximum Security Institution (“IMSI”). I have been employed with the IDOC for

approximately 24 years. During that time, I have been a Warden at various IDOC facilities for approximately nine years, the last two of which have been at IMSI.

3. As the Warden of IMSI, I am responsible for the safe and orderly operation of the facility. Specifically, with respect to executions, I am a member of the Administrative Team and have those duties and responsibilities as described in the IDOC's Execution Procedures Standard Operating Procedure 135.02.01.001 ("SOP 135"). I also had the same duties and responsibilities for the execution of Paul Rhoades on November 18, 2011.

4. During my career with the IDOC I have personally known or know many offenders sentenced to death, including Paul Rhoades and Mr. Leavitt, both of whom I have known for more than 20 years. In my role as Warden, I have had many discussions with death sentenced offenders, including Mr. Rhoades and Mr. Leavitt, regarding the execution process. Based on these conversations, it is my understanding that Mr. Rhoades wanted as little intrusion into the execution process as possible, specifically including any additional time period of witness observation. It is my understanding that Mr. Leavitt has these same concerns.

5. Based on my years of experience, observations, and discussions with death sentenced offenders, I have made the conclusion that death sentenced offenders have a common bond between them. These offenders are segregated from the rest of the offender population and reside in their own housing unit. Many of them have been housed in the same unit together for many years. During this time a sort of familial bond develops between the offenders. During the time leading up to Paul Rhoades' execution, and again with Mr. Leavitt, there is a definite sense of awareness of their circumstances among the death sentenced offenders.

6. Based on my experience and observations, death sentenced offenders do not want their deaths to be sensationalized or every minute detail leading up to their death reported to the

public. These offenders are concerned about their families and friends, including other death sentenced offenders, having to be subjected to media accounts of their deaths. These offenders want private dignity in the period of time leading up to their final moments.

7. In addition to my communications with death sentenced offenders, I have also had conversations with family members of these offenders. In particular, I have had conversations with both Paul Rhoades' and Richard Leavitt's mothers. Mrs. Rhoades was present for and witnessed Paul Rhoades' execution. Based on meetings with these mothers, it is my understanding that both of them want(ed) their sons to be afforded dignity in their final moments before the execution. That dignity includes minimizing the level of observation and scrutiny placed on their sons, and also minimizing the level of detail reported to the public about the deaths of their sons.

8. During the execution of Paul Rhoades, I was present in the execution room from the time Mr. Rhoades was brought into the room until the pronouncement of his death. Being responsible for an execution is one of the most important professional obligations someone can have. Because of the magnitude of the task, it is important to exercise those responsibilities with professionalism, dignity, and respect for all involved—including the condemned offender. The time between when Mr. Rhoades was brought into the execution room and the opening of the curtains to the witness areas was not only a time for the Medical Team to insert the IV catheters and prepare for the execution, but more importantly was a time for Mr. Rhoades to prepare himself and to have a final dignified personal moment before the ultimate event.

9. During the Rhoades' execution there was a 55 minute delay in the execution process. This delay was due to a last minute court filing by an attorney who did not represent Mr. Rhoades. Fortunately, Mr. Rhoades was still in his cell and had not been transported to the

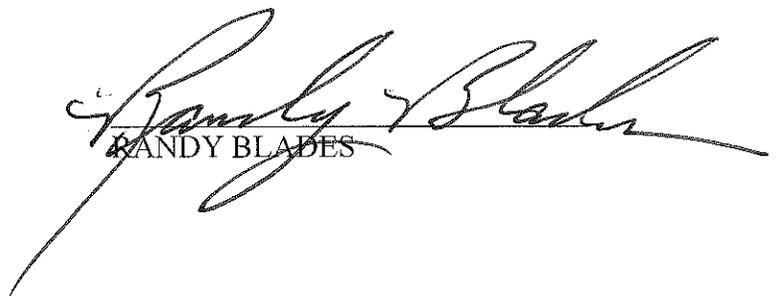
execution room. This was a period of natural tension and anxiety for all involved. Mr. Rhoades would clearly have been denied his right to dignity in his final moments if he had been in the execution room, strapped to the table under the direct observation of witnesses throughout that time.

10. Based on my professional relationship with Mr. Rhoades, and again with Mr. Leavitt, a sense of trust developed between the offenders and me. The trust that Mr. Rhoades placed in me would have been severely undermined if the witnesses had been allowed to view the process earlier in sequence of events.

11. Based on my experience, particularly with the Rhoades' execution, it is essential that the time leading up to the opening of the curtains to the witness areas be private. This is important not only for the Medical Team members to be able to perform their responsibilities without unnecessary pressure placed on them by having to perform under the observation of an audience, but it is especially important to the condemned offender. It is a matter of simple dignity to allow the offender to have time alone prior to the beginning of the execution.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29<sup>th</sup> day of May, 2012.

  
RANDY BLADES

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of May, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Charles A. Brown  
Attorney at Law  
[CharlesABrown@cableone.net](mailto:CharlesABrown@cableone.net)

/s/ Michael S. Gilmore  
MICHAEL S. GILMORE  
Deputy Attorney General