Exhibit H

Comparison of Safeguards Approved in Baze to Establish Constitutionality of Kentucky's Protocol with Washington's DOC's Amended Protocol Dated 10/25/08

Kentucky Safeguard	Washington DOC Provision
Written protocol's requirement that the execution team members have at least one year of "professional experience" as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman. Kentucky currently uses a phlebotomist and an EMT, "personnel who have daily experience establishing IV catheters for inmates in Kentucky's prison population." 128 S. Ct. at 1533-34. Ginsberg notes the phlebotomist has 8 years experience; the EMT has 20. 128 S. Ct. at 1569. Requires that IV team members "must remain certified in their profession and must fulfill any continuing education requirements in their profession." (Policy (Pl.'s Opp. Ex. 7) at p. 984.)	6/07 Policy had no experience or occupation qualifications. 10/25/08 Policy requires at least one year's experience in the occupations listed in the Kentucky statute but marginalizes that requirement by allowing "or similar occupation." (IX.A.1.d.) No requirement that the experience be current. Given the recency of even this requirement and DOC's anticipated execution date of December 3, 2008, there is no reasonable assurance that qualified persons with current experience and willing to participate in executions will be available.
IV team members and rest of execution team participate in at least 10 practice sessions per year. 128 S. Ct. at 1534.	10/25/08 Policy requires three practice sessions preceding an execution, to "include the siting" of IV lines. (VIII.A.2.) New requirement that may not be feasible to meet prior to scheduled December 3, 2008 execution date.
The written protocol requires that these practice sessions encompass a complete walk through of the execution procedures, including the siting of IV catheters into volunteers. 128 S. Ct. at 1534.	No equivalent requirements. 6/07 Policy provided for "[b]riefings and rehearsals" "as necessary" (VIII.A.2.); 10/25/08 Policy calls for "practice sessions" which "include the siting of intravenous (IV) lines." (VIII.A.2.) No complete walk through or volunteer requirements.
Presence of warden and deputy warden in execution chamber with the prisoner to (1) assure that prisoner is unconscious after 1st drug using visual inspection and (2) "watch for any problems with the IV catheters and tubing." 128 S. Ct. at 1528; 1534.	No specific requirement that anyone be in the execution chamber. 6/07 Policy had no requirement for observation of prisoner for signs of consciousness or difficulties with IV lines. 10/25/08 Policy provides that the superintendent shall observe for signs of consciousness before injection of pancuronium bromide. (IX.A.4.e.) No requirement that superintendent be in the execution chamber as opposed to the separate room where the drugs are located and administered; no requirement that anyone watch for problems with IV catheters and tubing. No requirement that two persons make observations.

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If physician and warden determine through visual inspection that the prisoner is not unconscious within 60 seconds of delivery of the Thiopental sodium to the primary IV site, a new 3 gram dose is administered to the secondary site before administering the other drugs. 128 S. Ct. at 1228; 1534.	6/07 policy had no such requirement. 10/25/08 Policy directs for an additional 3 grams of Thiopental sodium "if the superintendent observes" the prisoner to be conscious after the first dose, but with no time limitation. (IX.A.4.e.)
Invasive and painful cut-down procedure (requiring special surgical skills--see Souter Decl. ¶16) not allowed: Kentucky DOC agreed during trial court proceedings not to perform these, so the policy reviewed by the Supreme Court did not permit cut-downs. Baze v. Rees, Trial Court Slip op. (Pl.'s Opp. Ex. 3) at 3 n.7.	Allows cut-down procedure and state contends this cannot even ever be challenged unless prisoner "show[s] he would be a subject to such procedure." (Defs.' Reply at 5.) Of course, Plaintiff does not know whether DOC will attempt this procedure on him, so he cannot make such a prior showing, nor have other courts addressing lethal injection protocol required such an individualized showing in order to challenge particular aspects of the protocol.
Placement of IV in neck not allowed—this was held by Kentucky trial court to be unconstitutional (Trial Court Slip op. (Pl.'s Opp. Ex. 3) at 8, ¶ 7) and state agreed it would not perform these as part of the policy and did not challenge the court's finding. Aside from the neck placement issue, Kentucky's policy required placement in the following order of preference: "arms, hands, ankles, and/or feet." (Policy (Pl.'s Opp. Ex. 7) at p. 975.)	WA 8/10/01 Policy had required that IVs be placed in right and left arms only. (IX.A.4.b). Washington's 6/07 and 10/25/08 protocols have no limitations on placement and allow insertion in neck or anywhere.

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Monitoring of prisoner by medical personnel commencing 14 days prior to execution date, physical examination, physical and psychiatric evaluations, and notation of any changes in medical or psychiatric condition—all required by Kentucky Policy (Policy (Pl.'s Opp. Ex. 7) at pp. 971-74.)	• No requirements for physical or psychiatric evaluations or monitoring of medical or psychiatric condition. • A physical exam was required "if needed" by 6/20/07 policy (VIII B.2) – the 10/25/08 policy provides only that a physical exam "may be conducted," but is not required even though the policy notes that a physical exam could expose possible problems that "may affect the execution process," such as collapsed veins, obesity or deterioration of bone or muscular structure. (VIII B.2.) • State contends that failure of requirement for psychiatric evaluation is not reviewable because Stenson "does not allege he has a psychiatric state that would affect lethal injection." Defs' Reply at 5. Such allegation specific to a prisoner is not necessary when reviewing the constitutionality of lethal injection protocol.
Physician is present to assist in any effort to revive the prisoner in the event of a last-minute stay. 128 S. Ct. at 1528. Policy requires medical staff on site to attempt to revive prisoner in the event a stay is issued after execution commences and requires an ambulance and staff at the institution and a "medical crash cart and defibrillator" in the execution building. (Policy (Pl.'s Opp. Ex. 7) at p. 985.)	No comparable provisions. Rather, 10/25/08 policy provides that "[n]o staff will be required to participate in any part of the execution procedure.' (VIII.A.1) The 6/07 policy stated that no "individual' would be required to participate. (VIII.A.2) Requirement that Director of Health Services, a physician, assure that the lethal injection table is in working order under 6/20/07 policy (IX.A2.), was removed in the 10/25/08 policy, presumably due to that person's objection to participation in executions. (Complaint Ex. B.)

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Protocol requires that the IV team establish both primary and backup lines and prepare two sets of drugs before execution commences. 128 S. Ct. at 1534.	No specific requirement for two sets of drugs. Both policies call for "the acquisition of the appropriate quantities of lethal substances." (IX.A.1.b.) 6/07 Policy did not specify how many lines would be established or whether one would be primary and another backup. (IX.A.4.) 10/25/08 policy has no requirement that DOC designate a primary and backup line. Rather, policy says the lethal injection team will establish two IV lines, start a normal saline flow "through each line," (IX.A.4.b.) and allows "[e]ither line" to be used--with no designation of either as primary or backup. (IX.A.4.e.)
IV tubing is 5 feet. 128 S. Ct. at 1528. Ginsberg notes that length of tubing contributes to risk of inadequate dosage. 128 S. Ct. at 1572.	No specifications for length of tubing and no disclosure of what length is planned for use.
IV team has up to one hour to establish both the primary and back-up IVs. 128 S. Ct. at 1528, 1534.	No comparable, or any, limitations.
Dosages – 3g Thiopental, 50mg Pancuronium bromide, and 240 millequivalents Potassium Chloride. 128 S. Ct. at 1528.	6/07 Policy set Thiopental sodium at 2 grams; 10/25/08 Policy increases it to 3 grams. 6/20/07 policy provided that potassium chloride would be 1.50 – 2.70 mEq/icg based on body weight. New policy sets it at 240 without reference to body weight. (IX.A.4.d)
Electrocardiogram verifies death, 128 S. Ct. at 1528, cardiac monitor is attached to prisoner prior to injection of drugs, a team member uses a stopwatch once drug injections are complete and if there is no flat line after 10 minutes, a second set of lethal drugs is administered. (Policy (Pl.'s Opp. Ex. 7) at pp. 976, 979-80.)	No comparable requirements.

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	• Medical file review was required in 6/20/07 policy (VIII B.1) – completely eliminated in 10/25/08 policy. • 10/25/08 and 6/07 policies provide that the superintendent "may consult" with experts to determine if a deviation from policy is advisable to ensure a swift and humane death (VIII.B.2 and VIII.B.3 respectively) but now that consultation is authorized only based on a physical exam (which is not even required). Former requirement allowing expert consultation based on medical file review is eliminated. (VIII.B.2)