

EXHIBIT 1

MINUTE ENTRY OF COURT'S RULING
GRANTING STAY OF EXECUTION ENCLOSED

WRITTEN ORDER FORTHCOMING –
WILL BE FILED UPON RECEIPT

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

DAROLD R.J. STENSON,

Plaintiff,

vs.

ELDON VAIL, ET AL,

Defendants.

Case No. CV-08-05079-LRS

CIVIL MINUTES

DATE: 11/25/08

LOCATION: YAKIMA

MOTION HEARING (TELEPHONIC)

Judge LONNY R. SUKO

Laura McClure Courtroom Deputy	Fred Karau Law Clerk	Lynette Walters Court Reporter
Richard C. Coyle Sherilyn C. Peterson Diane M. Meyers Plaintiff's Counsel	John J. Samson Sara J. Olson Defendant's Counsel	

Open Court **Chambers** **Teleconf**

Arguments presented by Ms. Peterson regarding Motion for Temporary Restraining Order(Crt Rec #5) and Motion for Preliminary Injunction (Crt Rec #12).

Arguments presented by Mr. Samson.

Court ruled, granting a Stay of Execution, Order forthcoming.

ORDER FORTHCOMING

CONVENED: 8:05 AM	ADJOURNED: 8:30 AM	TIME: 25 MINUTES	CALENDARED <input type="checkbox"/>
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EXHIBIT 2

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Darold R.J. Stenson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Darold R.J. Stenson,
Plaintiff,

v.

Eldon Vail, Secretary of Washington
Department of Corrections (in his
official capacity); Stephen Sinclair,
Superintendent of the Washington
State Penitentiary (in his official
capacity); Cheryl Strange, Office of
Correctional Operations Deputy
Secretary (in her official capacity);
Washington Department of
Corrections; and DOES 1-50,

Defendants.

No. *CV-08-5079-LRS*

**COMPLAINT FOR EQUITABLE
AND INJUNCTIVE RELIEF [42
U.S.C. § 1983]**

Darold R. J. Stenson, by and through his undersigned attorneys for his
complaint against the above-captioned Defendants, alleges as follows:

NATURE OF THE ACTION

**COMPLAINT FOR EQUITABLE AND
INJUNCTIVE RELIEF [42 U.S.C. §
1983] - 1**

68695-0001/LEGAL14959421.1

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1. This action is brought under 42 U.S.C. § 1983 for violations and threatened violations of Plaintiff's rights to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution, and for violations and threatened violations of Plaintiffs' rights to be free from arbitrary and capricious Washington Department of Corrections ("DOC") protocols and procedures under the Fifth and Fourteenth Amendments to the United States Constitution.

2. This Complaint does not challenge Plaintiff's underlying capital conviction or sentence of death, nor does it allege that lethal injection as a form of execution is *per se* unconstitutional. Methods of lethal injection that would comply with the United States Constitution exist and are available for Defendants' use. Rather, Plaintiff challenges only the manner and means by which the DOC intends to execute condemned inmates by lethal injection under its protocol dated October 25, 2008 ("Policy"), attached hereto as Exhibit A, or any future version of the DOC lethal injection protocol.

3. Plaintiff contends that lethal injection, as that method of execution is currently administered in Washington, carries a substantial risk of the inflicting torturous pain and suffering upon condemned inmates. Plaintiff further contends that the nature of the chemicals used by Defendants to effectuate execution by lethal injection, coupled with Defendants' failure to implement sound alternative procedures and to guarantee the use of properly-trained and qualified personnel, creates a and substantial risk that Plaintiff will experience excruciating pain and suffering during execution.

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8. Defendant Eldon Vail is the Secretary of the DOC, with the responsibilities outlined in RCW § 72.09.050, and is sued in his official capacity.

9. Defendant Stephen Sinclair is the Superintendent of the Washington State Penitentiary where Plaintiff is housed and where all executions in Washington are performed, and is sued in his official capacity.

10. Defendant Cheryl Strange is the Deputy Secretary for the Office of Correctional Operations, and is sued in her official capacity.

11. Defendant Washington Department of Corrections is a department of the State of Washington created by RCW § 72.09.030, and is responsible for administering the adult corrections programs operated by the State of Washington pursuant to RCW § 72.09 *et seq.*

12. Defendants Does 1-50, are the DOC's officers, successors in office, agents, contractors, and employees, along with those acting in concert with them, who have or will participate in Plaintiff's execution by virtue of their roles in designing, implementing, preparing for, and/or carrying out the lethal injection process. Plaintiff does not yet know the identities of these persons, but will amend his complaint accordingly upon obtaining that information.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Without conceding that the provisions for exhaustion of administrative remedies are applicable to his claims, Plaintiff has effectively exhausted all administrative remedies for the issues contained in this Complaint to the extent that they were available and has satisfied the Prison

1 Litigation Reform Act's exhaustion requirements pursuant to 42 U.S.C. §
2 1997e(a).
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4 14. Plaintiff is not required to exhaust administrative remedies before
5 bringing this Complaint because modification of the DOC's lethal injection
6 protocol is not possible through the internal grievance process and therefore
7 exhaustion is futile
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12 15. Notwithstanding the fact that exhaustion of administrative
13 remedies through a prison grievance policy is not required for this type of
14 action, Plaintiff has, in an abundance of caution, grieved his claim. The DOC
15 has denied all relief requested by Plaintiff and Plaintiff avers and asserts that
16 all conditions precedent for bringing this suit have been met.
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22 BACKGROUND 23

24 16. Plaintiff was convicted and sentenced to death in 1994.

25 17. His execution is set for December 3, 2008.

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27 18. On April 16, 2008, the United States Supreme Court issued its
28 decision in *Baze v. Rees*, __ U.S. __, 128 S.Ct. 1520, 170 L.Ed. 2d 420
29 (2008), in which a plurality of the Court held that the Eighth Amendment to
30 the United States Constitution is violated when the State subjects an
31 individual to conditions presenting the risk of future harm that are likely to
32 cause serious illness and needless suffering and give rise to sufficiently
33 imminent dangers.
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42 19. The State of Washington's methods of execution create a
43 substantial risk of serious harm and expose death-sentenced prisoners to
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1 objectively intolerable risks of harm for purposes of the Eighth Amendment to
2 the United States Constitution.
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4 20. Alternatives to the State's methods of execution exist that
5 effectively address the substantial risk of serious harm posed by the State's
6 current methods and that are feasible, readily implemented, and in fact
7 significantly reduce a substantial risk of severe pain. The State lacks a
8 legitimate penological justification for adhering to its current methods of
9 execution. By refusing to adopt the available constitutionally sufficient
10 procedures, the State is violating the prohibitions on cruel and unusual
11 punishment set forth in the Eighth Amendment to the United States
12 Constitution.
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22 GENERAL ALLEGATIONS

23 21. All prior allegations set forth above are re-alleged as if set forth
24 entirely herein.
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27 22. The State of Washington has elected to use lethal injection as the
28 presumptive method of execution. *See* RCW § 10.95.180(1). Under state
29 law, death sentences "shall be supervised by the superintendent of the
30 penitentiary and shall be inflicted by intravenous injection of a substance or
31 substances in a lethal quantity sufficient to cause death and until the defendant
32 is dead." *Id.* A defendant may elect death by hanging. *Id.*
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40 23. The statute prescribes no specific drugs, dosages, drug
41 combinations, or the manner of intravenous line access to be used in the lethal
42 injection execution process.
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1 24. The statute fails to prescribe any certification, training, or
2 licensure required for those individuals who participate in the execution
3 process.
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6 25. Though the statute does not delegate to DOC or any agency the
7 authority to implement execution policies and fails to set forth any
8 administrative or procedural standards safeguards or guidelines to be followed
9 when enacting policy or otherwise acting to implement the statute, all of the
10 details and methods involved in the execution process have been determined
11 by DOC and at DOC's sole discretion.
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15 26. The Policy sets forth the protocol by which the DOC has
16 determined that lethal injections are to be carried out in the State of
17 Washington.
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20 27. On information and belief, DOC intends to execute Plaintiff by
21 the lethal injection procedure as set forth in the Policy. The Policy, and the
22 manner and means by which lethal injections are currently performed, violate
23 federal constitutional provisions that prohibit cruel and unusual punishment.
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26 28. On information and belief, the lethal injection protocol set forth
27 in the Policy was adopted without sufficient medical research or review to
28 determine that an inmate would not suffer a painful death.
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31 29. The execution protocol set forth in the Policy was adopted
32 without complying with any administrative or procedural standards,
33 safeguards or guidelines.
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36 30. The Policy creates a substantial risk that Plaintiff will
37 consciously experience pain and suffering during execution. Pursuant to the
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1 Policy, an "injection team" whose members, titles and qualifications are
2 largely undefined by the Policy, will administer intravenously a three-drug
3 combination to Plaintiff in the following order: (1) thiopental sodium;
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5 (2) pancuronium bromide; and (3) potassium chloride.
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9 **i. Thiopental Sodium**

10 31. Thiopental sodium, the first drug to be administered, is an ultra-
11 short acting anesthetic intended to cause temporary unconsciousness, the
12 effects of which wear off quickly. If a sufficient dose of thiopental sodium is
13 not administered properly, the sedative effect will wear off during the
14 execution process, creating a substantial constitutionally unacceptable risk of
15 suffocation from the administration of the subsequently-administered
16 pancuronium bromide and pain from injection of the subsequently-
17 administered potassium chloride.
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20 32. Failure to administer properly the entire dose of thiopental
21 sodium necessary to prevent unconstitutional suffering is a foreseeable
22 consequence of the inadequacy of DOC's procedures and training as outlined
23 in the Policy. Proper administration of thiopental sodium sufficient to render
24 an adequate depth of unconsciousness is crucial to render the execution
25 humane because the subsequently-administered drugs cause excruciating pain
26 and suffering if injected into a conscious or inadequately sedated person. If
27 not fully anaesthetized when injected with the pancuronium bromide and the
28 potassium chloride, Plaintiff will experience both conscious paralysis and
29 asphyxiation and an excruciating burning feeling throughout his veins before
30 dying from cardiac arrest.
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33. The Policy provides that a solution of thiopental sodium will be used in the lethal injection procedure and states that solutions for injection will be prepared no more than thirty minutes prior to administering them in the execution. The Policy does not outline how the drug will be prepared, or by whom, nor does it reasonably assure that the personnel who will prepare and deliver the thiopental sodium have adequate training and experience to perform these tasks properly and to do so within the time constraint. On information and belief, other states use licensed pharmacists or physicians to mix the drugs, including thiopental sodium, for lethal injections.

34. DOC has chosen to create a substantial and foreseeable risk that Plaintiff will be conscious during the administration of the pancuronium bromide and potassium chloride by electing to use thiopental sodium. Anesthesiologists typically administer thiopental for purposes of temporarily anaesthetizing patients in order to introduce a breathing tube. Once the breathing tube has been inserted, other longer-lasting barbiturates are administered to maintain the patient at a surgical plane of anesthesia throughout the procedure.

35. The American Veterinary Medical Association (AVMA) recommends the use of a long-acting barbiturate such as sodium pentobarbital in euthanasia, rather than the thiopental sodium used in Washington executions of death-sentenced prisoners. *See American Veterinary Medical Association, AVMA Guidelines on Euthanasia (Formerly Report of the AVMA on Euthanasia) (June 2007) at 11, available at*

1 <http://www.avma.org/issues/animal_welfare/euthanasia.pdf>, last visited
2 August 18, 2008.
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5 **i. Pancuronium Bromide**

6 36. After the thiopental sodium, Defendants intend to administer 100
7 milligrams of pancuronium bromide. Pancuronium bromide is a
8 neuromuscular blocking agent that paralyzes all voluntary muscles, including
9 the respiratory muscles, thereby causing asphyxiation. Pancuronium bromide
10 does not diminish cognition, consciousness, or the ability to feel pain or
11 suffocation. As a result, if an individual is not fully unconscious when
12 pancuronium bromide is administered, that person will experience the
13 physical and psychological agony of conscious suffocation, but because of the
14 paralysis, the person will be unable to communicate that suffering and the
15 pain will not be visible to an observer.
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18 37. Pancuronium bromide substantially increases the risk that
19 Plaintiff will be conscious during the injection of potassium chloride, an
20 extremely painful drug. Once paralyzed by pancuronium bromide, an
21 inadequately anesthetized person will appear to be serene and unconscious
22 throughout the execution procedure and will be unable to speak or move or
23 otherwise inform the execution personnel that he is conscious and
24 experiencing torturous pain. Indeed, administered by itself to a conscious
25 person, pancuronium bromide would cause the person to suffocate to death
26 slowly while remaining fully conscious.
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29 38. Pancuronium bromide serves no medical purpose or legitimate
30 function in an execution. The chemical is used to prevent the executioners
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1 and witnesses from knowing whether the condemned inmate is adequately
2 anesthetized. In cases in which the thiopental sodium is not successfully
3 delivered to the inmate's circulation and/or the condemned inmate is not
4 adequately anesthetized, pancuronium bromide will create the appearance of a
5 serene death while masking the fact that the person is experiencing conscious
6 paralysis, suffocation, and the agony of cardiac arrest from the administration
7 of potassium chloride. The use of pancuronium bromide is unnecessary to
8 bring about death. Absent the use of pancuronium bromide, a person
9 undergoing execution would be able to indicate that he was still conscious or
10 had regained consciousness prior to the lethal dose of potassium chloride.
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20 39. On information and belief, pancuronium bromide is banned in
21 most states for use in animal euthanasia because it inhibits the ability to
22 determine if the patient is experiencing pain during the procedure.
23 Washington's statutory and administrative provisions express a strong
24 preference for pentobarbital-based drugs. *See* RCW §§ 16.52.011; 69.50.310;
25 WAC §§ 246-886-020 & 246-886-030.
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32 40. Pancuronium bromide substantially and foreseeably increases the
33 risk that Plaintiff will be conscious during the injection of the potassium
34 chloride that follows. Once paralyzed, he will be unable to indicate to the
35 execution personnel that he is conscious and experiencing torturous pain.
36 When pancuronium bromide is administered after an initial dose of thiopental
37 sodium, as the Policy calls for, it creates the real, gratuitous, and unacceptable
38 risk that Plaintiff will be paralyzed by the pancuronium bromide but
39 conscious and able to feel the severe pain caused by the potassium chloride.
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1 Administering the combination of thiopental sodium and pancuronium
2 bromide thus creates the unconscionable possibility that Plaintiff will
3 consciously experience the agony of suffocation by the pancuronium bromide
4 and the intense burning as the potassium chloride moves through his veins,
5 followed by cardiac arrest, without being able to indicate that he was still
6 conscious or had regained consciousness.
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13 **I. Potassium Chloride**

14 41. 1. The third and final chemical Defendants intent to administer
15 is potassium chloride, an extremely painful chemical which causes death by
16 disrupting the heart's contractions, leading to cardiac arrest and death. As
17 potassium chloride travels through the bloodstream from the site of injection
18 towards the heart, the chemical activates sensory nerve fibers inside the veins,
19 causing a prolonged and intense burning sensation. In the foreseeable event
20 that a person is not adequately anesthetized throughout the execution
21 procedure, the potassium chloride will cause the person to consciously
22 experience the agonizing pain of this excruciatingly painful chemical coursing
23 through his veins and of cardiac arrest, while being incapable of expressing
24 his suffering due to the paralytic effects of the pancuronium bromide.
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36 42. The AVMA condemns the use of potassium chloride as the sole
37 agent for animal euthanasia. *See* AVMA Guidelines, *supra*, at 12. If
38 potassium chloride is to be used at all, the AVMA requires the practitioner
39 administering the potassium chloride to have proper training and knowledge
40 to ensure that the euthanized animal has reached a surgical plane, which is
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characterized by the loss of consciousness, loss of reflex muscle and loss of response to noxious stimuli. The Policy lacks even these basic protections.

43. The Policy creates a substantial risk that Plaintiff will not be fully anaesthetized when the potassium chloride is administered and therefore will be conscious and experience torturous pain as a result.

a. Deficiencies in the DOC's Lethal Injection Protocol Create a Substantial and Excessive Risk That Plaintiff Will Suffer Excruciating Pain During Execution

44. On information and belief, the State of Washington does not use a lethal injection procedure and/or employ safeguards substantially similar to those used by the State of Kentucky. *See Baze v. Rees*, ___ U.S. ___, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008).

45. The Policy fails for many reasons including, but not limited to, those stated below.

46. The Policy fails to set forth a back-up plan in the event of failed intravenous insertion or other errors in administration of the chemicals.

47. On information and belief, the State does not select or assemble the lethal injection team until 60 to 90 days prior to the execution date, thereby creating the substantial risk that the members of the injection team will not have adequate training to perform executions in a constitutionally compliant manner.

48. The Policy fails to set forth the procedures for establishing properly the intravenous lines through which the lethal solutions will flow. This failure creates a substantial, intolerable risk of serious harm that the drugs will not be properly administered, specifically, that an adequate dose of

1 thiopental sodium will not reach Plaintiff and render him unconscious on a
2 surgical plane of anesthesia, and that therefore Plaintiff will suffer suffocation
3 from the administration of the pancuronium bromide and the excruciating pain
4 akin to fire running through his veins from injection of the potassium
5 chloride.
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11 49. The Policy does not identify who will set the intravenous lines,
12 where and the manner in which the intravenous lines will be set, or sufficient
13 credentials, qualifications, training, or experience of such person or persons.
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16 50. The Policy does not provide a time frame during which the
17 intravenous lines must be established or a backup plan for vein access in the
18 event that the initial attempt to establish the intravenous lines is unsuccessful.
19 The protocol set forth in the Policy fails to identify whether the intravenous
20 access will be attempted first through peripheral sites, such as arms, hands, or
21 legs, before more invasive measures are attempted.
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28 51. The Policy does not prohibit the use of "cut downs" to access
29 veins for the intravenous lines. A cut down is a painful procedure that
30 involves surgically exposing a vein, inserting a catheter, and closing the skin
31 with suturing, and would be performed prior to the administration of the
32 thiopental sodium. This procedure has been held unconstitutional by other
33 courts.
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40 52. The Policy does not limit injection of the drugs into the arms or
41 legs as do other states protocols. Injection in other areas, such as the neck,
42 can cause excessive pain.
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53. The Policy does not provide for persons who possess sufficient expertise to insert an intravenous line properly to be present in the chamber with the inmate to watch for signs of intravenous line problems, such as blockage and infiltration, and what necessary measures to take in the event of such instances.

54. The Policy does not provide for a standard time for the lethal solutions to be administered or how much time should elapse between administration of the solutions.

55. The Policy fails to specify where the injection team and injection team leader are to be located during the administration of the intravenous lethal solutions or how the execution facilities are set up, thereby creating the substantial risk that there will be not be adequate monitoring for purposes of assessing unconsciousness and whether intravenous tubes are and remain properly inserted into veins.

56. The Policy fails to provide sufficient methods to ensure and monitor that the proper level of unconsciousness is maintained following administering of the sodium thiopental to ensure that an inmate will not experience suffocation or the excruciating burning pain caused by the second and third drugs, *i.e.*, whether the inmate is on the surgical plane of anesthesia prior to administration of pancuronium bromide and potassium chloride. In light of the known risk that a person not completely and deeply unconscious will experience torturous pain and suffering as a result of the last two drugs to be administered, the lack of safeguards creates a substantial intolerable risk of serious harm and wantonly exposes death-sentenced prisoners to that risk.

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57. The Policy does not provide how the syringes containing the lethal solutions will be labeled to ensure that the injection team administers the drugs in the correct order and dosage.

58. The Policy does not provide where or how the lethal solutions will be stored upon arrival to the Washington State Penitentiary to guarantee that the integrity of the chemicals is not compromised prior to the execution.

59. The Policy's inadequate procedures and lack of safeguards for establishing and maintaining the IVs, administering the lethal solutions and maintaining the unconsciousness of the condemned creates a substantial intolerable risk of serious harm to Plaintiff.

60. The Policy delegates the assignment of all staff to be involved in the execution, including the administration of the medical procedures, as well as the determination whether expert advice should be sought as to whether to deviate from the Policy's procedures for inmate-specific physical or medical reasons, to the Superintendent of the Washington State Penitentiary (Superintendent), a position that, on information and belief, does not require any medical certification, training, experience, or knowledge.

61. The Policy lacks any guidelines for injection team members or other personnel to rely upon if they are required to exercise their discretion during the lethal injection process.

62. The Policy provides that briefing and rehearsals are to be conducted only "as necessary," but fails to provide what will be rehearsed, and whether and what type of follow-up will take place in the event that the

1 rehearsal reveals deficiencies, difficulties, or flaws with the personnel or
2 procedures.
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4 63. The failure of requirement for medical file review and a physical
5 examination is especially problematic in this case. Mr. Stenson is a type 2
6 diabetic with a history of significant difficulty in the injection of needles in
7 his veins even to draw blood. Executing Mr. Stenson under DOC's current
8 protocol is likely to cause him severe pain.
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10 64. A physical examination of the person, may, but need not, be
11 performed. The Policy does not state who is to review the medical file the
12 requirements for that person's credentials or qualifications. There is no
13 guidance as to who will conduct the physical examination, when a physical
14 examination will be performed or the scope of the examination. The Policy
15 provides that, based upon the physical examination, the Superintendent "may"
16 but need not consult with "appropriate experts" to determine whether, based
17 on the medical file, any deviation from the policy is advisable. There is no
18 guidance as to what the credentials and qualifications of these "appropriate
19 experts" must be, or whether they must have any experience administering
20 lethal injections.
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22 65. The Policy does not provide for any evaluation of the person's
23 psychiatric state.
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25 66. The Policy fails to provide for a physician to be on stand-by, and
26 does not make any provision for resuscitation in the event that a last-minute
27 reprieve is granted once the execution process has begun.
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**COUNT I:
Violation of the Right to be Free from Cruel and Unusual Punishment
Pursuant to Eighth Amendment
to the United States Constitution**

67. All prior allegations set forth above are re-alleged as if set forth entirely herein.

68. Defendants, acting under color of Washington law, intend to execute Plaintiff in a manner and by methods that will cause unnecessary pain, that do not comport with evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth Amendment to the United States Constitution, as made applicable to the State of Washington by the Fourteenth Amendment to the United States Constitution, to be free from cruel and unusual punishment.

69. Although it is possible to conduct executions in a constitutionally compliant manner, Defendants have chosen not to do so. While Defendants could select additional or alternative chemicals and retain qualified medical personnel to administer its chosen chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have acted with deliberate indifference and failed to do so. Defendants' current procedures violate evolving standards of decency.

**COUNT II:
Violation of the Right to Due Process Pursuant to the
Fourteenth Amendment to the United States Constitution**

70. All prior allegations set forth above are re-alleged as if set forth entirely herein.

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71. The Washington legislature did not delegate authority to DOC to establish or implement a policy by which executions are to be carried out in the State.

72. By acting without a legislative grant of authority in establishing or implementing an execution policy, DOC exceeded its jurisdiction, and its policy may not be enforced.

73. No Washington statute sets forth which agency, if any, has delegated authority to establish or implement an execution policy.

74. No Washington statute sets forth the scope of authority under which a State agency might establish or implement an execution policy.

75. No Washington statute describes administrative or procedural standards, safeguards or guidelines by which an agency should establish or implement an execution policy.

76. There is no provision made by the Legislature, or by DOC, for review of the Policy under the Administrative Procedures Act or otherwise to assure that DOC's policies and actions are constitutional, and not arbitrary and capricious and are otherwise lawful.

77. By failing to adopt adequate statewide standards for lethal injection, and failing to adopt practicable procedures to implement them, and failing to provide for any review, Defendants have deprived Plaintiff of his right to due process under law as provided by the Fourteenth Amendment.

78. By failing to adopt adequate statewide standards for lethal injection, and failing to adopt practicable procedures to implement them, and failing to provide for any review, Defendants fail to provide a process with

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sufficient guarantees of equal treatment as required by the Fourteenth Amendment.

PRAYER FOR RELIEF

Mr. Stenson respectfully requests that this Court grant the following relief:

A. Injunctive relief to enjoin Defendants, their officers, agents, servants, employees and all persons acting in concert with them from execution Plaintiff by lethal injection using the execution protocol set forth in the DOC Policy or similar policy, protocol, practice, or procedure.

B. That the Court conduct appropriate and necessary evidentiary hearing and discovery to permit Plaintiff to prove his constitutional claim;

C. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the laws of the United States;

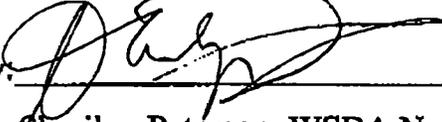
D. Costs of the suit; and

E. Any further relief that the Court deems just and proper.

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DATED: November 20, 2008

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COMPLAINT FOR EQUITABLE AND
INJUNCTIVE RELIEF [42 U.S.C. §
1983] – 21

68695-0001/LEGAL14959421.1

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Exhibit A

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 1 of 12	NUMBER DOC 490.200
	TITLE CAPITAL PUNISHMENT.		
POLICY			

REVIEW/REVISION HISTORY:

Effective: 9/3/93
 Revised: 6/15/98
 Revised: 8/10/01
 Revised: 6/21/07
 Revised: 10/25/08

SUMMARY OF REVISION/REVIEW:

Title and Team Name changes throughout
 I.A.1., II.C. & VIII.A.1., & VIII.C.2. – Added clarifying language
 III.B.3. – Added requirements for ISDP incoming mail
 III.B.4.b. & 5.b. – Added clarifying language regarding attorney of record
 Revised IV.A.1. to specify a single media event
 Added IV.B.1. & DOC 21-575 Acknowledgment of Visitor Search Requirements for searches of media representatives
 Revised V.F. regarding search requirement for witnesses
 VI.C. – Revised housing requirements for female ISDP
 VIII.A.2. – Added requirement for 3 practice sessions for lethal injections
 VIII.B. – Removed medical file review; revised physical examination requirement
 IX.A.1.d. – Added that Lethal Injection Team members must be trained; added qualifications
 IX.A.2.a. – Changed Director of Health Services to Superintendent
 IX.A.4.b. & d. – Revised requirements for lethal injection
 IX.A.4.Jr. – Removed requirement that Lethal Injection Team remove apparatus and saline
 X.A. – Calls to Headquarters will be made to the Department Emergency Operations Center
 X.F. – Removed requirement that Death Certificate be signed before removal of body
 Several changes to Attachment 1

APPROVED:

Signature on File

ELDON VAIL, Secretary
 Department of Corrections

10/23/08
 Date Signed

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REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 10.95.160-190; WAC 137-48-050;
 DOC 410.040 Incident Command System (ICS)

POLICY:

- I. The Department has established procedures governing capital punishment to meet the requirements of RCW 10.95.160-190. These procedures set forth:
 - A. Security requirements for an Inmate Subject to the Death Penalty (ISDP),
 - B. Protocol for conducting an execution,
 - C. The care provided the ISDP while a valid Death Warrant is in force, and
 - D. The method of execution by lethal injection or hanging.
- II. The Department Secretary designates the Assistant Secretary for Prisons to coordinate:
 - A. The responsibilities of the Washington State Penitentiary (WSP) Superintendent, and
 - B. A review of the procedures and all operational decisions in carrying out the execution, as well as the legal status of the Death Warrant.

DIRECTIVE:

- I. ISDP Housing
 - A. Upon receipt of an ISDP and prior to receipt of a Death Warrant:
 1. Male ISDPs shall be housed in a single person cell located in a segregated area of WSP.
 2. Female ISDPs shall be housed in a segregated area of the Washington Corrections Center for Women (WCCW). Prior to the execution date, the female ISDP will be transported to WSP for housing and execution.
- II. Pre-Execution Procedure
 - A. Consistent with RCW 10.95.190, a log shall be maintained with the Death Warrant in the Superintendent's Office.
 - B. Responsibilities are listed in the Execution Procedures and Assignments Checklist (Attachment 1).

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- C. Only staff assigned by the Superintendent will attend the execution. No facility staff will be required to participate in any part of the execution procedure.

III. Notification to ISDP

- A. After receiving confirmation of a valid Death Warrant, the Superintendent will designate an Associate Superintendent to personally interview the ISDP regarding procedures relating to the execution.
- B. The Associate Superintendent will provide the ISDP with a written summary of procedures, to include mail, visits, telephone usage, and available religious services. The ISDP will be informed of the following:
1. The date of the execution.
 2. The punishment of death shall be by lethal injection.
 - a. The ISDP may elect hanging as an alternate means of execution.
 - b. The procedure to be used will be determined 14 days prior to the execution and the method cannot be changed after that date. If the ISDP elects hanging, it must be stated in writing no later than 14 days prior to the execution date.
 3. Mail procedures for an ISDP with an active Death Warrant will be as follows:
 - a. The Mail Room Sergeant will be instructed, in writing, to forward all incoming mail, unopened, to the designated Associate Superintendent, who will screen and exclude any items which may threaten the order and security of the facility with regard to the ISDP.
 - 1) Mail intended to harass the ISDP will be considered a threat to the orderly operation of the facility and restricted per WAC 137-48-050.
 - 2) Legal mail will be screened, not read.
 - b. The Mail Room Sergeant will maintain a log of all incoming and outgoing mail, noting the date and time of receipt and delivery. A separate log will be maintained for all legal mail.
 4. All visits between the ISDP and authorized visitors will be no contact.

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- a. Visitation for an ISDP will be consistent with the visiting procedures of other offenders housed in the Intensive Management Unit (IMU).
 - b. Seven days prior to the execution, daily visits will be authorized in addition to visits with the attorney of record.
 - c. Twenty-four hours prior to the execution date, all visits and visitors require the approval/denial of the Superintendent.
 - d. After the ISDP is moved to the execution holding cell, visits will be restricted to approved clergy and the attorney of record.
5. The ISDP will have unlimited phone access during the daily yard period. Fourteen days prior to the execution date, an additional daily one hour yard will be provided.
- a. There will be no limit on the number or duration of calls to and from the attorney of record.
 - b. Only calls from the attorney of record will be authorized following transfer to the execution holding cell.

IV. Media Relations

- A. The Superintendent/designee will coordinate all requests for information concerning an execution.
 1. A single event to provide representatives of major and local media an opportunity to access the chamber will be authorized by the Superintendent and coordinated by designated staff.
- B. The Superintendent will establish procedures for selecting media witnesses as specified in the Witness Selection section of this policy.
 1. No audio/electronic/video equipment, cameras, telephones, or recording/communication devices will be permitted in the chamber. Media witnesses will be subject to an electronic and pat search. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.
 2. The only items that are allowed in the chamber are pens, pencils, and writing tablets supplied by the facility.
- C. Requests from media representatives for access to the Information Center must be submitted in writing.

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1. Information Center access will not be permitted more than 3 hours prior to an execution.
- D. Media access to a designated area of the facility parking lot will be permitted at a designated time the day prior to the execution.
- E. Media will not be permitted to film or conduct interviews with facility staff without the prior authorization of the Superintendent/designee.
- F. All normal facility security procedures will apply. Failure to comply with these procedures, Department policies, operational memorandums, or directions from authorized personnel may be cause for removal from the facility and/or facility grounds. The Superintendent may establish emergency rules and procedures.
- V. Witness Selection
- A. Not less than 20 days prior to an execution, individuals who wish to attend and witness the execution must submit a letter of request (e.g., application) to the Superintendent. The letter must designate the relationship to the ISDP and reason(s) for wishing to attend. Eligible individuals include:
1. Judicial officers (i.e., the Judge who signed the Death Warrant for the ISDP, the current Prosecuting Attorney or a Deputy Prosecuting Attorney of the county from which the final Judgment and Sentence and Death Warrant were issued, and the most recent attorney of record representing the ISDP),
 2. Law enforcement representatives (i.e., officers responsible for investigating the crime for which the inmate was sentenced to death),
 3. Media representatives,
 4. Representatives of the families of the victims (i.e., immediate family or victim advocates of the immediate family), and
 5. Representatives from the ISDP's immediate family.
- B. Not less than 15 days prior to the execution, the Superintendent shall determine the total number of individuals, other than Department employees, who will be allowed to attend and witness the execution.
1. The Superintendent shall determine the number of witnesses allowed in each category of eligible individuals.

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- a. No less than 5 media representatives will be included, with consideration given to news organizations serving communities affected by the crimes or the execution.
 - b. Up to 2 law enforcement representatives will be included. The chief law enforcement officer of the jurisdiction where the crime was committed shall designate the law enforcement representatives.
2. Once the list is composed, the Superintendent shall serve the list on all parties who have submitted a letter (e.g., application) to witness the execution.
- C. Not less than 10 days prior to the execution, the Superintendent shall file the witness list with the Superior Court from which the conviction and Death Warrant were issued. The witness list will be filed with a petition asking that the court enter an order certifying the list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than 5 days after the filing of the petition.
 - D. Unless a show cause petition is filed with the Superior Court from which the conviction and Death Warrant were issued within 5 days of the filing of the Superintendent's petition, the Superintendent's list, by order of the Superior Court, will become final and no other party will have standing to challenge its appropriateness.
 - E. In no case may the Superintendent or the Superior Court order or allow more than 17 witnesses to a planned execution, excluding required staff.
 - F. All witnesses must adhere to the facility's search and security provisions in regards to witnessing an execution and may be subject to emergency rules and procedures. Written consent for search will be required using DOC 21-576 Acknowledgment of Visitor Search Requirements.
- VI. Execution Holding Cell
- A. Prior to the execution, but no sooner than 24 hours before, the ISDP will be moved to the execution holding cell.
 - B. The holding cell will contain:
 1. Bedding that includes a mattress, 2 sheets, 3 blankets, a pillow, and a pillow case,
 2. Personal hygiene items that include 2 towels, a washcloth, and a bar of soap,

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3. Approved personal items and clothing that include underwear, facility clothing, legal materials, religious items, jewelry, or other personal items as requested by the ISDP and approved by the Superintendent, and
 4. Other personal items as requested by the ISDP and approved by the Superintendent to be retained by holding cell staff and issued as requested by the ISDP.
- C. A female ISDP may be housed in the WSP Intensive Management Unit (IMU) prior to being moved to the execution holding cell.
- D. Two correctional staff will be posted at the holding cell at all times and a complete log of activities will be maintained.

VII. Final Meal

- A. At the meal period just prior to the time of execution, the ISDP will be allowed to provide his/her meal selection from a menu prepared and provided by the Food Service Manager. The Food Service Manager will ensure preparation and delivery of the meal to the ISDP.

VIII. Execution Preparation

- A. The Superintendent will appoint individuals to support the execution process.
1. No staff will be required to participate in any part of the execution procedure.
 2. Briefings and rehearsals will be conducted as necessary to ensure adequate preparation for the execution. For an execution by lethal injection, there shall be a minimum of 3 practice sessions preceding an execution that shall include the siting of intravenous (IV) lines.
- B. Medical Review
1. A physical examination of the ISDP may be conducted to determine any special problems (e.g., collapsed veins, obesity, deterioration of bone or muscular structure) that may affect the execution process. The ISDP's height and weight will be measured during the examination.
 2. Based upon the physical examination, the Superintendent may consult with appropriate experts to determine whether deviation from the policy is advisable to ensure a swift and humane death.
- C. Crowd Control

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1. The Superintendent will notify law enforcement agencies of the date of execution, enabling them to prepare for any traffic and crowd control issues that may arise.
2. Prior to the execution, the Superintendent will hold briefings for local and state law enforcement agencies to determine the manner and extent to which WSP and Department resources will support law enforcement in managing crowd control and potential external threats.
3. An area(s) will be designated for the general public.
4. The WSP Emergency Response Team (ERT) will provide crowd control for the protection of the WSP grounds.
 - a. The ERT Commander(s) will be briefed by the Superintendent prior to the execution.
 - b. In the event that protesters and/or onlookers gather, law enforcement assistance will be requested to direct them to the designated area.

IX. Execution Procedure

A. Lethal Injection

1. Lethal Injection Materials/Personnel
 - a. All tubing, syringes, saline solution, and other apparatus will be on site and verified no later than 7 days prior to the execution.
 - b. The Superintendent will direct the acquisition of the appropriate quantities of lethal substances. These will be available and on site 7 days prior to the execution date.
 - c. The Superintendent will ensure the security and continued verification of all materials.
 - d. Lethal Injection Team members will have sufficient training or experience to carry out the lethal injection process without any unnecessary pain to the ISDP. Minimum qualifications include one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation.
2. Lethal injection Table

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- a. The Superintendent, in conjunction with the Plant Manager, will examine and verify that the lethal injection table is in working order with all restraints available.
3. Preparation of the Execution Area
- a. The Lethal Injection Team will inspect the area designated for lethal injection and make any final recommendations to the Superintendent.
- b. The Lethal Injection Team will assemble all necessary materials for transport to the chamber no less than one hour prior to the time of execution. The Lethal Injection Team Leader will secure the lethal substances and personally transport them to the chamber.
- c. The solutions for injection will be prepared not more than 30 minutes prior to administration.
4. Execution Process
- a. The Superintendent will direct that the ISDP be brought to the chamber. The Escort Team will place the ISDP on the lethal injection table and appropriately secure the ISDP to the table. The Escort Team will then leave the room.
- b. The Lethal Injection Team will establish 2 IV lines and start a normal flow of saline through each line. The Lethal Injection Team will ensure that a slow, normal saline flow is maintained through each line.
- c. The Superintendent will ask the ISDP if s/he has any last words.
- d. Upon notification from the Superintendent, the Lethal Injection Team will introduce the following lethal solutions using a bolus injection into the tubing in the order specified:
- 1) 3 g thiopental sodium
 - 2) 50 cc normal saline
 - 3) 100 mg pancuronium bromide
 - 4) 50 cc normal saline
 - 5) 240 mEq potassium chloride (KCl)
- e. Either line may be used for injection of solutions as required. The Superintendent shall observe the ISDP for signs of consciousness before the Lethal Injection Team administers the pancuronium

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bromide. If the Superintendent observes that the ISDP is conscious following the first dose of thiopental sodium, s/he shall direct the Lethal Injection Team to administer an additional 3 g dose of thiopental sodium.

- f. The Lethal Injection Team Leader will signal the Superintendent when all of the solutions have been administered.
- g. At a time deemed appropriate by the Superintendent, the curtains will be closed. The Superintendent will call for the physician to examine the body and make a pronouncement of death.
- h. After the pronouncement of death, the Lethal Injection Team will remain in the area until directed to leave.
- i. Post-execution procedures will be followed.

B. Hanging

1. The gallows area trap door(s) and release mechanisms will be inspected for proper operation.
2. A determination of the proper amount of drop of the ISDP through the trap door will be made. The following standard military execution drop chart will be used:

<u>WEIGHT (Pounds)</u>	<u>DROP DISTANCE</u>
120	8'1"
125	7'10"
130	7'7"
135	7'4"
140	7'1"
145	6'9"
150	6'7"
155	6'6"
160	6'4"
165	6'2"
170	6'0"
175	5'11"
180	5'9"
185	5'7"
190	5'6"
195	5'5"

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200	5'4"
205	5'2"
210	5'1"
220 and over	5'0"

3. Equipment

- a. Hood -- The hood will be a neutral color with an outer surface made of rough material, split at the open end so that it will come down over the chest and back.
- b. Collapse Board -- A board will be provided for use in case the ISDP collapses.
- c. Restraints -- Restraints will be used to ensure that the hands and arms of the ISDP are securely held to his/her front and sides.
- d. Rope -- The rope will be manila hemp, at least 3/4 inch and not more than 1 1/4 inches in diameter and approximately 30 feet in length. The rope will be soaked and then stretched while drying to eliminate any spring, stiffness, or tendency to coil. The knot will be treated with wax, soap, or clear oils ensuring a smooth sliding action through the knot. The knot will be tied according to Army regulations.

4. Execution Process

- a. Restraints will be placed on the ISDP by assigned staff.
- b. The Escort Team will escort the ISDP to the gallows area. The ISDP will be placed, standing, in the spot designated by the Superintendent. The Superintendent will ask the ISDP if s/he has any last words.
- c. The hood will be placed on the ISDP and leg restraints applied. If a collapse board appears to be necessary, the Escort Team will put the board in place.
- d. The noose will be placed snugly around the ISDP's neck in such a manner that the knot is directly behind the left ear.
- e. The Superintendent will direct the trapdoor be released.
- f. The Escort Team will move to the lower floor location to assist with removal of the deceased ISDP. The curtains will be closed.

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- g. At a time deemed appropriate by the Superintendent, the physician will be called to make a pronouncement of death.

X. Post-Execution Procedure

- A. The Assistant Secretary for Prisons will notify the Secretary and Incident Command Center of the time of death. Necessary calls to Headquarters will be made to the Department Emergency Operations Center.
- B. The Superintendent will inform a designated staff of the time of death, who will then inform the witnesses.
- C. The witnesses will be escorted out of the execution area immediately after the pronouncement of death.
- D. The media witnesses will be escorted to the Information Center.
- E. The Chaplain will provide official notification to the family of the time of death.
- F. The body will be removed from the facility by a pre-determined route.
- G. A post-trauma specialist and the Chaplain will be available to staff preceding, during, and after the execution. Staff will also be provided a confidential list of off-site locations where counseling and/or spiritual support will be available.
- H. Within 20 days after the execution, the Superintendent shall return the Death Warrant to the clerk of the trial court from which it was issued, along with the log identified in the Pre-Execution Procedure section of this policy.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Execution Procedures and Assignments Checklist (Attachment 1)

DOC FORMS:

DOC 21-575 Acknowledgment of Visitor Search Requirements

**DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
EXECUTION PROCEDURES AND ASSIGNMENTS CHECKLIST**

Inmate:

Date of Execution:

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
Compliance Date: Approximately 30 days prior to the scheduled execution		
	Superintendent appoints an Execution Incident Commander.	
	Execution Incident Commander determines the Incident Command System (ICS) objectives, strategies, tactical direction, and organizational structure needed for the execution event and identifies planning elements required.	
	Execution Incident Commander develops a draft Incident Action Plan (IAP) for the execution and submits to the Superintendent for approval. The IAP will contain, at a minimum, all elements identified in this checklist.	
	ISDP is informed of the statutory requirements regarding the method of execution and is advised the Superintendent will request s/he submit his/her election of alternate method in writing.	
	ISDP is given opportunity to designate family members as witnesses.	
	ISDP has been provided a written summary of the procedures governing mail, visitation, telephone use, and available religious services.	
	Mail Room Supervisor is informed, in writing, of the ISDP's name and execution and instructed that: <ul style="list-style-type: none"> <input type="checkbox"/> All incoming mail addressed to ISDP will be forwarded unopened to a designated Associate Superintendent <input type="checkbox"/> A log will be maintained of all incoming/outgoing mail noting date and time of receipt and distribution <input type="checkbox"/> A separate log will be maintained for legal mail 	

DATE COMPLETED STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The facility Public Information Officer has been informed of scheduled date and directed to prepare a media plan.	
	The Intensive Management Unit (IMU) Manager has been informed of mail, visit, telephone use, and available religious services as they apply to the ISDP.	
	ISDP is placed on 30 minute check. Observed behavior is entered in designated log.	
	Chaplain is assigned as Religious Specialist and briefed.	
	Sources and procedures for acquiring the substances necessary for lethal injection have been investigated. Plans being made for acquiring all necessary equipment essential to carry out either mode of execution.	
	Coordination meeting with local law enforcement is scheduled.	
	Lethal Injection Team or Hanging Team, as necessary, is identified and notified.	
	Individuals eligible to witness execution are identified. Appropriate letters sent.	
Compliance Date: Not less than 20 days prior to the execution		
	Superintendent completes changes to IAP and returns to the Execution Incident Commander.	
	Staff assigned an organizational role within the ICS structure are identified and briefed.	
	ICS organization completes identified planning elements, required forms, and documentation for the IAP.	
	Letters received from potential witnesses have been processed.	

DATE COMPLETED STAFF INITIALS	TASK	COMPLIANCE DATE
	The chamber has been inspected to ensure the following systems are functional: <input type="checkbox"/> Plumbing <input type="checkbox"/> Lighting <input type="checkbox"/> Emergency Lighting <input type="checkbox"/> Mechanical Systems <input type="checkbox"/> Locking Systems <input type="checkbox"/> Telephones <input type="checkbox"/> Sanitation <input type="checkbox"/> Furnishings <input type="checkbox"/> Toilet Facilities	
	Execution Incident Commander ensures all staff assigned to positions within the chamber receive a briefing and notification of the date and time of "on-site" rehearsal.	
	Execution Incident Commander ensures a written report detailing the condition of the chamber has been submitted to the Superintendent citing any deficiencies. A schedule of corrective actions will be provided.	
Compliance Date: 15 days prior to the execution.		
	All changes, improvements, or renovations to the chamber have been completed.	
	Total number of individuals to attend/witness the execution, other than staff, has been identified.	
	Witness applicants have been notified of the final witness list.	
Compliance Date: 14 days prior to execution.		
	ISDP is authorized one additional hour of yard time each day.	
	ISDP is provided final opportunity to choose alternate method of execution.	
	All equipment has been procured for either mode of execution.	
	Notification to staff/ISDP for program changes if needed (e.g., visiting, etc.).	
	Arrangements made to ensure Death Certificate will be available. Superintendent is advised.	
Compliance Date: Not less than 10 days prior to the execution.		

DATE COMPLETED STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	List of authorized witnesses is filed with Superior Court in county of conviction from which Death Warrant issued.	
	Physical examination is conducted, if needed.	
	The following have been checked: <input type="checkbox"/> All equipment required for lethal injection <input type="checkbox"/> All equipment required for hanging, if necessary.	
	Conduct at least 3 lethal injection practice sessions, if necessary, including siting of IV lines.	
	Gallows area trap door(s) and release mechanisms are inspected for proper operation, if necessary.	
	Proper amount of drop of ISDP through the trap door is determined, if necessary.	
	IAP specifically details crowd control strategies and tactics and identifies the operational supervisor/leader.	
Compliance Date: 7 days prior to the execution		
	Execution Incident Commander submits final IAP to the Superintendent and receives signature approval.	
	ISDP is authorized daily visits (in addition to with attorney of record).	
	Instructions are provided to staff on entrance and egress routes.	
	Mobile restroom facilities are placed in the designated demonstration area.	
	Post-execution handling of ISDP is coordinated.	
	Lethal solutions, if required, have been obtained and placed in security lock box.	
	The specific route and mode of body removal is determined and information transmitted to: <input type="checkbox"/> Superintendent <input type="checkbox"/> Execution Incident Commander <input type="checkbox"/> Captain <input type="checkbox"/> Shift Commander <input type="checkbox"/> Washington State Patrol	
	Menu for final meal is prepared and presented to Superintendent for approval.	
Compliance Date: Approximately 5 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	On-site rehearsal has been conducted with all Execution Event staff participating.	
	The holding cell area has been inspected and is ready for occupancy.	
	Security inspections of the entire chamber have been conducted.	
	The holding cell is prepared and equipped with: <input type="checkbox"/> 1 Mattress <input type="checkbox"/> 2 Sheets <input type="checkbox"/> 3 Blankets <input type="checkbox"/> 1 Pillow <input type="checkbox"/> 1 Pillowcase <input type="checkbox"/> 2 Towels <input type="checkbox"/> 1 Washcloth <input type="checkbox"/> 1 Bar of Soap	
	Chamber and all systems have been checked for operation and readiness. All equipment present and functional.	
	Notices are issued to any contract/volunteer staff and/or construction workers of planned suspension of their activities.	
	Arrangements for Death Certificate are confirmed and communicated to the Superintendent/Execution Incident Commander.	
Compliance Date: Approximately 4 days prior to the execution		
	Coordination briefings with local law enforcement agencies have been conducted.	
	All staff assignments made: <input type="checkbox"/> Chamber Security Team <input type="checkbox"/> Correctional Program Managers <input type="checkbox"/> Captain <input type="checkbox"/> Chamber Media Escort Team <input type="checkbox"/> Visiting Room Media Monitor <input type="checkbox"/> Chaplain <input type="checkbox"/> Transport/Restraining Team <input type="checkbox"/> Holding Cell Security Team <input type="checkbox"/> Health Care Manager 2 <input type="checkbox"/> Incident Command Post Staff (Security/Communication) <input type="checkbox"/> Specialty Team Group Supervisor/ERT Leader <input type="checkbox"/> Specialty Team Group Supervisor/SERT Leader	

DATE COMPLETED STAFF INITIALS	TASK	PERFORMER
	Staff escorts assigned for all non-WSP individuals attending.	
Compliance Date: 24 hours prior to execution		
	Superintendent approves all visitors.	
	ISDP is requested to designate disposition of his/her property/remains in writing.	
	A thorough security inspection of the entire chamber area, including search of cells, has been conducted.	
	Clocks are coordinated.	
	ISDP is moved from IMU to holding cell. Visitors limited to approved clergy and attorney of record.	
	Upon arrival at the holding cell, ISDP is informed of conditions of confinement.	
	The IAP is initiated and Incident Command Post opened and staffed.	
	Main facility is briefed at roll call of extraordinary security measures.	
	A designated staff to operate PBX reports for work.	
Execution Day		
	Chamber Access Security Team (Shift A) reports to duty station in chamber.	
	Cell Security Team (Shift A) reports to duty station in chamber.	
	Lethal solutions, if needed, are transferred to the injection room in the chamber.	
	Final meal is prepared and served to ISDP.	
	Chamber Access Security Team Shift B relieves Shift A.	
	Cell Security Team Shift B relieves Shift A.	
	Authorized media representatives are allowed access to the facility and are briefed by the Superintendent/designee.	
	All witnesses have been assigned escorts and allowed access to the facility.	
	All traffic through information desk area, visitor tunnel is cleared.	
	All staff designated as participants are at duty stations in the chamber.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Department Secretary has been contacted by telephone from the Incident Command Post/Communications Center and an open line from the Department Emergency Operations Center to the chamber is established.	
	Incident Command Post/Communications Center contacts the Attorney General's Office by telephone and maintains an open line.	
	Lethal Injection Team enters and the equipment for injection mode and back-up equipment is tested, if necessary.	
	Hanging Team enters the gallows area and the equipment and back-up equipment is tested, if necessary.	
	Open line participants verify and concur no stay has been received. The time is _____ or later and the execution is to proceed.	
	Superintendent is in place in chamber.	
	ISDP is placed in restraints and escorted to the appropriate execution area.	
	All pre-execution preparations are completed. All participants are in place.	
	Assistant Secretary confirms that no stays have been granted.	
	Assistant Secretary informs Superintendent that there are no stays.	
	Superintendent signals the execution to proceed.	

EXHIBIT 3

- EXPEDITE
- No hearing set
- Hearing is set

HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL, Secretary of Washington
Department of Corrections (in his official
capacity); STEPHEN SINCLAIR,
Superintendent of the Washington State
Penitentiary (in his official capacity);
MARC STERN, Director of Health
Services (in his official capacity);
CHERYL STRANGE, Office of
Correctional Operations Deputy Secretary
(in her official capacity); WASHINGTON
DEPARTMENT OF CORRECTIONS; and
DOES 1-50,

Defendants.

No. 08-2-02080-8

FIRST AMENDED AND SUPPLEMENTAL
COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Darold R. J. Stenson, by and through his undersigned attorneys for his complaint
against the above-captioned Defendants, alleges as follows:

FIRST AMENDED AND SUPPLEMENTAL
COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF – 1

68695-0001/LEGAL14833831.1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

EXHIBIT 3

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I. NATURE OF ACTION

1. Plaintiff Darold R. J. Stenson brings this action for declaratory and injunctive relief for violations and threatened violations of his right, under the Washington Constitution, art. I, §§ 14 and 3 of the Washington Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution to be free from cruel and unusual punishment and arbitrary and capricious action caused by the State of Washington's Department of Corrections ("DOC") protocols, procedures and/or actions.

2. Plaintiff is under a sentence of death imposed by the State of Washington. The State of Washington has elected to use lethal injection as the presumptive method of execution, and DOC has implemented a policy by which it plans to carry out lethal injections in the State. A death-sentenced inmate in the State of Washington may elect death by hanging.

3. Plaintiff does not in this action challenge his underlying conviction or sentence. Rather, Plaintiff challenges the manner and means by which DOC intends to execute him under its former policy, DOC Policy Number 490.200 (dated June 21, 2007) (the "Policy"), attached to Plaintiff's Complaint as Exhibit A, or its amended policy, dated October 25, 2008, which was revised after Plaintiff initiated this action and is attached as Exhibit A hereto, and any other policy, protocol, or other guideline or practice addressing the method of execution in Washington. Methods of lethal injection that would comply with the United States and Washington constitutions exist and are available for Defendants' use.

4. Lethal injection, as that method of execution is currently administered in Washington under the Policy, unnecessarily risks the infliction of torturous pain and suffering. The nature of the chemicals used by Defendants to effectuate execution by lethal injection, coupled with Defendants' failure to implement sound procedures and guarantee

1 the use of properly-trained and qualified personnel, unnecessarily risks and creates a highly
2 foreseeable probability that Plaintiff will experience excruciating pain and suffering during
3 execution.
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7 5. The alternative elective method of execution, death by hanging, is also
8 unconstitutional under the constitutions of the State of Washington and United States
9 because it unnecessarily risks and creates a highly foreseeable probability that Plaintiff will
10 experience excruciating pain and suffering during execution.
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14 6. Furthermore, Defendants' failure to provide a complete set of the execution
15 procedures and an opportunity for Plaintiff to review and object to those procedures violates
16 due process and fundamental fairness guaranteed by the constitutions of the State of
17 Washington and United States.
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21 7. In implementing and modifying the Policy, Defendants have not acted
22 pursuant to any authority, and/or any proper authority, granted to them by the Washington
23 Legislature.
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27 8. Defendants have not been given by the Legislature, nor have they
28 promulgated, sufficient procedural standards, safeguards or guidelines for the
29 implementation or modification of the Policy or to test the constitutionality of these actions
30 after promulgating the Policy or other critical guidelines or practices for implementing the
31 death penalty.
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35 9. Plaintiff seeks declaratory and injunctive relief to prevent Defendants from
36 carrying out his execution by means of lethal injection, as that method of execution is
37 currently performed in the State of Washington.
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1 the Court held that the Eighth Amendment to the United States Constitution is violated when
2
3 the State subjects an individual to conditions presenting the risk of future harm that are
4
5 likely to cause serious illness and needless suffering and give rise to sufficiently imminent
6
7 dangers.

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9 25. The State of Washington's methods of execution create a substantial risk of
10
11 serious harm and wantonly expose death-sentenced prisoners to objectively intolerable risks
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13 of harm for purposes of Article I, § 14 of the Washington Constitution, and the Eighth
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15 Amendment to the United States Constitution.

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17 26. Alternatives to the State's methods of execution exist that effectively address
18
19 the substantial risk of serious harm posed by the State's current methods and that are
20
21 feasible, readily implemented, and in fact significantly reduce a substantial risk of severe
22
23 pain. The State lacks a legitimate penological justification for adhering to its current
24
25 methods of execution. By refusing to adopt the available constitutionally sufficient
26
27 procedures, the State is violating the prohibitions on cruel and unusual punishment set forth
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29 in Article I, § 14 of the Washington Constitution, and the Eighth Amendment to the United
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31 States Constitution.

32 V. GENERAL ALLEGATIONS

33
34 27. All prior allegations set forth above are re-alleged as if set forth entirely
35
36 herein.

37 A. Lethal Injection

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39 28. The State of Washington has elected to use lethal injection as the
40
41 presumptive method of execution. *See* RCW § 10.95.180(1). Under state law, death
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43 sentences "shall be supervised by the superintendent of the penitentiary and shall be inflicted
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1 by intravenous injection of a substance or substances in a lethal quantity sufficient to cause
2 death and until the defendant is dead.” *Id.* A defendant may elect death by hanging. *Id.*
3

4 29. The statute prescribes no specific drugs, dosages, drug combinations, or the
5 manner of intravenous line access to be used in the lethal injection execution process.
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8 30. The statute fails to prescribe any certification, training, or licensure required
9 for those individuals who participate in the execution process.
10

11 31. Though the statute does not delegate to DOC or any agency the authority to
12 establish or implement execution policies and fails to set forth any administrative or
13 procedural standards safeguards or guidelines to be followed when enacting policy or
14 otherwise acting to implement the statute, all of the details and methods involved in the
15 execution process have been determined by DOC and at DOC’s sole discretion.
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22 32. The Policy sets forth the protocol by which the DOC has determined that
23 lethal injections are to be carried out in the State of Washington.
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25 33. On information and belief, DOC intends to execute Plaintiff by the lethal
26 injection procedure as set forth in the Policy. The Policy, and the manner and means by
27 which lethal injections are currently performed, violate state and federal constitutional
28 provisions that prohibit cruelty, pain, and torture.
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33 34. On information and belief, the lethal injection protocol set forth in the Policy
34 was adopted without sufficient medical research or review to determine that an inmate
35 would not suffer a painful death.
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39 35. The execution protocol set forth in the Policy was adopted without complying
40 with any administrative or procedural standards, safeguards or guidelines.
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1 **B. The Chemicals Chosen by DOC for Lethal Injection Create an Excessive Risk**
2 **That Plaintiff Will Suffer Excruciating Pain During Execution**

3
4 36. The Policy creates a substantial risk that Plaintiff will consciously experience
5 pain and suffering during execution. Pursuant to the Policy, an “injection team” whose
6 members, titles and qualifications are undefined by the Policy, will administer intravenously
7 a three-drug combination to Plaintiff in the following order: (1) thiopental sodium;
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12 (2) pancuronium bromide; and (3) potassium chloride.

13
14 **1. Thiopental Sodium**

15 37. Thiopental sodium, the first drug to be administered, is an ultra-short acting
16 anesthetic intended to cause temporary unconsciousness, the effects of which wear off
17 quickly. If a sufficient dose of thiopental sodium is not administered properly, the sedative
18 effect will wear off during the execution process, creating a substantial constitutionally
19 unacceptable risk of suffocation from the administration of the subsequently-administered
20 pancuronium bromide and pain from injection of the subsequently-administered potassium
21 chloride.
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29 38. Failure to administer properly the entire dose of thiopental sodium necessary
30 to prevent unconstitutional suffering is a foreseeable consequence of the inadequacy of
31 DOC’s procedures and training as outlined in the Policy. Proper administration of
32 thiopental sodium sufficient to render an adequate depth of unconsciousness is crucial to
33 render the execution humane because the subsequently-administered drugs cause
34 excruciating pain and suffering if injected into a conscious or inadequately sedated person.
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If not fully anaesthetized when injected with the pancuronium bromide and the potassium
chloride, Plaintiff will experience both conscious paralysis and asphyxiation and an
excruciating burning feeling throughout his veins before dying from cardiac arrest.

1 39. The Policy provides that a solution of thiopental sodium will be used in the
2
3 lethal injection procedure and states that solutions for injection will be prepared no more
4
5 than thirty minutes prior to administering them in the execution. The Policy does not outline
6
7 how the drug will be prepared, or by whom, nor does it reasonably assure that the personnel
8
9 who will prepare and deliver the thiopental sodium have adequate training and experience to
10
11 perform these tasks properly and to do so within the thirty-minute time constraint. On
12
13 information and belief, other states use licensed pharmacists or physicians to mix the drugs,
14
15 including thiopental sodium, for lethal injections.

16
17 40. DOC has chosen to create a substantial and foreseeable risk that Plaintiff will
18
19 be conscious during the administration of the pancuronium bromide and potassium chloride
20
21 by electing to use thiopental sodium. Anesthesiologists typically administer thiopental for
22
23 purposes of temporarily anaesthetizing patients in order to introduce a breathing tube. Once
24
25 the breathing tube has been inserted, other longer-lasting barbiturates are administered to
26
27 maintain the patient at a surgical plane of anesthesia throughout the procedure.

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29 41. The American Veterinary Medical Association (AVMA) recommends the use
30
31 of a long-acting barbiturate such as sodium pentobarbital in euthanasia, rather than the
32
33 thiopental sodium used in Washington executions of death-sentenced prisoners. *See*
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35 *American Veterinary Medical Association, AVMA Guidelines on Euthanasia (Formerly*
36
37 *Report of the AVMA on Euthanasia)* (June 2007) at 11, available at
38
39 <http://www.avma.org/issues/animal_welfare/euthanasia.pdf>, last visited August 18, 2008.

40
41 **2. Pancuronium Bromide**

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43 42. After the thiopental sodium, Defendants intend to administer 100 milligrams
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45 of pancuronium bromide. Pancuronium bromide is a neuromuscular blocking agent that
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47 paralyzes all voluntary muscles, including the respiratory muscles, thereby causing

1 asphyxiation. Pancuronium bromide does not diminish cognition, consciousness, or the
2 ability to feel pain or suffocation. As a result, if an individual is not fully unconscious when
3 pancuronium bromide is administered, that person will experience the physical and
4 psychological agony of conscious suffocation, but because of the paralysis, the person will
5 be unable to communicate that suffering and the pain will not be visible to an observer.
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10 43. Pancuronium bromide substantially increases the risk that Plaintiff will be
11 conscious during the injection of potassium chloride, an extremely painful drug. Once
12 paralyzed by pancuronium bromide, an inadequately anesthetized person will appear to be
13 serene and unconscious throughout the execution procedure and will be unable to speak or
14 move or otherwise inform the execution personnel that he is conscious and experiencing
15 torturous pain. Indeed, administered by itself to a conscious person, pancuronium bromide
16 would cause the person to suffocate to death slowly while remaining fully conscious.
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24 44. Pancuronium bromide serves no medical purpose or legitimate function in an
25 execution. The chemical is used to prevent the executioners and witnesses from knowing
26 whether the condemned inmate is adequately anesthetized. In cases in which the thiopental
27 sodium is not successfully delivered to the inmate's circulation and/or the condemned
28 inmate is not adequately anesthetized, pancuronium bromide will create the appearance of a
29 serene death while masking the fact that the person is experiencing conscious paralysis,
30 suffocation, and the agony of cardiac arrest from the administration of potassium chloride.
31 The use of pancuronium bromide is unnecessary to bring about death. Absent the use of
32 pancuronium bromide, a person undergoing execution would be able to indicate that he was
33 still conscious or had regained consciousness prior to the lethal dose of potassium chloride.
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44 45. On information and belief, pancuronium bromide is banned in most states for
45 use in animal euthanasia because it inhibits the ability to determine if the patient is
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1 experiencing pain during the procedure. Washington's statutory and administrative
2 provisions express a strong preference for pentobarbital-based drugs. *See* RCW §§
3 16.52.011; 69.50.310; WAC §§ 246-886-020 & 246-886-030.
4
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7 46. Pancuronium bromide substantially and foreseeably increases the risk that
8 Plaintiff will be conscious during the injection of the potassium chloride that follows. Once
9 paralyzed, he will be unable to indicate to the execution personnel that he is conscious and
10 experiencing torturous pain. When pancuronium bromide is administered after an initial
11 dose of thiopental sodium, as the Policy calls for, it creates the real, gratuitous, and
12 unacceptable risk that Plaintiff will be paralyzed by the pancuronium bromide but conscious
13 and able to feel the severe pain caused by the potassium chloride. Administering the
14 combination of thiopental sodium and pancuronium bromide thus creates the
15 unconscionable possibility that Plaintiff will consciously experience the agony of
16 suffocation by the pancuronium bromide and the intense burning as the potassium chloride
17 moves through his veins, followed by cardiac arrest, without being able to indicate that he
18 was still conscious or had regained consciousness.
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31 **3. Potassium Chloride**

32 47. The third and final chemical Defendants intent to administer is potassium
33 chloride, an extremely painful chemical which causes death by disrupting the heart's
34 contractions, leading to cardiac arrest and death. As potassium chloride travels through the
35 bloodstream from the site of injection towards the heart, the chemical activates sensory
36 nerve fibers inside the veins, causing a prolonged and intense burning sensation. In the
37 foreseeable event that a person is not adequately anesthetized throughout the execution
38 procedure, the potassium chloride will cause the person to consciously experience the
39 agonizing pain of this excruciatingly painful chemical coursing through his veins and of
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1 cardiac arrest, while being incapable of expressing his suffering due to the paralytic effects
2 of the pancuronium bromide.
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4 48. The AVMA condemns the use of potassium chloride as the sole agent for
5 animal euthanasia. *See* AVMA Guidelines, *supra*, at 12. If potassium chloride is to be used
6 at all, the AVMA requires the practitioner administering the potassium chloride to have
7 proper training and knowledge to ensure that the euthanized animal has reached a surgical
8 plane, which is characterized by the loss of consciousness, loss of reflex muscle and loss of
9 response to noxious stimuli. The Policy lacks even these basic protections.
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11 49. The Policy creates a substantial risk that Plaintiff will not be fully
12 anaesthetized when the potassium chloride is administered and therefore will be conscious
13 and experience torturous pain as a result.
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23 **C. Deficiencies in the DOC's Lethal Injection Protocol Create a Substantial and**
24 **Excessive Risk That Plaintiff Will Suffer Excruciating Pain During Execution**

25 50. On information and belief, the State of Washington does not use a lethal
26 injection procedure and/or employ safeguards substantially similar to those used by the State
27 of Kentucky. *See Baze v. Rees*, __ U.S. __, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008).
28

29 51. The Policy fails for many reasons including, but not limited to, those stated
30 below.
31

32 52. The Policy fails to set forth a back-up plan in the event of failed intravenous
33 insertion or other errors in administration of the chemicals.
34

35 53. On information and belief, the State does not select or assemble the lethal
36 injection team until 60 to 90 days prior to the execution date, thereby creating the substantial
37 risk that the members of the injection team will not have adequate training to perform
38 executions in a constitutionally compliant manner.
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1 54. The Policy fails to set forth the procedures for establishing properly the
2 intravenous lines through which the lethal solutions will flow. This failure creates a
3 substantial, intolerable risk of serious harm that the drugs will not be properly administered,
4 specifically, that an adequate dose of thiopental sodium will not reach Plaintiff and render
5 him unconscious on a surgical plane of anesthesia, and that therefore Plaintiff will suffer
6 suffocation from the administration of the pancuronium bromide and the excruciating pain
7 akin to fire running through his veins from injection of the potassium chloride.
8

9 55. The Policy does not identify who will set the intravenous lines, where and the
10 manner in which the intravenous lines will be set, or sufficient credentials, qualifications,
11 training, or experience of such person or persons.
12

13 56. The Policy does not provide a time frame during which the intravenous lines
14 must be established or a backup plan for vein access in the event that the initial attempt to
15 establish the intravenous lines is unsuccessful. The protocol set forth in the Policy fails to
16 identify whether the intravenous access will be attempted first through peripheral sites, such
17 as arms, hands, or legs, before more invasive measures are attempted.
18

19 57. The Policy does not prohibit the use of "cut downs" to access veins for the
20 intravenous lines. A cut down is a painful procedure that involves surgically exposing a
21 vein, inserting a catheter, and closing the skin with suturing, and would be performed prior
22 to the administration of the thiopental sodium.
23

24 58. The Policy does not provide for persons who possess sufficient expertise to
25 insert an intravenous line properly to be present in the chamber with the inmate to watch for
26 signs of intravenous line problems, such as blockage and infiltration, and what necessary
27 measures to take in the event of such instances.
28

1 59. The Policy does not provide for a standard time for the lethal solutions to be
2 administered or how much time should elapse between administration of the solutions.
3

4 60. The Policy fails to specify where the injection team and injection team leader
5 are to be located during the administration of the intravenous lethal solutions or how the
6 execution facilities are set up, thereby creating the substantial risk that there will be not be
7 adequate monitoring for purposes of assessing unconsciousness and whether intravenous
8 tubes are and remain properly inserted into veins.
9

10 61. The Policy fails to provide sufficient methods to ensure and monitor that the
11 proper level of unconsciousness is maintained following administering of the sodium
12 thiopental to ensure that an inmate will not experience suffocation or the excruciating
13 burning pain caused by the second and third drugs, *i.e.*, whether the inmate is on the surgical
14 plane of anesthesia prior to administration of pancuronium bromide and potassium chloride.
15 In light of the known risk that a person not completely and deeply unconscious will
16 experience torturous pain and suffering as a result of the last two drugs to be administered,
17 the lack of safeguards creates a substantial intolerable risk of serious harm and wantonly
18 exposes death-sentenced prisoners to that risk.
19

20 62. The Policy does not provide how the syringes containing the lethal solutions
21 will be labeled to ensure that the injection team administers the drugs in the correct order
22 and dosage.
23

24 63. The Policy does not provide where or how the lethal solutions will be stored
25 upon arrival to the Washington State Penitentiary to guarantee that the integrity of the
26 chemicals is not compromised prior to the execution.
27

28 64. The Policy's inadequate procedures and lack of safeguards for establishing
29 and maintaining the IVs, administering the lethal solutions and maintaining the
30

1 unconsciousness of the condemned creates a substantial intolerable risk of serious harm to
2
3 Plaintiff.

4
5 65. The Policy delegates the assignment of all staff to be involved in the
6
7 execution, including the administration of the medical procedures, as well as the
8
9 determination whether expert advice should be sought as to whether to deviate from the
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11 Policy's procedures for inmate-specific physical or medical reasons, to the Superintendent
12
13 of the Washington State Penitentiary (Superintendent), a position that, on information and
14
15 belief, does not require any medical certification, training, experience, or knowledge.

16
17 66. The Policy lacks any guidelines for injection team members or other
18
19 personnel to rely upon if they are required to exercise their discretion during the lethal
20
21 injection process.

22
23 67. The Policy provides that briefing and rehearsals are to be conducted only "as
24
25 necessary," but fails to provide what will be rehearsed, and whether and what type of
26
27 follow-up will take place in the event that the rehearsal reveals deficiencies, difficulties, or
28
29 flaws with the personnel or procedures.

30
31 68. A physical examination of the person, may, but need not, be performed. The
32
33 Policy does not state who is to review the medical file the requirements for that person's
34
35 credentials or qualifications. There is no guidance as to who will conduct the physical
36
37 examination, when a physical examination will be performed or the scope of the
38
39 examination. The Policy provides that, based upon the physical examination, the
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41 Superintendent "may" but need not consult with "appropriate experts" to determine whether,
42
43 based on the medical file, any deviation from the policy is advisable. There is no guidance
44
45 as to what the credentials and qualifications of these "appropriate experts" must be, or
46
47 whether they must have any experience administering lethal injections.

1 69. The Policy does not provide for any evaluation of the person's psychiatric
2 state.
3

4 70. The Policy fails to provide for a physician to be on stand-by, and does not
5 make any provision for resuscitation in the event that a last-minute reprieve is granted once
6 the execution process has begun.
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11 **D. Hanging**

12 71. All prior allegations set forth above are re-alleged as if set forth entirely
13 herein.
14

15 72. The Policy provides that Plaintiff must choose between lethal injection and
16 hanging as his method of execution. He has not done so.
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19 73. Execution by hanging as practiced in Washington is unconstitutional under
20 the United States and Washington Constitutions. Hanging creates a substantial risk that
21 Plaintiff will consciously experience pain and suffering during execution.
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27 **COUNT I:**
28 **Violation of the Right to be Free from Cruel Punishment and Arbitrary and**
29 **Capricious Procedures Pursuant to Article I, Sections 3 and 14,**
30 **of the Washington Constitution (Lethal Injection)**
31

32 74. All prior allegations set forth above are re-alleged as if set forth entirely
33 herein.
34

35 75. Defendants, acting under color of Washington law, intend to execute Plaintiff
36 in a manner and by methods that will cause unnecessary pain, that do not comport with
37 evolving standards of decency, thereby depriving Plaintiff of his rights under Article I, §§ 3
38 and 14 to the Washington State Constitution to be free from cruel punishment.
39
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41 76. Although it is possible to conduct executions in a constitutionally compliant
42 manner, Defendants have chosen not to do so. While Defendants could select additional or
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1 alternative chemicals and retain qualified medical personnel to administer its chosen
2 chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have
3 acted with deliberate indifference and failed to do so. Defendants' current procedures
4 violate evolving standards of decency.
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10 **COUNT II:**
11 **Violation of the Right to be Free from Cruel and Unusual Punishment**
12 **Pursuant to Eighth Amendment**
13 **to the United States Constitution (Lethal Injection)**

14 77. All prior allegations set forth above are re-alleged as if set forth entirely
15 herein.
16

17
18 78. Defendants, acting under color of Washington law, intend to execute Plaintiff
19 in a manner and by methods that will cause unnecessary pain, that do not comport with
20 evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth
21 Amendment to the United States Constitution, as made applicable to the State of
22 Washington by the Fourteenth Amendment to the United States Constitution, to be free from
23 cruel and unusual punishment.
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30 79. Although it is possible to conduct executions in a constitutionally compliant
31 manner, Defendants have chosen not to do so. While Defendants could select additional or
32 alternative chemicals and retain qualified medical personnel to administer its chosen
33 chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have
34 acted with deliberate indifference and failed to do so. Defendants' current procedures
35 violate evolving standards of decency.
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**COUNT III:
Violation of the Right to be Free from Cruel Punishment and Arbitrary and
Capricious Procedures Pursuant to Article I, Sections 3 and 14,
of the Washington Constitution (Hanging)**

80. All prior allegations set forth above are re-alleged as if set forth entirely herein.

81. Defendants, acting under color of Washington law, intend to execute Plaintiff in a manner and by methods that will cause unnecessary pain, that do not comport with evolving standards of decency, thereby depriving Plaintiff of his rights under Article I, §§ 3 and 14 to the Washington Constitution to be free from cruel punishment.

82. Although it is possible to conduct executions in a constitutionally compliant manner, Defendants have chosen not to do so. While Defendants could select additional or alternative methods of execution to ensure the constitutionality of its procedure, Defendants have acted with deliberate indifference and failed to do so. Defendants' current procedures violate evolving standards of decency.

**COUNT IV:
Violation of the Right to be Free from Cruel and Unusual Punishment
Pursuant to Eighth Amendment
to the United States Constitution (Hanging)**

83. All prior allegations set forth above are re-alleged as if set forth entirely herein.

84. Defendants, acting under color of Washington law, intend to execute Plaintiff in a manner and by methods that will cause unnecessary pain, that do not comport with evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth Amendment to the United States Constitution, as made applicable to the State of

1 Washington by the Fourteenth Amendment to the United States Constitution, to be free from
2
3 cruel and unusual punishment.

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5 85. Although it is possible to conduct executions in a constitutionally compliant
6
7 manner, Defendants have chosen not to do so. While Defendants could select additional or
8
9 alternative methods of execution to ensure the constitutionality of its procedure, Defendants
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11 have acted with deliberate indifference and failed to do so. Defendants' current procedures
12
13 violate evolving standards of decency.

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15 **COUNT V:**
16 **Violation of the Right to Due Process Pursuant to**
17 **Article I, Section 3, of the Washington Constitution**
18

19 86. All prior allegations set forth above are re-alleged as if set forth entirely
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21 herein.

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23 87. Defendants, acting under color of Washington law, fail to set forth, in detail
24
25 sufficient for Plaintiff to evaluate, the manner and methods of the execution employed by
26
27 the State of Washington as required by Article I, Section 3 of the Washington Constitution.
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29 88. As a direct cause of Defendants' failure to adequately describe the manner
30
31 and methods of execution employed by the State of Washington, Plaintiff is unable to make
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33 a knowing, voluntary and informed election of his method of execution.
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36 **COUNT VI:**
37 **Violation of the Right to Due Process Pursuant to the**
38 **Fourteenth Amendment to the United States Constitution**
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40 89. All prior allegations set forth above are re-alleged as if set forth entirely
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42 herein.

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44 90. Defendants, acting under color of Washington law, fail to set forth, in detail
45
46 sufficient for Plaintiff to evaluate, the manner and methods of the execution employed by
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1 the State of Washington as required by the Fourteenth Amendment to the United States
2
3 Constitution.

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5 91. As a direct cause of Defendants' failure to adequately describe the manner
6 and methods of execution employed by the State of Washington, Plaintiff is unable to make
7
8 a knowing, voluntary and informed election of his method of execution.
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11 **COUNT VII:**
12 **DOC Unconstitutionally Exceeded Its Jurisdiction**
13 **in Implementing the Execution Policy**
14

15 92. All prior allegations set forth above are re-alleged as if set forth entirely
16
17 herein.

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19 93. The Washington legislature did not delegate authority to DOC to establish or
20
21 implement a policy by which executions are to be carried out in the State.
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23 94. By acting without a legislative grant of authority in establishing or
24
25 implementing an execution policy, DOC exceeded its jurisdiction, and its policy may not be
26
27 enforced.
28

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30 **COUNT VIII:**
31 **Any Delegation of Authority to DOC to Establish or**
32 **Implement Execution Policy is Improper**
33

34 95. All prior allegations set forth above are re-alleged as if set forth entirely
35
36 herein.

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38 96. No Washington statute sets forth which agency, if any, has delegated
39
40 authority to establish or implement an execution policy.

41
42 97. No Washington statute sets forth the scope of authority under which a State
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44 agency might establish or implement an execution policy.
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1 C. Declaratory judgment stating that executing Plaintiff by lethal injection using
2 the execution protocol set forth in the DOC Policy and DOC practices, procedures, acts and
3 omissions violate Plaintiff's rights under the Eighth and Fourteenth Amendments to the
4 United States Constitution.
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9 D. Declaratory judgment stating that execution by hanging violates Plaintiff's
10 rights under Article I, §§ 3, 14 of the Washington Constitution and a preliminary and
11 permanent injunction barring Defendants from executing him by hanging.
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14 E. Declaratory judgment stating that execution by hanging violates Plaintiff's
15 rights under the Eighth and Fourteenth Amendments to the United States Constitution.
16
17

18 F. Declaratory judgment stating that Defendants' refusal to disclose its
19 execution procedures relating to lethal injection violates due process and fundamental
20 notions of fairness, and requiring Defendants to disclose these procedures to Plaintiff in a
21 timely manner sufficient to allow him to investigate and evaluate the procedure to ensure
22 that it does not violate prohibitions against cruel and unusual punishment in the Washington
23 and United States constitutions.
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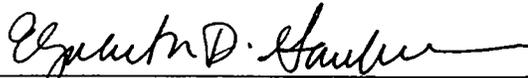
30 G. Declaratory judgment stating that Defendants' refusal to disclose its
31 execution procedures relating to hanging violates due process and fundamental notions of
32 fairness as provided by the Fourteenth Amendment to the United States Constitution, and
33 requiring Defendants to disclose these procedures to Plaintiff in a timely manner sufficient
34 to allow him to investigate and evaluate the procedure to ensure that it does not violate the
35 prohibitions against cruel and unusual punishment in the Washington and United States
36 constitutions.
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44 H. Any further relief, including attorneys' fees and/or costs, that the Court
45 deems just and proper.
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DATED: October 29, 2008

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DEPARTMENT OF CORRECTIONS

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POLICY

TITLE

CAPITAL PUNISHMENT

REVIEW/REVISION HISTORY:

Effective: 9/3/93
Revised: 6/15/98
Revised: 8/10/01
Revised: 6/21/07
Revised: 10/25/08

SUMMARY OF REVISION/REVIEW:

Title and Team Name changes throughout
I.A.1., II.C. & VIII.A.1., & VIII.C.2. – Added clarifying language
III.B.3. – Added requirements for ISDP incoming mail
III.B.4.b. & 5.b. – Added clarifying language regarding attorney of record
Revised IV.A.1. to specify a single media event
Added IV.B.1. & DOC 21-575 Acknowledgment of Visitor Search Requirements for searches of media representatives
Revised V.F. regarding search requirement for witnesses
VI.C. – Revised housing requirements for female ISDP
VIII.A.2. – Added requirement for 3 practice sessions for lethal injections
VIII.B. – Removed medical file review; revised physical examination requirement
IX.A.1.d. – Added that Lethal Injection Team members must be trained; added qualifications
IX.A.2.a. – Changed Director of Health Services to Superintendent
IX.A.4.b. & d. – Revised requirements for lethal injection
IX.A.4.h. – Removed requirement that Lethal Injection Team remove apparatus and saline
X.A. – Calls to Headquarters will be made to the Department Emergency Operations Center
X.F. – Removed requirement that Death Certificate be signed before removal of body
Several changes to Attachment 1

APPROVED:

Signature on File

ELDON VAIL, Secretary
Department of Corrections

10/23/08

Date Signed

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REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 10.95.160-190; WAC 137-48-050; DOC 410.040 Incident Command System (ICS)

POLICY:

- I. The Department has established procedures governing capital punishment to meet the requirements of RCW 10.95.160-190. These procedures set forth:
 - A. Security requirements for an Inmate Subject to the Death Penalty (ISDP),
 - B. Protocol for conducting an execution,
 - C. The care provided the ISDP while a valid Death Warrant is in force, and
 - D. The method of execution by lethal injection or hanging.

- II. The Department Secretary designates the Assistant Secretary for Prisons to coordinate:
 - A. The responsibilities of the Washington State Penitentiary (WSP) Superintendent, and
 - B. A review of the procedures and all operational decisions in carrying out the execution, as well as the legal status of the Death Warrant.

DIRECTIVE:

- I. ISDP Housing
 - A. Upon receipt of an ISDP and prior to receipt of a Death Warrant:
 1. Male ISDPs shall be housed in a single person cell located in a segregated area of WSP.
 2. Female ISDPs shall be housed in a segregated area of the Washington Corrections Center for Women (WCCW). Prior to the execution date, the female ISDP will be transported to WSP for housing and execution.

- II. Pre-Execution Procedure
 - A. Consistent with RCW 10.95.190, a log shall be maintained with the Death Warrant in the Superintendent's Office.
 - B. Responsibilities are listed in the Execution Procedures and Assignments Checklist (Attachment 1).

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- C. Only staff assigned by the Superintendent will attend the execution. No facility staff will be required to participate in any part of the execution procedure.

III. Notification to ISDP

- A. After receiving confirmation of a valid Death Warrant, the Superintendent will designate an Associate Superintendent to personally interview the ISDP regarding procedures relating to the execution.
- B. The Associate Superintendent will provide the ISDP with a written summary of procedures, to include mail, visits, telephone usage, and available religious services. The ISDP will be informed of the following:
1. The date of the execution.
 2. The punishment of death shall be by lethal injection.
 - a. The ISDP may elect hanging as an alternate means of execution.
 - b. The procedure to be used will be determined 14 days prior to the execution and the method cannot be changed after that date. If the ISDP elects hanging, it must be stated in writing no later than 14 days prior to the execution date.
 3. Mail procedures for an ISDP with an active Death Warrant will be as follows:
 - a. The Mail Room Sergeant will be instructed, in writing, to forward all incoming mail, unopened, to the designated Associate Superintendent, who will screen and exclude any items which may threaten the order and security of the facility with regard to the ISDP.
 - 1) Mail intended to harass the ISDP will be considered a threat to the orderly operation of the facility and restricted per WAC 137-48-050.
 - 2) Legal mail will be screened, not read.
 - b. The Mail Room Sergeant will maintain a log of all incoming and outgoing mail, noting the date and time of receipt and delivery. A separate log will be maintained for all legal mail.
 4. All visits between the ISDP and authorized visitors will be no contact.



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- a. Visitation for an ISDP will be consistent with the visiting procedures of other offenders housed in the Intensive Management Unit (IMU).
 - b. Seven days prior to the execution, daily visits will be authorized in addition to visits with the attorney of record.
 - c. Twenty-four hours prior to the execution date, all visits and visitors require the approval/denial of the Superintendent.
 - d. After the ISDP is moved to the execution holding cell, visits will be restricted to approved clergy and the attorney of record.
5. The ISDP will have unlimited phone access during the daily yard period. Fourteen days prior to the execution date, an additional daily one hour yard will be provided.
- a. There will be no limit on the number or duration of calls to and from the attorney of record.
 - b. Only calls from the attorney of record will be authorized following transfer to the execution holding cell.

IV. Media Relations

- A. The Superintendent/designee will coordinate all requests for information concerning an execution.
 1. A single event to provide representatives of major and local media an opportunity to access the chamber will be authorized by the Superintendent and coordinated by designated staff.
- B. The Superintendent will establish procedures for selecting media witnesses as specified in the Witness Selection section of this policy.
 1. No audio/electronic/video equipment, cameras, telephones, or recording/communication devices will be permitted in the chamber. Media witnesses will be subject to an electronic and pat search. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.
 2. The only items that are allowed in the chamber are pens, pencils, and writing tablets supplied by the facility.
- C. Requests from media representatives for access to the Information Center must be submitted in writing.



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1. Information Center access will not be permitted more than 3 hours prior to an execution.
 - D. Media access to a designated area of the facility parking lot will be permitted at a designated time the day prior to the execution.
 - E. Media will not be permitted to film or conduct interviews with facility staff without the prior authorization of the Superintendent/designee.
 - F. All normal facility security procedures will apply. Failure to comply with these procedures, Department policies, operational memorandums, or directions from authorized personnel may be cause for removal from the facility and/or facility grounds. The Superintendent may establish emergency rules and procedures.
- V. Witness Selection
- A. Not less than 20 days prior to an execution, individuals who wish to attend and witness the execution must submit a letter of request (e.g., application) to the Superintendent. The letter must designate the relationship to the ISDP and reason(s) for wishing to attend. Eligible individuals include:
 1. Judicial officers (i.e., the Judge who signed the Death Warrant for the ISDP, the current Prosecuting Attorney or a Deputy Prosecuting Attorney of the county from which the final Judgment and Sentence and Death Warrant were issued, and the most recent attorney of record representing the ISDP),
 2. Law enforcement representatives (i.e., officers responsible for investigating the crime for which the inmate was sentenced to death),
 3. Media representatives,
 4. Representatives of the families of the victims (i.e., immediate family or victim advocates of the immediate family), and
 5. Representatives from the ISDP's immediate family.
 - B. Not less than 15 days prior to the execution, the Superintendent shall determine the total number of individuals, other than Department employees, who will be allowed to attend and witness the execution.
 1. The Superintendent shall determine the number of witnesses allowed in each category of eligible individuals.

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- a. No less than 5 media representatives will be included, with consideration given to news organizations serving communities affected by the crimes or the execution.
 - b. Up to 2 law enforcement representatives will be included. The chief law enforcement officer of the jurisdiction where the crime was committed shall designate the law enforcement representatives.
2. Once the list is composed, the Superintendent shall serve the list on all parties who have submitted a letter (e.g., application) to witness the execution.
- C. Not less than 10 days prior to the execution, the Superintendent shall file the witness list with the Superior Court from which the conviction and Death Warrant were issued. The witness list will be filed with a petition asking that the court enter an order certifying the list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than 5 days after the filing of the petition.
 - D. Unless a show cause petition is filed with the Superior Court from which the conviction and Death Warrant were issued within 5 days of the filing of the Superintendent's petition, the Superintendent's list, by order of the Superior Court, will become final and no other party will have standing to challenge its appropriateness.
 - E. In no case may the Superintendent or the Superior Court order or allow more than 17 witnesses to a planned execution, excluding required staff.
 - F. All witnesses must adhere to the facility's search and security provisions in regards to witnessing an execution and may be subject to emergency rules and procedures. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.
- VI. Execution Holding Cell
- A. Prior to the execution, but no sooner than 24 hours before, the ISDP will be moved to the execution holding cell.
 - B. The holding cell will contain:
 - 1. Bedding that includes a mattress, 2 sheets, 3 blankets, a pillow, and a pillow case,
 - 2. Personal hygiene items that include 2 towels, a washcloth, and a bar of soap,

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3. Approved personal items and clothing that include underwear, facility clothing, legal materials, religious items, jewelry, or other personal items as requested by the ISDP and approved by the Superintendent, and
 4. Other personal items as requested by the ISDP and approved by the Superintendent to be retained by holding cell staff and issued as requested by the ISDP.
- C. A female ISDP may be housed in the WSP Intensive Management Unit (IMU) prior to being moved to the execution holding cell.
- D. Two correctional staff will be posted at the holding cell at all times and a complete log of activities will be maintained.

VII. Final Meal

- A. At the meal period just prior to the time of execution, the ISDP will be allowed to provide his/her meal selection from a menu prepared and provided by the Food Service Manager. The Food Service Manager will ensure preparation and delivery of the meal to the ISDP.

VIII. Execution Preparation

- A. The Superintendent will appoint individuals to support the execution process.
1. No staff will be required to participate in any part of the execution procedure.
 2. Briefings and rehearsals will be conducted as necessary to ensure adequate preparation for the execution. For an execution by lethal injection, there shall be a minimum of 3 practice sessions preceding an execution that shall include the siting of intravenous (IV) lines.
- B. Medical Review
1. A physical examination of the ISDP may be conducted to determine any special problems (e.g., collapsed veins, obesity, deterioration of bone or muscular structure) that may affect the execution process. The ISDP's height and weight will be measured during the examination.
 2. Based upon the physical examination, the Superintendent may consult with appropriate experts to determine whether deviation from the policy is advisable to ensure a swift and humane death.
- C. Crowd Control

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1. The Superintendent will notify law enforcement agencies of the date of execution, enabling them to prepare for any traffic and crowd control issues that may arise.
2. Prior to the execution, the Superintendent will hold briefings for local and state law enforcement agencies to determine the manner and extent to which WSP and Department resources will support law enforcement in managing crowd control and potential external threats.
3. An area(s) will be designated for the general public.
4. The WSP Emergency Response Team (ERT) will provide crowd control for the protection of the WSP grounds.
 - a. The ERT Commander(s) will be briefed by the Superintendent prior to the execution.
 - b. In the event that protesters and/or onlookers gather, law enforcement assistance will be requested to direct them to the designated area.

IX. Execution Procedure

A. Lethal Injection

1. Lethal Injection Materials/Personnel
 - a. All tubing, syringes, saline solution, and other apparatus will be on site and verified no later than 7 days prior to the execution.
 - b. The Superintendent will direct the acquisition of the appropriate quantities of lethal substances. These will be available and on site 7 days prior to the execution date.
 - c. The Superintendent will ensure the security and continued verification of all materials.
 - d. Lethal Injection Team members will have sufficient training or experience to carry out the lethal injection process without any unnecessary pain to the ISDP. Minimum qualifications include one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation.
2. Lethal injection Table

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- a. The Superintendent, in conjunction with the Plant Manager, will examine and verify that the lethal injection table is in working order with all restraints available.

3. Preparation of the Execution Area

- a. The Lethal Injection Team will inspect the area designated for lethal injection and make any final recommendations to the Superintendent.
- b. The Lethal Injection Team will assemble all necessary materials for transport to the chamber no less than one hour prior to the time of execution. The Lethal Injection Team Leader will secure the lethal substances and personally transport them to the chamber.
- c. The solutions for injection will be prepared not more than 30 minutes prior to administration.

4. Execution Process

- a. The Superintendent will direct that the ISDP be brought to the chamber. The Escort Team will place the ISDP on the lethal injection table and appropriately secure the ISDP to the table. The Escort Team will then leave the room.
- b. The Lethal Injection Team will establish 2 IV lines and start a normal flow of saline through each line. The Lethal Injection Team will ensure that a slow, normal saline flow is maintained through each line.
- c. The Superintendent will ask the ISDP if s/he has any last words.
- d. Upon notification from the Superintendent, the Lethal Injection Team will introduce the following lethal solutions using a bolus injection into the tubing in the order specified:
 - 1) 3 g thiopental sodium
 - 2) 50 cc normal saline
 - 3) 100 mg pancuronium bromide
 - 4) 50 cc normal saline
 - 5) 240 mEq potassium chloride (KCl)
- e. Either line may be used for injection of solutions as required. The Superintendent shall observe the ISDP for signs of consciousness before the Lethal Injection Team administers the pancuronium

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bromide. If the Superintendent observes that the ISDP is conscious following the first dose of thiopental sodium, s/he shall direct the Lethal Injection Team to administer an additional 3 g dose of thiopental sodium.

- f. The Lethal Injection Team Leader will signal the Superintendent when all of the solutions have been administered.
- g. At a time deemed appropriate by the Superintendent, the curtains will be closed. The Superintendent will call for the physician to examine the body and make a pronouncement of death.
- h. After the pronouncement of death, the Lethal Injection Team will remain in the area until directed to leave.
- i. Post-execution procedures will be followed.

B. Hanging

- 1. The gallows area trap door(s) and release mechanisms will be inspected for proper operation.
- 2. A determination of the proper amount of drop of the ISDP through the trap door will be made. The following standard military execution drop chart will be used:

<u>WEIGHT (Pounds)</u>	<u>DROP DISTANCE</u>
120	8'1"
125	7'10"
130	7'7"
135	7'4"
140	7'1"
145	6'9"
150	6'7"
155	6'6"
160	6'4"
165	6'2"
170	6'0"
175	5'11"
180	5'9"
185	5'7"
190	5'6"
195	5'5"

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200	5'4"
205	5'2"
210	5'1"
220 and over	5'0"

3. Equipment

- a. Hood – The hood will be a neutral color with an outer surface made of rough material, split at the open end so that it will come down over the chest and back.
- b. Collapse Board – A board will be provided for use in case the ISDP collapses.
- c. Restraints – Restraints will be used to ensure that the hands and arms of the ISDP are securely held to his/her front and sides.
- d. Rope – The rope will be manila hemp, at least ¾ inch and not more than 1¼ inches in diameter and approximately 30 feet in length. The rope will be soaked and then stretched while drying to eliminate any spring, stiffness, or tendency to coil. The knot will be treated with wax, soap, or clear oils ensuring a smooth sliding action through the knot. The knot will be tied according to Army regulations.

4. Execution Process

- a. Restraints will be placed on the ISDP by assigned staff.
- b. The Escort Team will escort the ISDP to the gallows area. The ISDP will be placed, standing, in the spot designated by the Superintendent. The Superintendent will ask the ISDP if s/he has any last words.
- c. The hood will be placed on the ISDP and leg restraints applied. If a collapse board appears to be necessary, the Escort Team will put the board in place.
- d. The noose will be placed snugly around the ISDP's neck in such a manner that the knot is directly behind the left ear.
- e. The Superintendent will direct the trapdoor be released.
- f. The Escort Team will move to the lower floor location to assist with removal of the deceased ISDP. The curtains will be closed.

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- g. At a time deemed appropriate by the Superintendent, the physician will be called to make a pronouncement of death.

X. Post-Execution Procedure

- A. The Assistant Secretary for Prisons will notify the Secretary and Incident Command Center of the time of death. Necessary calls to Headquarters will be made to the Department Emergency Operations Center.
- B. The Superintendent will inform a designated staff of the time of death, who will then inform the witnesses.
- C. The witnesses will be escorted out of the execution area immediately after the pronouncement of death.
- D. The media witnesses will be escorted to the Information Center.
- E. The Chaplain will provide official notification to the family of the time of death.
- F. The body will be removed from the facility by a pre-determined route.
- G. A post-trauma specialist and the Chaplain will be available to staff preceding, during, and after the execution. Staff will also be provided a confidential list of off-site locations where counseling and/or spiritual support will be available.
- H. Within 20 days after the execution, the Superintendent shall return the Death Warrant to the clerk of the trial court from which it was issued, along with the log identified in the Pre-Execution Procedure section of this policy.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Execution Procedures and Assignments Checklist (Attachment 1)

DOC FORMS:

DOC 21-575 Acknowledgment of Visitor Search Requirements

**DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
EXECUTION PROCEDURES AND ASSIGNMENTS CHECKLIST**

Inmate:

Date of Execution:

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
Compliance Date: Approximately 30 days prior to the scheduled execution		
	Superintendent appoints an Execution Incident Commander.	
	Execution Incident Commander determines the Incident Command System (ICS) objectives, strategies, tactical direction, and organizational structure needed for the execution event and identifies planning elements required.	
	Execution Incident Commander develops a draft Incident Action Plan (IAP) for the execution and submits to the Superintendent for approval. The IAP will contain, at a minimum, all elements identified in this checklist.	
	ISDP is informed of the statutory requirements regarding the method of execution and is advised the Superintendent will request s/he submit his/her election of alternate method in writing.	
	ISDP is given opportunity to designate family members as witnesses.	
	ISDP has been provided a written summary of the procedures governing mail, visitation, telephone use, and available religious services.	
	Mail Room Supervisor is informed, in writing, of the ISDP's name and execution and instructed that: <ul style="list-style-type: none"> <input type="checkbox"/> All incoming mail addressed to ISDP will be forwarded unopened to a designated Associate Superintendent <input type="checkbox"/> A log will be maintained of all incoming/outgoing mail noting date and time of receipt and distribution <input type="checkbox"/> A separate log will be maintained for legal mail 	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The facility Public Information Officer has been informed of scheduled date and directed to prepare a media plan.	
	The Intensive Management Unit (IMU) Manager has been informed of mail, visit, telephone use, and available religious services as they apply to the ISDP.	
	ISDP is placed on 30 minute check. Observed behavior is entered in designated log.	
	Chaplain is assigned as Religious Specialist and briefed.	
	Sources and procedures for acquiring the substances necessary for lethal injection have been investigated. Plans being made for acquiring all necessary equipment essential to carry out either mode of execution.	
	Coordination meeting with local law enforcement is scheduled.	
	Lethal Injection Team or Hanging Team, as necessary, is identified and notified.	
	Individuals eligible to witness execution are identified. Appropriate letters sent.	
Compliance Date: Not less than 20 days prior to the execution		
	Superintendent completes changes to IAP and returns to the Execution Incident Commander.	
	Staff assigned an organizational role within the ICS structure are identified and briefed.	
	ICS organization completes identified planning elements, required forms, and documentation for the IAP.	
	Letters received from potential witnesses have been processed.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The chamber has been inspected to ensure the following systems are functional: <input type="checkbox"/> Plumbing <input type="checkbox"/> Lighting <input type="checkbox"/> Emergency Lighting <input type="checkbox"/> Mechanical Systems <input type="checkbox"/> Locking Systems <input type="checkbox"/> Telephones <input type="checkbox"/> Sanitation <input type="checkbox"/> Furnishings <input type="checkbox"/> Toilet Facilities	
	Execution Incident Commander ensures all staff assigned to positions within the chamber receive a briefing and notification of the date and time of "on-site" rehearsal.	
	Execution Incident Commander ensures a written report detailing the condition of the chamber has been submitted to the Superintendent citing any deficiencies. A schedule of corrective actions will be provided.	
Compliance Date: 15 days prior to the execution		
	All changes, improvements, or renovations to the chamber have been completed.	
	Total number of individuals to attend/witness the execution, other than staff, has been identified.	
	Witness applicants have been notified of the final witness list.	
Compliance Date: 14 days prior to execution		
	ISDP is authorized one additional hour of yard time each day.	
	ISDP is provided final opportunity to choose alternate method of execution.	
	All equipment has been procured for either mode of execution.	
	Notification to staff/ISDP for program changes if needed (e.g., visiting, etc.).	
	Arrangements made to ensure Death Certificate will be available. Superintendent is advised.	
Compliance Date: Not less than 10 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	List of authorized witnesses is filed with Superior Court in county of conviction from which Death Warrant issued.	
	Physical examination is conducted, if needed.	
	The following have been checked: <input type="checkbox"/> All equipment required for lethal injection <input type="checkbox"/> All equipment required for hanging, if necessary.	
	Conduct at least 3 lethal injection practice sessions, if necessary, including siting of IV lines.	
	Gallows area trap door(s) and release mechanisms are inspected for proper operation, if necessary.	
	Proper amount of drop of ISDP through the trap door is determined, if necessary.	
	IAP specifically details crowd control strategies and tactics and identifies the operational supervisor/leader.	
Compliance Date: 7 days prior to the execution		
	Execution Incident Commander submits final IAP to the Superintendent and receives signature approval.	
	ISDP is authorized daily visits (in addition to with attorney of record).	
	Instructions are provided to staff on entrance and egress routes.	
	Mobile restroom facilities are placed in the designated demonstration area.	
	Post-execution handling of ISDP is coordinated.	
	Lethal solutions, if required, have been obtained and placed in security lock box.	
	The specific route and mode of body removal is determined and information transmitted to: <input type="checkbox"/> Superintendent <input type="checkbox"/> Execution Incident Commander <input type="checkbox"/> Captain <input type="checkbox"/> Shift Commander <input type="checkbox"/> Washington State Patrol	
	Menu for final meal is prepared and presented to Superintendent for approval.	
Compliance Date: Approximately 5 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	On-site rehearsal has been conducted with all Execution Event staff participating.	
	The holding cell area has been inspected and is ready for occupancy.	
	Security inspections of the entire chamber have been conducted.	
	<p>The holding cell is prepared and equipped with:</p> <input type="checkbox"/> 1 Mattress <input type="checkbox"/> 2 Sheets <input type="checkbox"/> 3 Blankets <input type="checkbox"/> 1 Pillow <input type="checkbox"/> 1 Pillowcase <input type="checkbox"/> 2 Towels <input type="checkbox"/> 1 Washcloth <input type="checkbox"/> 1 Bar of Soap	
	Chamber and all systems have been checked for operation and readiness. All equipment present and functional.	
	Notices are issued to any contract/volunteer staff and/or construction workers of planned suspension of their activities.	
	Arrangements for Death Certificate are confirmed and communicated to the Superintendent/Execution Incident Commander.	
Compliance Date: Approximately 4 days prior to the execution		
	Coordination briefings with local law enforcement agencies have been conducted.	
	<p>All staff assignments made:</p> <input type="checkbox"/> Chamber Security Team <input type="checkbox"/> Correctional Program Managers <input type="checkbox"/> Captain <input type="checkbox"/> Chamber Media Escort Team <input type="checkbox"/> Visiting Room Media Monitor <input type="checkbox"/> Chaplain <input type="checkbox"/> Transport/Restraining Team <input type="checkbox"/> Holding Cell Security Team <input type="checkbox"/> Health Care Manager 2 <input type="checkbox"/> Incident Command Post Staff (Security/Communication) <input type="checkbox"/> Specialty Team Group Supervisor/ERT Leader <input type="checkbox"/> Specialty Team Group Supervisor/SERT Leader	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Staff escorts assigned for all non-WSP individuals attending.	
Compliance Date: 24 hours prior to execution		
	Superintendent approves all visitors.	
	ISDP is requested to designate disposition of his/her property/remains in writing.	
	A thorough security inspection of the entire chamber area, including search of cells, has been conducted.	
	Clocks are coordinated.	
	ISDP is moved from IMU to holding cell. Visitors limited to approved clergy and attorney of record.	
	Upon arrival at the holding cell, ISDP is informed of conditions of confinement.	
	The IAP is initiated and Incident Command Post opened and staffed.	
	Main facility is briefed at roll call of extraordinary security measures.	
	A designated staff to operate PBX reports for work.	
Execution Day		
	Chamber Access Security Team (Shift A) reports to duty station in chamber.	
	Cell Security Team (Shift A) reports to duty station in chamber.	
	Lethal solutions, if needed, are transferred to the injection room in the chamber.	
	Final meal is prepared and served to ISDP.	
	Chamber Access Security Team Shift B relieves Shift A.	
	Cell Security Team Shift B relieves Shift A.	
	Authorized media representatives are allowed access to the facility and are briefed by the Superintendent/designee.	
	All witnesses have been assigned escorts and allowed access to the facility.	
	All traffic through information desk area, visitor tunnel is cleared.	
	All staff designated as participants are at duty stations in the chamber.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Department Secretary has been contacted by telephone from the Incident Command Post/Communications Center and an open line from the Department Emergency Operations Center to the chamber is established.	
	Incident Command Post/Communications Center contacts the Attorney General's Office by telephone and maintains an open line.	
	Lethal Injection Team enters and the equipment for injection mode and back-up equipment is tested, if necessary.	
	Hanging Team enters the gallows area and the equipment and back-up equipment is tested, if necessary.	
	Open line participants verify and concur no stay has been received. The time is _____ or later and the execution is to proceed.	
	Superintendent is in place in chamber.	
	ISDP is placed in restraints and escorted to the appropriate execution area.	
	All pre-execution preparations are completed. All participants are in place.	
	Assistant Secretary confirms that no stays have been granted.	
	Assistant Secretary informs Superintendent that there are no stays.	
	Superintendent signals the execution to proceed.	

EXHIBIT 4

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<input type="checkbox"/>	EXPEDITE
<input checked="" type="checkbox"/>	No hearing set
<input type="checkbox"/>	Hearing is set
	Date: _____
	Time: _____
The Honorable Chris Wickham	

HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL; STEPHEN SINCLAIR;
MARC STERN; CHERYL STRANGE;
WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, and DOES 1-50

Defendants.

No. 08-2-02080-8

ORDER DENYING IN PART AND
GRANTING IN PART DEFENDANTS'
MOTION TO DISMISS (PROPOSED)

The Court, having considered Defendants' CR 12(b)(6) Motion to Dismiss, Plaintiff's Complaint and Amended Complaint for Declaratory Judgment and Injunctive Relief, the response of the Plaintiff, reply, sur-reply, and all other submissions on this motion, and the remaining files and records herein, does hereby find and ORDER that Defendants' Motion to Dismiss is DENIED in part and GRANTED in part as follows:

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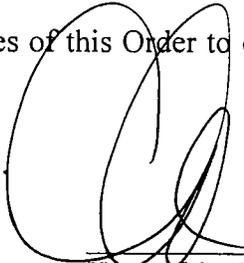
1. Defendants' argument that this case should be dismissed because it is a collateral attack on the judgment is denied. Plaintiff requests judicial review of the method of execution for the Plaintiff and others which is broader than, and not directed at, a specific provision of the judgment or sentence.
2. Defendants' argument that this case should be transferred to the Washington Supreme Court is denied. CrR 7.8 does not provide a vehicle for transfer, and the Court is not aware of any such vehicle. With respect to the inquiry to be made under *Baze*, there is value in having a trial court consider evidence, enter findings and conclusions and provide a record for appellate court review.while The Court of Appeals and the Supreme Court are not equipped for discovery and fact finding.
3. Defendants' argument that this case should be dismissed because it is barred by *res judicata* is denied. The doctrine of *res judicata* precludes issues that were or should have been raised in prior actions. This doctrine does not apply. There are other inmates facing the death penalty so Mr. Stenson was not under an obligation to bring this challenge at an earlier time. Because the claims pled go beyond Mr. Stenson, there was no obligation that they be raised in his prior criminal proceedings.
4. Defendants' argument that this case should be dismissed on statute of limitations grounds is granted as to claims based on hanging, but denied as to claims based on lethal injection. As to hanging, the statute of limitations began to run at the time that the sentence became final. As to lethal injection, the statute of limitations period was reset when DOC amended its policy in June 2007 and again on October 25, 2008, Plaintiff is well within the statute.

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5. Defendants' argument that this case should be dismissed for failure to state a claim is denied. The question is whether the Washington policy is substantially similar to the Kentucky policy. It is apparent that there have been some changes and there are differences from the Kentucky policy. The question is whether these differences are significant such that the Plaintiff could prove a violation of the Eighth Amendment. The issues are complicated and present a significant challenge for the trial court to evaluate and make factual findings. The Court cannot rule as a matter of law that Plaintiff cannot prove any set of facts showing that the Washington policy is unconstitutional.

6. The Clerk shall send uncertified copies of this Order to counsel for the Plaintiff and Defendants.

DATED this 21 day of November, 2008.



Honorable Chris Wickham

Presented by:

PERKINS COIE LLP

By: Diane Meyers
Sherilyn Peterson, WSBA No. 11713
speterson@perkinscoie.com
Diane Meyers, WSBA No. 40729
DMeyers@perkinscoie.com
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Plaintiff

Approved as to Form



SARA J. OLSON, WSBA #32003
JOHN J. SAMSON, WSBA #22187
Attorneys for Defendants

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER - 3

68695-0001/LEGAL14959452.1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

EXHIBIT 5

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:

Date:

Time:

The Honorable Chris Wickham

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9 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

10 DAROLD R.J. STENSON,

11 Plaintiff,

12 v.

13 ELDON VAIL; STEPHEN SINCLAIR;
14 MARC STERN; CHERYL STRANGE;
15 WASHINGTON STATE
DEPARTMENT OF CORRECTIONS,
and DOES 1-50

16 Defendants.

NO. 08-2-02080-8

ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION (PROPOSED)

17 THIS MATTER having come on pursuant to the Plaintiff's Motion for Preliminary
18 Injunction; the State being represented by ROBERT M. MCKENNA, Attorney General and
19 SARA J. OLSON and JOHN J. SAMSON, Assistant Attorneys General, and the Plaintiff being
20 represented by SHERILYN PETERSON and ELIZABETH D. GAUKROGER, Perkins Coie,
21 LLP; and the Court having reviewed the Motion, the Responses and replies thereto, and the
22 files and records and being fully advised in the premises, now therefore, IT IS HEREBY
23 ORDERED:

24 1. There are three criteria for preliminary injunctive relief as established in Tyler
25 Pipe Indus., Inc. v. Dep't of Revenue, 96 Wn.2d 785, 638 P.2d 1213 (1982).

1 2. The Plaintiff has satisfied two elements—well grounded fear of invasion of a
2 right and whether the opposing party's acts complained of will result in actual and substantial
3 injury.

4 3. But Plaintiff must also show a likelihood of success on the merits. Plaintiff has
5 not demonstrated a likelihood of success on the merits.

6 4. The Supreme Court recently reviewed a constitutional challenge to Kentucky's
7 procedures for lethal injection as a method of execution. Baze v. Rees, ___ U.S. ___, 128 S. Ct.
8 1520, 170 L. Ed. 2d 420 (2008). The Supreme Court held that Kentucky's protocol for lethal
9 injection was constitutional, and the Supreme Court also held that a state protocol that was
10 substantially similar to the Kentucky protocol would not violate the Constitution.

11 5. This Court finds the Washington policy governing lethal injection, despite some
12 differences from the Kentucky protocol, appears to be substantially similar to the Kentucky
13 protocol. The Court further finds that in areas where the two state policies diverge, it is because
14 the Washington policy is not as specific as the Kentucky policy, although the Washington policy
15 may be, in implementation, quite similar to the Kentucky policy.

16 6. The Court further finds that, even to the extent the Washington policy and the
17 Kentucky policy are not similar as written or actually implemented, it is not clear that the
18 Supreme Court instructed all states to have lethal injection policies identical to Kentucky's
19 protocol in order to satisfy the Constitution. The Supreme Court held that the prisoners cannot
20 challenge a policy merely by showing the existence of slightly safer alternatives, since such a rule
21 would turn the courts into boards of inquiry determining best practices for an execution. To
22 establish a constitutional violation, the safer alternatives must be feasible, readily available, and
23 substantially reduce the risk of unnecessary pain. Plaintiff has made no such showing.

24 7. Although the Court cannot find as a matter of law that Plaintiff has failed to state a
25 claim for relief, the Court does find that a likelihood of success on such a claim is slight, and that
26

1 though the harm that could result from the execution is great, it does not outweigh the remoteness
2 of success on the merits of the claim.

3 8. The Court further notes the judgment and sentence was entered in 1994, and the
4 judgment and sentence became final in 1997. The strong policy in favor of closure and in
5 carrying out sentences, and the fact that Plaintiff has received judicial review of his sentence in
6 multiple cases all weigh against the grant of a preliminary injunction.

7 9. For these reasons, Plaintiff's Motion for Preliminary Injunction is DENIED.

8 10. The Court recognizes that the Plaintiff may want to seek immediate review of
9 this decision and I want to facilitate review, and therefore direct counsel to propose findings
10 and conclusions for me to enter on November 21, 2008 on the 9:00 AM motion calendar.

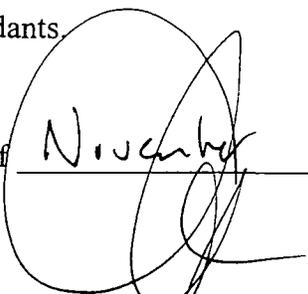
11 11. I hereby certify, pursuant to RAP 2.3(b)(4), that this decision involves a
12 controlling question of law as to which there is a substantial ground for difference of opinion
13 and that immediate review of the order may materially advance the ultimate termination of the
14 litigation.

15 12. Pursuant to RAP 2.3(d)(2), this decision involves a significant question of law
16 under the Constitutions of the State of Washington and the United States.

17 13. Pursuant to RAP 2.3(d)(2), this decision involves an issue of the public interest
18 which should be determined by an appellate court.

19 14. The Clerk shall send uncertified copies of this Order to counsel for the
20 Plaintiff and counsel for the Defendants.

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22 DATED this 21 day of November, 2008.

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26 CHRIS WICKHAM
Judge, Thurston County Superior Court

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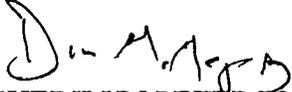
Presented by:

ROBERT M. MCKENNA
Attorney General



SARA J. OLSON, WSBA #33003
JOHN J. SAMSON, WSBA #22187
Assistant Attorneys General
Attorneys for Defendants

Approved as to form:

 WSBA #40729

SHERILYN PETERSON
ELIZABETH D. GAUKROGER
Attorneys for Plaintiff

EXHIBIT 6

ME 11/21

LOG I.D. NUMBER 0824742



STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS

LEVEL 1 - INITIAL GRIEVANCE NIVEL 1 - QUEJA INICIAL

Name: NOMBRE: Last APELLIDO First PRIMER NOMBRE Middle ZDO NOMBRE	DOC Number NUMERO DOC	Facility/FACILIDAD	Unit/Cell UNIDAD/CELDA
STENSON, David	232018	WSP	10011 N
Community Corrections Office OFICINA DE CORRECCIONES EN LA COMUNIDAD	Date Typed FECHA ESCRITA	PART B - LEVEL 1 RESPONSE / PARTE B RESPUESTA PRIMER NIVEL	
	11/14/08	Remedy/REMEDIIO	Resolution/RESOLUCION
		OS	04
		Pending/PENDIENTE	

PART A - INITIAL GRIEVANCE / PARTE A - QUEJA INICIAL Response due/Respuesta requerida en 11/21/08

I WANT TO GRIEVE the DOC's policy and procedure for carrying out the penalty phase of my case. I believe that the State's current and alternative methods will cause me undue pain and suffering and are cruel and unusual punishment. Also, I do not have enough information to be able to make an informed choice between the available methods.

SUGGESTED REMEDY: Changes should be made in the State's mandated methods and procedures at WSP. [10/16/08]

<i>C. Young</i>	11/14/08	<i>David Stenson</i>	11/14/08
Grievance Coordinator Signature FIRMA DE COORDINADOR DE QUEJAS	Date FECHA	Grievant Signature FIRMA DE QUEJANTE	Date FECHA

PART B - LEVEL 1 RESPONSE / PARTE B RESPUESTA PRIMER NIVEL

Although your complaint was reconsidered and found to be a grievable issue, WSP doesn't have the authority to change DOC policy regarding this matter. Your suggested remedy can't be implemented at this level.

<i>C. Young</i>	11/17/08
Grievance Coordinator Signature COORDINADOR DE QUEJAS	Date FECHA

You may appeal this response by submitting a written appeal to the coordinator within two (2) working days from date this response was received. Ud. Puede apelar esta respuesta al someter una apelación por escrito al coordinador dentro de dos (2) días de trabajo de la fecha en que esta respuesta fue recibida.

Distribution: White- Grievance Program Manager-Gerente del Programa de Quejas Green- Grievance Coordinator-Coordenador de Quejas Canary- Grievant-Quejante Pink- Grievance Coordinator-Coordenador de Quejas Goldenrod- Grievant-Quejante

EXHIBIT 6

STENSON, Darold (#232018)/IMU-N (B05)

Grievance Log ID# 0824742

Handwritten signature and date: 11/17/08

Although your complaint was reconsidered and found to be a grievable issue, WSP doesn't have the authority to change DOC policy regarding this matter. Your suggested remedy can't be implemented at this level.

LOG # NUMBER
0824742



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER COMPLAINT

CHECK ONE: INITIAL GRIEVANCE, EMERGENCY GRIEVANCE, APPEAL TO NEXT LEVEL

RESIDENTIAL FACILITIES: Send all completed copies of this form to the Grievance Coordinator. Explain what happened, when, where, and who was involved or which policy/procedure is being grieved. Be as brief as possible but include the necessary facts. A formal grievance begins on the date the typed grievance forms are signed by the coordinator. Contact a staff member to report an emergency situation or to initiate an emergency grievance. Please attempt to resolve all complaints through appropriate staff before initiating a grievance.

NAME: LAST STENSON	FIRST DAROLD	MIDDLE R. J.	DOC NUMBER 232518
PROGRAM ASSIGNMENT none added	WORK HOURS none	FACILITY/OFFICE W.S.P.	UNIT/CELL S.H.4. H-10

I WANT TO GRIEVE: *The WSP's policy and procedure for carrying out the penalty phase of my case. I believe that the states current and alternative methods will cause me undue pain and suffering and are cruel and unusual punishment. Also, I do not have enough information to be able to make an informed choice between the available methods.*

SUGGESTED REMEDY: *Changes should be made in the states institutional methods and procedures at W.S.P.*

MANDATORY *Darold R. Stenson* 10-16-08
SIGNATURE DATE

GRIEVANCE COORDINATOR'S RESPONSE

- Your complaint is being returned because:
- It is not a grievable issue.
 - You requested to withdraw the complaint.
 - You failed to respond to callout sheet on _____
 - The formal grievance/appeal paperwork is being prepared.

LOCATION CODE **WSP-E05** DATE RECEIVED **10-20-08**

- The complaint was resolved informally.
- Additional information and/or rewriting is needed.
- (See below.) Return within five (5) days or by:
Due Date: _____
- No rewrite received. Date: _____

EXPLANATION: *This isn't a grievable issue, per policy, because you are able to seek relief through the court system. However, you may request information regarding your sentence through your attorney.*

TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION	DATE OF RESPONSE	COORDINATOR'S SIGNATURE
01	02	010	688	08	08	10/21/08	<i>L. Young</i>

LOG I.D. NUMBER

082772



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

CHECK ONE: INITIAL GRIEVANCE, EMERGENCY GRIEVANCE, APPEAL TO NEXT LEVEL

OFFENDER COMPLAINT

RESIDENTIAL FACILITIES: Send all completed copies of this form to the Grievance Coordinator. Explain what happened, when, where, and who was involved or which policy/procedure is being grieved. Be as brief as possible but include the necessary facts. A formal grievance begins on the date the typed grievance forms are signed by the coordinator. Contact a staff member to report an emergency situation or to initiate an emergency grievance. Please attempt to resolve all complaints through appropriate staff before initiating a grievance.

NAME: LAST STENSON	FIRST DAROLD	MIDDLE R.D.	DOC NUMBER 232013
PROGRAM ASSIGNMENT WSP	WORK HOURS 11:00-11:30	FACILITY/OFFICE WSP	UNIT/CELL JMU B-5
COMMUNICATIONS SECTION Department of Corrections, 1000 4th Avenue, Olympia, WA 98501-1202			
MAILING ADDRESS: STREET, CITY, STATE, ZIP CODE, TELEPHONE NUMBER			

I WANT TO GRIEVE: The response that I received on my grievance is being a union-releasable issue.

SUGGESTED REMEDY: the same as was suggested on my initial grievance.

MANDATORY Darold R.D. Stenson 10-28-08
SIGNATURE DATE

GRIEVANCE COORDINATOR'S RESPONSE

LOCATION CODE: WSP-E04 DATE RECEIVED: 10/29/08

Your complaint is being returned because:

- It is not a grievable issue.
- You requested to withdraw the complaint.
- You failed to respond to callout sheet on _____.
- The formal grievance/appeal paperwork is being prepared.

- The complaint was resolved informally.
- Additional information and/or rewriting is needed. (See below.) Return within five (5) days or by _____.
- Due Date: _____
- No rewrite received. Date: _____

EXPLANATION: Findings of non-grievability are not grievable or appealable because they are automatically reviewed by the Grievance Program Manager in Olympia.

TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION	DATE OF RESPONSE	COORDINATOR'S SIGNATURE
				08	08	10/21/08	L. Young
				08	09	11/4/08	L. Young

Distribution: WHITE-Grievance Program Manager DOC 05-165 (Rev. 2/05/07) CANARY-Grievance Coordinator PINK-Grievant

* This will be accepted per the Grievance Program Manager.

DOC 550.100

10/29/08

EXHIBIT 7

DECLARATION OF DEVON SCHRUM

I, DEVON SCHRUM, make the following declaration:

1. I am the Grievance Program Manager for the Washington State Department of Corrections (DOC), located in Tumwater, Washington. My official duties include responding to questions regarding the inmate grievance program statewide, reviewing grievances appealed to Level III, reporting to courts and DOC officials on the status of the grievance program, and other duties related to this program. I have held this position since April, 2006.

2. The Washington Offender Grievance Program (OGP) has been in existence since the early 1980's and was implemented on a department-wide basis in 1985.

3. Under the OGP, an offender may file a grievance over a wide range of aspects of his/her incarceration. Inmates may file grievances challenging 1) DOC institution policies, rules and procedures; 2) the application of such policies, rules and procedures; 3) the lack of policies, rules or procedures that directly affect the living conditions of the offender; 4) the actions of staff and volunteers; 5) the actions of other offenders; 6) retaliation by staff for filing grievances; and 7) physical plant conditions. An offender may not file a grievance challenging 1) state or federal law; 2) court actions and decisions; 3) Indeterminate Sentence Review Board actions and decisions; 4) administrative segregation placement or retention; 5) classification/unit team decisions; 6) transfers; 7) disciplinary actions; and several other aspects of incarceration.

4. The OGP provides a wide range of remedies available to inmates. These remedies are outlined in OGP 015 and include 1) restitution of property or funds; 2) correction of records; 3) administrative actions; 4) agreement by department officials to remedy an objectionable condition within a reasonable time; and 5) a change in a local or department policy or procedure.

5. The grievance procedure consists of four levels of review:

Level 0 - Complaint or informal level. The grievance coordinator at the prison receives a written complaint from an offender on an issue about which the offender wishes to pursue a formal grievance. At this complaint level, the grievance coordinator pursues informal resolution, returns the complaint to the offender for rewriting, returns the complaint to the offender requesting additional information, or accepts the complaint and processes it as a formal grievance. Routine and emergency complaints accepted as formal grievances begin at Level I, complaints alleging staff misconduct are initiated at Level II.

Level I - Grievances against policy, procedure, or other offenders, and grievances processed as emergencies. The local grievance coordinator is the respondent at this level.

Level II - Appeal. Offenders may appeal Level I grievances to this level. Staff conduct grievances are initiated at this level. All appeals and initial grievances received at Level II are investigated, with the prison superintendent being the respondent.

Level III - Appeal. Offenders may appeal all Level II responses except emergency grievances to Department headquarters in Tumwater, where they are reinvestigated. Administrators are the respondents.

6. At this time, the offender has 20 working days from the date of the incident to file a grievance. An exception to this filing timeframe is allowed if there is a valid reason for the delay.

7. Darold Stenson, DOC #232018, is a DOC inmate currently incarcerated at the Washington State Penitentiary in Walla Walla, Washington.

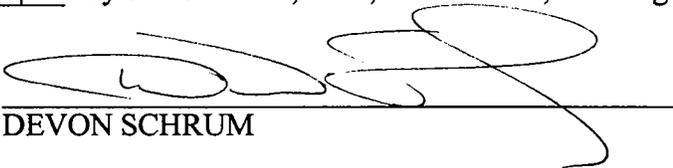
8. The DOC's grievance system is well known to inmates; currently over 20,000 grievances are filed per year system wide. Mr. Stenson is well aware of the grievance system in the DOC as he has filed multiple grievances during his incarceration, some of which have been appealed.

9. It is my understanding that Mr. Stenson's complaint contains an allegation that DOC Policy 490.200 is unconstitutional. An offender may grieve DOC policy under the DOC's grievance system.

10. I have reviewed DOC's official grievance records concerning Mr. Stenson, and have determined that he did file a grievance regarding DOC Policy 490.200. Defendant's Response to Plaintiff's Motion for Temporary Restraining Order or Preliminary Injunction, Exhibit 6, Grievance Log ID #0824742. This grievance was originally rejected as ungrievable; however, that rejection was reconsidered. Mr. Stenson's grievance was accepted for review and responded to at Level I of the grievance process. Id. Mr. Stenson was notified of the Level I grievance response and notified of his opportunity to appeal to Level II on November 17, 2008. Id. Pursuant to policy, Mr. Stenson had two days to file an appeal to Level II. Mr. Stenson has not appealed the Level I grievance response. As such, Mr. Stenson has failed to exhaust his administrative remedies as to this policy and its application to him.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 24 day of November, 2008, at Tumwater, Washington.



DEVON SCHRUM

EXHIBIT 8

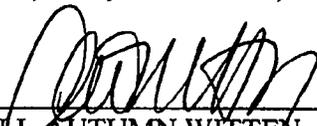
I, DELL-AUTUMN WITTEN, make the following declaration:

1. I am currently employed by the Washington State Department of Corrections (DOC) as a Program Specialist 5. As part of my job duties I am responsible for responding to requests for specific policies promulgated by the Department of Corrections.

2. A true and correct copy of the Department of Corrections Policy Directive 490.200, Capital Punishment, effective October 25, 2008, is attached to this Declaration as Attachment A. This is the current version of the policy.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 12th day of November, 2008, at Tumwater, Washington.



DELL-AUTUMN WITTEN

ATTACHMENT A



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY
PRISON

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10/25/08

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NUMBER
DOC 490.200

POLICY

TITLE

CAPITAL PUNISHMENT

REVIEW/REVISION HISTORY:

Effective: 9/3/93
Revised: 6/15/98
Revised: 8/10/01
Revised: 6/21/07
Revised: 10/25/08

SUMMARY OF REVISION/REVIEW:

Title and Team Name changes throughout
I.A.1., II.C. & VIII.A.1., & VIII.C.2. – Added clarifying language
III.B.3. – Added requirements for ISDP incoming mail
III.B.4.b. & 5.b. – Added clarifying language regarding attorney of record
Revised IV.A.1. to specify a single media event
Added IV.B.1. & DOC 21-575 Acknowledgment of Visitor Search Requirements for searches of media representatives
Revised V.F. regarding search requirement for witnesses
VI.C. – Revised housing requirements for female ISDP
VIII.A.2. – Added requirement for 3 practice sessions for lethal injections
VIII.B. – Removed medical file review; revised physical examination requirement
IX.A.1.d. – Added that Lethal Injection Team members must be trained; added qualifications
IX.A.2.a. – Changed Director of Health Services to Superintendent
IX.A.4.b. & d. – Revised requirements for lethal injection
IX.A.4.h. – Removed requirement that Lethal Injection Team remove apparatus and saline
X.A. – Calls to Headquarters will be made to the Department Emergency Operations Center
X.F. – Removed requirement that Death Certificate be signed before removal of body
Several changes to Attachment 1

APPROVED:

Signature on File

ELDON VAIL, Secretary
Department of Corrections

10/23/08

Date Signed

ATTACHMENT A

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 2 of 12	NUMBER DOC 490.200
	TITLE CAPITAL PUNISHMENT		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 10.95.160-190; WAC 137-48-050; DOC 410.040 Incident Command System (ICS)

POLICY:

- I. The Department has established procedures governing capital punishment to meet the requirements of RCW 10.95.160-190. These procedures set forth:
 - A. Security requirements for an Inmate Subject to the Death Penalty (ISDP),
 - B. Protocol for conducting an execution,
 - C. The care provided the ISDP while a valid Death Warrant is in force, and
 - D. The method of execution by lethal injection or hanging.

- II. The Department Secretary designates the Assistant Secretary for Prisons to coordinate:
 - A. The responsibilities of the Washington State Penitentiary (WSP) Superintendent, and
 - B. A review of the procedures and all operational decisions in carrying out the execution, as well as the legal status of the Death Warrant.

DIRECTIVE:

- I. ISDP Housing
 - A. Upon receipt of an ISDP and prior to receipt of a Death Warrant:
 1. Male ISDPs shall be housed in a single person cell located in a segregated area of WSP.
 2. Female ISDPs shall be housed in a segregated area of the Washington Corrections Center for Women (WCCW). Prior to the execution date, the female ISDP will be transported to WSP for housing and execution.

- II. Pre-Execution Procedure
 - A. Consistent with RCW 10.95.190, a log shall be maintained with the Death Warrant in the Superintendent's Office.
 - B. Responsibilities are listed in the Execution Procedures and Assignments Checklist (Attachment 1).



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- C. Only staff assigned by the Superintendent will attend the execution. No facility staff will be required to participate in any part of the execution procedure.

III. Notification to ISDP

- A. After receiving confirmation of a valid Death Warrant, the Superintendent will designate an Associate Superintendent to personally interview the ISDP regarding procedures relating to the execution.
- B. The Associate Superintendent will provide the ISDP with a written summary of procedures, to include mail, visits, telephone usage, and available religious services. The ISDP will be informed of the following:
1. The date of the execution.
 2. The punishment of death shall be by lethal injection.
 - a. The ISDP may elect hanging as an alternate means of execution.
 - b. The procedure to be used will be determined 14 days prior to the execution and the method cannot be changed after that date. If the ISDP elects hanging, it must be stated in writing no later than 14 days prior to the execution date.
 3. Mail procedures for an ISDP with an active Death Warrant will be as follows:
 - a. The Mail Room Sergeant will be instructed, in writing, to forward all incoming mail, unopened, to the designated Associate Superintendent, who will screen and exclude any items which may threaten the order and security of the facility with regard to the ISDP.
 - 1) Mail intended to harass the ISDP will be considered a threat to the orderly operation of the facility and restricted per WAC 137-48-050.
 - 2) Legal mail will be screened, not read.
 - b. The Mail Room Sergeant will maintain a log of all incoming and outgoing mail, noting the date and time of receipt and delivery. A separate log will be maintained for all legal mail.
 4. All visits between the ISDP and authorized visitors will be no contact.



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- a. Visitation for an ISDP will be consistent with the visiting procedures of other offenders housed in the Intensive Management Unit (IMU).
 - b. Seven days prior to the execution, daily visits will be authorized in addition to visits with the attorney of record.
 - c. Twenty-four hours prior to the execution date, all visits and visitors require the approval/denial of the Superintendent.
 - d. After the ISDP is moved to the execution holding cell, visits will be restricted to approved clergy and the attorney of record.
5. The ISDP will have unlimited phone access during the daily yard period. Fourteen days prior to the execution date, an additional daily one hour yard will be provided.
- a. There will be no limit on the number or duration of calls to and from the attorney of record.
 - b. Only calls from the attorney of record will be authorized following transfer to the execution holding cell.

IV. Media Relations

- A. The Superintendent/designee will coordinate all requests for information concerning an execution.
 1. A single event to provide representatives of major and local media an opportunity to access the chamber will be authorized by the Superintendent and coordinated by designated staff.
- B. The Superintendent will establish procedures for selecting media witnesses as specified in the Witness Selection section of this policy.
 1. No audio/electronic/video equipment, cameras, telephones, or recording/communication devices will be permitted in the chamber. Media witnesses will be subject to an electronic and pat search. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.
 2. The only items that are allowed in the chamber are pens, pencils, and writing tablets supplied by the facility.
- C. Requests from media representatives for access to the Information Center must be submitted in writing.



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1. Information Center access will not be permitted more than 3 hours prior to an execution.
 - D. Media access to a designated area of the facility parking lot will be permitted at a designated time the day prior to the execution.
 - E. Media will not be permitted to film or conduct interviews with facility staff without the prior authorization of the Superintendent/designee.
 - F. All normal facility security procedures will apply. Failure to comply with these procedures, Department policies, operational memorandums, or directions from authorized personnel may be cause for removal from the facility and/or facility grounds. The Superintendent may establish emergency rules and procedures.
- V. Witness Selection
- A. Not less than 20 days prior to an execution, individuals who wish to attend and witness the execution must submit a letter of request (e.g., application) to the Superintendent. The letter must designate the relationship to the ISDP and reason(s) for wishing to attend. Eligible individuals include:
 1. Judicial officers (i.e., the Judge who signed the Death Warrant for the ISDP, the current Prosecuting Attorney or a Deputy Prosecuting Attorney of the county from which the final Judgment and Sentence and Death Warrant were issued, and the most recent attorney of record representing the ISDP),
 2. Law enforcement representatives (i.e., officers responsible for investigating the crime for which the inmate was sentenced to death),
 3. Media representatives,
 4. Representatives of the families of the victims (i.e., immediate family or victim advocates of the immediate family), and
 5. Representatives from the ISDP's immediate family.
 - B. Not less than 15 days prior to the execution, the Superintendent shall determine the total number of individuals, other than Department employees, who will be allowed to attend and witness the execution.
 1. The Superintendent shall determine the number of witnesses allowed in each category of eligible individuals.



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- a. No less than 5 media representatives will be included, with consideration given to news organizations serving communities affected by the crimes or the execution.
 - b. Up to 2 law enforcement representatives will be included. The chief law enforcement officer of the jurisdiction where the crime was committed shall designate the law enforcement representatives.
2. Once the list is composed, the Superintendent shall serve the list on all parties who have submitted a letter (e.g., application) to witness the execution.
- C. Not less than 10 days prior to the execution, the Superintendent shall file the witness list with the Superior Court from which the conviction and Death Warrant were issued. The witness list will be filed with a petition asking that the court enter an order certifying the list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than 5 days after the filing of the petition.
 - D. Unless a show cause petition is filed with the Superior Court from which the conviction and Death Warrant were issued within 5 days of the filing of the Superintendent's petition, the Superintendent's list, by order of the Superior Court, will become final and no other party will have standing to challenge its appropriateness.
 - E. In no case may the Superintendent or the Superior Court order or allow more than 17 witnesses to a planned execution, excluding required staff.
 - F. All witnesses must adhere to the facility's search and security provisions in regards to witnessing an execution and may be subject to emergency rules and procedures. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.
- VI. Execution Holding Cell
- A. Prior to the execution, but no sooner than 24 hours before, the ISDP will be moved to the execution holding cell.
 - B. The holding cell will contain:
 - 1. Bedding that includes a mattress, 2 sheets, 3 blankets, a pillow, and a pillow case,
 - 2. Personal hygiene items that include 2 towels, a washcloth, and a bar of soap,



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3. Approved personal items and clothing that include underwear, facility clothing, legal materials, religious items, jewelry, or other personal items as requested by the ISDP and approved by the Superintendent, and
 4. Other personal items as requested by the ISDP and approved by the Superintendent to be retained by holding cell staff and issued as requested by the ISDP.
- C. A female ISDP may be housed in the WSP Intensive Management Unit (IMU) prior to being moved to the execution holding cell.
- D. Two correctional staff will be posted at the holding cell at all times and a complete log of activities will be maintained.
- VII. Final Meal
- A. At the meal period just prior to the time of execution, the ISDP will be allowed to provide his/her meal selection from a menu prepared and provided by the Food Service Manager. The Food Service Manager will ensure preparation and delivery of the meal to the ISDP.
- VIII. Execution Preparation
- A. The Superintendent will appoint individuals to support the execution process.
1. No staff will be required to participate in any part of the execution procedure.
 2. Briefings and rehearsals will be conducted as necessary to ensure adequate preparation for the execution. For an execution by lethal injection, there shall be a minimum of 3 practice sessions preceding an execution that shall include the siting of intravenous (IV) lines.
- B. Medical Review
1. A physical examination of the ISDP may be conducted to determine any special problems (e.g., collapsed veins, obesity, deterioration of bone or muscular structure) that may affect the execution process. The ISDP's height and weight will be measured during the examination.
 2. Based upon the physical examination, the Superintendent may consult with appropriate experts to determine whether deviation from the policy is advisable to ensure a swift and humane death.
- C. Crowd Control



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1. The Superintendent will notify law enforcement agencies of the date of execution, enabling them to prepare for any traffic and crowd control issues that may arise.
2. Prior to the execution, the Superintendent will hold briefings for local and state law enforcement agencies to determine the manner and extent to which WSP and Department resources will support law enforcement in managing crowd control and potential external threats.
3. An area(s) will be designated for the general public.
4. The WSP Emergency Response Team (ERT) will provide crowd control for the protection of the WSP grounds.
 - a. The ERT Commander(s) will be briefed by the Superintendent prior to the execution.
 - b. In the event that protesters and/or onlookers gather, law enforcement assistance will be requested to direct them to the designated area.

IX. Execution Procedure

A. Lethal Injection

1. Lethal Injection Materials/Personnel
 - a. All tubing, syringes, saline solution, and other apparatus will be on site and verified no later than 7 days prior to the execution.
 - b. The Superintendent will direct the acquisition of the appropriate quantities of lethal substances. These will be available and on site 7 days prior to the execution date.
 - c. The Superintendent will ensure the security and continued verification of all materials.
 - d. Lethal Injection Team members will have sufficient training or experience to carry out the lethal injection process without any unnecessary pain to the ISDP. Minimum qualifications include one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation.
2. Lethal Injection Table



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- a. The Superintendent, in conjunction with the Plant Manager, will examine and verify that the lethal injection table is in working order with all restraints available.
3. Preparation of the Execution Area
 - a. The Lethal Injection Team will inspect the area designated for lethal injection and make any final recommendations to the Superintendent.
 - b. The Lethal Injection Team will assemble all necessary materials for transport to the chamber no less than one hour prior to the time of execution. The Lethal Injection Team Leader will secure the lethal substances and personally transport them to the chamber.
 - c. The solutions for injection will be prepared not more than 30 minutes prior to administration.
 4. Execution Process
 - a. The Superintendent will direct that the ISDP be brought to the chamber. The Escort Team will place the ISDP on the lethal injection table and appropriately secure the ISDP to the table. The Escort Team will then leave the room.
 - b. The Lethal Injection Team will establish 2 IV lines and start a normal flow of saline through each line. The Lethal Injection Team will ensure that a slow, normal saline flow is maintained through each line.
 - c. The Superintendent will ask the ISDP if s/he has any last words.
 - d. Upon notification from the Superintendent, the Lethal Injection Team will introduce the following lethal solutions using a bolus injection into the tubing in the order specified:
 - 1) 3 g thiopental sodium
 - 2) 50 cc normal saline
 - 3) 100 mg pancuronium bromide
 - 4) 50 cc normal saline
 - 5) 240 mEq potassium chloride (KCl)
 - e. Either line may be used for injection of solutions as required. The Superintendent shall observe the ISDP for signs of consciousness before the Lethal Injection Team administers the pancuronium



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bromide. If the Superintendent observes that the ISDP is conscious following the first dose of thiopental sodium, s/he shall direct the Lethal Injection Team to administer an additional 3 g dose of thiopental sodium.

- f. The Lethal Injection Team Leader will signal the Superintendent when all of the solutions have been administered.
- g. At a time deemed appropriate by the Superintendent, the curtains will be closed. The Superintendent will call for the physician to examine the body and make a pronouncement of death.
- h. After the pronouncement of death, the Lethal Injection Team will remain in the area until directed to leave.
- i. Post-execution procedures will be followed.

B. Hanging

- 1. The gallows area trap door(s) and release mechanisms will be inspected for proper operation.
- 2. A determination of the proper amount of drop of the ISDP through the trap door will be made. The following standard military execution drop chart will be used:

<u>WEIGHT (Pounds)</u>	<u>DROP DISTANCE</u>
120	8'1"
125	7'10"
130	7'7"
135	7'4"
140	7'1"
145	6'9"
150	6'7"
155	6'6"
160	6'4"
165	6'2"
170	6'0"
175	5'11"
180	5'9"
185	5'7"
190	5'6"
195	5'5"



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200	5'4"
205	5'2"
210	5'1"
220 and over	5'0"

3. Equipment

- a. Hood – The hood will be a neutral color with an outer surface made of rough material, split at the open end so that it will come down over the chest and back.
- b. Collapse Board – A board will be provided for use in case the ISDP collapses.
- c. Restraints – Restraints will be used to ensure that the hands and arms of the ISDP are securely held to his/her front and sides.
- d. Rope – The rope will be manila hemp, at least ¾ inch and not more than 1¼ inches in diameter and approximately 30 feet in length. The rope will be soaked and then stretched while drying to eliminate any spring, stiffness, or tendency to coil. The knot will be treated with wax, soap, or clear oils ensuring a smooth sliding action through the knot. The knot will be tied according to Army regulations.

4. Execution Process

- a. Restraints will be placed on the ISDP by assigned staff.
- b. The Escort Team will escort the ISDP to the gallows area. The ISDP will be placed, standing, in the spot designated by the Superintendent. The Superintendent will ask the ISDP if s/he has any last words.
- c. The hood will be placed on the ISDP and leg restraints applied. If a collapse board appears to be necessary, the Escort Team will put the board in place.
- d. The noose will be placed snugly around the ISDP's neck in such a manner that the knot is directly behind the left ear.
- e. The Superintendent will direct the trapdoor be released.
- f. The Escort Team will move to the lower floor location to assist with removal of the deceased ISDP. The curtains will be closed.



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- g. At a time deemed appropriate by the Superintendent, the physician will be called to make a pronouncement of death.

X. Post-Execution Procedure

- A. The Assistant Secretary for Prisons will notify the Secretary and Incident Command Center of the time of death. Necessary calls to Headquarters will be made to the Department Emergency Operations Center.
- B. The Superintendent will inform a designated staff of the time of death, who will then inform the witnesses.
- C. The witnesses will be escorted out of the execution area immediately after the pronouncement of death.
- D. The media witnesses will be escorted to the Information Center.
- E. The Chaplain will provide official notification to the family of the time of death.
- F. The body will be removed from the facility by a pre-determined route.
- G. A post-trauma specialist and the Chaplain will be available to staff preceding, during, and after the execution. Staff will also be provided a confidential list of off-site locations where counseling and/or spiritual support will be available.
- H. Within 20 days after the execution, the Superintendent shall return the Death Warrant to the clerk of the trial court from which it was issued, along with the log identified in the Pre-Execution Procedure section of this policy.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Execution Procedures and Assignments Checklist (Attachment 1)

DOC FORMS:

DOC 21-575 Acknowledgment of Visitor Search Requirements

**DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
EXECUTION PROCEDURES AND ASSIGNMENTS CHECKLIST**

Inmate:

Date of Execution:

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
Compliance Date: Approximately 30 days prior to the scheduled execution		
	Superintendent appoints an Execution Incident Commander.	
	Execution Incident Commander determines the Incident Command System (ICS) objectives, strategies, tactical direction, and organizational structure needed for the execution event and identifies planning elements required.	
	Execution Incident Commander develops a draft Incident Action Plan (IAP) for the execution and submits to the Superintendent for approval. The IAP will contain, at a minimum, all elements identified in this checklist.	
	ISDP is informed of the statutory requirements regarding the method of execution and is advised the Superintendent will request s/he submit his/her election of alternate method in writing.	
	ISDP is given opportunity to designate family members as witnesses.	
	ISDP has been provided a written summary of the procedures governing mail, visitation, telephone use, and available religious services.	
	Mail Room Supervisor is informed, in writing, of the ISDP's name and execution and instructed that: <ul style="list-style-type: none"> <input type="checkbox"/> All incoming mail addressed to ISDP will be forwarded unopened to a designated Associate Superintendent <input type="checkbox"/> A log will be maintained of all incoming/outgoing mail noting date and time of receipt and distribution <input type="checkbox"/> A separate log will be maintained for legal mail 	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The facility Public Information Officer has been informed of scheduled date and directed to prepare a media plan.	
	The Intensive Management Unit (IMU) Manager has been informed of mail, visit, telephone use, and available religious services as they apply to the ISDP.	
	ISDP is placed on 30 minute check. Observed behavior is entered in designated log.	
	Chaplain is assigned as Religious Specialist and briefed.	
	Sources and procedures for acquiring the substances necessary for lethal injection have been investigated. Plans being made for acquiring all necessary equipment essential to carry out either mode of execution.	
	Coordination meeting with local law enforcement is scheduled.	
	Lethal Injection Team or Hanging Team, as necessary, is identified and notified.	
	Individuals eligible to witness execution are identified. Appropriate letters sent.	
Compliance Date: Not less than 20 days prior to the execution		
	Superintendent completes changes to IAP and returns to the Execution Incident Commander.	
	Staff assigned an organizational role within the ICS structure are identified and briefed.	
	ICS organization completes identified planning elements, required forms, and documentation for the IAP.	
	Letters received from potential witnesses have been processed.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The chamber has been inspected to ensure the following systems are functional: <input type="checkbox"/> Plumbing <input type="checkbox"/> Lighting <input type="checkbox"/> Emergency Lighting <input type="checkbox"/> Mechanical Systems <input type="checkbox"/> Locking Systems <input type="checkbox"/> Telephones <input type="checkbox"/> Sanitation <input type="checkbox"/> Furnishings <input type="checkbox"/> Toilet Facilities	
	Execution Incident Commander ensures all staff assigned to positions within the chamber receive a briefing and notification of the date and time of "on-site" rehearsal.	
	Execution Incident Commander ensures a written report detailing the condition of the chamber has been submitted to the Superintendent citing any deficiencies. A schedule of corrective actions will be provided.	
Compliance Date: 15 days prior to the execution		
	All changes, improvements, or renovations to the chamber have been completed.	
	Total number of individuals to attend/witness the execution, other than staff, has been identified.	
	Witness applicants have been notified of the final witness list.	
Compliance Date: 14 days prior to execution		
	ISDP is authorized one additional hour of yard time each day.	
	ISDP is provided final opportunity to choose alternate method of execution.	
	All equipment has been procured for either mode of execution.	
	Notification to staff/ISDP for program changes if needed (e.g., visiting, etc.).	
	Arrangements made to ensure Death Certificate will be available. Superintendent is advised.	
Compliance Date: Not less than 10 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	List of authorized witnesses is filed with Superior Court in county of conviction from which Death Warrant issued.	
	Physical examination is conducted, if needed.	
	The following have been checked: <input type="checkbox"/> All equipment required for lethal injection <input type="checkbox"/> All equipment required for hanging, if necessary.	
	Conduct at least 3 lethal injection practice sessions, if necessary, including siting of IV lines.	
	Gallows area trap door(s) and release mechanisms are inspected for proper operation, if necessary.	
	Proper amount of drop of ISDP through the trap door is determined, if necessary.	
	IAP specifically details crowd control strategies and tactics and identifies the operational supervisor/leader.	
Compliance Date: 7 days prior to the execution		
	Execution Incident Commander submits final IAP to the Superintendent and receives signature approval.	
	ISDP is authorized daily visits (in addition to with attorney of record).	
	Instructions are provided to staff on entrance and egress routes.	
	Mobile restroom facilities are placed in the designated demonstration area.	
	Post-execution handling of ISDP is coordinated.	
	Lethal solutions, if required, have been obtained and placed in security lock box.	
	The specific route and mode of body removal is determined and information transmitted to: <input type="checkbox"/> Superintendent <input type="checkbox"/> Execution Incident Commander <input type="checkbox"/> Captain <input type="checkbox"/> Shift Commander <input type="checkbox"/> Washington State Patrol	
	Menu for final meal is prepared and presented to Superintendent for approval.	
Compliance Date: Approximately 5 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	On-site rehearsal has been conducted with all Execution Event staff participating.	
	The holding cell area has been inspected and is ready for occupancy.	
	Security inspections of the entire chamber have been conducted.	
	<p>The holding cell is prepared and equipped with:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1 Mattress <input type="checkbox"/> 2 Sheets <input type="checkbox"/> 3 Blankets <input type="checkbox"/> 1 Pillow <input type="checkbox"/> 1 Pillowcase <input type="checkbox"/> 2 Towels <input type="checkbox"/> 1 Washcloth <input type="checkbox"/> 1 Bar of Soap 	
	Chamber and all systems have been checked for operation and readiness. All equipment present and functional.	
	Notices are issued to any contract/volunteer staff and/or construction workers of planned suspension of their activities.	
	Arrangements for Death Certificate are confirmed and communicated to the Superintendent/Execution Incident Commander.	
Compliance Date: Approximately 4 days prior to the execution		
	Coordination briefings with local law enforcement agencies have been conducted.	
	<p>All staff assignments made:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Chamber Security Team <input type="checkbox"/> Correctional Program Managers <input type="checkbox"/> Captain <input type="checkbox"/> Chamber Media Escort Team <input type="checkbox"/> Visiting Room Media Monitor <input type="checkbox"/> Chaplain <input type="checkbox"/> Transport/Restraining Team <input type="checkbox"/> Holding Cell Security Team <input type="checkbox"/> Health Care Manager 2 <input type="checkbox"/> Incident Command Post Staff (Security/Communication) <input type="checkbox"/> Specialty Team Group Supervisor/ERT Leader <input type="checkbox"/> Specialty Team Group Supervisor/SERT Leader 	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Staff escorts assigned for all non-WSP individuals attending.	
Compliance Date: 24 hours prior to execution		
	Superintendent approves all visitors.	
	ISDP is requested to designate disposition of his/her property/remains in writing.	
	A thorough security inspection of the entire chamber area, including search of cells, has been conducted.	
	Clocks are coordinated.	
	ISDP is moved from IMU to holding cell. Visitors limited to approved clergy and attorney of record.	
	Upon arrival at the holding cell, ISDP is informed of conditions of confinement.	
	The IAP is initiated and Incident Command Post opened and staffed.	
	Main facility is briefed at roll call of extraordinary security measures.	
	A designated staff to operate PBX reports for work.	
Execution Day		
	Chamber Access Security Team (Shift A) reports to duty station in chamber.	
	Cell Security Team (Shift A) reports to duty station in chamber.	
	Lethal solutions, if needed, are transferred to the injection room in the chamber.	
	Final meal is prepared and served to ISDP.	
	Chamber Access Security Team Shift B relieves Shift A.	
	Cell Security Team Shift B relieves Shift A.	
	Authorized media representatives are allowed access to the facility and are briefed by the Superintendent/designee.	
	All witnesses have been assigned escorts and allowed access to the facility.	
	All traffic through information desk area, visitor tunnel is cleared.	
	All staff designated as participants are at duty stations in the chamber.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Department Secretary has been contacted by telephone from the Incident Command Post/Communications Center and an open line from the Department Emergency Operations Center to the chamber is established.	
	Incident Command Post/Communications Center contacts the Attorney General's Office by telephone and maintains an open line.	
	Lethal Injection Team enters and the equipment for injection mode and back-up equipment is tested, if necessary.	
	Hanging Team enters the gallows area and the equipment and back-up equipment is tested, if necessary.	
	Open line participants verify and concur no stay has been received. The time is _____ or later and the execution is to proceed.	
	Superintendent is in place in chamber.	
	ISDP is placed in restraints and escorted to the appropriate execution area.	
	All pre-execution preparations are completed. All participants are in place.	
	Assistant Secretary confirms that no stays have been granted.	
	Assistant Secretary informs Superintendent that there are no stays.	
	Superintendent signals the execution to proceed.	

EXHIBIT 9

DECLARATION OF STEPHEN D. SINCLAIR

I, STEPHEN D. SINCLAIR, make the following declaration:

1. I am currently employed as the Superintendent of the Washington State Penitentiary (WSP). I have been employed in this position for 2 months. Prior to assuming the position of Superintendent, I was employed as an Associate Superintendent at WSP for 3 years. I have worked for the Department of Corrections (DOC) for 20 years. Prior to my employment by DOC, I was an infantryman in the United States Army and stationed at various posts in and out of the country. During my enlistment I received training and certification as a Combat Life Saver and completed a course for Emergency Medical Technicians presented by Pikes Peak Community College in Colorado Springs, Colorado. In previous executions carried out at the Washington State Penitentiary I have participated in the transportation of the Inmate Sentenced to Death Penalty (ISDP) to the chamber holding cell and other security/escort functions.

2. As the Superintendent for WSP, I am personally and thoroughly familiar with DOC Policy 490.200, Capital Punishment. I am familiar with my responsibilities as well as the responsibilities of the Lethal Injection Team and the Escort Team.

3. Darold Stenson is an ISDP and is scheduled for execution on December 3, 2008. I have reviewed Mr. Stenson's medical records and know that his weight fluctuates between 230 and 233 pounds and that his veins have been examined and are considered "normal" in that there are no signs of collapsed veins. Additionally, Mr. Stenson does not have a history of intravenous (IV) drug use.

4. I am personally aware of the identities of all members of the Lethal Injection Team and the Escort Team and of their qualifications, training, and professional experience.

5. Each member of the Lethal Injection Team has sufficient training or experience to carry out the lethal injection process without any unnecessary pain to Mr. Stenson. All members of the Lethal Injection Team each have one or more year of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation, as required by DOC Policy 490.200, Directive IX(A)(1)(d).

EXHIBIT 9

Additionally, the member of the Lethal Injection Team who will insert the IV lines regularly inserts IV lines as a part of his/her professional duties.

6. Pursuant to the requirements of DOC Policy 490.200, Directive VIII(1)(2) practice sessions have been conducted at WSP in anticipation of Mr. Stenson's scheduled execution.

7. The Lethal Injection team members have conducted three full lethal injection practice sessions since October 6, 2008. Each of these sessions involved a full walk-through of the entire lethal injection process and the insertion of IV lines in both arms of the person acting as the ISDP. I have personally acted in the role of the ISDP for two of these sessions and experienced the entire process to include the insertion of the needle and IV lines on both arms.

8. The lethal injection process includes the escorting in of the ISDP, the placing of the ISDP on the table, the securing of the ISDP to the table, and the insertion of the IV lines. There is 174" of tubing from the saline drip bag in the injection room to the arm of the ISDP in the execution chamber. Once the ISDP has been secured to the table and the IV lines have been inserted in both arms, with saline flowing through the IV lines, the members of the Lethal Injection Team enter and remain in the injection room. This room is approximately two feet from the head of the table to which the ISDP is secured. The injection room has a 9" by 7" door which is opened to the execution chamber to provide for direct, unobstructed, visual communication between myself and the Lethal Injection Team members. Once the Lethal Injection Team members have gone into the injection room, the witnesses are escorted into the witness room. Once the witnesses are seated, the curtain is opened. The witnesses sit six feet from the execution chamber window and have direct visual access to the execution chamber, me, and the ISDP. Once the witnesses have been brought in, the ISDP is permitted to give last words. I then orally communicate with the Deputy Secretary that there are no further stays. Once the Deputy Secretary has confirmed there are no further stays, I give a visual signal to the Lethal Injection Team to begin injection of the 3 grams of thiopental sodium. I observe the ISDP for signs of consciousness after the injection of the thiopental sodium. If any are seen, I instruct

the Lethal Injection Team to insert a second 3 gram dose of thiopental sodium. Once no signs of consciousness are observed, I signal to the Lethal Injection Team to inject the 50 cc normal saline, 100 mg pancronium bromide, 50 cc normal saline, and 240 mEq potassium chloride in succession. Throughout the injection of the drugs I am no more than one foot from the ISDP seated immediately next to his right arm. The execution chamber and the injection room are well lit and provide for clear sight and ample space for the movement of all staff participating in the execution.

9. I have received training on how to insert an IV line so that I am familiar with the process and how it is done effectively, although I will not be the individual inserting the IV lines during Mr. Stenson's execution.

10. I have also received personal, particularized training on recognizing the signs of an IV line that has not been properly sited. In an execution, an IV needle is used to site the IV lines. The IV needle has a connector needle, which is a fine pointed needle, with a fine, plastic sheath around it, with the needle protruding approximately an inch, and an approximately 3-inch length of connector tubing attached to it. The connector needle is inserted into the vein. Once the connector needle enters the vein there is a "flash" of blood which enters the hub of the needle. The "flash" indicates that a vein has been entered. Once the connector needle has entered the vein, the sheath is pushed down into the vein and the connector needle is removed. A syringe is then attached to the connector tubing and a "pull back" of the syringe's plunger is done to see if blood enters the connector tubing, indicating a vein has been entered. Once it is determined that a vein has been entered, the syringe is removed and the connector tubing is attached to the IV tubing and the saline flow begins. If a vein is missed, the "flash" will not occur, the "pull back" will not work, and there will be swelling at the injection site once the saline begins to enter the subcutaneous muscle. I have received training in witnessing the "flash", the "pull back", and looking for swelling at the injection site.

11. In each of the three full practice sessions, there were no difficulties with the insertion of the IV lines. The sessions were conducted without error or incident.

12. Prior to the execution, if Mr. Stenson does not elect hanging, the lethal injection drugs will be obtained by the WSP pharmacy. Once they arrive at the institution, they will be brought from the pharmacy at WSP to my office where they will be secured in a locked box, to which I have the only key. On the day of the execution, the drugs will be taken from the locked box in my office and given to the Lethal Injection Team. The Lethal Injection Team will follow the directions on the thiopental sodium box and will mix the powdered drug with saline to make a liquid to be injected into the ISDP. Both the pancronium bromide and the potassium chloride come in liquid form.

13. The Escort Team members and I have conducted fifteen to twenty hanging practice sessions in the last three weeks. In each of these practice sessions, either a mannequin has been "dropped" through the trap door or a metal container with weights weighing 230 pounds (to simulate Mr. Stenson's body weight) has been "dropped" through the trap door. In each hanging practice session involving the mannequin, of which there have been at least ten, the individual who will be placing the noose around the ISDP's neck has practiced the placing and tightening of the noose. In order to ensure a swift, painless death, the noose is placed extremely tightly around the ISDP's neck with the noose directly behind the ISDP's left ear and the running part of the noose, i.e. the part that moves when the noose is tightened, placed along the front of the neck. Four different ropes have been "stretched" which includes wetting the rope and stretching it to eliminate any risk of recoil once the trapdoor has opened and the ISDP has fallen the five feet. In the practice sessions with the mannequin, after the noose has been securely placed, the trapdoor is opened and the mannequin falls through and the rope is extended to the full five feet. In each hanging practice session involving the metal crate containing weights totaling 230 pounds, of which there have been at least five, the metal crate has been placed on the trapdoor and the rope has been attached to the metal crate. When the trapdoor drops, the metal crate falls through and the rope is extended its full five feet. In each of these fifteen to twenty sessions, the hanging mechanisms functioned without error or incident.

14. If an ISDP elects hanging, the ISDP will be brought into the execution chamber and escorted directly to the window over-looking the witness room. Once at the window, the curtain is opened approximately six inches to allow the ISDP to be visually seen by the witnesses as he makes his last words. Once he has finished his last words, the curtains are closed. Once the curtains are closed, the witnesses cannot see the ISDP directly; however, the room is backlit so that the ISDP's shadow is visible. The witnesses are able to see the ISDP being escorted back to the rope, by seeing his shadow, and can see the rope placed around his neck and tightened. From the witness room, the witnesses can see the trap door fall and can see the lower third of the ISDP's body once the rope has extended the full five feet.

15. As of this date, Mr. Stenson has not elected hanging as his execution method. As such, preparations are still under way for both hanging and lethal injection.

16. I will be present in the execution chamber during Mr. Stenson's execution and will ensure that DOC Policy 490.200 is followed.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 7th day of November, 2008, at Walla Walla, Washington.


STEPHEN D. SINCLAIR

EXHIBIT 10

DECLARATION OF FIONA JANE COUPER, Ph.D

I, FIONA JANE COUPER, make the following declaration:

1. I am over the age of eighteen years and am competent to testify to the matters set forth below.

2. I am employed as the Washington State Toxicologist. I have held this position since March 2008. My professional and educational qualifications are set forth in my curriculum vitae, a copy of which is provided as Attachment A to this declaration. As the Washington State Toxicologist, I oversee the Toxicology Laboratory Division, which includes a staff of 16 full time toxicologists and provides drug and alcohol testing for coroners, medical examiners, law enforcement agencies, and prosecuting attorneys. This position also involves supervision of the Washington State Patrol's Impaired Driving Section, consisting of the Breath Test Program, Drug Recognition Program and the Ignition Interlock Program. This involves overseeing the training and certification of technicians, operators and instructors, and the approval of all policies and procedures. I am also responsible for the supervision of the blood alcohol analyst program for Washington State, and I provide expert testimony on the effects of alcohol and drug intoxication, driving under the influence of alcohol and/or drugs, and blood and breath testing for alcohol and drugs.

3. I have reviewed the Department of Corrections Policy Directive 490.200, Capital Punishment, effective October 25, 2008.

4. Thiopental sodium is an ultra-short acting barbiturate typically used as an anesthetic and/or induction agent. It induces a deep, coma-like unconsciousness within 30-60 seconds, and typical anesthetic/induction doses are approximately 100-250 mg, rarely more than 1 gram. Following a 3 gram dose, respiratory functions would be significantly depressed or stopped within approximately one to two minutes. While unconscious, the subject would have no sense of physical pain or suffering.

EXHIBIT 10

5. Pancuronium bromide is a neuromuscular blocking agent (paralytic agent). It inhibits muscular-skeletal movements thereby paralyzing the diaphragm and other respiratory muscles, and stopping respiration. Typical therapeutic doses are 0.04-0.10 mg/kg. At a 100 mg dose, respiratory paralysis should occur within 30-60 seconds of administration. Additionally, the heart would stop beating within approximately one to three minutes.

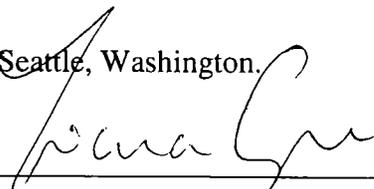
6. Potassium chloride is a chemical compound that interferes with the electrical signals that stimulate the contractions of the heart. A dose of 240 mEq would be sufficient to cause death by cardiac arrest within approximately one to three minutes.

7. Based on my professional experience and review, it is my opinion that the proper administration of the three drugs listed under Section IX.A.4(d) of the policy, in the sequence and dosages specified, would be a fatal combination resulting in a swift and painless death.

8. It is my professional opinion that flushing the intravenous (IV) lines with 50 cc of normal saline solution after the administration of each of the first two drugs specified (thiopental sodium and pancuronium bromide) should prevent clogging in the IV lines.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed this 7th day of November, 2008, at Seattle, Washington.



FIONA JANE COUPER, Ph.D.

ATTACHMENT A

CURRICULUM VITAE

July 2008

FIONA JANE COUPER

Address: Toxicology Laboratory Division
Forensic Laboratory Services Bureau
Washington State Patrol
2203 Airport Way S., Suite 360
Seattle, WA 98134

Phone: (206) 262 6100

Fax: (206) 262 6145

Email: fiona.couper@wsp.wa.gov

EMPLOYMENT

Mar 2008 **State Toxicologist, Toxicology Laboratory Division Commander**
- present Forensic Laboratory Services Bureau
Washington State Patrol
Mr. Larry Hebert (Interim Director, Forensic Laboratory Services Bureau)
Seattle, WA U.S.A.

Nov 2001 **Chief Toxicologist, Director of Laboratory Services**
- Feb 2008 Toxicology Laboratory
District of Columbia, Office of the Chief Medical Examiner
Dr. Marie Pierre-Louis (Chief Medical Examiner)
Washington, D.C. U.S.A.

Sept 1998 **Senior Fellow - Post Doctoral Fellowship**
- Oct 2001 **and Forensic Toxicologist**
Department of Laboratory Medicine, University of Washington
Washington State Toxicology Laboratory
Dr. Barry K. Logan (Director, Forensic Laboratory Services Bureau)
Seattle, WA U.S.A.

April 1997 **Research Fellow - Post Doctoral Fellowship**
- Aug 1998 National Institute of Forensic Science
Victorian Institute of Forensic Medicine
A/Professor Olaf H. Drummer (Head, Scientific Services)
Melbourne VIC, Australia

July 1994 **Research Assistant 3 (Part time)**
- Dec 1994 Department of Social and Preventive Medicine
Caulfield General Medical Centre
Dr. Malcolm R. Sim (Head, Senior Lecturer)

ATTACHMENT

A

Caulfield VIC, Australia

Nov 1992 **Forensic Toxicologist VPS 2 (Part time)**
- Aug 1998 Department of Forensic Medicine
 Victorian Institute of Forensic Medicine
 Dr. Iain M. McIntyre (Toxicology Laboratory Manager)
 Melbourne VIC, Australia

EDUCATION

1989-1991 **Bachelor of Science,**
 Faculty of Science, Monash University, Australia
 Majors: Pharmacology-Toxicology, Biochemistry

1992 **Bachelor of Science (Honours),** Pharmacology-Toxicology
 Department of Pharmacology, and Department of Forensic Medicine
 Monash University, Australia
 Thesis: *Detection of Antidepressants and Antipsychotics in Human Scalp Hair*

1993-1997 **Doctor of Philosophy, Ph.D. (Med),** Forensic Medicine-Forensic Toxicology
 Department of Forensic Medicine, Monash University, Australia
 Thesis: *The Involvement of β_2 -Agonists in Asthma Deaths*

TEACHING EXPERIENCE, RESEARCH SUPERVISOR

1992 Pharmacology/Toxicology Laboratory Assistant
 Department of Pharmacology, Monash University

1997 Research Co-supervisor – Karen van Loon, B.Sc. (Hons)
 Department of Forensic Medicine, Monash University, Australia
 Department of Pharmacy, University of Groningen, Netherlands

1999-2001 Lecturer – Medical Technology (Chemistry), LMED 322, 418
 Department of Laboratory Medicine, University of Washington

1999-2001 Faculty Mentor/Supervisor – Senior Research Enrichment Program
 Department of Laboratory Medicine, University of Washington

2002-2005 Instructor – The Effects of Drugs on Human Performance and Behavior
 Robert F. Borkenstein Center for Studies of Law in Action
 Department of Criminal Justice, Indiana University

PROFESSIONAL SOCIETIES, COMMITTEES

1992-1998 Australasian Society of Clinical and Experimental Pharmacologists and Toxicologists

1993-1997 Victorian Asthma Mortality Study Group - Steering Committee

1994- present The International Association of Forensic Toxicologists (TIAFT)

1997-1999 TIAFT – member; Young Scientists Committee (Asia-Pacific Regional Representative)

1998- present Society of Forensic Toxicologists (SOFT)

1998- present American Academy of Forensic Sciences (AAFS)

1999-2001 Seattle King County - Community Epidemiology Working Group (NIDA-CEWG)

1999- 2003 TIAFT – member; Young Scientists Committee (U.S.A. Regional Representative)

1999- present SOFT – member; Drug-Facilitated Sexual Assault Committee

2000 International Consultative Workgroup on Drugs and Driving Impairment – delegate & rapporteur

2001	Guest reviewer for <i>Forensic Science Communications</i>
2001	Guest reviewer for the 2001 <i>Special Issue of the Journal of Analytical Toxicology</i>
2001	Guest reviewer for <i>Journal of Analytical Toxicology</i>
2001-2003	Editorial Board for the AAFS Toxicology Section's <i>News & Views</i>
2001-present	SOFT/AAFS – member; Joint Drugs and Driving Committee
2002-2005	SOFT/AAFS – Chair; Joint Drugs and Driving Committee
2002	SOFT – member; Nominating Committee
2002	Guest reviewer for the 2002 <i>Special Issue of the Journal of Analytical Toxicology</i>
2003	Guest reviewer for <i>Forensic Science International</i>
2004	Guest reviewer for the 2004 <i>SOFT/TIAFT Special Issue of Forensic Science International</i>
2004	Guest reviewer for the 2004 <i>Special Issue of the Journal of Analytical Toxicology</i>
2005	Guest reviewer for the 2005 <i>Special Issue of the Journal of Analytical Toxicology</i>
2006	Guest reviewer for the 2006 <i>Special Issue of the Journal of Analytical Toxicology</i>
2006 - present	AAFS – member; Toxicology Awards and Scholarships Committee
2006	SOFT Annual Meeting, Scientific Program Chair

SCHOLARSHIPS, AWARDS, FELLOWSHIPS

1993-1996	Monash Graduate Scholarship, Monash University, Australia
1995	Conference Grant-In-Aid Scholarship, Monash University, Australia
1997-1998	National Institute of Forensic Science, Australia - Research Fellowship
1998-2001	University of Washington, U.S.A. - Postdoctoral Fellowship
2004	Paul Coverdell Forensic Science Improvement Grant
2006	Irving Sunshine Award, American Academy of Forensic Sciences

PUBLICATIONS (Peer Reviewed)

- Extraction of Psychotropic Drugs from Human Scalp Hair
Couper FJ, McIntyre IM, Drummer OH. *Journal of Forensic Sciences* 1995; 40: 83-86
- Detection of Antidepressant and Antipsychotic Drugs in Postmortem Human Scalp Hair
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- Gas Chromatographic-Mass Spectrometric Determination of β_2 -Agonists in Postmortem Blood: Application in Forensic Medicine
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- Reviewing Mortality
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- Postmortem Stability and Interpretation of β_2 -Agonist Concentrations
Couper FJ, Drummer OH. *Journal of Forensic Sciences* 1999; 44 (3): 523-526
- Determination of γ -Hydroxybutyrate (GHB) in Biological Specimens by Gas Chromatography-Mass Spectrometry
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- Are Asthma Medications and Management Related to Deaths from Asthma?
Abramson MJ, Bailey M, Couper F, Driver JS, Drummer OH, Forbes AB, McNeil JJ, Walters E.H. *American Journal of Respiratory and Critical Care Medicine* 2001; 163: 12-18
- Zolpidem and Driving Impairment
Logan BK, Couper FJ. *Journal of Forensic Sciences* 2001; 46 (1): 102-107
- GHB and Driving Impairment
Couper FJ, Logan BK. *Journal of Forensic Sciences* 2001; 46(4): 151-155.

10. 3,4-Methylenedioxyamphetamine (MDMA, Ecstasy) and Driving Impairment
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11. Prevalence of Drug Use in Commercial Tractor-Trailer Drivers
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Journal of Forensic Sciences 2002; 47(3): 562-567.
12. γ -Hydroxybutyrate (GHB): Effects on Human Performance and Behavior
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13. 3,4-Methylenedioxyamphetamine – Effects on Human Performance and Behavior
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14. Drugs and Human Performance Fact Sheets
Couper F, Logan B. Washington, DC: U.S. Department of Transportation, *NHTSA Technical Report No. DOT HS 809 725*. April 2004.
15. Suspected GHB Overdoses in the Emergency Department
Couper FJ, Thatcher JE, Logan BK. *J Analytical Toxicology* 2004; 28(6): 481-484.
16. Addicted to Driving Under the Influence – a GHB/GBL Case Report
Couper FJ, Logan BK. *J Analytical Toxicology* 2004; 28(6): 512-515.
17. Forensic Applications of New Analytical Technologies
Couper F, Gluodenis T, Jensen M, Klee M, Neufeld L, Quimby B, Zarwell L, Zweigenbaum. *Forensic Magazine* April/May 2005.
18. Substance misuse: Cocaine and other stimulants
Couper FJ. In: *Encyclopedia of Forensic and Legal Medicine*; Elsevier Limited; UK 2005; 141-144.
19. Substance misuse: Sedatives
Couper FJ. In: *Encyclopedia of Forensic and Legal Medicine*; Elsevier Limited; UK 2005; 163-164.
20. Substance misuse: Miscellaneous (volatiles, hallucinogens and ‘club’ drugs)
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21. Fatal Methadone Intoxication in an Infant
Couper FJ, Chopra K, Pierre-Louis M. *Forensic Science International* 2005; 153(1): 71-3.

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1. Detection of Psychotropic Drugs in Human Scalp Hair
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2. Method for Quantifying Antidepressant and Antipsychotic Drug Levels in Postmortem Human Scalp Hair
Couper F, McIntyre I, Drummer O. In: Muller K (editor). *Contribution to Forensic Toxicology*. MolinApress, Leipzig, Germany; 1994; 160-162
3. Detection of Antidepressant and Antipsychotic Drugs in Human Scalp Hair
Couper F, McIntyre I, Drummer O. In: Jacob B, Bonte W (editors). *Advances in Forensic Science*. Verlag Dr. Koster, Berlin, Germany; 1995; 5: 40-42
4. Toxicological Analysis of Asthmatic Deaths
Couper FJ, Drummer OH. In: Kovatsis AV, Tsoukali-Papadopouou H (editors). *Aspects on Forensic Toxicology*. Technika Studio, Thessaloniki, Greece; 1995; 20-23
5. Blood Salbutamol Levels are Higher in Asthma Deaths than Controls
Abramson M, Driver J, Willis J, Evans N, **Couper F**, Drummer O, McNeil J, Walters E. *Proceedings of the National Asthma Conference and Workshop*. Melbourne, Australia, 1995
6. Detection of Antidepressant Drugs in Hair
Drummer O, **Couper F**. In: De Zeeuw RA, Hosani IA, Munthiri SA, Maqbool A (editors). *Hair Analysis in Forensic Toxicology*, Abu Dhabi. 1995; 217-224
7. Extraction of Psychotropic Drugs in Hair

- Drummer O, **Couper F**. In: De Zeeuw RA, Hosani IA, Munthiri SA, Maqbool A (editors). Hair Analysis in Forensic Toxicology, Abu Dhabi. 1995; 326-333
8. Toxicological Analysis of Asthmatic Deaths
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 9. Blood Salbutamol Levels are Higher in Asthma Deaths than Controls
Abramson M, Driver J, Willis J, Evans N, **Couper F**, Drummer O, McNeil J, Walters E. Proceedings of The Thoracic Society of Australia and New Zealand. Perth, Australia, 1996
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Coleridge J, Maclean A, Thomson G, Driver J, Willis J, Evans N, **Couper F**, Drummer O, Walters E, Abramson M. Proceedings of The 6th International Conference on Emergency Medicine. Sydney, Australia, 1996
 11. Asthma Medications, Blood Salbutamol Levels and Mortality from Asthma
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 14. The Application of Hair Analysis to Detect Anabolic Steroid Use in Humans
Couper FJ, Drummer OH. Proceedings of The 14th International Symposium on the Forensic Sciences. Adelaide, Australia, 1998
 15. The Involvement of β_2 -Agonists in Asthma Deaths
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 16. Drug-Facilitated Sexual Assault
Couper F. Law Enforcement Digest. Washington, U.S.A., June 1999
 17. The Determination of GHB in Clinical and Postmortem Specimens
Couper F, Logan B. Proceedings of the Society of Forensic Toxicologists meeting, Puerto Rico, U.S.A., 1999.
 18. Pharmacological Facilitation of Robbery: Analysis of Two Cases from the Emergency Department
Blaho KE, Park LJ, Logan BK, **Couper F**, Winbery SL. Proceedings of the Society of Forensic Toxicologists meeting, Puerto Rico, USA, 1999.
 19. Zolpidem and Driving Impairment
Logan BK, **Couper FJ**. Proceedings of the American Academy of Forensic Sciences meeting, Reno NV, U.S.A., 2000.
 20. Determination of Drug Use in Tractor-Trailer Drivers: "Operation Trucker Check"
Couper FJ, Anonical A, Pemberton M, Logan BK. Proceedings of the American Academy of Forensic Sciences meeting, Reno NV, U.S.A., 2000.
 21. Driving Under the Influence of GHB
Couper FJ, Logan BK. Proceedings of the Society of Forensic Toxicologists meeting, Milwaukee WI, U.S.A., 2000
 22. Suspected GHB Overdoses in the Emergency Room
Couper FJ, Thatcher JE, Logan BK. Proceedings of the American Academy of Forensic Sciences meeting, Seattle WA, U.S.A., 2001.
 23. A Combined Drug Intoxication Involving Metaxalone (Skelaxin®)
Zarwell LW, Colvin SM, **Couper FJ**. Proceedings of the SOFT-TIAFT-FBI Forensic Toxicology meeting, Washington DC, U.S.A., 2005

PRESENTATIONS (* Invited Speaker)

1. "Detection of Psychotropic Drugs in Human Scalp Hair"
Couper FJ. Presentation at the Department of Pharmacology and Toxicology, Monash University, Melbourne, Australia, October 9, 1992
2. "Detection of Psychotropic Drugs in Human Scalp Hair"
Couper FJ. Presentation at the Australian Society of Clinical and Experimental Pharmacologists and Toxicologists 26th Meeting, Sydney, Australia, December 9, 1992
3. "Method for Quantifying Antidepressant and Antipsychotic Drug Levels in Postmortem Human Scalp Hair"
Couper FJ. Presentation at The International Association of Forensic Toxicologists 31st International Meeting, Leipzig, Germany, August 16, 1993
4. "Detection of Antidepressant and Antipsychotic Drugs in Human Scalp Hair"

- Couper FJ.** Presentation at the International Association of Forensic Sciences 13th International Meeting, Dusseldorf, Germany, August 23, 1993
5. "Toxicological Analysis of Asthmatic Deaths"
Couper FJ. Presentation at The 33rd International Congress on Forensic (TIAFT) and 1st Environmental Toxicology Meeting, Thessaloniki, Macedonia, Greece, August 31, 1995
 6. "Blood Salbutamol Levels are Higher in Asthma Deaths than Controls"
Abramson M, Driver J, Willis J, Evans N, **Couper F**, Drummer O, McNeil J, Walters E. Presentation at the National Asthma Conference and Workshop, Melbourne, Australia, 1995
 7. "Detection of Antidepressant Drugs in Hair"
Drummer O, **Couper F**. Presentation at the International Conference and Workshop for Hair Analysis in Forensic Toxicology, Abu Dhabi, November 1995
 8. "Extraction of Psychotropic Drugs in Hair"
Drummer O, **Couper F**. Presentation at the International Conference and Workshop for Hair Analysis in Forensic Toxicology, Abu Dhabi, November 1995
 9. "Blood Salbutamol Levels are Higher in Asthma Deaths than Controls"
Abramson M, Driver J, Willis J, Evans N, **Couper F**, Drummer O, McNeil J, Walters E. Presentation at the Thoracic Society of Australia and New Zealand meeting, Perth, Australia, March 1996
 10. "Blood Salbutamol Levels are Higher in Asthma Deaths than Controls"
Coleridge J, Maclean A, Thomson G, Driver J, Willis J, Evans N, **Couper F**, Drummer O, Walters E, Abramson M. Presentation at the 6th International Conference on Emergency Medicine, Sydney, Australia, May 1996
 11. "Toxicological Analysis of Asthmatic Deaths"
Couper FJ. Presentation at The Australian and New Zealand Forensic Science Society 12th International Symposium on the Forensic Sciences, Sydney, Australia, September 10, 1996
 12. "Asthma Medications, Blood Salbutamol Levels and Mortality from Asthma"
Abramson M, Driver J, Bailey M, Willis J, Evans N, **Couper F**, Drummer OH, Walters EH, Coleridge J, Maclean A, Thomson G. Presentation at the Thoracic Society of Australia and New Zealand meeting, Wellington, New Zealand, March 1997
 13. "The Involvement of β_2 -Agonists in Asthma Deaths"
Couper FJ. Presentation at the Victorian Institute of Forensic Medicine, Melbourne, Australia, March 20, 1997
 14. "Postmortem Interpretation of β_2 -Agonist Concentrations"
Couper FJ. Presentation at The International Association of Forensic Toxicologists 35th meeting, Padova, Italy, August 25, 1997
 - *15. "The Involvement of β_2 -Agonists in Asthma-Related Deaths"
Couper FJ. Lecture at the Department of Respiratory Medicine & The Inner and Eastern Health Care Network, Respiratory Conference, Melbourne, Australia, November 4, 1997
 16. "The Application of Hair Analysis to Detect Anabolic Steroid Use in Humans"
Couper FJ. Presentation at the Victorian Institute of Forensic Medicine, Melbourne, Australia, August 20, 1998
 17. "The Role of β_2 -Agonists in Asthma Deaths"
Couper FJ. Presentation at the Washington State Toxicology Laboratory, WA, U.S.A., September 18, 1998
 18. "The Application of Hair Analysis to Detect Anabolic Steroid Use in Humans"
Couper FJ, Drummer OH. Presentation at the 14th International Symposium on the Forensic Sciences meeting, Adelaide, Australia, October 1998
 19. "Blood Salbutamol Levels are Higher in Asthma Deaths than Controls after Adjusting for Administration and Severity"
Abramson M, Bailey M, **Couper F**, Drummer O, Forbes A, McNeil J, Walters EH. Presentation at the World Asthma Meeting, Barcelona, Spain, December 11, 1998
 20. "Date Rape: How Often Are Drugs Found?"
Couper FJ. Training Seminar for the Madigan Army Medical Center and University of Washington Emergency Medicine Residency, Emergency Medicine Grand Rounds: Medical Toxicology, University of Washington, WA, U.S.A., January 13, 1999
 21. "The Involvement of β_2 -Agonists in Asthma Deaths"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Orlando FL, February 18, 1999
 - *22. "Date Rape Drugs"
Couper FJ. Training Seminar for the Wahkiakum County Prosecuting Attorney's Office, Cathlamet, WA, U.S.A., June 17, 1999
 23. "The Determination of GHB in Clinical and Postmortem Specimens"
Couper FJ. Presentation at the Society of Forensic Toxicologists meeting, San Juan PR, October 15, 1999
 24. "Pharmacological Facilitation of Robbery: Analysis of Two Cases from the Emergency Department"

- Blaho KE, Park LJ, Logan BK, **Couper F**, Winbery SL. Presentation at the Society of Forensic Toxicologists meeting, San Juan PR, October 15, 1999
25. "Drug Facilitated Sexual Assaults"
Couper FJ. Presentation at the Washington State Toxicology Laboratory, WA, U.S.A., November 23, 1999
 26. "Interpretation of GHB Concentrations in Clinical and Postmortem Specimens"
Couper FJ. Presentation at the Washington State Toxicology Laboratory, WA, U.S.A., November 23, 1999
 27. "Toxicology of Heroin-Related Deaths"
Couper FJ. Presentation at the Preventing Heroin Overdose: Pragmatic Approaches Conference, Sheraton Towers, Seattle, WA, U.S.A., January 14, 2000
 - *28. "Medical Advocacy for Sexual Assault Victims: Rape Facilitating Drugs"
Couper FJ. Training Seminar for the Washington Coalition of Sexual Assault Programs, Olympia, WA, U.S.A., February 10, 2000
 29. "The Prevalence of Drug Use in Tractor-Trailer Drivers: "Operation Trucker Check""
Couper FJ. Presentation at the Washington State Toxicology Laboratory, WA, U.S.A., February 17, 2000
 30. "Zolpidem and Driving Impairment"
Logan BK, **Couper FJ**. Presentation at the American Academy of Forensic Sciences meeting, Reno NV, February 24, 2000
 31. "Determination of Drug Use in Tractor-Trailer Drivers: "Operation Trucker Check""
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Reno NV, February 25, 2000
 - *32-35. "Women and Domestic Violence: Evidence Collection and the Crime Scene – Emphasis on Domestic Violence and Sexual Assault"
Couper FJ. Four Training Seminars for the Violence Against Women Act Stop Grant, Seattle, Bellevue and Kent, WA, U.S.A., April-May 2000
 - *36. "Recognition of Drug-Facilitated Sexual Assault"
Couper FJ. Training Seminar for student-advocates at Pacific Lutheran University, Tacoma, WA, U.S.A., April 28, 2000
 - *37. "Recognition of Drug-Facilitated Sexual Assault"
Couper FJ. Training Seminar for the Puget Sound Sexual Assault Centre, Tacoma, WA, U.S.A., June 21, 2000
 38. "Drugs and Driving at the State Toxicology Laboratory"
Couper FJ. DRE Field In-Service Training Seminar, Evergreen State College, Olympia, WA, July 11, 2000
 - *39. "GHB and Date Rape Drugs"
Couper FJ. Lecture at the King County Medical Examiners Office, Seattle, WA, July 19, 2000
 - *40. "GHB and Driving Impairment"
Couper FJ. Presentation at the International Consultative Meeting on Drugs and Driving Impairment, Seattle, WA, July 31, 2000
 - *41. "Advances in Toxicology: Date Rape Drugs – Washington State Experience"
Couper FJ. Presentation at the Harborview Center for Sexual Assault and Traumatic Stress - Emergency Department Update: Acute Care for Sexual Assault Patients conference, Seattle, WA, September 26, 2000
 42. "Driving Under the Influence of GHB"
Couper FJ. Presentation at the Society of Forensic Toxicologists meeting, Milwaukee WI, October 4, 2000
 - *43. "Forensic Services in Washington State"
Couper FJ. Training Seminar for the Northwest Medical Laboratory Symposium 2000, Tacoma WA, October 19, 2000
 - *44. "Recognizing Drug-Facilitated Sexual Assault"
Couper FJ. Training Seminar for the Seattle Police Department - Special Assault Unit, Seattle WA, October 25, 2000
 - *45. "Drug-Facilitated Sexual Assault – Washington State Experience"
Couper FJ. Training Seminar for the King County Prosecutors Office, Seattle WA, October 26, 2000
 - *46. "Analytical Methodologies for MDMA"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Seattle WA, February 19, 2001
 47. "Case Reports of Drivers Impaired by MDMA"
Logan BK, **Couper FJ**. Presentation at the American Academy of Forensic Sciences meeting, Seattle WA, February 19, 2001
 48. "Effects of Drugs on Human Performance – Fact Sheets"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Seattle WA, February 20, 2001
 - *49. "General Analytical Approaches to DFSA in Washington State"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Seattle WA, February 20, 2001
 50. "Suspected GHB Overdoses in the Emergency Room"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Seattle WA, February 21, 2001
 - *51. "Street Drug Scene Update: A Toxicologist's View"
Couper FJ. Presentation at the 14th Annual Northwest Conference on Addictions, Seattle WA, May 2, 2001

- *52. "Advances in Toxicology: Date Rape Drugs"
Couper FJ. Presentation at the Conference on Acute Care for Sexual Assault Patients: Advances in Diagnosis, Treatment, and Forensic Investigation, Yakima WA, May 17, 2001
53. "Addicted to DUI – a GHB / GBL Case Report"
Couper FJ. Presentation at the Society of Forensic Toxicologists meeting, New Orleans LA, October 3, 2001
- *54. "How do we know that a person's use of prescription and O-T-C medications affects their ability to operate a motor vehicle?"
Couper FJ. Presentation at the National Transportation Safety Board - Food and Drug Administration Joint Public Meeting, Washington DC, November 14, 2001
55. "GHB: Use and Abuse"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Atlanta GA, February 11, 2002
56. "CNS Depressants: Is this Driver Impaired by Drugs?"
Couper FJ. Presentation at the American Academy of Forensic Sciences meeting, Atlanta GA, February 12, 2002
- *57. "Selected CNS Depressant Drugs and Their Effects on Driving"
Couper FJ. Presentation at the inaugural Robert F. Borkenstein Center for Studies of Law in Action course on The Effects of Drugs on Human Performance and Behavior, Bloomington IN, March 25, 2002
- *58. "GHB: Use and Abuse"
Couper FJ. Presentation at the Armed Forces Institute of Pathology, Rockville MD, April 25, 2002
59. "The Role of Toxicology in Death Investigations"
Couper FJ. Presentation at the Homicide School, Washington DC, June 6, 2002
60. "The Role of Toxicology in Death Investigations"
Couper FJ. Presentation at the Homicide School, Washington DC, February 11, 2003
- *61. "Selected CNS Depressant Drugs and Their Effects on Driving"
Couper FJ. Presentation at the Robert F. Borkenstein Center for Studies of Law in Action course on The Effects of Drugs on Human Performance and Behavior, Bloomington IN, March 17-18, 2003
- *62. "Hallucinogens"
Couper FJ. Presentation at the FBI Laboratory Symposium on Forensic Toxicology. Washington DC, August 28-29, 2004
- *63. "CNS Depressant Drugs and Human Performance"
Couper FJ. Presentation at the Robert F. Borkenstein Center for Studies of Law in Action course on The Effects of Drugs on Human Performance and Behavior, Bloomington IN, September 20-22, 2004
- *64. "Interpretive Toxicology & Drug Impaired Driving"
Couper FJ. Instructor at the Drug Impaired Driving Workshop, The Arizona DPS Crime Laboratory, Phoenix, AZ, November 29 – December 3, 2004
65. "The Role of the Toxicology Laboratory in DUI Cases"
Couper FJ. Presentation at the D.C. United DWI Training (O.A.G., M.P.D., U.S.C.P., U.S.P.P., U.S.S.S., F.B.I), Washington DC, May 20, 2005
- *66. "Drug-Facilitated Sexual Assaults"
Couper FJ. Presentation to the U.S. Attorney's Office, Metropolitan Police Department and U.S. Park Police sexual assault investigators, Washington DC, June 28, 2005
- *67. "Introduction to Drugged Driving"
Couper FJ. Presentation at the combined SFST Training (U.S.P.P. and M.P.D.), Bolling Airforce Base, Washington DC, March 29, 2007
- *68. "The Role of Toxicology in DUI Investigations"
Couper FJ. Presentation at the D.C. Attorney General Court Training (O.A.G., M.P.D., U.S.S.S.), Washington DC, December 6, 2007
69. "WSP State Toxicology Laboratory Division update"
Couper FJ, Jones KE. Presentation at the WAPA District Court Training, Leavenworth WA, May 28, 2008

EXHIBIT 11

DECLARATION OF MARK DERSHWITZ, M.D., Ph.D.

1. I am a medical doctor with a Ph. D. in Pharmacology. A true and accurate copy of my curriculum vitae is attached as Exhibit A. I am licensed to practice medicine in the states of Massachusetts and Maine. I am currently an anesthesiologist at the University of Massachusetts and I am certified by the American Board of Anesthesiology. I am currently Professor of Anesthesiology and Biochemistry & Molecular Pharmacology at the University of Massachusetts.
2. I have done extensive research and written numerous review articles and research papers on the use of anesthetics and I regularly practice medicine in that capacity. My research includes the study of pharmacodynamics and the pharmacokinetics of drugs. Pharmacokinetics is the study of the time course of a drug, while pharmacodynamics refers to the effects of a drug. Prior to my current appointment at the University of Massachusetts, I was an Instructor, Assistant Professor and Associate Professor at Harvard Medical School.
3. I have testified as an expert witness concerning the pharmacokinetics and the pharmacodynamics of anesthetic drugs and other medications. I have testified in court as an expert witness on seventeen occasions. I have given thirty-six depositions as an expert witness.
4. I have reviewed the protocols for the lethal injections used in the states of Arkansas, Alabama, California, Florida, Georgia, Kentucky, Maryland, Missouri, Montana, North Carolina, Ohio, Oklahoma, South Carolina, Texas and Virginia and by the federal government. In addition, I have reviewed the document from

the State of Washington Department of Corrections entitled, "Capital Punishment," and numbered "DOC 490.200." Each of the states and the federal government employ similar protocols for carrying out lethal injections. While the protocols and the jurisdictions differ in terms of the doses of the three medications used, each of these protocols will render an inmate unconscious quickly and cause the inmate's rapid and painless death.

5. Some medical paraprofessionals, such as nurses, emergency medical technicians, and paramedics, may be trained to insert intravenous catheters. If a medical paraprofessional routinely inserts intravenous catheters as a part of his or her regular job, it is reasonable to assign the task of inserting the intravenous catheter in an inmate to this person.
6. The protocol used in Washington states that medications will be administered as follows:
 - a. Thiopental sodium, 3 grams, will be injected.
 - b. Saline, 50 mL, will be injected to flush the IV line.
 - c. The Superintendent will observe the inmate for signs of consciousness. If the Superintendent observes that the inmate is conscious, an additional dose of thiopental sodium, 3 grams, will be injected.
 - d. Pancuronium bromide, 100 mg, will be injected.
 - e. Saline, 50 mL, will be injected to flush the IV line.
 - f. Potassium chloride, 240 mEq, will be injected.
 - g. The superintendent will direct the physician on site to examine the inmate

and pronounce death.

7. I have performed a pharmacodynamic analysis to predict the probability of response as a function of the predicted brain concentration of thiopental. This analysis is attached as Exhibit B. There are two responses to thiopental depicted in Exhibit B. The first response is the probability of unconsciousness. In this context, unconsciousness is defined as the drug-induced inability to perform a simple command such as "raise your right arm." An unconscious person is unable to perceive his or her environment. The second response is the probability of burst suppression. Burst suppression is a state of the brain as measured by an electroencephalograph (EEG) in which the EEG demonstrates the periodic absence of electrical activity. This state is readily demonstrable during the administration of clinical anesthesia for surgical procedures by using available clinical monitors. While burst suppression is easy to measure, it is a state of anesthesia that is deeper than that required for the performance of surgery.
8. I have performed a pharmacokinetic analysis to predict the brain concentration of thiopental in a man weighing 106 kg following the administration of a 3-gram dose of thiopental sodium. I assumed that the thiopental solution was injected at a rate of 50 mg/sec (50 milligrams per second). My pharmacokinetic analysis is attached as Exhibit C. This pharmacokinetic graph shows the predicted concentration of thiopental in the brain of a 106-kg man as a function of time following a dose of 3 grams. The y-axis is the predicted concentration of

thiopental in the brain measured in mcg/mL (micrograms per milliliter). The x-axis is time in minutes. As shown in Exhibit C, after the administration of 3 grams of thiopental sodium, the brain concentration of thiopental would peak at a concentration of about 84 mcg/mL about 3.5 minutes after beginning the injection.

9. The lower dashed line in Exhibit C indicates the brain concentration at which there is an approximately 95% probability of unconsciousness. This predicted concentration is exceeded for more than an hour following the beginning of the injection, assuming that the inmate continued to breathe.
10. The upper dashed line in Exhibit C indicates the brain concentration at which there is an approximately 95% probability of burst suppression. This predicted concentration is exceeded for approximately ten minutes following the beginning of the injection, assuming that the inmate continued to breathe.
11. A dose of 3 grams of thiopental sodium will cause virtually all persons to stop breathing. Thus, although the subsequent administration of pancuronium bromide, a paralytic agent, would have the effect of paralyzing the person and preventing him or her from being able to breathe, virtually every person given 3 grams of thiopental sodium will have stopped breathing prior to the administration of pancuronium bromide. Thus, even in the absence of the administration of pancuronium bromide and potassium chloride, the administration of 3 grams of thiopental sodium by itself would cause death to almost everyone.

12. I have co-authored a recently published article discussing in much greater detail the pharmacology of the medications used in lethal injection. This article is appended as Exhibit D.
13. Therefore, it is my opinion to a reasonable degree of medical certainty that there is an exceedingly small risk that a condemned inmate to whom 3 grams of thiopental sodium is properly administered pursuant to the lethal injection protocol of the State of Washington would experience any pain and suffering associated with the administration of lethal doses of pancuronium bromide and potassium chloride.
14. It is my opinion to a reasonable degree of medical certainty, the proper application of the of the State of Washington lethal injection protocol will result in the condemned inmate undergoing a rapid, painless and humane death, and furthermore, the inmate will not experience any unnecessary pain or suffering.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 3, 2008

By 
Mark Dershwitz, M.D., Ph.D.

EXHIBIT A
CURRICULUM VITAE
(prepared 3 November 2008)

NAME: Mark Dershwitz

ADDRESS: 33 Wildwood Drive
Sherborn, MA 01770
Telephone (508) 651-1120

PLACE OF BIRTH: Dearborn, MI

EDUCATION:

1974 B.A. cum laude
Chemistry, with Departmental Honors
Oakland University, Rochester, MI 48063

1982 Ph.D. (Pharmacology)
Northwestern University, Evanston, IL 60201

1982 M.D. Northwestern University, Chicago, IL 60611

POSTDOCTORAL TRAINING:

INTERNSHIPS AND RESIDENCIES:

1983 Transitional Resident
Carney Hospital, Boston, MA 02124

1984-1986 Resident in Anesthesia
Massachusetts General Hospital, Boston, MA 02114

RESEARCH FELLOWSHIPS:

1986-1988 Department of Anesthesia
Massachusetts General Hospital, Boston, MA 02114

LICENSURE AND CERTIFICATION:

1984 Massachusetts
1987 American Board of Anesthesiology
1990 Maine
2005 American Board of Anesthesiology, Maintenance of Certification
in Anesthesiology

ACADEMIC APPOINTMENTS:

1977-1979	Lecturer in Pharmacology, Illinois College of Podiatric Medicine
1979-1982	Lecturer in Pharmacology, Illinois College of Optometry
1984-1987	Clinical Fellow in Anæsthesia, Harvard Medical School
1987-1990	Instructor in Anæsthesia, Harvard Medical School
1990-1997	Assistant Professor of Anæsthesia, Harvard Medical School
1997-2000	Associate Professor of Anæsthesia, Harvard Medical School
2000-	Professor and Academic Vice Chair of Anesthesiology Professor of Biochemistry & Molecular Pharmacology University of Massachusetts Medical School

HOSPITAL APPOINTMENTS:

1986-1990	Assistant in Anesthesia, Massachusetts General Hospital
1990-1996	Assistant Anesthetist, Massachusetts General Hospital
1996-2000	Associate Anesthetist, Massachusetts General Hospital
2000-2002	Clinical Associate in Anesthesia, Massachusetts General Hospital
2000-	Anesthesiologist, UMass Memorial Medical Center

AWARDS AND HONORS:

1972	Michigan Higher Education Association Scholarship
1972-1974	Oakland University Competitive Scholarship
1973-1974	National Merit Scholarship
1979	American Society for Pharmacology and Experimental Therapeutics Travel Award
1981	Biophysical Society Samuel A. Talbot Award
1982	Alpha Omega Alpha Research Award
1986-1988	NIH National Research Service Award
2001	Distinguished Alumnus Award Oakland University Department of Chemistry
2002	Outstanding Teacher Award University of Massachusetts Department of Anesthesiology
2003	Outstanding Medical Educator Award University of Massachusetts Medical School
2003	Outstanding Teacher Award University of Massachusetts Department of Anesthesiology
2004-	Listed in Who's Who in America
2005	Teaching Recognition Award, Honorable Mention International Anesthesia Research Society

MEMBERSHIPS IN PROFESSIONAL SOCIETIES:

Association of University Anesthesiologists
 American Society of Anesthesiologists
 American Society for Pharmacology and Experimental Therapeutics
 American Society for Clinical Pharmacology and Therapeutics
 International Anesthesia Research Society
 Biophysical Society
 International Society for Anesthetic Pharmacology
 Massachusetts Medical Society
 Anesthesia History Association

RESEARCH INTERESTS:

Intravenous anesthetics
 Antiemetics
 Monitoring depth of anesthesia
 Malignant hyperthermia

RESEARCH FUNDING:

1986-1988	National Institutes of Health GM11656 (PI) The role of glutathione in malignant hyperthermia
1988-1989	Anaquest, Inc. (PI) Comparison of the sedative effects of midazolam and butorphanol
1989-1990	Glaxo, Inc. (Co-I) A randomized, double-blind comparison of intravenous ondansetron and placebo in the prevention of postoperative nausea and vomiting in female patients undergoing abdominal gynecological surgical procedures
1990-1991	Glaxo, Inc. (Co-I) A randomized, double-blind, placebo-controlled study of the effects of two dose levels of intravenous ondansetron on respiratory depression induced by alfentanil in healthy male volunteers
1991-1992	Glaxo, Inc. (Co-I) A dose finding and comparative trial of GI87084B and alfentanil for anesthesia maintenance
1992-1993	Glaxo, Inc. (Co-I) Pharmacokinetics and pharmacodynamics of GI87084B in subjects with hepatic impairment compared to subjects with normal hepatic function

- 1993-1994 Marion Merrell Dow, Inc. (PI)
A randomized, double-blind, placebo-controlled, dose response trial to assess single dose intravenous dolasetron mesylate in patients experiencing postoperative nausea and vomiting
- 1993-1994 Marion Merrell Dow, Inc. (PI)
A randomized, double-blind, placebo-controlled, dose response trial to assess single dose intravenous dolasetron mesylate in preventing postoperative nausea and vomiting
- 1993-1994 Glaxo, Inc. (Co-I)
Pharmacokinetics and pharmacodynamics of GI87084B in subjects with renal impairment compared to subjects with normal renal function
- 1995-1996 Glaxo, Inc. (PI)
A randomized, double-blind, dose-response study of ondansetron in the prevention of postoperative nausea and vomiting in inpatients
- 1996-1997 Aradigm Corporation (Co-I)
Comparison of the pharmacokinetics and pharmacodynamics of inhaled versus intravenous morphine sulfate in healthy volunteers
- 1999-2000 Searle, Inc. (PI)
Clinical Protocol for a Double-blind, Placebo-Controlled, Randomized Study of the Efficacy of Parecoxib 20 mg IV and Parecoxib 40 mg IV Given Postoperatively to Determine Narcotic-Sparing Effectiveness in a Post-General Surgery Pain Model

CLINICAL RESPONSIBILITIES:

- 1986-1988 Attending Anesthesiologist (20% clinical responsibility)
Massachusetts General Hospital
- 1988-2000 Attending Anesthesiologist (50% clinical responsibility)
Massachusetts General Hospital
- 1994-1997 Team Leader, East-West Anesthesia Service
Massachusetts General Hospital
- 1997-2000 Team Leader, General Surgery Anesthesia Service
Massachusetts General Hospital
- 2000- Attending Anesthesiologist (45% clinical responsibility)
UMass Memorial Medical Center

TEACHING EXPERIENCE:

1976-1980	Dental Hygiene Pharmacology Northwestern University Dental School 5 hours and Course Director
1977-1979	Medical Pharmacology Illinois College of Podiatric Medicine 22 hours and Course Director
1978-1981	Dental Pharmacology Northwestern University Dental School 3 hours
1979-1982	General Pharmacology Illinois College of Optometry 20 hours and Course Director
1979-1982	Ocular Pharmacology Illinois College of Optometry 10 hours and Course Director
1980-1981	Nursing Pharmacology, Northwestern University 5 hours
1994-	HST 150 Introduction to Pharmacology Harvard-MIT Program in Health, Science and Technology 4 hours
1996-	Harvard Anesthesia Review and Update 1-2 hrs
2001-	Medical Pharmacology University of Massachusetts Medical School 11-16 hrs and Course Co-Director
2007-	Medical Biochemistry University of Massachusetts Medical School 2 hrs

VISITING PROFESSORSHIPS:

April 6-7, 1994:	University of Pennsylvania
May 17-18, 1994:	University of North Carolina at Chapel Hill
Sept. 20-22, 1994:	State University of New York at Stony Brook
April 5-6, 1995:	Albany Medical College
May 8-10, 1997:	University of Texas Southwestern Medical Center
Dec. 8-9, 1998	Temple University
Dec. 16-17, 1998	University of Pittsburgh

COMMITTEE MEMBERSHIPS:

LOCAL:

2000 -	Pharmacy and Therapeutics Committee UMass Memorial Medical Center
2001 -	Physician Health and Well-Being Committee UMass Memorial Medical Center
2001 -	Educational Policy Committee University of Massachusetts Medical School
2008 -	Ethics Committee University of Massachusetts Medical School

NATIONAL:

1999 -2002	Subcommittee on Anesthetic Action and Biochemistry American Society of Anesthesiologists
2001 -	Subcommittee on Drug Disposition American Society of Anesthesiologists

EDITORIAL BOARD MEMBERSHIPS:

2000 -	International Anesthesiology Clinics
2008 -	AccessAnesthesiology (Editor-in-Chief)

BIBLIOGRAPHY:

ORIGINAL REPORTS:

1. Novak RF, Dershwitz M, Novak FC. The interaction of benzene with human hemoglobin as studied by ^1H Fourier transform NMR spectroscopy. **Biochem. Biophys. Res. Commun.** 1978; 82:634-40.
2. Novak RF, Dershwitz M, Novak FC. Characterization of the interaction of the aromatic hydrocarbons benzene and toluene with human hemoglobin. **Mol. Pharmacol.** 1979; 16:1046-58.
3. Dershwitz M, Novak RF. Lack of inhibition of glutathione reductase by unnitrated derivatives of nitrofurantoin. **Biochem. Biophys. Res. Commun.** 1980; 92:1313-19.
4. Dershwitz M, Novak RF. Lack of inhibition of glutathione reductase by anthracycline antibiotics. **Biochem. Pharmacol.** 1981; 30:676-8.
5. Dershwitz M, Novak RF. Generation of superoxide anion via the interaction of nitrofurantoin with human hemoglobin. **J. Biol. Chem.** 1982; 257:75-9.
6. Dershwitz M, Novak RF. Studies on the mechanism of nitrofurantoin-mediated red cell toxicity. **J. Pharm. Exp. Ther.** 1982; 222:430-4.
7. Dershwitz M, Ts'ao CH, Novak RF. Metabolic and morphologic effects of the antimicrobial agent nitrofurantoin on human erythrocytes in vitro. **Biochem. Pharmacol.** 1985; 34:1963-70.
8. Dershwitz M, Sréter FA, Ryan JF. Ketamine does not trigger malignant hyperthermia in susceptible swine. **Anesth. Analg.** 1989; 69:501-3.
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EXHIBIT B

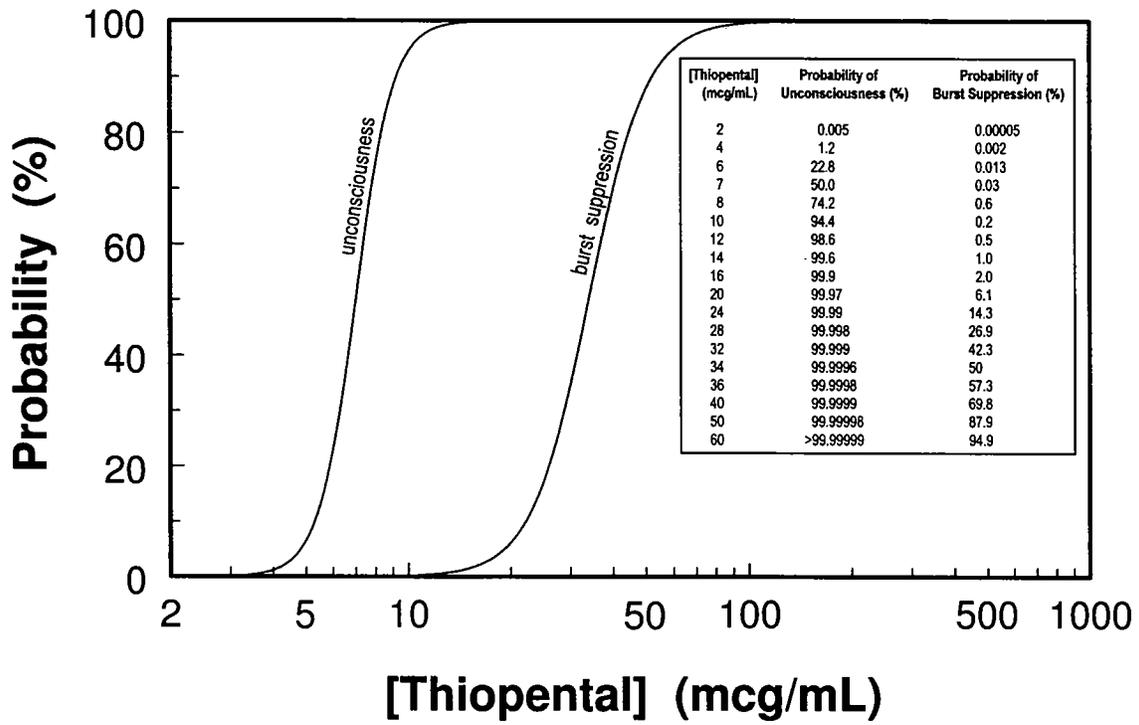


EXHIBIT C

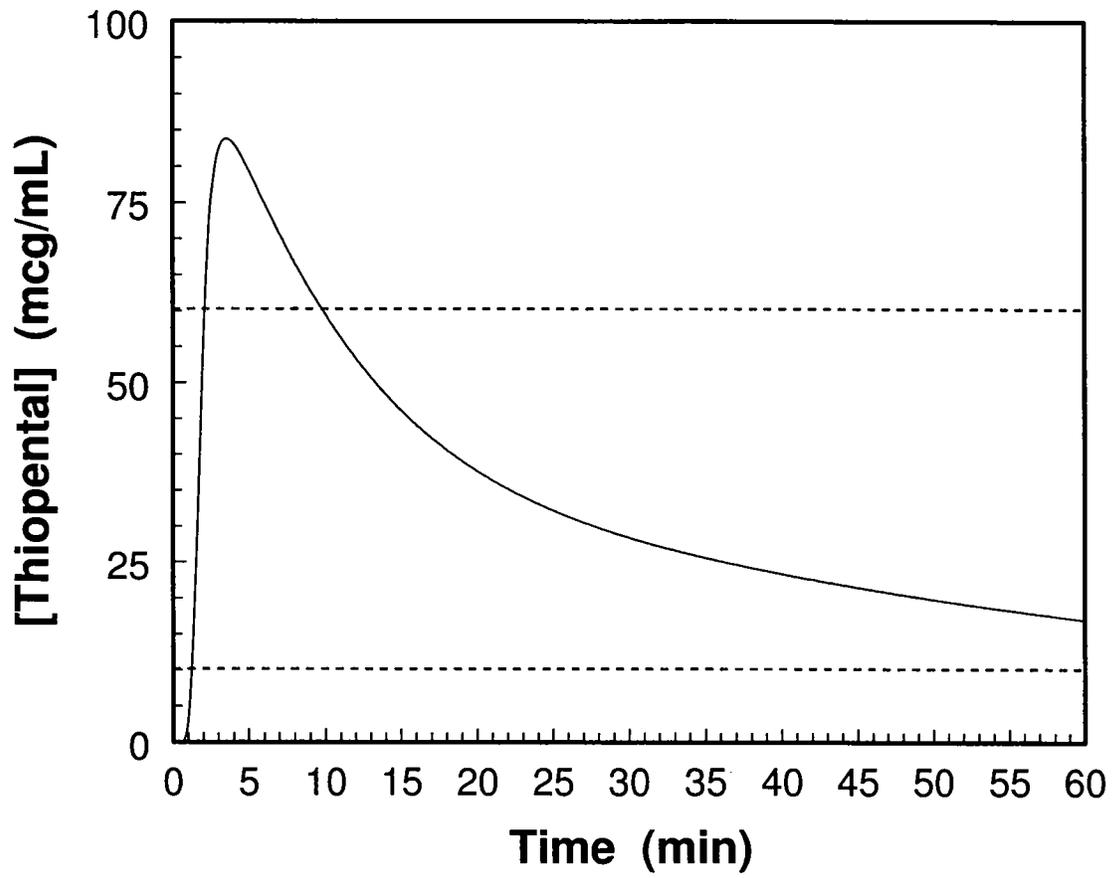


Exhibit D

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THE PHARMACOKINETICS AND PHARMACODYNAMICS OF THIOPENTAL AS USED IN LETHAL INJECTION

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Thiopental (sometimes called, although inaccurately, Sodium Pentothal) was the most commonly used intravenous anesthetic agent for about fifty years, beginning in the mid-1940s.¹ As states began to discuss and develop protocols for lethal injection in the 1970s, thiopental was the logical choice as the medication to render the inmate unconscious prior to the administration of subsequent medications, most commonly pancuronium (a medication that paralyzes skeletal muscle and results in cessation of breathing) followed by potassium chloride (a salt that is a necessary component of the diet but when given intravenously in large doses results in the cessation of electrical activity in the heart).

It is virtually unanimously accepted by physicians, particularly anesthesiologists, that the administration of lethal doses of pancuronium and/or potassium chloride to a conscious person would result in extreme suffering. For this reason, all of the protocols for lethal injection that we have reviewed precede the administration of pancuronium and potassium chloride with a dose of thiopental intended to render the inmate unconscious for a period of time far in excess of that necessary to complete the execution.² When implemented as written, meaning the correct doses of the correct medications are administered in the correct order into a properly functioning intravenous delivery system and with sufficient time for thiopental to produce its effect, all of the protocols we have reviewed are intended to result in the rapid death of the inmate without undue pain or suffering.

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1. See A.S. Evers et al., *General Anesthetics*, in GOODMAN & GILMAN'S THE PHARMACOLOGICAL BASIS OF THERAPEUTICS 341, 342 (Laurence L. Brunton et al. eds., McGraw-Hill, 11th ed. 2006).

2. One or both of the authors has reviewed the protocols used by Alabama, Arkansas, California, Delaware, Florida, Georgia, Kentucky, Maryland, Missouri, Montana, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and the federal government.

This paper will concentrate on the pharmacokinetics and pharmacodynamics of thiopental. As applied here, pharmacokinetics is the study of the concentration of thiopental as a function of time in tissues (particularly brain), while pharmacodynamics is the study of the effects of thiopental (particularly the production of unconsciousness and impairment of the heart's ability to circulate blood).³ By using generally accepted computer modeling techniques, and considering the wealth of published studies on the pharmacology of thiopental, we can prepare predictions of such relevant parameters as the onset (how long it takes for the inmate to become unconscious) and duration (how long the inmate would remain unconscious) of the pharmacological effects of thiopental.⁴

Thiopental is usually described as an "ultra-short acting" sedative/hypnotic agent in pharmacology and anesthesiology texts.⁵ This description is semantically correct, but only when thiopental is compared to other barbiturates. Indeed, when thiopental was used to induce (i.e., begin) a general anesthetic, the typical adult dose was about 300 mg and the typical patient would remain unconscious for 5 to 10 minutes.⁶ The usual anesthetic regimen would involve the subsequent administration of anesthetic gases that would keep the patient unconscious for the duration of the surgical procedure. The protocols for lethal injection mandate doses of thiopental ranging from 2000 to 5000 mg, i.e., about seven to sixteen times higher than those used to begin a typical anesthetic.⁷ However, the relationship between the dose of thiopental and its duration of action is *not* linear. For example, as the dose of thio-

3. K.B. Johnson & Talmage D. Egan, *Principles of Pharmacokinetics and Pharmacodynamics: Applied Clinical Pharmacology for the Practitioner*, in ANESTHESIOLOGY 821, 821 (D.E. Longnecker et al. eds., McGraw-Hill 3d ed. 2008).

4. See generally Colin A. Shanks et al., *A Pharmacokinetic-Pharmacodynamic Model for Quantal Responses with Thiopental*, 21 J. PHARMACOKINETICS & BIOPHARMACODYNAMICS 309, 309-21 (1993) (providing the pharmacokinetic model for thiopental and the pharmacodynamic model for burst suppression); see also Robert J. Telford et al., *Fentanyl does not Alter the "Sleep" Plasma Concentration of Thiopental*, 75 ANESTHESIA & ANALGESIA 523, 523-29 (1993) (providing the pharmacodynamic model for unconsciousness).

5. Thiopental is "ultra-short acting" only in comparison to the barbiturates that are classified as "short-acting," "intermediate-acting," and "long-acting." This differentiation is primarily of historical interest. See, e.g., LOUIS S. GOODMAN & ALFRED GILMAN, *THE PHARMACOLOGICAL BASIS OF THERAPEUTICS* 138 (Macmillan Co., 2d ed. 1955).

6. Mark Dershwitz & C.E. Rosow, *Intravenous Anesthetics*, in ANESTHESIOLOGY, *supra* note 3, at 849, 856.

7. See *supra* note 2 for the list of states whose protocols the authors have reviewed.

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pental is increased sevenfold to 2000 mg, the duration of unconsciousness is *not* also increased sevenfold but actually much more, as described later. The pharmacological term “sedative/hypnotic” means that at low doses (e.g. 25 - 100 mg), thiopental causes sedation (i.e., sleepiness), while at higher doses it produces hypnosis (i.e., unconsciousness).⁸ At sedative doses, it produces no analgesia (pain relief) and in fact probably increases the perception of painful stimuli. When a person is rendered unconscious by thiopental, the conscious perception of pain is abolished. The body may, however, react in a reflex manner to pain and exhibit such phenomena as movement, a fast heart rate, sweating, or tearing. Additionally, the state of consciousness produced by a drug is also affected by the strength of applied stimuli. Thus, at the threshold of unconsciousness pain may reverse the state and produce consciousness, making it difficult to distinguish between reflex responses to pain and conscious response. Therefore, it has been argued by some that deep unconsciousness, as defined by burst suppression on the electroencephalogram (“EEG”), be the level of unconsciousness produced in lethal injection.⁹

We will present models to describe the onset and duration of unconsciousness as a function of the dose of thiopental. For example, with the administration of 2000 mg of thiopental to an 80-kg person, loss of consciousness will occur within approximately 1.0 to 1.5 minutes, while duration of unconsciousness will last approximately two hours. The time for onset of burst suppression in the same individual would be approximately 1.5 to 2.5 minutes and would reliably last only seven minutes. Larger doses of thiopental will be shown to result in further prolongation of the duration of unconsciousness and burst suppression.

There is an enormous body of anesthesiology literature supporting the use of mathematical modeling of the pharmacokinetic and pharmacodynamic behavior of intravenous anesthetic agents like thiopental.¹⁰ Such modeling underlies the commonly utilized tech-

8. Dershwitz & Rosow, *Intravenous Anesthetics*, *supra* note 6, at 850.

9. See Testimony of Thomas K. Henthorn, *Taylor vs. Crawford et al.*, No. 05-4173-CV-S-FJG, 2006 WL 1779035, slip op at *7 (W.D. Mo. June 26, 2006).

10. See, e.g., such comprehensive review articles and book chapters as: Dershwitz & Rosow, *supra* note 6, at 849-68; J. Sear, *Total Intravenous Anesthesia*, in *ANESTHESIOLOGY*, *supra* note 3, at 897, 897-917; Thomas K. Henthorn, *The Effect of Altered Physiological States on Intravenous Anesthetics*, 182 *HANDB. EXP. PHARMACOL.* 363, 363-77 (2008); Thomas K. Henthorn, *Recirculatory Pharmacokinetics: Which Covariates Affect the Pharmacokinetics of Intravenous Agents?*, 523 *ADV. EXP. MED. BIOL.* 27, 27-33 (2003); Harmut Derendorf et al., *Pharmacokinetic/Pharmacodynamic Modeling in Drug research and Development*, 40 *J. CLIN. PHARMACOL.* 1399, 1399-

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nique of target-controlled intravenous drug infusions. Mathematical modeling of intravenous anesthetics has been extensively studied and has been validated in the real world practice of target-controlled infusions ("TCI").¹¹ TCI couples a small computer with an infusion pump so that multi-compartment models are used to predict and adjust anesthetic drug infusion rates on a second-by-second basis to reach and maintain plasma concentrations determined by the practitioner.¹² TCI devices are in common use in anesthetic practice worldwide. Median absolute performance errors for TCI of predicted versus actual drug concentrations are in the range of $\pm 30\%$ when literature values for pharmacokinetic parameters are used to drive the TCI device.¹³ Therefore, similar errors can be expected when applying the simulations presented here to any given individual. Thus the methodology employed in performing the pharmacological simulations employed herein has undergone peer review and its application to the actual practice of anesthesia is well studied.

I. THE ONSET TIMES FOR THIOPENTAL ADMINISTERED AT VARIOUS RATES

No drug, including thiopental, has an effect the moment it is injected. It must first be transported by circulating blood to the site of action, i.e., the brain in the case of thiopental. The drug must then cross the blood-brain barrier to reach drug receptors in the neural cells of the brain. The drug-receptor interaction then triggers a cellular response resulting in the drug effect. As thiopental concentrations at the site of action continue to rise, more intense drug responses are seen. The interval between injecting the drug, and seeing an effect, i.e. the process of accumulating adequate drug concentrations in the blood and subsequently the brain, is called hysteresis.¹⁴ A good way to think about hysteresis is to compare it to using a stove. Turning the flame on is akin to injecting the drug; transporting the heat to the surface of the pan is analogous to the

1418 (2000); D.R. Stanski, *Pharmacodynamic Modeling of Anesthetic EEG Drug Effects*, 32 ANNU. REV. PHARMACOL. TOXICOL. 423, 423-47 (1992).

11. See Talmage D. Egan, *Target-Controlled Drug Delivery: Progress Toward an Intravenous "Vaporizer" and Automated Anesthetic Administration*, 99 ANESTHESIOLOGY 1214, 1215 (2003).

12. *Id.*

13. See *id.* at 1216-17; see also Robert A. Veselis et al., *Performance of Computer-Assisted Continuous Infusion at Low Concentrations of Intravenous Sedatives*, 84 ANESTHESIA & ANALGESIA 1049, 1053-57 (1997).

14. Johnson & Egan, *supra* note 3, at 825.

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circulation delivering the drug to the site of action; and cooking the food in the pan is akin to producing the drug effect. Your dinner can range from undercooked to well done, depending on how long it's exposed to the flame "dose" the stove is delivering. Similarly the heating effect continues for some time even after the flame is turned off. Therefore, with hysteresis it is possible to have the same effect at two different plasma drug concentrations just as it is possible for a pan to be at the same temperature at two different flame settings, once during heating and again during cooling. Pharmacokinetic-pharmacodynamic modeling is able to mathematically describe this hysteresis and fully explain how the same blood drug concentration can produce variable effects.¹⁵

In a lethal injection setting, once an injection of thiopental has begun, the drug must pass through the IV tubing from the "injection room" to the "death chamber" before reaching the vein of the condemned inmate. For instance, if the tubing is ten feet long with a typical tubing volume of 1.8 mL/foot, then the total volume is 18 mL. Assuming fluid traveling in a tube as a perfect cylinder and an injection speed of 2 mL/sec, it would take a full 9 seconds for the drug to reach the vein.

After entering the bloodstream the drug must circulate with the blood to reach the brain before concentrations at the site of effect can begin to rise. Depending on where the intravenous catheter is placed in the inmate, it could take up to 15 seconds for the drug to reach the right-sided chambers of the heart and thus be considered within the central circulation where the flow of blood is at its greatest. From the right side of the heart, the blood flows through the pulmonary arteries to the capillaries of lungs, recollects in the pulmonary veins and flows back to the left side of the heart. The powerful left ventricle of the heart then pumps the blood out through the aortic arch into all of the arteries of the body, including the carotid and vertebral arteries leading to the brain.

The principles governing the time required for an injected drug to pass through IV tubing to reach the vein also apply to the drug within the bloodstream. That is, the time elapsed is directly related to the volume of the system and the flow rate of the fluid in the system. The volume of the central circulation as a percentage of the body's total blood volume is near maximum when lying flat, approximately one third of the total blood volume or 1.7 L for the typical male inmate. It would be higher tilted head down and

15. See generally *id.* at 825.

lower when standing. In a sedated adult it would be reasonable to assume a total blood flow (or cardiac output) of 5 L/min. Thus the time required for drug just arriving in the right side of the heart to pass through the central circulation to reach the brain would be 1.7 L divided by 5 L/min, which is approximately 20 seconds.

Adding the 15 seconds for venous transit (times vary greatly with the distance from the heart and the flow in the particular vein selected for the intravenous catheter) to the 20 seconds for central circulation transit, one can appreciate the concept of arm-brain circulation time, which is empirically spoken of among anesthesiologists as being approximately one-half minute. Again, there will be an additional 9 seconds or so added to time required to see the initial thiopental response due to the very long length of intravenous tubing leading from the "injection room" to the "death chamber."

In the fluid medium of the body, drug diffuses from areas of high concentration to adjacent areas where the concentration is lower. During the onset of effect, thiopental diffuses from the blood where the concentrations become quite high, after the initial 35 seconds required for transit, into the brain where the thiopental concentration starts at zero. Without continued thiopental administration, diffusion continues in this direction for approximately 2.5 minutes, at which time blood and brain concentrations are momentarily equal. Then diffusion reverses direction and the drug begins to move from the brain back into the blood. Brain concentrations will continue to fall at a rate governed by the decrease in blood concentrations since brain concentrations will never fall below those of the blood during this phase. Figure 1 depicts the probability of unconsciousness or burst suppression as a function of the brain concentration of thiopental.

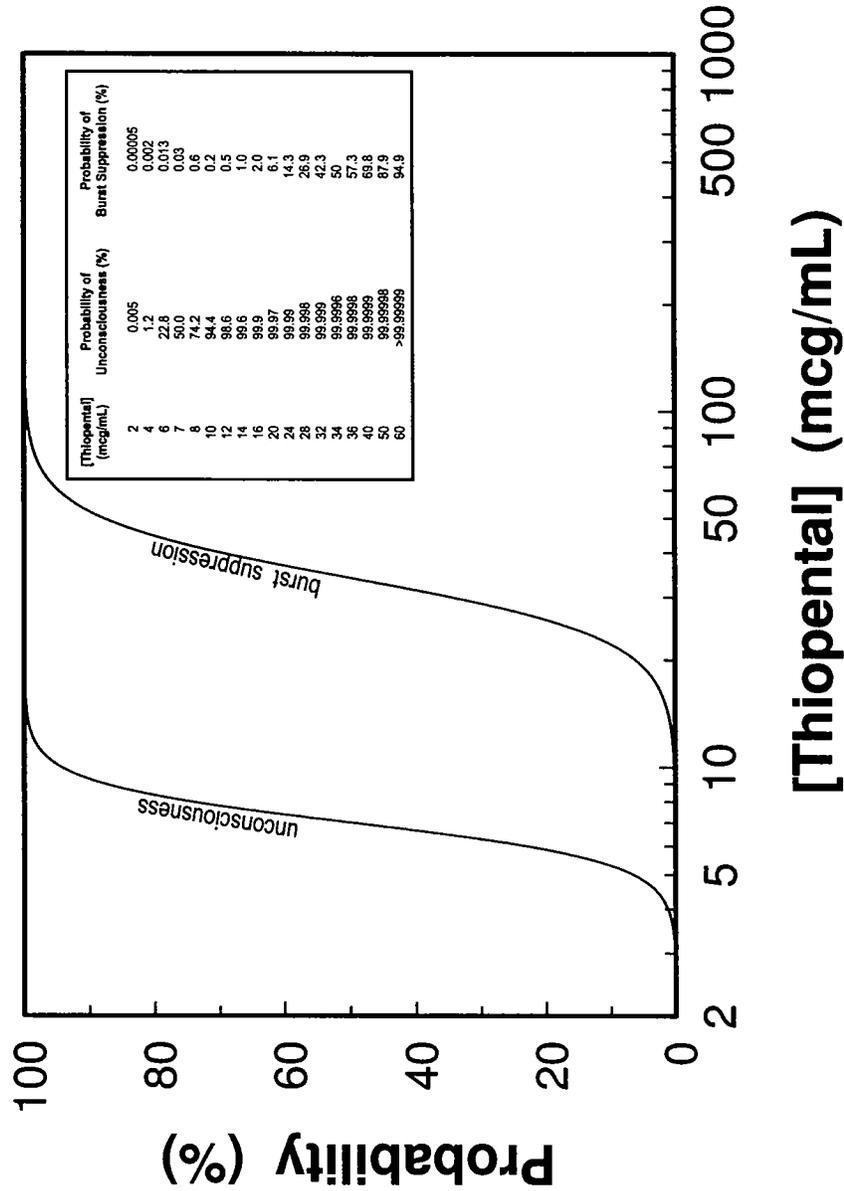


Figure 1: The probability that a person will experience unconsciousness or burst suppression on the EEG as a function of the brain concentration of thiopental. Note that the x-axis is shown as a logarithmic scale for clarity.¹⁶

16. See, e.g., *supra* note 4 and accompanying text.

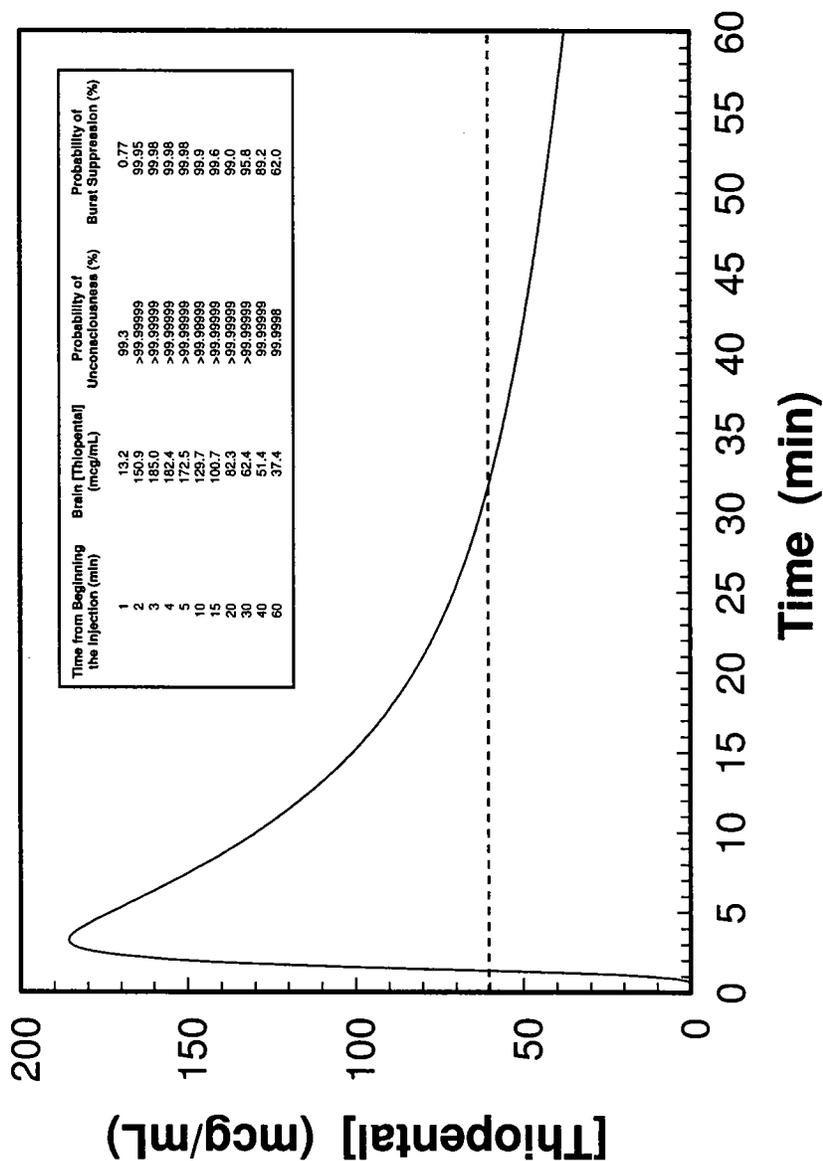


Figure 2: The predicted brain concentration of thiopental following the administration of a dose of 5000 mg given at a rate of 167 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.¹⁷

17. See Dershwitz & Rosow, *supra* note 6, at 850.

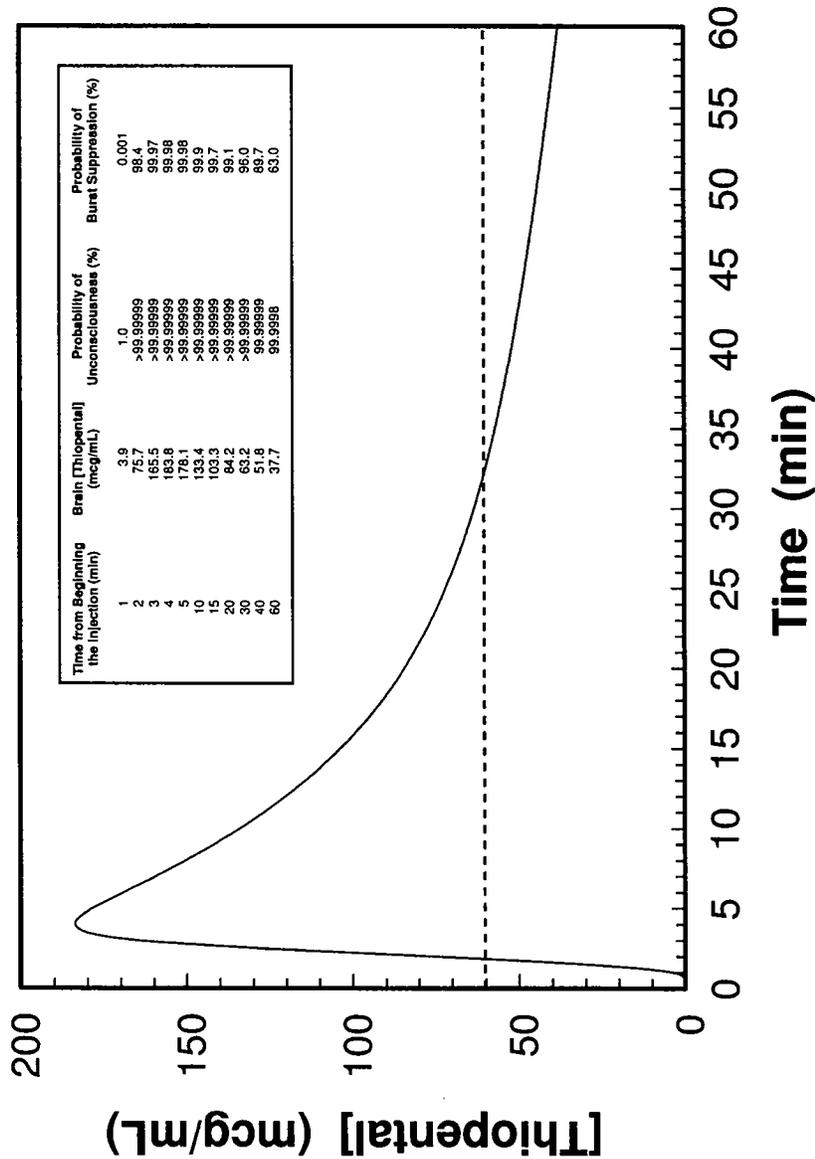


Figure 3: The predicted brain concentration of thiopental following the administration of a dose of 5000 mg given at a rate of 50 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.¹⁸

18. The pharmacodynamic model for unconsciousness is in Telford et al., *supra* note 4, at 523-29. See Shanks et al., *supra* note 4, at 309-21 for the pharmacodynamic model for burst suppression.

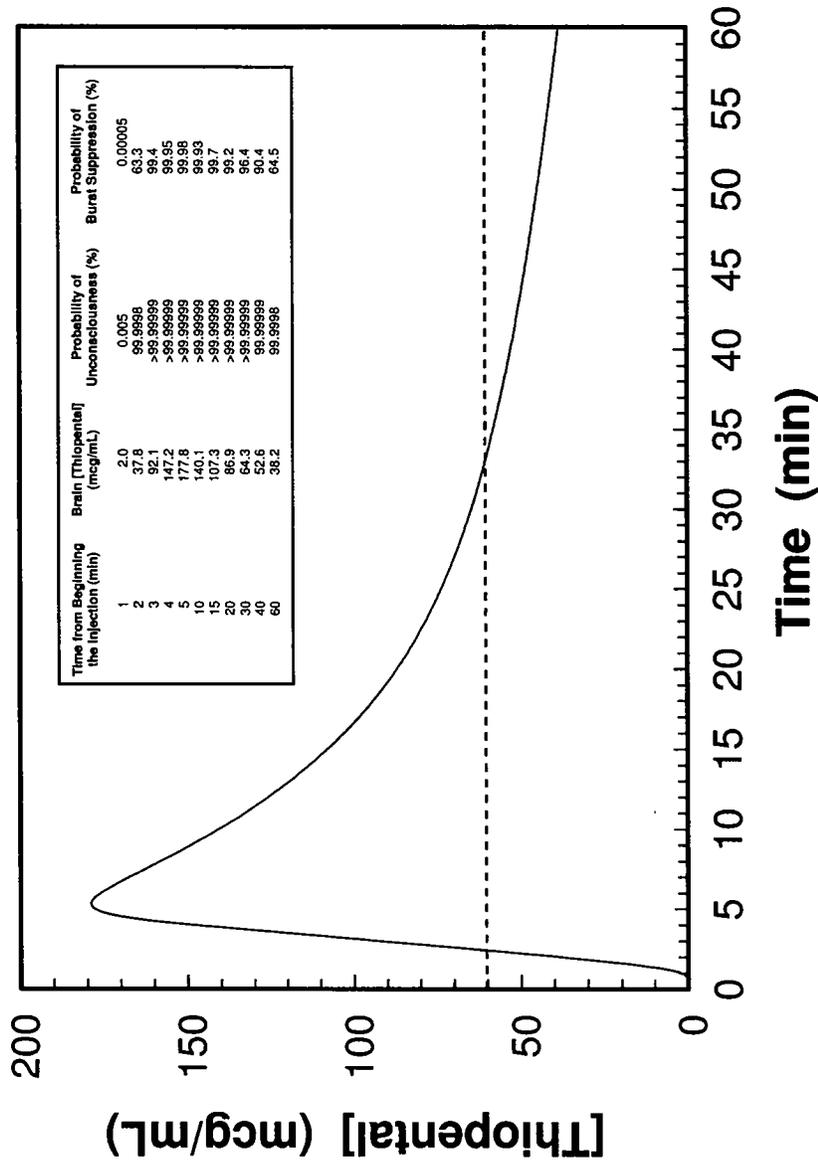


Figure 4: The predicted brain concentration of thiopental following the administration of a dose of 5000 mg given at a rate of 25 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.¹⁹

19. The pharmacokinetic model for thiopental used in Figures 2-8 is in Shanks et al., *supra* note 4, at 309-21.

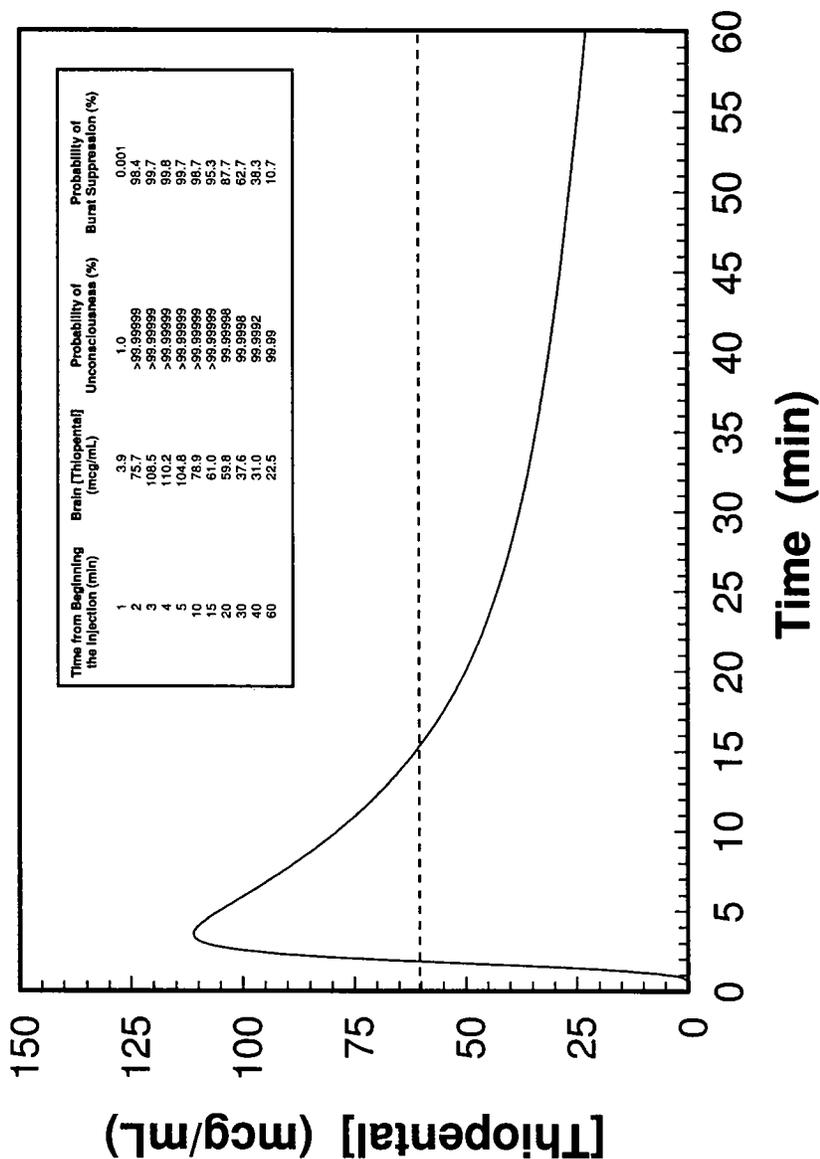


Figure 5: The predicted brain concentration of thiopental following the administration of a dose of 3000 mg given at a rate of 50 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.²⁰

20. See id.

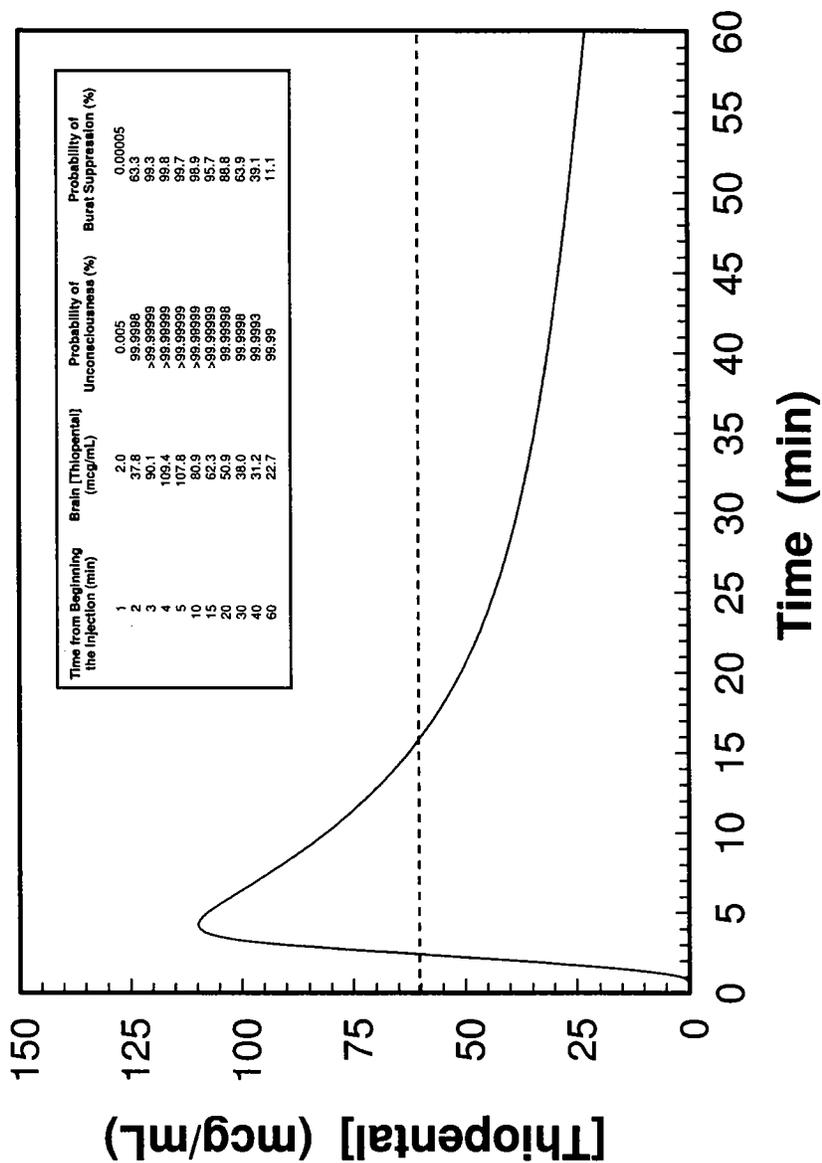


Figure 6: The predicted brain concentration of thiopental following the administration of a dose of 3000 mg given at a rate of 25 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.²¹

21. See *id.*

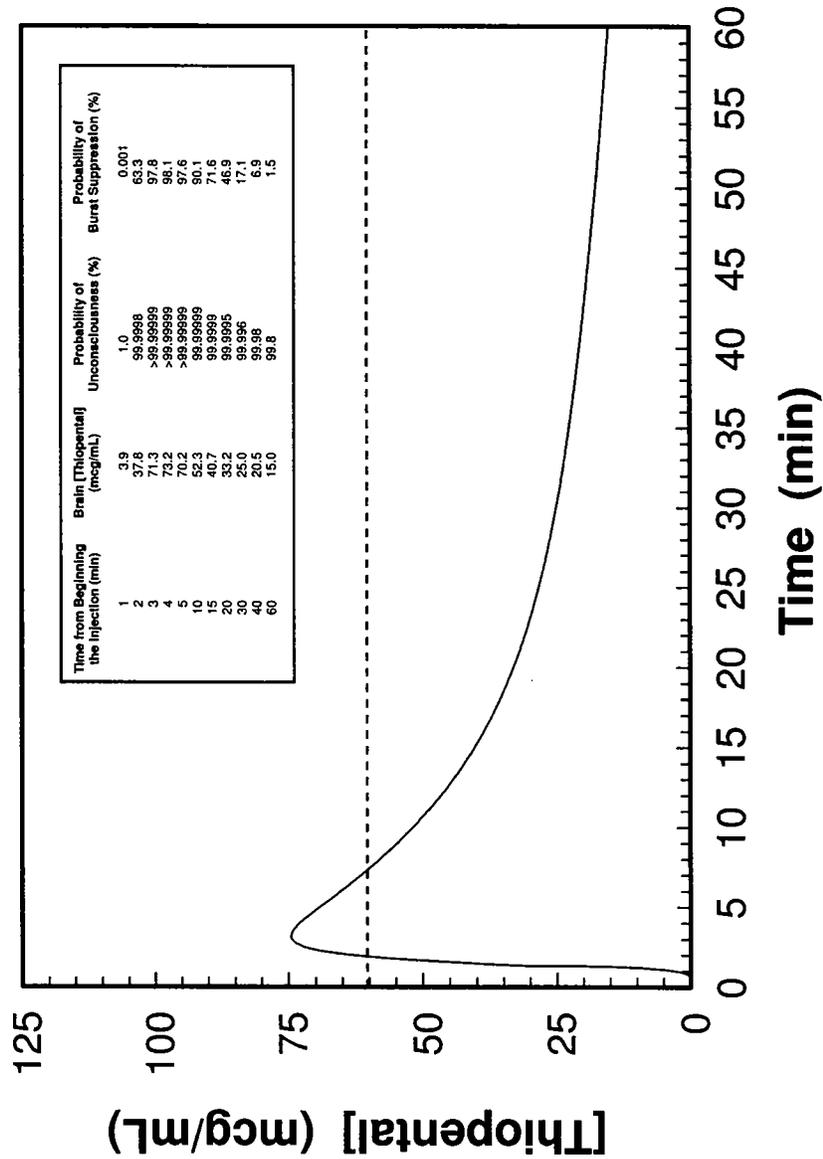


Figure 7: The predicted brain concentration of thiopental following the administration of a dose of 2000 mg given at a rate of 50 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.²²

22. See id.

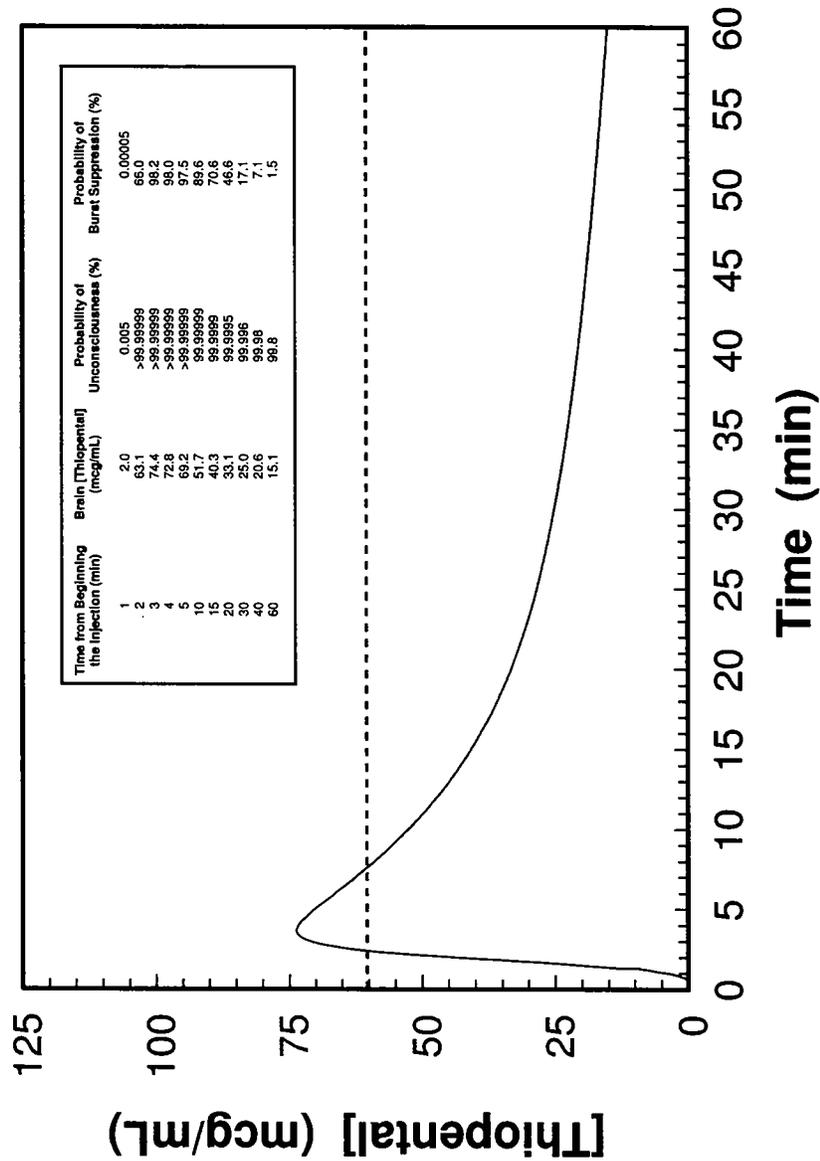


Figure 8: The predicted brain concentration of thiopental following the administration of a dose of 2000 mg given at a rate of 25 mg/sec to an average 80-kg person. The dashed line indicates the brain concentration above which 95% of persons will experience burst suppression on the EEG.²³

23. See id.

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Injection Rate (mg/sec)	Time to 95% probability of unconsciousness (min, normal C.O.)	Time to 95% probability of burst suppression (min, normal C.O.)	Time to 95% probability of unconsciousness (min, C.O. ↓ by 75%)	Time to 95% probability of burst suppression (min, C.O. ↓ by 75%)
25	1.6	2.6	2.3	3.1
50	1.4	2.1	2.0	2.7
167	1.1	1.5	1.8	2.2

These principles along with published data regarding the timing of drug onset can be used to construct models to simulate the onset of thiopental effect from any given dose or injection speed.²⁴ Figures 2 to 8 depict the onset of thiopental effect to the endpoints of unconsciousness and burst suppression for 2000 mg, 3000 mg, and 5000 mg doses at varying injection speeds. Since the onset of effect is rate-limited by blood circulation and diffusion, injection speed matters little. The table above shows the times required, from the beginning of the injection process, to reach a 95% probability of unconsciousness or burst suppression as a function of the injection rate for a 5000-mg dose. The standard solution of thiopental as used clinically is a 2.5% solution, or 25 mg/mL.²⁵ Therefore, injecting this solution at a rate of 1 mL/sec or 2 mL/sec yields injection rates of 25 mg/sec and 50 mg/sec, respectively. An injection rate of 167 mg/sec (6.7 mL/sec) is achieved by administering a 5000-mg dose over 30 seconds.

Since a 5000-mg dose of thiopental is expected to produce a substantial decrease in the cardiac output (C.O.),²⁶ the table also shows how the times to reach a 95% probability of unconsciousness or burst suppression are prolonged by a 75% decrease in cardiac output.

II. THE DURATION OF THIOPENTAL FOLLOWING VARIOUS DOSES

We shall now consider the *duration* of the effect of the thiopental once it has been administered. The duration of its action should exceed the amount of time required to administer the remaining

24. *See id.*

25. *See id.*

26. *See infra* notes 28-29 and accompanying text.

medications as well as the time required for the potassium chloride to stop the inmate's heart and to cause his or her death.

The amount of time required to administer all of the medications will depend on the doses specified by the protocol as well as the speed of the injection (i.e. how rapidly the executioner injects each syringe) as well as allowing some time to change syringes by removing one from the intravenous tubing and replacing it with the next one. The following hypothetical three-drug protocol involves using doses at the high end of those used by the various states:

- thiopental, 5000 mg (25 mg/mL, 200 mL)
- saline flush, 50 mL
- pancuronium, 100 mg (1 mg/mL, 100 mL)
- saline flush, 50 mL
- potassium chloride, 240 mEq (2 mEq/mL, 120 mL)
- saline flush, 50 mL

The largest commercially-available syringes used in medicine are 60 mL. The above protocol therefore requires eleven syringes. Assuming ten seconds for each syringe change, the total time to change syringes is 100 seconds. Considering the size of the syringes used (it becomes harder to push the plunger of a syringe as its diameter increases) and the length of the intravenous tubing required to go from the "injection room" to the "death chamber," it is difficult to inject such syringes at a rate greater than 2 mL/sec (or 50 mg/sec when the standard 2.5% solution is used). On the other hand, there is no reason to inject more slowly than 1 mL/sec, so the total volume of the drugs and flushes as listed above, 570 mL, should require no more than approximately eleven minutes to inject.

The potassium chloride should cause cessation of cardiac electrical activity within two minutes of its injection (although see below for a discussion on the effects of thiopental on cardiac output). Therefore, a time period of fifteen minutes should be more than enough to complete an execution, from the beginning of the injection of the thiopental until cessation of electrical activity. Some states mandate a period of time, e.g. five minutes, of continuous electrical inactivity on the electrocardiogram ("ECG"), but that additional time does not need to be considered here.²⁷

27. North Carolina, for example, requires such a five-minute period of electrical inactivity prior to the pronouncement of death. See North Carolina Department of Correction, Execution Method, <http://www.doc.state.nc.us/dop/deathpenalty/method.htm> (last visited Apr. 15, 2008).

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Figures 2 through 4 depict the predicted concentration of thiopental in the brain following a dose of 5000 mg given at various rates of injection. Referring to Figures 2 to 4, it is apparent that fifteen minutes following the beginning of the thiopental injection, an average person will have essentially a 100% probability of being unconscious and having burst suppression on the EEG. These probabilities are not affected by the speed of the injection.

Figures 5 and 6 depict the predicted brain concentration of thiopental following a dose of 3000 mg given at a rate of 25 mg/sec (1 mL/sec) or 50 mg/sec (2 mL/sec). Fifteen minutes following the beginning of the thiopental injection, an average person will have essentially a 100% probability of being unconscious and about a 95% probability of having burst suppression on the EEG. These probabilities are not affected by the speed of the injection.

Figures 7 and 8 depict the predicted brain concentration of thiopental following a dose of 2000 mg given at a rate of 25 mg/sec (1 mL/sec) or 50 mg/sec (2 mL/sec). The 2000-mg dose of thiopental requires less time to inject than the 5000-mg dose (40 seconds vs. 100 seconds using an injection rate of 50 mg/sec). It will also have a lesser effect in decreasing cardiac output permitting the potassium chloride to circulate more quickly. With the 2000-mg dose, the time required to complete the injection and achieve cardiac arrest will be approximately 7 to 10 minutes with injection rates of 25-50 mg/sec and an additional two minutes to observe cardiac arrest on the ECG. At these time points, a person will have essentially a 100% probability of being unconscious, and a 90-95% probability of having burst suppression on the EEG.

III. OTHER EFFECTS OF THIOPENTAL

The aforementioned predictions of duration of unconsciousness are based upon the persons continuing to breathe (or have their breathing assisted as during surgery). The doses of thiopental used in lethal injection will cause most persons to stop breathing and to have their blood pressures substantially decreased.²⁸ Thus, even in the absence of the administration of pancuronium and/or potassium chloride, doses of thiopental of 2000 mg and above will be lethal in most persons due to the impairment of delivery of oxygen to critical organs such as the heart and brain. The largest dose of thiopental used in clinical medicine, about 3000 mg, is occasionally used for "brain protection" when there is the planned and deliber-

28. See generally, Dershwitz & Rosow, *supra* note 6, at 853.

ate interruption of blood flow to the brain.²⁹ Such an interruption of blood flow may occur during certain brain surgeries to repair an aneurysm or arteriovenous malformation. During such surgical procedures, patients are mechanically ventilated so that the effect of thiopental on ventilation is not relevant. However, a dose of 3000 mg of thiopental will decrease the cardiac output and the blood pressure to a dramatic, and dangerous, degree. Such patients require the aggressive administration of medications to maintain adequate blood pressure and oxygen delivery to organs. While neither of us, nor any other physician we know, has ever given a 3000-mg dose of thiopental to a patient who was not mechanically ventilated nor had his or her circulation supported, it is difficult for us to imagine that the administration of 3000 mg of thiopental to an inmate, by itself, is survivable.

We are unaware of any indication in clinical medicine in which a 5000-mg dose of thiopental is given to an 80-kg patient. The negative cardiac effects of such a huge dose of thiopental are necessarily larger than those following a 3000-mg dose. In fact, there is circumstantial evidence that a 5000-mg dose of thiopental may have caused, in some inmates, virtual cessation of the circulation. California is one of the states that uses a 5000-mg dose of thiopental as well as an ECG to monitor the electrical activity of the heart. There have been several executions in California in which a second dose of potassium chloride was given, as mandated by the protocol, because cessation of electrical activity on the ECG did not occur after the first dose.³⁰ One possible explanation is that the potassium chloride was not injected through a working intravenous catheter. Another more plausible explanation is that the potassium chloride did not circulate to the heart from the site of the intravenous injection.

IV. ASSESSING THE PRESENCE OR ABSENCE OF CONSCIOUSNESS

As previously described, all of the lethal injection protocols that we have reviewed are intended to render the inmate unconscious prior to the administration of pancuronium and potassium chloride

29. See W.A. Kofke, *Protection of the Central Nervous System in Surgical Patients*, in ANESTHESIOLOGY, *supra* note 3, at 1939-40.

30. For example, the execution log of Robert L. Massey, who was executed on March 27, 2001, indicates he was given a second dose of potassium chloride five minutes after the first dose failed to produce a flat ECG, and the execution log of Stephen Wayne Anderson who was executed on January 29, 2002, indicates he was given a second dose of potassium chloride four minutes after the first dose failed to produce a flat ECG.

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and to maintain unconsciousness until death occurs.³¹ The greatest risk to the inmate, in terms of the humaneness of an execution, is the administration of pancuronium and/or potassium chloride to an inmate who is conscious. Based upon the history of those executions that did not go as intended, the most frequent problem in such executions has been an intravenous catheter that was not actually within a vein.³²

If the intravenous catheter was not positioned correctly from the beginning, all of the medications will be delivered to the subcutaneous tissues and the inmate will not lose consciousness as rapidly as expected. A less plausible, but still possible, scenario is one in which the thiopental is delivered subcutaneously but then the intravenous catheter begins functioning properly and the remaining medications are delivered intravenously. In such a scenario, the inmate could be conscious and experience the paralytic effects of pancuronium and the pain associated with the injection of potassium chloride.

Such a risk could be lessened if the inmate were demonstrated to be unconscious following the administration of thiopental and before the administration of the pancuronium and potassium chloride. This sort of assessment is mandated by some protocols and makes use of either a physical examination or an EEG monitor.³³

Assessing the *depth* of anesthesia is a complex examination requiring both significant training and experience, which is obligatory in clinicians who administer anesthesia. Assessing the *presence of unconsciousness*, in contrast, is something many paramedical personnel do routinely. Such an examination typically involves the application of graded stimuli and the assessment of the response to:

- a spoken command (e.g. "open your eyes")
- a tactile reflex (e.g. gently stroking an eyelash)
- gentle shaking
- a noxious stimulus (e.g. a strong pinch)

31. See *supra* note 2 and accompanying text.

32. The executions of Joseph Clark on May 2, 2006, in Ohio and of Angel Diaz on December 13, 2006, in Florida were characterized by prolonged periods following the administration of thiopental during which the inmates did not lose consciousness as would have been expected had the medication been introduced intravenously.

33. For example, the protocols used by Missouri and the federal government include an assessment of consciousness by physical examination. The protocol used by North Carolina employs a type of EEG monitor. See, e.g., Connor v. N.C. Council of State, Nos. 07-GOV-0238, 07-GOV-0264 (N.C.O.A.H. Aug. 9, 2007) (describing North Carolina's lethal injection protocol).

The lack of any response to these graded stimuli is strong evidence that a person is indeed unconscious.

One state, North Carolina, uses the bispectral index ("BIS") monitor in its lethal injection protocol.³⁴ This is a type of EEG monitor commonly used by anesthesiologists to assess the depth of anesthesia and decrease the incidence of intraoperative awareness.³⁵ It involves placing an electrode array on the forehead and connecting these electrodes to the monitor. Although the monitor displays much neurophysiological information, the parameter of greatest interest is the bispectral index, or BIS. This is a dimensionless number that ranges from zero to 100.³⁶ Zero corresponds to complete electrical inactivity of the EEG (i.e. "flatline") while 100 corresponds to the completely awake state.³⁷ Many clinical studies have shown that a BIS value of 40-60 is associated with a clinically appropriate depth of anesthesia and a very low probability of intraoperative awareness.³⁸

North Carolina has utilized the BIS monitor in several executions. The monitor is viewed by a nurse. The executioner pauses after the administration of thiopental (3000 mg in this state) and awaits a signal from the nurse before giving the pancuronium and potassium chloride. In each execution in which it has been used, the BIS value was 0-10 *before* the thiopental administration was complete.

V. POSTMORTEM DETERMINATION OF THIOPENTAL

Some states routinely perform autopsies on executed inmates and such autopsies may include drawing blood for the measurement of the thiopental concentration.³⁹ Unfortunately, in far too many of these autopsies the blood samples have been improperly

34. *See id.*; *Brown v. Beck*, 2006 U.S. Dist. LEXIS 60084, at *4 (E.D.N.C. Apr. 7, 2006).

35. *See* Paul S. Myles et al., *Bispectral Index Monitoring to Prevent Awareness During Anaesthesia: The B-Aware Randomised Controlled Trial*, 363 LANCET 1757, 1757 (2004); Y. Punjasawadwong et al., *Bispectral Index for Improving Anaesthetic Delivery and Postoperative Recovery*, 1 THE COCHRANE LIBRARY 1, 2 (2008) (reprinted by The Cochrane Collaboration).

36. *See* Lee A. Kearsse et al., *Bispectral Analysis of the Electroencephalogram Predicts Conscious Processing of Information During Propofol Sedation and Hypnosis*, 88 ANESTHESIOLOGY 25, 25-34 (1998).

37. *Id.*

38. *See* Myles et al., *supra* note 35, at 1757, 1763; Punjasawadwong et al., *supra* note 35, at 6.

39. Leonidas G. Koniaris et al., *Inadequate Anaesthesia in Lethal Injection for Execution*, 365 LANCET 1412, 1412-14 (2005).

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obtained and the results have therefore been erroneously interpreted.

Thiopental undergoes postmortem redistribution. This means that the blood concentration of thiopental continues to decrease even after the inmate's death and the cessation of circulation.⁴⁰ There is unfortunately very little information on the postmortem kinetics of thiopental because historically thiopental has been of little importance to forensic toxicologists. There are no peer-reviewed papers in the medical literature that have evaluated the postmortem redistribution of thiopental. Medical examiners in several jurisdictions have drawn paired blood samples following executions in order to assess the presence and degree of postmortem redistribution.⁴¹ The first blood sample was obtained soon after the execution, while the second blood sample was obtained hours later at the time of autopsy. We are aware of the following sets of paired blood samples that demonstrate that postmortem redistribution of thiopental does indeed occur:

Jurisdiction	Inmate	Date	[Thiopental] mcg/ mL Obtained soon after death	[Thiopental] mcg/ mL Obtained at autopsy
CT	Ross	5/13/05	29.6	9.7
NC	McHone	11/11/05	21	1.5
NC	Syriani	11/18/05	12	4.4
NC	Boyd	12/2/05	29	11
NC	Simpson	1/20/06	42	12
MT	Dawson	8/11/06	21	3

In each case, "soon" after death means that the blood sample was drawn within an hour of completing the execution. Autopsies were performed at various times following the executions, ranging from about seven to eighteen hours.

Some persons have argued that this table represents nothing more than a group of random numbers.⁴² There are indeed *pooled* data that are purported to demonstrate no time-dependent de-

40. See A.L. Péliissier-Alicot et al., *Mechanisms Underlying Postmortem Redistribution of Drugs: A Review*, 27 J. ANAL. TOXICOL. 533, 533-44 (2003).

41. Such postmortem analyses have been performed following executions in Connecticut, Montana, and North Carolina.

42. See generally Susi Vassallo, *Thiopental In Lethal Injection*, 35 FORDHAM URB. L.J. 957 (2008); Teresa A. Zimmers & Leonidas Koniari, *Peer-reviewed Studies Iden-*

crease in the thiopental concentration in blood following death.⁴³ The table above is, however, the only example of *paired* data in which blood samples were drawn from the *same* inmate at *different* times following death. Applying Student's t-test for paired data to the data in the above table yields a *p* value of 0.0013. The interpretation of this statistical result is that there is a 99.9987% probability of a significant *decrease* in the blood thiopental concentration as a function of time following death by lethal injection where death closely follows a single rapid infusion of the drug and pseudoequilibrium with the majority of the body's tissues did not have time to be completed.⁴⁴ These data confirm the process of postmortem redistribution and would suggest that a rise in blood thiopental concentrations would be seen if similar paired postmortem samples were obtained when death occurred much longer after a dose of thiopental (as might occur in a clinical situation) at a time well after pseudoequilibrium between blood and tissue drug concentrations when the concentration gradient would be expected to be reversed.

In addition to the process of postmortem redistribution, another possible source of misleading postmortem thiopental data is the difference in the concentration of thiopental in arteries and veins. Pathologists most commonly draw postmortem blood samples from the femoral vein in the groin. Located immediately next to the femoral vein is the femoral artery. During life, it is usually easy to locate the femoral artery because it is typically the strongest peripheral pulse in the body. Following death, this landmark is lost. Since the femoral vein has a greater diameter, when a needle is inserted blindly in the groin, the femoral vein is more likely to be entered. However, Figure 9 shows that there may be substantial and clinically meaningful differences between the arterial and venous concentrations of thiopental. Assuming a normal cardiac output, differences between the arterial and venous concentrations of thiopental are expected for approximately four minutes following the beginning of thiopental administration. In contrast, if thiopental were to cause a large decrease in cardiac output (as is expected with the large doses used in lethal injection protocols), the differ-

tifying Problems in the Design and Implementation of Lethal Injection for Execution, 35 FORDHAM URB. L.J. 919 (2008).

43. See Koniaris et al., *supra* note 39, at 1412-14; Teresa A. Zimmers et al., *Authors' Reply, Inadequate Anaesthesia in Lethal Injection for Execution*, 366 LANCET 1073, 1074-76 (2005).

44. See Stanton Glantz, PRIMER OF BIOSTATISTICS 322-25 (McGraw-Hill, 6th ed. 2005).

ence in the arterial and venous concentrations will persist until well after the expected occurrence of death.

The accurate differentiation between the femoral artery (lacking a pulse) and the femoral vein following death requires dissection and visualization of both vessels. Many medical examiners are unwilling to perform such a procedure at a prison on an inmate who has just been executed. Were a state to decide that the acquisition of a blood sample from a known blood vessel is a prudent idea, they might consider hiring a funeral director to perform the procedure. Since the process of embalming involves dissection and visualization of arteries and veins so that the embalming fluid can be injected, funeral directors should readily be able to obtain accurately femoral arterial and femoral venous blood for analysis.

We believe that there should be as much transparency as possible in the lethal injection procedure. Therefore, we support the practice of obtaining postmortem blood samples for thiopental analysis as a routine procedure. It is, however, crucial to obtain the blood sample properly and that means drawing it soon after the inmate's death, preferably within a few minutes and definitely within an hour.

VI. CONCLUSIONS

In summary, our pharmacokinetic and pharmacodynamic predictions of the effects of thiopental as used in the lethal injection protocols we have reviewed suggest that these protocols, if implemented as written, will result in the rapid death of the inmate without undue pain or suffering.

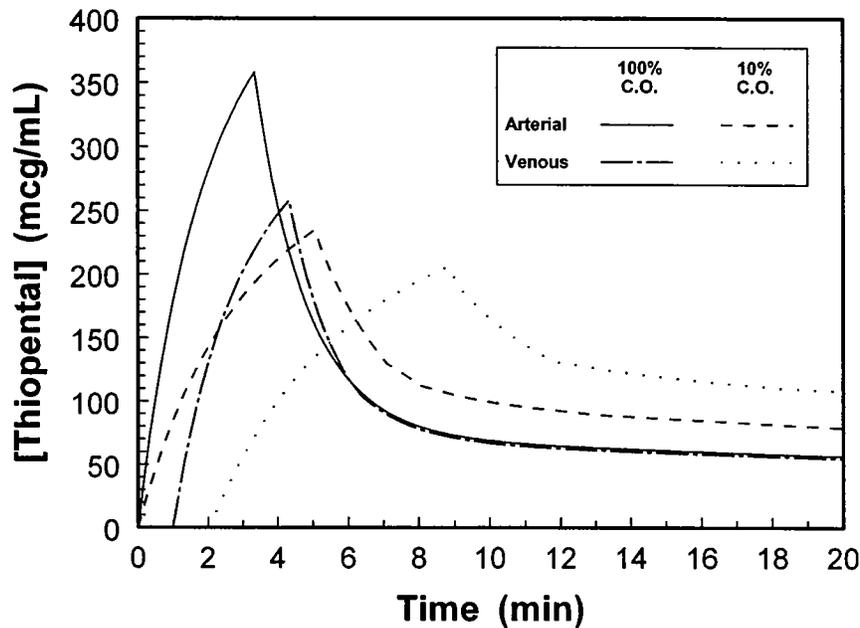


Figure 9: The effect of thiopental-induced decrease in cardiac output on the time course of the arterial and venous concentrations of thiopental. The predicted arterial blood concentration of thiopental following the administration of a dose of 5000 mg given at a rate of 1 mL/sec to an average 80-kg person is depicted by the solid line. The simultaneous venous blood concentration is depicted by (— - —). The two other lines assume a 90% decrement in cardiac output caused by thiopental. The dashed line depicts the predicted arterial concentration, while the dotted line depicts the predicted venous concentration.⁴⁵

Implementing a protocol as written means the correct doses of the correct medications are administered in the correct order into a properly functioning intravenous delivery system and allowing sufficient time for thiopental to produce its effect.

We previously discussed that the cardiovascular and respiratory effects of thiopental given by itself in doses of 2000 mg and above are likely to be lethal in virtually everyone. Much has been written and said about adopting lethal injection protocols that rely on a single drug alone such as thiopental. As clinical pharmacologists, we can describe the advantages and disadvantages in comparing the current three-drug protocol with a protocol consisting of thio-

45. The pharmacokinetic model for thiopental used in Figure 9 is in T.D. Homer & D.R. Stanski, *The Effect of Increasing Age on Thiopental Disposition and Anesthetic Requirement*, 62 ANESTHESIOLOGY 714, 714-24 (1985). Some of the cardiovascular modeling was performed using the program A-ware, Springer Electronic Media.

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pental as the only medication. We cannot, however, state which option is “better” because in this context “better” is based not upon pharmacological considerations but is actually a public policy decision best made by well-informed policy makers.

Some persons have contended that a large dose of thiopental given by itself does not reliably produce death.⁴⁶ In the Netherlands, where euthanasia and physician-assisted suicide are both legal, the Royal Dutch Society for the Advancement of Pharmacy wrote, “For intravenous administration, thiopental receives most consideration. It is not possible to administer so much of it that a lethal effect is guaranteed, but the substance is quite suitable for producing coma, after which termination may be effected using a muscle relaxant.”⁴⁷ In the same article, the thiopental dose to be used was stated as, “intravenous administration of 1 g thiopental sodium, if necessary, 1.5-2 g of the product in case of strong tolerance to barbiturates.”⁴⁸ Apparently the largest dose of thiopental used in the Netherlands was only 2 g (or 2000 mg) and it is therefore not surprising that such a dose was found to be less than 100% lethal.

The primary advantage of the three-drug protocol is that there is a definite and rapid end-point to the protocol and that is the onset of a flat-line ECG that can be assessed remotely by viewing an ECG monitor. The primary disadvantage is that there is the risk that the inmate could experience pain and suffering if the dose of thiopental is not properly administered for whatever reason and the pancuronium and potassium chloride are then administered to a conscious person. Another disadvantage to the three-drug protocol is that the potassium chloride, in addition to its action in stopping the heart, also causes widespread stimulation of nerve and muscle tissue throughout the body. Such stimulation is often manifested as involuntary muscle contractions that may have in the past been misperceived by lay witnesses as consistent with pain or suffering, or experiencing a seizure. In fact, it is most unlikely that someone given a large dose of thiopental, an excellent anticonvulsant medication, could suffer a seizure. One action of the pancuronium is to mitigate these involuntary muscle contractions.

46. Teresa A. Zimmers et al., *Lethal Injection for Execution: Chemical Asphyxiation?* 4(4) PLoS MEDICINE 646, 646-47 (2007).

47. For an English translation of the article, see *Administration and Compounding of Euthanasic Agents*, The Hague (Royal Dutch Society for the Advancement of Pharmacy 1994), available at <http://www.week.com/html/euthanasics.html>.

48. *Id.*

The primary advantage of a protocol in which a large dose of thiopental is given by itself is that there is no risk whatsoever of the inmate experiencing pain or suffering due to the effects of pancuronium or potassium chloride. If the intravenous catheter were to malfunction and the thiopental were deposited next to, instead of inside of, the vein, the inmate might experience some pain at the injection site but in fact this is a potential risk to which any patient given thiopental for anesthesia is subjected. The primary disadvantage of this single-drug protocol is that, although the inmate will likely die within a few minutes, his death will not be immediately reflected on the ECG monitor. In fact, following a large dose of thiopental that causes the inmate to stop breathing, experience a huge drop in blood pressure, and therefore a fatal decrease in oxygen delivery to critical tissues, it might very well take a half hour or longer for the ECG to become flat. In this case, it would be imprudent to wait for the ECG to become flat, and death would need to be ascertained by a physical examination that demonstrated the absence of a heartbeat or evidence of circulation. Whether this physical examination is performed by a physician or a paraprofessional credentialed to pronounce death (such as a nurse or a paramedic), either the person would be visible to the witnesses or the curtains in the death chamber would need to be drawn for the pronouncement of death to maintain this person's anonymity. Once again, we are unable to state, based upon pharmacological principles, which of these options is "better," however, we believe that those policy makers responsible for making such decisions are entitled to accurate scientific information in order to make an informed policy decision.

EXHIBIT 12

DECLARATION OF DAN J. PACHOLKE

I, DAN J. PACHOLKE, make the following declaration:

1. I am currently employed as the Prison Administrator for the Department of Corrections (DOC). As the Prison Administrator, I supervise the operation of a number of Washington State prisons, including the Washington State Penitentiary (WSP). I am over the age of eighteen and competent to testify as a witness. The declaration set forth below is based on my personal knowledge.

2. Before I became the Prison Administrator, I was a prison superintendent at the following DOC prison facilities: Cedar Creek Corrections Center (2003-2006), Stafford Creek Correction Center (2007-2008), and interim superintendent at the Monroe Correctional Complex (2008). I have worked for DOC for 26 years. Attached to this declaration as Attachment A is a true and correct copy of my curriculum vitae.

3. As the DOC Prison Administrator, I supervise the WSP Superintendent, Stephen Sinclair. I am familiar with DOC Policy 490.200, Capital Punishment.

4. Superintendent Sinclair has reported to me that each member of the lethal injection team has sufficient training or experience to carry out the lethal injection process without any unnecessary pain to Mr. Stenson. Superintendent Sinclair has reported to me the individual team members who will assist in the execution by lethal injection will each have one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation, as required by DOC Policy 490.200, Directive IX(A)(1)(d).

5. Pursuant to the requirements of DOC Policy 490.200, Directive VIII(1)(2) practice sessions have been conducted at WSP in anticipation of Mr. Stenson's scheduled execution. I have been present during at least two sessions for lethal injection and two sessions for hanging.

6. Regarding lethal injection, I attended two practice sessions on October 14, 2008, in the execution chamber at WSP. Each of these sessions involved a full walk-through of the

EXHIBIT 12

entire lethal injection process and the insertion of intravenous lines in both arms of two individuals. The lethal injection process includes the escorting in of the inmate subject to the death penalty, the placing of this person on the table, and the insertion of the intravenous lines. In one practice session, I assumed the role of the inmate subject to the death penalty. I was placed on the gurney in the execution chamber and strapped to the gurney. From there, I observed the actions of the lethal injection team. In the other practice session, I assumed the role of the superintendent while Superintendent Sinclair assumed the role of the inmate subject to the death penalty. Again, I observed the actions of the lethal injection team. In both practice sessions, two separate intravenous lines were inserted into either my arms or the arms of Superintendent Sinclair, one intravenous line on each arm, and flows of saline were initiated. Thereafter, members of the lethal injection team went through the tasks of simulating the application of the substances called for under the DOC Policy 490.200, sodium thiopental, pancuronium bromide, and potassium chloride. When I assumed the role of an inmate, I felt little or no pain during the practice session. The insertion of the needle and catheter occurred very much like when I have given blood. The lines were inserted with no apparent difficulty. I also observed nothing indicating that Superintendent Sinclair experienced any pain as the intravenous lines were inserted into his arms during the practice session in which he assumed the role of the inmate. Lethal injection team members performed their respective roles without any apparent difficulty. They all appeared to know their assignments and performed them without any difficulty.

7. I attended two practice sessions for hanging on October 19, 2008, at WSP. During both sessions, I was present on the upper floor of the execution chamber where the inmate subject to the death penalty would be escorted prior to an execution by hanging. In each of the practice sessions I witnessed, a mannequin was "dropped" through the trap door. Both practice sessions occurred without any difficulty and the steps leading up to and including the execution occurred according to DOC Policy 490.200.

8. In the practice sessions involving the mannequin, the noose was placed tightly around the mannequin's neck with the noose knot directly behind the mannequin's left ear and the running part of the noose (or the loop) placed in the front of the mannequin's neck. After the noose has been securely placed, the trap door is opened and the mannequin falls through and the rope is extended to five full feet. In each of these sessions, the hanging mechanisms functioned without error or incident.

9. Based on my observations of the execution practice sessions discussed above and on my conversations with Superintendent Sinclair, I observed nothing indicating any inability by either the execution team or Superintendent Sinclair in carrying out DOC Policy 490.200.

10. I will be present in the execution chamber during Mr. Stenson's execution and will ensure that DOC Policy 490.200 is followed.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 7 day of November, 2008, at Olympia, Washington.



DAN J. PACHOLKE